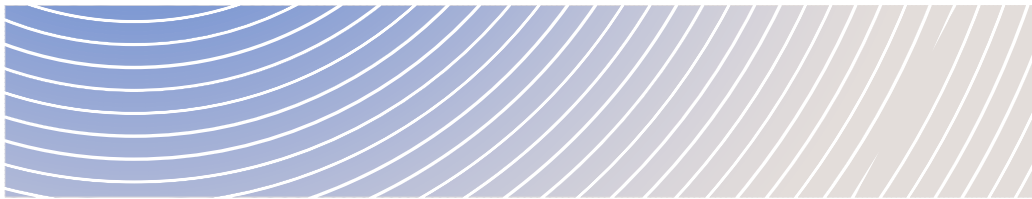


Analysis Report



WHETHER TO DESIGNATE THE WEST PATH DELIVERY 2022
AND 2023 PROJECTS IN ALBERTA PURSUANT TO THE
IMPACT ASSESSMENT ACT

May 2020



Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

Canada



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Purpose

The Impact Assessment Agency of Canada (the Agency) prepared this report for consideration by the Minister of Environment and Climate Change (the Minister) in deciding whether to designate four separate natural gas pipeline Projects (the Projects) of the West Path Delivery Program 2022 and 2023, pursuant to section 9 of the *Impact Assessment Act*.

Projects

Foothills Pipe Lines (South B.C.) Ltd. (Foothills) and NOVA Gas Transmission Ltd. (NGTL), wholly owned subsidiaries of TransCanada PipeLines Limited, which is an affiliate of TC Energy Corporation (TC Energy), are proposing to construct and operate four separate natural gas pipeline Projects of the West Path Delivery Program 2022 and 2023. Collectively, these Projects (further outlined in Table 1 and Annex III) located between southwest Alberta and southeast British Columbia (Figure 1), consist of alterations to two meter stations and construction of seven spatially disconnected natural gas pipeline segments, are mostly proposed to be alongside or contiguous with existing rights of way, and total approximately 108 kilometres of pipeline. There will be approximately 16.2 kilometres of pipeline on new right of way.

- NGTL 2022
- Foothills 2022
- NGTL 2023
- Foothills 2023

TC Energy represents the interests of Foothills and NGTL during this process and is therefore referred to as the proponent in this document. TC Energy confirmed its role to the Agency.

Context of Request

On February 26, 2020, the Stoney Tribal Council, representing the three Stoney Nakoda Nations (Wesley, Bearspaw, and Chiniki First Nations), signatories of Treaty 7, and on April 8, 2020, O'Chiese First Nation Chief and Council, a signatory of Treaty 6, requested the Minister designate the four Projects. The requesters (Stoney Nakoda Nations and O'Chiese First Nation) expressed concerns regarding the potential impacts of these Projects on culture, the health of members, and sacred and ceremonial sites including burial sites. The requesters also expressed concerns regarding a lack of capacity funding from the federal regulators to participate in the regulatory review processes for pipeline projects. Without support to participate in the regulatory process, information on the potential impacts to rights protected under section 35 of the *Constitution Act, 1982*, is not able to be identified. The requesters expressed the view that the Projects should be considered as one single project and that characterizing them as four separate projects misrepresents the total depth and breadth of their potential impacts and noted that the management of the four projects through two subsidiaries of TransCanada Pipelines Limited, Foothills and NGTL, obscures the combined magnitude of the effects through separate assessments. The Stoney Nakoda Nations expressed concerns regarding the potential impacts the Projects may have on their rights protected under section 35 of the *Constitution Act, 1982*. O'Chiese First Nation expressed concern with the cumulative effects of the piecemeal nature of pipeline development and individual regulatory review of each project, as cumulative



impacts remain unaddressed, and the current process does not allow for the ability to assess impacts to rights. Concerns of impacts from new and expansion of rights of way were also expressed.

The Agency sought additional views and input from the requesters and, on their recommendation, obtained their submissions (i.e., intervener reports, Oral Indigenous Evidence Transcripts) to the former National Energy Board (Canada Energy Regulator) regulatory process for other pipeline projects to contextualize the concerns expressed in the designation request. The Stoney Nakoda Nations identified their submissions to the NGTL West Path Delivery System Project 2018 Application (NGTL 2018 Application), the 2021 NGTL System Expansion Project, the NGTL McLeod River North Project, and the NGTL Edson Mainline Project. O'Chiese First Nation identified submissions related to the NGTL 2021 and Edson Mainline Expansion projects.

As requested by the requesters, the Agency considered the four commercially independent Projects as one request for designation.

On March 9, 2020, the Agency notified TC Energy Corporation of the designation request and requested information on the Projects' potential adverse effects and proposed measures to mitigate those effects. The proponent provided this information on March 16 and March 30, 2020, and also provided its perspective that the Projects should not be designated. The Agency requested views from relevant federal authorities and from relevant Alberta and British Columbia provincial authorities. The Agency received input from: Canada Energy Regulator; Environment and Climate Change Canada; Health Canada; Women and Gender Equality Canada; Parks Canada Agency; Fisheries and Oceans Canada; Transport Canada; Natural Resources Canada; Economic and Social Development Canada; the British Columbia Oil and Gas Commission; the Alberta Energy Regulator; and Alberta Environment and Parks.

Project Context

Project overview

The four Projects include the construction and operation of seven spatially disconnected¹ (separated) natural gas pipeline segments, totaling approximately 108 kilometres², and alterations to two meter stations. The Projects are in southwest Alberta and southeast British Columbia and located on provincial

¹ Spatially disconnected refers to the situation in which the components of the Projects are not located next to each other or attached to each other in any way.

² On March 30, 2020, the proponent updated the Foothills 2022 project and removed one pipeline section (British Columbia Mainline Loop No. 2 Crowsnest), which removed 4 kilometres of proposed pipeline from the total length of the Projects, resulting in a decrease from a total of 112 kilometres of natural gas pipeline to approximately 108 kilometres.



Crown and freehold lands. The Projects will create approximately 16.2 kilometres of new right of way³. The Projects would allow for the transportation of natural gas from sources in Alberta and British Columbia to southwest Alberta and to downstream markets through existing TC Energy infrastructure. Two of the Projects (NGTL 2022 and Foothills 2022) have predicted in-service dates of 2022 and two of the Projects (NGTL 2023 and Foothills 2023) have predicted in-service dates of 2023. Figures 1 through 5 depict the location and components of the Projects. Table 1 and Annex III provide additional information on each component, including land disposition and new right of way required.

The Projects are located in Treaty 6 and 7 territory, within the Métis Nation of Alberta Region 3, in territory where chartered communities of Métis Nation British Columbia may assert their rights, and within the territory of the Ktunaxa Nation.

Project components and activities

The components of the four Projects are located on provincial Crown and freehold land, mostly within existing rights of way and existing rights of way contiguous with existing disturbances. The Projects may require temporary work camps or the use of local accommodations. The Agency understands that pipeline routing is subject to change, increasing or decreasing lengths within existing rights of way and new rights of way. Based on the information provided, the Agency understands the Projects and their components are as described in Table 1.

³ *Physical Activity Regulations* – new right-of-way: is not alongside and contiguous to an area of land that was developed for an electrical transmission line, oil and gas pipeline, railway line or all-season public highway



Table 1 – Proposed West Path Delivery Projects Components

Project Name and Proponent; Total Pipeline and New Right of Way Kilometres ⁴	Component Name	Location	Total Pipeline Length in Kilometres (Approximate)	New Right of Way in Kilometres (Approximate)
NGTL 2022 Total pipeline kilometres: 24 New Right of Way kilometres: 4.4	Edson Mainline Loop No. 4- Raven River Section (Raven River Section)	Near Sundre, Alberta	18	3.8
	Alberta System Mainline Loop No. 2 - Alberta British Columbia Section (ASM Loop 2)	Near Coleman, Alberta	6	0.6
	ABC Border Meter Station Expansion (ABC Meter Station)	Near Coleman, Alberta	N/A	N/A
Foothills 2022 Total pipeline kilometres: 13 New Right of Way kilometres: 3.9	British Columbia Mainline Loop No. 2-Yahk Section (Yahk Loop)	Near Creston, British Columbia	13	3.9
NGTL 2023 Total pipeline kilometres: 40 New Right of Way kilometres: 1.7	Western Alberta System Mainline (WASML) Loop No. 2-Turner Valley Section (Turner Valley Section)	Near Turner Valley, Alberta	23	1.4
	WASML Loop No. 2-Longview (Longview Section)	30 kilometres southwest of High River, Alberta	10	0.3
	WASML Loop No. 2- Lundbreck Section (Lundbreck Section)	Near Turner Valley, Alberta	7	0
Foothills 2023 Total pipeline kilometres: 31 New Right of Way kilometres: 6.2	British Columbia Mainline Loop No. 2- Elko Section (Elko Section)	17 kilometres east of Fernie, British Columbia	31	6.2
	Kingsgate Border Meter Station – upgrade (Kingsgate Meter Station)	Near Kingsgate, British Columbia	N/A	N/A
Total pipeline kilometers:			108	16.2

⁴ To date, the Canada Energy Regulator received project notifications for two projects (NGTL 2022 and Foothills 2022) and no applications for Orders or Certificates under the *Canadian Energy Regulator Act*. The Agency understands that the NGTL 2023 project is expected to undergo a review under section 183 (Certificate) of the *Canadian Energy Regulator Act*, as the pipeline is at the 40 kilometres length threshold, while the other three projects are expected to undergo review under section 214 (Order) of the *Canadian Energy Regulator Act*, as the pipelines are less than 40 kilometres in length.



