



LETTER DECISION

File OF-Fac-Gas-W102-2017-11 01
10 December 2018

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Dear Ms. Schmidt, Mr. Bourne and Ms. Millar:

**Westcoast Energy Inc., carrying on business as Spectra Energy Transmission
(Westcoast) - Application for the Spruce Ridge Program (Project)
Hearing Order GH-001-2018 (Hearing Order)
Reasons for Decision dated 10 December 2018 –
Orders XG-W102-032-2018, XG-W102-033-2018 and TG-009-2018 (Orders)**

1.0 Project Overview and the NEB Process

1.1 Application and Project Overview

On 19 October 2017, Westcoast applied to the National Energy Board (Board or NEB) pursuant to section 58 of the *National Energy Board Act* (NEB Act) and section 43 of the *National Energy Board Onshore Pipeline Regulations* (OPR) for authorization to construct and operate the Project which is located in the Peace River Regional District near Chetwynd and near Wonowon, British Columbia (BC). The Project includes two natural gas pipeline loops (Chetwynd Loop and Aitken Creek Loop, approximately 25 kilometres (km) and 13 km, respectively, in length and the associated facilities which include the addition of new compressor units at two existing compressor stations (CS2 and CS N5), and minor modifications at two compressor stations

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(CS N5 and CS 16). Westcoast requested an increase in the maximum operating pressure for the portion of the existing Fort St. John Mainline Loop upstream of the Chetwynd Loop to 9,930 kilopascal (kPa). Westcoast also applied for an order pursuant to subsection 48(2.1) of the NEB Act exempting certain welds for its auxiliary and utility piping systems from the 100% non-destructive examination requirement in section 17 of the OPR. Westcoast's requested relief under section 58 included exemptions from paragraphs 30(1)(a) and (b) of the NEB Act and from the requirements of section 47 of the NEB Act for the pipeline tie-ins. In addition, Westcoast applied for an order under Part IV affirming that costs of the Project will be included in Westcoast's Transmission North (Zone 3) cost of service and will be tolled on a rolled-in basis.

The proposed Project will allow Westcoast to provide incremental firm transportation service from receipt points along the Fort Nelson Mainline, Aitken Creek Pipeline and Fort St. John Mainline. Westcoast received requests for additional Zone 3 firm transportation service in order to accommodate increasing levels of production from the Montney formation in northeast BC.

1.2 The NEB Process

On 8 November 2017, the Board issued notification letters to Indigenous peoples potentially affected by the Project. In addition to advising that the Board is the final decision maker on this Project, the letter sought comments or concerns about the Project or views about how the Project may impact Indigenous peoples, the use of their traditional territory and any potential or established treaty or Indigenous rights.¹ Also on 8 November 2017, the Board established a comment process whereby interested persons could file comments about the proposed Project with the Board.

In response, the Board received two letters on 22 November 2017 from Saulteau First Nation (SFN) and West Moberly First Nations (WMFN) in which those First Nations outlined concerns they have with the proposed Project, and requested additional process steps to enable third party participation. The Board also received letters from Environment and Climate Change Canada (ECCC), NOVA Gas Transmission Ltd. (NGTL), and FortisBC Energy Inc., Swan Energy Ltd. and Métis Nation British Columbia (MNBC) regarding the Project. On 27 November 2017 Westcoast replied to the comments, and agreed with a number of the procedural steps requested by those parties.

Although the NEB Act does not mandate a public hearing for applications filed under section 58 of the NEB Act, the Board decided to hold a public hearing for the Project given the interest in this Project. On 27 February 2018, the Board issued a Notice of Public Hearing, in which the Board invited other interested persons who wished to participate in the hearing to apply. The Notice of Public Hearing also advised that Intervenors may be eligible for participant funding.

¹ The Board uses the terms "Indigenous" and "Indigenous peoples" in decision documents such as this, as these terms are understood to be inclusive of First Nations, Inuit and Métis people of Canada, and to have the meaning assigned by the definition of "aboriginal peoples of Canada", in subsection 35(2) of the *Constitution Act, 1982*. The term "Indigenous rights" may be used in substitution for the term "aboriginal rights" as set out in subsection 35(1) of the *Constitution Act, 1982*. When citing the submissions of parties in this proceeding, the titles of certain documents, or provisions of acts or regulations, the term "aboriginal" occasionally appears within the text of this Letter Decision. Similarly, when referring to particular First Nations, or signatories of treaties, such as Treaty 8, the term "First Nations" is also occasionally used.

The Board subsequently received applications to participate from: Aitken Creek Gas Storage ULC, Black Swan Energy Ltd., District of Chetwynd, ECCC, FortisBC Energy Inc., Mr. Charles Lasser, MNBC, NGTL, SFN, Tourmaline Oil Corp., and WMFN, all seeking Intervenor status. In the Notice of Public Hearing, the Board had granted pre-determined standing in the hearing to all of the persons who provided comments in response to the Board's letters of 8 November 2017. The remaining applicants were granted Intervenor status, and Northern Health Authority was granted commenter status, as requested.

On 26 April 2018, the Board issued its completeness determination, established a hearing process, issued its Hearing Order and set a 15 month time limit for the Board to complete its assessment and issue a decision. The Hearing Order set out the remaining process steps for the Board's review of the application, including an opportunity for Intervenor status to ask Information Requests (IRs) of Westcoast, and provide written submissions and Oral Traditional Evidence (in the case of Indigenous Intervenor status).

The Board administers a Participant Funding Program (PFP), which provides financial assistance to individuals, Indigenous peoples, landowners, and non-industry not-for-profit groups to facilitate public participation as Intervenor status in certain project hearings. On 27 February 2018, the NEB announced \$250,000 to assist individuals and groups with their participation in the hearing for the Project. The PFP recommended awards for three Indigenous Intervenor status (MNBC, SFN, and WMFN) to assist them in their ability to provide submissions to the Board. The total amount awarded was \$173,410; MNBC was awarded \$31,100, SFN \$80,000, and WMFN \$62,310.

On 26 June 2018, the Board released a series of proposed draft conditions to allow parties to assess how their concerns with the Project may be addressed. Parties were also invited to provide comments to the Board on the draft conditions, within their written submissions.

The Board received and considered extensive information about concerns, as brought forward through consultation undertaken by Westcoast and directly through the participation of potentially affected Indigenous peoples and other participants in the hearing process.

2.0 Assessment of the Application

2.1 Consultation (Public and Government Stakeholders) and Land Matters

Note that the Board's analysis with respect to consultation with Indigenous peoples is provided in section 2.2.1

2.1.1 Consultation

Westcoast stated that it consulted with potentially affected persons or groups, including landowners, local residents, holders of registered traplines, guides/outfitters, Crown tenure holders, industry, local government, provincial and federal government authorities, and local environmental organizations. Westcoast stated that following the provision of Project information to those listed above, consultation then focused on active engagement with additional Project information, follow-up communications and face-to-face meetings to provide

further information and receive feedback on the Project. Westcoast stated that through this engagement, other potentially interested parties were identified and engaged in the Project consultation program. Westcoast stated that its consultation program was designed to create a continuous feedback loop approach to engagement and Project development with the objectives of inviting ongoing mutually beneficial information sharing, and confirming interpretation of comments and knowledge shared in the design of the Project. With the exception of one landowner (Mr. Lasser, see section 2.1.2, Land Matters), no evidence or comments about Westcoast's engagement with public or government stakeholders were filed.

Westcoast stated that it continues to meet and discuss concerns with stakeholders in an effort to resolve them, and with government agencies to obtain required permits prior to commencing construction. Westcoast further stated that it will develop a Stakeholder Engagement Plan to facilitate communication channels with affected stakeholders over the operational life of the Project to resolve issues that may arise.

2.1.2 Land Matters

The Chetwynd Loop, approximately 25 km in length, is located primarily on private land and would start approximately 6.5 km northeast of Chetwynd, BC, and extends to an endpoint approximately 17 km southwest of Chetwynd. Approximately half of the Chetwynd Loop will parallel existing pipeline right-of-way, with approximately 12.5 km proceeding through a greenfield route east and south of Chetwynd, away from developed areas. The Chetwynd Loop requires the acquisition of rights-of-way on private and Crown lands. On private lands, Westcoast will acquire 29 hectares (ha) for right-of-way and 87 ha of temporary work space. On Crown lands, Westcoast will apply for tenure for 10 ha of new right-of-way and for 26 ha of temporary work space.

The Aitken Creek Loop, approximately 13 km in length, is located entirely on Crown land and would commence at the existing Westcoast Aitken Creek Gas Plant, located approximately 103 km northwest of Fort St. John, and end just west of the existing Spectra Energy Midstream Corporation Highway Gas Plant, located approximately 109 km northwest of Fort St. John. The majority of the Aitken Creek Loop will parallel existing linear disturbances, and will include an above-ground pigging facility at each end of the pipeline. As the Aitken Creek Loop is located entirely on Crown land, Westcoast will apply for tenure for approximately 24 ha of new right-of-way, and approximately 46 ha of temporary work space.

Westcoast stated that the Project also includes the addition of a new compressor unit at each of CS 2 and CS N5, as well as minor modifications at CS N5 and CS 16. Westcoast stated that CS 2 is located approximately 47 km south of Hudson's Hope, BC; CS N5 is located approximately 27 km northwest of Hudson's Hope, BC; and CS 16 is located approximately 48 km south of Fort St. John, BC. Westcoast stated that the installation of the new compressor units at CS 2 and CS N5 and the minor modifications to CS N5 and CS 16 will take place completely within existing Westcoast-owned land.

Westcoast indicated that following discussions with the BC Ministry of Transportation and Infrastructure, Westcoast altered the Project route slightly to avoid a gravel quarry.

Westcoast stated that it continues to negotiate with private landowners, and that it has signed land agreements with 32 of the 33 private landowners, representing 39 of 44 parcels of freehold privately owned land. Westcoast stated that the remaining five outstanding freehold privately owned parcels belong to Mr. Lasser.

2.1.2.1 Lasser Lands

Views of Parties

Mr. Charles Lasser

Mr. Lasser, a landowner along the Chetwynd Loop, indicated, in response to an IR from the Board, that the Project would impact his certified organic cattle operation. Mr. Lasser asserted that the pipeline route would run through the middle of his ranch, reducing the number of crossings for his cattle and his equipment, limiting the area available for his cattle, and interfering with the routine of his cattle and his operations, including his cattle's regular access to warm water during winter (two to three times daily). Specifically, Mr. Lasser stated, "This will almost shut down our cattle operation, as it will cut through our winter feed grounds (we feed in 10 separate fields, 1 day in each field)." Mr. Lasser submitted that the potential impacts of Project construction on his cattle operation would vary depending on the timing of construction: November to May would impact winter feeding grounds (including his two-year cattle); and April 15 to August 31 would impact calving.

Mr. Lasser submitted that construction timing could also impact the finishing herd; that this herd has to be close to the corral to have them easily ready to sort and to transport when an order comes in. Mr. Lasser indicated that the finishing herd could not be able to pasture close to the corral during Project construction, and that the resulting stress could cause weight loss to those animals which would result in loss of value. Mr. Lasser indicated that he would require 72 hours notice before entry onto his lands.

Mr. Lasser submitted that the Project construction equipment would cause stress to his cattle which have never been off of his ranch and are not used to unfamiliar machinery or vehicles. Mr. Lasser submitted that traffic on his access roads would disturb new mothers and calves, and could result in mothers abandoning calves, "resulting in death". Mr. Lasser also submitted that his private lands were not made for heavy traffic, having a 15-ton load limit. Mr. Lasser asserted that the proposed crossing of Centurion Creek will open a shelter belt of trees which took him forty years to develop as windbreaks, letting in cold winds to the cattle feeding and new calving holding fields. Mr. Lasser submitted that Project construction will cut across his hay field, rendering that field unable to be used for haying and pasturing for four to five years. Mr. Lasser also indicated that the Project will result in the need to change a roadway, impacting haying and crossing, and will interfere with the main drain channel on parts of his land, possibly resulting in flooding.

Mr. Lasser indicated that his cattle operation has been certified organic since 1991 (Mr. Lasser advises that it was the first in British Columbia and Alberta Peace River #001), and certified with the British Columbia Society for the Prevention of Cruelty to Animals, and that he is concerned about contamination and disease being brought onto his property and introduced to

his cattle. Mr. Lasser indicated that should the Project be approved with the proposed route through his lands, he would require that every pipe, machine, and vehicle be washed down, including underneath, and that all personnel entering his property would have to wear clean coveralls, boots, gloves, and hats at all times while on his lands.

In filings to the Board, Mr. Lasser proposed two alternate routes for the Project, providing a sketch of the routes. Both alternate routes appear to be located east of the proposed pipeline route. Mr. Lasser indicated that the routes would keep the existing buffer from cold north winds, and would result in fewer Project-related impacts. Mr. Lasser submitted that both alternate routes would leave his private roads free for his ranch operations, with alternate route #1 (having the least impacts) as his preferred choice, but that he “could live with” alternate route #2 which, while having a greater impact than alternate route #1, would have less impact than Westcoast’s proposed route. Mr. Lasser submitted that Westcoast did not physically examine his two proposed alternate routes. Mr. Lasser also indicated that he has repeatedly asked Westcoast to have someone with a ranching background and knowledge to discuss the proposed route, but that this never occurred.

Mr. Lasser indicated that the route proposed to him in February 2017 was “completely inaccessible” and that at that time he informed Westcoast that he would rather they use his alternate route #2, but that Westcoast refused. Mr. Lasser stated that the proposed route will “hinder” and “cut up” his working area and indicated that at the time of his discussions about the route with Westcoast in February 2017 he was grieving from a personal loss experienced in August 2016 and “was not in proper thinking condition,” that he was only now recovering.

Mr. Lasser is of the view that, given the predicted impacts of the Project on this lands, Westcoast’s offer of compensation was insufficient.

Views of Westcoast

In response to Mr. Lasser’s concerns, Westcoast stated that since initial contact with Mr. Lasser in February 2017, it has worked closely with him to ensure that the integrity of his land and cattle operation is not negatively affected. Westcoast stated that upon completion and reclamation of the Project, Mr. Lasser should not experience any adverse effect on his ability to carry out his operations or cross the pipeline right-of-way with standard agricultural equipment. Westcoast stated that it proposes to keep in close contact with Mr. Lasser to ensure his concerns are dealt with in a timely and effective manner. Westcoast further stated that it remains committed to working diligently with Mr. Lasser to further clarify requirements once a Project route is approved.

Westcoast stated that in the pre-construction phase, it intends to continue to ensure vehicles entering Mr. Lasser’s property are clean and in good operating order; plot vehicle visits to minimize traffic; avoid contact with livestock; and collaboratively gather information with Mr. Lasser to assist in planning construction methods/timelines so as to minimize disturbance to farming operations.

Westcoast stated that it is open to collaborating with Mr. Lasser to identify measures to minimize stress to his cattle operation. Westcoast stated that for the construction phase of the Project, it proposes numerous mitigation measures, including construction of temporary and permanent heavy duty crossings; ensuring vehicles entering Mr. Lasser's property are clean and in good operating order; restricting timing of construction; payment for inconvenience related to keeping cattle in less affected areas for longer periods of time; fencing of the right-of-way area to restrict cattle access; speed limits for Project personnel and equipment; temporary relocation of cattle; minimizing tree clearing; replanting of trees in temporary work spaces; consultation on seed mixtures for re-vegetation; coordination of construction activities; dust control; restricted hours of operation; resident relocation; and sediment/erosion control (such as diversion berms, sediment barriers, silt fences, culverts, geotextiles).

Westcoast stated that during post-construction, mitigation measures would include: ensuring that all Westcoast and contractor vehicles are washed prior to entering his property, presence of permanent heavy duty equipment crossings, fencing of the right-of-way as required, monitoring of the Project area (for weeds, trench subsidence, rocks etc.), replanting of trees in temporary work spaces in identified windbreak areas, and ongoing available support from Westcoast personnel throughout the Project lifecycle.

Westcoast indicated that since February 2017 it has held several face-to-face meetings with Mr. Lasser at his home and along the proposed route, and has considered all of the information provided by Mr. Lasser in selecting the final route and proposed access on his land. Westcoast stated that on 3 May 2017, Westcoast Land, Engineering and survey representatives met with Mr. Lasser to tour the land and clarify and adjust the route as needed, and that both parties agreed to compromise on Project routing, which was the basis for the route for which Westcoast applied for Board approval. Westcoast stated that a tentative agreed-upon route was recorded at the time of the meeting including a routing compromise at Mr. Lasser's request that involved shifting the first 2.5 km of the route approximately 250 metres (m) to the east to be adjacent to the existing fence line, in addition to a deviation around Centurion Creek to reduce impact on a storage yard belonging to Mr. Lasser. Westcoast stated that Mr. Lasser indicated that this tentative agreed-upon route was acceptable to him as it was a good compromise that addressed most of his concerns related to his ranching operations, specifically calving and feeding.

Westcoast stated that it then proceeded to meet with adjacent landowners to finalize the route in this area, based upon the tentative agreed-upon route on Mr. Lasser's land. Westcoast stated that on 9 October 2017, Mr. Lasser requested another minor route adjustment in order to preserve some windbreak trees along the western boundary of DL 2204, and that this request was subsequently agreed to on 30 October 2017, after a field visit with Mr. Lasser and Westcoast representatives. Westcoast stated that the final route and access was not contested by Mr. Lasser until April 2018, after Westcoast said it was unwilling to agree to Mr. Lasser's compensation demands.

Westcoast stated that it reviewed the sketches of the two alternate routes for the Project, proposed by Mr. Lasser. Westcoast indicated that it advised Mr. Lasser that the proposed alternate routes were not feasible, stating that these routes would appear to result in additional challenges regarding the crossing of Centurion Creek and that they do not follow Mr. Lasser's preferred

route for the creek crossing expressed to Westcoast. Westcoast indicated that the last approximately two kilometres of alternate route #1 are within steep mountainous terrain, which Westcoast avoided with the proposed Project route due to potential geotechnical concerns with the slope and additional slide slope grading required, as well as construction safety concerns related to slope stability, reduced access and egress for equipment and emergency evacuations and surface water control. Westcoast further stated that Mr. Lasser's alternate route #2 also has some steep slope construction on the southeast corner of Mr. Lasser's property, which would pose similar challenges to those described for alternate route #1 in that area.

Westcoast indicated that from an operations perspective, it is preferable that a pipeline right-of-way follow a route that is as straight as possible to allow for better right-of-way patrol and line of sight surveillance and to reduce the chances of a third party strike, and that one of Mr. Lasser's proposed alternate routes does not follow these general criteria.

Westcoast indicated that it remains committed to working diligently with Mr. Lasser regarding timing and methods of construction, and to further clarify requirements once a Project route is approved.

2.1.2.2 NGTL Land Overlap

Views of Parties

NOVA Gas Transmission Ltd.

At the outset of the hearing process, NGTL indicated in a letter of objection that a portion of the proposed placement of the Westcoast Aitken Creek Loop right-of-way would be directly over top of the approved temporary workspace reserved for the construction of a portion of the North Montney Mainline (NMML) Kahta Section. NGTL stated that it objected to the proposed alignment for the Aitken Creek Loop where it overlaps with approximately four kilometres of the approved NMML corridor. NGTL further indicated that the routing proposed by Westcoast would significantly impede NGTL's ability to construct that portion of the NMML.

NGTL stated that it met with Westcoast on several occasions in an attempt to reach a compromise that would permit construction of both the NMML and the Aitken Creek Loop in the overlap area, and that NGTL has provided its suggested options that would allow both companies to construct their projects. NGTL further stated that it has already obtained approval for its route in the overlap area. NGTL inquired whether Westcoast would accept as a condition to the potential NEB approval of the Project, a stipulation that construction within the overlap area cannot commence until either NGTL completes construction on the relevant section of the NMML, or Westcoast notifies the Board that it has reached a resolution with NGTL on the overlap area that includes several stipulations by NGTL.

