



Canada Energy
Regulator

Régie de l'énergie
du Canada

Crown Consultation and Accommodation Report

Regarding the proposed NEBC Connector Project

1 December 2023

Prepared by the Canada Energy Regulator as Crown Consultation Coordinator



Land Acknowledgement

The Canada Energy Regulator acknowledges that Canada is on the traditional territory of many diverse Indigenous communities, including First Nations, Inuit and Métis.

The Canada Energy Regulator acknowledges Treaty 8 lands where the proposed Project is located on the traditional and ancestral territory of the Beaver, Cree and Dene Peoples. We acknowledge that this territory is also home to the Metis Settlements and the Métis Nation of Alberta, Region 6.

The Canada Energy Regulator makes this acknowledgement as an act of Reconciliation and gratitude.

Disclaimer

This Report contains information from the OH-001-2022 hearing record and the Commission of the Canada Energy Regulator's Recommendation Report. If there is any inconsistency or ambiguity between references to the record in this Report and evidence filed on the OH-001-2022 hearing record or the Commission's Recommendation Report, the information on the hearing record and Recommendation Report shall prevail.

List of Acronyms

Alberta	Government of Alberta
BC	Government of BC
BCER	BC Energy Regulator
Canada	Government of Canada
CCAR	Crown Consultation and Accommodation Report
CCC	Crown Consultation Coordinator
CER	Canada Energy Regulator
CER Act	Canada Energy Regulator Act
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
Commission	Commission of the Canada Energy Regulator
DFO	Fisheries and Oceans Canada
ECCC	Environment and Climate Change Canada
EMLI	Ministry of Energy, Mines and Low Carbon Innovation
EPP	Environmental Protection Plan
FAs	Federal Authorities
FID	final investment decision
GIC	Governor in Council
IAMC	Indigenous Advisory and Monitoring Committees
IOF	Indigenous Oversight Forum
IR	Information Request
ISC	Indigenous Services Canada
km	kilometres
NGTL	Nova Gas Transmission Ltd.
NorthRiver	NorthRiver Midstream NEBC Connector GP Inc.
NRCan	Natural Resources Canada
OGMA	Old Growth Management Areas
OPR	Onshore Pipeline Regulations
Project	NEBC Connector Project
RoW	right-of-way
Report	Commission's Recommendation Report

section 35 rights	Rights of Indigenous Peoples, including Treaty rights, affirmed by section 35 of the <i>Constitution Act, 1982</i>
TLRU	Traditional Land and Resource Use
UN Declaration	United Nations Declaration on the Rights of Indigenous Peoples
VC	Valued Component

Executive Summary

This Crown Consultation and Accommodation Report (**CCAR**), including the Annexes specific to Indigenous communities, describes the outcome of the Crown’s consultation process with 35 potentially affected Indigenous¹ communities with respect to NorthRiver Midstream NEBC Connector GP Inc.’s (**NorthRiver**) application to construct and operate the NEBC Connector Project (**Project**).

NorthRiver’s Project application was filed pursuant to section 183 of the *Canadian Energy Regulator Act* (**CER Act**) and was considered by the Commission of the Canada Energy Regulator (**Commission**) in the OH-001-2022 hearing process. The Project consists of two 215 kilometres (**km**) long parallel pipelines that will be contained in the same right-of-way (**RoW**). The Project is located wholly in Treaty 8 territory and the traditional territory of many Indigenous communities in Alberta and British Columbia (**BC**).

This CCAR summarizes the consultation activities undertaken by the Commission and by the Canada Energy Regulator (**CER**) in its role as Crown Consultation Coordinator (**CCC**) for the Project. Both the Commission and the CCC were responsible for fulfilling the procedural and substantive aspects of the Crown’s constitutional duty to consult and accommodate with respect to the Project’s potential impacts to the section 35 rights and interests identified by Indigenous communities. The CCC relied on the assessment described in the Commission’s Recommendation Report (**Report**) ([C26744](#)) and the information and evidence available through the Commission’s hearing process.

The CCC supplemented the Commission’s process by consulting 35 Indigenous communities on the Crown List before, during, and after the Commission’s hearing process. The consultations began in July 2021 and continued until November 2023. These consultations included Indigenous communities that did not participate directly in the Commission’s process, so that their views could be considered by the Commission as part of its overall assessment of the Project, as set out in its Report.

Throughout the consultation process, the CCC met with Indigenous communities one-on-one in-community and virtually, hosted multilateral workshops and information sessions, met regularly with NorthRiver, coordinated with federal and provincial authorities, and filed submissions on the hearing record for the Commission’s consideration.

The overarching topic of discussion throughout the entire consultation process related to the Project’s potential impacts to Indigenous communities’ ability to exercise their section 35 rights and interests meaningfully, in particular due to the cumulative impacts of industrial development in the area. This was interconnected with the ongoing dialogue about NorthRiver’s proposed offset plan.

The other overarching topics of discussion included:

- Procedural and policy concerns relating to the regulatory process and cross-jurisdictional issues;
- NorthRiver’s engagement with Indigenous communities;

¹ Indigenous peoples of Canada as defined in section 2 of the *CER Act*, which has the meaning assigned by the definition of ‘aboriginal peoples of Canada’ in subsection 35(2) of the *Constitution Act, 1982* as including First Nations, Inuit, and Métis peoples of Canada.

- Project-specific potential impacts to section 35 rights and interests, including:
 - Traditional Land and Resource Use and hunting and trapping, harvesting of vegetation, medicines and culturally significant plants;
 - Impacts on water quality and quantity, and watercourse crossings;
 - Employment, training and economic inclusion for Indigenous Peoples; and
 - Cumulative effects and cumulative impacts on rights.

The CCC filed eight substantive consultation submissions, including recommendations to the Commission for its consideration, based on what the CCC had heard from Indigenous communities:

Early Engagement Phase:

- Summary of Issues, 29 October 2021 ([C15789](#))

Commission Hearing Process:

- First Submission, 3 March 2022 ([C18006](#))
- Supplemental to the First Submission, 24 March 2022 ([C18289](#))
- Second Submission, 18 October 2022 ([C21461](#))
- CCC Response to Information Requests, 6 December 2022 ([C22398](#))
- Summary of CCC Workshop on NorthRiver's Revised Offset Plan and Conditions, 4 May 2023 ([C24394](#))
- Third Submission, including the CCC's 11 recommendations for Commission consideration, 25 May 2023 ([C24596](#))
- Indigenous communities' feedback on the CCC's 11 recommendations, 14 July 2023 ([C25534](#))

In its Report, the Commission concluded that there has been adequate consultation and accommodation for the purpose of the Commission's recommendations to the GIC and its own determinations on the Project. The Commission also concluded that the hearing process provided opportunities for meaningful participation of Indigenous Peoples, and that its recommendation to the GIC and the corresponding decisions on the Project are consistent with the requirements of section 35 of the *Constitution Act, 1982* and the honour of the Crown.

Through supplemental Crown consultation activities that continued after the close of the Commission's record on 26 July 2023 and following the release of the Commission Report on 18 October 2023, the CCC met with Indigenous communities until 17 November 2023, both individually and collectively, to discuss and better understand any concerns and potential impacts related to the Project that remained outstanding and any appropriate accommodation measures. These final consultation activities were conducted in a meaningful, yet timely, manner to support a GIC decision on the Project within the legislative time limit of 90-days, as set out under the CER Act.

In addition, the CCC has committed to hosting a session in early in 2024, should the Project be approved, to review the conditions for the Project in detail and to explain the CER's approach to condition compliance. A \$5,000 grant will be made available to Indigenous communities on the Crown list to participate.

The Crown is of the view that throughout the entire process, it has offered meaningful two-way dialogue in good faith, has provided responses to each of the concerns that were raised (included in the Indigenous Community-Specific Annexes). Where appropriate, the Crown has provided reasonable accommodations to address potential impacts on section 35 rights and interests, as

identified. Accordingly, this report concludes that Canada has fulfilled its duty to consult, and, where appropriate, accommodate.

The Crown provides this CCAR to the Minister of Energy and Natural Resources recognizing that the Crown's final decision on the Project and the adequacy of consultation and accommodation is made by the Governor in Council (**GIC**), as decision-maker pursuant to section 186 of the CER Act.

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1. Introduction

This CCAR, including the Annexes specific to Indigenous communities, describes the outcome of the Crown’s consultation process with potentially affected Indigenous communities with respect to NorthRiver’s application to construct and operate the Project. This CCAR was developed based on consideration of the Report ([C26744](#)), the information and evidence available through the Commission’s hearing process, and supplemental consultations undertaken between the CER as CCC and potentially affected Indigenous communities.

This CCAR is provided by the CER as CCC in its role as agent of the Crown with respect to Crown consultation undertaken on the Project’s potential impacts to rights of Indigenous Peoples, including Treaty rights, affirmed by section 35 of the *Constitution Act, 1982* (**section 35 rights**), and other interests identified by Indigenous communities, recognizing that the Crown’s final decision is made by the GIC as decision-maker pursuant to section 186 of the CER Act.

The Government of Canada (**Canada**) is committed to advancing Reconciliation through a renewed relationship with Indigenous Peoples based on a recognition of rights, respect, cooperation and partnership. Canada is further committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples (**UN Declaration**) and recognizes the UN Declaration as a framework for advancing Reconciliation. These commitments inform the way the Crown fulfills its duty to consult and, where appropriate, accommodate Indigenous Peoples. This includes fostering meaningful, two-way dialogue in a manner that upholds the honour of the Crown. It is with this commitment in mind that the CER carried out its responsibilities for coordinating all federal Crown consultation activities with Indigenous communities in relation to the Project.

The CER, in its role as CCC and as agent of the Crown, relied on the Commission’s OH-001-2022 public hearing and assessment process as the primary forum for consultation with Indigenous Peoples. The CER, in its role as CCC, acknowledges that the Commission has the technical expertise and mandate to consider and address the Project’s impacts, including those affecting the section 35 rights and interests of Indigenous Peoples. To this end, the CCC encouraged Indigenous communities to participate directly in the Commission’s hearing process.

The CCC also coordinated with other federal authorities and encouraged their participation in the hearing process. These federal authorities (**FAs**) included Crown-Indigenous Relations and Northern Affairs Canada (**CIRNAC**), Environment and Climate Change Canada (**ECCC**), Health Canada, Indigenous Services Canada (**ISC**), Fisheries and Oceans Canada (**DFO**), Natural Resources Canada (**NRCan**), and Transport Canada. The CCC and FAs worked together to provide, where necessary, a whole-of-government response to concerns heard from Indigenous communities relating to the Project. In addition to federal coordination, the CCC engaged the governments of BC and Alberta and encouraged their participation in the hearing process. These coordination activities are summarized in section 8 of this report.

The CCC held a total of 71 consultation meetings with Indigenous communities, of which 26 were held virtually. Seventeen consultation meetings were held in the Early Engagement phase, 41 were held during the Commission’s hearing process, and 13 were held in the GIC phase.

This CCAR reflects the CCC’s understanding of the concerns and interests of affected Indigenous communities with respect to the Project as of 17 November 2023. This understanding is based on

the substantive dialogue between the CCC and Indigenous communities over the course of the consultation on this Project. The CCC shared draft versions of Indigenous community-specific Annexes between 26 September and 31 October 2023 for each respective Indigenous community to review, validate, and provide comments for dialogue with the CCC. This CCAR is informed by the feedback and comments from Indigenous communities on their respective Annexes.

2. The CER: the Commission and the CER's Role as Crown Consultation Coordinator

2.1 About the CER

The CER regulates pipelines, power lines, and offshore renewable energy projects within federal jurisdiction, and shares energy information, all while enforcing some of the strictest safety and environmental standards in the world. The CER's mission is to ensure safe and efficient delivery of energy to Canada and the world, protecting people, property and the environment, and recognizing and respecting the rights of the Indigenous Peoples.

The CER's commitments to the ongoing process of Reconciliation and implementing the UN Declaration are referenced explicitly in the preamble of the CER Act. The CER has reinforced these commitments through identifying Reconciliation as one of its four interconnected Strategic Priorities,² recognizing the **UN Declaration** as a framework for advancing Reconciliation,³ and committing to its implementation. On 21 June 2021, [the United Nations Declaration on the Rights of Indigenous Peoples Act \(UNDA\)](#) came into force. The UNDA affirms the UN Declaration as a universal international human rights instrument with application in Canadian law and provides a roadmap for Canada and Indigenous Peoples to work together to implement the UN Declaration based on lasting Reconciliation, healing, and cooperative relations.

As part of Canada's commitment to implement the UN Declaration, it released the 2023-2028 UN Declaration Action Plan on 21 June 2023. The UN Declaration Action Plan offers a path towards Reconciliation that will be walked by generations to come. It is an evergreen roadmap, with opportunities to renew and further co-develop its contents as part of the UN Declaration implementation process. In this way, the Action Plan will continue to evolve in consultation and cooperation with Indigenous peoples. While there are many articles and priorities in the Action Plan, Article 34 in Lands, Territories and Resources outlines the need to work in consultation and cooperation to (i) enhance the participation of Indigenous Peoples in, and (ii) set the measures that could enable Indigenous Peoples to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the CER. The CER will continue to work with Indigenous and government partners to implement the Action Plan as part of a whole-of-government approach.

The CER's strategy is based on a firm belief that meaningful change is driven by enhancing Indigenous Peoples' involvement in the CER's functions, recognizing the unique cultures, knowledge and histories. The strategy is also driven by building renewed relationships based on the recognition of rights, respect, cooperation and partnership, and improving the cultural intelligence of the CER

² The CER's Strategic Priorities provided on the CER website at: [CER – Who we are and what we do - Our Strategic Plan \(cer-rec.gc.ca\)](#)

³ The CER's Statement on Reconciliation provided on the CER website at: [CER – Reconciliation \(cer-rec.gc.ca\)](#)

and its staff. As an organization regulating energy projects that may impact the ability of Indigenous Peoples to exercise their Section 35 rights, efforts towards protecting rights and building a shared cultural awareness is key to establishing strong and trusting relationships, and the CER is committed to building these relationships with Indigenous Peoples.

2.2 The Commission

The Commission is the entity within the CER that makes adjudicative decisions and recommendations on project applications. The Commission functions independently from other parts of the CER governance structure, the CCC and NRCan. It contributes to the overall effective delivery of the CER's mandate and corporate outcomes. When examining project applications, the Commission assesses, among other things, the engineering, environmental, socio-economic, economic and financial aspects of potential projects. The Commission also considers the rights, interests and concerns of Indigenous Peoples, including with respect to their current use of lands and resources for traditional purposes and the potential effects of projects on the exercise of their rights.

As a decision-maker, the Commission has the authority to discharge the duty to consult, and, where appropriate, accommodate Indigenous Peoples. The Commission's application assessments, hearing processes, and recommendation reports are designed and implemented to satisfy the Crown's duty to consult and if appropriate, accommodate, impacts to the rights and interests of Indigenous Peoples, and are the primary means through which the CER consults with potentially affected Indigenous Peoples.