Figure 1: Overview of Proposed West Path Delivery Project Components

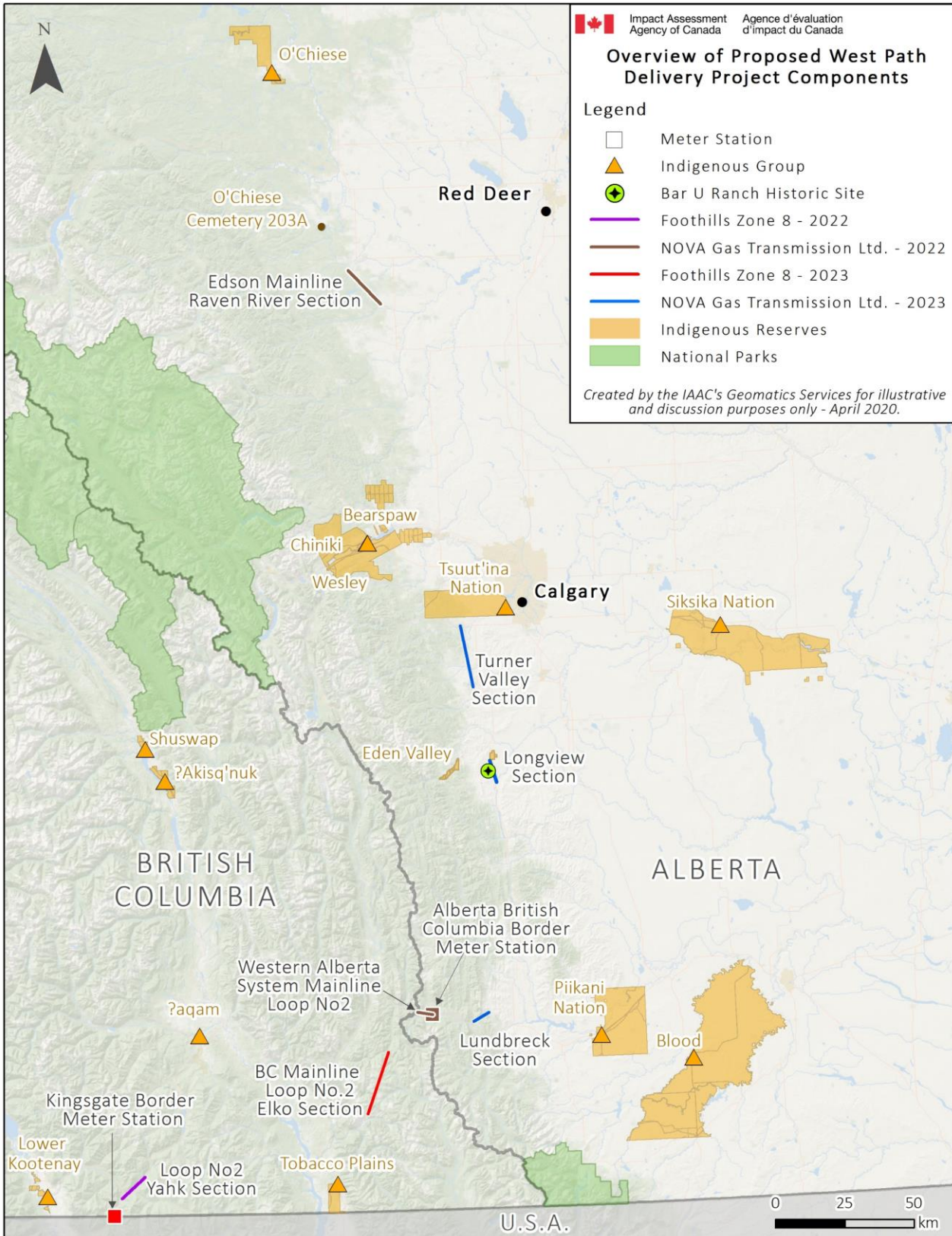




Figure 2: Nova Gas Transmission Ltd. 2022 – NGTL 2022

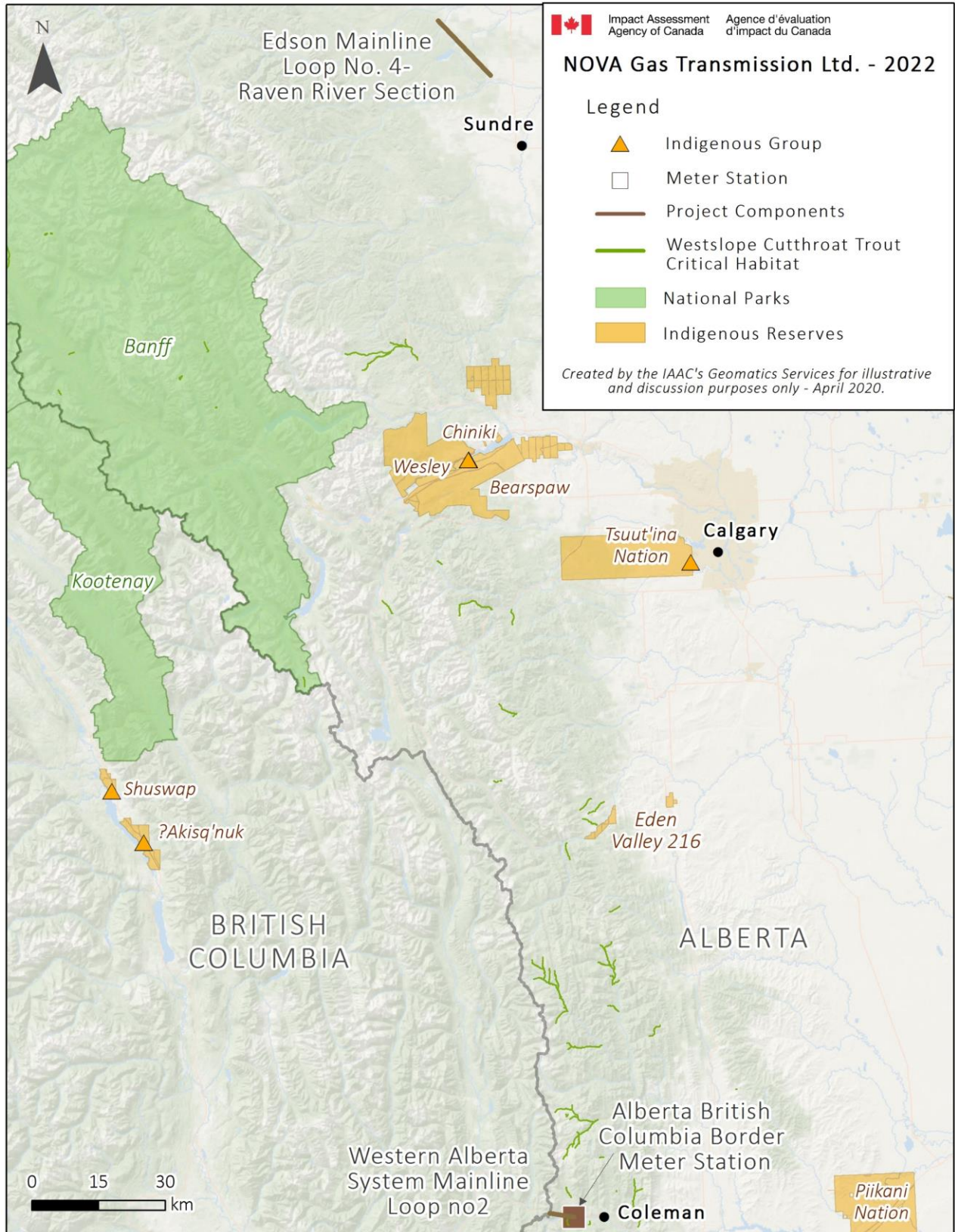




Figure 3: Foothills Zone 8 2022 – Foothills 2022

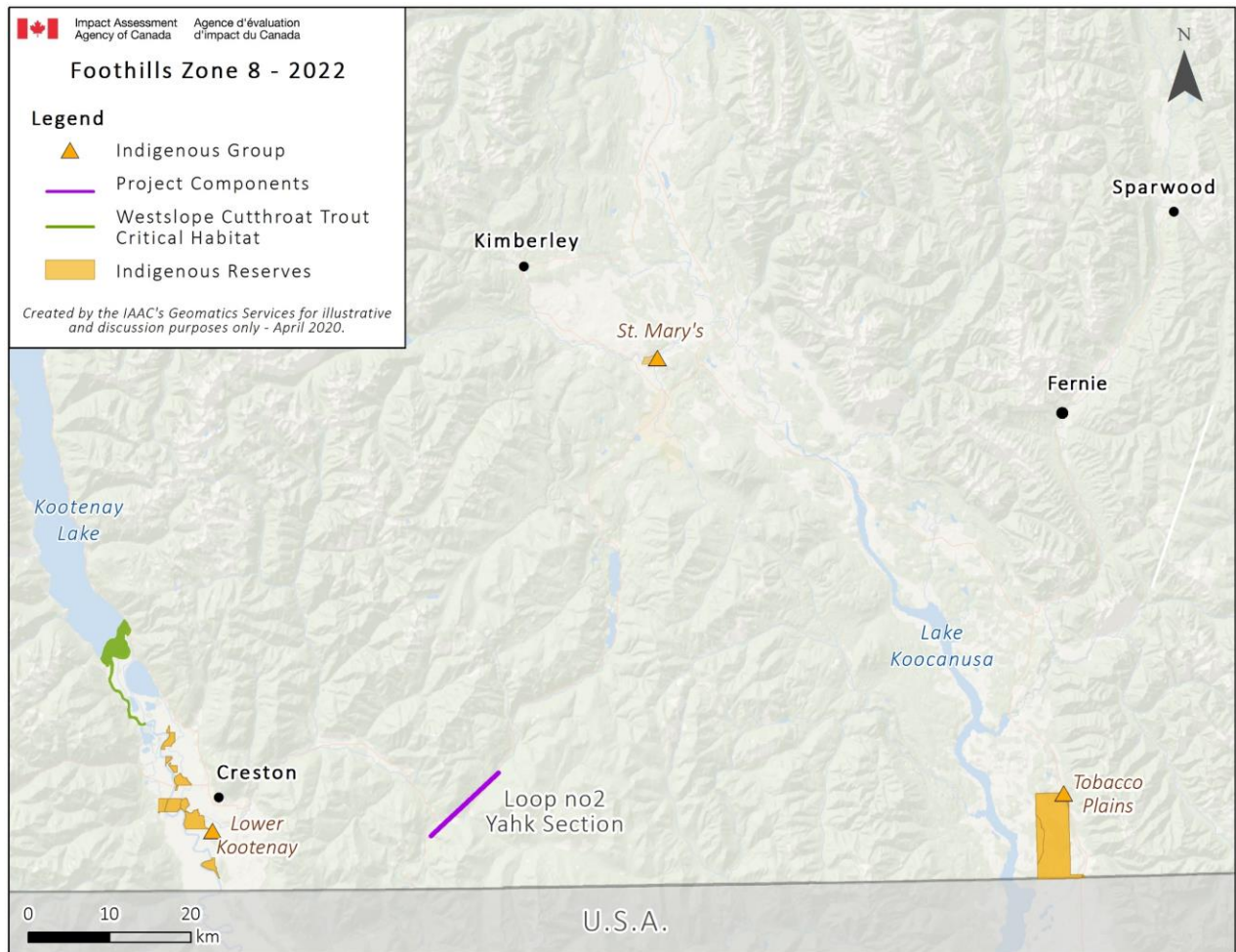




Figure 4: Nova Gas Transmission Ltd. 2023 - NGTL 2023

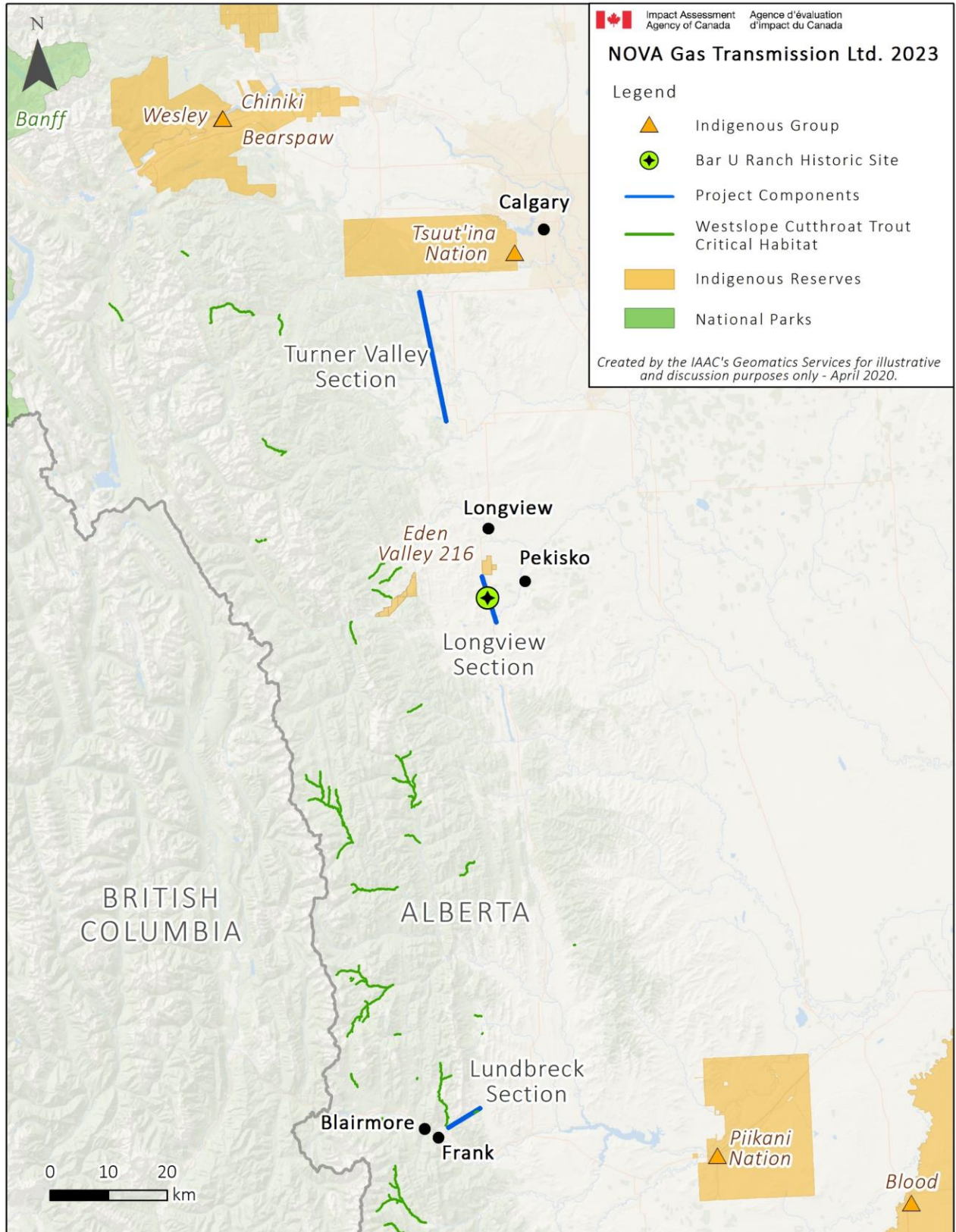
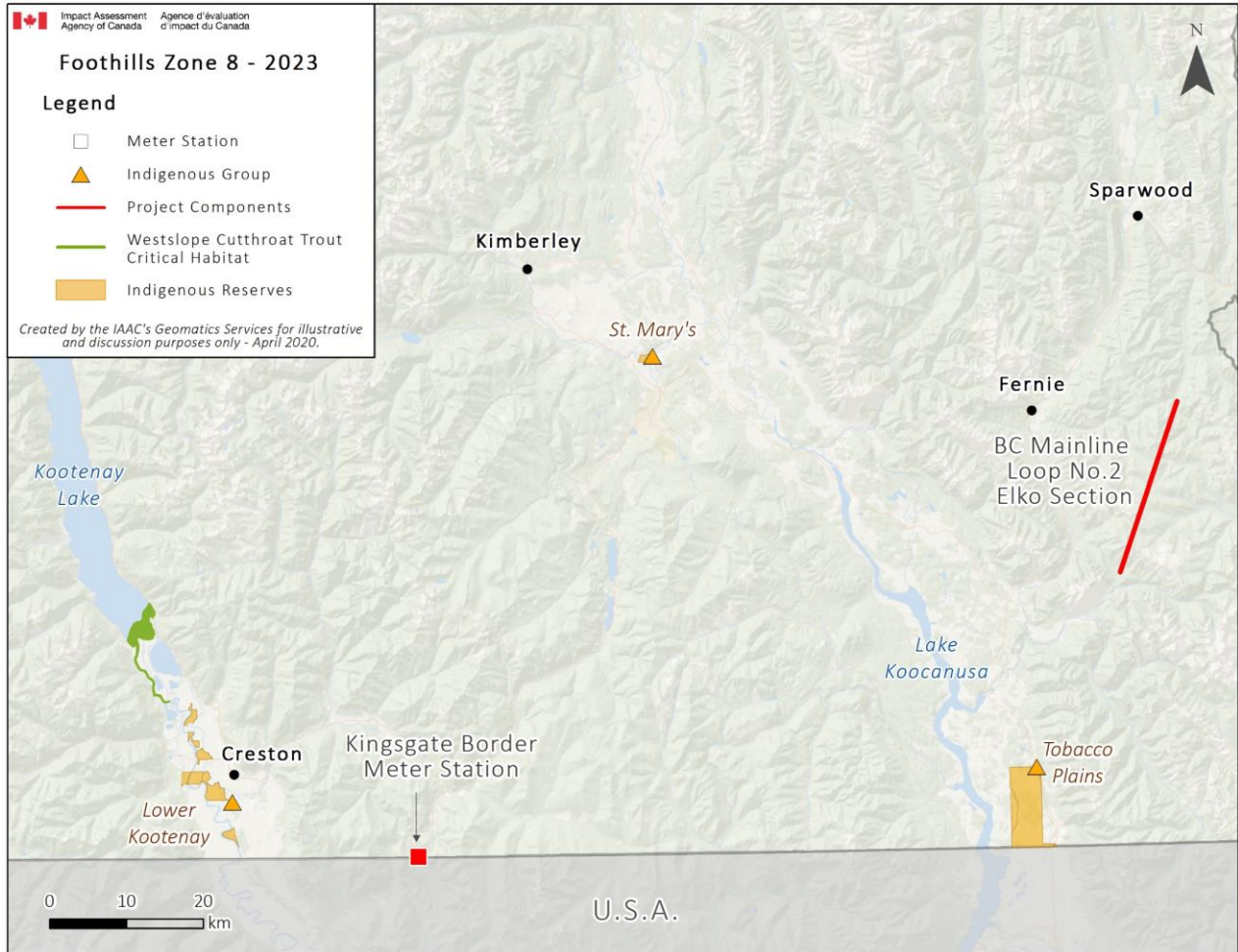




Figure 5: Foothills Zone 8 2023 - Foothills 2023



Federal Legislative and Regulatory Oversight

Canadian Energy Regulator Act

The Projects will be regulated by the Canada Energy Regulator⁵ (previously the National Energy Board) process due to a Declaratory Order (Order MO-06-2009).

When section 183 or 214 of the *Canadian Energy Regulator Act* applies, as it does for these Projects, an independent Commission adjudicates each project application. The Commission considers, among other things, the environmental effects⁶; extent to which the effects contribute to the Government of Canada's ability to meet its environmental obligations and commitments in respect of climate change; interests and concerns of Indigenous people of Canada with respect to current use of lands and resources for traditional purposes; potential impacts to any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance; and, impacts to the exercise of potential or established Aboriginal or treaty rights.

An approval under the *Canada Energy Regulator Act* will include project specific conditions with which a proponent must comply. Conditions may require the proponent to provide environmental protection plans, consultation updates, construction schedules, species-specific studies, mitigation and monitoring documentation, and to obtain heritage resources clearances.

The Canada Energy Regulator will use the regulatory process, to the extent possible, to meet the Crown's duty to consult for these Projects. Early in the regulatory process⁷ the Canada Energy Regulator will reach out to potentially affected Indigenous groups to understand their concerns and potential impacts to their rights and interests. The Canada Energy Regulator will also explain how to participate in the process and provide information on the Canada Energy Regulator's Participant Funding Program⁸.