Views of Westcoast

Westcoast indicated that it discussed the right-of-way overlap issue with NGTL and the BC Oil and Gas Commission (BCOGC). Westcoast indicated that it developed a proposal that would allow NGTL to utilize temporary workspace on existing Westcoast pipeline right-of-way to the

south of the NMML right-of-way and on the proposed Aitken Creek right-of-way to the north, providing for total construction width of approximately 40 m in the overlap area. Westcoast stated that provided it is able to begin construction on the Aitken Creek Loop by early January 2019, Westcoast would be constructing in the overlap area nearly one year ahead of NGTL, based on NGTL's current construction schedule, and that Westcoast anticipates completing its construction in the overlap area by April 2019, well ahead of NGTL's proposed construction start in the overlap area of November 2019. Westcoast further stated that the BCOGC has indicated a willingness to consider a gap between the Aitken Creek Loop and NMML right-of-ways if it would enable the safe and timely construction of both projects.

Westcoast indicated that as it is currently planning to construct in the overlap area ahead of NGTL, it would not accept a condition that restricts Project construction in the overlap area until NGTL's construction is complete. Westcoast further stated that it does not believe that a condition requiring Westcoast to notify the Board that it has reached resolution with NGTL on the overlap area is necessary, as Westcoast commits to working with NGTL to resolve any concerns related to the overlap area and to advising the Board of a final resolution. Westcoast stated that it believes that an agreement between the parties can be reached such that both projects can be constructed per proposed timelines.

Views of the Board

Consultation

The Board recognizes that public involvement is a fundamental component during each phase throughout the lifecycle of a project in order to address potential impacts.

The Board notes that Westcoast adequately identified stakeholders, developed engagement material and notified stakeholders of the Project. The Board is of the view that Westcoast's design of Project-specific public consultation activities was adequate given the scope and scale of the Project.

The Board acknowledges the interested parties who provided comments to the Board and acknowledges the efforts made by Mr. Lasser to participate in the hearing. The Board notes that Westcoast made efforts to revise the Project route with respect to NGTL's concerns during the course of the Board's hearing process based on consultation with NGTL.

The Board notes that Westcoast committed to continue its public consultation activities throughout the lifecycle of the Project to ensure that issues are addressed and that all potentially affected parties remain informed and involved. The Board expects Westcoast to continue its efforts to consult and to maintain effective and timely consultation activities with all stakeholders throughout the lifecycle of the Project. The Board expects Westcoast to provide all potentially affected persons and groups with additional Project-related information, including timelines for activities on the owner's lands, and a construction schedule.

Land Matters

The Board notes that routing decisions involve the consideration of many factors, including archaeological, environmental and engineering factors, and consultation with landowners, including Mr. Lasser, and Indigenous peoples. The Board acknowledges Westcoast's efforts to minimize both the potential area of environmental disturbance of the Project, as well as avoidance of existing municipal development, by proposing a right-of-way that bypasses the District of Chetwynd, and otherwise is largely contiguous with existing linear disturbances.

The Board acknowledges Mr. Lasser's concern regarding the potential impacts of the Project on his lands in the location proposed. The Board notes that Mr. Lasser has expressed several specific concerns regarding the routing of the Project on his lands, and has proposed routing alternatives within his own lands. The Board also notes that Westcoast has been responsive; has engaged with Mr. Lasser; has at least twice adjusted the route (prior to filing the Application) to meet Mr. Lasser's requests; has identified several mitigation measures regarding Mr. Lasser's concerns; and has committed to continue consulting with Mr. Lasser.

Considering all of the evidence on the record with respect to the proposed route of the pipeline, the Board is satisfied that Westcoast has proposed suitable mitigation to address the Project's potential land-related effects during the design, construction, and operation of the Project. The Board is of the view that the route, as proposed, is acceptable.

The Board finds that the requested right-of-way and temporary work space land requirements, as described in the application, and as amended, are necessary to allow for the construction and operation of the Project in a safe and efficient manner. The Board finds that Westcoast's anticipated requirements for permanent and temporary land rights are acceptable.

The Board notes that notices required pursuant to section 87 of the NEB Act have been served on all private landowners whose lands are required for the purpose of the pipeline, and that Westcoast has signed land agreements with 32 of 33 private landowners. The Board finds the land rights documentation and acquisition process proposed by Westcoast to be acceptable.

The Board has considered the evidence regarding the NGTL overlap area. The Board is of the view that the issue raised by NGTL relates to potential terms of an agreement between Westcoast and NGTL which is not before the Board for adjudication as part of this hearing process.

The Board notes that, for the portion of the Project of Mr. Lasser's lands, there is still an opportunity to confirm methods and timing of construction; the Board therefore imposes **Condition 12** (Landowner-specific Consultation Update) with a view to ensuring that Westcoast continues to consult with Mr. Lasser, as well as allowing for the participation of Mr. Lasser in planning Project construction activities on his lands. The Board strongly encourages Westcoast to work with Mr. Lasser to resolve any outstanding issues. The

Board is of the view that, with Westcoast's commitments and the Board's **Condition 12**, Westcoast's implementation of Project-specific public consultation activities is adequate.

The amount of compensation paid for land acquisition is negotiated between the company and the landowner. At present, the Board does not have jurisdiction to consider or resolve questions of compensation which arise as a result of the inability of companies and landowners to reach agreement with respect to the use of lands for pipeline projects.

When a landowner and a pipeline company cannot agree on compensation for lands that the company has acquired or damaged, either party may apply to the Minister of Natural Resources to receive the services of a negotiator, or to have the dispute settled by arbitration. For information, the Landowners may contact Natural Resources Canada at PAS-SAP@NRCan-RNCan.gc.ca or visit its website.

Outside of this hearing process, and beyond the purview of this panel assigned to consider the Project, Alternative Dispute Resolution (ADR) services such as mediation and facilitation are available through the Board at any time to help parties resolve disputes. ADR services are voluntary and at no-cost. To seek additional information or to arrange for these services, please contact the Board at 1-800-899-1265 or email ADR-MRD@neb-one.gc.ca. The Board also has a landowner complaint resolution process for any issues that arise with pipelines during operation which any landowner can request by contacting the Board at 1-800-899-1265 or email at landsinfo@neb-one.gc.ca. Should such a process result in an agreement between Westcoast and a landowner such as Mr. Lasser which includes a potential route deviation(s), Westcoast is reminded that such a change would require an application for a variance pursuant to section 21 of the NEB Act.

2.2 *Matters of Concern to Indigenous Peoples*

2.2.1 *Introduction*

The Board has considered all of the evidence provided by Indigenous peoples and by others, including Westcoast, about the potential impacts of the Project on the rights and the interests of Indigenous peoples, Westcoast's proposed mitigation of the Project's potential effects, requirements in the regulatory framework and the conditions imposed by the Board in the Orders. The Board interprets its responsibilities in a manner consistent with the *Constitution Act, 1982*, including subsection 35(1), which recognizes and affirms the existing Aboriginal and treaty rights of Indigenous peoples. Further discussion of the Board's role in upholding section 35 of the *Constitution Act, 1982* appears below in *Views of the Board* regarding Section 35 of the *Constitution Act, 1982*. The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed.

This section includes summaries of evidence provided directly to the Board by Indigenous peoples through their participation in the hearing, as well as summaries of Westcoast's consultation with affected Indigenous peoples, which noted the concerns and interests,

assessment methods and rationales, and any mitigation proposed by Indigenous peoples as recorded by Westcoast. The Board notes that identifying and referring to specific passages within the record can lead to other direct and indirect references being overlooked. Therefore, anyone wishing to fully understand the context of the information and evidence provided by Indigenous peoples should familiarize themselves with the entire record of the hearing. In addition, *Appendix I – Comments on Conditions* and *Appendix II – Summary of Concerns raised by Indigenous Peoples, and Applicant and NEB Responses* provides a summary of the general and specific concerns and issues raised by Indigenous peoples through this proceeding, related to potential conditions which the Board may attach in its approval of the Project, as well as summaries of the responses to these concerns provided by Westcoast, responses by the Board (including its conditions), and applicable requirements provided through regulation and/or legislation.

The Board notes that consultation or engagement efforts undertaken by a proponent with Indigenous peoples are considered within the context of the expectations set out in the Board's Filing Manual. This is not to be confused with the Crown's duty to consult which is explained in greater detail below in *Views of the Board* regarding Section 35 of the *Constitution Act, 1982*. While a proponent's consultation or engagement efforts are distinct from those of the Crown, the information gathered as a result of such efforts often provide helpful information to the Board's understanding of the views and concerns with respect to the rights and interests of potentially-affected Indigenous peoples.

2.2.2 Westcoast's Consultation with Indigenous Peoples for the Project

Westcoast stated that it is committed to building and maintaining sustainable, long-term relationships with Indigenous peoples that are based upon mutual respect and understanding. Westcoast stated that it conducted consultation with Indigenous peoples for the Project in accordance with Spectra Energy's Aboriginal Consultation Approach, which sets out an Indigenous relations strategy focusing on four key areas:

- Relationship building;
- Consultation and communication;
- Capacity building; and,
- Economic development.

Westcoast stated that it recognizes the importance of ensuring that its ongoing activities and proposed projects, as well as opportunities for local participation and employment, are communicated to Indigenous peoples in a timely manner. Westcoast further stated that its objective is to provide opportunities for participation and feedback by Indigenous peoples, by ensuring that project information is conveyed to them in writing and, whenever possible, in-person.

Westcoast indicated that engagement with Indigenous peoples for the Project commenced in January 2017, beginning preliminary introductions, engagement and information sharing with Indigenous peoples that were identified due to their proximity to the Project, through previous interactions and experience working in the area or those who requested participation in Westcoast's engagement activities for the Project. Westcoast stated that engagement continued

and expanded in April 2017, with the provision of Project Information Packages to a list of potentially affected Indigenous peoples. This included all signatories to Treaty 8 in BC (the Project areas within northeast BC being subject to Treaty 8), as well as other First Nations and Métis peoples in Alberta and BC who may have an interest in the Project. Westcoast stated that Project Information Packages were sent to the following:

- BC Métis Federation
- Blueberry River First Nations (BRFN)
- Dene Tha' First Nation
- Doig River First Nation (DRFN)
- Fort Nelson First Nation
- Fort Nelson Métis Society
- Fort St. John Métis Society
- Halfway River First Nation (HRFN)
- Horse Lake First Nation
- Kelly Lake Cree Nation (KLCN)
- Kelly Lake First Nation (KLFN)
- Kelly Lake Métis Settlement Society (KLMSS)
- McLeod Lake Indian Band (MLIB)
- Métis Nation of British Columbia
- Moccasin Flat's Métis Society
- North East Métis Association
- Nun wa dee Stewardship Society
- Prophet River First Nation
- Saulteau First Nations
- West Moberly First Nations

Westcoast stated that based on the responses it received from the contacted Indigenous peoples, as well as Westcoast's knowledge of expressed interest in the Project area, additional consultation and engagement then occurred with the following: namely, BRFN, DRFN, HRFN, MLIB, SFN, and WMFN. Westcoast stated that KLCN and KLFN expressed interest in the Project and were included in consultation efforts. Westcoast stated that if at any time additional Indigenous peoples express interest in a project, additional consultation and engagement would occur.

Westcoast stated that an update on the Project was provided to potentially affected Indigenous communities (BRFN, DRFN, HRFN, MLIB, SFN, and WMFN) by email on 3 August 2017, inclusive of an overview, map and timing of regulatory applications on the Project. Westcoast noted that the Environmental and Socio-Economic Assessment (ESA), Environmental Protection Plan (EPP) and Archaeological Impact Assessment was reviewed and discussed with interested Indigenous communities (BRFN, DRFN, HRFN, MLIB, SFN, and WMFN) in September 2017.

Westcoast indicated that it had held in-person meetings with interested Indigenous peoples to discuss the Project, including fieldwork, contract opportunities, concerns, etc. and that it was continuing engagement on and inclusion in contracting and work opportunities with respect to

the Project. Westcoast stated that it offered funding for independent Traditional Land Use (TLU) studies to all Indigenous communities that expressed interest and that it entered into agreements with four Indigenous communities: BRFN, DRFN, HRFN and SFN.

In a consultation update filed with the Board on 9 August 2018, Westcoast indicated that it has continued to maintain ongoing engagement and relationship building with Project-area First Nations regarding the Project, specifically BRFN, WMFN, SFN, DRFN, HRFN, KLMSS, and MLIB.

In its final argument submission, Westcoast asked that the Board find that consultation with potentially affected Indigenous peoples regarding the Project has been adequate. Westcoast indicated that this consultation has consisted of both the engagement efforts undertaken by Westcoast, and the Board's process, which comprised adequate notice, participant funding, IRs, written evidence and written final argument. Westcoast further submitted that any Project-related concerns raised by Indigenous peoples have been adequately addressed, or will be adequately addressed through Westcoast's proposed mitigation measures, or through NEB conditions on the Project approval, such that the Crown's duty to consult and accommodate has been satisfied.

Westcoast stated that engagement is ongoing to address Project concerns raised by Indigenous peoples. Westcoast stated that it remains committed to continuing to engage with potentially affected Indigenous peoples regarding the Project and welcomes the opportunity to continue discussions regarding the Project through construction and operation.

2.2.3 The Board's Hearing Process and Participation with Indigenous Peoples

The Board's hearing process was designed to obtain as much relevant evidence as possible on concerns regarding the Project, the potential impacts on the rights and interests of Indigenous peoples, and possible mitigation measures to minimize those potential adverse impacts.

2.2.3.1 Engagement with Indigenous Peoples

The Board, through its own assessment of publicly known or asserted Indigenous traditional territory information, identifies Indigenous peoples who may be potentially affected by any applied-for project. After receiving Westcoast's application, the Board reviewed the list of potentially affected Indigenous communities identified in the application and confirmed that the list was complete. The Board also provided the list to Natural Resources Canada, who on 15 June 2018 sent notice to those potentially affected Indigenous peoples that the federal Crown would, to the extent possible, rely on the NEB process to fulfill its duty to consult regarding the Project.

2.2.3.2 Participation of Indigenous Peoples in the Board's Hearing Process

Section 55.2 of the NEB Act requires the Board to hear any person who is directly affected by the granting or refusing of an application. The following three Indigenous communities applied to participate in the hearing and were granted Intervenor status, as requested: MNBC, SFN, and WMFN.

During the proceeding, these Intervenor were able to obtain further information about the Project and present their views to the Board in numerous ways. They could submit written evidence, provide Oral Traditional Evidence (OTE), ask written questions of Westcoast and other parties (via IRs), respond to any written questions asked of them by the Board and Westcoast, provide comments on draft conditions and provide final argument. Table 2-1 below summarizes the process steps participated in by Indigenous Intervenor, including the types and sources of information submitted by Indigenous Intervenor during the proceeding and considered by the Board.

Table 2-1 – Written Submissions by Indigenous Intervenor by Exhibit Number

Intervenor	Comment on Process	IRs made to applicant	Written Evidence Submitted	Final Argument
MNBC	A88194	A92207	A92838	n/a
SFN	A88085	A92206	A92836	A93903
WMFN	A88079	A92178	n/a	A93893

The Board received two motions from Indigenous Intervenor relating to the timing of the Board's hearing process regarding the filing of IRs to the applicant, and the filing of written evidence. In both instances, the Board revised the hearing schedule to accommodate the requests for additional time.

To the extent that other government organizations had information to provide to the Board that potentially relates to concerns of Indigenous peoples, they had the opportunity to participate in the Board's process and file relevant information on the Board's record. ECCC participated in the Board's proceeding as an Intervenor and filed information on the Board's hearing record that relates to some of the concerns raised by Indigenous peoples in this hearing, such as protection of wildlife, wildlife habitat, and cumulative effects that are discussed further in section 2.2.4.8.

2.2.4 Issues and Concerns Raised by Indigenous Peoples

2.2.4.1 Westcoast's Consultation with Indigenous Peoples

Views of Parties

Saulteau First Nations and West Moberly First Nations

SFN indicated that they are concerned about the lack of engagement in the development of the Project Heritage Resource Discovery Contingency Plan. SFN indicated that Westcoast never followed up with SFN on the matter of devising a more culturally appropriate Heritage Resource Discovery Plan for both pipelines and compressor stations. SFN indicated that Westcoast refused to consult with SFN regarding updating the ESA and EPP following the identification of additional spiritual or cultural sites by SFN. SFN also indicated that beyond its initial notification, Westcoast has not followed up or consulted with an SFN trapper.

WMFN indicated that should the Project be approved, Westcoast should engage in ongoing consultations with affected First Nations regarding the Project's impacts related to Indigenous interests or environmental and socio-economic impacts, including any additional impacts that may arise throughout the lifecycle of the Project. SFN expressed a similar concern, indicating in several proposed conditions (for pre- and post-approval) that Westcoast be required to consult with SFN to more meaningfully consider and assess Project impacts on SFN; to develop mitigation measures, an Indigenous Monitoring Plan, and a Construction Monitoring Program; and to determine compensation.

2.2.4.2 Capacity Funding

Views of Parties

Saulteau First Nations

SFN requested that capacity funding be provided for various consultation efforts carried out by and with SFN, regarding additional Project impact assessments, mitigation development / efforts, and reclamation planning / efforts.

2.2.4.3 Project Monitoring by Indigenous Peoples

Views of Parties

Saulteau First Nations

SFN indicated that despite SFN's suggestion that Indigenous monitors/liaisons should be present during all phases of construction to ensure proper management of discoveries, Westcoast has done nothing to confirm that this will happen. SFN further indicated that although Westcoast has indicated that a construction monitoring program will be put in place, the precise nature and scope of this commitment remains unclear, and does not confirm that First Nation monitors will have a continued presence throughout construction. SFN recommended that, in accordance with Westcoast's commitment to create an Indigenous Monitoring Plan, it should be developed in consultation with affected First Nations; and it should be used as a means of managing and mitigating all Project impacts on First Nation interests and rights, as identified by First Nations.

2.2.4.4 Environmental Methodology and Impacts

Both MNBC and SFN raised concerns about environmental assessment methodology, and MNBC, SFN, and WMFN raised concerns regarding the potential environmental impacts of the Project. A summary of these concerns and the *Views of the Board* on these matters can be found in section 2.4.

2.2.4.5 Employment and Economic Benefits

Views of Indigenous Communities

Saulteau First Nations

SFN expressed an interest in Westcoast setting aside specific employment and contracting opportunities for SFN members and SFN businesses; and in Westcoast providing SFN with meaningful community development payments, aimed at offsetting harm caused by Project and ensuring that the cultural loss caused by the Project can be regained in some capacity by other community building initiatives.

Kelly Lake Cree Nation, Kelly Lake First Nation, Kelly Lake Métis Settlement

In addition to the evidence directly received from SFN, Westcoast provided in its evidence, information it had received from Kelly Lake Cree Nation, Kelly Lake First Nation, and Kelly Lake Métis Settlement through their engagement efforts. Westcoast indicated that KLCN requested to be included in monitoring and work opportunities, that KLFN was interested in work opportunities for their contractors, and that KLMS was interested in economic opportunities.

2.2.4.6 Cultural Heritage

Views of Parties

Saulteau First Nations

SFN indicated that their members are concerned about impacts on burial sites and sites containing archaeological artefacts heritage, and that Westcoast has failed to update its ESA in light of burial sites identified by SFN in its Knowledge and Use Report as being located within 250 metres (m) of the proposed Project footprint. In particular, SFN members reported two site-specific cultural values within 250 m of the proposed Aitken Creek Loop, and eight site-specific cultural values within 250 m of the proposed Chetwynd Loop. SFN use was reported from 1994 to 2014 for the Aitken Creek Loop study area, and from 1905 to 2013 for the Chetwynd Loop study area. In the Aitken Creek Loop study area, cultural values include plant harvesting areas. In the Chetwynd Loop study area, cultural values include burial sites; place names; sites used for the transmission of traditional knowledge; traplines; and the location of gathering sites such as rodeos. SFN indicated that the importance of identified burial sites within 250 m of the proposed Chetwynd Loop footprint, as well as the resulting harm if the Project goes ahead without appropriate mitigation, cannot be underestimated.

SFN also indicated that they are concerned about the lack of monitoring and management activities proposed in the Project Heritage Resource Discovery Contingency Plan. SFN stated that in the event that a culturally important site or resource is discovered, Westcoast should be required to contact the affected First Nations, including SFN, immediately (i.e., prior to Westcoast or provincial authorities carrying out its own assessment of the matter). SFN also stated that First Nations should be given a central role in the decision making process regarding how to proceed following such a discovery. Furthermore, SFN indicated that prior to any Project

approval, Westcoast should be required to update its ESA on heritage resources to account for the burial sites that SFN identified in its Knowledge and Use Study and consult and work with SFN regarding these burial sites; to consult and work with affected First Nations to produce a more culturally appropriate Heritage Resource Discovery Contingency Plans; and to provide more detailed information regarding heritage/cultural resource training for construction personnel.