2.3 The CER's Lifecycle Role

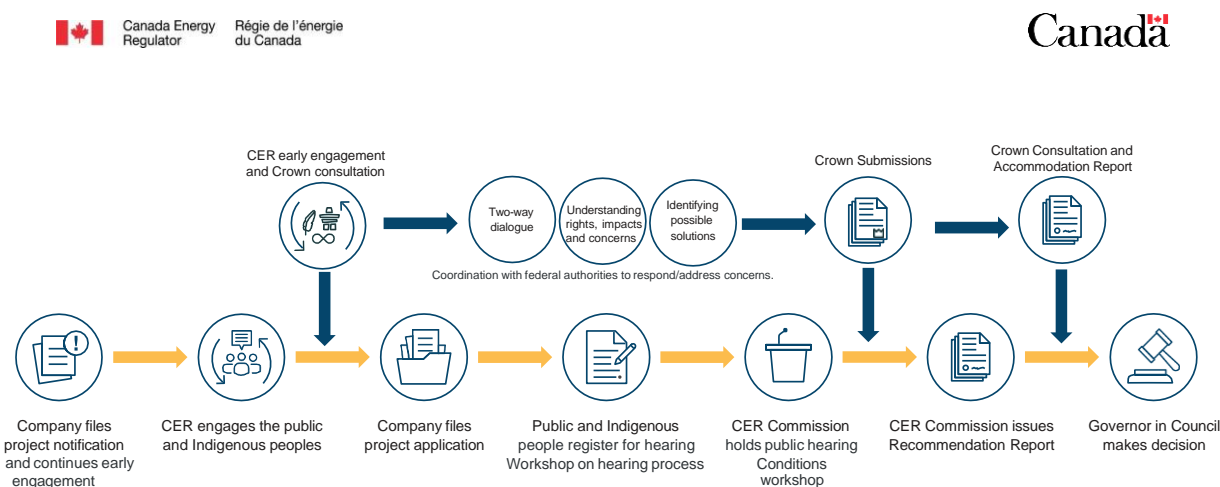
In carrying out its responsibilities under the CER Act, the CER takes a lifecycle approach to regulating facilities under its jurisdiction. The CER's regulatory oversight occurs during the pre-construction and construction phases, continues throughout the operation of the facility, and also occurs when a facility has reached the end of its lifecycle and is abandoned. The overarching aim of the CER's lifecycle regulation is to ensure that the infrastructure that it regulates is constructed and operated safely in a way that protects the environment, the rights of Indigenous Peoples, and the public. If a project is approved, there are often conditions specific to the project that the proponent must comply with. The CER verifies that a proponent is meeting the conditions by activities, such as, assessing condition filings, conducting inspections and audits, and holding compliance meetings. When a proponent does not meet the requirements, the CER has the authority to take action to bring the proponent back into compliance so they are operating safely. The CER has a number of enforcement tools available, such as Inspection Officer Orders, Administrative Monetary Penalties, Warning Letters, revoking or suspending authorizations, and prosecution.

2.4 The CER’s Role and Approach as Crown Consultation Coordinator⁴

The CER is an agent of the Crown and therefore acts on behalf of the Crown in fulfilling the duty to consult with Indigenous Peoples. The CER tailors the scope and nature of its engagement and Crown consultation activities to the complexity of a proposed project and its potential effects, as well as the needs and preferences of potentially affected Indigenous Peoples. The Commission’s application assessment, hearing process, and its Report are designed and implemented to be able to satisfy the Crown’s duty to consult and accommodate impacts to the rights and interests of Indigenous communities, and are the primary means through which the CER consults with potentially affected Indigenous Peoples.

The CER’s Crown consultation activities begin early and occur concurrent to the Commission’s hearing process, recognizing that the Commission’s process is the primary forum for effecting the CER’s Crown consultation efforts. The CCC’s process is supplemental to the hearing process.

CER’s Approach to Crown Consultation



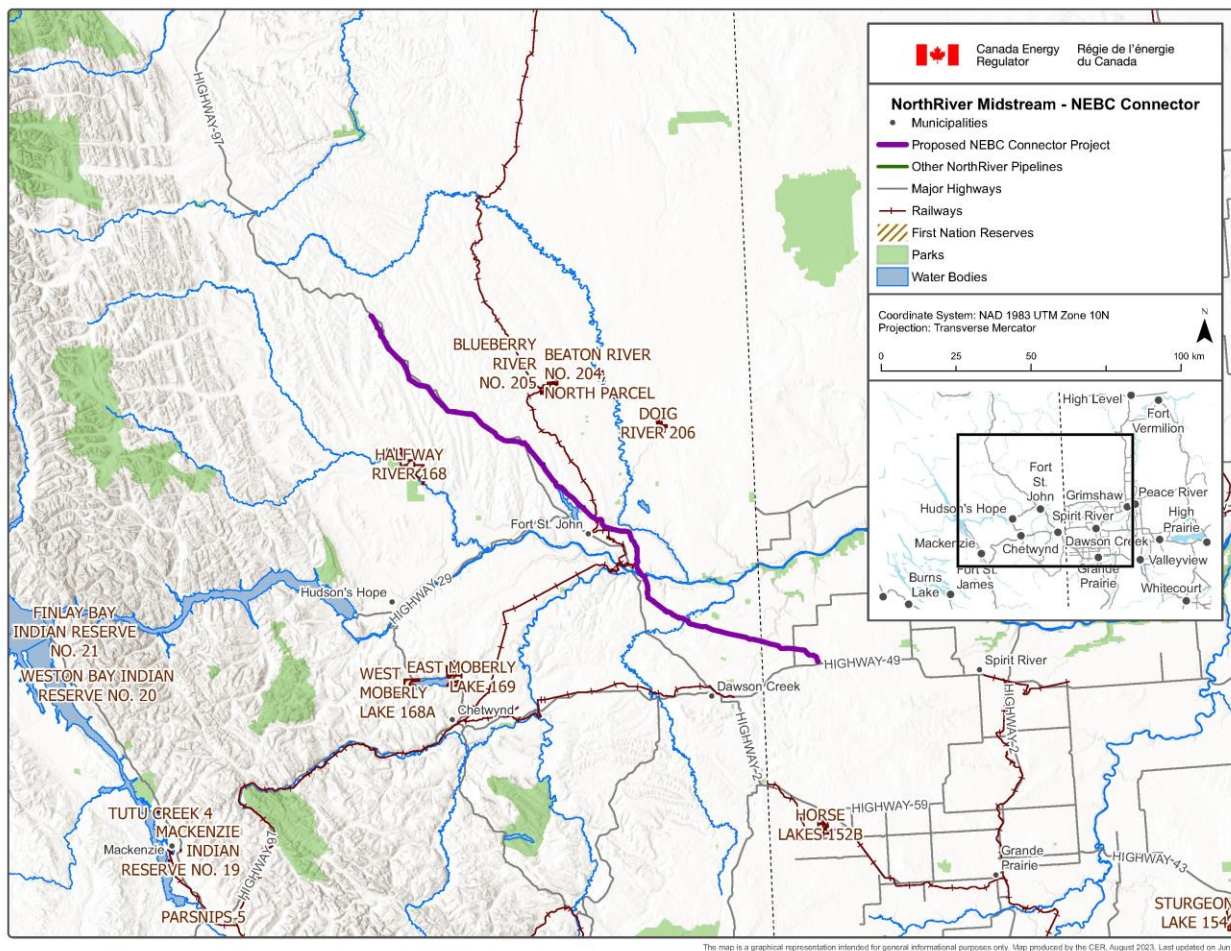
The CCC shares information with the Commission arising from, or relating to, its consultation activities through filings on the hearing record so that all affected parties have an opportunity to respond on the record, for the Commission’s consideration.

The CCC is transparent throughout dialogue with Indigenous communities that project-related Crown consultation is not a rights-determining process. The CCC engages and consults with all Indigenous communities who may have asserted or established section 35 rights and/or interests in a project area and may be potentially impacted by a project.

⁴ See <https://www.cer-rec.gc.ca/en/consultation-engagement/crown-consultation/index.html>

The Crown consultation process, including the Commission’s hearing process, is designed to allow the CCC and potentially affected Indigenous communities to participate in substantive, meaningful two-way dialogue in order to understand potential project impacts to section 35 rights and interests of Indigenous communities, and to discuss and develop potential community-specific mitigations, recommendations and potential accommodation measures, first for the Commission’s consideration and finally for the GIC’s decision.

3. Overview of the Project



On 18 November 2021, NorthRiver filed the Application ([C16186](#)) for the NEBC Connector Project pursuant to sections 182 and 183 of the CER Act. The Project consists of two parallel pipelines that are each approximately 215 km in length. The pipeline components for the Project require a total cumulative length of approximately 215 km of RoW, approximately 20 km of which will be new non-parallel RoW, as well as associated temporary workspace.

NorthRiver sought limited exemptions under section 214 of the CER Act, which were approved by the Commission subject to the GIC’s approval of the portion of the application relating to sections 182 and 183 of the CER Act. The exemptions approved are for:

- temporary infrastructure required for construction of the pipelines;

- RoW preparation activities (including clearing, grading, stripping and topsoil storage) and conducting trenchless crossing in select areas along the proposed route (in aggregate not exceeding 40 km in length); and
- installation of pump station and storage capacity within the boundaries of the existing Highway Hub footprint.

NorthRiver also sought an exemption from the leave to open requirement under subsection 213(1) of the CER Act for the pump station and storage capacity additions at the Highway Hub. This was denied by the Commission.

The RoW and temporary workspaces are located on both private (freehold) land and Crown land in BC and Alberta. Approximately 61.5 per cent (132 km) of lands traversed by the pipeline components are on private (freehold) land, and approximately 38.5 per cent (82.9 km) are on Crown land.

Subject to regulatory approval, construction is scheduled to begin in Q3 2024 and extend until Q2 2025, with facilities scheduled to be in service by Q2 2025. Pipeline construction will occur over a period of up to one year. (Source: NorthRiver Reply Evidence for the NEBC Connector Project, 8 June 2023 [C24795](#))

4. Development of the Crown List

To identify Indigenous communities that may have asserted or established section 35 rights and/or interests in the Project area and may be potentially impacted by the Project, the CER considered the following criteria and developed the Crown List:

- Boundaries of traditional territories and intersections between traditional territories and the Project;
- Requests from Indigenous communities to be included in proponent engagement and Crown consultation with respect to the Project; and
- Asserted or established authority of an Indigenous organization to speak on behalf of section 35 rights-holders who may be affected by the Project.

These Indigenous communities, and representative organizations for the purposes of Crown consultation, are set out below in Table 1 – Crown List for the NEBC Connector Project.

Table 1: Crown List for the NEBC Connector Project	
1. Apetokosan Nation (Kelly Lake Métis Settlement Society)	19. Kelly Lake First Nation
2. As'in'l'wa'chi Ni'yaw (Kelly Lake Cree Nation)	20. Kikino Metis Settlement
3. Beaver First Nation	21. Louis Bull Tribe
4. Blueberry River First Nations	22. McLeod Lake Indian Band
5. British Columbia Métis Federation	23. Métis Nation of Alberta
6. Buffalo Lake Metis Settlement	24. Métis Nation of Alberta Region 6
7. Dene Tha' First Nation	25. Métis Nation British Columbia
8. Doig River First Nation	26. Métis Nation British Columbia Northeast Region

9. Driftpile Cree Nation	27. Metis Settlements General Council
10. Duncan's First Nation	28. Paddle Prairie Metis Settlement
11. East Prairie Metis Settlement	29. Peavine Metis Settlement
12. Elizabeth Metis Settlement	30. Prophet River First Nation
13. Fishing Lake Métis Settlement	31. Saulteau First Nations
14. Foothills First Nation	32. Sucker Creek First Nation
15. Fort Nelson First Nation	33. Tsay Keh Dene
16. Gift Lake Metis Settlement	34. West Moberly First Nations
17. Halfway River First Nation	35. Whitefish Lake First Nation #459
18. Horse Lake First Nation	

Initially, the Crown list did not include Driftpile Cree Nation, Lous Bull Tribe, Sucker Creek First Nation, and Whitefish Lake First Nation #459; these four Indigenous communities were identified on 7 February 2022 as potentially affected and added to the Crown list after the filing of the Project Application (see section 6.1 Consultation Activities during the Early Engagement Phase).

5. Grants and Contributions

The CER administers Participant Funding independent of the Commission's hearing and the CCC processes. Participant Funding provides financial assistance to Indigenous Peoples, landowners, and non-industry not-for-profit groups to participate in public hearings and the related CER Crown consultation process.

A maximum of \$165,000 was made available to Indigenous communities throughout the Crown consultation and hearing processes for the Project and covered the following:

- \$5,000 to participate in Early Engagement activities, and
- up to \$100,000 to participate in the regulatory process as an Intervenor in the hearing; or
- up to \$60,000 to participate in the Crown consultation process only; or
- up to \$160,000 to participate in both the hearing and Crown consultation activities.

Funding for Early Engagement activities was announced to Indigenous communities on 5 July 2021 in the CER's letter to Indigenous Peoples regarding receipt of Project Notification and offered to all Indigenous communities and organizations identified as potentially affected by the Project at that time.

Funding for the hearing and/or Crown consultation processes was established in Contribution Agreements, which covered eligible costs (including legal, experts, incremental staff, travel, honoraria, up to 15% administrative and other costs) incurred from the date the proponent filed the Project application with the CER (18 November 2021) to the date the GIC makes its decision (anticipated by 16 January 2024).

On 31 March 2023, five Indigenous communities requested additional funding, noting various steps had been added to the Commission's hearing process and consultation activities. In response, on 4 April 2023, the CER notified all Indigenous communities that additional funding in the amount of

\$20,000 was available. This resulted in the funding amount for participating in the hearing and Crown consultation activities to increase from \$140,000 to \$160,000.

In addition, a post-decision \$5,000 grant will be offered to all Indigenous communities involved in Crown consultation which will be announced when the GIC decision is issued. Due to the ongoing and variable nature of Crown consultation, the final numbers for funding will not be known for some time and the amounts in Table 2 do not include any post-decision \$5,000 grants.

As of 24 November 2023, the CER has signed Contribution Agreements with 27 Indigenous communities on the Crown list for a total of \$3.42 million. A total of \$1.75 Million has been advanced or reimbursed. Advances are subject to final accounting in accordance with signed Contribution Agreements. Table 2 sets out the Contribution Agreement amounts allocated (offered and not necessarily sent at this time) to Indigenous communities.

Table 2: Participant funding amounts for Crown Consultation (including Early Engagement) and/or hearing process

Indigenous Community	Early Engagement Grant	Contribution Agreement Value ⁵
Apetokosan Nation (Kelly Lake Métis Settlement Society)	\$5,000	\$140,000
As'in'l'wa'chi Ni'yaw (Kelly Lake Cree Nation)	\$5,000	\$160,000
Beaver First Nation		Pending Signature
Blueberry River First Nations		\$140,000
British Columbia Métis Federation	\$5,000	\$160,000
Buffalo Lake Metis Settlement	\$5,000	\$140,000
Dene Tha' First Nation	\$5,000	\$140,000
Doig River First Nation		\$160,000
Driftpile Cree Nation		\$140,000 revised pending signature
Duncan's First Nation		\$160,000
East Prairie Metis Settlement		Funding not requested
Elizabeth Metis Settlement	\$5,000	\$40,000
Fishing Lake Métis Settlement	\$5,000	Funding not requested
Foothills First Nation	\$5,000	\$160,000
Fort Nelson First Nation		Funding not requested
Gift Lake Metis Settlement		\$40,000
Halfway River First Nation		\$40,000 revised pending signature
Horse Lake First Nation		\$140,000
Kelly Lake First Nation	\$5,000	\$140,000

⁵ This is the amount offered in the signed Contribution Agreement and the maximum that can be claimed. The actual amount paid depends on the eligible costs reimbursed.