To address concerns raised early in the regulatory process for each project, the Canada Energy Regulator may also arrange meetings with proponents and consider collaborative options to resolve concerns. The

⁵ Generally, inner provincial pipelines are provincially regulated. These Projects are subject to federal regulation because of the Canada Energy Regulator Declaratory Order MO -06-2009. The Declaratory Order declared that, the Alberta System of TransCanada PipeLines Limited, and therefore wholly owned subsidiaries, is within Canadian federal jurisdiction and subject to regulation by the Canada Energy Regulator.

⁶ Environmental effects considered include to: fish and fish habitat, migratory birds, federal lands, cumulative effects; health, social (including intersection of gender and identity factors), and economic aspects.

⁷ <https://www.cer-rec.gc.ca/prtcptn/nfrmtn/crwncnsltn-eng.html>

⁸ <https://www.cer-rec.gc.ca/prtcptn/hrng/pfp/prtcptntfndngprgrm-eng.html>



Canada Energy Regulator encourages Indigenous people to bring forward any concerns not addressed in early planning to be considered by the Commissioners. The Commissioners will consider all relevant concerns and mitigate or accommodate, where possible. The regulatory process also requires proponents to conduct an Environmental and Socio-Economic Assessment for each project. This assessment will assess potential effects and proposed mitigation and consider information from Indigenous communities, stakeholders, government departments, and any other participants in the process. At the end of the regulatory process, the Canada Energy Regulator will continue to engage with Indigenous communities as part of its lifecycle oversight role. For concerns raised outside of the Canada Energy Regulator's mandate, the Canada Energy Regulator will work with other federal departments, as applicable, to determine how they can be addressed.

Fisheries Act

Authorization under the *Fisheries Act* is required if the Projects are likely to cause the death of fish or the harmful alteration, disruption or destruction of fish habitat. An authorization issued under the *Fisheries Act* includes enforceable conditions.