2.2.4.7 Social and Cultural Well-being

Views of Parties

Saulteau First Nations

SFN stated that their members are concerned about an increased presence of transient workers in the region, leading to increases in drugs, alcohol, crime, and sexual violence in towns within the vicinity of the Project; and increased traffic due to Project truck traffic, creating increased danger and safety issues for community members. SFN requested that Westcoast prohibit all firearms at camps and worksites, with the exception of designated safety personnel, and requested that Westcoast provide sensitivity training to all workers who will be working on the Project, and particularly those who will be living in work camps located in the vicinity of First Nations communities.

2.2.4.8 Traditional Land and Resource Use

Views of Parties

Métis Nation British Columbia

MNBC indicated that the Project will have direct impacts on Métis and other Indigenous peoples' land use activities and rights. MNBC stated that harvested resources and harvesting activities are extremely valuable and important in the maintenance and continuance of the Métis way of life, and that the endangerment or destruction of harvest resources threatens Métis sustenance practices. MNBC stated that it and the British Columbia Métis Assembly of Natural Resources seek to protect the traditional and substantive resource base that supports the cultural and harvesting activities of the Métis peoples. MNBC also indicated that it would be interested in conducting further research in and around the study area regarding impacts to Métis harvesting and land use, and advised that more use and occupancy interviews are required to accurately represent the interests and activities of the Métis in the Project area.

Saulteau First Nations

Traditional Use

SFN carried out a traditional use study (Knowledge and Use Study) and filed the study's findings with the Board. In particular, SFN's Knowledge and Use Study identified eight site-specific values within 250 m of the proposed Aitken Loop portion of the Project and 76 site-specific values within 250 m of the proposed Chetwynd Loop Project. SFN use was reported from 1994 to 2014 for the Aitken Creek Loop and from 1905 to 2013 for the Chetwynd Loop. Site-specific

values include cultural values, environmental values, habitation values, subsistence values, and transportation values.

SFN indicated that their members have used and continue to use the land in and around the Project area extensively for the exercise of SFN treaty rights and for carrying out the SFN traditional way of life. In examining concerns about potential impacts of the Project on their traditional land and resource use, SFN indicated that their concerns relate to the interactions of the Project with water, animals, plants, access, and cultural heritage.

SFN indicated that traditional uses, rights and interests simply have not been meaningfully considered, mitigated, or accommodated by Westcoast in the application materials and that the Project will have adverse effects on SFN's rights, interests, and land/resource use.

SFN stated that prior to any Project approval, Westcoast should be required to meet the following conditions:

- to carry out and file a meaningful assessment of potential effects on First Nations' traditional land and resource use;
- to provide evidence using empirical data to support the assertion that Project impacts on water, fish, vegetation and wildlife can be effectively reversed without any residual impacts;
- to consult and work with SFN to develop mitigation measures for SFN's traditional plants and re-vegetation-related concerns, and incorporate those into the EPP; and,
- to consult with SFN on their traditional and ecological knowledge to minimize the impacts on SFN's interests in respect of such fish and wildlife.

Access

SFN indicated that their members are concerned about restricted access to right-of-ways, which would prevent SFN members from accessing culturally important areas; and increased access to Project study area for non-Indigenous hunters, thereby impacting both the safety of SFN members and resource quantities.

Trapping

SFN stated that their members are concerned about impacts on traplines in the Project study area, including barriers to access due to right-of-way restrictions and declines in quality and quantity of furbearers and other animals. SFN further stated that the compensation Westcoast indicated it will provide to trappers fails to address the harm to SFN members with unregistered traplines, or the more general impacts of the Project on SFN's constitutionally protected right to trap. SFN noted that Westcoast's assessment and mitigation measures regarding trapping do not consider Project impacts in the context of highly prized traplines, which are not only important to SFN for subsistence purposes, but which are also important from a cultural preservation perspective. SFN indicated that prior to any Project approval, Westcoast should be required to consult with an SFN trapping representative regarding the scope of impact on all affected SFN traplines, the best timeline for interfering with SFN traplines and trapping interests, and other areas of concern.

Cumulative Effects

SFN indicated that their members are concerned about the contribution of the Project to the existing range of cumulative effects in the Project area and the region; that the region is already heavily impacted by industry, including existing and future planned oil and gas activities, coal mining, and Site C dam construction and flooding. SFN indicated that they are very concerned about the impact of the Project on the already substantial cumulative effects in the region, as this will cause further harm to SFN's already damaged rights and its ability to continue to exercise those rights in a manner consistent with the spirit and intent of Treaty 8.

SFN stated there was a failure to meaningfully assess Project impacts relative to SFN land uses, and that they are concerned that Westcoast has underestimated the extent of cumulative effects in the region.

SFN stated that prior to any Project approval, Westcoast should be required to carry out a full cumulative effects assessment of the Project area and surrounding SFN lands, so as to understand the full suite of impacts to which the Project will ultimately contribute.

West Moberly First Nations

Traditional Use

WMFN indicated that it is concerned by both the construction and the long-term impacts of a cleared right-of-way, particularly with respect to impacts on traditional activities and the wildlife impacts. WMFN stated that the two new pipelines will result in an increase in the accumulating impacts within the WMFN treaty territory and on treaty rights.

WMFN stated that it has concerns regarding the potential impacts of the Project in relation to impacts on water, fish, wildlife, plant life, cumulative effects, heritage and spiritual sites, traffic, increased non-Indigenous access, and on WMFN's ability to use and occupy the land according to its customs and traditions as protected in Treaty 8 and recognized and affirmed in the *Constitution Act, 1982*. WMFN stated that they are concerned that more pipeline capacity will lead to greater cumulative impacts in their traditional territories from gas extraction activities.

2.2.4.9 Section 35(1) of the Constitution Act, 1982

Views of Parties

Saulteau First Nations

SFN indicated that because the courts have confirmed that the duty to consult regarding applications pursuant to section 58 of the NEB Act can be fulfilled in part or in full by the Board, the Board has a "weighty duty to ensure that First Nation rights and concerns have been meaningfully considered and accommodated via the regulatory process, in advance of Project approval". SFN stated that it is of the view that, as currently presented, the Project is not yet in the public interest and SFN's rights and interests have not yet been meaningfully considered, protected, or accommodated. SFN further stated that remedying the same will require further baseline assessment, as well as the implementation of specific mitigation measures, accommodations, and conditions as part of Project approval. SFN stated that they are not

opposed to the regulatory development within Treaty 8 territory but they are adamant that if such development is to take place, it must be in a manner that acknowledges the importance of First Nation interests in the land, does not harm the environment, and does not impair SFN's ability to exercise its constitutionally protected rights and to carry on their way of life more generally.

West Moberly First Nations

WMFN stated that the current route proposed for the Chetwynd Loop falls just to the south of the Area of Critical Community Interest and all the proposed development is within the Treaty 8 territory. WMFN stated that it has acute concerns regarding impacts on its established treaty rights to hunt caribou, and that further destruction or disturbance to habitat may infringe or extinguish these constitutional rights.

2.2.5 *Westcoast's Reply to Issues and Concerns Raised by Indigenous Peoples*

2.2.5.1 Westcoast's Consultation with Indigenous Peoples

Westcoast stated that it has consulted and will continue to consult with Indigenous peoples regarding potential impacts to traditional land and resource use and appropriate mitigation measures. Westcoast indicated that engagement is ongoing to address Project concerns raised by Indigenous peoples, that it continues to meet with potentially affected Indigenous peoples regarding the proposed Project, and that it will continue to engage with First Nations throughout the construction and operation phases of the Project.

In response to specific consultation concerns regarding heritage resources and spiritual or cultural sites, Westcoast stated that if archaeological artefacts are identified during construction, Westcoast will engage with First Nations and discuss potential mitigation measures, but noted that all final mitigation measures relating to heritage resources (specifically archaeological sites) are subject to approval by the BC Archaeology Branch. Westcoast stated that it is interested in SFN's views of what a more "Culturally Appropriate" Contingency Plan may involve and is open to further discussion on this topic.

In response to concerns regarding consultation with an SFN trapper, Westcoast indicated that it notified registered trappers of the Project. Westcoast stated that it has consulted and continues to consult with SFN on the Project, including any discussion regarding SFN trapper interests that SFN may raise. Westcoast stated that registered and SFN trappers were invited to one or both of two Project open houses, one at SFN, and one in Chetwynd. Westcoast stated that no Project-specific concerns have been raised by registered trapline holders, and that it is willing to meet with registered trapline holders and discuss the Project, their interests and any concerns or input they may have.

2.2.5.2 Capacity Funding

In its evidence, Westcoast indicated that it had discussed capacity funding with BRFN, DRFN, HRFN, KLCN, and WMFN. Westcoast also indicated that it offered funding for independent TLU studies to all Indigenous communities that expressed interest in completing TLU studies to inform the Project team and facilitate further discussion regarding Project timelines, potential

impacts to Indigenous communities, monitoring and potential mitigation strategies. Westcoast stated that it entered into TLU study agreements with BRFN, DRFN, HRFN, and SFN. Westcoast stated that it regularly provides capacity funding to affected Indigenous communities. Westcoast further stated that it committed to developing a Project-specific Indigenous Monitoring Plan (see *Views of the Board* regarding capacity funding below for further information) through consultation with potentially affected Indigenous peoples, and stated that it is open to having discussions regarding capacity for First Nations to participate in the development of this plan.

2.2.5.3 Project Monitoring by Indigenous Peoples

Westcoast stated that it will develop a Project-specific Indigenous Monitoring Plan that will ensure meaningful opportunities for Indigenous peoples to participate as monitors for the Project. Westcoast indicated that this plan will be developed through consultation with potentially affected Indigenous peoples, and will define the roles of Indigenous monitors and support meaningful participation to ensure that Indigenous cultural, traditional land and resource use, and environmental interests are effectively addressed. Westcoast stated that consultation on the Project-specific Indigenous Monitoring Plan will build on the process for engagement with Indigenous peoples outlined in the Project application, and that engagement will focus on key interested Indigenous peoples identified during initial consultation, as well as those Indigenous peoples that have expressed an interest in monitoring. Westcoast stated that the development of this plan will include Westcoast sharing its draft plan, meetings as necessary, receipt and incorporation of feedback on the draft plan, and development of a final Project-specific Indigenous Monitoring Plan. Westcoast stated that it plans to undertake consultation on this plan prior to the start of construction.

Westcoast stated that it is also committed to a Construction Monitoring Program during the clearing, construction and reclamation phases of the Project. Westcoast stated that prior to construction, it will consult with First Nations to determine the details of resourcing and scheduling for the construction. Westcoast stated that First Nations will be engaged in the development of, and invited to participate in, this program. Westcoast stated that it is anticipated that the program will include the inspection of Traditional Ecological Knowledge (TEK) sites to observe measures being undertaken to mitigate and/or negate significant impacts to TEK sites and resources; the opportunity for the collection of culturally significant vegetation prior to construction; the installation of flagging and/or temporary construction fencing for TEK site protection; the recording of any additional TEK sites and resources not identified at the time of the original TEK Survey; and documentation of the movement of animals during construction.

Westcoast stated that training in the identification of archaeological materials will be included in the onsite pre-work orientation training. Westcoast stated that the monitors will work closely with Westcoast's construction management, contractors and on-site environmental inspectors. Westcoast stated that training for monitors will include the Enbridge online safety orientation and onsite pre-work orientation training.

In response to SFN's concerns, Westcoast stated that it has engaged and will continue to engage with SFN regarding opportunities for SFN or its members to participate in the Project, including

opportunities with Westcoast's contractors, for involvement of SFN members in environmental monitoring before, during and post-construction.

2.2.5.4 Employment and Economic Benefits

Westcoast indicated that interested Indigenous peoples were invited to enter into contracts to participate in technical and field work with its contractors. Westcoast also indicated that it discussed with BRFN, DRFN, FSJMS, HRFN, KLCN, KLMSS, MLIB, SFN, and WMFN, on several occasions, various topics including supply chain management, procurement processes, Indigenous business and contracting opportunities, and master service agreements. Westcoast indicated that KLFN expressed an interest in work opportunities for their contractors and has been included in consultation efforts. Westcoast stated that it continues to gather information from First Nation businesses in preparation for the Aitken Creek Loop construction Request for Proposal, and other construction and operation components of the Project to ensure First Nation employment and procurement opportunities are realized. Westcoast also stated that it would engage Twin Sisters Native Plants Nursery on seed and tree seedling reclamation.

Westcoast stated that it conducted consultation with Indigenous peoples in accordance with Spectra Energy's Aboriginal Consultation Approach, which sets out an Indigenous relations strategy focusing on relationship building, consultation and communication, capacity building, and economic development. Westcoast indicated that it recognizes the importance of ensuring that opportunities for employment are communicated to Indigenous communities in a timely manner. Westcoast further indicated that in order to maximize beneficial effects of the Project for local Indigenous communities, mitigation measures targeted at increasing local and Indigenous employment and procurement will be implemented. Westcoast stated that it will engage early in consultation activities to enhance employment and business opportunities associated with the Project, and that it will procure goods and services from local and Indigenous businesses in accordance with its Local and Aboriginal Content Strategy. Westcoast stated that it will follow its existing practice of encouraging local and Indigenous content based on its Local and Aboriginal Content Strategy; previous experience from operating in the area; and through engagement with Indigenous peoples, local municipalities, residents, and the public. Westcoast stated that it has an Indigenous contractors' database which will be used by the company and shared with its prime contractors, and that it will build capacity for economic development through investments in education and by working with organizations to enhance recruiting opportunities for women and Indigenous persons. Westcoast also indicated that it will adhere to its Diversity Statement of Purpose and Code of Business Ethics which together value employee diversity and governs organizational compliance with laws concerning discrimination and equal opportunities, and that Westcoast will require its prime contractor to have a site policy which aligns with that of Westcoast's policy.

2.2.5.5 Cultural Heritage

In response to SFN's pre-approval conditions regarding heritage resources, Westcoast stated that interested Indigenous communities, including SFN, were invited to participate in archaeological and TEK fieldwork, and that SFN participated in this work. Westcoast stated that any potential cultural and spiritual sites identified through the TEK survey are only shared with Indigenous communities who participated in the TEK study, and that 41 confidential TEK sites were identified on the Chetwynd Loop. Westcoast further stated that a detailed data package containing

confidential site details was hand delivered to SFN in October 2017. Westcoast stated that a full archaeological assessment was completed for the Project and that no burial sites were identified in the Project study area. More specifically, Westcoast stated that no significant archaeological sites were identified on the Chetwynd Loop, or at the two compressor stations associated with the Project. Westcoast filed its clearance letter from the BC Archaeology Branch regarding the archaeological impact assessment for the Chetwynd Loop. Westcoast also indicated that four new sites were identified during the assessment of the Aitken Creek Loop, and that all four sites are being avoided and mitigation measures have been identified in the EPP. Westcoast filed a Heritage Resource Discovery Contingency Plan to be implemented in the event of the discovery of archaeological artefacts, and is based on the requirements of the BC *Heritage Conservation Act*.

Westcoast stated that it acknowledged the potential interactions of spiritual and cultural sites identified by SFN with the Project, and indicated the mitigation measures to which it has committed in its ESA and EPP address those potential interactions. Westcoast has committed to sharing a draft of the final Project EPP with SFN prior to filing it with the NEB. Westcoast also stated that it acknowledges the additional burial sites identified within 250 m of the Chetwynd Project footprint, and stated that these burial sites were not identified during the Archaeological Impact Assessment for the Project because they were located outside of the area of detailed field investigation. Westcoast indicated that it will consult further with SFN on these burial sites to confirm their locations and identify measures to avoid interaction of the Project with these sites; and that this may include potential mitigation measures to protect the sites.

Westcoast stated that a Heritage Resource Discovery Contingency Plan has been prepared and will be present onsite during construction. In response to SFN's pre-approval conditions regarding the Heritage Resources Discovery Contingency Plan, Westcoast indicated that it has committed to update and submit a final EPP prior to construction. Westcoast stated that it is committed to continuing engagement with SFN to discuss mitigation measures including potential revisions to the Heritage Resource Discovery Contingency Plan, having regard for provincial requirements and the BC Archaeology Branch's role in managing archaeological investigations.

2.2.5.6 Social and Cultural Well-being

Westcoast estimated that peak construction workforces would be sustained for six weeks, and indicated that as the Project is anticipated to hire a large portion of the workforce locally, that no camps are required, and given the scale of the overall workforce relative to the area, potential effects on social well-being are considered negligible. Westcoast indicated that the EPP includes mitigation measures relating to increases in social problems resulting from increased presence of transient workers and other socio-economic interactions. Westcoast noted that a Worker Lodging Plan will be implemented to manage workforce accommodations during construction, and that a Traffic and Access Management Plan will be developed to support safe driving practices and limit impacts to landowners, residents, and local communities and to communicate and manage changes in access. Westcoast also stated that personnel will adhere to the contractor's fit for duty policy. Westcoast stated that it is open to meeting with SFN and SFN trappers regarding firearm prohibitions. Westcoast also stated that it does intend to provide sensitivity training through its general contractors as part of Project orientation and onboarding.

2.2.5.7 Traditional Land and Resource Use

Traditional Use

Westcoast stated that at the time the ESA was prepared, limited TLU information was available, and as such the ESA was conservatively prepared on the basis that traditional land uses were carried out throughout the Project area. Westcoast stated that it offered potentially affected Indigenous communities funding for independent TLU studies and that it has entered into TLU study agreements with four Indigenous communities (DRFN, BRFN, HRFN, and SFN).

Westcoast stated that these studies are ongoing and that it will continue to work with Indigenous communities that express interest in completing TLU studies to inform the Project team and facilitate further discussion regarding Project timelines, potential impacts to communities, monitoring and potential mitigation strategies. Westcoast also stated that the results of these TLU studies will be shared at the discretion of the Indigenous community.

Westcoast noted that SFN conducted a TLU study (Knowledge and Use Study) for the Project and that SFN members identified their concerns about interactions between the Project and SFN values related to water, animals, plants, access, and cultural heritage. Westcoast indicated that to address potential effects of the Project on environmental and socio-economic features, including those valued by SFN, it has developed a Project-specific EPP. Westcoast stated that the EPP outlines specific mitigation measures for the activities and environmental and TLU attributes within and adjacent to the Project development area.

Westcoast stated that in addition to TLU studies, a TEK Site Field Survey was conducted on the Crown land portions of the Chetwynd and Aitken Creek Loops to gather information about sites that may have ecological or traditional importance within the Project footprint. Westcoast stated that this work was completed with participation from local Indigenous peoples, but is not necessarily intended to represent the traditional knowledge of a community. Rather, Westcoast suggests its value is in identifying site-specific value components which may not be captured by other environmental or heritage resource studies, and to complement community-led TLU studies. Westcoast stated that participation included a monitor or participant chosen by the Indigenous community in the field studies and an opportunity to review and discuss the data and proposed mitigation by the lands department. Westcoast stated that specific TEK sites were recorded and recommendations were made, and that the company is currently in discussion with Indigenous peoples to develop mitigation and reclamation measures for these sites and resources.

Westcoast indicated that the ESA included an assessment on impacts to residences, which includes local Indigenous communities.

Westcoast stated that it is confident that the EPP's approach to re-vegetation adequately meets the requirements of the NEB Filing Manual. Westcoast further stated that where the soils are not disturbed in temporary workspaces, it expects that natural re-vegetation will include some traditionally used species. Westcoast stated that post-construction monitoring will be undertaken to determine re-vegetation success, and corrective actions will be undertaken as required. In response to SFN's proposed pre-approval condition regarding further consultation with SFN on fish and wildlife and TEK, Westcoast stated that it has incorporated TEK available to date into the Project EPP, and that it is committed to ongoing engagement with Indigenous peoples regarding potential Project effects and mitigation. Westcoast stated that the final Project EPP will

be prepared in advance of construction and will incorporate any changes that may result from continued engagement with SFN. Westcoast committed to sharing a draft of the final Project EPP with SFN prior to filing with the NEB. Westcoast stated that TEK gathered through the Indigenous construction monitoring program will be used to inform reclamation. Westcoast stated that it is of the view that concerns regarding TEK have been adequately addressed.

