

Appendix C.18 – Yale First Nation

I - Background Information

Yale First Nation (Yale) is located in the area around Yale on the Fraser River, roughly 20 kilometers (km) north of Hope.

Yale has 16 reserves and a total of 172 registered members as of August, 2016. Yale’s traditional language is known as Halq’eméylem.

Yale filed a protective *Writ of Summons* with the British Columbia (BC) Supreme Court on December 10, 2003. Yale entered the BC Treaty process in 1994, filing a statement of intent identifying its asserted traditional territory,¹ and completed a final agreement in 2013 but has suspended its implementation.

II - Preliminary Strength of Claim Assessment

- The pipeline right of way (RoW) travels through 27.5 km of Yale’s asserted traditional territory. No Project facilities are located within Yale’s asserted traditional territory; however Lukseetsissum reserve no.9 is situated approximately 1 km from the proposed pipeline RoW.
- Yale is understood to be a modern descendant of the group ethnographically identified as the Tait. The Tait are one of several groups classified as Upper Stó:lō. Though similar language and customs appear to have been shared between the Upper Stó:lō groups, the Tait spoke a unique dialect.
- The Crown's preliminary assessment of the Tait's *prima facie* claim for rights over the area related to the Project ranges from weak to strong. The portion that spans the asserted territory falls within the area ethnographers attributed to the historic Tait territory and would support a strong *prima facie* claim.²
- The Crown's preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz up to Hope is considered moderate to strong, and the claim is strong for the portion of the Project in proximity to Hope. This is supported by the number of historic Tait village sites scattered from Popkum up through to Ruby Creek on towards Hope, including the historic site of *C’Kals*, a large village site where Hope is now located. The stretch of territory northwest of Hope is considered to be moderate, an area likely utilized for resource gathering activities by those who occupied the Tait villages in and near Hope and northwards.³

¹ http://www.bctreaty.net/nations/soi_maps/Yale_SOI_Map.pdf

² Ts’lwxweyeqw (Chilliwack), Tait and Ntlakyapamuk (Thompson) First Nations: Review of Historical and Ethnographic Sources regarding Aboriginal Use and Occupation of the Chilliwack River Valley; Cascades Lower Canyon CFA: The Shxw’owhamel, Chawathil, Union Bar and Yale First Nations: A Preliminary Review of Ethnographic and Historical Sources; Stó:lō/Yale Territorial Overlaps: A Preliminary Review of Ethnographic and Historical Sources; Sto:lo First Nations: Traditional Territories of the “Upriver” Halkomelem or “Upper Sto:lo” – Review of Ethnographic and Historical Sources (Nov 18, 2013); A Stó:lō-Coast Salish Historical Atlas (2001); and Stó:lō Nation Traditional Use Study (Jan 30, 1998)

³ Ibid.

III - Involvement in the NEB and Crown Consultation Process

Given the nature and location of the Project, and the potential impacts of the Project on Yale's Aboriginal Interests, the Crown is of the view that the legal duty to consult Yale lies at the middle portion of the *Haida* consultation spectrum. Yale was placed on Schedule B of the Section 11 order issued by the British Columbia Environmental Assessment Office (EAO) which affords Yale opportunities to be consulted at a deeper level.

Yale did not participate in the National Energy Board (NEB) process.

The Major Projects Management Office (MPMO) offered Yale \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Yale an additional \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Yale signed contribution agreements with the MPMO in response to both of these offers, for a total of \$9,000 in allocated funding. On September 20, 2016, Yale was issued \$5,000 in capacity funding by EAO to assist with participation in consultation.

Yale signed a letter of support with the proponent on May 25, 2015, informing the proponent and the NEB that the community supports the Project, does not object to the Project, and/or is satisfied by the mitigation measures and the consultation provided. At a September 16, 2016, meeting with the Crown consultation team, Yale indicated its willingness to engage in ongoing consultation to improve the Project throughout its lifecycle, should it be approved. Yale reiterated this desire in an October 24, 2016, letter from Chief and Council to the Crown.

The Crown provided a first draft of the Crown Consultation and Accommodation Report to Yale for review and comment on August 17, 2016. Yale provided comments on the draft Report to the Crown on October 24, 2016. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from Yale.