Indigenous Community	Early Engagement Grant	Contribution Agreement Value ⁵
		revised pending signature
Kikino Metis Settlement		\$140,000
Louis Bull Tribe		\$160,000
McLeod Lake Indian Band	\$5,000	\$140,000 revised pending signature
Métis Nation of Alberta / Region 6		\$60,000
Métis Nation British Columbia / Northeast Region		\$140,000 revised pending signature
Metis Settlements General Council		\$40,000
Paddle Prairie Metis Settlement	\$5,000	\$140,000
Peavine Metis Settlement	\$5,000	\$140,000
Prophet River First Nation		\$40,000
Saulteau First Nations	\$5,000	\$40,000
Sucker Creek First Nation		\$160,000
Tsay Keh Dene		Pending Signature
West Moberly First Nations		\$160,000
Whitefish Lake First Nation #459		\$160,000
Total	\$65,000	\$3,420,000 with another \$360,000 pending signature

6. Summary of Supplemental Crown Consultation Coordinator Activities

6.1 Consultation Activities during the Early Engagement Phase

On 30 April 2021, NorthRiver filed a Project Notification ([C12778](#)) with the CER regarding the Project. In response, on 6 July 2021, the CER issued a letter to NorthRiver ([C13909](#)) informing NorthRiver that the CER would be undertaking Early Engagement and Crown consultation activities in advance of the application being filed and describing the type of activities that it was planning.

The CER sent a letter on 5 July 2021 to Indigenous communities ([C13902](#)) initially identified as potentially affected by the Project. The CCC followed up with phone calls, texts and emails to begin the dialogue and meet one-on-one with Indigenous communities. In light of the ongoing COVID-19 pandemic, the CCC stated that it would conduct consultations virtually and remained flexible to adapting the approach as the pandemic situation evolved. The objectives of these early consultation meetings were to introduce the role of the CCC, discuss the potential timeframes for consultations and the hearing process, and to begin dialogue on any potential Project-specific impacts, concerns or questions.

On 29 October 2021, the CCC filed a Summary of Issues on the hearing record ([C15789](#)) This summary described the key areas of interest and concern about the Project identified by Indigenous communities during the CER's Early Engagement Phase, including the concerns about the hearing

process, the importance of the decision of the BC Supreme Court in *Yahey v. British Columbia*⁶ (**Yahey**) and concerns regarding impacts to section 35 rights and interests as a result of cumulative effects of industrial development in the region. Through the Early Engagement Guide, the CER was clear that the intent is for proponents to address the topics raised in the Summary of Issues in their project application.

The Early Engagement activities did not include Driftpile Cree Nation, Lous Bull Tribe, Sucker Creek First Nation, and Whitefish Lake First Nation #459. These four Indigenous communities were identified on 7 February 2022 as potentially affected by the Project and added to the Crown List after the filing of the Project Application, at which time the CCC began consulting them. The CCC contacted each of these four Indigenous communities on 7 February 2022, via email, to share high level Project information, to confirm the Indigenous communities would like to be included in the Crown consultation activities moving forward, and to offer an introductory meeting. The CCC also informed these Indigenous communities about the upcoming Project information sessions organized by the CCC. The CCC informed NorthRiver of these additional Indigenous communities on 8 February 2022. The CCC filed this latter information in its first submission on 3 March 2022.

Although these nations were not part of the Early Engagement phase, the CCC would like to note that consultations with Sucker Creek First Nation, Whitefish Lake First Nation #459, Driftpile Cree Nation, and Louis Bull Tribe began over six months prior to the commencement of the Commission's hearing process and the Indigenous communities had the opportunity to participate in early pre-hearing steps, such as workshops on the hearing process and cumulative effects.

6.2 Consultation Activities Concurrent with Commission Assessment

A core principle of the CCC's approach to Crown consultation is to file information relating to its consultations on the hearing record for the Commission's consideration. This supports a transparent, robust, and fair process, while also offering more flexible consultation activities and direct dialogue between all Indigenous communities and the Crown. As described in this section, the CCC was an active participant in the Commission's hearing process in order to bring as much information forward for consideration.

On 18 November 2021, NorthRiver filed its Project application with the CER and nine months later, on 31 August 2022, the Commission determined the application to be complete. In recognition of the Project's unique context, the Commission implemented several novel process steps prior to making its completeness determination. This included three rounds of Commission information requests (**IRs**) to NorthRiver, two of which gathered further information on upstream development, a community-by-community assessment of Indigenous and Treaty rights, as well as NorthRiver's

⁶ *Yahey v. British Columbia*, 2021 BCSC 1287 [Yahey]. In this case, the BC Supreme Court found, among other things, that the extent of the lands taken up by the Province for industrial development (including the associated disturbances, impacts on wildlife, and impacts on Blueberry River First Nations' way of life), meant there are no longer sufficient and appropriate lands in Blueberry River First Nations' territory to allow for the meaningful exercise by Blueberry River First Nations of its Treaty 8 rights.

proposed offset plan. The Commission also held a process workshop and a technical workshop on the assessment methodology to be used for cumulative effects.

The 31 August 2022 completeness determination started the Commission's 450-day time limit under the CER Act to hold a public hearing and prepare a report setting out its recommendation as to whether the Project was in the public interest, along with any conditions.

Throughout November 2021 to July 2023, the CCC continued to meet directly with Indigenous communities, including those not participating directly in the Commission's hearing process. The CCC also provided regular updates to all Indigenous communities on the Crown list about key upcoming hearing steps and milestones, informing them that the CCC remained open and flexible to meetings with Indigenous communities.

The CCC acknowledged the important context of the Yahey decision for this Project. The CCC consulted with all interested Indigenous communities for this Project, to discuss their concerns regarding the potential effects of the Project, including its potential impacts on section 35 rights and interests, and cumulative effects.

The CCC's approach throughout the Commission's hearing was to put as much information on the hearing record as possible. The CCC filed seven substantive consultation submissions, with recommendations, during the Commission's process, based on what the CCC had heard from Indigenous communities:

- First Submission, 3 March 2022 ([C18006](#))
- Supplemental to the First Submission, 24 March 2022 ([C18289](#))
- Second Submission, 18 October 2022 ([C21461](#))
- CCC Response to Information Requests, 6 December 2022 ([C22398](#))
- Summary of CCC Workshop on NorthRiver's Revised Offset Plan and Conditions, 4 May 2023 ([C24394](#))
- Third Submission, including the CCC's 11 recommendations for Commission consideration, 25 May 2023 ([C24596](#))
- Indigenous communities' feedback on the CCC's 11 recommendations, 14 July 2023 ([C25534](#))

The CCC participated in the following hearing steps and hosted the following workshops concurrent to the Commission hearing process:

- The CCC made its first submission to the Commission on 3 March 2022 to outline the start of consultations with Indigenous communities and to provide the Commission with comments on the hearing process.
- From 9-11 March 2022, the Commission hosted a virtual workshop ([C18568](#)) on its process. The session was an opportunity for participants to ask questions and to provide comments. The session on 9 March 2022 was an introductory session, providing an overview of the CER, the Commission, typical hearing processes, and the draft List of Issues, with a focus on Indigenous Peoples' participation in the hearing process. The purpose of the session on 10 March 2022 was to receive all parties' comments on the proposed hearing process on the draft List of Issues. The purpose of the session on 11 March 2022 was to hear from Indigenous Peoples and receive comments on matters relating to Indigenous Peoples'

participation in the hearing, including on the proposed hearing process. This workshop was facilitated by a neutral third party.

- On 24 March 2022, the CCC filed supplemental information ([C18289](#)) to its first submission from 3 March 2022 and provided further clarification and updates regarding the status of consultations with Indigenous communities engaged by the CCC, including the CCC's understanding of their participation in the process at the time of the submission of the supplemental information.
- On 20, 22-24 June 2022, the Commission hosted a workshop on Cumulative Effects ([C19637](#), [C19664](#), [C19669](#), and [C19714](#)), in order to provide an opportunity to hear views on suggested methodology with respect to the assessment of cumulative impacts on Indigenous Peoples' rights, culture, and way of life. The Commission welcomed discussion on what commonalities may be found with respect to the methodology and what gaps may exist.
- On 18 October 2022, the CCC filed its second submission to the Commission ([C21461](#)) which included a summary of the CCC's consultations with Indigenous communities and engagement with NorthRiver and FA's between 24 March and 12 October 2022. The submission also contained additional comments and feedback from the CCC regarding the hearing process and the CCC's future submissions.
- On 6 December 2022 the CCC filed its responses to IRs ([C22398](#)) which it had received from Doig River First Nation, Driftpile Cree Nation, Duncan's First Nation, Louis Bull Tribe, Sucker Creek First Nation, and Whitefish Lake First Nation #459.
- On 28 February – 2 March 2023 the Commission hosted a workshop on NorthRiver's Preliminary Offset Plan ([C23457](#), [C23490](#), [C23507](#)) with Indigenous communities, NorthRiver, and the CCC. The workshop provided a forum to come together, share perspectives, and collaborate on the continued development of NorthRiver's Offset Plan. The CCC participated in discussions to share perspectives regarding the Preliminary Offset Plan, as well as more technical discussions related to the overall goals of the offset plan, offset principles, residual Project effects and what could be offset, and offset measures. This workshop was facilitated by a neutral third party.
- Some Indigenous communities, including Doig River First Nation, Kelly Lake First Nation, Louis Bull Tribe and Peavine Metis Settlement, voiced frustration at the format and structure of the Commission's offset workshop on 28 February – 2 March 2023. As a result, Doig River First Nation proposed that the CCC facilitate a session without the proponent where Indigenous communities and the Crown could come together to identify common ground amongst Indigenous communities on the offset principles for the Project. The CCC worked with Doig River First Nation to co-facilitate a workshop on 4-5 April 2023 on NorthRiver's Revised Offset Plan that was submitted on 23 March 2023. At the request of Indigenous communities, NorthRiver did not participate in the workshop.
- The CCC filed a summary of the 4-5 April 2023 workshop on 4 May 2023. The summary described how, during the workshop, the Indigenous communities present came to common ground on 11 principles for an offset plan, that differed from NorthRiver's Revised Offset Plan. These 11 principles were included as a recommendation for the Commission's consideration in the CCC's 25 May 2023 Third Submission to the Commission. The CCC's workshop summary also provided feedback from Indigenous communities on other aspects of the offset plan, for the Commission's consideration and available to help inform NorthRiver's next iteration of its offset plan.
- On 8 and 10 May 2023 the CCC hosted a virtual workshop on the potential conditions that had been released by the Commission on 4 May 2023. The main objective of this workshop

was for the CCC to describe what conditions are, generally, including the significance of conditions as part of the CER's hearing process and how they are developed. The sessions were also attended by other federal departments, including one representative of the Province of BC. The CCC encouraged Indigenous communities participating in the hearing process to provide comments on the Commission's potential conditions directly on the hearing record. For Indigenous communities that were not participating in the hearing, but were on the Crown list, the CCC sought feedback, which would be included in the CCC's 25 May 2023 Third Submission to the Commission. The CCC received written comments from British Columbia Métis Federation, Métis Nation of Alberta, and Paddle Prairie Metis Settlement.

- On 25 May 2023, the CCC filed its Third Submission to the Commission ([C24596](#)). The Third Submission contained 11 Recommendations for the Commission's consideration. The recommendations were based on the CCC's understanding of the concerns raised with regards to the Project's impacts to section 35 rights and interests and dialogue with Indigenous communities, including those that did not participate directly in the hearing process. In its Report the Commission responded to each of the CCC's recommendations and explained its rationale for accepting each of them or not.
- The CCC was orally cross examined on 28 June 2023 by Kelly Lake First Nation, NorthRiver, Legal Counsel for the Commission, and the Commission Panel ([C25266](#)).
- On 11 July 2023 the CCC hosted a virtual session on its 11 Recommendations to the Commission. The virtual session was an opportunity for Indigenous communities to ask questions and provide feedback on the CCC's 11 Recommendations to the Commission, with the CCC specifically requesting that Indigenous communities identify support, disagreement, and if the recommendations would potentially address the potential impacts and or concerns raised to date with the CCC. Doig River First Nation also presented its Alternative Offset Plan and sought endorsement of its plan ([C24509](#)) from Indigenous communities present.
- The CCC filed additional information on 14 July 2023 containing feedback from Indigenous communities on the CCC's 11 Recommendations ([C25534](#)). The feedback was supportive of the CCC's recommendations, with suggestions for stronger and direct proposals to the Commission. The CCC also included a description of Indigenous communities' endorsement of Doig River First Nation's Alternative Offset Plan.

The CCC continued proactive consultations with all Indigenous communities and the whole-of-government approach to consultation, working with other relevant federal authorities to leverage federal expertise and connect Indigenous communities with any relevant initiatives and programs across the Government of Canada. The CER offered an additional \$20,000 to Indigenous communities (as reflected under section 5 Grants and Contributions) to support their participation in any remaining steps in the Commission's hearing process and/or continued Crown consultation activities.

6.3 Consultation Activities Following the Close of the Commission's Record

The Commission's hearing record closed on 26 July 2023. During this phase of the process, the CCC shifted from supplementing the Commission's process to supporting the GIC's decision-making. The CCC respected Indigenous communities' request to avoid consultations over the summer months and resumed meeting with Indigenous communities in September 2023.

In late September and early October 2023, the CCC sent Community-specific Annexes to all Indigenous communities. The first draft of the Annexes described, in Indigenous communities' words as much as possible, the CCC's understanding of potential impacts to section 35 rights and interests that each Indigenous community had shared with the CCC to date and may still be considered outstanding. It also contained preliminary Crown responses. Feedback was requested by 23 October 2023. These first drafts of the Annexes were shared prior to the release of the Commission Report. The Annexes were primarily based on:

- Direct consultation with potentially affected Indigenous communities that occurred during the Early Engagement phase of the Project to the close of the hearing record;
- Direct engagement with the proponent, NorthRiver, and NorthRiver's Project application, commitments and proposed mitigation measures;
- Feedback from various federal and provincial authorities and CER technical and subject matter experts; and
- Filings on the OH-001-2022 hearing record, including the CCC's recommendations and the draft potential conditions that had been released by the Commission on 4 May 2023.

6.4 Consultation Activities Following the Release of the Commission Report

On 18 October 2023, the Commission submitted its Report to the Minister of Energy and NRCan ([C26744](#)). The Commission recommended that the Project be approved, subject to 49 recommended conditions, and provided reasons for its findings.

The CCC sent an email on 18 October to all Indigenous communities on the Crown list providing a link to the Report and confirmation that the GIC has 90 days under the CER Act to make a decision, no later than 16 January 2024. The CCC indicated it would conclude Crown consultations on the Project application by 17 November 2023. The CCC received an email from Blueberry River First Nations on 18 October 2023 reiterating that it had withdrawn as an intervenor in February 2023 and it would engage with BC as part of the provincial regulatory processes and not with the CCC.

The CCC continued to consider the Yahey decision as it undertook Crown consultations in support of the GIC decision-making after the Commission released its Report, and as the CCC prepared its CCAR to the Minister of Energy and NRCan.

As mentioned above, the CCC sent first drafts of Community-Specific Annexes in late September and early October 2023 prior to the Report being released in order to validate the CCC's understanding of potentially outstanding impacts according to Indigenous communities. The CCC requested written feedback on this first iteration by 23 October 2023. The CCC received comments from British Columbia Métis Federation, Halfway River First Nation, West Moberly First Nations, and Kelly Lake First Nation. British Columbia Métis Federation confirmed that it had no further concerns regarding the Project.