Access and Trapping

In response to concerns regarding Project interactions with access and trapping, Westcoast identified mitigation measures in the EPP. Westcoast stated that such measures are proposed to mitigate the Project's residual effects on wildlife and their habitats, and contributions to cumulative effects on wildlife. Westcoast indicated that mitigation measures also include implementing a Traffic and Access Management Plan; ensuring Project workers abide by all conditions for access and use of forestry roads; working with tenure holders to limit interference with existing uses; scheduling of construction activities will consider appropriate timing to limit disruption of wildlife during sensitive periods; implementing a Worker Management Strategy which prohibits Project personnel from hunting, fishing, and using recreational vehicles within a buffer zone to be determined prior to construction; and notifying registered outfitters and trapline holders prior to construction. Westcoast stated that trapline holders will be compensated, where appropriate, in accordance with the BC Registered Trapper and Petroleum Industry Agreement on Notification and Compensation. Westcoast stated that it will continue to consult with SFN Chief and Council on the collective treaty right to trap, and that it is willing to meet with registered trapline holders and discuss the Project, their interests and any concerns or input they may have.

Westcoast stated that it “commits to working with SFN and other potentially affected First Nations in a manner that recognizes and respects treaty rights and the traditional lands and resources to which they apply”. Westcoast further stated that it commits to ensuring that its projects and operations are carried out in an environmentally responsible manner, and to that end, Westcoast seeks to “meaningfully engage with SFN and other potentially impacted First Nations so that input received can help define Westcoast's projects and minimize cumulative impacts on First Nation traditional land and resource use”. Westcoast noted that it has committed to establishing a Construction Monitoring Program and to developing a Project-specific Monitoring Plan for Indigenous peoples through consultation with potentially affected Indigenous communities (see section 2.2.5.3 above).

Cumulative Effects

Westcoast stated that with regard to upstream development activity generally, the BCOGC is the provincial government agency responsible for regulating oil and gas activities within BC's jurisdiction (i.e., exploration, development, pipeline transportation, and reclamation). Westcoast stated that since September 2014 the BCOGC has implemented its Area-based Analysis approach to manage cumulative environmental effects associated with permit applications under the *Oil and Gas Activities Act*. Westcoast further stated that through the Area-based Analysis process, the BCOGC considers landscape level cumulative effects on ecological, cultural and social values resulting from all industrial development when making decisions on provincial oil and gas applications.

Westcoast stated that using this approach, a cumulative effects assessment is not needed when no residual effects are anticipated. Westcoast stated that a residual effects characterization is provided for each of fish and fish habitat, vegetation and wetland, and wildlife and wildlife habitat. Westcoast stated that most of the mitigation measures proposed for fish and fish habitat and vegetation and wetlands are standard industry methods and best practices, and as such are understood to effectively mitigate potential residual effects. Westcoast indicated that it is of the view that the cumulative effects assessment for fish and fish habitat, and vegetation and wetlands is appropriate and well supported and that no further assessment is necessary.

Westcoast stated that its cumulative effects assessment was completed in accordance with the NEB Filing Manual, following methods that have been successfully applied to many previous ESAs submitted by Westcoast to the NEB. Westcoast stated that cumulative effects are considered within the regional assessment area, as defined for each valued component, and that the regional assessment area is the area within which Project-specific residual effects may act in combination with the effects of past, present, and reasonably foreseeable projects of the ESA. Westcoast stated that the regional assessment area includes a portion of SFN traditional lands as well as those of other Indigenous peoples. Westcoast indicated that it is of the view that an SFN lands-specific cumulative effects assessment is not warranted, as the portion of the SFN traditional lands where Project residual effects are predicted to overlap with past, present, or reasonably foreseeable projects has already been assessed.

Views of the Board

Westcoast's Consultation with Indigenous Peoples

In addition to providing technical information addressing Project-related impacts on, among other things, fisheries, wildlife, vegetation, and heritage resources, Westcoast was required to make all reasonable efforts to consult with potentially affected Indigenous peoples and to provide information about those consultations to the Board. This included evidence on the nature of the interests potentially affected, the concerns that were raised and the manner and degree to which those concerns have been addressed. Westcoast was expected to report to the Board on all concerns that were expressed to it by Indigenous peoples, even if it was unable or unwilling to address those concerns. Therefore, even if Indigenous peoples chose not to participate in the subsequent hearing process, any concerns could be brought to the attention of the Board through the applicant's evidence.

This early consultation was guided by the Board's Filing Manual Requirements. The requirements reflect the fact that an applicant is often in the best position to respond to the concerns of Indigenous peoples about a project before an application is filed and while a project is still in the early stages of development. The Board expects an applicant to design and implement its consultation activities with regard to the nature and magnitude of a project's potential impacts both from early in the design phase and into the future operational phase of the project. Where there is a greater risk of more serious impacts on the rights and interests of Indigenous peoples (the significance of which may, themselves, vary), the Board has proportionally greater expectations in terms of the applicant's consultation with potentially impacted Indigenous peoples. In contrast, where there is a remote possibility of an impact on Indigenous rights and/or interests, or where

the impacts are minor in nature, the applicant's consultation will generally not be expected to be as extensive.

A proponent's early consultation with Indigenous peoples is a critical part of the development of a proposed project, and a key matter for consideration within the regulatory review process. Timely, accessible and inclusive consultation facilitates the effective exchange of information, and provides opportunities for the company to learn about the concerns of potentially affected Indigenous peoples, to discuss how those concerns can be addressed through project design and operations, and to develop and discuss measures to reduce and mitigate the effects a project may have on the rights and the interests of Indigenous peoples. Timely and effective consultation can help establish productive relationships that can carry on throughout the life of the project. It also informs the Board of the concerns Indigenous peoples may have about a project's impacts.

In assessing the consultation undertaken by Westcoast with Indigenous peoples, the Board evaluated the design and implementation of Westcoast's consultation activities. The Board considered the company's activities to engage Indigenous peoples and to learn about their concerns and interests, as well as the concerns and views expressed by Indigenous peoples. It also considered how Indigenous peoples responded to opportunities for consultation and how Westcoast sought to understand and address the concerns of potentially affected Indigenous peoples. The Board considered how this input influenced the Project's proposed design and operation.

The Board notes that Westcoast provided a Project Information Package to Indigenous peoples it identified as being potentially impacted by the Project. (see the description and list in section 2.2.2). The Board notes that Westcoast's Project Information Packages included information about the Project design, environmental, social and economic effects, including potential economic development opportunities such as contracting and employment. The Board is of the view that potentially affected Indigenous peoples were appropriately identified, given the information available at the time, and that they were provided information about the Project.

Based on the responses to the Project Information Packages and Westcoast's knowledge of interest in the Project area, additional consultation and engagement was undertaken with a smaller group of communities, including BRFN, DRFN, HRFN, MLIB, SFN, and WMFN. The Board notes that Westcoast was responsive to the requests of Indigenous peoples and engaged with KLCN, KLFN, and KLMSS when they expressed an interest in the Project. The Board also notes Westcoast's communications with MNBC. The Board considered the evidence and submissions of Westcoast and of the Indigenous Intervenors that participated in the proceeding, and is of the view that all potentially affected Indigenous peoples were provided with sufficient information about the Project, and that the level of engagement by Westcoast was commensurate with the level of interest expressed by Indigenous peoples. The Board finds that Westcoast provided Indigenous peoples who expressed an interest in the Project with reasonable opportunities to

participate in Project planning, to share traditional knowledge, and to identify site-specific and general concerns about the Project.

Consultation by a project proponent needs to occur early in the planning stages of a project and continue throughout the lifecycle of a project. The Board views consultation as an iterative and ongoing process of discussion and dialogue. Information about a project is necessarily refined as project planning progresses, including in response to information provided by Indigenous peoples through consultation. As the regulator of a project throughout its lifecycle, the Board also has a number of processes and tools at its disposal to execute its oversight of a project, including ensuring compliance with any conditions imposed by the Board and requirements that form part of the regulatory framework, including the OPR.

The Board notes that SFN and WMFN expressed some concerns related to Westcoast's consultation with Indigenous peoples, including SFN trappers. The Board also notes Westcoast's commitment to work with Indigenous peoples, including WMFN, SFN and SFN trappers, to address Project-related concerns and finalize measures to address the Project's effects. The Board expects companies to continue to learn about the concerns that Indigenous peoples may have about a project that may affect them, and to discuss ways to address those concerns to the extent possible. The Board also encourages Indigenous peoples with an interest in the Project to continue to engage with Westcoast.

Having assessed all of the evidence, the Board is of the view that Westcoast has designed and implemented appropriate and effective consultation activities that meet the requirements and expectations set out in the Board's Filing Manual. Further, the Board finds that with Westcoast's commitments and the Board's **Condition 6** (Construction Monitoring Plan for Indigenous Peoples), **Condition 8** (Report on Engagement with Indigenous Peoples) and **Condition 19** (Post-Construction Monitoring Plan for Indigenous Peoples), Westcoast will continue to consult with Indigenous peoples, including all Indigenous Intervenor, in order to learn more about their interests and concerns, and to address issues that they may raise throughout the lifecycle of the Project.

Capacity Funding

The Board administers a PFP which provides financial assistance to support participation of Indigenous peoples and other Intervenor who meet the program criteria. The Board also assigned a Process Advisor to support Indigenous peoples and the public who participated in the hearing.

The Board notes Westcoast's offer to fund independent TLU studies, and that Westcoast entered into TLU study agreements with four Indigenous communities. Regarding capacity funding post-hearing, the Board notes that Westcoast's Aboriginal Relations Strategy focuses on four key areas: relationship building, consultation and communication, capacity building, and economic development. The Board further notes Westcoast's commitment to develop a Project-specific Indigenous Monitoring Plan through consultation with potentially affected Indigenous communities. Given these commitments and the different areas of interest of Indigenous communities, the Board

encourages each Indigenous community to work out the specific requests with Westcoast for capacity funding that aligns with their own interests and values.

Project Monitoring by Indigenous Peoples

The Board notes the value and unique perspective that Indigenous peoples can provide in determining mitigation measure effectiveness, partly based on their traditional knowledge. The Board notes Westcoast's commitments to have Indigenous monitors throughout the various phases of the Project lifecycle as well as SFN's desire to have conditions that solidify these commitments. Therefore, the Board is of the view that with Westcoast's commitments and the Board's **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) and **Condition 19** (Post-Construction Monitoring Plan for Indigenous Peoples), Westcoast will appropriately involve Indigenous peoples in monitoring during construction and after construction of the Project. The Board notes that Westcoast has agreed to develop a Project-specific plan for monitoring by Indigenous peoples through consultation with potentially affected Indigenous communities to incorporate relevant feedback from Indigenous peoples into the development of the plans. The Board also notes that the plan will support meaningful participation to ensure that Indigenous cultural, traditional land and resource use, and environmental interests are effectively addressed.

Employment and Economic Benefits

The Board notes Spectra Energy's Aboriginal Consultation Approach, which sets out an Indigenous relations strategy focusing on four key areas:

- Relationship building;
- Consultation and communication;
- Capacity building; and,
- Economic development.

The Board notes that Westcoast will engage with Indigenous peoples in a timely manner to provide potential employment and business opportunities associated with the Project, and that it will acquire goods and services from local and Indigenous businesses.

The Board is of the view that the Project would provide benefits to Indigenous, local, regional and provincial economies.

Cultural Heritage

The Board notes that SFN was concerned with potential Project impacts on burial sites and sites containing archaeological artefacts heritage, and that SFN requested that First Nations have a central role in the decision making process in the event that a culturally important site or resource is discovered. The Board notes that Westcoast completed archaeological impact assessments for the Project which found that no burial sites were identified in the Project study area, and that no significant archaeological sites were identified on the Chetwynd Loop, or at the two compressor stations associated with the Project. The Board does note that four new sites were identified during the

assessment of the Aitken Creek Loop, and that all four sites are being avoided and mitigation measures have been identified in the EPP.

The Board notes that burial sites identified by SFN are located outside of the Project footprint, and that Westcoast will consult further with SFN about the burial sites in question. The Board notes Westcoast's commitment to follow the Heritage Resource Discovery Contingency Plan in the event that a heritage resource is encountered during construction that was not identified in previous studies, and that Westcoast will discuss mitigation measures regarding potential revisions to the Heritage Resource Discovery Contingency Plan. As a result, the Board is of the view that the potential adverse effects of the Project on cultural heritage are not likely to be significant. In light of the above, the Board has decided to impose **Condition 9** (Archaeological and Heritage Resource Permits and Clearances).

Social and Cultural Well-being

The Board notes that SFN were concerned with Project impacts on the social and cultural well-being of their community. The Board notes Westcoast's response to implement best management practices; to provide a suite of mitigation measures, including the implementation of a Worker Lodging Plan and a Traffic and Access Management Plan; and a requirement that personnel undergo sensitivity training and adhere to contractors' fit for duty policies. The Board also notes that Westcoast will discuss firearms prohibition with SFN.

Regarding SFN's concerns about safety due to behavioral practices of transient workers, the Board directs Westcoast to incorporate Indigenous awareness training into its sensitivity training which reflects culturally appropriate approaches and content. The Board expects that this training will be provided to Westcoast's own employees as well as to construction personnel. The Board encourages Westcoast to develop the Indigenous awareness training with input from local Indigenous peoples. The Board notes Westcoast's commitment to continue consulting with SFN Chief and Council and discuss any concerns or input they may have. Similarly, the Board also notes that with **Condition 8** (Report on Engagement with Indigenous Peoples), Westcoast must continue to consult with Indigenous peoples to learn more about their concerns, and to address issues that they may raise through the Project's construction. As a result, the Board is of the view that the potential adverse effects of the Project on social and cultural well-being are not likely to be significant.

Traditional Land and Resource Use

Westcoast outlined its approach for assessing the potential impacts on traditional land and resource use. Its approach relies on an assessment of effects on biophysical and human environments. Westcoast's assessment also incorporated information obtained by collection of TEK and information from TLU studies. The Board notes that Westcoast had provided Indigenous peoples with a number of opportunities to participate in TEK surveys and fieldwork, and environmental fieldwork. The Board also notes that Westcoast reached an agreement with DRFN, BRFN, HRFN and SFN regarding the scope of work for their TLU studies for the Project.

Through the assessment process, Indigenous peoples had the opportunity to make known to Westcoast and to the Board their views and concerns about the Project, including what effects it might have on their potential or established rights and interests. MNBC, SFN, and WMFN expressed their views and concerns about how the Project might affect their Indigenous and treaty rights relating to hunting, harvesting, land use, and traditional activities. The Board acknowledges the importance that Indigenous peoples place on being able to exercise their Indigenous and treaty rights, and continue their traditional activities, uses and practices within the entire area of their traditional territories, including access to resources and areas and sites of cultural importance and significance.

The Board considered the evidence provided by Westcoast, MNBC, SFN, and WMFN about the nature and extent of the activities, uses, and practices that are carried out by Indigenous peoples in the Project area. The Board acknowledges the concerns raised by MNBC, SFN, and WMFN that potential impacts on the biophysical elements are indistinguishable from impacts on traditional land and resource use; that they are interrelated. Another concern echoed by MNBC, SFN, and WMFN was that of cumulative impacts threatening their environment and traditional lands, and traditional uses in these areas.

The Board considered the potential impacts on these activities, uses, and practices. The Board also considered all of the mitigation measures to address potential effects on biophysical elements, including fish and fish habitat, wildlife, vegetation and wetlands, and air and water quality, as well as measures to address the potential effects on traditional use, including access and trapping, and socio-economic components, including cultural heritage resources to which Westcoast has committed. The Board also acknowledges Westcoast's commitments to continue engaging with potentially affected Indigenous peoples regarding the Project, through construction and operation; and to engage with SFN on planned reclamation for the Project right-of-way on Crown land; to engage Twin Sisters Native Plants Nursery on seed and tree seedling reclamation. The Board also acknowledges Westcoast's commitment to developing a Project-specific Indigenous Monitoring Plan, through consultation with potentially affected Indigenous peoples, and commitment to engage Indigenous communities to develop and participate in a Construction Monitoring Program.

The Board is satisfied that with Westcoast's commitments and proposed mitigation measures, and the conditions imposed by the Board, the potential effects on the interests of Indigenous peoples can be minimized. The Board notes that a significant portion of the Project will occur adjacent to existing rights-of-way, and that the approximately 12.5 km of the Chetwynd Loop that does not parallel existing rights-of-way occurs in areas with predominantly agricultural land use. The Board also notes that there will be temporary and localized interruptions to the access and use of the Project right-of-way during construction. The Board is of the view that additional efforts could be made to ensure that no sites of traditional land use are in conflict with the planned construction footprint. Therefore, the Board imposes **Condition 4** (Environmental Protection Plan), requiring Westcoast to develop and implement a Traditional Land Use Sites Discovery Contingency Plan as part of its EPP. The Board imposes **Condition 7** (Outstanding

Traditional Land Use Investigations), requiring Westcoast to file a plan to address outstanding TLU investigations. The Board also imposes **Condition 6** (Construction Monitoring Plan for Indigenous Peoples), **Condition 8** (Report on Engagement with Indigenous Peoples), and **Condition 19** (Post-Construction Monitoring Plan for Indigenous Peoples), requiring Westcoast to submit reports on engagement with Indigenous peoples as well as monitoring plans for Indigenous peoples for construction and post-construction activities, which would provide Indigenous peoples further opportunities to address outstanding or unanticipated TLU issues.

The Board finds that effects of the Project on traditional land and resource use will therefore be short-term to long-term in duration, reversible in the long-term, local to regional in geographic extent, and low to moderate in magnitude. Given all of the above, including Westcoast's commitments and the Board's conditions, the Board is of the view that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples are not likely to be significant.

Regarding cumulative effects, the Board has heard concerns about the pace and scale of development in northeast British Columbia across a number of proceedings held in the region over the past few years. The Board notes the concerns raised in this proceeding by SFN and WMFN regarding cumulative effects on traditional use. The Board also notes **Condition 4** (Environmental Protection Plan), **Condition 6** (Construction Monitoring Plan for Indigenous Peoples), **Condition 7** (Outstanding Traditional Land Use Investigations), **Condition 8** (Report on Engagement with Indigenous Peoples) and **Condition 19** (Post-Construction Monitoring Plan for Indigenous Peoples), and the commitments from Westcoast to engage with Indigenous peoples on the inclusion of traditional land and resource use mitigation in the Project EPP, and on the development of Project monitoring plans. The Board remains concerned about the cumulative effects of projects, including this Project, on the current use of lands and resources for traditional purposes by Indigenous peoples. However, the Board is of the view that the cumulative effects of the Project on traditional land and resource use in the Project area will be effectively mitigated by the proposed conditions and commitments.

Section 35 of the Constitution Act, 1982

During the hearing process, both SFN and WMFN made submissions regarding consideration of their constitutional rights. Submissions made by Indigenous peoples are summarized in section 2.2.4.9.

The Board notes that the Supreme Court of Canada has acknowledged in two recent decisions, *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*² and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*³ that the Board has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures as well as the requisite technical expertise. The Supreme Court also acknowledged the Crown's ability to rely on the Board's regulatory assessment

² *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40, [2017] 1 SCR 1069.

³ *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41, [2017] 1 SCR 1099.

process to fulfill its duty to consult. The Board is the final decision-maker in relation to the Project.

Administrative tribunals play an essential role in the execution of federal or provincial constitutional powers. Through their legislative mandates, they are charged with performing duties and exercising the powers that fall within the executive branch of government. Administrative tribunals such as the Board must perform those duties and exercise those powers, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982* and other applicable laws.

The NEB Act provides the Board with broad powers and expansive remedial authority to deal with the impacts of federally-regulated pipeline projects. The Board is the federal statutory body that has the most direct involvement in the assessment of applications to construct and operate interprovincial and international pipelines. The Board also has the technical expertise and the regulatory experience to understand a project, the likelihood of effects and the measures that can be implemented to minimize effects. In addition, the Board has the authority to elicit commitments from the proponent, impose conditions on an approval and ensure ongoing regulatory oversight of a project and a proponent's compliance. The Board also has been given the statutory mandate to impose and enforce mitigation measures to reduce negative project effects and hold a proponent to the commitments made in the Board's project assessment process.