The Canada Energy Regulator is responsible for assessing potential impacts to fish and fish habitat and to determine if proposed projects may impact aquatic species at risk⁹; for infrastructure regulated by the Canada Energy Regulator. The Canada Energy Regulator will determine if an authorization under the *Fisheries Act* or a permit under the *Species at Risk Act* is required. If the Canada Energy Regulator determines that an authorization or permit may be required, Fisheries and Oceans Canada will be notified and will be responsible for issuing any necessary authorizations or permits.

Prior to issuing an authorization or permit, Fisheries and Oceans Canada would review the proponent's application including fish and fish habitat assessments, detailed information on the project's impacts, and the proposed plans to offset losses of fish habitat. Prior to issuing a *Species at Risk Act* permit, Fisheries and Oceans Canada would have to be satisfied that the project will not jeopardize the survival or recovery of aquatic species at risk. Before issuing an authorization or permit Fisheries and Oceans Canada will consult with Indigenous peoples that may be adversely impacted by the authorization or permit.

Other Applicable Federal Legislation

Other federal legislation such as the *Migratory Birds Convention Act*, the *Species at Risk Act*, and the *Federal Real Property and Immovables Act* apply to certain aspects of the Projects.

⁹ "Memorandum of Understanding between the National Energy Board and Fisheries and Oceans Canada for Cooperation and Administration of the Fisheries Act and the Species at Risk Act Related to Regulating Energy Infrastructure".



Analysis of Designation Request

Authority to designate the Project

The *Physical Activities Regulations* (the Regulations) identify the physical activities that constitute designated projects. Designated projects are subject to the *Impact Assessment Act*. Item 41 of the Schedule to the Regulations includes the construction and operation of a new pipeline, as defined in section 2 of the *Canadian Energy Regulator Act*¹⁰ that requires a total of 75 kilometres or more of new right of way.

The Projects consist of four spatially disconnected, non-contiguous pipeline projects, with a combined total length of approximately 108 kilometres, of which approximately 16.2 kilometres is new right of way. The Projects are not located in a wildlife area or a migratory bird sanctuary. Whether considered as one project or as four separate projects, the Regulation's threshold of 75 kilometres of new right of way would not be met and therefore the Projects do not include physical activities that are designated by the Regulations.

Under subsection 9(1) of the *Impact Assessment Act*, the Minister may, by order, designate a physical activity that is not prescribed in the Regulations. The Minister may do this, if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation¹¹.

The carrying out of these Projects has not substantially begun and no federal authority has exercised a power or performed a duty or function that would permit the Projects to be carried out, in whole or in part. Therefore, the Agency is of the view that the Minister may consider designating these Projects pursuant to subsection 9(1) of the *Impact Assessment Act*.

Potential adverse effects within federal jurisdiction

While there is the potential for adverse effects within federal jurisdiction, as defined in section 2 of the *Impact Assessment Act*, these would be limited through project design and the application of standard mitigation measures, and would be managed through existing federal and provincial legislative regulatory

¹⁰ Section 2 of the *Canadian Energy Regulator Act* defines a **pipeline** as a line — including all branches, extensions, tanks, reservoirs, storage or loading facilities, pumps, racks, compressors, interstation communication systems, real or personal property, or immovable or movable, and any connected works — that connects at least two provinces or extends beyond the limits of a province, [...] and that is used or is to be used for the transmission of oil, gas or any other commodity. . . .”

¹¹ The Minister cannot designate a physical activity by order if the carrying out of the physical activity has substantially begun or a federal authority has exercised a power or performed a duty or function conferred on it under another act of Parliament that could permit the physical activity to be carried out, in whole or in part.



mechanisms. Annex I provides a summary of the potential adverse effects, mitigation measures proposed by the proponent, and regulatory mechanisms that will apply if the Project proceeds.

Fish and Fish Habitat

The Agency considered information provided by the proponent, the requesters, Environment and Climate Change Canada, and Fisheries and Oceans Canada and is of the view that the Projects, as proposed, may cause adverse effects to fish, including species at risk, and fish habitat. These potential adverse effects relate to the harmful alteration, disruption, and destruction of fish habitat and possible death of fish from:

- open cut construction techniques to cross water courses, which could disrupt or destroy habitat and cause the death of fish, if this technique is used; and
- activities such as hydrostatic testing, construction and maintenance of access roads, right of way construction, and excavation or movement of soils, that could result in a deposit of contaminants or sediments into surface waters.

Two species listed as threatened pursuant to the *Species at Risk Act*, Bull Trout (*Salvelinus confluentus*) Saskatchewan – Nelson Rivers populations and Westslope Cutthroat Trout (*Oncorhynchus clarkii lewisii*) Saskatchewan – Nelson Rivers populations, are known to occur in southwestern Alberta. These species may be impacted by the construction of the watercourse crossings, in water work, and by operation activities, such as right of way maintenance and malfunctions or accidents.

Migratory Birds

The Agency considered information provided by Environment and Climate Change Canada and is of the view that the Projects, as proposed, may cause adverse effects to migratory birds, including species at risk in the area, due to removing, altering, and fragmenting habitat (e.g., forests, wetlands, grasslands), and causing direct mortality.

Federal Lands

The Agency considered information provided by the requesters, Parks Canada Agency, and Health Canada, and is of the view that the Projects, as proposed, may cause adverse effects to federal lands. The Agency understands that a portion of the ten kilometre (0.3 kilometres of new right of way) NGTL 2023-Longview Section will bisect the Bar U Ranch National Historic Site and be within two kilometres of the Stoney Nakoda Nations' Eden Valley 216 Reserve land. Additionally, the 23 kilometre (1.4 kilometres of new right of way) NGTL 2023 - Turner Valley Section is within five kilometres of Tsuut'ina Nation 145 Reserve lands.

Potential adverse effects to federal lands may occur from changes to noise levels, air quality, water quality (e.g., impact of spills on potable water), landscape and aesthetic changes, and accidents or malfunctions, which could increase risks to the health and social conditions of Indigenous peoples if there is not an emergency response plan.



Indigenous Peoples of Canada

The Agency considered the information provided by the proponent, the requesters, Health Canada, Fisheries and Oceans Canada, and Environment and Climate Change Canada. Based on the information available, the Agency is of the view that the Projects may result in adverse effects to health, social or economic conditions for Indigenous peoples of Canada and impacts on the exercise of Aboriginal and Treaty rights. The Projects are situated on provincial Crown and private land, in Treaty 6 and 7 territory, within the Métis Nation of Alberta Region 3, in territory where chartered communities of Métis Nation British Columbia may assert their rights, within the territory of the Ktunaxa Nation, and overlap with areas where traditional activities may occur. The Agency understands, that the NGTL 2023 - Longview Section pipeline component will be within two kilometres of the Eden Valley 216 Reserve lands and that the NGTL 2023 - Turner Valley Section is within five kilometres of the Tsuut'ina Nation 145 Reserve lands.

With respect to Indigenous peoples, potential adverse effects to traditional and cultural use of lands and potential impacts to health, social and economics may occur due to:

- changes to the habitat of wildlife species of importance, and subsequent wildlife behaviour changes;
- changes in land access, potential and perceived, decreasing quantity and quality of resources for harvest (e.g., medicinal plants, game animals);
- impacts on the ability to access sites of ceremonial and spiritual significance and subsequent impacts on the intergenerational transfer of culture, practices, and language;
- concerns regarding the safety of water resources, near and along pipeline routes; and
- impacts and risks on reserve lands from the lack of an emergency response plan.

Other Considerations

Proponent

The proponent continues to undertake public and Indigenous engagement activities related to the Projects and has indicated its preferred method to address stakeholder and landowner concerns is through direct and respectful discussion to promote mutual resolution and positive interest-based outcomes. The proponent's Indigenous engagement program is guided by its corporate Indigenous Relations policy, strategy, and guiding principles¹², which is consistent with proponent consultation guidance in the Canada Energy Regulator Filing Manual. Through communication and engagement activities, the proponent seeks to identify concerns and potential adverse project effects on the current use of lands and resources for traditional purposes and to identify proposed mitigation measures to address effects.

The proponent transitions from its Indigenous engagement program to its Public Awareness Program upon operation. The Program facilitates consistent, ongoing communication about safety, integrity and emergency response with Indigenous groups, and key community stakeholders and interested parties, such as landowners, the public, government representatives, and emergency response agencies.

¹² <https://www.tcenergy.com/sustainability/indigenous/>



Species at Risk

Environment and Climate Change Canada indicated that critical habitat for Whitebark Pine may be impacted by the footprint of the 31-kilometre NGTL 2023 Elko Section.

Agency Views

The Agency is of the view that the regulatory processes of the Canada Energy Regulator and Fisheries and Oceans Canada, will provide sufficient measures, including industry standard mitigation measures (e.g., construction timing, minimizing disturbance in the project footprint) to mitigate effects within federal jurisdiction and related concerns. These regulatory processes require consultation with any Indigenous groups whose Aboriginal or treaty rights may be adversely impacted. These regulatory processes are able to mitigate and address potential impacts on Aboriginal or treaty rights.

The Agency considered that all activities must be carried out in compliance with applicable federal legislation including the *Fisheries Act*, *Migratory Birds Convention Act*, *Species at Risk Act*, *Canadian Energy Regulator Act*, and *Federal Real Property and Immovables Act* (Annex I).

The Agency considered that the Canada Energy Regulator determines whether to evaluate multiple applications as aggregate or singular and is of the view that the Canada Energy Regulator review process will address potential effects within federal jurisdiction.

Authorizations or permits may be required under provincial legislation such as: the *Water Act* (Alberta), *Water Sustainability Act* (British Columbia), *Wildlife Act* (Alberta), *Wildlife Act* (British Columbia); *Oil and Gas Activities Act* (British Columbia); *Historical Resources Act* (Alberta) and *Heritage Conservation Act* (British Columbia). These provide additional tools to manage and mitigate the adverse impacts of the Projects (Annex II).

The Agency understands that the proponent continues to engage the public and Indigenous peoples during the development and regulatory processes and that they will transition to its Public Awareness Program upon operation. The proponent Indigenous engagement program is guided by its Indigenous relations policy, strategy, and guidance and seeks to identify concerns and potential mitigation. The Public Awareness Program focuses on communication about safety and emergency response with Indigenous groups, and key community stakeholders.

Potential adverse direct or incidental effects

Direct or incidental effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function under another act of Parliament that could permit the carrying out, in whole or in part, of a project, or to a federal authority's provision of financial assistance to a person for the purpose of enabling a project to be carried out, in whole or in part. The Projects as described may require the exercise or performance of the following federal powers, duties, or functions:

- Orders or certificates issued under of the *Canadian Energy Regulator Act*;
- Authorization under the *Fisheries Act*;
- Authorization under the *Species at Risk Act*;
- A Land Tenure Agreement for federal lands (Bar- U National Historic Site) under the *Federal Real Property and Federal Immovables Act*; and
- An environmental effects determination under section 82 of the *Impact Assessment Act*, in respect of the pipeline on federal lands under the administration of the Parks Canada Agency.