Following the release of the Report, the CCC hosted an in-person and a virtual session on 26 and 27 October 2023, respectively, to review the Commission Report. The main purpose of the session was for Indigenous communities to gain an understanding of the Commission's assessment, findings, and conclusions in its Report. This would help inform the CCC's consultations with Indigenous communities on potential outstanding impacts to section 35 rights and interests. The session also provided an opportunity to hear Indigenous communities' initial thoughts and reactions about the

Commission’s findings and analysis. The sessions were attended by 23 Indigenous communities on the Crown List; NorthRiver, federal authorities, and BC were also in attendance.

At those sessions, the CCC reiterated the next steps in the process leading up to a GIC decision. The CCC indicated that it would be available for in person meetings until 10 November 2023, virtual until 17 November 2023 and that consultations would close on 17 November 2023. Independent submissions would be due on 24 November 2023, should Indigenous communities wish to submit them. The CCC indicated that it would invite NorthRiver to consultation meetings should Indigenous communities wish to have trilateral dialogue and work with NorthRiver directly to raise and resolve concerns, where possible.

A second draft of the Annex was sent to most of the Indigenous communities on 31 October 2023 (except for Doig River First Nation), with new information about the Commission’s findings, recommended conditions, and NorthRiver’s commitments that the CCC viewed as relevant to the concerns, views, and Project impacts discussed. The Annex for Doig River First Nation was sent on 8 November 2023. Doig River First Nation and the CCC agreed that the Annex should reflect a meeting between Doig River First Nation and the CCC that occurred on 2 November 2023. The 8 November 2023 Annex also reflected a written statement that Doig River First Nation read at the 27 October 2023 virtual information session. The intent of the second draft of the Annexes was to provide accessible information to Indigenous communities to facilitate dialogue in upcoming Crown consultation meetings.

The CCC requested Indigenous communities provide written or verbal feedback on any potential outstanding impacts to section 35 rights and interests, and proposed solutions by 10 November 2023. The CCC received written feedback on the second draft of the Annexes from Beaver First Nation, Driftpile Cree Nation, Foothills First Nation, Horse Lake First Nation, Kelly Lake Cree Nation, Louis Bull Tribe, Sucker Creek First Nation, West Moberly First Nations, and Whitefish Lake First Nation #459. In addition, Doig River First Nation, Driftpile Cree Nation, Elizabeth Metis Settlement, Kelly Lake First Nation, Louis Bull Tribe, Paddle Prairie Metis Settlement, Sucker Creek First Nation, and Whitefish Lake First Nation #459 provided verbal feedback during meetings held between 19 October and 13 November 2023. The CCC assessed all the feedback received, as further outlined in Sections 10 and 11 of this Report and integrated all the feedback into each of the relevant final Annexes.

Final Annexes, which included a final Crown response to concerns relating to outstanding impacts to section 35 rights and interests, were sent to Indigenous communities between 17 and 20 November 2023.

The CCC received Independent Submissions from six Indigenous communities:

- Doig River First Nation
- Driftpile Cree Nation
- Foothills First Nation
- Louis Bull Tribe
- Sucker Creek First Nation
- Whitefish Lake First Nation #459

The Independent Submissions are provided, un-altered, and confidentially to the Minister of Energy and Natural Resources to inform the GIC's decision on the Project.

7. Crown Consultation Coordinator Engagement with NorthRiver

The CCC held regular, proactive discussions with NorthRiver to share Project-specific concerns, comments or questions raised by Indigenous communities, and to determine whether and how any concerns or potential impacts to section 35 rights and interests might be mitigated or resolved by NorthRiver. NorthRiver began its engagement with Indigenous communities on the Project in 2020 and engagement between the CCC and NorthRiver began during the Early Engagement phase in 2021.

The CCC was transparent with all Indigenous communities and with NorthRiver that part of its coordination role is to engage the proponent, to share Project-related impacts and concerns and/or community specific solutions that might arise during Crown consultation meetings. NorthRiver was invited to several trilateral meetings with the CCC and Indigenous communities; NorthRiver attended these meetings and responded to Project-specific questions that arose during the meeting and/or committed to respond.

The CCC and NorthRiver continued to meet regularly while the Commission's hearing process was underway. The CCC's submissions were filed transparently on the hearing record as part of a procedurally fair, transparent, and timely process. NorthRiver replied to the CCC's submissions, cross-examined the CCC, and had the opportunity to ask the CCC IRs.

During its engagement with the CCC, NorthRiver raised concerns with regard to the CCC's role and NorthRiver's involvement in consultation activities. NorthRiver raised concerns that the CCC acted as an advocate for Indigenous communities. Furthermore, NorthRiver was concerned that it was not invited to large meetings the CCC organized with Indigenous communities, such as workshops on NorthRiver's Revised Offset Plan. NorthRiver shared its view that this meant that NorthRiver could not answer technical questions and assumptions were made that placed NorthRiver in an unfair and adversarial position.

Through dialogue with NorthRiver, and as filed on the hearing record, the CCC clarified that it is not an advocate; it takes no position on the Project and its objective is to meet the Crown's constitutional duty to ensure that Indigenous communities' concerns about potential Project impacts to section 35 rights and interests are considered and addressed. This means sometimes hosting Crown – Indigenous meetings to the exclusion of the proponent.

Further, throughout the process, the CCC encouraged NorthRiver to work directly with each Indigenous community concurrent with the Commission and CCC processes to answer any questions and explore collaborative options for solutions to concerns. The CCC also communicated to NorthRiver that the CCC does not engage with Indigenous communities on behalf of a proponent, or as a substitute for a proponent's own engagement.

As stated previously, the results of these consultation meetings are shared with NorthRiver in a timely manner through direct conversations, regular bi-weekly meetings, and through the hearing record, as appropriate. For example, the CCC provided a verbal debrief to NorthRiver the same day

as the Revised Offset Plan workshop concluded and shared detailed summary notes on the hearing record and directly with NorthRiver.

Lastly, the CCC continued to meet regularly with NorthRiver while consultations on the Report were underway during the GIC phase. This included inviting NorthRiver to present at the information session the CCC hosted for Indigenous communities on the Report, as well as trilateral meetings with Indigenous communities and the CCC.

NorthRiver continued to raise concerns regarding the CCC's process, its meetings with Indigenous communities, and consultation timelines during the GIC phase. In response, the CCC reiterated its approach, and that meaningful, responsive Crown consultation activities support predictable regulatory processes and that it works to deliver consultations within the legislative time limits.

8. Crown Consultation Coordinator Engagement with Federal and Provincial Authorities

The CCC coordinated a whole-of-government approach with other FAs, to be responsive to Indigenous communities' needs throughout the consultation process. The federal review team included CIRNAC, ECCC, Health Canada, ISC, DFO, NRCan, and Transport Canada. The CCC met with these FAs regularly, providing, where necessary, a whole-of-government response to concerns heard from Indigenous communities relating to the Project. ECCC and NRCan participated as Intervenor directly in the hearing process.

During the GIC decision-making phase, the CCC continued to engage FAs and the province of BC both on technical issues (e.g., the offset plan) and to discuss potential programs and initiatives that might address impacts from the Project.

The CCC worked with FAs to identify several potential programs and initiatives that align with the interests raised by Indigenous communities; many were referenced in the CCC's 25 May 2023 submission to the Commission and in the CCC's first draft of the Community-Specific Annexes (shared in early October 2023). Some of these initiatives include:

- First Nations Guardians Initiative;
- Climate Change and Health and Adaptation Program;
- Baseline Assessment Proposals on the state of Health and Environment;
- First Nations Adapt Program;
- Indigenous Community-Based Climate Monitoring Program; and
- Early engagement on the *Indigenous Ministerial Arrangements Regulations*.

In addition to federal coordination, the CCC engaged the governments of Alberta and BC on feedback and concerns raised by Indigenous communities that fall within areas of their jurisdiction.

The Province of BC, particularly the Ministry of Energy, Mines and Low Carbon Innovation (**EMLI**), participated in consultation activities as an Intervenor in the hearing process as well as in the CCC supplemental consultation activities. An EMLI representative participated in the CCC workshop on the Revised Offset Plan in April 2023. Officials from EMLI, BC Energy Regulator (**BCER**), Ministry of Indigenous Relations and Reconciliation and the Ministry of Forestry attended Crown consultation meetings with the CCC as needed.

The CCC also reached out to the Province of Alberta, through Alberta Energy, the Ministry of Forestry and Parks, the Ministry of Environment and Protected Areas, and the Aboriginal Consultation Office to share information and look for opportunities to coordinate responses to Indigenous communities. Alberta Energy was an intervenor in the hearing process and communicated to the CCC its preference to monitor the hearing directly, asking the CCC to direct Indigenous communities to engage with the Government of Alberta through regular existing channels.

9. The Commission's Analysis and Findings on Matters related to Indigenous Peoples

The Commission's review of the Project included an assessment of matters related to Indigenous Peoples. Details on the Commission's findings and analysis are found throughout the Report but primarily in Chapter 6. The Commission assessed the potential effects of the Project, including any cumulative effects, on the rights of Indigenous Peoples. The Commission also considered Indigenous Peoples' interests and concerns with respect to heritage resources, traditional land and resource use (**TLRU**), social and cultural well-being, employment and economy, and opportunities for monitoring and oversight. The Commission also assessed other aspects of the Project that were of interest to Indigenous Peoples, including the environmental effects of the Project, and project design, construction and operation.

The Commission considered engagement and consultation, interests and concerns of Indigenous Peoples, and potential Project effects on the rights of Indigenous People together holistically. The Commission stated that NorthRiver's engagement was a starting point and that the CER's consultation built on the engagement through the hearing process and the CCC's supplemental consultation activities. This enabled the Commission to understand the interests and concerns of Indigenous Peoples potentially affected by the Project, which informed the Commission's assessment of Project effects on section 35 rights and interests. The Commission recognized that there is overlap between interests and concerns of Indigenous Peoples, environmental and socio-economic effects, and Project effects on the rights of Indigenous Peoples. The Commission took all of this into account to determine the adequacy of consultation and accommodation.

Ultimately, the Commission determined it had sufficient information to allow it to assess the Project impacts on Section 35 rights. The Commission stated that it did not assess rights as a Valued Component (**VC**). Rather, the Commission recognized that the rights of Indigenous Peoples are inherent. Information considered by the Commission in its assessment included evidence on the hearing record from Indigenous Peoples about potential effects on their Indigenous and Treaty rights, impacts on TLRU (as referenced in Chapter 6.4.2 of the Report), and impacts on biophysical components (as referenced in Chapter 7 of the Report); NorthRiver's proposed mitigation measures; and conditions imposed by the Commission. The Commission stated it highly valued the Indigenous Knowledge it received from TLRU studies, oral Indigenous Knowledge sessions and other written evidence, input during technical workshops, Crown Submissions, and other filings. It stated that Indigenous Knowledge influenced NorthRiver's Project application, the Commission's design of the hearing process, and its recommendation for the Project.

The Commission found that effects of the Project on the rights of Indigenous Peoples would likely be short-term to long-term in duration, local to regional in geographic extent, moderate in magnitude, and high in total cumulative effects. Typically, in instances of high total cumulative effects the Commission would make a finding of high severity; however, NorthRiver included an offset plan to offset the impacts of the Project on wildlife and wildlife habitat, fish and fish habitat, and TLRU. As a result of the offset plan, the Commission found that the potential adverse effects of the Project on the rights of Indigenous Peoples would be of a medium degree of severity.

9.1 Revised Final Offset Plan

The Commission considered the offsets proposed by NorthRiver and acknowledged the evolution from the Preliminary Offset Plan ([C21316-7](#)) to the Revised Offset Plan ([C23770](#)), and to the Final Offset Plan ([C24795-10](#)), submitted by NorthRiver over the duration of the Commission's hearing.

The Commission considered the Doig River First Nation Alternative Offset Plan and appreciated the extent to which Indigenous Peoples were involved in the development of this plan. The Commission also took into account the many other submissions regarding offsets and associated recommendations from the parties. In arriving at its recommendations with respect to the imposition of conditions requiring an offset plan, the Commission relied on all submissions, including the Doig River First Nation Proposed Offset Plan, which helped identify deficiencies in NorthRiver's various offset proposals throughout the hearing. These submissions enabled the Commission to develop further recommendations to address those areas that will improve the final offsets for the Project.

The Commission did not consider the offset plan in this case to be compensation for loss arising from the Project's impact on the exercise of Indigenous and Treaty rights. Rather, NorthRiver's obligation to offset is objectively determined and directed towards measures to offset the Project's residual impact to Crown land. The Commission considers that the offset conditions (**Conditions 6, 34, 35, and 36**) are necessary or in the public interest under paragraph 183(1)(b) and an important accommodation measure due to the existing significant adverse cumulative effects in the Project area.

NorthRiver would contribute a total of approximately \$6 million for the three components of the Revised Final Offset Plan, which are as follows:

9.1.1 Revised Final Offset Plan Component 1: Blueberry River First Nations-BC Restoration Fund

The Commission stated that it understood that the BRFN Implementation Agreement is intended to set out a framework and process for managing cumulative effects that impact Blueberry River First Nations' Treaty rights.⁷ In particular, the Commission understood that the BRFN Implementation Agreement establishes new land protection measures for areas with high value to Blueberry River First Nations, and sets out a disturbance fee of \$60,000 per hectare for new disturbances from petroleum and natural gas developments within these areas.

⁷ This agreement is legally binding in BC as a result of the [BRFN Implementation Agreement Regulation](#) (Regulation) and the [BRFN Implementation Agreement Order](#) (Order).

Given that it forms a substantial part of NorthRiver's Final Offset Plan, the Commission considered necessary **Condition 6** (Revised Final Offset Plan), requiring NorthRiver to update component 1 if there are any relevant Project design changes, such as changes to the Project footprint overlapping mapped areas in the BRFN Implementation Agreement. The Commission also considered necessary **Condition 34** (Blueberry River First Nations – British Columbia Restoration Fund reporting), holding NorthRiver to its commitment to report to the CER once the payment has been made.

With respect to concerns about inclusivity, the Commission found that even if restoration projects funded via component 1 may be selected solely by Blueberry River First Nations without other Indigenous communities engaged on the Project, restoration work that is completed through contributions to the BRFN-BC Restoration Fund would occur on Treaty 8 Crown land. This restoration can therefore benefit the interests of all Indigenous Peoples that exercise Indigenous and Treaty rights in the vicinity of the Project.

9.1.2 Revised Final Offset Plan Component 2: Contribution to the Treaty 8 Restoration Fund

The Commission stated its understanding that the Treaty 8 Consensus Document envisions a \$400 million Treaty 8 Restoration Fund for restoring impacts on Crown lands in BC that are within Treaty 8 but not subject to the BRFN-BC Restoration Fund. The details of the Treaty 8 Restoration Fund are not as developed as those for the BRFN-BC Restoration Fund and there is currently no mandatory fee in place.⁸ The Commission also understands that this Treaty 8 Restoration Fund will eventually be used to restore some of the disturbance to the landscape that is impacting Indigenous Peoples' ability to exercise their Indigenous and Treaty rights in northeast BC.

The Commission acknowledged NorthRiver's commitment in component 2 of its Final Offset Plan to contribute to the Treaty 8 Restoration Fund in an amount calculated based on the \$60,000 per hectare New Disturbance fee established by the BRFN Implementation Agreement, for areas of Project overlap with mapped areas in the Treaty 8 Consensus Document.

The Commission was of the view that this contribution would provide funding to support Indigenous-led restoration projects in Treaty 8 which would help address cumulative effects. The Commission found reasonable NorthRiver's approach to calculating the amount to contribute, given the implementation of the Treaty 8 Restoration Fund is not yet finalized. NorthRiver's proposal is to apply a similar methodology as used in the BRFN Implementation Agreement (i.e., \$60,000 per hectare for overlap of New Disturbance with mapped areas of high value).