The framework within which the Board operates and decisions under the NEB Act are made, which includes the requirement that a project assessment process be conducted in a procedurally fair manner, can provide a practical, effective and efficient way within which Indigenous peoples can request and receive meaningful assurances from the proponent or the Board about project-related effects on the rights and interests of Indigenous peoples. Hearing directly and indirectly about Indigenous people's concerns about project-related impacts allows the Board to impose measures to mitigate the impacts and balance, as appropriate, any residual effects with the other societal interests at play when assessing a project. As a result, decisions on pipeline projects can be made in a constitutionally appropriate manner consistent with the doctrine of the honour of the Crown.

It should be understood that the Board's consideration of what is required in terms of consultation with Indigenous peoples is a fluid process as more information is obtained and assessed in the Board's proceeding. There are several points in a Board proceeding where the existence and extent of Indigenous rights and/or interests, and the Project's potential impact on them will be considered with a view to determining the procedural opportunities that must be provided and the substantive outcomes that are warranted. For example, such factors may be considered when:

- the proponent determines who may be impacted by its proposed project;
- the Board decides to whom to send notices;
- the Board considers the type of Board process that should be employed;

- the Board decides who should be allowed to participate in the proceeding and to what extent;
- the Board assesses the level of consultation expected of the proponent and any others who may have authority to deal with an issue;
- the Board considers the amount of information required from the proponent regarding potential impacts and proposed mitigation measures;
- the Board considers the amount of information required from Indigenous participants;
- the Board determines what conditions would need to be imposed; and,
- the Board determines whether the authorization should be issued.

The Board's process is designed to be thorough and accessible to Indigenous peoples so that they may make their concerns known to the Board and have those concerns addressed as appropriate. In addition to the mandated one-on-one consultation that is to occur between an applicant and potentially impacted Indigenous peoples (described in section 2.1.2), it should be understood that the Board's hearing process itself (described in section 1.2), including these reasons for decision, is part of the overall consultative process.

In the context of this application, much early consultation was performed by Westcoast, the results of which were submitted by the proponent in its Project application and otherwise as evidence. The Board's process allowed those interactions, and the concerns raised therein to form part of the record from which the Board (and the Crown) could become aware of the concerns of Indigenous peoples with respect to the potential impacts of the Project to their rights and interests. The Board's process is also a necessary and important check on that consultation and gave Indigenous peoples the opportunity to explain their concerns about the Project and have those concerns considered by the Board in its capacity as regulatory decision-maker. The Board is of the view that Westcoast designed and implemented appropriate and effective consultation activities for the Project, and is also of the view that the Board process was appropriate in these circumstances.

The Board has considered the information submitted regarding the nature of potentially affected Indigenous peoples' rights and interests in the Project area, including information on constitutionally protected Indigenous and treaty rights. The Board has also considered the anticipated effects of the Project on those rights and interests and the concerns expressed by Indigenous peoples, as discussed in this Decision, in this regard. In light of the nature of the rights and interests and the anticipated effects, the Board has evaluated the consultation undertaken with respect to this Project, including the mandated consultation performed by Westcoast and the consultation undertaken through the Board's project assessment process. The Board has also considered the mitigation measures proposed to address the various concerns and potential effects. Having assessed all of the evidence, the Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is also of the view that any potential adverse Project impacts on the rights and interests of

affected Indigenous peoples are not likely to be significant within the Project area and can be effectively addressed.

As a result of the above, considering all of its findings in this Decision, and the conditions it has applied to this approval, the Board, as final decision maker with respect to the Project, is of the view that the approval of this Project is in keeping with the doctrine of the honour of the Crown.

2.3 *Engineering Matters*

In consideration of the safety and security of proposed facilities, the Board assesses whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities will be located. Westcoast is responsible for ensuring that the design, specifications, programs, manuals, procedures, measures, and plans developed and implemented by Westcoast are in accordance with the OPR, which includes by reference the Canadian Standards Association (CSA) Standard CSA Z662 – Oil and Gas Pipeline Systems (CSA Z662). Throughout the lifecycle of a pipeline, the Board holds pipeline companies accountable for meeting their regulatory requirements through compliance verification activities such as audits, inspections, meetings, and review of condition filings, and other manuals and reports.

Regarding the operation of the Project, Westcoast stated that it will implement a comprehensive Integrity Management Program (IMP) to identify, monitor and mitigate potential integrity threats, using a risk-based methodology. The IMP includes regular preventative maintenance activities such as in-line inspections, aerial patrols, cathodic protection monitoring, and pipeline markers at roads and watercourse crossings.

Westcoast also applied pursuant to section 43 of the OPR for an increase in the maximum operating pressure (MOP) to 9,930 kPa from what was previously limited to 6,453 kPa by two Leave to Open Orders (LTO), GPSO-W102-007-2016 and GPLO-W102-011-2017. Both LTO orders set a MOP somewhat reduced from the pressure for which that pipe had been tested (and approved) under the Order approving the facility. This lower approved pressure was due to the piping being connected to adjacent systems that could only be safely operated at 6,453 kPa. In this application, Westcoast explained that the original piping limited to 6,453 kPa would be replaced through this Project. Westcoast intends to operate the newly installed replacement pipe at 9,930 kPa. The new pipe, if successfully tested and approved for an operating pressure of 9,930 kPa, would address the concern which resulted in the Board setting a reduced operating pressure in the previous LTO Orders. Westcoast has asserted that the segments of pipe in question were built and tested for 9,930 kPa, and have been monitored and maintained so that they are able to be operated at that pressure.

Views of the Board

The Board is of the view that the general design of the Project facilities is appropriate for the intended use, and that the facilities will be constructed in accordance with accepted standards for design, construction and operation, including the mandatory OPR and CSA Z662 requirements, as well as Westcoast's standards and guidelines referenced therein. The Board has decided not to impose Conditions floated as Slope

and Bank Failures, Horizontal Directional Drilling Execution Plans, Report on Post-Blasting Activities and Water Wells and Geotechnical Report Regarding Slope Stability as Westcoast has provided sufficient mitigation and commitments to cover potential concerns. The Board reminds Westcoast to apply for Leave to Open (LTO) pursuant to section 47 of the NEB Act, prior to the facilities being placed in operation.

The Board recognizes that the piping which was the basis for the reduced MOP imposed by LTO Orders GPSO-W102-007-2016 and GPLO-W102-011-2017 is piping identified to be replaced through this Project. The Board understands that this Project will replace that piping with systems and piping that are intended to safely operate at 9,930 kPa. However, the final operating pressure will not be set until LTO is applied for, and granted by the Board for this Project's piping. Therefore, the Board denies Westcoast's request pursuant to section 43 of the OPR for an increase in MOP to 9,930 kPa for piping associated with LTO Orders GPSO-W102-007-2016 and GPLO-W102-011-2017 at this time. The Board reminds Westcoast to file an application pursuant to section 47 of the NEB Act for LTO for the new piping for this Project. The Board also advises Westcoast to concurrently apply for variances to the previous LTOs at that time. The Board directs Westcoast to provide with its application sufficient information to support its request for the 9,930 kPa MOP instead of the MOP of 6,453 kPa that those piping sections currently have. The Board suggests this supporting information include the results of the original hydrostatic tests, and an engineering assessment that defends its assertion that the pipeline remains capable of operating at the higher pressure.

2.4 *Environment Matters*

The Chetwynd Loop parallels existing linear disturbances for approximately 13 km of the proposed 25 km route and the Aitkin Creek Loop parallels existing linear disturbances for approximately 9.7 km of the proposed 13 km route. The CS2 expansion will be located immediately to the west of the existing CS2 facilities and will require clearing of approximately 2.75 ha of lands. The CSN5 expansion will be located immediately south of the existing CSN5 facilities and will require clearing of approximately 1.9 ha of forested lands. The modifications to the existing CS16 will not require additional clearing and will take place entirely within previously cleared Westcoast-owned lands. Construction was proposed to commence in July 2018 with an in-service date of August 2019 and amended by Westcoast to commence in January 2019 with an in-service date of March 2020. Construction is scheduled to take place over a 12-month continuous window plus an additional two months for commissioning activities.

The CS2 and CSN5 Project components overlap with the Moberly/Klinse-Za herd range and the Graham herd range for which ECCC's *Recovery Strategy for the Southern Mountain Caribou population (Rangifer tarandus caribou) in Canada* (Recovery Strategy) applies.

Views of Westcoast

Standard Mitigation

Westcoast stated that the ESA was completed using a standard framework and methods that were developed to meet the requirements of the NEB Act and the NEB Filing Manual. Westcoast is of the view that with the application of standard and Project-specific environmental protection

measures, the residual biophysical and socio-economic effects of the Project are predicted to be not significant, with the exception of residual effects on caribou.

In its application, Westcoast identified routine design and standard mitigation to mitigate most of the potential adverse environmental effects of the Project. In addition to routing and scheduling, Westcoast committed to implementing best practices to mitigate potential adverse environmental effects on the physical environment, the atmospheric environment, soil and soil productivity, fish and fish habitat, vegetation, wetlands, wildlife and wildlife habitat.

Westcoast stated that compliance with the environmental commitments, implementation of the mitigation measures, EPPs and involvement in the design and planning of the Project by environmental specialists, as well as periodic inspections, monitoring of the Project during construction and operation will reduce the extent of residual adverse environmental effects. Westcoast committed to implementing a Post-Construction Monitoring Program (PCMP) following construction where it will identify residual effects or other issues post-construction and follow up with remedial actions and appropriate documents within Post-Construction Monitoring Reports (PCMRs). The PCMRs will also include any corrective actions implemented.

Atmospheric Environment

Westcoast submitted that even with the implementation of mitigation measures, the Project will result in increased greenhouse gas (GHG) emissions. Westcoast is of the view that the magnitude of emissions is low. However, Westcoast has committed to a robust monitoring program, confirmed that the facilities will be in compliance with the new ECCC regulations, and noted that it will be taxed on the Project's emissions as well.

In response to an IR from ECCC, Westcoast prepared an upstream GHG assessment for quantifying the GHG emissions released as a result of upstream activities associated with the Project. Westcoast committed to adhering to the new *Federal Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)*.

Caribou

Westcoast submitted that the CS2 expansion overlaps with Type 1 Matrix range in the Moberly/Klinse-Za range and the clearing of the 2.7 ha lands will include 2.5 ha of forested lands, resulting in a change in caribou habitat of 2.5 ha within the Pine River Local Population Unit (LPU). Westcoast also submitted that the CSN5 expansion overlaps Type 1 Matrix range in the Graham range and clearing will result in a change of caribou habitat of 1.9 ha within the Graham LPU. These changes involve a conversion from permanent indirect disturbance to permanent direct disturbance as a result of clearing of vegetation for the Project.

In its application, Westcoast stated that because there is predicted to be a loss of caribou critical habitat associated with the CS2 and CSN5 expansions, it would prepare a Caribou Habitat Restoration and Offset Measures Plan (CHROMP). In response to Intervenor concerns, Westcoast filed the CHROMP on 14 June 2018. Westcoast noted that the CS2 and CSN5

expansion footprints are considered permanent disturbances and that no on-site habitat restoration is planned. The residual effects will be addressed through offsets.

Westcoast stated that clearing and piling activities for the CS2 and CSN5 expansion and construction will be planned to avoid the critical period for caribou (January 15 to July 15).

Views of Participants

Environment and Climate Change Canada

Standard Mitigation

ECCC is of the view that Westcoast did not establish sufficient baseline information in relation to barn and bank swallows and therefore Westcoast may have underestimated the potential Project effects on these species. ECCC is further of the view that there is uncertainty in the measures proposed by Westcoast to mitigate Project effects on barn and bank swallows and recommended it conduct additional surveys to provide additional data on the occurrence and habitat of these species within the Local Assessment Area and Regional Assessment Area. ECCC also recommended that Westcoast clarify the setback buffer distances that are proposed to protect foraging, roosting and nesting areas and the establishment of a plan for monitoring the three potential bank swallow colonies within the Chetwynd Loop Local Assessment Area.

ECCC is also of the view that Westcoast may have underestimated the potential Project effects on the little brown myotis and northern myotis, including cumulative effects, and recommended Westcoast conduct additional surveys to account for inter-seasonal variation to inform its mitigation measures and adaptive management frameworks.

With respect to the western toad, ECCC is of the view that the buffers proposed for use during pre-construction surveys may not adequately mitigate Project effects on western toads. ECCC recommended avoiding those activities that could destroy, alter or fragment terrestrial protection zones.

Atmospheric Environment

ECCC reviewed Westcoast's upstream GHG assessment for the Project and while it had no major concerns with the assessment, it recommended that Westcoast revise the assessment to include ECCC's most recent emission and production data and constant emission intensities from the last available year of projections to the end of the operating life of the Project.

Caribou

ECCC indicated that, in its work to amend the Recovery Strategy, it is considering all available information including the telemetry data, habitat mapping and TEK prepared by WMFN and considered it relevant for this environmental assessment as well. ECCC stated that if this information is not considered, there is a risk of underestimating the potential effects of the Project on caribou habitat which may influence the characterization of Project effects, the Project's contribution to existing cumulative effects and the proposed mitigation measures, including offsets.

ECCC is of the view that Westcoast should consider Project effects in areas that are being considered for identification as critical habitat in an amended Recovery Strategy.

ECCC noted its concerns with the time gap between habitat destruction and restored areas becoming fully functional and suitable for southern mountain caribou and that they cannot be sufficiently compensated for by implementing Westcoast's proposed temporal risk multipliers.

ECCC is of the view that the current version of the CHROMP does not adequately address the Project effects and it remains unclear as to whether the final CHROMP will effectively mitigate Project effects.

District of Chetwynd

The District of Chetwynd submitted that while it is deeply concerned with the decline in caribou numbers and is committed to caribou protection and recovery efforts, it wished to bring to the Board's attention that caribou habitat is a distance away from the proposed Spruce Ridge pipeline extension location.

Métis Nation of British Columbia

MNBC stated that any caribou habitat restoration plan must adhere to the Recovery Strategy. MNBC are of the view that offsite management or paying into a fund are unlikely to contribute positively to the caribou population in a timely manner. MNBC are also of the view that the Project is not only likely to negatively impact the recovery of the caribou populations, but where applicable, will also have direct impacts on Métis and other Indigenous peoples' land use activities and rights.

West Moberly First Nation

Standard Mitigation

WMFN stated that they are concerned about the Project's watercourse crossings' potential for negative impacts on fish and fish habitat, as well as water quality impacts.

Caribou

WMFN submitted that in light of the likelihood of imminent changes to the Recovery Strategy, the Board should recognize the proposed new boundaries for LPUs affected by the Project, or adopt ECCC's recommendations to amend the proposed conditions relating to caribou to ensure that Westcoast's restoration plans for caribou are updated and changed "to reflect updates to the applicable Recovery Strategy, range and action plans, as well as critical habitat boundaries.

WMFN requested that any changes to Westcoast's caribou restoration plans include meaningful consultation with affected First Nations, prior to implementation. WMFN are of the view that offset measures should be subject to close scrutiny by the Board and interested intervenors, as they form an integral part of the mitigation strategy for caribou habitat. WMFN urges the Board to establish a suitable process for Westcoast to create the Caribou Habitat Restoration and Offsets Measures Monitoring Program (CHROMMP) with consultation from interested

First Nations, and a process of review of the implementation of the CHROMMP to permit meaningful input from WMFN and other interested Intervenors.

Saulteau First Nation

Standard Mitigation

SFN noted their concerns with potential Project interactions with fish and wildlife, specifically contamination of water; contamination from garbage; increased erosion; and increased predation.

SFN submitted that the information contained in the ESA and used by Westcoast to assess impacts on wildlife, vegetation, traditional land and resource use, and heritage resources is vague, incomplete, inaccurate and sometimes misleading. SFN are of the view that this has resulted in an impacts assessment that is unreliable and further suggests that Westcoast's proposed mitigation measures are equally unreliable. SFN noted their concerns with Westcoast's assessment of wildlife mortality risk and are of the view the assessment was qualitative and should have been quantitative.

SFN also submitted that Westcoast did not properly address the need to conserve ecosystem diversity as it relates to wetlands. SFN recommended Westcoast be required to prepare a Wetland Functions Monitoring Program and a Wetland Functions Monitoring Plan in consultation with affected First Nations.

Caribou

SFN noted their concerns with Westcoast's CHROMP and is of the view that further efforts are required before there will be any certainty regarding what in fact is required for the long-term recovery of caribou. SFN submitted that if the Project is allowed to proceed despite the uncertainty and without coordinated efforts or action plans in place there will be confounding effects on caribou.

Reply of Westcoast

Standard Mitigation

Westcoast maintained that baseline conditions for wildlife, including for species at risk known or likely to occur in the Project area, have been adequately assessed and characterized using the methods described in the ESA and in response to IRs. Westcoast indicated it would implement a comprehensive suite of mitigation measures that are based on best practices, industry guidelines, and precedence. These mitigation measures include undertaking species-specific pre-construction surveys if required for species of concern, implementing appropriate setbacks and timing windows for nests, habitat features, and habitats, and implementing habitat offset measures. Westcoast is of the view that the assessment methods and findings presented in the ESA, in combination with the proposed mitigation and offset measures, are sufficient.

Westcoast submitted that it assessed population-level mortality risk for each valued component in the context of cumulative effects and the Regional Assessment Areas. Westcoast noted that in doing so, it assessed key effect pathways for change in mortality risk, such as human and predator access, and identified well-known and well-understood population-level sources of

mortality risk for wildlife, such as linear feature development. Westcoast acknowledged that baseline conditions are at a level likely to have adversely affected the sustainability of some focus wildlife species however, because most of the Project is contiguous with existing linear features, the predicted residual cumulative effect is negligible with respect to change in mortality risk.

Westcoast indicated it would implement its Breeding Bird Management Plan if construction during the breeding and nesting periods cannot be avoided. Westcoast noted that this plan is based on ECCC guidelines, as well as similar and related industry best practices. Westcoast committed to undertaking pre-construction surveys and implementing appropriate setbacks as needed to avoid potential effects of the Project on bank and barn swallows as well as using a qualified biologist to undertake the surveys, and to prescribe a setback for active nests. If the recommended setback or timing window cannot be met, Westcoast indicated it would consult with the appropriate regulatory agency for further guidance.

Westcoast submitted that rock crevices, caves, cliff fissures, and mine adits are not present in the Project area, and climatic conditions necessary for hibernation in tree crevices or root wads are not favorable for hibernation in the Project area.

Westcoast is of the view that with the implementation of an isolated crossing technique, mitigation and site restoration measures, and follow-up and compliance monitoring, potential residual effects can be avoided and/or mitigated. Westcoast is further of the view that there will be no permanent alteration or destruction to fish habitat at the crossing location and downstream of the crossing location and that there will be no impacts to commercial, recreational, and/or Aboriginal fisheries.

Westcoast is of the view that the mitigation measures proposed in the EPP relating to water quality and sedimentation, waste handling and disposal, spill prevention and response watercourse crossings will reduce the extent of residual adverse environmental effects from the Project.

Caribou

In response to the concerns of ECCC and WMFN, Westcoast submitted that it reviewed WMFN's caribou mapping and telemetry data and indicated that only a single polygon from the mapping overlapped with a portion of the Chetwynd Loop, and that no caribou telemetry locations were within that polygon. In an IR to ECCC, Westcoast asked for an update on the timeline for the amended Recovery Strategy, and inquired as to whether it intended to include the aforementioned polygon that overlaps with the Chetwynd Loop in the amended Recovery Strategy. Westcoast submitted that in its response, ECCC could not confirm when the amended Recovery Strategy would be made available, and did not confirm whether the polygon overlapping the Chetwynd Loop would be included in an amended Recovery Strategy. Westcoast committed to review and incorporate, as appropriate, new or updated information on critical habitat mapping in an amended Recovery Strategy, or in range plans or action plans, into the final CHROMP.

Westcoast submitted that the effects assessment for caribou was completed in a manner consistent with the current Recovery Strategy, and that the effects characterization and conclusions drawn are reliable. Westcoast noted that linear features, and linear feature density, were not assessed for caribou because neither CS2 nor CSN5 include linear elements.