There is potential for adverse direct or incidental effects related to the exercise or performance of the above powers duties or functions by federal authorities. However, these potential effects would be mitigated or addressed through the applicable federal regulatory mechanisms.

Public concerns

In addition to the concerns expressed by the requesters, the Agency was made aware of public concerns related to the Projects by the proponent. The proponent identified several areas of public concerns related to the Projects through its engagement program. A summary of the public concerns identified by the proponent and the requesters include:

- A lack of engagement by the proponent;
- A lack of funding to facilitate the participation of Indigenous peoples in the review of these Projects;
- Effects to the biophysical environment resulting in impacts to surface and groundwater quality, waterbodies, water wells, wildlife, and air quality (e.g., damage to trees, changes to drainage, weed control);
- Effects to traditional land use and resources (e.g., hunting, fishing, plant harvesting, camping);
- Diminishing land base to practice rights;
- Economic impacts from business disruption (e.g., grazing operations, crop loss);
- Lack of access during construction and operation and an increase in recreational users;
- Increase in traffic;
- Size and location of the right of way;
- Impacts to property values;
- Reclamation of the sites; and
- Splitting of the Projects between proponents.

Annex I provides a summary of the concerns expressed related to potential adverse effects within federal jurisdiction and adverse or incidental effects, the associated mitigation measures proposed by the proponent, if any, and applicable regulatory mechanisms. The Agency understands that public concerns relating to matters outside of areas of federal jurisdiction are expected to be addressed through provincial regulatory mechanisms (Annex II) and that the proponent is continuing with public engagement activities.

Potential adverse impacts on the rights of Indigenous peoples

The Projects are located on provincial Crown and freehold land in Treaty 6 and 7 territory, the Métis Nation of Alberta Region 3, within the territory where chartered communities of Métis Nation British Columbia may assert rights, and within the territory of the Ktunaxa Nation. The Agency is of the view that the Projects may cause adverse impacts on the exercise of potential and established Aboriginal and treaty rights including the potential for adverse effects to areas of federal jurisdiction that could impact those rights. The Agency considered the issues and concerns identified in the requests to designate and relevant information submitted by Stoney Nakoda Nations and O'Chiese First Nation to the National Energy Board (predecessor of the Canada Energy Regulator) during the review of previous natural gas pipeline projects, such as the NGTL 2018 Application and the NGTL 2021 Application¹³ as the concerns also apply to the Projects.

Concerns relate to:

- the cumulative impact of pipeline development taking of lands and subsequently altering the landscape, diminishing access to sites of cultural importance, and diminishing the ability to practice rights affirmed by section 35 of the *Constitution Act, 1982* and intergenerational transfer of culture, practices, and language;
- the lack of consideration of impacts to practice rights affirmed by section 35 of the *Constitution Act, 1982* from new right of way and the widening of existing rights of way ;
- reduced access to lands for current and traditional uses and activities, and avoidance behaviours of developed sites;
- lack of engagement by the proponent and the federal government;
- lack of emergency response plans and potential risks to the health and safety of the communities on and off reserve lands;
- impacts to water quality through malfunctions and the risks to health and safety;
- impacts to fish species of importance for food, ceremonial and medicinal purposes;
- impacts to sacred and ceremonial sites of cultural value and traditional use value;

¹³ The Stoney Nakoda Nations (Bears paw, Chiniki and Wesley First Nations) submitted intervenor reports to the application for the construction of the West Path Delivery Project 2018, natural gas pipeline and meter station additions in Alberta. The Stoney Nakoda Nations reports outlined an assessment of the traditional land use within the project area and impacts and concerns regarding this project. O'Chiese First Nation submitted intervenor reports such as the Inherent and Treaty Rights Assessment Report as evidence in the National Energy Board Hearing for the 2021 NGTL System Expansion Project. The Stoney Nakoda Nations and O'Chiese First Nation requested the Agency consider these reports, as the concerns expressed in the intervenor reports apply to the designation request.

- impacts to the quality and quantity of traditional resources (such as medicinal plants and game animals) around development; and
- project splitting which may misrepresent the depth and breadth of the potential impacts of the Projects and undermine engagement and meaningful consultation.

The Agency is of the view that the potential for the Projects to adversely impact rights affirmed by section 35 of the *Constitution Act, 1982* would be managed through existing federal regulatory mechanisms, including the Canada Energy Regulator regulatory process (Annex I). The Agency also understands the proponent continues to engage with Indigenous peoples, including the requesters, to identify concerns, potential impacts to Aboriginal and treaty rights, and possible mitigation measures and that the proponent will continue communications with Indigenous peoples upon the commencement of operations through its Public Awareness Program. The Agency understands that there is continued concern regarding the consideration of cumulative impacts of pipeline development through existing legislative mechanisms.

Regional and strategic assessments

There are no regional or strategic assessments pursuant to sections 92, 93 or 95 of the *Impact Assessment Act* that are relevant to the Projects.

Conclusion

The Agency is of the view that the Projects do not warrant designation under subsection 9(1) of the *Impact Assessment Act*. The potential for adverse effects within federal jurisdiction and adverse direct or incidental effects will be limited through project design, applicable federal and provincial regulatory schemes (Annex I), and the application of standard mitigation measures and enforceable conditions in regulatory approvals. The concerns expressed by the requesters and potential adverse impacts of the Projects on Aboriginal and treaty rights will be adequately addressed through applicable federal regulatory schemes.

To inform its analysis, the Agency sought and received input from the proponent, the Canada Energy Regulator, federal authorities, provincial ministries, Stoney Nakoda Nations, and the O'Chiese First Nation. In addition, the Agency considered the concerns raised by the Stoney Nakoda Nations and O'Chiese First Nation in the designation requests, concerns raised by the proponent in its submissions, the proponent's Indigenous engagement policy and Public Awareness Programs, and other publically available information. Further, the Agency considered the potential for the Project to cause adverse impacts on the rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982* and is satisfied that existing legislative mechanisms would include Indigenous consultation and address potential impacts.

ANNEX I

Annex I: Analysis Summary Table

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
<p>A change to fish and fish habitat, as defined in subsection 2(1) of the <i>Fisheries Act</i></p>	<p>Two species listed as Threatened pursuant to the <i>Species at Risk Act</i>, Bull Trout (<i>Salvelinus confluentus</i>) Saskatchewan – Nelson Rivers populations and Westslope Cutthroat Trout (<i>Oncorhynchus clarkii lewisi</i>) Saskatchewan – Nelson Rivers populations, are known to be in southwestern Alberta¹⁴.</p> <p>Specific information regarding potential effects of the Projects on fish and fish habitat was not available to the Agency at the time of this analysis.</p> <p>Stoney Nakoda Nations: Stoney Nakoda Nations indicated their concerns for pipeline projects are represented in submissions into the NGTL 2018 Application and other Canada Energy Regulator processes and include potential effects to fish and fish habitat from changes in water quality and quantity.</p> <p>Proponent: Potential effects to fish habitat, fish due to mortality, and to surface and groundwater quality and quantity may occur. The proponent indicated that effects of these Projects will be mitigated through project specific mitigation and standard industry practices for pipeline projects such as the minimization of disruption of watercourses; installation of erosion control measures during temporary crossings; compliance with federal and provincial permits, licences, and authorizations; and avoidance of sensitive areas.</p> <p>Federal Authorities: Fisheries and Oceans Canada (DFO) indicated that the Projects may result in the harmful alteration, disruption or destruction of fish habitat and/or the death of fish and impacts to aquatic species at risk and may require authorization under the <i>Fisheries Act</i> and/ or <i>Species at Risk Act</i>. DFO identified that</p>	<p><i>Species at Risk Act</i> authorization is required if there are impacts to an aquatic species at risk, any part of their critical habitat or the residences of their individuals.</p> <p>Authorization under <i>Fisheries Act</i> may be required if the project is likely to cause the harmful alteration, disruption, or destruction to fish habitat or is likely to result in the death of fish.</p> <p>Deposit of deleterious substances into waters frequented by fish, unless authorized</p>

¹⁴ Information on specific project sections that may overlap with the habitat of these two species is in Annex III.

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
	<p>some of the watercourse crossings are in areas that are mapped as distribution areas of aquatic species at risk. Authorizations under the <i>Fisheries Act</i> and the <i>Species at Risk Act</i>, if required, would include conditions and required prior consultation with Indigenous peoples.</p> <p>Environment and Climate Change Canada (ECCC) identified that more information is required to assess project specific impacts to aquatic species at risk. ECCC indicated that there are potential negative effects to aquatic life from the activities associated with construction and operation of a pipeline. Potential effects include: changes to the quality of surface water (e.g., from construction of water course crossings, runoff, wastewater discharge, groundwater resurgence, access road and right of way maintenance, excavation or movement of soils, sediments or rocks, and unexpected events, such as a spill or a frac-out (unintentional return of drilling fluids to surface) during horizontal directional drilling) and to the hydrological regimes of watercourses and water bodies. If not properly mitigated, these impacts to surface water quality may have effects on aquatic life.</p> <p>The Canada Energy Regulator's (CER) regulatory process applies to these Projects and includes the identification of potential environmental effects including effects to fish and fish habitat and mitigation measures to eliminate or reduce these effects. The CER regulatory process requires identification of detailed mitigation measures to mitigate impacts, consultation with Indigenous peoples, and approvals that include enforceable conditions.</p> <p>Provincial Authorities: Authorizations or permits are also required under relevant provincial legislation such as the <i>Water Sustainability Act</i> (British Columbia) and <i>Water Act</i> (Alberta) which would consider, address, and mitigate the potential impacts of the Projects.</p>	<p>by regulations or other federal legislation, is prohibited under the <i>Fisheries Act</i>.</p> <p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>Authorization under the <i>British Columbia Water Sustainability Act</i> is required for stream crossings and can include conditions and require public and Indigenous consultation.</p> <p>Authorization under Alberta's <i>Water Act</i> is required for temporary disturbances to wetlands including marshes and for the temporary diversion of water.</p> <p>Alberta's <i>Wildlife Act</i> protects and conserve wild animals in Alberta.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
A change to aquatic species, as defined in subsection 2(1) of the <i>Species at Risk Act</i>	<p>See fish and fish habitat section.</p> <p>No adverse effects to marine plants are anticipated, as there is no interaction between the Projects and the marine environment.</p>	N/A
A change to migratory birds, as defined in subsection 2(1) of the <i>Migratory Birds Convention Act, 1994</i>	<p>Ranges for avian species at risk such as Sprague's Pipit, Common Nighthawk, Baird's Sparrow, Barn Swallow, Bank Swallow, Horned Grebe, Evening Grosbeak, Olive-sided Flycatcher, Black Swift and Lewis Woodpecker overlap the area of the Projects. No critical habitat for these species at risk is predicted to be within the footprints of the Projects.</p> <p>Specific information regarding potential effects of the Projects to migratory birds was not available to the Agency at the time of this analysis.</p> <p>Proponent: The proponent indicated that effects of these Projects would be similar to other projects of similar scope and scale such as the Edson Mainline Expansion Project¹⁵. Expected standard mitigation measures to potential effects to migratory birds include: minimizing the construction footprint, ground disturbance and the removal of habitat; scheduling of construction outside of the Primary Nesting Period including the extended period for species at risk and if construction activities extend into the primary nesting period, the Breeding Bird and Nest Management Plan will be implemented, as necessary, to avoid destruction or disturbance to bird nests.</p> <p>Federal Authorities: ECCC would require more information (e.g., project location, duration, scale, configuration, ancillary project activities, existing cumulative effects, type of disturbed habitat, sensitivity of nearby species) to assess the project specific effects to migratory birds protected under the <i>Migratory Birds Convention Act</i>. ECCC identified that temporary and permanent effects to migratory birds and species at risk may</p>	<p>Compliance with the <i>Migratory Bird Convention Act</i> is required.</p> <p>Compliance with the <i>Species at Risk Act</i> is required.</p> <p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>Alberta's <i>Wildlife Act</i> protects and conserves wild animals in Alberta.</p> <p>Permits are required under the British Columbia's <i>Wildlife Act</i> for the removal of bird nests.</p>

