



LETTER DECISION

File OF-Fac-Gas-N081-2018-01 01
11 April 2019

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Dear Mr. Wyman, Mr. Ducharme, and Mr. Duncanson:

**NOVA Gas Transmission Ltd. (NGTL)
Application for the West Path Delivery Project (Project) pursuant to section 58 of
the *National Energy Board Act* (NEB Act)
Hearing Order GH-002-2018 (Hearing Order)
Letter Decision dated 11 April 2019 – Order XG-N081-005-2019 and
MO-006-2019**

The National Energy Board (the Board or NEB) has determined that it is in the public interest to approve NGTL's¹ West Path Delivery Project application (Application) to construct and operate the Project, pursuant to section 58 of the NEB Act.

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¹ NGTL is a wholly-owned subsidiary of TransCanada PipeLines Limited (TransCanada). TransCanada operates the NGTL System pursuant to an operating agreement between TransCanada and NGTL. TransCanada applies corporate policies in its operations of the NGTL System that are common to TransCanada's operation of other federally-regulated pipelines.

1.0 Project Overview and the NEB Process

1.1 Application and Project Overview

On 12 February 2018, NGTL (Applicant) applied to the Board pursuant to section 58 of the *National Energy Board Act* (NEB Act) for authorization to construct and operate the Project which consists of one new natural gas pipeline, two compressor station unit additions, and related facilities (Application).

The Western Alberta System (WAS) Mainline Loop (Rocky View Section) consists of approximately 21.5 kilometres (km) of nominal pipe size 42 outside diameter pipeline, valves and associated facilities.

The Rocky View Section begins at NGTL's existing WAS110 Valve Site in NE 16-26-04 W5M, approximately 0.8 km north of the Town of Cochrane, Alberta (AB), and ends at NGTL's existing WAS100 Valve Site in NE 10-24-04 W5M, approximately 16.6 km west of the City of Calgary, AB within Rocky View County. The new compressor units would be located at each of NGTL's existing Turner Valley and Burton Creek Compressor Stations within the Municipal District of Foothills No. 31 and Municipal District of Ranchland No. 66, AB, respectively.

The Turner Valley Compressor Station Unit Addition (Turner Valley CS) involves the installation of a single 30 megawatt turbo-compressor package (gas turbine and compressor) and auxiliary systems at NGTL's existing Turner Valley CS approximately 3 km northwest of Turner Valley, AB, within SE 15-20-03 W5M.

The Burton Creek Compressor Station Unit Addition (Burton Creek CS) involves the installation of a single 30 megawatt turbo-compressor package (gas turbine and compressor) and auxiliary systems at NGTL's existing Burton Creek CS, approximately 39 km west of Claresholm, AB, in NW 06-12-01 W5M.

NGTL requested relief under section 58 including exemptions from paragraph 30(1)(a) and section 31 of the NEB Act and from the requirements of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain Leave to Open (LTO) for certain tie-in and valve assemblies associated with the Project (LTO Exemption). NGTL also applied for an Order pursuant to subsections 48(2.1) and 48(2.2) of the NEB Act exempting certain low-pressure piping systems associated with the Project from the 100% non-destructive examination requirement (NDE Exemption) in section 17 of the *National Energy Board Onshore Pipeline Regulations* (NEB OPR). Finally, in its additional evidence, NGTL applied for an Order pursuant to section 45.1 of the NEB OPR to decommission and remove certain existing facilities of the Project to provide space for the installation of new facilities for the Burton Creek CS component of the Project.

NGTL stated that the proposed Project will allow NGTL to connect the Western Canadian Sedimentary Basin (WCSB) producers seeking increased access to intra-basin and export markets. NGTL indicated that existing aggregate demand in southern Alberta and incremental

long-term delivery commitments at the NGTL System's AB-B.C. Border export delivery point provide the support and requirement for the Project.

1.2 The NEB Process

1.2.1 Overview of the Hearing

On 25 May 2018, the Board issued notification letters to Indigenous peoples² potentially affected by the Project. The letter sought comments or concerns about the Project or views about how the Project may impact Indigenous peoples, the use of their traditional territory and any potential or established Treaty or Indigenous rights.³ On 14 June 2018, the Board issued a Notice of Public Hearing and Application to Participate, and determined that the Application was complete enough to proceed to assessment. As explained in the Notice of Public Hearing, the Board decided to hold a public hearing regarding NGTL's Application under subsection 24(3) of the NEB Act after having considered the submissions from NGTL and interested persons who filed comments directly to the Board.

The Board issued its Hearing Order GH-002-2018 (Hearing Order) on 28 June 2018, which established a process for the Board's consideration of the Application.

Pursuant to section 55.2 of the NEB Act, the Board must determine who may participate in a hearing for a project before the Board. To be eligible to participate, interested persons or groups must request participation and demonstrate to the Board in their participation application that:

- they are directly affected by the proposed project; or
- they have relevant expertise or information that will assist the Board in making its decision in respect of a proposed project.

Those who wished to participate in the hearing process for the Project were required to submit an Application to Participate (ATP) to the Board by 12 July 2018.

The Notice of Public Hearing and Hearing Order explained that the Board decided all of the persons who provided comments to the Board,⁴ as well as Indigenous communities, municipalities, and landowners and occupants who are directly affected by the granting or refusing of the Application, had standing provided they registered before the ATP deadline of

² "Indigenous" or "Indigenous peoples" has the meaning assigned by the definition *aboriginal peoples of Canada*, in subsection 35(2) of the *Constitution Act, 1982* which states: In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.

³ "Indigenous rights" has the meaning assigned by the definition *aboriginal rights* in subsection 35(1) of the *Constitution Act, 1982*.

⁴ Prior to the establishment of hearing proceeding, the Board received letters about the Project from: Mr. Costigan on 19 February and 2 March 2018; St. Peter's Lutheran Church, and Mr. and Mrs. Mostaghel on 26 February 2018, respectively; Mr. Block on 27 February 2018, Mr. and Mrs. Drewry on 28 February 2018; McKendrick Ranches Ltd. on 10 April 2018; and O'Chiese First Nation (O'Chiese) on 11 May 2018 and decided to give them Pre-decided Standing.

12 July 2018. This was referred to as Pre-decided Standing. Anyone who was not granted Pre-decided Standing could apply to participate through the ATP process.

The Board received 27 ATPs. A total of 21 individuals or groups requested or registered for Intervenor status and all were granted Intervenor status by the Board. Six individuals or groups requested or registered for Commenter status and all were granted Commenter status by the Board. On 26 October 2018, Tsuut'ina Nation (Tsuut'ina) filed a request to file late evidence and while Tsuut'ina was granted Pre-decided Standing in the Notice of Public Hearing, Tsuut'ina did not register through the ATP system by 12 July 2018, failure of which, as was explained in the Hearing Order, the person would not be on the List of Participants. Nonetheless, on 30 October 2018, the Board accepted Tsuut'ina's letter dated 26 October 2018 as registration into the hearing and granted Tsuut'ina Intervenor status "in progress" and accepted its late evidence.⁵ On 29 November 2018, the Board noted that it had received letters of comment from Mr. and Mrs. Drewry and O'Chiese prior to the Board commencing a proceeding for the Project and had been granted Pre-decided Standing in the Board's Notice of Public Hearing but, had failed to register through the ATP system. The Board noted that their letters of comment, at least implicitly, expressed an interest by Mr. and Mrs. Drewry and O'Chiese to participate in the hearing and the Board decided to grant them Commenter status such that their letters would be considered. Four participants eventually withdrew from the hearing: Mr. and Mrs. Mostaghel; Cochrane/Springbank Landowners Group; West Path Agricultural Producers Group (CAEPLA-WPAPG⁶); and St. Peter's Lutheran Church (St. Peter's).

Of note, when parties withdraw, while the submissions made by withdrawing parties remain on the record, the Board gives no weight to such submissions, especially when those submissions are specific to the individual concerns of a party and not otherwise shared by other parties or of general public interest to the Board. Therefore, while some of these participants may have been active, little will be said in this Letter Decision about what their concerns were.

On 22 August 2018, the Board released Procedural Update No. 1 providing information about the oral statements and oral traditional evidence (OTE) portions of the hearing. Oral statements and OTE were held from 16 to 19 October 2018 in Calgary, AB, at which time all intervenors and the Applicant had an opportunity to present an oral statement and/or OTE expressing their views on the Project directly to the Board.

All Procedural Updates and Rulings can be viewed in **Appendix I – Rulings and Procedural Updates**. The regulatory documents on file in the GH-002-2018 proceeding are available on the Board's website, www.neb-one.gc.ca.

⁵ By "in progress", the Board meant that steps in the process that had already passed were no longer available to Tsuut'ina.

⁶ The West Path Agricultural Producers Group was granted standing as an intervenor. Subsequently, they joined with the Canadian Association of Energy and Pipeline Landowner Associations. (CAEPLA-WPAPG)

1.2.2 Participant Funding

The NEB administers a Participant Funding Program, which provides financial assistance to individuals, Indigenous groups, landowners, and non-industry not-for-profit groups to facilitate public participation in certain project hearings and environmental assessments of designated projects.

On 30 May 2018, the NEB announced \$250,000 to assist individuals and groups with their participation in the hearing for the Project. The Participant Funding Program received fourteen applications requesting a total of \$851,393. After reviewing the applications, the Participant Funding Program recommended awarding \$839,383. The NEB's Executive Vice President, Regulatory approved the recommendation. Indigenous communities account for 75 per cent of the funding awarded.

Applicant	Amount awarded
West Path Agricultural Producers Group (CAEPLA-WPAPG)	\$80,000
Bearspaw First Nation (BFN)	\$80,000
Blood Tribe also known as Káínai First Nation (Káínai)	\$79,375
Chiniki First Nation (CFN)	\$80,000
Cochrane/Springbank Land Owners Group	\$40,000
Elisabeth Mostaghel	\$6,000
Métis Nation of Alberta Region 3 (MNA3)	\$70,330
Mohammad Mostaghel	\$6,000
Piikani Nation (Piikani)	\$76,100
Samson Cree Nation (SCN)	\$79,578
Scott Bower	\$2,000
St. Peter's Lutheran Church (St. Peter's)	\$80,000
Tsuut'ina Nation (Tsuut'ina)	\$80,000
Wesley First Nation (WFN)	\$80,000
Total value awarded	\$839,383

1.2.3 Conditions

The Board sets out conditions of approval that it considers necessary or desirable in the public interest. The purpose of conditions is to mitigate potential risks and effects associated with a project so that the project can be designed, constructed, operated, and ultimately abandoned in a safe manner that protects the public and the environment.

On 14 November 2018, the Board made its draft potential conditions for the Project available for review by all participants to the hearing. The Board considered all comments it received from participants before finalizing and setting out the terms and conditions it would impose on the Project.

The Board has included 22 conditions in the XG-N081-005-2019 Order and 6 conditions in the MO-006-2019 Order that it has issued to NGTL in respect of the Project. The following chapters

in this Decision explain the context and expectations of the conditions which the Board has set out for the Project.

2.0 Assessment of the Application

2.1 Economic Feasibility

When making the determination regarding the economic feasibility of the Project, the Board assessed the need for the proposed facility and the likelihood of it being used at a reasonable level over its economic life. The Board considered the supply and markets available to the pipeline, transportation contracts underpinning the facilities, the rationale for selecting the applied-for facilities and the applicant's ability to finance the Project. The Board also considered the commercial impacts of the Project.