In reply to ECCC's concerns regarding time gaps, Westcoast submitted that the temporal risk multipliers take into consideration several factors they are also based on precedent, are specific to the Project and have been adjusted accordingly.

With respect to proposed Condition - Construction During Caribou Critical Windows regarding the caribou restricted activity period, Westcoast requested that this condition not be included in an NEB order approving the Project on the basis that it would provide little benefit to the protection of critical caribou habitat, but would result in extra time, cost and environmental impact from the Project being prolonged. Westcoast argued that when it filed its application on 19 October 2017, the construction schedule proposed at that time allowed for the completion of clearing and piling prior to the January 15 start of the caribou critical window. Westcoast further argued that due to the timelines associated with the NEB hearing process, these construction activities are pushed within the caribou critical window and it would not be possible to satisfy that potential Condition - Construction During Caribou Critical Windows.

Westcoast noted that the construction activities to be completed at CS2 and CSN5 are within its private property boundaries and in a setting of existing and ongoing disturbance. Westcoast is of the view that the area is not suitable for caribou and that direct effects on habitat are predicted to be small with no indirect effects on habitat expected. Westcoast stated that it plans to clear the areas needed for the expansion at the CS2 and CSN5 facility sites and immediately fence those areas.

Westcoast stated that facility construction at CS2 and CSN5 is currently scheduled to take place over a 12-month continuous window plus an additional two months for commissioning activities. Based on its current Project schedule, construction is planned to commence by January 2019 with an in-service date of March 2020. Westcoast argued that if the Project is unable to conduct construction activities between 15 January and 15 July in any year, this would have a significant cost and schedule impact to the Project, resulting in a minimum of two construction seasons (2019 and 2020) and potentially three construction seasons. This would push the in-service date out by a minimum of one year and potentially as much as two years.

Westcoast concluded that based on the lack of suitable habitat currently onsite and in the vicinity of the Project, the nature of construction in the context of ongoing disturbance, its commitment to implement all mitigation measures except the timing restriction, and the significant impact proposed Condition - Construction During Caribou Critical Windows would have on Project construction and in-service timing, Westcoast requested that this proposed Condition not be made a condition of the Board's approval of the Project.

Views of the Board

The Board's Filing Manual provides guidance to proponents on what should be included in the ESA with respect to baseline information. The Filing Manual notes that an

applicant is not expected to provide extensive descriptions of features of the environment that would clearly not be impacted by the Project and that the goal is to provide information with sufficient detail to: identify Project-environment interactions; determine the significance of Project effects; and formulate appropriate mitigation measures and monitoring Programs. In some cases, the effects of a project on certain environmental elements can be predicted and appropriate mitigation proposed regardless of the level and detail of baseline information provided. In this case, the Board is of the view that Westcoast has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology. The Board is also of the view that Westcoast's ESA properly analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project as outlined in the Filing Manual. Therefore, the Board is of the view that Westcoast's ESA methodology is acceptable.

In considering the evidence, the Board is of the view that mitigation to be implemented by Westcoast will minimize the environmental effects of the Project. The Board notes that Westcoast will conduct post-construction monitoring and that a PCMP is a key tool towards ensuring that potential adverse effects will be effectively mitigated and where issues are identified, adaptive management will be implemented to address them. To be satisfied that post-construction monitoring is thorough and effective and that reports will be developed and filed, the Board imposes **Condition 20** (Post-Construction Environmental Monitoring Reports) which sets out requirements for Westcoast's PMCP. The Board notes that Westcoast will also develop a Wetland Functions Monitoring Program and has included that as part of **Condition 20**. The Board also notes the request of SFN to be consulted in the preparation of the Wetland Functions Monitoring Program and encourages Westcoast to engage with SFN where possible.

As part of the Board's requirements of **Condition 4**, for an EPP, the Board is also requiring Westcoast's preparation and filing of an Amphibian Management Plan and a Breeding Bird Management Plan to address outstanding concerns with respect to the western toad and bank and barn swallows.

The Board notes that Westcoast is required to comply with the new federal *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)* and so has decided not to impose potential Conditions floated as Air Quality Monitoring Plan and Air Quality Monitoring Reports as they would be redundant in light of these regulations.

The Board notes Westcoast's inventory of watercourse crossings, including those that are not expected to align with the least risk window. To ensure appropriateness and sufficiency of mitigation measures for watercourse crossings, including respective appropriate timing windows, the Board imposes **Condition 13** (Watercourse Crossing Inventory), which requires Westcoast to provide an update of all the crossing and methods used for the Project.

Where Westcoast would employ a contingency crossing method instead of its proposed primary method, the Board imposes **Condition 14** (Contingency Watercourse Crossings), requiring Westcoast to notify the Board of the contingency and its differences from the primary crossing method, and explain the rationale for the contingency.

Under the Memorandum of Understanding between the Board and DFO, the Board is responsible for referring potential watercourse crossings that are likely to require a *Fisheries Act* Authorization to DFO.

To address uncertainty in the unlikely event that an authorization is required, the Board also imposes **Condition 15** (Authorizations under paragraph 35(2)(b) of the *Fisheries Act* and Species at Risk permits) requiring Westcoast to provide confirmation that any required authorization under subsection 35(2) of the *Fisheries Act* were obtained.

In order to track construction schedules, the Board imposes **Condition 5** requiring Westcoast to provide detailed construction schedule(s) identifying major construction activities. The Board also imposes **Condition 11** requiring Westcoast to file monthly construction progress reports. These reports must include information on the activities carried out during construction and report any environmental, socio-economic, safety and security issues and issues of non-compliance, and the measures undertaken for the resolution of each issue and non-compliance.

Based on the information provided by Westcoast in its application and subsequent filings, and taking into account the mitigation proposed by Westcoast and the conditions imposed by the Board, the Board has determined that residual effects of the Project on the environment are likely to be localized to the Project area and reversible in the medium term.

With respect to the CS2 and CSN5 components of the Project in caribou ranges, the Board has previously commented on the importance of protecting critical habitat. The Board expects proponents to preferentially avoid, and then minimize disturbance before, during and after construction. The Board has also expressed that companies have a responsibility to restore affected habitat as soon as possible and as much as possible, and that residual effects must be fully offset.

The Board acknowledges Westcoast's Preliminary CHROMP submitted during this process. As noted above, in some cases, the effects of a project on certain environmental elements, can be predicted and appropriate mitigation proposed regardless of the level and detail of baseline information provided. The Board notes SFN's view that the ESA on which the CHROMP depends does not provide sufficient baseline information to assess the adequacy of mitigation or offsetting required to address the potential impacts of the Project on caribou. Considering the site location and footprint of the Project in the context of the range and existing disturbance, the Board is of the view that Westcoast's ESA methodology is acceptable. The Board notes that Westcoast's mitigation and management plans for the Project also include monitoring and adaptive management processes to manage uncertainty and increase the probability of effective mitigation.

The Board acknowledges the comments from ECCC and WMFN that Westcoast should consider all available information that may be included in the amended Recovery Strategy in its assessment. The Board notes that updated mapping of critical habitat has been planned for the Recovery Strategy for over a year; and it has previously commented on the importance of having clear map boundaries available in order to ensure regulatory consistency for any project proponent. As such the Board is of the view that Westcoast made reasonable efforts to obtain the latest critical habitat mapping from ECCC in order to plan its Project. In order to reasonably balance Westcoast's Project needs and ECCC's potential amendment of the Recovery Strategy, the Board expects Westcoast's preparation and implementation of its offsets plans will rely on the latest available critical habitat mapping at the time that LTO is sought for the Project.

The Board is of the view that the CHROMP as filed identified goals and measureable objectives and offset implementation plans that are appropriate for a preliminary CHROMP and for the nature of the Project and setting. The Board notes the disturbed nature of the sites, their limited size and adjacent disturbances, such that there may be little point in implementing habitat restoration measures on the Project site. However, the Board also notes that the Project essentially delays any potential rehabilitation, or restoration as called for in the Recovery Strategy. In that sense, the Project contributes temporally to ongoing impacts to caribou critical habitat.

The Board therefore imposes **Condition 17** requiring offsets and a Caribou Habitat Offset Measures Plan (OMP). The Board expects the OMP to include a final confirmation of the footprint and if combined with another ongoing Westcoast offset program, a demonstration of how the measures are included and how they will be effective. The Board reminds Westcoast to account for an inherent value, and provide different multipliers for the different delivery, temporal, and spatial risks encountered under different circumstances when determining its offset multipliers. As offsets will be relied on to compensate for habitat restoration, the Board has decided against imposing the potential Conditions floated as Caribou Habitat Restoration Implementation Report and Status Update, Caribou Habitat Offset Measures Implementation Report, Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP), and two referenced as Caribou Monitoring Reports. The Board directs Westcoast to review and incorporate updated information on critical habitat in the amended Recovery Strategy or applicable range plans or action plans at the time of LTO in its offset plans for the Project. The Board also imposes Condition 18 requiring Westcoast to report on the results of the CHROMMP.

The Board has considered Westcoast's argument to remove the proposed draft Condition Construction During Caribou Critical Windows, which would have restricted any construction activities in caribou ranges within the critical window of January 15 to July 15 in any year of construction of the Project. The Board notes Westcoast's commitment in its initial application to plan clearing and piling activities outside of the critical period for caribou and that Westcoast's initial Project schedule allowed for that commitment to be fulfilled. The Board also notes Westcoast's claim that the lengthy regulatory process has pushed the scheduling of the construction activities into the

caribou critical timing window and consequently it may no longer be able to meet its commitment to avoid that period. The Board is mindful of the extent to which Westcoast's original proposed construction schedule may now be delayed. However, Westcoast should be fully aware of the regulatory process, particularly when a project garners this level of public interest. The Board's release of this decision is consistent with the limit outlined in its 14 March 2018 letter (A90572). The Board reminds Westcoast that when it presents mitigation on the record, the Board expects such mitigation to be taken seriously and implemented regardless of process circumstances and delays.

The Board has considered the particular circumstances of this case in which the portions of the Project within caribou habitat are within the buffer of, and adjacent to, existing high sensory disturbance linear features, the Board finds limited potential for additional sensory impact and that the Project is not likely to result in any additional adverse impacts to caribou within the Graham and Pine River LPUs. Therefore, the Board has decided not to impose the draft Condition it floated entitled Construction during Caribou Critical Windows.

The Board is of the view that with these conditions and the Board's regulatory oversight of them, the Project is not likely to result in any additional adverse impacts to caribou within the Graham and Pine River LPU.

2.5 Economic Feasibility

When making the determination regarding the economic feasibility of the Project, the Board assesses the need for the proposed facility and an applicant's ability to finance the proposed facilities. Matters relating to tolling methodology and toll impacts are discussed in section 2.6.

2.5.1 Need for the Project

In assessing the need for the Project and the likelihood of it being used at a reasonable level over its economic life, the Board considers the available supply of product that will be shipped on the pipeline, the availability of adequate markets to receive the product, and the transportation contracts underpinning the facilities. The Board also considers the adequacy of the capacity of the pipeline, and the alternatives to, and rationale for, the proposed facilities.

Views of the Board

For the reasons laid out below, the Board is of the view that Westcoast has demonstrated a need for the Project and the applied for facilities are likely to be used at a reasonable level over their economic life.

2.5.1.1 Natural Gas Supply

Views of Westcoast

Westcoast said that there will be abundant supply available for the economic life of the Project. Supply for the Project will come from the Montney Formation, one of the largest unconventional

gas resources, and one of the most economic formations, in North America. Westcoast submitted that, based on estimates developed jointly by the NEB, the BCOGC, the Alberta Energy Regulator and the British Columbia Ministry of Natural Gas Development, the total marketable gas in place for the Montney Formation within BC is 271 trillion cubic feet.

Westcoast stated that all upstream operators whose contracts underpin the Project have planned production with associated land positions, drilling activities, etc.

Views of Participants

No participant expressed concerns regarding the availability of supply.

Views of the Board

The Board is of the view that the natural gas resources in the Montney Formation represent adequate supply to support the Project.

2.5.1.2 Markets

Views of Westcoast

Westcoast stated that the Project will enable it to provide service for the expansion firm transportation service agreements from receipt points along the Fort Nelson Mainline for gas deliveries to the NGTL system at Compressor Station 16 (Sunset); and from receipt points along the Fort St. John Mainline for gas deliveries to the Westcoast T-South system at Compressor Station No. 2.

Westcoast stated that the NGTL system provides access to markets in Alberta and other Canadian provinces and the United States, including the Pacific Northwest, California, the US Northeast and the Midwest. The Westcoast T-South system provides access to markets in BC, the U.S. Pacific Northwest and California.

2.5.1.3 Downstream Capacity

Views of Westcoast

Westcoast stated that it has not made arrangements with operators of downstream facilities. Further, Westcoast said that, as was indicated in the open season for the Project, expansion shippers are responsible for securing any necessary downstream capacity or marketing arrangements on other portions of the Westcoast system or other pipelines connecting to the Westcoast system.

Views of Participants

NGTL

Prior to Westcoast providing more fulsome information regarding the contracted delivery points, NGTL submitted its concerns that it was unclear that service associated with this Project, or the

other recent T-North expansions, could actually commence until such time as downstream takeaway capacity on the NGTL System was available. Therefore, to the extent any of the contracts underpinning the Project application are intended to be delivered to the NGTL system, this existing mismatch with downstream takeaway capability would be further increased.

Following confirmation from Westcoast that the majority of the incremental volume was contracted for delivery to Sunset, NGTL did not provide further comments or argument on the matter of downstream capacity.

Westcoast's Reply

Westcoast argued that shippers who bid for capacity in Westcoast's open seasons are sophisticated parties and are responsible for securing the necessary downstream capacity or marketing arrangements. Firm commitments by shippers for deliveries to Sunset Creek with a weighted average term of 26.0 years, notwithstanding current capacity constraints on various parts of the NGTL system, provide strong evidence of the need for the Project facilities and of their expected use at a reasonable level over their economic life. Furthermore, Westcoast expects that additional downstream capacity will be made available by open access downstream pipelines in a timely manner if and when customers make requests for capacity at specified downstream locations.

Views of the Board

The Board notes that NGTL raised concerns regarding the availability of capacity downstream of the contracted delivery point over the short-term. The Board is of the view that adequate markets exist to support this Project over the long-term given the access to markets provided by the NGTL System and its connections to downstream markets. Further, the Board is of the view that the financial risks of a lack of downstream takeaway capacity are risks that are rightly borne by Westcoast and the contracting expansion shippers.

2.5.1.4 Transportation Contracts

Views of Westcoast

Westcoast conducted a public open season process from 23 September to 21 October 2016 to provide potential shippers with an opportunity to contract for service on the Project. Westcoast said that upon completion of the open season, information about the Project, including Project scope, contractual commitments, expected capital cost and toll impacts, was shared at various Tolls and tariff task force (TTTF) meetings. Westcoast specified that the TTTF membership includes shippers (producers, marketers, utilities, and industrial consumers), upstream and downstream industry associations and other interested parties.

As a result of the open season, Westcoast received bids from, and subsequently entered into expansion service agreements with, shippers for 11,385 10³m³/day (402 MMcf/day) of incremental firm service. The weighted average term of the service agreements is approximately 24 years.

Westcoast stated that shippers awarded expansion service who held existing firm service in Zone 3 were required, under the terms of the open season, to extend the term of such existing service, up to an amount equal to the volume of expansion service awarded, to match the minimum ten year open season term requirement for expansion service. This resulted in a term extension being applied to 5,663 10³m³/day (200 MMcf/day) of existing firm service.

Westcoast is of the view that the firm service agreements, with no shippers exercising the turn-back option, together with the significant gas resources and markets that support the Project, demonstrate that the Project facilities are likely to be used at a reasonable level over their economic life.

Views of Participants

No participant expressed any concerns with respect to the contracting process and open season, need for the Project or the size of the pipeline proposed.

Black Swan

Black Swan stated, in support of the Project, that the infrastructure and transportation currently available in northern British Columbia is insufficient to handle increased volumes of gas of this magnitude, which has impacted the rate at which Black Swan is developing its lands and investing in its asset. Black Swan said it requires additional egress to develop its lands, as existing pipeline takeaway capacity in the area is fully contracted. Black Swan submitted that the proposed Spruce Ridge pipeline will address an existing bottleneck, allowing for further growth and development in northern BC.

Views of the Board

The Board is of the view that the contracting process and open season were conducted in a fair and transparent manner. Westcoast's use of its TTTF and its Customer Interface to inform its shippers of the open season ensured that information was conveyed fairly and without discrimination.

The Board finds that there is sufficient commercial support for the Project in the form of executed expansion service agreements.

2.5.1.5 Alternatives and Rationale

Views of Westcoast

Westcoast stated that the Project has been designed so that it will increase T-North (Zone 3) system capacity over the limiting path associated with the expansion service agreements (the Fort Nelson Mainline to Sunset path) by the increased contract demands over that path under the firm transportation service agreements that underpin the Project.

Westcoast submitted that it did not consider an alternative pipe size for the applied-for 914 mm (Nominal Pipe Size (NPS) 36) pipeline loop. Westcoast explained that the existing Fort St. John mainline consists of the original 762 mm (NPS 30) pipeline and approximately 37 km of

914 mm (NPS 36) pipeline loop constructed in 1977 and Wyndwood, currently under construction, which will add an additional 28 km of 914 mm (NPS 36) loop. Westcoast said that using the same pipe size for the Project as existing looping on the Fort St. John mainline will minimize different pipeline sizes in the same corridor and thereby enhance the efficient operation and maintenance of the facilities.

Views of the Board

In assessing the alternatives to, and rationale for, the Project, the Board looks at larger design for the Project relative to the identified need for facilities. Project routing alternatives and routing concerns are addressed in section 2.1.2.

The Board is of the view that capacity of the proposed pipeline loop is appropriate to accommodate firm service requirements and that the applicant provided sufficient rationale for how the proposed design of the facilities meets the needs for the Project.

2.5.2 Ability to Finance

Views of Westcoast

Westcoast estimated the capital cost of the Project at \$564.5 million. Westcoast will finance the Project through a combination of internally generated funds and financing through Enbridge Inc., its ultimate parent. Enbridge Inc. is a Fortune 500 company with significant financial resources and sizable access to equity and credit markets.

Views of Participants

No participants expressed concerns regarding Westcoast's ability to finance the Project.

Views of the Board

The Board notes that no parties expressed concerns regarding Westcoast's ability to finance the Project. The Board is satisfied that Westcoast's parent company, Enbridge Inc., has sufficient access to equity and credit markets to fund the cost of the Project. The Board finds that Westcoast is therefore sufficiently able to finance the Project. The Board recognizes that financial risk is further mitigated through long-term expansion service agreements for the full capacity of the loop.

2.5.2.1 Abandonment Cost Estimate and Abandonment Funding

Views of Westcoast

Westcoast said that the abandonment cost estimate (ACE) for the Project is \$5.56 million, calculated using the same methodology, assumptions and unit costs set out in Westcoast's updated ACE filed with the Board on 30 September 2016. Westcoast stated that following completion of construction of the Project, any impact that the Project has on Westcoast's overall system ACE and annual contribution amount will be reflected in the periodic reviews and updates of Westcoast's ACE and annual contribution amount.

Views of Participants

No participants expressed any concerns with respect to the ACE for the applied-for Project.

Views of the Board

The Board is satisfied with the methodology and assumptions used to calculate the ACE and finds the ACE appropriate. The Board notes that any material changes to Westcoast's ACE as a result of the Project will be addressed in the Board's next routine review of pipeline ACEs.

2.6 Tolling Methodology and Toll Impact

Westcoast requested an Order from the Board pursuant to Part IV of the NEB Act, affirming that the cost of the Project will be included in the T-North (Zone 3) cost of service and tolled on a rolled-in basis.

In assessing a proposed tolling methodology, the Board must be satisfied that a proposed tolling methodology would not result in any unjust discrimination in tolls, service or facilities. The Board also considers whether the resulting tolls would be just and reasonable, and whether, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, the tolls would be charged equally to all persons at the same rate.