IV - Summary of Yale's Key Issues and Concerns Raised

Although Yale did not participate in the NEB review process nor engage in outside consultation with the Crown, Yale has engaged with the proponent extensively. The Crown has considered information regarding the proponent's engagement with Yale, as described in the proponent's Aboriginal Engagement Report (July 2016). Yale also met with the Crown consultation team on September 16, 2016.

This section offers a summary of the key issues raised by Yale, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown's assessment of the impact of the Project presented in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of issues and concerns raised by Yale as identified in correspondence on March 15, 2016 and at a meeting with the Crown consultation team on September 16, 2016, include the following:

- How to meaningfully take part in the opportunities associated with the Project, requiring partnerships, training and local services; including related limitations facing labourer positions, other employment opportunities and security certification training, the possible requirement that workers have driver licenses, as well as procurement opportunities for community members;
- Greenhouse gas emissions that are released as a result of the Project and impacts on localized environments;
- The questionable value-added of oil exports and undetermined domestic economic benefits
- Concerns about the risks associated with transporting diluted bitumen including the ability to remediate after a spill; and
- Concern about the route of the Project's pipeline and its proximity to Ruby Creek Indian Reserve.

Yale identified the following concerns in the proponent's Aboriginal Engagement Report:

- Concerns about pesticide use on the RoW; and
- Concerns that the Project may affect access to sacred or ceremonial sites.

In an October 24, 2016, letter from Chief and Council, Yale indicated its support for local refining of diluted bitumen in order to promote the domestic energy supply, lower gas prices at the pump, and benefit the national economy by cutting transport costs and creating jobs. Domestic refining would also reduce environmental risks in the event of a spill.

Yale's Response to NEB Recommendation Report

To the Crown's knowledge, Yale has not prepared a direct response to the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Yale's Aboriginal Interests

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Sections 2.4.3 and 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group, may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Yale's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Yale's ability to practice Aboriginal Interests. Where information was available, the Crown considered the following:

- Biophysical effects to values linked to Aboriginal rights (e.g., fish) that were assessed by the NEB;
- Impacts on specific sites or areas identified as important to traditional use; and
- Impacts on social, cultural, spiritual, and experiential aspects of exercising Aboriginal Interests.

Additional factors considered in the assessment of impacts on Aboriginal Interests are described in Section 2.4.3 of this Report. The Crown's conclusion on the seriousness of Project impacts on Yale's Aboriginal Interests considers information available to the Crown from consultation with Yale, Yale's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate (EAC) issued by the Province. Yale completed an independent, third-party traditional land use (TLU) study in 2014 entitled, "*Cultural Heritage Assessment and Traditional Knowledge Study of the Proposed Kinder Morgan Trans Mountain Pipeline Route through Yale First Nation Traditional Territory.*" The Report identifies traditional land uses in the segment of the proposed pipeline from Black Pines to Hope. The objectives of this study included compiling Yale's traditional use and ethnographic data in the Coquihalla Valley and identifying potential impacts of the Project on Yale's use of the proposed pipeline corridor. Yale's TLU information is summarized in the Project Application ([A4F5D1](#); [A3S1S0](#)).

Impacts on Hunting, Trapping, and Plant Gathering

As identified in their TLU study, Yale collected plants such as roots, berries, mushrooms and stinging nettle and gathered cranberries in the late summer/early autumn. Cedar was an important resource for Yale and was used for building, canoe construction, cordage, clothing, hats, utensils, bowls, and baskets. Yale traded with the upriver Thompson peoples for items such as Saskatoon berries.

Yale identified a total of three trapping and four plant gathering sites in their TLU study for the Project. Three of these sites are within the proposed pipeline corridor including one blueberry gathering site at 9 Mile Creek and two trapping sites on trails along Boston Bar Creek and Dewdney Creek. The remaining four sites identified by Yale are more than 2 km away from the Project area or the approximate distance from the Project area was not stated in the TLU study.

In addition to providing traditional use information, Yale raised concerns regarding potential Project impacts on their Aboriginal right to hunt, trap, and gather plants. For example, pesticide use on the Project RoW potentially compromises Yale's ability to gather plants in their traditional territory.