The Commission recognized that there may be further progress with regard to the Treaty 8 Restoration Fund, and with associated agreements and potential fees, between now and the time that NorthRiver will make its contribution to the Treaty 8 Restoration Fund (i.e., prior to construction). In addition, NorthRiver would continue to refine the detailed design of the Project, which may result in changes to the Project footprint and the overlap with mapped areas in the Consensus Document. The Commission therefore considers necessary **Condition 6** (Revised Final Offset Plan), requiring NorthRiver to update component 2 to reflect any relevant developments with regard to the Treaty 8 Restoration Fund and any relevant Project design changes.

⁸ The Treaty 8 Consensus Document and individual Letter Agreements between Treaty 8 First Nations and BC set out high-level details of the Treaty 8 Restoration Fund.

The Commission considered it necessary, as detailed in **Condition 6**, that NorthRiver provide a contingency plan in case there are issues with the Treaty 8 Restoration Society accepting payment of a contribution into the Treaty 8 Restoration Fund, along with a description of how NorthRiver sought feedback from Indigenous Peoples engaged on this Project to inform such a contingency plan. This might involve, for example, holding the contribution in trust for the Treaty 8 Restoration Fund until it can be accepted.

The Commission also considered necessary **Condition 35** (Treaty 8 Restoration Fund reporting), holding NorthRiver to its commitment to report to the CER once the payment has been made. This contribution must be at least as much as what NorthRiver committed to in component 2 of the Revised Final Offset Plan. If legal developments progress in BC to the point of requiring contributions to the Treaty 8 Restoration Fund, then NorthRiver's commitment in the Final Offset Plan may be partially, fully, or more than fully covered by such mandatory payments. Provided that NorthRiver can show that it has contributed, in relation to this Project, at least the amount in component 2 of the Revised Final Offset Plan, then the purpose of **Condition 35** would be satisfied.

As with the component 1 contribution above, the Commission similarly found that a contribution to the Treaty 8 Restoration Fund, whose aim is to heal the land and the people and address the cumulative effects of development in Treaty 8 territory, can benefit all Indigenous Peoples who exercise their Indigenous and Treaty rights in those areas.

9.1.3 Revised Final Offset Plan Component 3: Indigenous-led Land Securement Fund

In addition to the above two components, NorthRiver proposed a third component in its Final Offset Plan to offset the balance of Crown lands that are not otherwise addressed by the BRFN-BC Restoration Fund or the Treaty 8 Restoration Fund contributions.

The Commission accepted the majority of NorthRiver's Final Offset Plan, except for some refinements to the Land Securement Fund in component 3 as noted above, namely:

- use of the appropriate multiplier (two-to-one rather than one-to-one, effectively doubling the funding in component 3);
- an updated market valuation;
- provision to pay land transfer costs;
- provision for a facilitator, including their costs, to guide the decision-making process; and
- extension of the timing for redirecting any unallocated funds to the Treaty 8 Restoration Fund to 4 years after the in-service date, and corresponding extension of the number of years of capacity funding for Indigenous communities' participation to up to 5 years.

In addition, as with components 1 and 2 above, any relevant design changes, such as modifications to the Project footprint that affect the quantification of offsets required, must also be incorporated into the revisions for component 3.

The Commission therefore considered necessary **Condition 6** (Revised Final Offset Plan) which requires NorthRiver to revise component 3 in its Final Offset Plan to incorporate the above changes and file it for approval prior to construction. The Commission also considered necessary **Condition 36** (Land Securement Fund reporting) which requires NorthRiver to submit reports according to the schedule in the Revised Final Offset Plan.

As a result of the offset plan, the Commission found that the potential adverse effects of the Project on the rights of Indigenous Peoples would be of a medium degree of severity. The Commission also found that with NorthRiver's proposed mitigation and offset measures and the conditions that the Commission considers necessary, the potential adverse effects of the Project on the TLRU, fish and fish habitat, wildlife and wildlife habitat VCs would be of medium significance. The offset plan was a key consideration in the Commission's public interest determination.

10. Summary of Procedural and Policy Related Concerns identified as Outstanding by Indigenous communities

10.1 Regulatory Process

Kelly Lake Cree Nation, Beaver First Nation, Dene Tha' First Nation, Doig River First Nation, Driftpile Cree Nation, Duncan's First Nation, Foothills First Nation, Kelly Lake First Nation, Louis Bull Tribe, Sucker Creek First Nation, Prophet River First Nation, Saulteau First Nations, Whitefish Lake First Nation #459, and West Moberly First Nations raised concerns regarding the regulatory process and/or the Commission's assessment of the Project application, such as:

- The hearing process is intimidating, time consuming, and often requires lawyers or consultants;
- There was insufficient time for some hearing steps, such as asking IRs on NorthRiver's Final Offset Plan and filing TLRUs;
- Greater capacity is needed to participate meaningfully;
- The Commission lacked compassion for Indigenous communities dealing with wildfires;
- The Commission misinterpreted Indigenous communities' evidence, proposed solutions and Indigenous knowledge or it was unclear how the Commission considered it;
- The public interest is different than Indigenous interest, the Commission's methodology to assess impacts to Indigenous rights and interests was flawed and there were biases toward western methodologies;
- The CER and CCC are proponent-driven and project approvals are pre-determined;
- Issues relating to cumulative impacts should be addressed prior to the hearing;
- There is a lack of clarity about the CER's condition compliance and oversight process; and
- The GIC's decision-making should be more inclusive and transparent.

On 15 December 2022, Doig River First Nation requested that the Minister of Energy and Natural Resources grant a six-month extension to the 450-day time limit for the Commission to submit its Recommendation Report on the Project. The Minister solicited comments and on 26 April 2023 issued a letter stating that he would not extend the legislated time limit ([C24180](#)). The Minister noted that the hearing process provided an appropriate mechanism and period of time to address potential impacts to section 35 rights and interests, and that there was sufficient time to provide feedback on the offset plan.

Crown Response:

The Crown's view is that the Commission's hearing process was sufficiently thorough and accessible to Indigenous Peoples to enable them to make their concerns and views known to the Commission. The Crown is further of the view that there were various opportunities for two-way dialogue with respect to this Project, both with the Commission in its hearing process, as supported by the Commission's own initiatives such as the technical workshop on cumulative effects, the offset plan

workshop in Grande Prairie, and the Process Advisor service. Two-way dialogue was further enhanced by the CCC through its activities. Both the Process Advisors for the hearing and the CCC made every effort to ensure that Indigenous communities' questions about the hearing process were addressed.

The Commission encouraged all Indigenous Peoples whose rights may be potentially impacted by the Project to characterize their rights, the nature of the impact(s), and the measures they might suggest to reduce or eliminate the impacts on those rights to the extent possible. As noted in section 6.2, the CCC supplemented the Commission's process in numerous ways, such as by meeting with Indigenous communities virtually and in-person and facilitating multilateral sessions to further dialogue. The CCC filed the results of these meetings on the record of the Commission's proceeding.

The Commission's consideration of the rights of Indigenous Peoples, the nature of the impact of the Project, and the measures suggested is found throughout the relevant sections of the Report and is reflected in the Commission's finding and conclusions regarding the Project's potential effects, as well as its recommended conditions. The Commission also described its methodology for the assessment of the Project and its assessment of the rights and interests of Indigenous Peoples in Chapter 6 of its Report. At Chapter 6.1.3.3, the Commission described how it took Indigenous Knowledge into account, particularly in its recommendation and conditions. Further information about the Commission and Crown's analysis in regards to the section 35 rights and interests of Indigenous Peoples is found in section 11, below.

In Rulings No. 11 and 18 the Commission provided Driftpile Cree Nation, Sucker Creek First Nation and Whitefish Lake First Nation #459 with the flexibility to file their TLRU in whole or in part by 14 July 2023. If that date could not be met any outstanding TLRU studies could be addressed through a condition on outstanding TLRU investigations. **Condition 15** (Outstanding traditional land and resource use investigations and consultation, concerns and response tables) would require NorthRiver to, among other things, integrate information from any new TLRU studies, address any outstanding concerns, and incorporate necessary revisions into the relevant Environmental Protection Plans (**EPPs**), and to report on these matters. The Crown is satisfied that **Condition 15** will enable the CER to address any concerns relating to outstanding TLRU studies effectively.

The Crown is of the view that the funding provided by the CER was adequate for participation of Indigenous communities in the hearing and CCC processes. The Crown notes that \$20,000 in additional funding was made available to Indigenous communities between 31 March and 4 April 2023 for those that identified a need for additional funding for various reasons (see section 5 above).

With regards to the inclusiveness and transparency of GIC decision-making, the Crown notes that two drafts and a final Indigenous community-specific annex was shared with Indigenous communities to facilitate dialogue in the final consultation steps. The CCC also asked Indigenous communities for feedback to ensure the accuracy and completeness of the information. In addition, Indigenous communities had an opportunity to submit independent submissions that are transmitted, unaltered in Indigenous communities' own words with the CCAR and shared with the Minister of Energy and Natural Resources to support GIC's decision. Lastly, GIC is required to provide reasons for its decision, which will be described in an Order-in-Council and Explanatory Note. The CCC will share these documents with Indigenous communities when public.

In the context of this particular Project, the Commission stated that it expects NorthRiver to comply with all imposed conditions. It is important to know that regardless of whether a filing is submitted for

formal approval, the CER will monitor and enforce NorthRiver's compliance with all conditions in the Certificate and related Order. The CER's regulatory oversight with respect to conditions is not limited to reviewing condition-related filings through desktop exercises. The CER has at its disposal other compliance tools that may be used throughout the Project's lifecycle to verify that NorthRiver is implementing the plans, procedures, and measures that have been committed to in condition-related filings. It is also important to note that if the Commission receives feedback or comments from an Indigenous community or other party regarding a particular condition filing, the Commission would consider those comments in reviewing NorthRiver's condition filing. Finally, NorthRiver cannot begin Project construction until all applicable pre-construction conditions are satisfied. Likewise, Project operations cannot begin until all applicable conditions are satisfied for initiating that phase. For these Project activities to begin, NorthRiver must also meet all other applicable regulatory requirements of the CER and other government departments and agencies of any level (e.g., provincial, municipal).

Regarding wildfires, the Commission proactively requested information from hearing participants whether their participant in the hearing may be impacted by the wildfires and if accommodation is requested. The Commission made adjustments to accommodate Indigenous communities impacted by the fires and issued Ruling 18 ([C24691](#)), adjusting the hearing process by moving NorthRiver's cross-examination of Louis Bull Tribe, Sucker Creek First Nation, and Whitefish Lake First Nation #459 on account of wildfire impacts.

10.2 Cross-jurisdictional Concerns

Nations with core territory in Alberta, including seven of the eight Metis Settlements, some Treaty 8 Nations (Duncan's First Nation, Sucker Creek First Nation, Whitefish Lake First Nation #459), and Louis Bull Tribe, shared concerns related to the Government of Alberta's lack of involvement in consultation activities and the regulatory process. These Indigenous communities also noted their perception that Alberta-based Indigenous communities were disadvantaged compared to BC-based Indigenous communities. Indigenous communities noted that BC is taking action on cumulative effects whereas Alberta was not.

Peavine Metis Settlement shared concerns that the Government of Alberta was not in attendance for workshops discussing implications of Treaty 8 First Nations and Treaty 8 Consensus Document and Letter Agreements and contrasted it to the presence of BC for discussions surrounding the BC agreements, BC restoration work and land acquisition.

Some Indigenous communities with territory in BC identified a concern that they were not recognized by BC. These Indigenous communities included Kelly Lake First Nation, Foothills First Nation, Kelly Lake Cree Nation.

Doig River First Nation shared concerns with BC's involvement and input during the hearing record. With respect to the process and commitments related to the Treaty 8 Restoration Fund. Doig River First Nation asserted that the Treaty 8 agreements do not address cumulative effects as equally as the BRFN Implementation Agreement.

Crown response:

The CER and the federal Crown seek cooperative relationships with provincial governments, and do not have the jurisdiction or ability to direct the Governments of Alberta or BC with respect to matters under provincial jurisdiction. The Crown would like to note that representatives from BC, particularly BC EMLI and the BCER, were accessible, responsive, and cooperative throughout the Crown consultation process. The CCC invited representatives from the Alberta government to share information and/or attend Crown consultation meetings; Alberta responded that Indigenous communities should communicate directly with Alberta through existing, established channels. Alberta Energy was a registered intervenor in the Commission's proceedings and had informed the CCC that it monitored the proceeding to further its understanding of the Project.

The Crown notes that the Commission assessed the Project's effects in both BC and Alberta, as well as the impacts of the Project to section 35 rights and interests of both BC and Alberta-based Indigenous communities, including all Indigenous communities on the Crown list. The Crown further notes that the Commission's conditions are applicable to the Project as a whole and are relevant to all Indigenous communities on the Crown List (including Alberta-based communities). In particular, Alberta-based Indigenous communities on the Crown List are able to participate in the Indigenous-led Land Securement Fund set out in **Condition 6** of the Commission's Report. NorthRiver is required to provide funding to a maximum of five years to Indigenous communities to participate in the administration of this fund.

10.3 NorthRiver's Engagement with Indigenous Communities

NorthRiver received letters of support from Saulteau First Nations ([C24795-5](#)), Halfway River First Nation ([C24795-4](#)), and British Columbia Métis Federation ([C25649](#)) and a letter of non-objection from Métis Nation of Alberta ([C24795-7](#)).

Through engagement with NorthRiver, Elizabeth Metis Settlement, Fishing Lake Métis Settlement, Fort Nelson First Nation, and Tsay Keh Dene have confirmed that they do not have concerns with the Project ([C25650](#)). McLeod Lake Indian Band indicated that it is satisfied that the concerns raised about specific impacts have been materially addressed by NorthRiver ([C23189](#)).

The Crown notes that a number of Indigenous communities, including Kelly Lake Métis Settlement Society, Halfway River First Nation, and British Columbia Métis Federation, have said that they have a positive and productive working relationship with NorthRiver.

Buffalo Lake Metis Settlement, Driftpile Cree Nation, Kikino Metis Settlement, Louis Bull Tribe, Peavine Metis Settlement, Prophet River First Nation, Sucker Creek First Nation, Whitefish Lake First Nation #459, and Foothills First Nation all shared their dissatisfaction with NorthRiver's engagement with them. They also indicated a lack of confidence in NorthRiver's commitments to implement conditions in good faith.

Beaver First Nation shared with the CCC that it wanted to have direct discussions with NorthRiver leadership, and not just with consultants that work with NorthRiver.

Driftpile Cree Nation, Louis Bull Tribe, Sucker Creek First Nation, Whitefish Lake First Nation #459, Foothills First Nation all requested more prescriptive language in **Conditions 16** and **20** that would require NorthRiver to make reasonable best efforts to enter into long term relationship agreements as a means to enable these Indigenous communities' participation in monitoring of the Project.

In addition, Driftpile Cree Nation, Louis Bull Tribe, Sucker Creek First Nation and Whitefish Lake First Nation #459 all expressed criticism of **Conditions 14** and **41** and requested more prescriptive language to make them less about reporting and more about explicit requirements for Indigenous monitoring.

Crown Response:

The CER expects proponents to continually engage Indigenous communities and encourages positive, long-term relationship-building. The Commission, in its Report, noted that NorthRiver's engagement program is designed to continue for the lifecycle of the Project, and the Commission expects NorthRiver to follow through on its engagement obligations and commitments. The Crown is of the view that relationship agreements could be an effective mechanism in achieving this.