¹⁵ <https://apps.cer-rec.gc.ca/REGDOCS/Item/Filing/A98624>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
	<p>result from activities associated with pipeline projects such as the removal, alteration, and fragmentation of habitat, causing mortality and introducing invasive species. The proponent has committed to undertake construction outside the breeding period for species at risk birds, which is a standard industry practice. Compliance with the <i>Migratory Bird Convention Act</i> and the <i>Species at Risk Act</i> are required.</p> <p>The CER regulatory process applies to these Projects and includes the identification of potential environmental effects including effects to migratory birds. The applicant must identify the species, distributions, sensitive areas, and existing and anticipated disturbance to species. The CER regulatory process requires identification of detailed measures to mitigate impacts, consultation with Indigenous peoples, and approvals include enforceable conditions.</p> <p>Provincial Authorities: Authorizations or permits are also required under relevant provincial legislation such as the <i>Alberta Wildlife Act</i> and the <i>Wildlife Act</i> (British Columbia) which would consider, address, and mitigate the impacts of the Projects.</p>	
<p>A change to the environment that would occur on federal lands</p>	<p>Specific information regarding potential effects of the Projects to federal lands was not available to the Agency at the time of this analysis. However, section 82 of the <i>Impact Assessment Act</i> would apply and the Parks Canada Agency would be required to conduct an environmental effects determination for portions of the Projects on the Bar U Ranch National Historic Site.</p> <p>The Agency understands that the NGTL 2023 - Longview Section will bisect the Bar U Ranch National Historic Site and be within 2 kilometres from the Stoney Nakoda Nations' Eden Valley 216 Reserve land. Additionally, the NGTL 2023 - Turner Valley Section is within approximately 5 kilometres of Tsuut'ina Nation 145 Reserve lands.</p> <p>Stoney Nakoda Nations: The Stoney Nakoda Nations indicated concerns with the proximity of development to its Eden Valley 216 Reserve. Concern include the lack of emergency response plans for development near reserve land and within its traditional territory, and the subsequent health and safety concerns including the ability of communities to respond to health risks posed by pipelines and other oil and gas development.</p>	<p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>The <i>Federal Real Property and Immovables Act</i> applies, for work on the Bar U National Historic Site. A determination under section 82 of the <i>Impact Assessment Act</i> is required for projects on federal lands.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
	<p>Proponent: The proponent indicated they will continue to engage with Indigenous groups through development and regulatory processes and seek input regarding concerns and impacts of the Projects.</p> <p>Federal Authorities: Health Canada indicated that health effects on human receptors may vary based on proximity and distance. Potential effects to federal lands include: changes to ambient air quality through emissions in the construction phases and changes to surface water and groundwater through potential leaks and spills during operation. These potential effects could impact landowners and land users, including land user access to water. Health Canada noted that the proponent indicated that Indigenous communities have concerns with the potential interaction of the Projects with reserve lands, traditional land and resource use sites, areas and resources (e.g., hunting, fishing, plant harvesting, camping).</p> <p>The Parks Canada Agency identified that the NGTL 2023 - Longview Section bisects the Bar U Ranch National Historic Site. There is potential for changes to the landscape, aesthetics, and cultural resources, invasive species to occur along the pipeline right of way, and a high likelihood of encountering sites and artifacts of historical and archaeological significance. The Parks Canada Agency would be required to make an environmental effects determination under section 82 of the <i>Impact Assessment Act</i> with respect to portions of the Projects on the Bar U Ranch National Historic Site prior to issuing an authorization that would allow the given project to proceed. The assessment would identify mitigations in relation to environmental effects as defined in section 81 of IAA. The Parks Canada Agency, will issue a Land Tenure Agreement under to the <i>Federal Real Property and Immovable Act</i> to allow access to federal lands.</p> <p>The CER regulatory process applies to these Projects and includes: the identification of potential environmental effects including those to federal lands; consideration of interests and concerns of Indigenous peoples of Canada with respect to current use of lands and resources for traditional purposes; and impacts to the potential or established Aboriginal or treaty rights of Indigenous peoples of Canada. CER-regulated companies are responsible for anticipating, preventing, managing, and mitigating conditions during an emergency and cleaning up. Development of an emergency management program requires consultation, education regarding the program, and the training of employees to respond. The CER regulatory process requires identification of detailed mitigation</p>	<p>The <i>Species at Risk Act</i> applies when there are impacts to a species at risk.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
	measures to mitigate impacts, consultation with Indigenous peoples, and approvals include enforceable conditions.	
A change to the environment that would occur in a province other than the one in which the project is being carried out or outside Canada	<p>Based on maps provided by the proponent, the Agency understands that three components of the Projects are within approximately 40 kilometres of the border with the United States of America: the Foothills 2022 - Yahk Section is within seven kilometres; the Foothills 2023 – Elko Section is within 40 kilometres; and the Foothills 2023 - Kingsgate Meter Station is within one kilometre. The NGTL 2022 ASM Loop 2 is within approximately one kilometre of the interprovincial (AB/ BC) border.</p> <p>Specific information regarding potential effects of the Projects to the environment in a province other than the one in which the project is being carried out or outside of Canada was not available to the Agency at the time of this analysis.</p> <p>Federal Authorities: ECCC would require more information to determine the level of greenhouse gas (GHG) emissions and effectiveness of the proponent GHG mitigation measures for these Projects. GHG emissions may occur from construction equipment. ECCC draft guidance (Strategic Assessment of Climate Change (SACC)) describes information requirements related to GHG emissions and mitigations, climate change resilience, and the circumstances in which an upstream GHG assessment will be required.</p> <p>The CER regulatory process applies to these Projects and includes the consideration of environmental effects and the extent to which the effects hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and commitments in respect of climate change. Proponents must provide information on direct and operational sources of greenhouse gas emissions and an estimate of upstream emissions and how they will be mitigated. The CER notifies the State and Federal Governments of United States when there is an anticipated cross border impact and can instruct a proponent to notify international parties, if it is of the opinion that project warrants notification of parties outside of Canada. The CER regulatory process requires identification of detailed mitigation measures to mitigate impacts, consultation with Indigenous peoples, and approvals include enforceable conditions.</p>	<p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>Federal greenhouse gas emissions reporting, pursuant to the <i>Canadian Environmental Protection Act, 1999</i>, required if ten kilotons or more of greenhouse gas emissions are emitted in carbon dioxide equivalent units per year.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
<p>With respect to the Indigenous peoples of Canada, an impact - occurring in Canada and resulting from any change to the environment - on physical and cultural heritage</p>	<p>Also, see section on: change to the environment – on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance. Information indicating overlap of the Projects with preferred Indigenous use areas and sites of cultural importance was not available to the Agency at the time of this analysis.</p> <p>Requesters: The requesters indicated that there are potential impacts to sites of physical and cultural significance, including sacred, ceremonial, and burial sites, from pipeline construction and operation on existing, adjacent to existing, or new right of way, which could impact and diminish the access to and experience of physical and cultural heritage. Cumulative impacts from changes to the environment were identified as likely impacting physical and cultural heritage.</p> <p>Proponent: The proponent’s Indigenous engagement program is guided by a corporate Indigenous Relations policy, strategy, and guiding principles, that is consistent with the CER guidance on proponent consultation in the Filing Manual. The proponent indicated they will continue to communicate and engage with and seek input from Indigenous groups regarding project-related concerns and impacts on the rights of Indigenous peoples.</p> <p>Federal Authorities: The CER regulatory process applies to these Projects and includes consideration of potential environmental and socio-economic effects, including heritage resources; interests and concerns of Indigenous peoples of Canada with respect to current use of lands and resources for traditional purposes; and impacts to the exercise of potential or established Aboriginal or treaty rights of Indigenous peoples of Canada. The CER regulatory process requires identification of detailed mitigation measures to mitigate impacts, consultation with Indigenous peoples, and approvals include enforceable conditions.</p> <p>Provincial Authorities: Authorizations or permits are required under relevant provincial legislation such as the Alberta <i>Historical Resources Act</i>, the Alberta Public Lands Act, and the Heritage Conservation Act (<i>British Columbia</i>) which would consider, address, and mitigate the impacts of the Projects.</p>	<p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>The Alberta <i>Historical Resources Act</i> requires proponent to follow protocols to preserve and study historical resources and provinces a framework for Historical Resources Impact Assessment and mitigation.</p> <p>The Alberta <i>Public Lands Act</i> regulates public land allocations and the uses of land.</p> <p>The <i>Heritage Conservation Act</i> (British Columbia) requires an archaeological impact assessment prior to clearing and ground disturbance.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
<p>With respect to the Indigenous peoples of Canada, an impact - occurring in Canada and resulting from any change to the environment on current use of lands and resources for traditional purposes</p>	<p>Also, see sections on: change to fish and fish habitat, change to migratory birds, and a change to the environment that would occur on federal lands.</p> <p>The Projects are within in Treaty 6 and 7 territory, within the Métis Nation of Alberta Region 3, within the territory where chartered communities of Métis Nation British Columbia may assert rights, within the territory of the Ktunaxa Nation, and overlap with areas where traditional activities may occur.</p> <p>Information indicating overlap of the Projects with preferred Indigenous use areas and sites of cultural importance was not available to the Agency at the time of this analysis.</p> <p>Requesters: The requesters indicated the concerns they raised in their submissions to the CER in regulatory processes¹⁶ represent the concerns they have with the Projects regarding current use of lands and resources for traditional purposes. These concerns include: the cumulative diminished access to lands to use for traditional practices, decreasing quantity and quality of resources for harvest (e.g., medicinal plants, game animals, fish resources) along pipeline routes, the inability to practice rights due to landscape alteration, effects to species of cultural importance such as the Grizzly Bear¹⁷, Bull Trout, and Cutthroat Trout, and the safety of water resources near development. The requesters indicated that there are concerns with project splitting and the subsequent underestimation of impacts on their rights affirmed by section 35 of the <i>Constitution Act, 1982</i>.</p> <p>Proponent: The proponent indicated that the majority of the Projects will be built on existing right of way which may mitigate impacts of new pipeline right of way. The proponent indicated that the Projects are discrete applications for separate projects with different commercial in-service dates, shippers,</p>	<p>The <i>Canadian Energy Regulator Act</i> applies. The <i>Forest and Range Practices Act</i> (British Columbia) may apply.</p> <p>The <i>Forest and Prairie Protection Act</i> (Alberta) required for burning timber from construction clearing (March 1 – October 31).</p> <p>The <i>Alberta Historical Resources Act</i> requires proponent to follow protocols to preserve and study historical resources and provinces a framework for Historical Resources</p>

¹⁶ Examples of submissions to CER regulatory processes the requesters indicated to the Agency represent their concerns for these Projects: NGTL 2018 Application, NGTL 2021 Application, and others.