2.1.1 *Need for the Proposed Project*

Views of NGTL

NGTL submitted that the Project is driven primarily by WCSB producers seeking increased access to export markets. New firm transportation contracts for 288,000 gigajoules per day (GJ/d) have been executed with average terms of 17.5 years, and there is currently insufficient capacity to transport the new and existing contract demand. NGTL submitted that resource development and growth of the basin, and in turn the associated economic benefits, depend on the ability to increase egress to key markets. The contracts associated with the Project are a commitment to expand egress and to transport gas from the WCSB to key downstream Western United States markets.

Views of Participants

The Alberta Department of Energy (ADOE) argued that there is a clear need for the Project to provide additional transportation for natural gas within, and out of, Alberta. ADOE stated that it supports the increased market access capacity the Project is designed to provide, and encouraged timely approval by the Board.

2.1.2 *Supply and Markets*

Views of NGTL

NGTL submitted that WCSB supply available to the NGTL system is forecast to grow from 11.3 billion cubic feet per day (Bcf/d) in 2015/16 to 16.1 Bcf/d in 2030. The Project will not be sourcing gas supply from a specific location or play, but rather will provide transportation access to supply sources from emergent shale plays in British Columbia and Alberta, as well as from additional tight conventional supply sources from the Deep Basin of Alberta. While WCSB was once supply constrained, the key issue now facing WCSB producers is the need to access markets for the significant resource potential of the basin.

NGTL submitted that the Project will serve existing markets in the Pacific Northwest and California, as well as the Calgary area, which are expected to grow modestly over time. Pacific Northwest and California industrial gas demand and gas demand for power is forecast to increase from approximately 4.9 Bcf/d in 2016 to approximately 5.8 Bcf/d in 2030. NGTL stated that the Project will provide incremental capacity allowing WCSB gas to compete and capture market growth in the Pacific Northwest and California markets and will provide producers the needed ability to diversify their market portfolio beyond NGTL intra-basin demand.

Views of Participants

No participants expressed concerns about the natural gas supply or the markets available to the Project.

2.1.3 *Transportation and Alternatives*

Views of NGTL

NGTL submitted that the Project is underpinned by 288,000 GJ/d of new firm service delivery transportation contracts with an average term of 17.5 years, starting 1 June 2020. The new service requests were a result of a fully-subscribed open season that was held in May 2017. The expansion would align the capacity at the AB-B.C. point to the available downstream capacity to the Pacific Northwest and California. The Project facilities are required to accommodate both new and existing firm service delivery transportation contracts.

NGTL stated that existing export capacity at the AB-B.C. border on 1 June 2020 is 2,758 terajoules per day (TJ/d). Increased contracts result in design flow requirements of 3,046 TJ/d. Without the Project, there would be a capacity shortfall to contracts of 288 TJ/d. With the addition of the Project, the NGTL System would have a total delivery capacity to the AB-B.C. border export point of 3,085 TJ/d, which would be sufficient to accommodate the new and existing firm service delivery transportation contracts.

NGTL stated that it identified and compared facility alternatives to meet service and design flow requirements. NGTL considered a new 30 megawatt compressor station, a 40 km nominal pipe size 42 pipeline loop, and a 37 km nominal pipe size 42 pipeline loop as facility alternatives. The Project facilities were selected as the lowest Cumulative Present Value Cost of Service option.

Views of Participants

CAEPLA-WPAPG submitted a report completed by A.S. Cheung & Associates, in which several questions were raised regarding NGTL's Cumulative Present Value Cost of Service analysis. However, on 3 December 2018, CAEPLA-WPAPG filed a letter withdrawing from the GH-002-2018 hearing.

2.1.4 Ability to Finance

Views of NGTL

NGTL submitted that the estimated capital cost of the Project is \$409 million, and that TransCanada will fund Project construction through a combination of predictable cash flows generated from operations, new senior debt, as well as subordinated capital in the form of additional preferred shares and hybrid securities, the issuance of common shares and portfolio management.

NGTL submitted that potential costs associated with the risks and liabilities that may arise during construction and operation of the Project will be financed by accessing TransCanada's considerable reserves of cash and cash equivalent, which it maintains in the normal course of business. As of 31 March 2018, TransCanada had total committed and available liquidity of approximately \$6.9 billion.

Views of Participants

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

2.1.5 Commercial Impacts

Views of NGTL

NGTL proposed to roll-in the cost of the Project's facilities to the rate base for the rest of the NGTL system, and to apply the existing NGTL system toll methodology, which may change from time to time, to the Project. NGTL stated that the full-path toll impact is not anticipated to be material, at an increase of 0.1¢/thousand cubic feet.

NGTL provided a presentation to the Tolls, Tariffs, Facilities and Procedures Committee informing it of the Project. NGTL submitted that it is not aware of any objections to the Project.

Views of Participants

No participants expressed concerns regarding commercial impacts of the Project.

Views of the Board

The Board is of the view that the applied for facilities are economically feasible and are likely to be used at a reasonable level over their economic lives.

The Board finds that the Project will provide the benefit of increased egress to key markets for WCSB natural gas, and will have a minimal impact on tolls. The Board notes that shippers did not express any concerns regarding the Project. The Board finds NGTL's proposal to roll-in the cost of the Project's facilities to the rate base for the rest

of the NGTL system and to apply the existing NGTL system toll methodology to be reasonable.

2.2 Engineering Matters and Emergency Management

In consideration of the safety and security of proposed facilities, the Board assesses whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities will be located. NGTL is responsible for ensuring that the design, specifications, programs, engineering assessments, manuals, procedures, measures, and plans developed and implemented are in accordance with the NEB OPR, which includes by reference the Canadian Standards Association Standard CSA Z662 – Oil and Gas Pipeline Systems (CSA Z662-15).

The Board takes a lifecycle approach to regulation, holding its regulated companies accountable so that Canadians and the environment are protected throughout the lifecycle of each pipeline or project. The Board holds pipeline companies accountable for meeting their regulatory requirements through compliance verification activities such as audits, inspections, meetings, and review of condition filings, and other manuals and reports. The lifecycle includes the planning and pre-application phase, the application assessment and public hearing phase, the construction and post-construction phase, the operations and maintenance phase, and the eventual abandonment phase. The Board uses a risk-informed lifecycle approach in requiring that NEB-regulated facilities and activities are safe and secure from their initial construction through to their abandonment. The Board notes that the Project will be part of the existing NGTL System which is subject to the Board's comprehensive regulatory oversight.

2.2.1 Requested Exemptions

Views of NGTL

As described in **Section 1.1**, the Project will consist of several tie-in connections to incorporate the applied-for Project into the existing pipeline system. Under subsection 58(1) of the NEB Act, NGTL requested an LTO Exemption from the Board for installing two valve assemblies at each compressor station and two tie-in assemblies for Rocky View Section at valve sites WAS 110 and WAS 100.

Additionally, NGTL requested a NDE Exemption for certain small diameter low pressure auxiliary piping systems consisting of instrument air, glycol/water heat medium, potable water, lube oil and vents associated with the Burton Creek CS and Turner Valley CS. These systems are designed and constructed in accordance with ASME B31.3 or CSA Z662-15. NGTL committed to conducting NDE on 15 per cent of production welds per day, in accordance to the requirements of CSA Z662-15.

Views of Participants

Tsuut'ina expressed concern related to the exemptions requested by NGTL in the Application, and the potential direct impact to Tsuut'ina and their rights.

Views of the Board

The Board is of the view that the general design of the Project facilities is appropriate for its intended use. The Board is satisfied that the Project will be designed, constructed and operated in accordance with the NEB OPR and the CSA Z662-15. In regard to the requested LTO exemption, the Board is satisfied that prior to installation, the relevant valve and tie-in assemblies will be field or shop pressure-tested in compliance with the time duration and pressure requirements of CSA Z662-15. The Board reminds NGTL to file an application for LTO pursuant to section 47 of the NEB Act for the remainder of the Project. The Board grants the requested NDE exemption as they are small diameter auxiliary systems that operate at low stress levels and contain product that have little consequence. The Board imposes **Condition 2 (Design, Location, Construction, and Operation)** requiring NGTL to construct and operate the Project in accordance with the specifications, standards and other information referred to in its application or as otherwise agreed to during questioning or in its related submissions.

The Board also imposes **Condition 16 (Technical Specifications Updates)**, requiring NGTL to file any technical specification updates for the compressor stations listed in the Application concurrently with its final LTO application(s) for the compressor stations. Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade or material that do not impact any other information provided in the Application. Any other changes will require advance approval from the Board. Once filed by NGTL, the Board will assess all final technical specification updates and issue an Amending Order as appropriate.

The Board also imposes **Condition 4 (Construction Schedule)**, requiring NGTL to file a detailed construction schedule identifying major construction activities for that component and must notify the Board of any modifications to the schedule or schedules as they occur. NGTL must also provide a copy of the construction schedule(s) to those Indigenous communities who expressed interest in receiving them.

The Board reminds NGTL that it must seek advance approval from the Board prior to making any technical specification changes to the Rocky View Section.

2.2.2 Pipeline Class Location and Risk Assessment

Views of NGTL

The proposed Rocky View Section route traverses through populated areas including the Town of Cochrane. NGTL indicated that the pipeline sections along the proposed Rocky View Section meets the CSA Z662-15 criteria for Class 2, 3, and 4 designations. NGTL noted that portions of the Project are designed to a higher class⁷ location than their current class location designations in areas with proposed development, or deemed likely to have future development. NGTL also

⁷ Class location is defined in CSA Z662-15 as a geographical area classified according to its approximate population density and other characteristics that are considered when designing and pressure testing piping to be located in the area.

confirmed that the Project will be in compliance with the valve location and spacing requirements in CSA Z662-15 Clause 4.4, and will have a minimum depth of cover of 1.2 m.

Views of Participants

Mr. Bower raised concerns about the absence of a thorough risk assessment, particularly with respect to consequences of worst-case failure scenarios, cumulative effects, and natural forces and third-party damage hazards.

Views of the Board

The Board is satisfied with NGTL's approach to class location assessment, valve spacing and depth of cover for the Project.

The Board acknowledges Mr. Bower's observations with respect to the safety risk and consequence of failure, particularly if that failure is an ignited natural gas rupture. The Board notes that when a high-pressure gas pipeline is routed through areas of higher class location designation, CSA Z662-15 requires a stronger or thicker walled pipe to be installed. CSA Z662-15 defines risk as a compound measure of the frequency and severity of an adverse effect. Considering the probability of failure is inversely proportional to the wall thickness or pipe material properties for essentially all hazards, the CSA class system approach implicitly deals with risk since lower probability of failure is provided when the consequence of failure increases. The Board notes that in areas with potential for future development along the Rocky View Section, NGTL will use thicker walled pipes that meet the CSA requirements for a class location designation higher than the current class location designation.

The Board also acknowledges that risks associated with the new pipe are cumulative to the risks associated with the existing infrastructure. The Board notes that the separation distances for NGTL's pipelines were selected using an industry recognized model to reduce the possibility of collateral damage of the parallel pipelines in the unlikely event of a pipeline failure due to a natural event or third-party damage. The Board recognizes that the proposed thicker walled pipeline combined with the increased depth of cover will provide higher resistance to potential third party mechanical damage hazard associated with potential higher activity rate in populated areas.

Operational experience has shown that the class system approach to risk assessment combined with an effective Integrity Management Program (IMP) provides safe, environmentally responsible, and reliable service for the pipeline systems. Please refer to **Section 2.2.4 (Operation – Integrity Management Program)** for further information. The Board notes that for the long-term operational risks, NGTL is required and has committed to perform detailed system wide risk assessment for its entire pipeline system on an annual basis as per CSA Z662-15 and the NEB OPR.