However, the Commission's wording in both **Conditions 16** and **20** is appropriate. The Crown's view is that it would not be appropriate to require the execution of relationship agreements between NorthRiver and Indigenous communities, given that NorthRiver alone must be able to undertake the actions necessary to comply with the requirements of the condition. In the Crown's view, **Condition 16** sets a clear expectation that funding will be provided. This condition is appropriately flexible, such that it allows Indigenous communities and NorthRiver to discuss the level of funding required for the circumstance. For similar reasons, it would not be appropriate for the Crown to alter **Condition 20**. As well, in Chapter 6.4.4.4 of the Report, the Commission concluded there was no evidence before it to determine what acceptable employment, contracting, procurement, and training thresholds would be, what the implications could be for imposing specific thresholds, and how they could be effectively enforced. For further Crown views on **Condition 20**, see section 11.5 below.

The CER will review all the filings submitted by NorthRiver related to the Project to ensure compliance. As well, if the Commission receives feedback or comments from an Indigenous community or other party regarding a particular condition filing, the Commission would consider those comments in reviewing NorthRiver's condition filing. Should there be dispute or disagreement, Indigenous communities may use the complaint resolution process and if necessary, avail themselves of the CER's Alternative Dispute Resolution services.

As conditions are a key method of mitigating impacts to rights and interests, the CCC sought to discuss the Commission's proposed conditions after the release of the Commission Report to understand Indigenous communities' views and identify potentially outstanding impacts to rights and interests. NorthRiver attended some of these consultation meetings in October and November 2023 where it was invited to share information about its anticipated next steps for fulfilling the proposed conditions. NorthRiver stated that its next steps were still to be determined based on the interpretation of the conditions. Therefore, NorthRiver did not provide responses to Indigenous communities' questions relating to condition compliance next steps, such as the process to negotiate funding for condition filing reviews (**Condition 16**). NorthRiver shared that it would be happy to start having more in-depth conversations on conditions should the Project receive regulatory approval and after a positive final investment decision is made by NorthRiver.

The CCC has committed to hosting a session with interested Indigenous communities to review the conditions, and to discuss the CER's overall approach to condition compliance, should the Project be approved by GIC. There will be a \$5,000 grant for Indigenous communities to be a part of post GIC-decision steps in early 2024.

11. Project-Specific Potential Impacts to Section 35 Rights and Interests

11.1 Impacts on Section 35 Rights and Interests, including Traditional Land and Resource Use and Hunting and Trapping

Indigenous communities, including Kelly Lake Cree Nation, Métis Nation British Columbia, Tsay Keh Dene, and Whitefish Lake First Nation #459 have shared concerns regarding the Project's potential impacts on culturally and traditionally important wildlife and wildlife habitat. Specific concerns were raised regarding loss of wildlife habitat, habitat fragmentation, disturbance to travel ways or access for harvesting, loss of hunting areas, avoidance of disturbed lands, declining health of ungulate species, including impacts to caribou, and increasing pressures on wildlife species traditionally hunted.

Indigenous communities, including Métis Nation British Columbia, expressed concerns regarding the Project's effects on wildlife, including decline populations of trapped species, that would impact the ability of Indigenous Peoples to continue to harvest traditionally used species and exercise hunting and trapping rights. These included concerns regarding how potential adverse impacts to the exercise of hunting and trapping rights could further impact the ability of Indigenous Peoples to maintain their cultures, transmit knowledge and sustain Indigenous languages. In addition, Indigenous communities shared concerns regarding diminished access to lands. While some of the concerns relating to the Project's potential effects on hunting and on wildlife species overlapped with concerns regarding the Project's contributions to cumulative effects, recommendations from Indigenous communities included increasing the participation of Indigenous communities in monitoring and oversight for the Project, as well as specific proposals regarding the calculation and methodology for the proposed offset plan that, in Indigenous communities' view, would be required for the Project.

Crown Response:

The Crown acknowledges that Indigenous Peoples prefer to meaningfully exercise their section 35 rights, including hunting and trapping, on undisturbed lands. The Crown also recognizes the importance to Indigenous Peoples of maintaining and preserving Indigenous cultures and cultural identity, lifeways, systems of knowledge and languages through the ongoing ability to meaningfully exercise section 35 rights.

The Commission agreed with NorthRiver's approach to assessing the effects of the Project on the rights of Indigenous Peoples, not as a valued component in the Environmental and Socio-economic Assessment, but rather in its Project application and in further responses to the Commission and Indigenous Peoples' information requests. For this reason, the Commission similarly did not assess rights as a valued component in the Commission's own assessment. The Commission recognized that rights of Indigenous Peoples are inherent. The Commission found that the effects of the Project on the rights of Indigenous Peoples would likely be short-term to long-term in duration, local to regional in geographic extent, moderate in magnitude, and high in cumulative effects.

The Commission took into consideration Doig River First Nation's calculations indicating the avoidance area of community members during construction and operation, and agreed with NorthRiver that the calculations appeared to disregard the fact that the Project parallels existing

linear disturbance for 91% of the total route length. The Commission sought further clarification from Doig River First Nation; however, no further clarification was provided.

The Crown has considered the concerns raised through Crown consultation activities, NorthRiver's commitments and mitigation, as well as the Commission Report. The Crown is of the view that the Commission thoroughly addressed the environmental effects of the Project in Chapter 7 of its Report (including effects on wildlife and wildlife habitat in Chapter 7.5), the concerns and interests of Indigenous Peoples, including traditional land and resource use, in Chapter 6.4, and the potential effects of the Project on the rights of Indigenous Peoples in Chapter 6.2. The Commission concluded that there is a finding of high cumulative effects on Indigenous Peoples, noting that while NorthRiver's routing and mitigation measures reduces, and at times, eliminates adverse impacts to section 35 rights, additional accommodation measures are necessary so that these rights, including fishing, hunting, and gathering, can continue to be meaningfully exercised. In particular, the Commission found the Revised Final Offset Plan critical for enabling the Commission to recommend that the Project is in the public interest in this broader context of high cumulative effects. The Commission found that an overall severity finding of medium is appropriate for this Project. The Crown finds these conclusions to be reasonable in light of the evidence submitted, as further discussed in section 11.6 below.

The Commission has recommended imposing conditions requiring NorthRiver to survey, mitigate and monitor potential effects on wildlife species through **Condition 9** (Construction Environmental Protection Plan), **Condition 27** (Bank swallow survey), **Condition 30** (Little brown myotis and northern myotis surveys and protection), **Condition 31** (Breeding bird survey and protection), **Condition 38** (Operations EPP), and **Condition 49** (Post-construction environmental monitoring reports). The Commission also recommended imposing **Condition 14** (Plan for Indigenous Peoples' participation in construction monitoring), and **Condition 41** (Plan for Indigenous Peoples' participation in post-construction and operations monitoring) that will enable the participation of interested Indigenous Peoples in monitoring activities during and after Project construction, and during Project operation.

The Crown understands that some TLRU studies remained in progress or had not started at the time of the Report, and the Crown is of the view that the completion of these studies can assist in appropriately identifying any additional sites or activities that would require consideration for mitigation for the Project. Through **Condition 15** (Outstanding traditional land and resource use investigations and consultation, concerns and response tables), NorthRiver would be required to, among other things, integrate information from any new TLRU studies, address any outstanding concerns, and incorporate necessary revisions into the relevant EPPs, and to report on these matters.

The Crown is of the view that the Commission's amendments to its recommended conditions relating to plans for the participation of Indigenous communities in monitoring during construction and post-construction and operations are responsive to the concerns and recommendations of Indigenous communities, given the inclusion of requirements for NorthRiver to report on all issues, concerns and recommendations raised by Indigenous communities, and for NorthRiver to provide a plan for how it will resolve outstanding concerns. The Crown is of the view that with the measures committed to by NorthRiver, the Commission's recommended conditions and the CER's ongoing oversight of the Project, the potential impacts of the Project to section 35 rights and interests related to hunting and trapping are appropriately accommodated.

11.2 Impacts on Section 35 Rights and Interests, including Harvesting of Vegetation, Medicines and Culturally Significant Plants

Indigenous communities, including Métis Nation of Alberta, Buffalo Lake Metis Settlement, East Prairie Metis Settlement, Elizabeth Metis Settlement, Kikino Metis Settlement, Kelly Lake Cree Nation, Kelly Lake First Nation, and Whitefish Lake First Nation #459, shared concerns regarding the Project's potential effects on plant species that are culturally important, harvested and used by Indigenous communities. Concerns were shared regarding the importance of gathering berries and medicinal plants, including diamond willow fungus, white spruce, birch, poplar, wild red raspberry, mint, blueberries, raspberries, Saskatoon berries, muskeg/trapper's tea, rat root, chaga, Labrador tea and other plants for subsistence, medicinal, and other cultural purposes. Indigenous communities described how the potential impacts of the Project could impact the continued ability of Indigenous communities to harvest and use culturally important plants through loss of habitat, diminished availability of culturally important plant species, impaired access to lands for harvesting, and the reality that rights-holder tend to avoid areas due to increased disturbance. Further, concerns were raised about invasive plants, the use of chemicals for vegetation management, and the effects of forest blow down adjacent to RoW clearing (and its effects on the ability of Indigenous communities to access forest areas for harvesting and the exercise of section 35 rights) were also noted. The loss of a diamond willow corridor was considered by at least one Indigenous community as something that could not be offset. Some Indigenous communities indicated that the loss of such a corridor would take several years to come back and would not be of the same quantity and quality of medicine in our lifetime.

Several Indigenous communities, including Dene Tha' First Nation, Elizabeth Metis Settlement, Halfway River First Nation, Louis Bull Tribe, Prophet River First Nation, Tsay Keh Dene, and Whitefish Lake First Nation #459 shared concerns regarding reclamation, reclamation methods, and restoration.

Recommendations were made by Indigenous communities, including for increased monitoring by Indigenous communities during construction and post-construction, and for participation in the development of reclamation plans.

Crown Response:

The Crown acknowledges the importance to Indigenous communities of their continued ability to find, access, harvest and use medicinal and culturally important plants, and the importance these have on cultural identity, knowledge transmission, and community health. The Crown is of the view that with the exception of short-term temporary interruptions in access to the Project footprint during construction, and throughout the operational life of the Project during routine maintenance activities, Indigenous communities will continue to be able to exercise section 35 rights on the Project footprint, including on Crown land that will be used for the Project, for the harvesting of plant species.

The Crown notes NorthRiver's mitigation measures and commitments, as set out in its EPP and Consultation Concern and Response Tables, which intend to address Project effects on vegetation. These measures and commitments include the Project being designed to follow existing infrastructure, a revegetation program, and work occurring during frozen or dry conditions. The

Commission considered NorthRiver's commitment to provide all Indigenous communities engaged on the Project with the construction schedule and an opportunity to harvest diamond willow fungus (and other medicines) prior to construction as being responsive to Indigenous communities' concern related to medicinal and culturally important plants.

The Commission's assessment of vegetation and wetlands included consideration of old growth forest and Old Growth Management Areas (**OGMA**), species at risk such as provincially listed slender penstemon, and culturally important species such as diamond willow fungus. Important mitigation and commitments from NorthRiver include the natural regeneration of 10 meters of the 20 meter RoW; crossing the OGMA at the Kiskatinaw River via trenchless crossing; providing Indigenous communities with the opportunity to harvest diamond willow fungus and other traditional, medicinal, and cultural plants prior to construction; and limiting the use of pesticides and herbicides within the Project footprint where possible. The Crown concurs with the various Commission conditions related to the construction schedule, integrated pest management plan, and reclamation plan that the Commission deems necessary.

The Crown is of the view that with the measures committed to by NorthRiver, the CER's ongoing oversight of the Project and the Commission's recommended **Condition 8** (Reclamation Plan) and **Condition 49** (Post-construction environmental monitoring reports), Indigenous communities' concerns regarding harvesting medicinal and culturally important plants have been sufficiently responded to.

The Crown is of the view that the Commission's amendments to its recommended conditions relating to plans for the participation of Indigenous communities in monitoring during post-construction and operations are responsive to the concerns and recommendations of Indigenous communities. With the measures committed to by NorthRiver, the Commission's recommended conditions and the CER's ongoing oversight of the Project, the potential impacts of the Project to section 35 rights and interests related to culturally important plants and vegetation, including rights related to harvesting, are appropriately accommodated.

11.3 Impacts on Water Quality and Quantity, and Watercourse Crossings

Concerns were shared by Indigenous communities, including Buffalo Lake Metis Settlement, East Prairie Metis Settlement, Elizabeth Metis Settlement, Kelly Lake Cree Nation, Kelly Lake First Nation, Kikino Metis Settlement, McLeod Lake Indian Band, Paddle Prairie Metis Settlement, Sucker Creek First Nation, and Whitefish Lake First Nation #459 regarding the Project's potential impacts to water quality and quantity, and water course crossings.

Tsay Keh Dene shared concerns regarding fish species in the Project area, namely Bull Trout.

Crown Response:

Regarding fish and fish habitat, the Commission recognized avoidance (e.g., trenchless crossings) as a key mitigation measure put forward by NorthRiver. NorthRiver proposed trenchless crossing methods for at least 15 watercourses, including large crossings of significance to Indigenous communities such as the Peace River, Kiskatinaw River, and Pouce Coupe River. NorthRiver also

committed to monitoring water quality during construction and implementing additional mitigation measures where any exceedances of water quality guidelines are observed.

The Crown is of the view that the measures committed to by NorthRiver are effective avoidance measures to mitigate impacts to fishing rights.

The Commission addressed the environmental effects of the Project, including effects on fish and fish habitat, in Chapter 7 of its Report. Water quality and quantity were considered under the broader fish and fish habitat assessment.

The Crown finds the Commission's analysis to be reasonable, and notes that the CER would have ongoing oversight of the Project. The Crown further notes that the Commission's recommended **Condition 10** (Finalized watercourse crossing inventory), **Condition 28** (Contingency watercourse crossings) and **Condition 37** (Hydrostatic pressure testing), would also address potential Project effects with respect to water quantity and quality and fish and fish habitat.

The Commission also recommended imposing **Condition 29** (*Fisheries Act* authorizations) that would require NorthRiver to file copies of any DFO authorizations or letters of advice it receives. As a lifecycle regulator, the CER could then verify any conditions that DFO imposes or recommends during its compliance verification activities. The Crown notes that the Commission was satisfied that any potential residual effects resulting from the Project would be mitigated or offset through any conditions included within any DFO authorizations. If DFO determines that an authorization is required for a particular crossing, DFO would undertake any further consultation with Indigenous Peoples during its review process. The Crown notes that this approach leverages the expertise of DFO and was therefore a reasonable approach for the Commission to take.

The Crown is of the view that, with the measures committed to by NorthRiver, the Commission's recommended conditions and the CER's ongoing oversight of the Project, as well as any conditions imposed by DFO in authorizations or permits issued under the *Fisheries Act*, the potential impacts to section 35 rights and interests related to fishing are appropriately accommodated.

11.4 Monitoring and Oversight by Indigenous Peoples

The majority of Indigenous communities shared views about the importance of the inclusion of Indigenous monitors in the construction and operational phases of a Project as well as concerns related to the intent and willingness of NorthRiver to meaningfully engage with interested Indigenous communities in monitoring activities.

Driftpile Cree Nation, Louis Bull Tribe, Sucker Creek First Nation, Whitefish Lake First Nation #459, and Kelly Lake Cree Nation all recommended an Indigenous Advisory and Monitoring Committee (IAMC)-like body for the Project. Sucker Creek First Nation identified this to the CCC as a pathway to consent. Indigenous communities' views are that Indigenous oversight would only be effective via an IAMC-like body. Sucker Creek First Nation suggested that it could be regional in nature, perhaps for Treaty 8 or for pipelines crossing the northeast portion of the BC/Alberta border.