2.6.1 Tolling Methodology

2.6.1.1 Westcoast's Current Zone 3 Tolling Methodology

Zone 3 cost of service is allocated on the basis of contract demand volumes only, this method of tolling is also referred to as postage stamp tolls. Westcoast explained that there are two postage stamp tolls in Zone 3:

- The Short Haul Toll for deliveries to distribution utilities connected to Zone 3 that serve northern communities and for gas movements of 75 km or less other than to the Alliance or NGTL systems; and,
- The Long Haul Toll for all other gas movements in Zone 3.

2.6.1.2 Westcoast's Proposed Tolling Methodology

Views of Westcoast

Westcoast stated that its current and historical capital expenditure and tolling policy for expansions in Zones 3 and 4, whether by looping or compression, is to roll-in the cost of the expansion facilities into the Zone 3 or 4 cost of service, and to toll the expansion service under the existing Zone 3 or 4 tolling methodology. Under Westcoast's toll design, the annual cost of service for each zone is allocated to the firm shippers in that zone. Cost and utilization risk for both the base facilities and expansions are therefore borne by the Zone 3 shippers.

Westcoast stated that at a meeting held on 21 September 2017, the TTTF supported Westcoast's proposal for the cost of the Project to be included in the Zone 3 cost of service and tolled on a rolled-in basis. The vote was characterized as "unopposed" in the application, which Westcoast said means that the majority of the task force members voted in support of the resolution and one or more members opposed the resolution but without intention of actively opposing or proposing an alternative to the Board.

Views of Participants

No participants expressed any concerns with respect to the Part IV relief Westcoast requested for the Project.

Views of the Board

The Board finds the proposed tolling methodology, using rolled-in cost of service, to be appropriate for the circumstances of this Project and will result in just and reasonable tolls. The rolled-in tolling methodology is consistent with Westcoast's existing practice for system expansions. The Board acknowledges the opposition to the tolling methodology in the TTTF vote, as indicated by Westcoast in its application, however, no evidence was filed by the dissenting party(ies). The Board is of the view that the proposed tolling methodology reasonably satisfies section 62 of the NEB Act, which requires that the same tolls should apply to all shippers using the same transportation services over the same facilities.

The Board has decided to grant Westcoast the relief requested pursuant to Part IV of the NEB Act. In issuing this decision, the Board emphasizes that it would not be precluded from determining that a different tolling treatment would be appropriate in the future.

Nevertheless, the Board disagrees with Westcoast's definition of "unopposed" to include votes where one or more TTTF members opposed the resolution. In the Board's view this use of the term "unopposed" is inaccurate.

2.6.2 Toll Impacts

Views of Westcoast

Westcoast provided the toll impacts and the estimated annual revenues from the expansion service agreements for the first five years of contracted service for the Project based on the 2017 final tolls (Table 2-2). Westcoast estimated that the increase in the T-North Long Haul Toll would range from 1.58 ¢/mcf in 2020 to 1.95¢/mcf in 2024 as a result of this Project.

Westcoast also estimated that the increase in the T North short haul Toll would range from 0.11¢/mcf in 2020 to 0.14¢/mcf in 2024 as a result of this Project.

Table 2-2: Toll Impact and Estimated Incremental Annual Revenues

		2020	2021	2022	2023	2024
T-North Long Haul Toll Impact	¢/mcf	1.58	1.73	1.83	1.9	1.95
	\$/103m3	17.02	18.53	19.61	20.44	21.04
T-North Short Haul Toll Impact	¢/mcf	0.11	0.12	0.13	0.13	0.14
	\$/103m3	1.18	1.29	1.36	1.42	1.46
Expected increase in Zone 3 cost of service (\$000)		49,142	50,900	52,149	53,082	53,743

Views of Participants

No participants expressed any concerns with respect to the toll impact of the Project.

Views of the Board

The Board has assessed the estimated impact on tolls for shippers on the Westcoast T-North system and finds the impacts of the Project are acceptable given the demonstrated need for the Project.

3.0 Conclusion

The Board has determined that it is in the public interest to approve Westcoast's application to construct and operate the Project.

The Board has decided to grant an order pursuant to section 58 of the NEB Act exempting the applied-for facilities from the application of paragraphs 30(1)(a) and (b) and section 31 of the NEB Act, and exempting the pipeline tie-ins from the application of section 47 of the NEB Act;

The Board has decided to grant an order pursuant to subsection 48(2.1) of the NEB Act exempting certain welds for the auxiliary and utility piping systems from the 100% non-destructive examination requirement in section 17 of the OPR for the auxiliary and utility systems.

The Board has also decided to grant Westcoast an order pursuant to Part IV of the NEB Act affirming that the cost of the Spruce Ridge Program will be included in the Transmission North (Zone 3) cost of service and tolled on a rolled-in basis.

The Board denies Westcoast's request pursuant to section 43 of the OPR for an increase in MOP to 9,930 kPa for piping associated with LTO Orders GPSO-W102-007-2016 and GPLO-W102-011-2017, without prejudice to make a future request at the time it files an application pursuant to section 47 of the NEB Act for LTO.


All of the above constitute the Board's Letter Decision for Orders XG-W012-032-2018, XG-W012-033-2018, and TG-009-2018 issued on 10 December 2018. The Board directs Westcoast to serve a copy of these reasons on all interested parties.



R. R. George



D. Côté



W. Jackknife

December 2018
Calgary, Alberta

Attachments

4.0 Appendix I – Comments on Conditions

The table below summarizes comments and responses regarding potential conditions which the Board floated for comment, as well as others which may have been proposed by hearing participants. There were no comments received on the following proposed conditions: Condition Compliance; Design, Construction and Operation; Implementation of Environmental Protection; Construction Schedule; Outstanding Traditional Land Use Investigations; Indigenous Engagement Reports; Archaeological and Heritage Resource Permits and Clearance; Programs and Manuals; Slope and Bank Failures; Construction During Caribou Critical Windows; Construction Progress Reports; Watercourse Crossing Inventory; Contingency Watercourse Crossings; Authorizations under paragraph 35(2)(b) of *Fisheries Act* and Species at Risk permits; Report on Post-blasting Activities and Water Wells; Condition Compliance by the Accountable Officer; Post-construction Indigenous Monitoring Plan for Indigenous Peoples; Geotechnical Report Regarding Slope Stability; Pipeline Geographic Information System (GIS) Data; and Sunset Clause.

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
NEB CONDITION FLOATED		
<i>Environmental Protection Plan (EPP)</i>	<p>ECCC recommended that the EPP include requirements for Westcoast to:</p> <ul style="list-style-type: none"> ○ Avoid engaging in potentially destructive or disruptive activities at key locations or during key periods, including the breeding periods and periods of high usage such as migration and/or feeding, in order to reduce the risk of harmful impacts on migratory birds and the risk of nest destruction or disturbance. ○ Undertake additional surveys for bank and barn swallow, following established protocols. Collect additional baseline data, to support improved mitigation and monitoring strategies to avoid and minimize impacts to little myotis and northern brown myotis, their residence and habitats. ○ Establish a 150-290 m buffer around core wetlands and aquatic resources to ensure the protection of western toad core aquatic and wetland habitats. 	<p>The Board is of the view that Westcoast has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology.</p> <p>As part of the Board's requirements of Condition 4 for an EPP, the Board is also requiring Westcoast's preparation and filing of an Amphibian Management Plan and a Breeding Bird Management Plan to address outstanding concerns with respect to the western toad and bank and barn swallows.</p> <p>The Board notes that Westcoast will also develop a Wetland Functions Monitoring Program and has included that as part of Condition 20 (PCMR).</p>

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
	<ul style="list-style-type: none"> ○ Include a wetland functions monitoring program and wetland compensation plan that details mitigation measures for species at risk and migratory birds, and a requirement to consult with ECCC and relevant stakeholders in the development of these measures. 	
Construction Indigenous Monitoring Plan	<p>SFN suggested that this condition requires that the plan be amended to include the following parts:</p> <ul style="list-style-type: none"> ○ Be developed in consultation with First Nations, where the consultation will included (among other things), appropriate methodologies, the scope of First Nation interests to be monitored, the scope of the activities that will be monitored. ○ Include capacity funding with respect to developing the plan as well as funding for subsequent monitors who participate in the monitoring. <p>Westcoast stated the NEB has already proposed a condition requiring Westcoast to prepare an Indigenous construction monitoring plan, and Westcoast has specifically committed to engage with SFN in the development of that plan.</p>	<p>The Board notes that Westcoast committed to develop a Project-specific Indigenous Monitoring Plan to ensure meaningful opportunities for Indigenous peoples to participate as monitors for the Project. The Board also notes that this plan will be developed through consultation with potentially affected Indigenous peoples, and will define the roles of such monitors and support meaningful participation to ensure that Indigenous cultural, traditional land and resource use, and environmental interests are effectively addressed.</p> <p>The Board has made modifications to the condition to incorporate certain suggestions from SFN.</p> <p>Given Westcoast's commitments and the different areas of interest of Indigenous communities, the Board encourages each Indigenous community to work out the specific requests with Westcoast for capacity funding that aligns with their own interests and values.</p>
Air Quality Monitoring Plan	<p>ECCC recommended that the Air Quality Monitoring Plan should include requirements for the Proponent to provide the Board with the method and schedule for nitrogen oxide emission testing for engines and turbines.</p> <p>Westcoast stated that the wording of the proposed condition was unclear, as it stated the report is to be annual but only included an initial filing date and did not contain an end date for this filing. As written, it was either a one-time filing requirement or a filing requirement in perpetuity.</p>	<p>The Board notes that Westcoast must comply with the new federal <i>Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)</i> and so has declined to impose potential Conditions floated as Air Quality Monitoring Plan and Air Quality Monitoring Reports as they would be redundant given the application of these regulations.</p>

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
<i>Air Quality Monitoring Reports</i>	Westcoast stated that the wording of the condition as proposed was unclear, as it stated the report was to be annual but only included an initial filing date and did not contain an end date for this filing. As written, it was either a one-time filing requirement or a filing requirement in perpetuity.	See “NEB Response to the Comments from Intervenors” for Air Quality Monitoring Plan above.
<i>Construction Progress Reports</i>	N/A	N/A
<i>Watercourse Crossing Inventory</i>	Westcoast requested that the timing of the filing be changed to align with the updated Environmental Protection Plan, which will include the watercourse crossing inventory.	The Board has no concerns with this timing amendment.
<i>Contingency Watercourse Crossings</i>	Westcoast requested that the timing of the filing be changed to seven days prior to commencing construction. If a contingency watercourse crossing is required, it would only be discovered during ongoing construction, and a notification requirement greater than seven days could impact construction timing.	The Board has no concerns with this timing amendment.
<i>Authorizations under paragraph 35(2)(b) of Fisheries Act and Species at Risk permits</i>	N/A	N/A
<i>Horizontal Directional Drilling Execution Plans</i>	Westcoast requested that the requirement be changed from the specific locations included in the potential conditions to a general reference to any HDD(s) the Project requires.	The Board decided not to impose this condition as Westcoast has provided sufficient mitigation and commitments to address potential concerns.
<i>Caribou Habitat Restoration Implementation Report and Status Update</i>	WMFN suggested that this condition include the requirement for evidence of consultation (i.e., “evidence of how consultation feedback from ECCC and affected First Nations was integrated into the plan”) be added to the condition. Westcoast stated that as part of its corporate caribou program, Westcoast will continue to work with First Nations on initiatives such as determining appropriate offset locations within caribou habitat and developing Westcoast’s long-term caribou monitoring program. ECCC recommended that the report include any changes that are required to reflect updates to the applicable Recovery Strategy, Range and Action Plans, as well as critical habitat boundaries.	The Board is of the view that the CHROMP as filed with the application identified goals and measureable objectives and offset implementation plans that are appropriate for a preliminary CHROMP and for the nature of the Project and setting. The Board imposed Condition 17 requiring offsets and an Offset Measures Plan (OMP). As offsets will be relied on to compensate for habitat restoration, the Board has declined to impose potential Conditions floated as Caribou Habitat Restoration Implementation Report and Status Update, Caribou Habitat Offset Measures Implementation Report,

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
		Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP), and two referenced as Caribou Monitoring Reports.
<i>Caribou Habitat Offset Measures Implementation Report</i>	<p>WMFN suggested amending the wording of the condition “evidence of how consultation feedback was integrated into the plan” to “evidence of how consultation feedback from ECCC and affected First Nations was integrated into the plan”.</p> <p>Westcoast stated that as part of its corporate caribou program, Westcoast will continue to work with First Nations on initiatives such as determining appropriate offset locations within caribou habitat and developing Westcoast’s long-term caribou monitoring program.</p> <p>ECCC recommended that the report include any changes that are required to reflect updates to the applicable Recovery Strategy, Range and Action Plans, as well as critical habitat boundaries.</p>	See comments above under “NEB Response to the Comments from Intervenors” for Caribou Habitat Restoration Implementation Report and Status Update.
<i>Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP)</i>	<p>SFN suggested that the preparation of such a Caribou Habitat Restoration and Offset Measures Plan be added to this condition. SFN stated that since ECCC is currently working with the BC government and First Nations on the amendment of the Southern Mountain Caribou recovery strategy, it is imperative that this plan be prepared in collaboration with ECCC, the BC government, and affected First Nations.</p> <p>WMFN suggested that this condition include the requirement for evidence of consultation (i.e., “evidence of how consultation feedback from ECCC and affected First Nations was integrated into the plan”) be added to the condition.</p> <p>Westcoast stated that it has already prepared and filed a preliminary CHROMP for the Project and has committed to prepare and implement a final CHROMP. A draft version of the preliminary CHROMP was shared with ECCC, BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), and affected Indigenous peoples in December 2017. Comments from ECCC and FLNRORD, including Westcoast’s response to how those comments were</p>	See comments above under “NEB Response to the Comments from Intervenors” for Caribou Habitat Restoration Implementation Report and Status Update.

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
	<p>addressed, are summarized in the preliminary CHROMP. Westcoast stated that it is committed to continued engagement with Indigenous peoples on the development of the CHROMP, but notes that comments on the draft preliminary CHROMP from some Indigenous peoples, including SFN, have not yet been received.</p> <p>ECCC recommended that the program include any changes that are required to reflect updates to the applicable Recovery Strategy, Range and Action Plans, as well as critical habitat boundaries.</p>	
<i>Caribou Monitoring Reports</i>	<p>WMFN suggested that the condition include the requirement that the report be made available to affected First Nations for further review prior to approval.</p> <p>Westcoast stated that as part of its corporate caribou program, Westcoast will continue to work with First Nations on initiatives such as determining appropriate offset locations within caribou habitat and developing Westcoast's long-term caribou monitoring program.</p> <p>ECCC recommended that the program include any changes that are required to reflect updates to the applicable Recovery Strategy, Range and Action Plans, as well as critical habitat boundaries.</p> <p>Westcoast indicated that this condition appeared twice.</p>	<p>See comments above under "NEB Response to the Comments from Intervenors" for Caribou Habitat Restoration Implementation Report and Status Update. The Board is of the view that the CHROMP as filed with the application identified goals and measureable objectives and offset implementation plans that are appropriate for a preliminary CHROMP and for the nature of the Project and setting.</p> <p>The Board imposed Condition 17 requiring offsets and an OMP and for Westcoast to notify representatives of Indigenous peoples who have expressed to Westcoast an interest in this filing.</p> <p>The condition appeared twice. The second occurrence was removed.</p>
<i>Air Quality Monitoring Reports</i>	<p>ECCC recommended that the Air Quality Monitoring Reports, should include requirements for the Proponent to provide the Board with the results and dates of nitrogen oxide emission testing for engines and turbines.</p>	<p>See comments above under "NEB Response to the Comments from Intervenors" for Air Quality Monitoring Plan.</p>
<i>Post-construction Environmental Monitoring Report</i>	<p>ECCC recommended that the PCMR be specific to include western toad, bank and barn swallow, little and northern brown myotis, migratory birds and breeding birds.</p>	<p>The Board has made this amendment to the Condition.</p>
<i>Geotechnical Report Regarding Slope Stability</i>	<p>N/A</p>	<p>The Board decided not to impose this condition as Westcoast has provided sufficient mitigation and commitments to address potential concern.</p>

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
<i>Pipeline Geographic Information System (GIS) Data</i>	N/A	The Board decided not to impose this condition as Westcoast has provided sufficient mitigation and commitments to address potential concern.
PROPOSED NEW CONDITIONS		
<i>Additional Caribou Habitat and Restoration Plan Commitments</i>	<p>SFN proposed a new condition for additional commitments regarding the Caribou Habitat and Restoration Plan.</p> <p>Westcoast stated that it is committed to avoiding and limiting adverse effects of the Project on caribou habitat to the extent possible. Westcoast stated that where adverse residual Project effects were identified for the CS-2 and CS-N5 Project components, it has committed to develop and implement a CHROMP with a goal of “no net loss of caribou habitat”. Westcoast stated that it has also committed to monitor and report on the effectiveness of restoration and offset measures, and to adaptively manage those measures to achieve the goal. Westcoast respectfully disagreed with ECCC’s assertion that Westcoast did not use scientific rationale to develop the offset multipliers used to support and calculate an offset value in the preliminary CHROMP. According to Westcoast, the preliminary CHROMP is wholly supported by a comprehensive literature review that collectively includes information and results from peer-reviewed scientific literature, expert-based scientific questionnaires, and science-based results from monitoring of restoration and offset measures. Westcoast stated that the methods used to calculate the offset value for the Project have been used on several NEB-regulated projects in Alberta and BC, and the multipliers used on those projects have been adjusted (generally increased) over time as new information has become available. Westcoast stated that it notes that ECCC did not provide an alternate method, or any specific scientific references, from which to inform the multipliers used in the preliminary CHROMP. Westcoast stated that instead, ECCC referred to a “draft offsetting decision support tool” being developed by FLNRORD. Westcoast stated that through its engagement with FLNRORD, it is aware that an offsetting</p>	<p>The Board is of the view that the CHROMP as filed with the application identified goals and measureable objectives and offset implementation plans that are appropriate for a preliminary CHROMP and for the nature of the Project and setting.</p> <p>The Board imposed Condition 17 requiring offsets and an OMP.</p>

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
	calculator is being developed. However, the draft calculator is not yet available for use, and Westcoast has not had an opportunity to review the underlying rationale for the calculator, scientific or otherwise.	
<i>Wetlands Functions Monitoring Plan</i>	<p>SFN proposed a new condition that Westcoast prepare a Wetland Functions Monitoring Plan and that this program be preceded by the preparation of a Wetland Functions Monitoring Plan, prepared in consultation with affected First nations.</p> <p>Westcoast stated that it has committed to developing a wetland functions monitoring program as part of its Post-Construction Environmental Monitoring Program; this wetland functions monitoring program will be similar to those from recently completed Westcoast projects, and will address habitat functions for migratory birds and species at risk.</p>	The Board has included this as part of the PCMR in Condition 20 .
<i>Wetlands Compensation Plan</i>	<p>SFN proposed a new condition that Westcoast prepare a Wetlands Compensation Plan.</p> <p>Westcoast stated that it committed to prepare a Wetland Compensation Plan if a loss of wetland functions is detected at the end of the three-year monitoring program. Westcoast stated that if monitoring of wetland functions in Year 3 of the Wetland Monitoring Program demonstrates a loss of wetland function, Westcoast will prepare a Wetland Compensation Plan, which will follow ECCC guidance to achieve no net loss of wetland function, with a minimum compensation ratio of 2:1.</p>	The Board is satisfied that the Wetlands Function Monitoring Plan will identify residual effects or other issues post-construction. Westcoast committed to follow up with remedial actions and appropriate documents within PCMRs. The PCMRs will also include any corrective actions implemented.
<i>SFN Monitor during Construction</i>	<p>SFN proposed a new condition that Westcoast employ an SFN monitor during clearing and construction activities regarding culturally important site or resource discoveries, and regarding limiting impacts on fish and wildlife.</p> <p>Westcoast stated that the NEB has already proposed a condition requiring Westcoast to prepare an Indigenous construction monitoring plan, and Westcoast has specifically committed to engage with SFN in the development of that plan.</p>	The Board considers SFN's concerns to have been addressed in Condition 6 , requiring Westcoast to provide the Board with a plan describing participation by Indigenous peoples in monitoring activities during construction.