2.2.3 Horizontal Directional Drilling (HDD)

Views of NGTL

The proposed Rocky View Section contains two HDD installations; the Bow River crossing, and the proposed diversion channel of the Springbank Off-Stream Reservoir Project (SR1 project). NGTL provided the HDD feasibility reports for both crossings, and concluded that it is feasible to construct the proposed crossings along the proposed alignment based on the available data.

Views of Participants

Káínai, Piikani, MNA3, and Mr. Bower each independently raised concerns which collectively related to borehole depths, poor bedrock conditions leading to the release of drilling fluids, borehole stability, presence of boulders along the drill path, installation of casing, stuck pipe during pipe pull back, and/or pipe integrity for the proposed Bow River HDD crossing.

St. Peter's expressed concerns about the proposed alignment of the Project on St. Peter's property and expressed views about the proposed and contingency routes and trenchless methods at the Bow River crossing. However, on 6 December 2018, St. Peter's filed a letter withdrawing from further participation in the Project.

Káínai and Piikani raised concerns related to the likelihood of hydraulic fracture beneath the Springbank Reservoir.

ADOE raised concerns related to the Project's interaction with the SR1 project, and the potential trenched contingency crossing method at the proposed diversion channel of the SR1 project.

Views of the Board

The Board is satisfied with the approach NGTL used for the Bow River and the proposed diversion channel of the SR1 project crossings. The Board notes that the success of HDD installations for pipeline construction depends on accurate HDD feasibility assessments, proper design and planning, and actual conditions encountered during the execution of the HDD. The Board acknowledges the concerns expressed by the participants, and has imposed **Conditions 13 (HDD and/or Direct Pipe Installation (DPI) Execution Plan), 14 (HDD Unsuccessful Attempts Reports), and 15 (Contingency HDD or DPI Crossing Method Feasibility Report)**, requiring NGTL to file its HDD and/or DPI crossings execution plans, report on any unsuccessful HDD attempts, and feasibility reports in the unlikely event that NGTL identifies the need to employ a contingency trenchless crossing method. In regard to St. Peter's views, the Board acknowledges that NGTL has committed to a re-alignment of the Bow River Crossing as part of NGTL's agreement with St. Peter's, and the revised feasibility study indicated that the crossing is feasible to construct along the proposed re-alignment. For concerns in relation to the release of drilling fluids and the Project's interaction with the SR1 project, please refer to **Section 2.5.2 (Bow River HDD Crossing)** and **Section 2.4 (Public Consultation [Public and Government Stakeholders])**, respectively.

2.2.4 Operation – Integrity Management Program

Views of NGTL

NGTL stated that it will implement TransCanada’s comprehensive IMP to monitor and ensure the integrity of the Project. The program uses advanced inspection and mitigation techniques applied within a comprehensive risk based methodology. Risk assessment is used to identify potential integrity hazards and initiate inspection and mitigation activities, while results from advanced inspections for known or suspected integrity threats are used to develop specific integrity maintenance activities. The Project will be an integrated part of the NGTL System, which is monitored 24 hours a day by the Supervisory Control and Data Acquisition System in the Operation Control Centre in Calgary, AB.

Views of Participants

Participants independently raised concerns related to Project safety.

Mr. and Mrs. Drewry raised concerns regarding the interaction of the Project with the SR1 project, particularly the failure potential driven by the proposed flooding on top of the existing and proposed TransCanada pipelines.

Tsuut’ina raised concerns regarding an existing section of pipeline which was exposed and excavated for purposes of Operations & Maintenance. Tsuut’ina raised concern on the danger of contamination or rupture from the line if it remains exposed.

Views of the Board

The primary goal of an IMP is to prevent pipeline failures for the protection of people, the environment and property. The Board is satisfied that the Project will be incorporated into TransCanada’s IMP as per NEB OPR and CSA Z662-15. The IMP is a continuous improvement process and is applied throughout the lifecycle of a Project. In regard to Mr. and Mrs. Drewry’s concerns, the Board notes that NGTL provided supporting evidence for determining that hazards of erosion and scour are limited and are not anticipated to affect the integrity or safe operation of the pipeline, and committed to monitoring the location during operations as per NGTL’s IMP. For concerns related to Project interactions with the SR1 project, please refer to **Section 2.4**. The Board notes that the instance of an exposed pipeline section indicated by Tsuut’ina occurred on an existing pipeline system outside the scope of the Project; however, the concern raised is being followed up in a separate Board process, relying on the Board’s lifecycle oversight to ensure there is no risk to the environment or safety.

2.2.5 Safety and Security

Views of NGTL

NGTL submitted that security management will be governed by TransCanada's Corporate Security Program Manual, Policy, and TransCanada's Operating Procedures which adhere to the CSA Z246.1 standard for security management. NGTL also confirmed TransCanada's Corporate Security Program Manual, Policy and TransCanada's Operating Procedures will govern security management during construction and operations.

NGTL submitted that TransCanada's Operational Management System applies to all of TransCanada's assets including the Project. By implementing TransCanada's Operational Management System in support of a strong safety culture, TransCanada's projects are designed, constructed, operated and decommissioned or abandoned in a manner that provides for the safety and security of the public, TransCanada personnel and physical assets, and the protection of property and the environment.

Views of Participants

As noted in **Appendix III (Intervenor Comments on Conditions for Order XG-N081-005-2019 and the National Energy Board [NEB or the Board] Response)**, SCN recommended NGTL provide the Construction Safety Manual to SCN and promptly address any concerns raised by the Board or SCN in a revised version of the Construction Safety Manual.

Reply of NGTL

NGTL stated that it is unable to provide the Site-Specific Safety Manual to any third parties as it contains proprietary information, and would be commercially detrimental to NGTL and its contractors. NGTL also argued that an additional review of the Site-Specific Safety Manual would be redundant as these manuals, and the technical standards they are based on, are subject to periodic audits, conducted both by the NEB and external contractors, which are more appropriate to address deficiencies than through the condition compliance process.

Views of the Board

The Board is of the view that the measures proposed by NGTL to address safety throughout the lifecycle of the Project are appropriate. The Board imposes **Condition 5 (Programs and Manuals – Safety)**, requiring NGTL to file Construction Safety Manuals with the Board prior to commencing construction. In regard to SCN's recommendation, the Board's expectation is that any concerns raised by any Indigenous community will be considered and addressed through ongoing engagement activities and throughout the lifecycle of the Project. NGTL must report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns as part of the Board's requirements for **Condition 10 (Consultation with Indigenous Communities Report)**. For the Board's considerations related to **Condition 10**, please refer to **Section 2.6.4.2 (NGTL's Consultation Activities)**.

2.2.6 NGTL's Emergency Preparedness and Response Planning

The Board requires all companies whose infrastructure the Board regulates to anticipate, prevent, manage, and mitigate potentially dangerous conditions associated with their facilities, as part of an Emergency Management Program. The Board developed *Guidance Notes* for the NEB OPR to assist companies in understanding the requirements. Further information on Emergency Management Programs is provided in Annex A of the NEB OPR *Guidance Notes*. With respect to emergency response, the Board notes that NGTL must comply with sections 33 to 35 of the NEB OPR for continued liaison with agencies and persons that may be involved in an emergency response and for the ongoing implementation of a continuing education program for emergency response.

In order to determine compliance with the Emergency Management Program requirements of the NEB OPR, the Board conducts compliance verification activities on every aspect of this program. These activities include reviews of manuals, compliance screening meetings, implementation assessment meetings, information exchange meetings, inspections, and audits. The Board also participates in emergency response exercises as required by the scale of the exercise. During the course of its compliance verification activities, the Board assesses the adequacy, effectiveness and implementation of a company's emergency management system, program and emergency procedure manual(s). The Board's compliance activities are risk-informed and adaptable to take into account changes in a company's facilities or performance.

Views of NGTL

NGTL submitted that the Project will comply with the most recent version of all applicable acts, regulations, and standards, including the NEB OPR and CSA Z662-15. NGTL confirms that emergency management during Project construction will be governed by the Project-specific Emergency Response Plan (ERP), and during operations by TransCanada's overarching Emergency Management Corporate Program Manual and related operating procedures. As part of Project consultation activities, NGTL provides information concerning Emergency Preparedness and Response to potentially affected stakeholders, landowners and Indigenous communities, and TransCanada publishes its Emergency Management Corporate Program Manual in accordance with NEB Order AO-001-MO-006-2016 (compelling companies to publish their Emergency Procedures Manuals online, with sensitive information redacted for security reasons). In the event of an emergency, TransCanada's comprehensive Emergency Response Program would be activated.

NGTL explained that TransCanada employees and contractors receive training for emergency events and if there is an incident, they will work closely with landowners and impacted persons or groups, as well as authorities and emergency responders to manage the incident. To support these efforts, NGTL engaged local first responders by providing an Emergency Response presentation to the Cochrane Fire Department in January of 2018. This presentation outlined TransCanada's Emergency Response process and procedures, as well as how TransCanada and local authorities can work together during the event of an emergency.

Views of Participants

Each of the Indigenous communities expressed concerns regarding emergency response with respect to the pipeline segment to be installed on or near its community and traditional lands, for both the construction and operation phases. Stoney Nakoda Nations (Bears paw First Nation, Chiniki First Nation, and Wesley First Nation) (SNN), Tsuut'ina, Piikani, and Káínai argued that information or consultation was not provided by NGTL to address the concerns regarding instructions and options for spill or leak response, involvement of and training for Indigenous peoples in emergency response, and engagement of Indigenous communities in creation of project-specific ERPs.

SNN stated that they have concerns around how they will be notified in the event of an emergency, citing that not all in their communities speak English, and cellular signal is not available in much of their territories. Piikani and Káínai also expressed concerns and wanted detailed information on how they will be notified of and involved in emergency response and preparedness procedures for any potential accidents or incidents related to the Project.

SNN, MNA3, Káínai and Piikani stated that they wanted involvement in creating site-specific ERPs and SNN requested these plans to be offered by NGTL in the Stoney Nakoda language. Please refer to **Appendix II (Summary of Concerns raised by Indigenous Communities, and Applicant and the National Energy Board [NEB or the Board] Response)** for more details.

MNA3 raised questions around the hiring of its communities for emergency response roles. MNA3, SCN, and Tsuut'ina also wanted training for their communities in emergency response from NGTL.

Landowners Mr. Bower and Mr. and Mrs. Drewry expressed concerns over the pipeline proximity to landowners and urban centers. Mr. Bower asked for information on worst-case scenario hazards for the Project. He argued that he was not provided complete answers or sufficient information to alleviate his concerns for public safety. Landowner Mr. Costigan also expressed concerns over a leak potentially impacting water supply and how the company would monitor for this and how landowners would be notified of this. He also mentioned that he had not heard of any safety or ERPs including notification and evacuation plans if a leak should occur.

Reply of NGTL

For emergency response during the construction phase, NGTL indicated that it will create project-specific ERPs to be used by contractors and company personnel during construction activities, which outline spill prevention measures, spill control plans, reporting, notification, response, and clean-up requirements and procedures. These ERPs are to be filed as part of the Project's Environmental Protection Plan (EPP).

In regard to construction and operations phases of the Project, NGTL will be relying on internal capacity and contractors trained in site-specific ERPs and procedures to implement a response to any incident or emergencies that may arise.