¹⁷ Stoney Tribal Administration, in collaboration with Alberta Environment and Parks, the Foothills Research Institute, and the Canadian Mountain Network, report - Cultural Assessment for the "Enhancing grizzly bear management programs through the inclusion of cultural monitoring and traditional ecological knowledge". Focus of report was in the Kananaskis area of west-central Alberta.

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
	<p>contracts, or supply/market areas. The proponent indicated they are undertaking an Indigenous engagement program for the Projects, guided by a corporate Indigenous Relations policy, which is consistent with proponent consultation guidance in the CER Filing Manual. The proponent indicated they consider potential adverse effects of the Projects on the current use of lands and resources for traditional purposes and continue to listen to concerns, propose measures to avoid, mitigate or otherwise manage potential adverse project effects on Indigenous interests and rights.</p> <p>Federal Authorities: HC identified that Indigenous communities have concerns with the potential interaction of the Projects with traditional land and resource use sites, areas and resources (e.g., hunting, fishing, plant harvesting, camping). HC identified that there is the potential that contaminants in water, air or soil may be taken up or deposited on traditional foods that are harvested or grown for subsistence or medicinal purposes.</p> <p>The CER regulatory process applies to these Projects. The CER considers project interrelatedness by considering the degree of interdependence between project components and whether individual projects are responses to separate commercial requirements (different in-service dates, contractual obligations, shipping, and market area). The CER process considers potential environmental effects (inclusive of project specific cumulative effects (dependent upon the temporal and spatial interrelations of project) and effects of accidents and emergencies); interests and concerns of Indigenous peoples of Canada with respect to current use of lands and resources for traditional purposes; and impacts to the potential or established Aboriginal or treaty rights of Indigenous peoples of Canada. The CER regulatory process requires the identification of residual effects, detailed mitigation measures to mitigate impacts, requires consultation with Indigenous peoples, and approvals include enforceable conditions.</p> <p>Provincial Authorities: Authorizations or permits are required under relevant provincial legislation such as the Alberta <i>Historical Resources Act</i>, the Alberta <i>Public Lands Act</i>, British Columbia <i>Land Act</i>, and the <i>Heritage Conservation Act</i> (British Columbia) which would consider, address, and mitigate the impacts of the Projects.</p>	<p>Impact Assessment and mitigation.</p> <p>The Alberta <i>Public Lands Act</i> regulates public land allocations and the uses of land.</p> <p>The <i>Heritage Conservation Act</i> (British Columbia) requires an archaeological impact assessment prior to clearing and ground disturbance.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
<p>With respect to the Indigenous peoples of Canada, an impact - occurring in Canada and resulting from any change to the environment - on any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance</p>	<p>Also see section on: change to the environment –on physical and cultural heritage Information indicating overlap of the Projects with areas that have a thing that is of historical, archaeological, paleontological or architectural significance was not available to the Agency at the time of this analysis.</p> <p>Requesters: The requesters indicated there may be a high density of ceremonial and spiritual sites of significance in the areas of the Projects, specifically the NGTL 2022 Raven River Section component. The requesters indicated concerns there may be impacts to traditional family camps, ceremonial sites, and sacred sites, including burial sites from pipeline projects.</p> <p>Proponent: The proponent indicated they are undertaking an Indigenous engagement program for the Projects, guided by a corporate Indigenous Relations Policy, which is consistent with proponent consultation guidance in the CER Filing Manual. The proponent provided notifications and information packages about the Projects and engagement opportunities to potential affected Indigenous groups. The proponent indicated they will continue to listen to concerns, propose measures to avoid mitigate or otherwise manage potential adverse project effects on Indigenous interests and rights.</p> <p>Federal Authorities: The CER regulatory process applies to these Projects. The CER assessment and consultation processes will include consideration of potential impacts to any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance with respect to Indigenous peoples of Canada. The CER regulatory process requires identification of detailed mitigation measures to mitigate impacts, consultation with Indigenous peoples, and approvals include enforceable conditions.</p> <p>Provincial Authorities: Compliance with provincial legislation (<i>Historical Resources Act</i> (Alberta) and <i>Heritage Conservation Act</i> (British Columbia)) is required if heritage or historical resources are disturbed.</p>	<p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>The <i>Alberta Historical Resources Act</i> requires proponent to follow protocols to preserve and study historical resources and provinces a framework for Historical Resources Impact Assessment and mitigation.</p> <p>The <i>Heritage Conservation Act</i> (British Columbia) requires an archaeological impact assessment prior to clearing and ground disturbance.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
<p>Any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada</p>	<p>Limited information indicating effects of the Projects on any specific change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada was available to the Agency at the time of this analysis.</p> <p>Requesters: The Stoney Nakoda Nations indicated concerns with the lack of emergency response plans and the risks to the health and safety of the residents in communities and on reserve lands from the Projects. Capacity, engagement with the proponent, and language barriers were identified as barriers to the implementation of an emergency response plan. O’Chiese First Nation identified, through other regulatory processes, that concern with pipelines include the potential for contamination of traditional resources including vegetation and animals through proponent air, water, and vegetation management practices.</p> <p>Proponent: The proponent indicated they will work with Indigenous groups to identify community needs with respect to safety, by working with communities to understand how they can support community safety initiatives, including emergency preparedness, accident prevention, education, and training. The proponent indicates it will support organizations and community initiatives that bring communities together through initiatives such as cultural preservation, community events, health and wellness, skills development, job readiness and career development. The proponent will work with communities to conserve important habitat, protect species at risk and the environment. Business engagement activities will seek to provide business opportunities arising from project-related activities to qualified Indigenous contractors and suppliers.</p> <p>The proponent transitions from its Indigenous engagement program to its Public Awareness Program upon operation. The Program facilitates consistent, ongoing communication about safety, integrity and emergency response with Indigenous groups, and key community stakeholders and interested parties, such as landowners, the public, government representatives and emergency response agencies.</p> <p>Federal Authorities: HC indicated there is potential for impacts to human health through changes in ambient air quality due to exhaust emissions from construction machinery and practices; changes in noise levels from</p>	<p>The <i>Canadian Energy Regulator Act</i> applies.</p>

Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
	<p>machinery use and increased traffic; and changes to surface and ground water from construction and operations spills or leaks and subsequent changes to drinking water. There is the potential for health and economic impacts associated with the potential for contaminants in water, air or soil to be taken up or deposited on traditional foods that are harvested or grown for subsistence or medicinal purposes. There is potential for social and economic impacts to local communities from temporary worker accommodations and use of local accommodations within nearby communities.</p> <p>The CER regulatory process applies to these Projects. The CER regulatory and consultation processes will consider health, social, and economic conditions of the Indigenous peoples of Canada and the identification of detailed mitigation measures to mitigate impacts. The CER holds regulated companies responsible for anticipating, preventing, managing, and mitigating conditions during an emergency and cleaning up. When developing an emergency management program companies are to consult on its development, educate regarding the program, and train employees to respond. The CER regulatory process requires identification of detailed mitigation measures to mitigate impacts, consultation with Indigenous peoples, and approvals include enforceable conditions.</p>	
Adverse direct or incidental effects	<p>Authorizations pursuant to the <i>Fisheries Act</i> and the <i>Species at Risk Act</i> issued by DFO, as required.</p> <p>The CER will undertake regulatory processes pursuant to the <i>Canadian Energy Regulator Act</i>. The proponent requires an Order or Certificate to proceed with its Projects as proposed.</p> <p>If the NGTL 2023- Longview Section of pipeline passes through the Bar-U Ranch National Historic Site, the proponent will required the Parks Canada Agency to issue a Land Tenure Agreement pursuant to the <i>Federal Real Property and Immovables Act</i>. Prior to issuing the authorization, it will have to make an environmental effects determination under section 82 of the <i>Impact Assessment Act</i>, in respect of the portions of the pipelines that cross the Bar U Ranch National Historic Site.</p> <p>The federal authorities required to exercise a power or perform a duty or function in order for the Projects to proceed will, through their regulatory processes, address potential adverse effects that are directly linked or necessarily incidental to their regulatory decisions.</p>	<p>The <i>Fisheries Act</i> applies.</p> <p>The <i>Species at Risk Act</i> applies.</p> <p>The <i>Canadian Energy Regulator Act</i> applies.</p> <p>The <i>Federal Real Property and Immovables Act</i> applies for work on the Bar U National Historic Site.</p>



Adverse Effect or Public Concern in Relation to Subsection 9(1) of the <i>Impact Assessment Act</i>	Effects and Mitigation Proposed by the Proponent and Advice from Federal and Provincial Experts	Relevant Legislative Mechanisms
		Section 82 of the <i>Impact Assessment Act</i> required for projects on federal lands.