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
<i>Discovery of Culturally Important Sites or Resources</i>	<p>SFN proposed a new condition that Westcoast adapt its procedures in the event a culturally important site or resource is discovered.</p> <p>Westcoast stated it is committed to engaging with SFN regarding its Heritage Resource Discovery Contingency Plan, including requirements for notifications to SFN or other potentially impacted Indigenous peoples and the role of Indigenous peoples in the event that heritage resources are discovered during the course of construction.</p>	<p>In response to SFN's suggestion, the Board added a requirement to Condition 4 (EPP) to include a Traditional Land Use Sites Discovery Contingency Plan.</p>
<p><i>Plants and Reclamation: Reclamation in accordance with SFN interests</i></p> <p><i>SFN Consultation on Vegetation and Reclamation Mitigation Measures</i></p>	<p>SFN proposed a new condition that Westcoast consult with SFN to develop vegetation and vegetation reclamation mitigation measures that reflect SFN traditional plant values and interests, including conditions that Westcoast only use seedlings from Twin Sisters Native Plants Nursery on SFN lands; Westcoast avoid the use of herbicides as much as possible in and around traditional used plants; and Westcoast engage a reclamation monitor.</p> <p>Westcoast stated it has committed to, and expects an NEB condition requiring Westcoast to, update and submit a final EPP prior to construction. Westcoast stated that it is committed to continuing engagement with SFN to discuss mitigation measures to be included in the EPP, including re-vegetation mitigation measures that meet SFN's interests in preserving traditional plants, avoidance of use of herbicides, and reclamation monitoring. Westcoast stated that it commits to sharing a draft of the final Project EPP with SFN prior to filing it with the NEB.</p> <p>Westcoast stated that it will engage Twin Sisters Native Plants Nursery on seed and tree seedling reclamation, as directed by SFN.</p>	<p>The Board considers SFN's concerns to have been addressed in Condition 4, which requires Westcoast to provide the Board with an updated Project-specific EPP. The Board notes that Westcoast has committed to continuing engagement with SFN to discuss mitigation measures to be included in the EPP, and to sharing a draft of the final Project EPP with SFN prior to filing it with the NEB.</p>
<i>Prohibition of Firearms</i>	<p>SFN proposed a new condition that Westcoast prohibit all firearms at camps and worksites, with the exception of designated safety personnel.</p> <p>Westcoast stated that it remains open to meeting with SFN and SFN trappers regarding the interests of trappers, including with respect to firearm prohibitions.</p>	<p>The Board notes that Westcoast has committed to continuing to engage with potentially affected Indigenous peoples regarding the Project, including meeting with SFN with respect to firearms prohibitions.</p>

NEB Condition Floated or Proposed New Condition	Summary of Comments from Intervenors and Westcoast on NEB Draft Conditions and Proposed New Conditions	NEB Response to the Comments from Intervenors
		The Board has imposed Condition 8 requiring Westcoast to provide the Board with reports summarizing Westcoast's engagement with all potentially affected Indigenous peoples identified.
<i>Compensation for Interference</i>	SFN proposed a new condition that Westcoast provide appropriate compensation regarding all SFN traplines and trapping interests. Westcoast stated that it remains open to meeting with SFN and SFN trappers to discuss the Project, their interests, and concerns or input they may have.	The Board notes that Westcoast is required under the NEB Act to provide compensation for all damages suffered as a result of the operations of the company.
<i>Sensitivity Training</i>	SFN proposed a new condition that Westcoast provide sensitivity training to all workers on the Project. Westcoast stated although not in evidence, it intends to provide sensitivity training through its general contractors as part of Project orientation and onboarding.	The Board notes that Westcoast has committed to provide sensitivity training through its general contractors as part of Project orientation and onboarding.
<i>Working Health and Safety Committee</i>	SFN proposed a new condition that Westcoast create and fund a Health and Safety Committee which includes representatives from First Nations communities. Westcoast stated that it does not agree that a condition requiring a Health and Safety Committee is necessary. Westcoast stated that it has already committed to mitigation measures to reduce the impact on the local community as discussed in Westcoast's Final Argument.	Given Westcoast's commitments and the different areas of interest of Indigenous communities, the Board encourages each Indigenous community to work out the specific requests with Westcoast for capacity funding that aligns with their own interests and values.
<i>Landowner-specific Monitoring Plan and Consultation Update</i>	N/A	The Board added this condition to ensure that Westcoast continues to consult with Mr. Lasser, as well as to facilitate Mr. Lasser's participation in the monitoring of Project construction activities on the right-of-way on his lands.

5.0 Appendix II – Summary of Concerns raised by Indigenous Peoples, and Applicant and NEB Responses

This appendix provides a summary of the issues identified and concerns raised by Indigenous peoples through this proceeding, as well as summaries of the responses to these concerns provided by the Applicant, analysis by the Board relevant to its decision (including conditions), and applicable requirements of relevant regulation and/or legislation. The issues and concerns include those raised directly by Indigenous peoples through their participation in the hearing, as well as those recorded summaries of Indigenous concerns and interests as recorded and provided to the Board by the Applicant. **Table 2-1** in the Report refers to the written submissions by Indigenous Intervenor who participated in the hearing. The Board notes that the direct and indirect references to the record in the summary below are not necessarily exhaustive. Anyone wishing to fully understand the context of the information and evidence provided by Indigenous peoples, as well as the applicable responses to these concerns by the Applicant, is encouraged to read the submissions of the parties as they appear in the Board's hearing record.

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
Consultation by the Applicant				
Lack of meaningful consultation by Westcoast throughout the various phases of the Project	SFN WMFN	<ul style="list-style-type: none"> Westcoast indicated that engagement is ongoing to address Project concerns raised by Indigenous peoples and that it continues to meet with potentially affected Indigenous peoples regarding the proposed Project. Westcoast committed to continue to engage with First Nations throughout the construction and operation phases of the Project. Westcoast stated that it has consulted and will continue to consult with Indigenous peoples regarding potential impacts to traditional land and resource use and appropriate mitigation measures. 	<ul style="list-style-type: none"> The Board finds that with Westcoast's commitments and the Board's Condition 6, Condition 8 and Condition 19. Westcoast will continue to consult with Indigenous peoples, including all Indigenous Intervenor, in order to learn more about their interests and concerns, and to address issues that they may raise throughout the lifecycle of the Project. 	2.2 Page 27

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
Lack of engagement in the development of the Project Heritage Resource Discovery Contingency Plan	SFN	<ul style="list-style-type: none"> Westcoast stated that if archaeological artefacts are identified during construction, Westcoast will engage with First Nations and discuss potential mitigation measures, but noted that all final mitigation measures relating to heritage resources are subject to approval by the BC Archaeology Branch. Westcoast stated that it is interested in SFN's views of what a more "Culturally Appropriate" Contingency Plan may involve and is open to further discussion on this topic. 	<ul style="list-style-type: none"> The Board notes Westcoast's commitment to follow the Heritage Resource Discovery Contingency Plan in the event that a heritage resource is encountered during construction that was not identified in previous studies, and that Westcoast will discuss mitigation measures regarding potential revisions to the Heritage Resource Discovery Contingency Plan. 	2.2 Page 30
Lack of engagement with SFN trapper	SFN	<ul style="list-style-type: none"> Westcoast indicated that it notified registered trappers of the Project. Westcoast stated that it has consulted and continues to consult with SFN on the Project, including any discussion regarding SFN trapper interests that SFN may raise. Westcoast stated that registered and SFN trappers were invited to one or both of two Project open houses, one at SFN, and one in Chetwynd. Westcoast stated that no Project-specific concerns have been raised by registered trapline holders, and that it is willing to meet with registered trapline holders and discuss the Project, their interests and any concerns or input they may have. 	<ul style="list-style-type: none"> The Board notes Westcoast's commitment to work with Indigenous peoples, including SFN and SFN trappers, to address Project-related concerns and finalize measures to address the Project's effects. See comments above under "NEB Analysis" for the Concern - Lack of meaningful consultation by Westcoast throughout the various phases of the Project. 	2.2 Page 28
Effects on the Interests, including Asserted and Established Treaty and Indigenous Peoples' Rights				
Project impacts on asserted and established Treaty and Indigenous rights and interests	MNBC SFN WMFN	<ul style="list-style-type: none"> Westcoast committed to working with potentially affected First Nations in a manner that recognizes and respects treaty rights and the traditional lands and resources to which they apply. 	<ul style="list-style-type: none"> The Board has considered the information submitted regarding the nature of potentially affected Indigenous peoples' interests in the Project area, including information on constitutionally protected Indigenous and treaty rights. The Board has also considered the anticipated effects of the Project on those interests and the concerns expressed by Indigenous 	2.2 Page 33

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
			peoples. The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is also of the view that any potential adverse Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed.	
Opportunities for Indigenous peoples to monitor the Project	SFN	<ul style="list-style-type: none"> Westcoast committed to develop, through consultation with potentially affected Indigenous peoples, a Project specific Indigenous Monitoring Plan which will define the roles of Indigenous monitors and support meaningful participation to ensure that Indigenous cultural, traditional land and resource use, and environmental interests are effectively addressed. Westcoast committed to a Construction Monitoring Program during the clearing, construction and reclamation phases of the Project, and that First Nations will be engaged in the development of, and invited to participate in, this program. Monitor training will include identification of archaeological materials. 	<ul style="list-style-type: none"> The Board notes that Westcoast has agreed to develop a Project-specific plan for monitoring by Indigenous peoples through consultation with potentially affected Indigenous communities to incorporate relevant feedback from Indigenous peoples into the development of the plans. The Board also notes that the plan will support meaningful participation to ensure that Indigenous cultural, traditional land and resource use, and environmental interests are effectively addressed. The Board notes Westcoast's commitments to have Indigenous monitors throughout the various phases of the Project lifecycle. The Board is of the view that with Westcoast's commitments and the Board's Condition 6 and Condition 19, Westcoast will appropriately involve Indigenous peoples in 	2.2 Page 30

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
			monitoring during both construction and post-construction of the Project.	
Increased predation and hunting by non-Indigenous hunters	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA. Westcoast will develop a Worker Management Strategy to establish guidelines for Project workers to follow while onsite; this includes guidelines prohibiting Project personnel from hunting, fishing, and using recreational vehicles within a buffer zone. 	<ul style="list-style-type: none"> The Board is satisfied that with Westcoast's commitments and proposed mitigation measures, and the Board's conditions, the effects on the rights and interests of potentially affected Indigenous peoples can be minimized. 	2.2 Page 31
Restricted access to culturally important areas and traplines	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA that pertain to access and traplines, including notifying registered outfitters and trapline holders prior to construction; compensating trapline holders; and a Traffic and Access Management Plan to support safe driving practices and limit impacts to landowners, residents, and local communities and to communicate and manage changes in access. 	<ul style="list-style-type: none"> The Board is satisfied that with Westcoast's commitments and proposed mitigation measures, and the Board's conditions, the potential effects on the rights and interests of Indigenous peoples can be minimized. 	2.2 Page 31
Impacts to cultural heritage, including burial sites and artefacts	SFN	<ul style="list-style-type: none"> Westcoast stated that a full archaeological assessment was completed for the Project and no burial sites were identified in the Project study area; no significant archaeological sites were identified on the Chetwynd Loop, or at CS2 or CS N5. Four new sites were identified during the archaeological assessment on the Aitken Loop. All four sites are being avoided and mitigation measures have been identified in the EPP. Westcoast has a Heritage Resource Discovery Contingency Plan. Westcoast will consult further with SFN regarding traditional knowledge of burial sites. Westcoast committed to developing a Project-specific Indigenous Monitoring Plan. 	<ul style="list-style-type: none"> The Board is of the view that the potential adverse effects of the Project on cultural heritage are not likely to be significant. The Board notes Westcoast's commitment to follow the Heritage Resource Discovery Contingency Plan, and that Westcoast will discuss mitigation measures regarding potential revisions to the Heritage Resource Discovery Contingency Plan. The Board imposes Condition 9 – Archaeological and Heritage Resource Permits and Clearances. 	2.2 Page 30

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
Increases in social problems resulting from increased presence of transient workers, increased traffic danger	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA that pertain to increases in social problems resulting from increases presence of transient workers and other socio-economic interactions, including a Worker Lodging Plan to manage workforce accommodations during construction; a requirement that personnel will adhere to the contractor's fit for duty policy; a Traffic and Access Management Plan; and plans to transport construction workers from designated marshaling stations to site via crew-cap truck and/or bus, where practical. Westcoast remains open to meeting with SFN with respect to firearm prohibitions. Westcoast intends to provide sensitivity training through its general contractors as part of Project orientation and onboarding. 	<ul style="list-style-type: none"> The Board is satisfied that with Westcoast's commitments and proposed mitigation measures, and the Board's conditions, the effects on the rights and interests of potentially affected Indigenous peoples can be minimized. The Board directs Westcoast to incorporate Indigenous awareness training into its sensitivity training which reflects culturally appropriate approaches and content. The Board expects that this training is provided to Westcoast's own employees as well as to construction personnel. The Board imposes Condition 8 - Westcoast will continue to consult with Indigenous peoples, including Indigenous Intervenors, to learn more about their concerns, and to address issues that they may raise during the Project's construction. 	2.2 Page 31
Impacts of the Project on traditional land use activities	MNBC SFN WMFN	<ul style="list-style-type: none"> Westcoast stated that in addition to TLU studies, a TEK Site Field Survey was conducted, with participation from local Indigenous peoples, on the Crown land portions of the Chetwynd and Aitken Creek Loops to gather information about sites that may have ecological or traditional importance within the Project footprint. Westcoast stated it incorporated available TEK into the Project EPP, and is committed to ongoing engagement with Indigenous peoples regarding potential Project effects and mitigation. 	<ul style="list-style-type: none"> The Board is of the view that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples are not likely to be significant. The Board imposes Condition 4, requiring Westcoast to develop and implement a Traditional Land Use Sites Discovery Contingency Plan as part of its EPP. The Board imposes 	2.2 Page 31

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
		<ul style="list-style-type: none"> Westcoast stated the final Project EPP will be prepared in advance of construction and will incorporate any changes that may result from continued engagement with SFN. Westcoast committed to sharing a draft of the final Project EPP with SFN prior to filing with the NEB. Westcoast stated that traditional ecological knowledge gathered through the Indigenous construction monitoring program will be used to inform reclamation. 	<p>Condition 7, requiring Westcoast to file a plan to address outstanding TLU investigations. The Board also imposes Condition 6, Condition 8 and Condition 19, requiring Westcoast to submit Indigenous engagement reports as well as Indigenous monitoring plans for construction and post-construction activities, which would provide Indigenous communities further opportunities to address outstanding or unanticipated TLU issues.</p>	
Cumulative effects on traditional land and resource use	SFN WMFN	<ul style="list-style-type: none"> Westcoast stated that its cumulative effects assessment was completed in accordance with the NEB Filing Manual. Westcoast stated that using this approach, a cumulative effects assessment is not needed when no residual effects are anticipated. Westcoast indicated that it is of the view that an SFN lands-specific cumulative effects assessment is not warranted, as the portion of the SFN traditional lands where Project residual effects are predicted to overlap with past, present, or reasonably foreseeable projects has already been assessed. 	<ul style="list-style-type: none"> The Board notes the concerns raised in this proceeding by SFN and WMFN regarding cumulative effects on traditional use. The Board also notes Condition 4, Condition 6, Condition 7, Condition 8 and Condition 19, and the commitments from Westcoast to engage with Indigenous peoples on the inclusion of traditional land and resource use mitigation in the Project EPP, and on the development of Project monitoring plans. The Board remains concerned about the cumulative effects of projects, including this Project, on the current use of lands and resources for traditional purposes by Indigenous peoples. However, the Board is of the view that the cumulative effects of the Project on traditional land and resource use will be effectively mitigated by the proposed conditions and commitments. 	2.2 Page 31

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
Employment and Procurement				
Employment and contracting opportunities, business procurement for Indigenous businesses	KLCN KLFN KLMSS SFN	<ul style="list-style-type: none"> Westcoast indicated that interested Indigenous peoples were invited to enter into contracts to participate in technical and field work with its contractors [A87033-34]. Westcoast indicated that it discussed employment, contracting, and procurement opportunities with BRFN, DRFN, FSJMS, HRFN, KLCN, KLFN, KLMSS, MLIB, SFN, and WMFN. Westcoast stated that it continues to gather information from First Nation businesses in preparation for the Aitken Creek Loop construction Request for Proposal, and other construction and operation components of the Project to ensure First Nation employment and procurement opportunities are realized. Westcoast will engage Twin Sisters Native Plants Nursery on seed and tree seedling reclamation. 	<ul style="list-style-type: none"> The Board notes that Westcoast will engage with Indigenous peoples in a timely manner to provide potential employment and business opportunities associated with the Project, and that it will acquire goods and services from local and Indigenous businesses. The Board is of the view that the Project would provide these types of benefits to Indigenous peoples, and generally to local, regional and provincial economies. 	2.2 Page 30
Environmental Effects				
Impacts of land clearing on harvested plants and valuable animal habitat	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA, which include reducing work site dimension to limit disturbance to vegetation in wetlands, listed communities, and old forest, where practical; prohibiting clearing or grubbing beyond the Project footprint boundaries; and only clearing to the extent necessary. 	<ul style="list-style-type: none"> The Board is of the view that mitigation to be implemented by Westcoast will minimize the environmental effects of the Project. The Board notes that Westcoast will conduct post-construction monitoring and that a PCMP is a key tool towards ensuring that potential adverse effects will be effectively mitigated and where issues are identified, adaptive management will be implemented to address them. To be satisfied that post-construction monitoring is thorough and effective and that reports will be 	2.4

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
			developed and filed, the Board imposes Condition 20 which sets out requirements for Westcoast's PMCP.	
Impacts to vegetation by herbicide use and dust	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA, which include equipping drills with dust collectors, application of water, mulch, or tackifiers to stabilize the topsoil. Westcoast is not planning to use large applications of herbicides to maintain the right-of-way, road or other facilities. Integrated management approaches will be used to determine the best fit for treatment type at a specific location. 	<ul style="list-style-type: none"> See comments above under "NEB Analysis" for the Concern - Impacts of land clearing on harvested plants and valuable animal habitat. 	2.4
Vegetation reclamation	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA pertaining to vegetation and reclamation. Westcoast expects that natural re-vegetation will include some traditionally used species and that post-reclamation monitoring will take place to determine re-vegetation success, and corrective actions will be undertaken as required. Westcoast will engage SFN on planned reclamation for the Project right-of-way on Crown land, and will engage Twin Sisters Native Plants Nursery on seed and tree seedling reclamation, as directed by SFN. Routine pipeline patrols will monitor for weed infestations during operations. Westcoast will use TEK gathered through its Indigenous construction monitoring program to inform reclamation. 	<ul style="list-style-type: none"> See comments above under "NEB Analysis" for the Concern - Impacts of land clearing on harvested plants and valuable animal habitat. The Board notes that Westcoast will also develop a Wetland Functions Monitoring Program and has included that as part of Condition 20. 	2.4
Impact on water quality	SFN WMFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA pertaining to water quality. 	<ul style="list-style-type: none"> See comments above under "NEB Analysis" for the Concern - Impacts of land clearing on harvested plants and valuable animal habitat. 	2.4

Concern	Indigenous Peoples	Company Response	NEB Analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Letter Decision Section
Impacts of waste contamination on wildlife	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA, which include plans to mitigate the effects of contamination, and removing waste and debris from the Project Development Area following Project construction. 	<ul style="list-style-type: none"> See comments above under “NEB Analysis” for the Concern - Impacts of land clearing on harvested plants and valuable animal habitat. 	2.4
Impacts of erosion on fish spawning beds	SFN	<ul style="list-style-type: none"> Westcoast will implement a suite of mitigation measures outlined in its ESA, which include the implementation of sediment and erosion control measures. 	<ul style="list-style-type: none"> See comments above under “NEB Analysis” for the Concern - Impacts of land clearing on harvested plants and valuable animal habitat. 	2.4
Impacts on caribou and caribou habitat	MNBC SFN WMFN		<ul style="list-style-type: none"> The Board is of the view that Westcoast has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology. The Board is of the view that the CHROMP as filed with the application identified goals and measureable objectives and offset implementation plans that are appropriate for a preliminary CHROMP and for the nature of the Project and setting. The Board imposes Condition 17 requiring offsets and an OMP. 	2.4