Regarding MNA3's requests for training, NGTL states that it continues to engage MNA3 to better understand their education and training needs. At the request of MNA3, NGTL committed funding to support the Métis Education Fund at the Southern Alberta Institute of Technology, which provides Métis students with bursaries to support further education. NGTL also continues to engage MNA3 to identify future training opportunities.

To address concerns and inquiries for more information on emergency response and procedures, NGTL offered to meet with any parties upon request to give a safety presentation including information on NGTL's local facilities and operations, and TransCanada's emergency management system, safety, integrity, monitoring and public awareness programs. As well, NGTL offered to provide an overview of both TransCanada's and local emergency services' responsibilities during an emergency response. In regard to engagement and liaison, NGTL has offered to meet and discuss the project-specific ERP to each of the Indigenous communities who have raised concerns. NGTL has not received any responses to this offer to date. NGTL also stated that, at a regional level, dedicated community and Indigenous relations specialists develop and implement annual plans specific to their area that assess individual regional risks and define supplemental engagement activity to help mitigate these risks. Messaging and engagement strategies are tailored to the respective audience and, at a minimum, include information about how to recognize the signs of a pipeline leak and the importance of calling for a locate request before beginning any ground disturbance activity or crossing the pipeline.

As for emergency response during the operation phase, NGTL stated that the details (including notification procedures) are provided in TransCanada's overarching Emergency Management Corporate Program Manual, and related operating procedures. In response to SNN's desire for site-specific ERPs created in their Stoney Nakoda language, NGTL reiterates that the ERP for this Project will be contained within the overarching TransCanada Emergency Management Corporate Manual. NGTL noted that the Board is bound by the *Official Languages Act* and relevant Treasury Board policies. Additionally, NGTL explained that it does not have the linguistic expertise available to translate the required documents, or verify that translations conducted by a third-party would be complete. NGTL submitted that it would be unreasonable and inappropriate for the Board to impose this type of condition. NGTL noted that should an Aboriginal group decide that translation of any documents is required, that group should take it upon itself to make those translations.

In regard to worst-case scenario hazards of this Project raised by Mr. Bower, NGTL stated that due to the separation distances between the three pipelines located in this right-of-way (ROW), a rupture of one pipeline will not cause rupture of the two adjacent pipelines that are located in the shared ROW. As a result, the worst-case scenario on the portion of the Rocky View Section is an ignited rupture of the proposed pipeline where it is buried 1.2 m below the surface. The safety consequences in this case would have a potential impact radius of 256 m from the failure site (based on ASME B31.8S).⁸ NGTL ensures the probability of the worst-case scenario of an ignited rupture is extremely low. For further discussion on Mr. Bower's concerns, refer to **Section 2.2.2 (Pipeline Class Location and Risk Assessment)**.

⁸ American Society of Mechanical Engineers (ASME), 2016. B31.8S-2016: Managing System Integrity of Gas Pipelines. ASME, New York

NGTL has stated it has provided landowners with TransCanada safety information brochures to the residents for more safety information and contact numbers. These brochures can be found at: <https://www.transcanada.com/globalassets/pdfs/commitment/safety/emergency-preparedness/transcanada-emergency-responders-gas-canada.pdf>

Views of the Board

The Board is of the view that the measures proposed by NGTL to address emergency preparedness and response are appropriate for both the construction and the operation of the new pipeline segment. The Project will be incorporated into TransCanada's existing and regulated Emergency Management Corporate Contingency Plan and NGTL's local facilities and operations, which applies to the entirety of the Project. A Spill Contingency Plan will also be submitted to the Board prior to the commencement of construction of the Project as part of the updated EPP to be filed under **Condition 6 (Environmental Protection Plans (EPPs) – Turner Valley Compressor Station and Burton Creek Compressor Station)** and **Condition 7 (EPP – Rocky View Section)**.

As with any company that has NEB regulated infrastructure that are subject to the NEB OPR, NGTL must respond to any incident that results in a loss of product from its pipeline, regardless of the time of year or environmental conditions (responder safety permitting). Companies must have sufficient plans in place (available publicly on their website or by request) to enable adequate incident response. CSA standard 10.5.2.4 states "Operating companies shall have verifiable capability to respond to an emergency in accordance with their emergency procedures and response plans and shall demonstrate and document the effectiveness of such procedures and plans." In addition, NEB OPR section 32 states "A company shall develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect property, the environment or the safety of workers or the public". NGTL is required to engage with all stakeholders, agencies, landowners, and Indigenous communities potentially affected by the Project; however, the Board cannot require NGTL to hire potentially affected people for positions, including for emergency preparedness and response roles. Please refer to **Section 2.6.4.8 (Employment and Economic Benefits)** for more information. NGTL has indicated that it will meet all standards required to implement and maintain its emergency management program and execute effective emergency response.

In regard to public safety, the Board holds its regulated companies accountable to ensure that Canadians and the environment are protected throughout the lifecycle of each pipeline or project. Considering the discussion in **Sections 2.2.2 (Pipeline Class Location and Risk Assessment)** and **2.2.4 (Operation – Integrity Management Program)**, the Board agrees with NGTL that the probability of a worst case scenario of an ignited rupture is very low in this case. For further information on the Board's lifecycle approach to regulation, IMP, and CSA Z662-15's class location system approach to risk assessment related to Mr. Bower's concerns, refer to **Section 2.2 (Engineering Matters and Emergency Management)**, **Section 2.2.4 (Operation –**

Integrity Management Program), and **Section 2.2.2 (Pipeline Class Location and Risk Assessment)**, respectively.

As a company with NEB regulated facilities, NGTL must meet the requirements of sections 33 to 35 of the NEB OPR to address emergency management liaison, continuing education and consultation requirements with affected and potentially impacted parties. The Board expects emergency management-related discussions between NGTL, first responders, stakeholders and Indigenous peoples to be ongoing and collaborative as part of TransCanada's Public Awareness Program. As such, the Board expects NGTL to effectively communicate potential response scenarios to the communities, which could be accomplished through the safety presentation referred to in this Section. This could also be achieved through involving communities in company emergency response exercises. The Board imposed **Condition 20 (Emergency Response Exercise)** requiring NGTL to host a full scale exercise within 18 months of receiving leave to open, which would present an opportunity to further engage communities. Community stakeholders can then learn directly from the company of the capabilities, and what options exist, for incident response and share this knowledge amongst their communities. To remain in compliance with CSA standards and the NEB OPR for liaison and continuing education, NGTL should ensure that communication and learning methods are adequate and effective, and that these methods, when possible, take into account potential language barriers. However, for the reasons explained by NGTL, the Board agrees with NGTL that it would not be appropriate for the Board to impose a condition requiring NGTL to translate materials into Indigenous languages. The Board also encourages NGTL to invite and engage interested Indigenous communities to attend any company emergency exercises in the region to allow for further knowledge sharing and collaborative learning opportunities.

The Board recognizes the importance of, and expects NGTL to ensure, effective emergency management, including planning, training, communication and coordination with first responders, stakeholders and Indigenous communities. The Board further notes that through the NEB's ongoing oversight, it will continue to monitor and assess the pipeline's operations throughout its lifecycle.

2.3 Land Matters

2.3.1 Route Selection Process

Views of NGTL

NGTL used the following criteria to assess route alternatives:

- Minimizing length to reduce overall environmental and socio-economic footprint, ensuring facilities are economical to construct and operate.
- Paralleling existing linear disturbances.
- Ensuring public safety, minimizing the number, and ensuring the construction feasibility of, watercourse, road, rail and utility crossings.

- Considering and avoiding sensitive environmental features and sites with known occurrences of provincially or federally listed wildlife and plant species.
- Avoiding lands of designated status, such as parks, protected areas, cemeteries and historic, archaeological or heritage sites.
- Considering input received from potentially affected landowners, stakeholders and Indigenous communities.

NGTL outlined the methodology for route selection, and the application of its criteria, as well as its evaluation of alternative Route B, and the selected route, Route A. NGTL explained that Route A better met a number of these criteria, including having a shorter total length, mostly parallel with existing NGTL/Foothills pipelines, less new ROW required, likely less of an environmental impact, fewer watercourse crossings and fewer heritage sensitivities. NGTL also stated that it had received feedback from Alberta Environment and Parks that the selected route would minimize effects to wildlife values by eliminating avoidable watercourse crossings, and avoid public lands with protective notations pertaining to native fescue grasslands. NGTL also stated that alternative Route B would have traversed reserve lands, as well as one additional parcel of Crown land that may have the potential to support traditional land and resource use activities.

Views of Participants

Mrs. and Mr. Mostaghel raised concerns regarding Project routing, impacts to their property, ability to develop their lands and financial impacts. On 11 October 2018, Mrs. Mostaghel and Mr. Mostaghel withdrew from the hearing process, noting that they had come to a private agreement with NGTL.

Ms. Ann McKendrick McNabb filed a letter of support for the proposed route, and raised concerns regarding alternate Route B, which would cross her property and have a devastating impact on the McKendrick Ranches current operations and limit future development.

Mr. Block, a landowner on the proposed ROW, raised concerns about the proposed Project routing, its impact to property values and his ability to subdivide and develop his lands due to the required safety zones and municipal setbacks. Mr. Block stated that the development and subdivision of his lands has always been part of the family investment strategy and the proposed route would affect and sterilize the land, resulting in a negative impact to family legacy, retirement and financial security. Mr. Block also raised concerns regarding NGTL's engagement, as well as NGTL's approach to negotiating compensation.

Mr. Costigan raised concerns regarding the proposed route and the impact of the Project's proposed ROW on the value of his property and his ability to subdivide and develop their lands due to the required safety zones and municipal setbacks. Mr. Costigan stated that the property has been in his family for thirty years, and that the subdivision and development of the land has always been part of the family investment strategy. Mr. Costigan stated that the proposed ROW would prevent this development of the land and negatively impact their retirement and financial security. Mr. Costigan also raised concerns regarding NGTL's engagement and NGTL's

approach to negotiating compensation. Mr. Costigan asked that the activities across his land be halted so that compensation could be negotiated before the Project continues.

Reply of NGTL

NGTL stated that it met with Mr. Block and Mr. Costigan, who also represented Mrs. Shirley Costigan and Mr. Patrick Costigan. NGTL stated that it provided the landowners with information to address concerns regarding property value and restrictions on future development, as well as its continuous leak detection monitoring and emergency response procedures. NGTL also committed to testing water wells to assess any impacts from the Project for the Costigans. With respect to Mr. Costigan, NGTL stated that it discussed the concerns raised, and is unaware of any outstanding concerns. With respect to Mr. Block, NGTL stated that NGTL will continue to attempt to engage with the landowner's legal counsel to discuss outstanding concerns. NGTL stated it will implement mitigations to resolve concerns where appropriate.

Views of the Board

The Board notes that routing decisions involve the consideration of many factors, including environmental, archaeological and engineering factors, as well as consultation with landowners, municipalities and Indigenous communities. The Board notes that NGTL has adjusted its originally proposed routing, including minor re-routes based on input from landowners. The Board acknowledges NGTL's efforts to minimize the potential environmental impact of the Project by proposing a route that parallels existing ROWs, and minimizes the taking up of new lands.

The Board notes the concerns raised by Mr. Block and Mr. Costigan regarding the proposed routing and its potential impacts on their properties, including the potential impacts on property values. The NEB Act requires companies to compensate landowners for the acquisition of land. The amount of compensation paid for land acquisition is negotiated between the company and the landowner. The Board does not have jurisdiction to consider questions of compensation which arise as a result of negotiations between a company and a landowner.