Sucker Creek First Nation, Whitefish Lake First Nation #459, Driftpile Cree Nation and Louis Bull Tribe are concerned that **Condition 14** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 41** (Plan for Indigenous Peoples' participation in post-construction and

operations monitoring) only support the ability of Indigenous Peoples to monitor Project activities, and that the conditions do not provide a clear mechanism through which Indigenous communities can collaborate in Project oversight with each other and with the CER. The Indigenous communities further added that this would be especially beneficial in the cases where there is a poor relationship between Indigenous communities and NorthRiver.

Crown Response:

The Crown views the participation of Indigenous communities in construction and post-construction monitoring as a vital avenue for helping to ensure that the section 35 rights and interests of Indigenous Peoples are adequately identified and protected.

The Crown understands and appreciates the significant time, resources, and capacity needed for Indigenous communities to be involved in lifecycle oversight of federally regulated projects, including what is needed to participate and review project applications, as well as condition filings and monitoring and compliance activities, should a project be approved.

During the course of the hearing for the Project, the CCC made **Recommendation 5** (to consider including a condition requiring NorthRiver to support the development of an Indigenous Rights & Interests Working Group or collaborative forum) to the Commission.

The Commission directly addressed recommendations for an IAMC that were raised during the hearing, including the CCC's **Recommendation 5**. The Commission's opinion was that the Project is of a smaller scope and scale than that which would warrant an IAMC. The Commission noted that NorthRiver is not a holder of an extensive system of pipelines such as, for example, Nova Gas Transmission Ltd. (**NGTL**) is. The Commission was therefore of the view that an IAMC is not required for this Project, given the conditions on Indigenous monitoring that are proposed for the Project and the Indigenous-led governance of the Land-Securement Fund. The Crown concurs with the Commission's view, particularly in light of the work underway by the CER for establishing an Indigenous Oversight Forum (**IOF**) for the NGTL system, and notes that the northwest extent of the NGTL system overlaps NorthRiver's Project area. The Crown sees involvement in the NGTL IOF as one opportunity that is available for Indigenous communities to address concerns through their participation in a broad forum within the same project area.

The Crown notes that many Indigenous communities expressed to the CCC concerns regarding participation in monitoring activities as well as an interest in having a role in monitoring during construction and post-construction activities. In its third submission to the Commission, the CCC noted key elements and commitments of NorthRiver's proposed monitoring programs during construction and post-construction. The CCC viewed the participation of Indigenous communities in construction and post-construction monitoring as a vital avenue for helping to ensure that the section 35 rights and interests of Indigenous communities are adequately identified and protected. The CCC noted NorthRiver's commitments to provide opportunities for Indigenous communities to participate in its monitoring programs and encouraged all Indigenous communities to engage with NorthRiver regarding their participation in monitoring for the Project.

The Commission's recommended **Condition 14** (Plan for Indigenous Peoples' participation in construction monitoring), **Condition 41** (Plan for Indigenous Peoples' participation in post-construction and operations monitoring) and **Condition 17** (Socio-economic effects monitoring plan) require NorthRiver to provide:

- a description of all issues, concerns, and recommendations raised by Indigenous Peoples, how NorthRiver addressed or responded to them and a plan to resolve any outstanding issues, concerns, or recommendations;
- a description of how existing Indigenous community-based monitoring programs were integrated into the plan;
- a description of how NorthRiver has taken available and applicable Indigenous knowledge and results from community-specific traditional land and resource use investigations into consideration in developing the plan, and how such information was integrated into the plan;
- a list of Indigenous Peoples (i.e., Indigenous communities) who have expressed an interest in, but not yet, reached an agreement with NorthRiver to participate in monitoring activities, an explanation as to why such agreements have not yet been reached, and a description of how their views and concerns have been or will be incorporated into or accommodated by the plan;
- a description for the roles and responsibilities of Indigenous monitors with respect to monitoring activities during construction; and
- a description of the contractor oversight measures to ensure adherence to the plan for Indigenous Peoples' participation in construction monitoring.

With regards to Indigenous Peoples' oversight of federally-regulated energy projects, the Crown also notes that Canada's [2023-2028 UNDA Action Plan](#) sets out actions Canada needs to take in partnership with Indigenous Peoples to implement the principles and rights set out in the UN Declaration and to further advance Reconciliation. The Plan includes Action Plan Measure 34, which describes the work the CER will undertake to work in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to (i) enhance the participation of Indigenous peoples in, and (ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the CER.

The Crown is of the view that the Commission's amendments to its recommended conditions relating to plans for the participation of Indigenous communities in monitoring during construction and post-construction and operations are responsive to the concerns and recommendations of Indigenous communities. Consistent with Action Plan Measure 34, the CER will be undertaking work with Indigenous communities to further enhance participation in respect of CER-regulated projects. The Crown encourages Indigenous communities to engage with NorthRiver on the development of its plans on this Project, to participate in the monitoring programs for this Project, and to work with the CER on Action Plan Measure 34 in the years to come.

11.5 Employment, Training and Economic inclusion for Indigenous Peoples

The majority of Indigenous communities shared concerns regarding employment, contracting, training opportunities, and lifecycle inclusion related to the Project.

Beaver First Nation, British Columbia Métis Federation, Kelly Lake Métis Settlement Society, Driftpile Cree Nation, Kikino Metis Settlement, Sucker Creek First Nation, Kelly Lake Cree Nation, and Foothills First Nation specifically expressed interest in meaningful employment opportunities related to the Project.

Indigenous communities including Beaver First Nation, Driftpile Cree Nation, Foothills First Nation, Horse Lake First Nation, Sucker Creek First Nation, Whitefish Lake First Nation #459, and Métis

Nation of Alberta submitted that targets or thresholds for the employment of Indigenous Peoples should be imposed on NorthRiver, as well as monitoring of those targets.

Some Indigenous communities stated that general measures for Indigenous inclusion after construction do not necessarily result in concrete economic benefits to Indigenous communities in the form of jobs, training, or contracting opportunities. Concerns were also expressed that without specific requirements or direction for more culturally inclusive hiring or business practices, economic benefits may remain elusive for some Indigenous communities. Foothills First Nation stated that without thresholds or the ability to enforce economic and employment targets, it remains unclear how NorthRiver will be held accountable to their stated principles and initiatives, despite the Commission's recommended **Conditions 20** (Update on employment, contracting, procurement and training for Indigenous Peoples) and **Condition 46** (Socio-economic effects monitoring final report). NorthRiver's limited engagement with Foothills First Nation and lack of commitments to economic inclusion are a key contributing factor to this concern.

Sucker Creek First Nation, Driftpile Cree Nation, Whitefish Lake First Nation #459 stated that there should be resource revenue sharing by Canada through a distribution of tax revenue.

Crown Response:

The Crown acknowledges Indigenous communities' concerns regarding the need to experience meaningful and measurable economic inclusion and benefits from the Project.

The Crown notes the Commission's conclusion that the Project's effects on employment and economy for Indigenous Peoples could be positive in total cumulative effects (rated low to medium) and positive in overall significance (rated low significance). NorthRiver has acknowledged the importance of economic inclusion and has noted it is a priority. In its third submission to the Commission, the CCC noted the key elements of NorthRiver's proposed measures to enhance opportunities for employment and economic inclusion for the project, including its [Indigenous Contracting Initiative](#).

Regarding Indigenous communities' concerns with respect to targets and minimum thresholds, the Crown notes that the Commission did not impose specific targets or thresholds related to hiring, training, contracting or procurement activities. This aligns with the CCC's comments regarding employment thresholds contained in its third submission to the Commission. The Crown therefore does not recommend any further measures with respect to hiring, training, contracting or procurement targets thresholds for Indigenous Peoples for this Project.

The Commission's recommended **Condition 20** (Update on employment, contracting, procurement, and training for Indigenous Peoples), includes requirements for NorthRiver to provide:

- a summary of NorthRiver's engagement methods used and the outcome of its engagement efforts, including those performed by its prime contractor(s), with all Indigenous Peoples who express an interest regarding potential training opportunities on the Project for Indigenous Peoples;
- a description of all issues, concerns, and recommendations raised by Indigenous Peoples how NorthRiver addressed or responded to them and a plan to resolve any outstanding issues, concerns, or recommendations; and
- a description of the measures that NorthRiver has used or will use to maximize anticipated opportunities for Project-related employment, contracting, and procurement for Indigenous

Peoples and the measures taken to maximize the ability of Indigenous Peoples to take advantage of such opportunities.

The CCC's **Recommendation 2** recommended that the Commission add a provision for NorthRiver to report on additional disaggregated economic data to provide greater transparency so that such information can be of value to Indigenous communities. The Commission agreed with **Recommendation 2** and amended **Condition 46** (Socio-economic effects monitoring final report) to include disaggregated information that is of interest to Indigenous Peoples and non-Indigenous persons, with the understanding that the information does not need to be broken down on a community-by-community basis. Rather, the Commission stated that it expects NorthRiver to determine what subcategories of employment, procurement, or training for Indigenous and non-Indigenous communities is reasonable to report. The Crown notes that the CCC did not provide any specifics in its recommendation to the Commission regarding the type or breakdown of disaggregated data. It is the Crown's view that the Commission's general requirement in **Condition 46** is responsive to the **Recommendation 2**, and that the addition of reporting on disaggregated data in **Condition 46** can address, at least in part, Indigenous communities' concerns regarding tracking or monitoring of Project-related employment, contracting, procurement and training without the need to disclose community specific information that may be sensitive and/or confidential. The Crown also notes that all Indigenous Peoples who express an interest in receiving the socio-economic effects monitoring final report will receive the report from NorthRiver.

The Commission also recommended **Condition 20** (Update on employment, contracting, procurement, and training for Indigenous Peoples), which requires NorthRiver to provide a detailed description of the measures that it has used or will use to maximize anticipated opportunities for Project-related employment, contracting, and procurement for Indigenous Peoples, as well as a description of contractor oversight measures as well as any other policies and procedures that encourages safety, responsibility, integrity, diversity, and inclusion.

With respect to benefits sharing from the development of natural resources, the Crown is working to address barriers preventing Indigenous Peoples from fully benefitting from Canada's natural resources sector. The Crown notes that in 2021, NRCan began developing its [National Benefits-Sharing Framework](#). One of the aims of the framework is to develop and implement actions to ensure Indigenous Peoples and their communities equitably and consistently benefit from natural resource development on their lands. NRCan will engage with Indigenous partners, provincial and territorial governments, and natural resources industries, to inform the development of a national framework. The focus points for a national framework are Indigenous communities' capacity, inclusion, partnership, and economic benefits. The work to develop the National Benefits-Sharing Framework is ongoing and further information is available at the webpage in the link above.

The Crown is of the view that the Commission's recommended conditions relating to plans for the participation of Indigenous communities in employment and training during construction, post-construction and operations are responsive to the concerns and recommendations of Indigenous communities. The Crown continues to encourage all Indigenous communities to engage with NorthRiver on the development of these plans and on economic opportunities for the Project in general. The Crown is of the view that with NorthRiver's commitments, the Commission's recommended conditions and CER's ongoing oversight of the Project, concerns relating to employment, training and economic inclusion for Indigenous Peoples are appropriately accommodated.

11.6 Cumulative Effects and Cumulative Impacts on Rights

The majority of Indigenous communities shared concerns regarding cumulative effects and cumulative impacts on rights. Concerns included potential impacts the Project may have on the ability of Indigenous Peoples to maintain secure and continued access to lands and resources used for traditional purposes, specifically due to the proximity and increasing encroachment of projects, and other downstream impacts, including within Treaty 8 territory in both BC and Alberta and Métis Harvesting Area A in Alberta. The ability to access and use lands for traditional purposes was central to the concerns raised, including the increased need to travel further to be able to practice section 35 rights.

Beaver First Nation, Driftpile Cree Nation, and Dene Tha' First Nation expressed the importance of cumulative effects from other development in the area being included and weighed in decisions regarding cumulative impacts on rights.

Doig River First Nation, along with other Treaty 8 Nations, expressed concerns that the Project would diminish access to already limited lands available for traditional land and resource use, or lead to increased avoidance of lands. The diminishing availability of lands for traditional uses and the exercise of Indigenous and Treaty rights prompted further concerns regarding the ongoing ability of Indigenous Peoples to maintain their roles as stewards of the lands and to exercise section 35 rights to maintain culture, identity, and language.

Several Indigenous communities, including Driftpile Cree Nation, Dene Tha' First Nation, Kelly Lake Cree Nation, Kelly Lake First Nation, Saulteau First Nations, West Moberly First Nations, and Whitefish Lake First Nation #459, raised concerns regarding cumulative effects of Projects within their traditional territories, the recent BC Supreme Court decision in Yahey, and impacts to their section 35 rights. "Death by a thousand cuts" was mentioned regularly in CCC meetings. Doig River First Nation shared specific concerns related to NorthRiver's methodology for assessing impacts to rights. West Moberly First Nations shared that continued reliance on industry standards is not meaningful acknowledgement of the Yahey decision. Indigenous communities also shared that cumulative effects and impacts on their rights are inadequately addressed in the Commission's assessment of the Project, in part due to an absence of thresholds. Indigenous communities also expressed concerns that Project disturbance is not limited to Crown land, and that distinctions between occupied and unoccupied Crown land with respect to Project disturbance is not accurate nor appropriate.

A number of Indigenous communities expressed concern that any further loss of available Crown land would have an adverse effect for those communities on:

- the ability to maintain secure access to lands for the exercise of rights;
- the ability to maintain secure access to resources integral to traditional activities;
- the ability to maintain preferred conditions to meaningfully exercise section 35 rights, including hunting, fishing, harvesting and trapping;
- maintaining and preserving Indigenous cultures, lifeways, systems of knowledge and languages through the ongoing ability to meaningfully exercise section 35 rights.

Some Indigenous communities expressed that, in addition to the increased amount of land taken up for agricultural, industrial and municipal purposes, Indigenous communities cannot access privately

owned land to practice their way of life, or to undertake Traditional Land Use studies to inform project applications or for project monitoring post construction.

NorthRiver's proposed offset plan was an integral topic of discussion throughout the hearing process and with the CCC. Many Indigenous communities, including Beaver First Nation, Buffalo Lake Metis Settlement, Dene Tha' First Nation, Doig River First Nation, Driftpile Cree Nation, East Prairie Metis Settlement, Elizabeth Metis Settlement, Foothills First Nation, Horse Lake First Nation, Kelly Lake Cree Nation, Kelly Lake First Nation, Kikino Metis Settlement, Louis Bull Tribe, Peavine Metis Settlement, Prophet River First Nation, West Moberly First Nations, and Whitefish Lake First Nation #459 expressed concern regarding the offset plan. Concerns included:

- Inappropriate reliance on the BC-Blueberry River First Nations Agreement and Treaty 8 consensus document
- Failure to consider Project effects to private and previously disturbed Crown lands;
- A misunderstanding of cumulative effects and the impact to Indigenous and Treaty rights;
- A disconnect between what NorthRiver is willing to offset, and what Indigenous communities consider an impact;
- Bias towards a western science perspective over the use Indigenous knowledge;
- Proximity and increasing encroachment of other projects such as the Site C project and other downstream impacts;
- Importance of inclusivity, both of Alberta-based Indigenous communities, as well as Métis, and non-Treaty communities;
- NorthRiver's Final Offset Plan does not allow for sufficient time to implement a governance structure and spend the funds;
- Lack of appropriate funding to participate in the implementation of the Offset plan; and
- Lack of cultural offsets explicitly accounted for in the Revised Final offset Plan.