With regards to specific concerns raised by Yale, the proponent would implement several mitigation measures to reduce potential effects to Yale's hunting, trapping, and plant gathering activities. The proponent has committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction ROW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Yale, Yale's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Yale's hunting, trapping and plant gathering activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Yale;
- Project-related pipeline and facility construction and routine maintenance activities within Yale's territory are temporary and thus, likely to cause minor disruptions to Yale community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Yale regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

Yale's TLU information describes the importance of coho and chum salmon as well as trout to Yale. Community members traded dried, smoked salmon with the Thompson peoples and engaged in the exchange of salmon for fish, seal skins, and wild potatoes. Yale identified three fishing sites along the Coquihalla and Fraser Rivers although no fishing sites were identified within the proposed pipeline corridor.

As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate environmental effects on fish and fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats.

In consideration of the information available to the Crown from the NEB process, consultation with Yale, Yale's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a negligible-to-minor impact on Yale's freshwater fishing activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Yale;

- Project-related pipeline and facility construction and routine maintenance activities within Yale's traditional territory are temporary and thus, likely to cause minor disruptions to Yale community members accessing traditional fishing sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

Historically, Yale traded canoes with upriver Thompson people. Yale identified a total of 10 trails and/or travelways in their TLU study, two of which are located within the proposed pipeline corridor (i.e., Coquihalla area and Trail up Boston Bar Creek). Yale identified an additional trail/travelway within 2 km of the proposed pipeline corridor, while the remaining seven sites identified by Yale are more than 2 km away from the Project area, or the approximate distance from the Project area was not stated in the TLU study. No habitation sites, gathering places, or sacred areas within the pipeline corridor were identified by Yale in their TLU. The Spirit Cave Trail, located approximately 15.4 km northwest of the proposed pipeline corridor, was identified as an important heritage asset and spiritual site, which is in use by community members.

Yale raised concerns about the route of the Project's pipeline and its proximity to Ruby Creek Indian Reserve, and concerns that the Project may restrict access to sacred or ceremonial sites.

As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources important for Yale's traditional and cultural practices. The proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during right-of-way finalization, narrowing the right-of-way in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

In consideration of the information available to the Crown from the NEB process, consultation with Yale, Yale's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued, Project construction and routine maintenance during operation are expected to result in a minor impact on Yale's other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and operation activities are likely to have minor to moderate environmental effects on Yale's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Yale's traditional territory are temporary and thus, likely to cause minor disruptions to Yale's community members accessing traditional and cultural practice sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

During a meeting with the Crown consultation team on September 16, 2016, Yale raised concerns around the availability of labourer positions, other employment opportunities and security certification training, as well as procurement opportunities for community members.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. The Crown notes that Yale executed a Mutual Benefits Agreement with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce or accommodate impacts to Aboriginal title claims if the Project proceeds.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion that the Project is expected to have negligible impacts on Yale's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

In an October 24, 2016 letter from Chief and Council, Yale expressed concerns regarding the impact of a potential oil spill on its Aboriginal Interests, including the effects of a spill on:

- The aquatic environment, particularly the behavior of diluted bitumen. Yale pointed to the recommendation by the US Environmental Protection Agency that pipelines containing diluted bitumen not be treated as other pipelines as heavier bitumen sank to the bottom of the water column and cleanup efforts lasted for years in the case of the 2010 Kalamazoo oil spill; and
- Yale raised a specific concern with potential Project impacts relating to their Aboriginal right to fish, specifically concerns about the risks of contamination and devastation of a spill.

A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on Yale's Aboriginal Interests and concerns raised by Yale during the Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Yale's exercise of Aboriginal Interests, depending on the characteristics and severity of the spill. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty.

VI - Conclusion

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. Proponent commitments, recommended NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Yale's Aboriginal Interests would be up to minor.

The Crown is also supportive of consultation requirements provided by the NEB and EAO in their respective conditions, which would support Yale's ongoing involvement and participation the proponent's detailed Project planning, including the development of site-specific measures to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Yale in emergency response planning activities. The federal Crown is also considering incremental measures that would further accommodate the potential adverse impacts of the Project on Yale, as discussed in Sections 4 and 5 of the main body of this Report.

In addition, the Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Yale in an attempt to offset potential impacts, should the Project proceed.