Parliament did not intend for matters of compensation to be a factor that enters the public interest determination that the Board must make in relation to pipeline projects proposed under Part III of the NEB Act; and this is logical since every landowner that may be affected by a pipeline could raise compensation issues. However, Parliament did provide for a separate and distinct regime for parties to resolve compensation matters in the NEB Act. Disputes over compensation for land agreements or for damages can be resolved by seeking independent negotiation and arbitration services offered by Natural Resources Canada.

The Board notes NGTL's efforts to engage with and work collaboratively with potentially affected landowners to resolve land related concerns. The Board notes NGTL's minor reroutes and adjustments to routes as a result of landowner feedback. Given the ongoing engagement activities with potentially affected landowners and

concerns raised, the Board imposes **Condition 11 (Landowner, Government, and Municipalities Issue Report)** requiring NGTL to file a Report summarizing impacts to land and land use and describing how NGTL will engage with stakeholders.

The Board is of the view that the route selection criteria utilized by NGTL were reasonable and were appropriately applied. The Board finds that the route, as proposed, is acceptable.

2.3.2 Land Area and Land Requirements

Views of NGTL

Rocky View Section

The Rocky View Section parallels two existing TransCanada operated pipelines, NGTL's nominal pipe size 36 Western Alberta System Mainline and Foothills' nominal pipe size 36 Zone 7 Pipeline for approximately 88 per cent of its route.

NGTL stated that the Rocky View Section will require approximately 35 hectares (ha)⁹ of permanent ROW. NGTL also indicated that of this permanent ROW, 25 ha or 71 per cent will overlap with the existing Western Alberta System Mainline or Foothills Zone 7 Pipeline ROWs. The entire route is within the White Area of Alberta, as defined by the Government of Alberta and is on either freehold land or previously disturbed TransCanada-leased land with no third party access, with the exception of approximately 0.08 ha within the bed and banks of the Bow River, which are Crown lands. However, since the Bow River will be crossed using a trenchless crossing method, there will be no surface disturbance or access restrictions as a result of Project construction activities.

NGTL stated that the permanent ROW will range in width between approximately 10 metres (m) and 35 m, and in most areas, will be approximately 17 m in width. The overall construction ROW (including both the permanent land and temporary workspace) will be a minimum of 42 m to allow for safe and efficient workspace for construction. In areas where the land availability is limited, such as the Town of Cochrane, NGTL stated that the ROW will entirely overlap with the existing Western Alberta System Mainline pipeline.

Approximately 78 ha of temporary workspace will be required for various activities including, but not limited to: material laydown and staging areas, areas of increased depth of cover, timber clearing and storage, access, crossings, HDD locations, final tie-in weld locations and areas where geotechnical or environmental conditions require additional temporary workspace.

Turner Valley Compressor Station

NGTL stated that the Turner Valley CS unit addition will require 3.07 acres (1.24 ha) of permanent land outside the boundaries of the existing compressor station, as well as 5.07 acres (2.05 ha) of temporary workspace. All additional land required is located on NGTL owned land, and no new land rights are required.

⁹ One hectare contains about 2.47 acres.

Burton Creek Compressor Station

Burton Creek CS Preferred Site

NGTL stated that the applied-for Burton Creek CS requires the purchase in fee simple, or lease of an additional 4.90 acres (1.98 ha) of permanent lands, located adjacent to the existing Burton Creek CS which are currently privately owned. As will be discussed further in **Section 2.3.3 (Land Rights and Land Acquisition Process)**, these privately owned lands are subject to a Nature Conservancy of Canada (NCC) conservation easement.

The applied-for Burton Creek CS also requires 13.34 acres (5.40 ha) of temporary workspace for a construction camp (privately owned) and 4.94 acres (1.99 ha) of temporary workspace during construction, which will include laydown yards used to store equipment and supplies (Crown Land).

NGTL stated that the applied-for site was preferable for a number of reasons: other than 4.94 acres of Crown land being required for temporary workspace, there is no taking of Crown land thus reducing potential impacts on traditional land and resource use (when compared to the Burton Creek CS Alternate Site, discussed below, which would have required approximately 19 ha of Crown land); there are minimal new land requirements (about 2 ha); there are limited environmental impacts; and there is operational efficiency in using the existing Burton Creek CS. Moreover, NGTL explained that with respect to the new 1.98 ha of lands required (which are subject to a NCC conservation easement), these lands are relatively less sensitive grazing lands (as opposed to riparian areas, or forested lands), are adjacent to an existing compressor station, are wedged between existing industrial features, are in close proximity to a major highway, and are in partially disturbed grazing land that has no environmentally sensitive features.

NGTL asked the Board to approve the Project as a whole and approve the preferred Burton Creek CS, notwithstanding that there may be outstanding issues associated with the conservation easement. NGTL stated that should the Board determine the Project to be in the public interest but decided to deny the preferred Burton Creek location, then, NGTL requested that the Board approve the Burton Creek CS Alternate Site (discussed immediately below).

Burton Creek CS Alternate Site

In a letter filed with the Board on 21 June 2018, NGTL indicated that due to the unanticipated land constraints at the applied-for Burton Creek CS Unit Addition, it identified the need to explore a potential alternate location for the Burton Creek CS Unit Addition (Burton Creek CS Alternate Site).

The Alternate Site for the Burton Creek CS (and camp) would be located 2.5 km north of existing compressor station. NGTL stated that it had begun surveying the Alternate Site for siting and for a potential adjacent construction camp, and had also begun consulting with potentially impacted parties. It would require the taking of some approximately 19 ha of Crown land (48.57 acres).

Views of the Board

The Board notes the limited taking of Crown land and thus reduced potential impacts on traditional land and resource use, minimal new land requirements, limited environmental impacts and operational efficiency of the applied-for Burton Creek CS. The Board finds that the applied-for preferred Burton Creek CS is in the public interest and therefore approves it. The Board has not further assessed the Burton Creek CS Alternate Site and is therefore not approving it. Refer to **Section 2.6.4 (Issues and Concerns raised by Indigenous Communities)** for further discussion regarding concerns raised by Indigenous communities regarding the Burton Creek CS Alternate Site.

The Board finds that the requested ROW and temporary workspace land requirements for the Rocky View Section, Turner Valley CS and preferred Burton Creek CS, as applied for, are necessary to allow for the safe and efficient construction and operation of the Project. The Board finds that NGTL's anticipated land requirements are acceptable. The Board notes NGTL's efforts to minimize new ROW and temporary workspace, and to overlap with existing ROWs whenever possible and find these criteria to be acceptable.

2.3.3 Land Rights and Land Acquisition Process

Views of NGTL

Information regarding the status of land acquisition was provided in the additional written evidence filed by NGTL. In this evidence, NGTL indicated that land acquisition activities commenced in Q1 2018, and that it applied for all required Crown dispositions for the Rocky View Section on 30 May 2018. NGTL stated that as part of continued consultation and negotiation, NGTL will address remaining concerns relating to land acquisition with the intent to acquire a voluntary land rights agreement prior to construction.

NGTL confirmed that its land acquisitions process will comply with the applicable sections of the NEB Act, including sections 86 and 87. NGTL indicated that the notices required pursuant to section 87 of the NEB Act have been served on the majority of private landowners.

NGTL intends to complete acquisition of all land rights for the Rocky View Section prior to NGTL's expected construction start date of August 2019. As for the compression components of the Project, new land rights are only required for the Burton Creek CS or Burton Creek CS Alternate Site which NGTL anticipates to have acquired in advance of NGTL proposed construction start date of April 2019. NGTL stated that its preference is to acquire voluntary land rights agreements with landowners prior to construction. However, should NGTL not have all private land rights acquired prior to construction, NGTL will seek a right-of-entry order through section 104 of the NEB Act.

2.3.3.1 Rocky View Section

Views of NGTL

NGTL stated that approximately 74 per cent of all parcels of land crossed by the Rocky View section are owned in fee simple by private landowners, and 22 per cent of all parcels are owned in fee simple by a mixture of industry (including two parcels owned by NGTL), municipalities (Rocky View County and the Town of Cochrane), and a provincial ministry (Alberta Transportation).

2.3.3.2 Burton Creek CS

Views of NGTL

NGTL stated that the lands required for the applied-for Burton Creek CS Unit Addition are subject to a NCC conservation easement. The lands are qualified as ecologically sensitive under Environment and Climate Change Canada's (ECCC) Ecological Gifts Program. Pursuant to the *Income Tax Act* (ITA) (Canada), if the construction of the Burton Creek CS at this location constitutes a disposition by the NCC or a change of use of the property by the NCC, and such disposition or change of use is not authorized by ECCC, the NCC may be required to pay a tax. Under the NCC conservation easement between the private landowner and the NCC, the private landowner (in this case, the Waldron Grazing Co-Operative Limited or Waldron Ranch, who is not a participant in this hearing) would be required to indemnify the NCC for any tax assessed.

The Board issued a letter to NGTL on 21 December 2018, seeking clarification regarding the tax implications should ECCC not authorize the use of land. The Board sought NGTL's comments on a potential condition or a commitment requiring that, unless the Board otherwise directed, NGTL would be required to cover any and all tax penalties related to the acquisition of land for the applied-for Burton Creek CS site, including if the tax penalty were to apply to more than just the two ha needed to expand the applied-for Burton Creek CS. The Board also asked NGTL to comment on a proposed condition or commitment that would, unless the Board otherwise directed, require NGTL, to the extent possible, to work with the landowner and NCC, and to the extent that ECCC is willing to, with ECCC, to achieve better or equivalent protection for the lands relative to existing conditions or, if possible, to achieve a net benefit for land conservation in lieu of a net loss.

NGTL stated that it has been in consultation with NCC, and working with NCC and the landowner to request authorization from ECCC for disposition or change in use of the Ecological Gifts lands required for the Burton Creek CS. NGTL has communicated its willingness to work collaboratively with the landowner, NCC, and ECCC on the matter.

NGTL noted that it has proposed what it views to be appropriate conservation initiatives, as well as potential purchasing of equivalent land, should that be required for ECCC approval of the change in use. NGTL also stated that NGTL has offered to cover a tax penalty, if any, for the two ha needed to expand the preferred Burton Creek CS site (but only for the two ha needed).

Views of Participants

In its letter of Comment, NCC raised concerns regarding potential significant tax implications (50 per cent of the current value of land) that would result from any deemed unauthorized change in use under the Ecological Gifts Program.

NCC also outlined the policy issues with the current Ecological Gifts Program not allowing for any mitigation proposals that would allow for a net loss of legally protected areas that would result from the currently proposed Project.

In its letter of comment dated 29 November 2018, NCC requested two specific conditions be attached to any approval of the Project: *1) NGTL shall indemnify NCC and the landowner for all costs related to the conversion to industrial land use including NGTL to be responsible for the payment of the cost of any tax that might be imposed upon those parties as a result of the unauthorized disposition of the Conservation Easement or an unauthorized change in land use related to the compressor station addition; and 2) NEB directing or requiring that NGTL work with NCC, with the landowners and if possible, with Environment and Climate Change Canada, to achieve a net benefit for land conservation in lieu of the loss of the Affected Land as conservation land.*

Reply of NGTL

NGTL outlined the interactions with ECCC and NCC regarding the conservation easement, and procedural issues encountered with ECCC. NGTL stated that in its view, ECCC's implementation of the Ecological Gifts Program was unreasonable, and noted that, in NGTL's view, the guidance received by ECCC has been inconsistent.