Crown Response:

The Crown acknowledges Indigenous communities' concerns regarding the Project's potential to further reduce the ability of Indigenous communities to exercise section 35 rights and interests in the Project area, given the amount of land already taken up for agricultural, industrial and municipal purposes. The Crown also recognizes the importance to Indigenous communities of maintaining access to lands and resources needed for the meaningful exercise of section 35 rights and for preserving Indigenous cultures, lifeways, systems of knowledge and languages.

The Crown has considered the concerns of the Indigenous communities, the Commission's Report and the Commission's recommended conditions, and concludes that, based on the below analysis, the Commission appropriately addressed the concerns raised by Indigenous communities related to the Project's potential cumulative effects and cumulative impacts on rights. The Crown is of the view that, if the Project is approved, appropriate measures would be put in place such that Indigenous communities' concerns about the ability to exercise their section 35 rights would be appropriately accommodated.

The Crown notes that, in its Report, the Commission addressed the potential adverse effects to section 35 rights and interests, described its findings and responded specifically to submissions on the record. The Commission recommended imposing the following conditions as measures to address the Project's potential effects, including the Project's effects on section 35 rights (inclusive

of the potential effects of the project on wildlife, vegetation, water quality and quantity and the associated rights of harvesting and use of these resources):

Condition 6 – Revised Final Offset Plan

Condition 9 – Construction Environmental Protection Plan

Condition 10 – Finalized watercourse crossing inventory

Condition 14 – Plan for Indigenous Peoples’ participation in construction monitoring

Condition 15 – Outstanding traditional land and resource use investigations and consultation, concerns and response tables

Condition 16 – Support for Indigenous Peoples to review NorthRiver’s condition filings

Condition 17 – Socio-economic Effects Monitoring Plan

Condition 18 – Temporary construction camps and worker accommodation strategy

Condition 20 – Update on employment, contracting, procurement, and training for Indigenous Peoples

Condition 21 – Heritage resources clearances

Condition 22 – Integrated Pest Management Plan

Condition 27 – Bank swallow survey

Condition 28 – Contingency watercourse crossings

Condition 29 – *Fisheries Act* authorizations

Condition 30 – Little brown myotis and northern myotis surveys and protection

Condition 31 – Breeding bird survey and protection

Condition 34 – Blueberry River First Nations – British Columbia Restoration Fund reporting

Condition 35 – Treaty 8 Restoration Fund Reporting

Condition 36 – Land Securement Fund reporting

Condition 37 – Hydrostatic pressure testing

Condition 38 – Operations Environmental Protection Plan

Condition 41 – Plan for Indigenous Peoples’ participation in post-construction and operations monitoring

Condition 46 – Socio-economic effects monitoring final report

Condition 49 – Post-construction environmental monitoring reports

With respect to incremental cumulative effects resulting from upstream development, the Commission agreed with NorthRiver that the Project is not likely to materially enable or induce upstream development in the Montney area. The Commission also noted that upstream

development is regulated by the BC government and would be subject to requirements arising from the BRFN Implementation Agreement, and when they are legally enforceable, the Treaty 8 Consensus Document and Letters of Agreement.⁹ The Crown finds these conclusions to be reasonable.

The Crown has also considered the concerns raised regarding cumulative effects and NorthRiver's offset plan for the Project. NorthRiver proposed that it offset all residual effects on Crown lands from the Project, and, as a result of the hearing process for the Project, the Commission recommended the offset plan required in **Condition 6** (Revised Final Offset Plan). It is the Crown's view that the Commission, in coming to its determinations on the Project's potential cumulative effects, has appropriately scoped the measures it deems necessary for mitigating those effects, which includes its conditions with respect to the offset plan, commensurate with its determinations on the Project's cumulative effects.

The Crown concurs with the Commission's findings with respect to NorthRiver's offset plan. In its Report, the Commission provided detailed responses to Indigenous communities' evidence with respect to the offset plan. Specifically, the Commission has directly responded to the evidence regarding offsets in the following Report chapters:

- 9.4.3.2 – offset multipliers
- 9.3.4.4 – governance and Indigenous-led
- 9.3.4.6 - monitoring and adaptive management
- 9.4.4.2 – offsetting private lands
- 9.4.4.3 - previously disturbed lands
- 9.4.4.5 – cultural offsets
- 9.4.4.6 – economies of scale
- 9.4.4.7 – net gain
- 9.4.4.9 – [DRFN's proposed] four areas (in the DRFN alternative offset plan)
- 9.4.4.10 – other [offset] principles

The Crown is of the view that Indigenous communities' input related to offsets has been thoroughly considered by the Commission. The Crown notes that the Commission afforded expansive treatment of the issue of offsets throughout the proceeding by orchestrating multiple workshops on cumulative effects and offsets, dedicating an entire chapter of its Report to the issue of offsets and providing clear reasons for its ultimate determinations on the suitability of NorthRiver's offset plan, and how and why the Commission reached its conclusions on the conditions it is recommending regarding NorthRiver's offset plan. The Crown notes that the Commission made several changes to the offset plan throughout the proceeding, and that these changes took into account a number of comments from Indigenous communities as well as the CCC. For example, the Commission:

- Doubled the effective multiplier to be applied for the Land securement Fund (from one-to-one to two-to-one, effectively doubling the funds for Component 3);
- Enhanced the capacity support for Component 3 (through provisions for a facilitator, the increase

⁹ The Treaty 8 Consensus Document is a document that was co-developed by the Province of BC and six other Treaty 8 First Nations dated March 2022. The Letters of Agreement refers to the agreements between BC and Doig River First Nation, Fort Nelson First Nation, Halfway River First Nation, Sauteau First Nations, and McLeod Lake Indian Band to affirm the commitments and obligations set out in the Treaty 8 Consensus Document.

in timespan from three years to four years before unspent funds would be transferred to the Treaty 8 Restoration Fund, and the increase in timespan from four years to five years for funding to Indigenous communities to participate in Component 3);

- Addressed uncertainty with respect to the Treaty 8 Restoration Fund by requiring NorthRiver to provide a contingency scenario in the event this fund is not operational at the time NorthRiver would need to make payment to the fund;
- Required NorthRiver to internalize some costs for Component 3, through the requirement for NorthRiver to pay any land transfer costs;
- Inclusion of the offset plan principle of Indigenous-led;
- Enhanced reporting on Component 3, including a report detailing the amount contributed to the fund, and a detailed schedule for reporting; and
- Clarified that cultural offsets could be included in the Revised Final Offset Plan

Regarding the concern that NorthRiver's offset plan does not contemplate, nor offset, impacts to Indigenous culture, and that cultural offsets should be included, the Crown notes that the Commission agreed with the CCC's **Recommendation 8**, that the offset plan be inclusive of cultural offsets. The Crown also notes that the Commission agreed with NorthRiver that its contributions to the BRFN-BC Restoration Fund and the Treaty 8 Restoration Fund could lead to restoration activities that are of cultural importance to the Indigenous communities involved in administering the funds, or to specific investment in cultural projects. The Commission was likewise of the view that the Component 3 (Land Securement Fund) could be used to select land areas that hold cultural values of importance to the Indigenous Peoples involved in administering that Fund. The Crown finds the Commission's analysis to be reasonable, and therefore agrees that the decision on whether to proceed with cultural offsets can be left to the discretion of the Indigenous communities involved in administering the three funds. Specifically, the Crown concurs with the Commission that the three funds include scope for supporting cultural practices, either through land restoration in Treaty 8 areas or through land securement.

Regarding the CER's ability to monitor on the implementation or success of the offsets, the Crown notes that the governance of Components 1 and 2 of the Revised Final Offset Plan is or will be set by agreements between the province and Indigenous Peoples. The Crown acknowledges that these funds are in early stages of development. However, the unique circumstances for this Project resulted in the approach set out in Components 1 and 2 of the Revised Final Offset Plan. The Crown notes that the BRFN Implementation Agreement is now legally binding,¹⁰ and that, like the Commission, it has confidence in the Treaty 8 Restoration Fund. The Crown notes that the Commission has included a contingency plan scenario in **Condition 6** with respect to the Treaty 8 Restoration Fund, which accounts for the early-stage uncertainty for this fund. This provides additional confidence for this measure by ensuring that the funds dedicated for offsetting though this measure can still be made available.

The Commission's recommended **Conditions 6** and **36** include reporting requirements relating to implementation of Component 3 of the Final Revised Offset plan. More specifically, the Crown sees **Condition 6** (Revised Final Offset Plan), which requires NorthRiver to provide detailed reporting on the progress of the fund, including amounts paid into it, and **Condition 36** (Land Securement Fund

¹⁰ As a result of the [BRFN Implementation Agreement Regulation](#) (Regulation) and the [BRFN Implementation Agreement Order](#) (Order).

reporting) which requires NorthRiver to submit reports according to the schedule, as sufficiently addressing Indigenous communities' concerns. As noted in sections 2.3 and 10.1, all condition filings will be reviewed by the CER, including any comments received in respect of the condition. Regardless of whether a filing is submitted for formal approval, the CER will monitor and enforce NorthRiver's compliance with all conditions in the Certificate and related Order, should the Project be approved.

12. Additional Comments Regarding CER Initiatives

The CER is conducting a comprehensive review of the *Onshore Pipeline Regulations (OPR)*, to update these regulations and is updating various sections of its Filing Manuals.¹¹ The CER will coordinate engagement activities for the review of the OPR and Filing Manuals with Indigenous communities. When available, details on how and when to participate in the next phase of engagement will be posted on the CER Dialogue website.

The Crown is of the view that the concerns expressed by Indigenous communities, particularly with respect to the methodology used for cumulative effects assessment and for the assessment of impacts to section 35 rights and interests, would be relevant to those reviews. The Crown encourages Indigenous communities to become involved in the next phase of engagement so their views on these issues can be heard.

13. Conclusion

The CER, as the CCC, has conducted engagement and consultation activities on behalf of the Crown to supplement the Commission's OH-001-2022 hearing process and support the GIC decision-making phase for the Project.

In undertaking consultation activities, the Crown sought to understand and be responsive to potential Project-related effects and concerns of Indigenous communities with respect to their section 35 rights and interests. The Commission's hearing process formed an important part of Crown consultation for the Project and was the primary forum for consultation. The Commission had available for its consideration all the evidence put forward by Indigenous Peoples participating in the hearing, as well as the evidence of all other participants in the Commission's hearing process, including the multiple submissions of the CCC. The CCC's submissions included consultations with Indigenous communities that did not participate directly in the hearing to ensure that their views about the potential impacts to section 35 rights and interests could be considered by the Commission as part of its overall assessment of the application.

The consultation that took place following the issuance of the Report was also an important part of Crown consultation process for the Project. Following the release of the Report, the CCC met with Indigenous communities multilaterally on 26 and 27 October 2023, as well as individually to discuss the Commission's findings and analysis as well as its final recommended conditions. The content of

¹¹ The CER conducted the first phase of engagement in 2022, with a Discussion Paper and engagement sessions. Submissions received, and a What We Heard report are available on the CER Dialogue website.

conditions was discussed and the CCC received further written and verbal feedback and recommendations from Indigenous communities.

During final consultation meetings, the CCC committed to hosting a session early in 2024, should the Project be approved, to review the conditions in detail and to explain the CER's general approach to condition compliance. The CCC has undertaken a consultation process characterized by respectful dialogue, adhering to culturally inclusive protocols. The CCC has made genuine efforts to engage and consult with Indigenous communities whose section 35 rights or interests might be impacted by the Project.

Comments regarding outstanding concerns that were received during these consultation activities were then considered in relation to the measures proposed to address the Project's potential effects, including NorthRiver's commitments and mitigation, the Commission's recommended conditions, the CER's ongoing oversight of the Project, and existing federal initiatives.

In its Report, the Commission included 49 recommended conditions for the Project. A number of changes and amendments proposed by Indigenous communities and the CCC during the hearing process were reflected in these final recommended conditions. The Commission also added conditions beyond those initially issued as potential conditions during the course of the hearing process. Conditions attached to a Certificate of Public Convenience and Necessity can contribute to avoiding, mitigating or offsetting potential impacts to section 35 rights and interests and concerns identified through the consultation process. Commission conditions can be appropriate accommodation measures.¹²

Canada has a legal duty to consult and, if appropriate, accommodate, Indigenous Peoples when it contemplates conduct that may adversely affect section 35 rights. Cumulative effects form a key part of the context when considering potential impacts to the rights and interests of Indigenous Peoples. Fulfilling the honour of the Crown through meaningful dialogue involves working together in a manner that promotes Reconciliation and enables the meaningful exercise of section 35 rights. The Commission's process formed an important part of Crown consultation for the Project, and the CCC has relied on the Commission's process with respect to the assessment of the Project's potential effects, including the resulting measures detailed in the Commission's Report that would be imposed to avoid, reduce or eliminate those potential effects.

The Crown is of the view that the Commission's hearing process and the supplemental consultations by the CCC provided an effective forum for the concerns and potential impacts of the Project on the section 35 rights and interests of potentially affected Indigenous Peoples to be heard, considered and addressed. The Crown is of the view that it has offered meaningful two-way dialogue in a good faith consultation process, has considered, and provided responses to the potential impacts and concerns that were raised.

Accordingly, the CER, in its role as the CCC concludes that Canada has satisfied its duty to consult and accommodate the Indigenous communities on the Crown list for the NEBC Connector Project.

¹² *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41 at para. 60.

This CCAR along with Indigenous Community-Specific Annexes and independent submissions from Indigenous communities was submitted to the Minister of Energy and Natural Resources to inform GIC assessment of whether the Crown's duty to consult and accommodate Indigenous communities has been satisfied.

The CCC would like to thank every Indigenous community, their Leadership, Elders, members, and staff for the time, effort and two-way dialogue that has occurred over this two-year Crown consultation period. It has been an honour to work with and alongside the Indigenous communities and to learn more about the great work that is happening in the communities. The CER's commitment to Reconciliation and relationship building will ensure ongoing work and follow-up during Projects and outside of them will continue with Indigenous communities.

Attachments: Indigenous Community-Specific Annexes

1. Apetokosan Nation (Kelly Lake Métis Settlement)
2. As'in'l'wa'chi Ni'yaw (Kelly Lake Cree Nation)
3. Beaver First Nation
4. Blueberry River First Nations
5. British Columbia Métis Federation
6. Buffalo Lake Metis Settlement
7. Dene Tha' First Nation
8. Doig River First Nation
9. Driftpile Cree Nation
10. Duncan's First Nation
11. East Prairie Metis Settlement
12. Elizabeth Metis Settlement
13. Fishing Lake Métis Settlement
14. Foothills First Nation
15. Fort Nelson First Nation
16. Gift Lake Metis Settlement
17. Halfway River First Nation
18. Horse Lake First Nation
19. Kelly Lake First Nation
20. Kikino Metis Settlement
21. Louis Bull Tribe
22. McLeod Lake Indian Band
23. Métis Nation of Alberta / Métis Nation of Alberta – Region 6
24. Métis Nation British Columbia / Métis Nation British Columbia Northeast Region
25. Metis Settlements General Council
26. Paddle Prairie Metis Settlement
27. Peavine Metis Settlement
28. Prophet River First Nation
29. Sauteau First Nations
30. Sucker Creek First Nation
31. Tsay Keh Dene
32. West Moberly First Nations
33. Whitefish Lake First Nation #459