ANNEX II



Annex II: Potential Federal and Provincial Authorizations Relevant to the Project

Authorization	Description
<i>Species at Risk Act</i>	Authorization may be required if there are impacts to a species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the <i>Species at Risk Act</i> . Prior to authorization, the Competent Minister under this Act must be satisfied that the activities will not jeopardize survival or recovery of the species at risk.
Fisheries Act	<p>Authorization under paragraph 35(2)(b) of the <i>Fisheries Act</i> is required when any activity that is not fishing results in the death of fish. Authorization under paragraph 34.4(2)(b) of the <i>Fisheries Act</i> is required when any activity that is not fishing results in the harmful alteration, disruption, or destruction to fish habitat. Prior to issuing such authorizations, consultations with potentially impacted Indigenous groups would be undertaken.</p> <p>The <i>Fisheries Act</i> prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations or other federal legislation.</p>
<i>Migratory Birds Convention Act</i>	<p>A permit is required for all activities affecting migratory birds, with some exceptions detailed in the Regulations.</p> <p>The <i>Migratory Birds Convention Act</i> prohibits killing, harming, or collecting adults, young, and eggs of migratory birds and screens and provides regulatory responses for effects to migratory birds.</p>



Authorization	Description
<i>Canadian Energy Regulator Act</i>	<p>One of the main purposes is to ensure that pipeline projects within Parliament's jurisdiction are constructed, operated and abandoned in a safe and secure manner that protects people, property and the environment. Certificates under section 183 and Orders under section 214 of the <i>Canadian Energy Regulator Act</i> require consultation and may include conditions. The regulatory process considers environmental, health, social, and economic effects; and impacts to rights of Indigenous peoples of Canada. Certificates under section 183 of the Canadian Energy Regulators Act apply to projects with 40 kilometres or more of pipeline. Orders under section 214 <i>Canadian Energy Regulator Act</i>, are required for project that have less than 40 kilometres of pipeline.</p> <p>Applications are assessed pursuant to the Canada Energy Regulator's Filing Manual and Interim Filing Guidance and Early Engagement Guide. The regulatory process includes a project notification to the Regulator, a subsequent application for an Order or Certificate, the adjudication of the application by an independent Commission that may require hearings, a decision by either the Commission or the Governor-In-Council, and issuance of enforceable conditions.</p>
<i>The Federal Real Property and Immovables Act</i>	<p>Disposition or lease of federal property or federal immovables shall be made in accordance with this Act. Sections contain provisions relating to conveyancing, leasing and licensing federal real property and the execution and legal effect of the instruments used.</p> <p>Activities or structures on the Bar U Ranch National Historic Site will be governed by this legislation.</p>
<i>Canadian Environmental Protection Act, 1999</i>	<p>May require greenhouse gas emissions reporting, if 10 kilotons or more of greenhouse gas emissions are emitted in carbon dioxide equivalent units per year.</p>
<i>Public Lands Act (Alberta)</i>	<p>The Act is to regulate public land allocations, the sale or transfer of public land to other levels of government or private entities, and the uses (including recreational use, commercial use and industrial use) of public land. Permission under this Act is required for activities on provincial Crown land.</p>
<i>Water Act (Alberta)</i>	<p>This Act supports and promotes the conservation and management of water in Alberta.</p> <p>Approvals may be required for temporary disturbances to wetlands including marshes and for the temporary diversion of water. To provides for the protection and conservation of wild animals in Alberta and permits research and fish collection/salvage.</p>



Authorization	Description
<i>Wildlife Act</i> (Alberta)	This Act provides for the protection and conservation of wild animals in Alberta and permits research and fish collection/salvage. Permission under this Act may be required for construction activities on provincial Crown land.
Other provincial legislation and Codes of Practice - Alberta	<i>Forest and Prairie Protection Act</i> allows the burning of timber from construction clearing (March 1 – October 31). Compliance with this Act is required for activities it governs on provincial Crown land. These Codes of Practice must be applied for activities on provincial Crown land. <i>Code of Practice for Watercourse Crossings</i> - standards and conditions to be met to ensure the governed activity minimizes the disturbance and impact on the environment. Code of Practice for Pipelines and Telecommunications Lines Crossing a Water Body – notification when watercourse and wetlands are crossed by pipelines.
<i>Historical Resources Act</i> (Alberta)	Requires the proponent to follow protocols to preserve and study historical resources (historical, archaeological, paleontological or architectural) and provides a framework for Historical Resources Impact Assessments and mitigation.
<i>Oil and Gas Activities Act</i> (British Columbia)	An assessment of effects and permitting under British Columbia's <i>Land Act</i> , <i>Forest Act</i> , and <i>Water Sustainability Act</i> for Canada Energy Regulator related pipelines. Permission under this Act is required for activities it governs, on provincial Crown land.
<i>Land Act</i> (British Columbia)	Authorization for use and occupation of Crown lands. Permission under this Act is required for activities it governs, on provincial Crown land.
<i>Water Sustainability Act</i> (British Columbia)	<i>Water Sustainability Act</i> governs the licensing, diversion, and use of water by maintaining water quantity, water quality and aquatic ecosystems in and for British Columbia. Authorizations may be issued for stream crossings and short-term water use and can include conditions and require public and Indigenous consultation.
<i>Wildlife Act</i> (British Columbia)	This Act may required permits. Permits for the removal of bird nests, amphibian species and beavers.



Authorization	Description
<i>Forest and Range Practices Act</i> (British Columbia)	The <i>Forest and Range Practices Act</i> outlines how all forest and range practices and resource-based activities are to be conducted on Crown land in B.C., while ensuring protection of everything in and on them, such as plants, animals and ecosystems.
<i>Forest Act</i> (British Columbia)	Governs the issuance of timber harvesting permits and forest service road use permits. Permission under this Act is required for activities it governs, on provincial Crown land.
<i>Heritage Conservation Act</i> (British Columbia)	This Act required an Archaeological Impact Assessment prior to clearing and ground disturbance. Permits may be required for disturbances or alteration of sites.
Other legislation - British Columbia	<i>Public Health Act</i> - the primary article of legislation that is used by the government to convey land to the public for community, industrial and business use. The Act allows the granting of land, and the issuance of Crown land tenure in the form of leases, licences, permits and rights of way. <i>Environmental Management Act</i> - regulates industrial and municipal waste discharge, pollution, hazardous waste and contaminated site remediation. EMA provides the authority for introducing wastes into the environment, while protecting public health and the environment.



ANNEX III

Annex III: Additional Project Information

Total Pipeline Kilometres, and Right of Way Description (approximate kilometres)	Project Component	Land Disposition
NGTL West Path Delivery 2022		
<p>Total pipeline kilometres: 24</p> <p>Contiguous right of way within existing disturbances: 19.6 kilometres</p> <p>New Right of Way: 4.4 kilometres</p>	<p>Edson Mainline Loop No. 4 – Raven River Section</p> <ul style="list-style-type: none"> - Approximately 18 kilometres of pipeline located 16 kilometres north of Sundre, Alberta -Within Bull Trout distribution area. <p>Western Alberta System Mainline Loop No. 2 – Alberta British Columbia Section</p> <ul style="list-style-type: none"> - Approximately 6 kilometres of pipeline located 6 kilometres west of Coleman, Alberta. -Within Bull Trout distribution area and Westslope Cutthroat Trout Critical Habitat is nearby. <p>ABC Border Meter Station Expansion- Expansion of the existing ABC border meter station.</p> <ul style="list-style-type: none"> - Located approximately 6 kilometres west of Coleman, Alberta. 	<p>Crossing provincial Crown (81%) and freehold (19%) lands.</p> <p>Continuous with existing disturbances for 79% of its length (14.2 kilometres)).</p> <p>New right of way: 3.8 kilometres.</p> <p>Crossing provincial Crown (38%) and freehold (62%) lands.</p> <p>Continuous with existing disturbances for 90% of its length (5.4 kilometres).</p> <p>New right of way: 0.6 kilometres.</p> <p>Expansion of the existing ABC border meter station.</p>

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<p>Total pipeline kilometres: 13</p> <p>Contiguous right of way within existing disturbances: 9.1 kilometres</p> <p>New right of way: 3.9 kilometres</p>	<p>British Columbia Mainline Loop No. 2 – Yahk Section.</p> <ul style="list-style-type: none"> - Approximately 13 kilometres of pipeline located 25 kilometres east of Creston, British Columbia. 	<p>Crossing provincial Crown (79%) and freehold (21%) lands.</p> <p>Continuous with existing disturbances for 70% of its length (9.1 kilometres)).</p> <p>New right of way: 3.9 kilometres.</p>
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<p>Total pipeline kilometres: 40</p> <p>Contiguous right of way within existing disturbances: 38.3 kilometres</p> <p>New right of way: 1.7 kilometres</p>	<p>Western Alberta System Mainline (WASML) Loop No. 2 – Turner Valley Section.</p> <ul style="list-style-type: none"> - Approximately 23 kilometres of pipeline located 3 kilometres northwest of Turner Valley, Alberta. -Within Bull Trout distribution area. 	<p>Crossing provincial Crown (1%) and freehold (99%) lands.</p> <p>Continuous with existing disturbances for 94% of its length (21.6 kilometres)).</p> <p>New right of way: 1.4 kilometres.</p>
	<p>WASML Loop No. 2 – Longview Section.</p> <ul style="list-style-type: none"> -Approximately 10 kilometres of pipeline located 30 kilometres southwest of High River, Alberta. -Within Bull Trout distribution area. 	<p>Crossing provincial Crown (21%) and freehold (79%) lands.</p> <p>Continuous with existing disturbances for 97% of its length (9.7 kilometres)).</p> <p>New right of way:0.3 kilometres.</p>
	<p>WASML Loop No. 2 – Lundbreck Section.</p> <ul style="list-style-type: none"> -Approximately 7 kilometres of pipeline located 3 kilometres northwest of Turner Valley, Alberta. 	<p>Crossing provincial Crown (58%) and freehold (42%) lands.</p> <p>Continuous with existing disturbances for 100% of its length (7 kilometres)).</p> <p>New right of way: 0 kilometres.</p>



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-Within Bull Trout distribution area and the proposed water course crossing crosses Westslope Cutthroat Trout designated Critical Habitat.

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<p>Total pipeline kilometres: 31</p> <p>Contiguous right of way within existing disturbances: 24.8 kilometres</p>	<p>British Columbia Mainline Loop No. 2 – Elko Section.</p> <p>- Approximately 31 kilometres of pipeline located 17 kilometres east of Fernie, British Columbia.</p>	<p>Crossing provincial Crown (96%) and freehold (4%) lands. Continuous with existing disturbances for 80% of its length (24.8 kilometres)).</p> <p>New right of way: 6.2 kilometres.</p>
<p>New right of way: 6.2 kilometres</p>	<p>Kingsgate Border Meter Station.</p> <p>-Consists of a change-out to fourteen orifice-meter plates within the existing meter station located near Kingsgate, BC.</p>	<p>Modification within existing site. Construction is not yet scheduled.</p>
<p>Totals for the Four Projects</p>	<p>Total kilometres of pipeline: 108 kilometres.</p> <p>Total contiguous right of way within existing disturbances: 91.8 kilometres.</p> <p>Total new right of way: 16.2 kilometres.</p>	