In its response to the Board's 21 December 2018 letter, NGTL filed a letter dated 7 January 2019 to respond to the Board proposed tax indemnification condition. This letter included an excerpt email from NCC to NGTL dated 4 January 2019 in which NCC relayed information from ECCC. Referring to the 4 January 2019 email excerpt from NCC to NGTL, NGTL stated that, according to NCC, ECCC has confirmed that their revised position is that if the Board grants a section 58 of the NEB Act order approving the Project, ECCC would authorize the change in use. NGTL stated that if the Board issues a section 58 Order for the Project, and ECCC authorizes the change in use as it has indicated it will, NGTL's understanding is that no tax would be payable pursuant to section 207.31 of the *Income Tax Act*. The email excerpt dated 4 January 2019 from NCC explains that the disposition would be deemed outside of the control of the ecological gift recipient (in this case, NCC) due to the action of law (in this case, the NEB approval and the NEB determination of Public Interest). The excerpt email from NCC states that *"Upon Section 58 project approval by the NEB, ECCC will recognize that the recipient is not responsible for this involuntary action resulting in the change in use/disposition and will therefore authorize the resulting disposition or change in use for the 5 acre compressor station site in order to relieve the recipient from the tax pursuant to section 207.31 of the ITA."*

The excerpt email between NCC and NGTL continues and NCC states: *"Please note that the requested conditions of approval set out in the NCC November 29, 2018 comment letter are in*

our view still relevant and applicable, if the NEB should decide to grant a Section 58 Order to approve the Project. (...) If you are providing the NEB with a response incorporating the comments and information set out above, please provide the entire package including our confirmation of the requested conditions of approval.”

NGTL also confirmed that it is willing to work with the landowner, NCC and ECCC to achieve better or equivalent protection for the Waldron Ranch relative to existing conditions, and/or achieve a net benefit for land conservation.

Views of the Board

Typically, as part of its assessment of land acquisition process matters, the Board examines the information filed by the company regarding the company’s proposed process for acquiring the necessary land rights for the project. Specifically, the Board examines the company’s form of notices pursuant to section 87 of the NEB Act, as well as the form (but not the precise content) of land acquisition agreements for the way in which those agreements comply with subsection 86(2) of the NEB Act. The company commits to complying with the NEB Act, and in most cases, the Board will then find that the forms of notices and agreements are appropriate and that the company’s process for acquiring the land rights is acceptable. The company is then left to negotiate the provisions of the terms of agreements privately between the parties.

The form of land acquisition agreements is outlined in subsection 86(2) of the NEB Act, in particular, (c), and (d) which state:

- (2) A company may not acquire lands for a pipeline under a land acquisition agreement unless the agreement includes provision for:
 - (a) compensation for the acquisition of lands to be made, at the option of the owner of the lands, by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time;
 - (b) review every five years of the amount of any compensation payable in respect of which annual or other periodic payments have been selected;
 - (c) compensation for damages caused by the company’s operations, pipelines or abandoned pipelines;
 - (d) indemnification from all liabilities, damages, claims, suits and actions resulting from the company’s operations, pipelines or abandoned pipelines, other than liabilities, damages, claims, suits and actions resulting from
 - (i) in the Province of Quebec, the gross or intentional fault of the owner of the lands, and
 - (ii) anywhere else in Canada, the gross negligence or wilful misconduct of the owner of the lands; (...)

In regard to this Project, one aspect of NGTL's land acquisition process appears to be unique as it relates to NGTL's proposed fee simple acquisition or lease of approximately two ha of lands for the preferred Burton Creek CS Unit Addition, as the two ha of land are under an Ecological Gifts Program.

Specifically, NCC and Waldron Ranch appear to be particularly concerned with the potential for a tax penalty should the change in use of lands or the land disposition not be approved by ECCC and how NCC and the Waldron Ranch would be indemnified.

It is not within the Board's mandate to determine the exact details of compensation and indemnification. Rather, these matters are left to the private negotiations between the parties. However, and as noted earlier in this Letter Decision, the NEB Act does provide for a distinct and separate regime under which parties may resort to Natural Resources Canada to resolve matters of compensation either through negotiation or arbitration.

While the Board still maintains that matters of compensation are not within its authority to consider when determining whether a pipeline is in the public interest, the Board notes that, if NCC disposes of land or changes the use of land subject to the Ecological Gifts Program without the authorization of ECCC, NCC may be liable to pay a tax penalty. The Board notes that, based on the evidence on the record, and while Waldron Ranch is supportive of NGTL's proposal to acquire the lands, both NCC and Waldron Ranch are unwilling to grant the necessary land rights for the Burton Creek CS unless ECCC first authorizes the change in use.

However, the Board notes that, if the Board grants an order approving the Project under section 58 of the NEB Act, NCC stated in the excerpted 4 January 2019 email (which is attached to NGTL's 7 January 2019 letter) that ECCC has committed to issuing the authorization for change of use of lands and will thereby relieve NCC from any tax penalty. This email excerpt from NCC explains that the disposition would be deemed outside of the control of the ecological gift recipient (in this case, NCC) due to the action of law (in this case, the NEB approval and the NEB determination of Public Interest).

The Board notes the commitments made by NGTL to address NCC's and the landowner's concerns, including proposing conservation initiatives on the Waldron Ranch, such that there would be a net environmental benefit to the lands covered by the Ecological Gifts Program. While the Board is not making this a condition of approval, see **Appendix III** for a further discussion of the proposed condition to achieve better or equivalent protection for the land, the Board expects NGTL to fulfill these commitments to the extent possible.

The Board also notes that, under section 75 of the NEB Act, NGTL, in the exercise of its powers, must do as little damage as possible, and must make full compensation in the manner provided in the NEB Act to all persons interested, for all damage sustained by them by reason of the exercise of those powers.

For the reasons set out above, the Board is of the view that NGTL's proposed land rights and land acquisition process for the Rocky View Section, Turner Valley CS and preferred Burton Creek CS are acceptable and meet the requirements of the NEB Act. The Board is of the view that NGTL's submitted sample agreements meet the requirements of subsection 86(2) of the NEB Act.

The majority of the Board refers readers to **Appendix III** for a further discussion of the proposed tax indemnification condition for the lands required for the preferred Burton Creek CS which are under a conservation easement and why this condition, in the Board's majority view, is neither warranted or appropriate in this case. While the conservation easement and the potential for a tax penalty, which, according to the evidence, is not likely in this case, may have appeared to provide a certain uniqueness to NGTL's land acquisition process, a tax penalty is still, in the Board's majority view, a matter of compensation for which the Board has no jurisdiction.

Dissenting Views of Member Ron Durelle on the Imposition of a Tax Indemnification Condition

While I concur with the majority that the applied for site for the Burton Creek CS is in the public interest (as discussed in **Section 2.3.2 [Land Area and Land Requirements]** above) and agree with the majority that NGTL's land acquisition process is acceptable (as discussed in this section), unlike the majority, I would have added a condition to further the public interest.

The proposed condition which was circulated for comment in draft form would have been the following:

“NGTL is required, unless the Board otherwise directs, to cover any and all tax penalties related to the acquisition of land for the preferred Burton Creek CS site, even if the tax penalty applies to more than just the two ha needed to expand the Burton Creek CS preferred site.”

As discussed above, in its 7 January 2019 letter, NGTL stated that it would be prepared to indemnify the NCC and Waldron Grazing Co-operative Limited with respect to tax that would result from a disposition for only the two ha applied for location for Burton Creek CS, but not for any tax that may be payable with respect to the approximately entire 12,357 ha covered under the conservation easement. NGTL also indicated in its letter, that based on NGTL's understanding of updated correspondence between NCC and ECCC that: 1) ECCC would recognize a section 58 Order of the Board approving the Project as the Public Interest decision point at which the matter of future land use and disposition of the compressor station site is out of control of the NCC; and 2) accordingly ECCC would not impose tax liability on NCC for an unauthorized change in use and disposition of the two ha compression site addition.

In the excerpt of NCC's email that was attached to NGTL's 7 January 2019 letter, NCC reiterated and confirmed its continued request to the Board for two conditions of approval

of the Project which included the following condition: “NGTL shall indemnify NCC and the landowner for all costs related to the conversion to industrial use including NGTL to be responsible for payment of the cost of any tax that might be imposed upon the parties as a result of unauthorized disposition of the Conservation Easement or an unauthorized change in land use related to the compressor station addition.”

In its 13 December 2018 Final Argument, NGTL argued that “Under the Income Tax Act, if NCC disposes of land or changes the use of land subject to the EGP without the authorization of ECCC, NCC may be liable to pay a tax penalty. For the Waldron Ranch lands, the terms of the conservation easement between NCC and the landowner provide that the landowner is required to indemnify NCC for such penalty. As a result, while Waldron is supportive of NGTL’s proposal to acquire the lands, it hesitates to grant interests without ECCC approval. While this issue is solely related to tax consequences, and NGTL has offered to cover a tax penalty, if any, for the two ha needed to expand the Burton Creek CS site, it appears that both NCC and Waldron are unwilling to grant the necessary land rights for Burton Creek CS unless ECCC first authorizes the change in Use.”

In my view, I do not agree that this is a simple matter of compensation as the majority has said in their decision. The potential tax penalty is a contingent liability that is not quantified as to the amount and is based on future events which are unknown at the time of our decision. Any future tax penalty would be determined primarily based on ECCC’s decision on whether the disposition of land required for the Burton Creek CS addition is authorized and whether it is an authorized or unauthorized change of use. If ECCC makes the determination that the change of use is authorized then it is possible that there would be no tax penalty. If ECCC determines that the change of use is unauthorized then it is possible that there could be a tax penalty applied to the two ha required for the compressor station addition or potentially the entire 12,357 ha covered under the conservation easement agreement (based on the evidence, I am not certain if the tax penalty would be limited to the two ha only). The potential tax consequences of severing two ha from the larger land parcel that is part of conservation easement agreement is undetermined at the time of our decision.

I am uncertain at this time if the parties can reach an agreement given that Waldron and NCC do not seem willing to grant the land rights without ECCC first authorizing the disposition of the land or the change in land use. This then leads to the possibility of NGTL seeking a Right of Entry Order under section 104 of the NEB Act and I am not certain if a tax penalty would be triggered. Even if the parties entered into an agreement, I am not sure that the owners would be indemnified of any tax penalty arising out of the acquisition of the lands under the Ecological Gifts Program which may or may not be authorized by ECCC. Specifically, if NGTL entered into an acquisition agreement with NCC for either the purchase or the lease of the two ha required for the Burton Creek CS site, and the parties did not adequately provide for the indemnification by NGTL of any tax penalty arising out of the unauthorized disposition of land or unauthorized change in land use as part of their acquisition agreement, it is possible, in my view, that ECCC may decide not to authorize the disposition and not authorize the change in use, even if the

Board did issue a section 58 Order the effect of which was to approve the Project. While the record has some indication that ECCC will authorize the disposition if the Board grants a section 58 Order, we do not have ECCC on the record explicitly confirming this. This could then trigger a tax penalty for which Waldron would ultimately be responsible, and I am uncertain if it would be for only the two ha or potentially more. In the absence of the proposed condition and/or without prior ECCC authorization of the disposition or the change in use, NCC (and ultimately Waldron) may be required to pay for the potential tax consequences. It is my opinion that NGTL should bear the risk (including any tax liability) associated with acquiring lands required for its proposed pipeline that are subject to ECCC's Ecological Gifts Program; such taxes ought not be imposed on the landowners who did not instigate this land disposition.

This is why, in my view, I would have added the condition. In my opinion there is merit for the Board to impose the proposed condition in order to prevent any potential damage to the Ecological Gifts Program. Not imposing the proposed condition might have a chilling effect on future conservation easements which in my view serve the larger public interest. Owners may be hesitant to gift lands if they are to bear potential hefty tax penalties. The company, in my view, and in this case, NGTL, must bear the risk for a tax penalty for lands it needs for its Project that are subject to the ECCC Ecological Gifts Program.

2.4 Public Consultation (Public and Government Stakeholders)

Note that the Board's analysis with respect to consultation with Indigenous communities is provided in **Section 2.6.1 (NGTL's Consultation with Indigenous Communities)**.

Views of NGTL

In the Application, NGTL stated that it designed and implemented a stakeholder engagement program for the Project, based on the overarching principles that stakeholders will be engaged in a fair, open, consistent and timely manner and will have the opportunity to provide input into NGTL's Project plans.

NGTL stated that it engaged with potentially affected persons or groups, landowners, adjacent landowners and nearby residents potentially impacted by the Project, regional and municipal elected officials and personnel, emergency responders, federal and provincial government agencies, recreational users, members of the public and non-governmental organizations. NGTL also confirmed that it consulted Alberta Transportation regarding any potential interactions with proposed highway and infrastructure projects, including the SR1 project, Highway 1A/Highway 22 and Highway 1/Highway 22 interchange projects. NGTL confirmed that engagement will continue as all projects progressed in their design.

NGTL outlined stakeholder engagement activities for the Rocky View Section, Turner Valley CS, and Burton Creek CS, beginning in May 2017. Engagement activities included mail-outs to stakeholders containing project fact sheets and Board brochures which outlined information on the Board's hearing process. NGTL indicated that they held a number of meetings and

conference calls with stakeholders, as well as public open houses and town halls. NGTL stated that it consulted with Alberta Environment and Parks and Alberta Culture and Tourism regarding its proposed route, alternate route, provincial resource management interests and environmental mitigation measures.

As NGTL explained in its Application, NGTL's engagement programs will be included into TransCanada's Public Awareness Program for the lifecycle of the Project. The Public Awareness Program is intended to increase awareness of pipeline safety and, thereby, protect the public, environment and TransCanada facilities. It reaches the potentially affected Indigenous communities and stakeholders engaged through Project planning and construction phases. The Public Awareness Program provides for an annual pipeline safety mailing to landowners, excavators/contractors, emergency responders and local public officials, and a biennial mailing to the affected public. At a regional level, dedicated community and Indigenous relations specialists develop and implement annual plans specific to their area that assess individual regional risks and define supplemental engagement activity to help mitigate these risks. Messaging and engagement strategies are tailored to the respective audience and, at a minimum, include information about how to recognize the signs of a pipeline leak and the importance of calling for a locate request before beginning any ground disturbance activity or crossing the pipeline.

Views of Participants

The West Path Agricultural Producers Group (WPAPG), in association with the Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA) (collectively CAEPLA-WPAPG), were active intervenors in the hearing process. CAEPLA-WPAPG raised concerns regarding potential impacts of the Project on land use, construction plans and maintenance activities on their properties, comprehensive construction agreements and independent third party construction monitors. On 3 December 2018, CAEPLA-WPAPG withdrew from the Board's hearing process, stating that CAEPLA-WPAPG and NGTL had agreed on measures that will resolve WPAPG landowner issues.

St. Peter's was an active participant in the Board's hearing process, providing written evidence and oral statements. St. Peter's raised concerns regarding Project routing, ability to use lands and develop its property in the future, as well as social and cultural wellbeing. On 6 December 2018, St. Peter's withdrew from the hearing process, noting that St. Peter's and NGTL had reached a resolution and settled the concerns raised by St. Peter's.

Mr. Block and Mr. Costigan raised concerns that the applied-for route was selected with little engagement of the people affected.

Mr. and Mrs. Drewry stated that they found NGTL's stakeholder feedback to be deficient, as many of their concerns were raised during public consultation forums such as the interrelation between the Project and the SR1 project, yet were not mentioned in NGTL's Application.

NGTL stated that Mr. Bower raised concerns regarding potential impacts to his property value and reclamation activities. Mr. Bower also had concerns about Project safety and the lack of an appropriate risk assessment (which was discussed earlier in the Letter Decision in **Section 2.2.2**).

Reply of NGTL

NGTL stated it has engaged and is in ongoing discussions with each landowner regarding the concerns they have raised. NGTL committed to continuing discussions with potentially affected landowners and occupants to provide updates, answer questions and address their questions and concerns, as appropriate.

Regarding concerns raised around property values, and damage to property, NGTL stated that the Project was unlikely to reduce property values in the area. NGTL provided information regarding reclamation timelines confirmed that NGTL is responsible for any damages resulting from the Project.

In response to the consultation concerns raised by Mr. Block, Mr. Costigan, and Mr. and Mrs. Drewry, NGTL stated that it met with each of the landowners to discuss outstanding concerns, and provided follow-up information

Views of the Board

The Board recognizes that public involvement is a fundamental component throughout the lifecycle of a project in order to address potential impacts. The Board notes NGTL's efforts to engage landowners both in advance of filing its application and during the hearing process. The Board acknowledges NGTL's success in resolving concerns directly with parties, such as Mr. and Mrs. Mostaghel, CAEPLA-WPAPG, Cochrane/Springbank Landowners group, and St. Peter's, including adjusting the Project design in order to accommodate St. Peter's interests. The Board is of the view that companies and parties reaching an agreement independently outside of the hearing process is preferable to having decisions imposed upon them through a quasi-judicial process.

The Board is of the view that NGTL adequately and appropriately identified stakeholders and potentially affected landowners, as well as developed appropriate engagement materials. The Board is also of the view that NGTL's design and implementation of consultation activities for the Project was adequate given the scope and scale of the Project.

The Board notes NGTL's commitments to continue engaging landowners through its Public Awareness Program throughout the lifecycle of the Project. The Board expects NGTL to continue its efforts to consult and maintain timely consultation activities with all stakeholders throughout the lifecycle of the Project. Given the ongoing engagement activities with potentially affected landowners and outstanding concerns, the Board imposes **Condition 11**.

Lastly, the Board notes that Alternative Dispute Resolution services such as mediation and facilitation are available from the NEB at any time to help parties resolve disputes outside the Board's hearing process. More information about these services is available on the Board's website (under Alternative Dispute Resolution Guidelines in NEB Publications).

2.5 Environment and Socio-Economic Matters

The proposed pipeline route for the Project is 21.5 km in length, parallels existing pipelines for 88 per cent of its length, and mainly traverses agricultural, pasture, and developed lands with limited sensitive environmental features. Of the remaining 12 per cent of the route that does not parallel existing pipeline, 7 per cent would be crossed using trenchless methods. Approximately 4.6 km of the route is within the municipal boundaries of the Town of Cochrane, while the remaining 16.9 km of the route traverses lands used for rural residences and for agricultural production that is either under forage or crop production, or is used for cattle grazing. The pipeline would cross the Bow River and the proposed SR1 project using trenchless methods. The two compressor station unit additions would be installed at existing NGTL compressor station sites on lands that are over 50 per cent disturbed by existing development, including the existing compressor station facilities and roads.

The Project is not a designated project identified in the *Regulations Designating Physical Activities* under the *Canadian Environmental Assessment Act 2012*. The Board has assessed the Project under the NEB Act and identified interactions expected to occur between the proposed activities and the surrounding bio-physical and socio-economic elements. The Board also considered the potential accidents and malfunctions that may occur due to the Project, and any change to the Project that may be caused by the environment. Where interactions were predicted, the Board then considered any potential adverse effects.

The Board also considered the potential for cumulative effects resulting from the Project. The assessment of cumulative effects considers the impacts of the residual effects associated with the Project in combination with the residual effects from other projects and activities that have been or are reasonably foreseeable to be carried out within the appropriate temporal and spatial boundaries, ecological and socio-economic context.

2.5.1 Standard Mitigation

The Board recognizes that many adverse environmental effects are resolved through standard mitigation. Standard mitigation refers to a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully and is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the Board.

Views of NGTL

NGTL's mitigation measures are included in its Application, EPP for the pipeline and compressor stations, Environmental Alignment Sheets, and associated filings. Standard

mitigation is proposed by NGTL to avoid or minimize potential adverse environmental effects on soil and soil productivity, water quantity and quality, vegetation, wetlands, fish, wildlife, species of special status, species at risk, atmospheric and acoustic environments, navigation and navigation safety, people, and effects associated with accidents and malfunctions. Mitigation particular to different components of the Project is set out in three project specific EPPs: for the pipeline; and each compressor station. These EPPs address the Project's potential impacts to valued components such as wildlife, soils, vegetation, water, and wetlands.

Among the mitigation strategies to avoid or minimize the effects of the Project, NGTL is relying, in part, on: avoidance through route and site selection; scheduling clearing activities to avoid sensitive periods; development of detailed, practical, effective mitigation and contingency measures to address site-specific and general issues; inspection during construction to ensure that planned mitigation is implemented and effective; post-construction monitoring; conducting the maintenance and operation of the pipeline system; and implementing NGTL's existing programs and procedures to ensure pipeline integrity, public safety and environmental protection.

NGTL stated it would implement the management and contingency plans included in each EPP. The EPPs would include mitigation for managing elements such as chemicals and waste, traffic, hydrovac waste, HDD, breeding birds and nests, and access control/management. Contingency plans are included for spills, adverse weather, floods and excessive flow, wet soils, fire, soil handling, soil erosion, directional drilling mud release, plant species and ecological communities of concern, wildlife, heritage resource discovery, and traditional land use sites discovery.

NGTL evaluated alternative means including alternate routing options and ultimately selected the proposed Route A. NGTL stated that the pipeline route would parallel existing disturbances for approximately 88 per cent of its length and the preferred compressor station additions would be co-located with existing NGTL compressor station facilities.

NGTL stated that the proposed construction schedule would enable clearing activities to occur outside of restricted activity periods for wildlife. NGTL submitted that the proposed schedule would help reduce environmental impact by avoiding compressor station addition clearing and pipeline construction activities outside of the Primary Nesting Period for migratory birds.

Views of Participants

Mr. Block and Mr. Costigan

Mr. Block and Mr. Costigan raised specific concerns regarding human occupancy and resource use, specifically their property values, and future ability to subdivide and develop their lands.

Mr. Bower

Mr. Bower raised general concerns about soil and water quality related to NGTL's proposal to dispose of HDD drill cuttings and fluids on surrounding agricultural lands. Mr. Bower also raised concerns regarding potential impacts on property values. He also had concerns about the lack of an appropriate risk assessment for the Project (which was discussed earlier in **Section 2.2.2**).

Mr. and Mrs. Smith

Mr. and Mrs. Smith raised concerns regarding effects on human occupancy, including location of the Burton Creek CS construction camp, and the potential for disruption due to lights, noise and increased traffic in the area.

Mr. and Mrs. Drewry

Mr. and Mrs. Drewry raised specific concerns regarding increased noise, traffic and airborne materials during construction of the Rocky View Section.

Mr. Carver and Mr. and Mrs. Hatchard

Landowner Mr. Carver raised concerns regarding the need to monitor and repair any potential damage to property due to construction traffic. Mr. Carver also raised human occupancy and resource use concerns regarding noise from the existing Turner Valley CS, the construction traffic, speed, dust and littering. Mr. and Mrs. Hatchard raised concerns regarding dust control on county and municipal roads due to construction traffic. Mr. and Mrs. Hatchard also raised concerns regarding noise from the existing Turner Valley CS and the proposed unit addition.

Káínai First Nation and Piikani Nation

Káínai and Piikani raised concerns with potential Project interactions and with NGTL's mitigation for topsoil, rough fescue grasslands, vegetation and wetlands, grizzly bears, breeding birds, cervids, noise impacts to wildlife, bull trout, hydrostatic testing, watercourses, groundwater, greenhouse gases, and air emissions. Káínai and Piikani also raised concerns with NGTL's post-construction monitoring plans for vegetation, wetlands, and wildlife; and was critical of the methodologies used to complete baseline surveys for wetlands, groundwater, surface water, fish and fish habitat, and wildlife species at risk.

Káínai and Piikani submitted that there were numerous inadequacies with the Environmental and Socio-Economic Assessment (ESA), including: valued components are missing from the assessment; additional data is needed to conduct a more thorough analysis of potential effects; and additional Project and situation specific monitoring and management plans are required to reflect potential effects that have not been adequately considered in the ESA.

Káínai and Piikani submitted approximately 40 recommendations to NGTL specific to its concerns regarding potential Project effects on the environment. The Board's response to the specific recommendations are included in **Appendix II** and **Appendix III**.

Métis Nation of Alberta – Region 3

MNA3 raised concerns regarding the Project interactions with vegetation and wetlands, wildlife and wildlife habitat, aquatic resources, and air and noise. Specifically, MNA3 raised issues in Final Argument with proposed rough fescue grassland mitigation, vegetation and wetland monitoring, wildlife baseline surveys, breeding bird nesting periods, aquatics baseline surveys and monitoring, effects on bull trout, watercourse buffer zones, and groundwater protection. MNA3 also submitted that the baseline information and methodologies within the Application and used by NGTL to assess and monitor impacts on vegetation and wetlands, fish and aquatic resources, and wildlife are incomplete.

MNA3 argued that to be adequately prepared for any eventuality and to adequately evaluate the potential impacts of the Project, it is necessary to collect a thorough baseline of river ecology. The aquatic baseline data is the foundation for all subsequent aspects of the Environmental Assessment process and must be completed to a high standard. MNA3 is of the view that NGTL has completed only a very superficial survey. MNA3 also expressed concerns regarding bull trout, stating that NGTL has not described measures that will be taken to ensure the Project does not contribute to further declines.

MNA3's submission included approximately 26 recommendations to NGTL regarding its concerns with the effects of the Project on the environment. The Board's response to the specific recommendations are included in **Appendix II** and **Appendix III**.

Samson Cree Nation

SCN raised concerns with the ESA, including the identification of valued components. SCN indicated that in its view, a higher-level regional assessment is required. SCN also stated that in its view, a cumulative effects assessment, in consultation with SCN, has not been completed for the Project.

Stoney Nakoda Nations SNN raised concerns with the Project's effect on fish species at risk and water quality and quantity, and NGTL's plans for hydrostatic testing and post-construction monitoring.

Tsuut'ina Nation

Tsuut'ina raised concerns regarding the ESA, indicating that in its view, the ESA was deficient as Tsuut'ina was not engaged or consulted in its development, and the full scope of cumulative effective of the Project has not been assessed or addressed by NGTL.

Reply of NGTL

NGTL argued that its ESA filed in support of the Project provides a thorough assessment of the Project, its route and potential effects, including a cumulative effects assessment. NGTL further submitted that the ESA includes EPPs that contain well understood and field-proven mitigation techniques developed over NGTL's history of building pipelines and associated facilities.

In NGTL's view, with the implementation of standard and Project-specific mitigation measures in the EPPs, the Project will not result in any significant adverse environmental or socio-economic effects.

With respect to the concerns raised by landowners regarding human occupancy and resource use, NGTL stated that standard mitigation measures will be implemented, as outlined in the EPPs. Specifically, regarding property values, restrictions on land use and development, NGTL stated that it is unlikely that the Project will reduce property values, and these concerns were addressed through consultation activities. With regards to the noise related concerns at the Turner Valley CS, NGTL stated that the existing compressor station and proposed unit addition meets Alberta Energy Regulator Directive 038: Noise Control.

NGTL noted that a number of Indigenous communities raised concerns with the assessment methodology used in NGTL's ESA. NGTL submitted that the ESA provides sufficient information to allow the Board to understand the effects of the Project. NGTL also noted that none of the Indigenous communities provided an alternative assessment that could be relied on by the Board to supplement or replace NGTL's ESA.

NGTL argued that historical data on relative abundance and fish condition was not required to support the assessment of fish and fish habitat as no residual effects on fish or fish habitat are anticipated, given that no in-stream work is planned, and all activities will be completed above the high water mark. NGTL noted that *Species at Risk Act* -listed Westslope cutthroat trout do not inhabit waters within the Project area, and that its ESA assessed the effects of the Project on all fish species potentially present in the Project area, including bull trout.

NGTL does not anticipate any environmental impacts as a result of potential drilling mud disposal on agricultural land. NGTL conducts non-toxic drilling mud disposal in compliance with the parameters in Alberta Energy Regulator's Directive 50: Drilling Waste Management which includes setback distances from sensitive environmental features.

NGTL stated that hydrostatic testing is conducted under the *Code of Practice for the Temporary Diversion of Water for Hydrostatic Testing of Pipelines* and the *Code of Practice for the Release of Hydrostatic Test Water from Hydrostatic Testing of Petroleum Liquid and Gas Pipelines* and that it will incorporate mitigation in accordance with the *Freshwater Intake End-of Pipe Fish Screen Guideline* published by Fisheries and Oceans Canada to prevent fish from entering the pumps.

Views of the Board

The Board's Filing Manual provides guidance to proponents on what should be included in the ESA with respect to baseline information. The Filing Manual notes that an applicant is not expected to provide extensive descriptions of features of the environment that would clearly not be impacted by the Project and that the goal is to provide information with sufficient detail to: identify Project-environment interactions; determine the significance of Project effects; and formulate appropriate mitigation measures and monitoring programs. For example, regarding river ecology baseline surveys and fish and fish habitat assessments, the Board accepts the level of detail NGTL provided for its trenchless crossing. In some cases, the effects of a project on certain environmental elements can be predicted and appropriate mitigation proposed regardless of the level and detail of baseline information provided. In this case, the Board is of the view that NGTL has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology. The Board is also of the view that NGTL's ESA properly analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project as outlined in the Filing Manual. Therefore, the Board is of the view that NGTL's ESA methodology is acceptable.

The Board is of the view that sufficient routine design and standard mitigation measures have been proposed to mitigate the potential adverse environmental effects identified. The Board notes NGTL's consideration of alternative means and accepts the routing as proposed. The Board also notes that many aspects of NGTL's engineering design for the Project address environmental risks, in particular with respect to accidents and malfunctions and the effects of the environment on the Project. NGTL is also implementing a number of known best practices and scheduling considerations to mitigate potential adverse environmental effects associated with grassland communities, wetlands, and species at risk.

To be satisfied that all site-specific mitigation measures are appropriate and would be implemented according to their intent, the Board imposes the conditions below. The Board notes that NGTL and some of the participants commented on the Board's Draft Conditions for the Project that were made available for review, and in some instances, proposed additional conditions. The Board considered all comments received before finalizing and setting out the terms and conditions to be imposed. The Board's response to comments on draft conditions is provided in **Appendix III**.

Environmental Protection Plans

The Board imposes **Condition 6** and **Condition 7** requiring NGTL to file updated Project-specific EPPs to communicate all environmental protection procedures and mitigation measures to employees, contractors and regulators. These procedures and mitigation measures must be as clear and unambiguous as possible to minimize errors of interpretation. In cases where there may be multiple ways of achieving the desired outcome, the EPP must state the goal, mitigation options, and clear decision-making criteria for choosing which option to apply under what circumstances. Where a mitigation option is mandatory it must be clearly stated as such. Updated Environmental Alignment Sheets are also to be included with the pipeline EPP. The EPPs must be comprehensive and cover general and site-specific mitigation related to all environmental elements.

The Board notes that NGTL submitted draft versions of the EPPs on the record during the hearing and that Indigenous participants had an opportunity to provide comments on these draft versions. The Board further notes NGTL's ongoing engagement with Indigenous communities and NGTL's commitment to incorporate any additional mitigation into the final EPPs and Environmental Alignment Sheets prior to construction.

Breeding Bird Survey and Protection Measures

The Board acknowledges NGTL's intention to plan construction activities outside of the Primary Nesting Periods for breeding birds. The Board notes NGTL's EPP mitigation measures, Breeding Bird Nest Management Plan, and commitment to conduct supplemental bird surveys in the event that it initiates construction activities during the Primary Nesting Periods for nesting birds. The Board also notes that there are 15 SARA Schedule 1 listed bird species at risk with the potential to occur in the Project area. In the event that bird surveys are required, the Board imposes **Condition 8 (Breeding Bird**

Survey and Protection) in order for the Board to review the survey results and to verify that NGTL consulted with federal and provincial authorities in regards to additional mitigation and monitoring.

Post-Construction Monitoring Reports

In considering the evidence, the Board is of the view that mitigation to be implemented by NGTL will minimize the environmental effects of the Project. The Board notes that NGTL will conduct post-construction monitoring which is a key tool towards ensuring that potential adverse effects will be effectively mitigated and where issues are identified, adaptive management will be implemented to address them. To be satisfied that post-construction environmental monitoring is thorough and effective and that reports are developed and submitted, the Board imposes **Condition 18 (Post-Construction Monitoring Report)**.

Based on the information provided by NGTL in its Application and subsequent filings, and taking into account the mitigation proposed by NGTL and the conditions imposed by the Board, the Board has determined that residual effects of the Project on the environment are likely to be localized to the Project development areas and reversible in the medium term. Therefore, the Board has determined that Project effects on the environment are not likely to be significant.

Socio-Economic Effects

The Board notes that NGTL's standard mitigation measures include measures to address socio-economic effects, such as notification of landowners, municipalities, government agencies and Indigenous communities of the intended construction schedule and specific construction activities, Traffic Control Management Plans, dust control measures, input from landowners on the seed mix for the reclamation of privately-owned lands, Heritage Resource Discovery Plan, Traditional Land Use Sites Discovery Contingency Plan, and keeping noise emission levels below regulatory limits. The Board is satisfied with the proposed mitigation measures proposed in the Application and EPP. However, the Board imposes **Condition 7**, requiring updated mitigation measures and contingency plans, as well as **Condition 11** requiring an update on any outstanding landowner concerns, and how they will be addressed.

The Board also notes the consultation and engagement activities NGTL undertook to address specific concerns relating to human occupancy and resource use, and NGTL's proposal of specific mitigation measures to address concerns regarding the preferred Burton Creek CS camp location.

In considering the evidence, the mitigation proposed by NGTL, and the Board's imposed conditions, the Board has determined that the socio-economic effects of the Project are not likely to be significant, including effects on the acoustic environment, and human occupancy and resource use.

Cumulative Effects

With respect to cumulative effects, there are existing and proposed projects and activities that have the potential for spatial and temporal interaction of Project effects, and therefore the potential for cumulative effects, including: agriculture and livestock grazing; energy transmission; forestry; oil and gas; industrial; recreation and tourism; settlement and rural and urban development; and transportation and infrastructure.

Although there are possible cumulative effects for a number of biophysical elements, the Board is of the view that these cumulative interactions and effects are limited to the duration of construction, are fairly localized and are minor in nature. The Board is of the view that any potential cumulative effects would also be mitigated by NGTL's environmental protection and mitigation measures and the Board's additional conditions and findings. Therefore, the Board concludes that the Project would not likely result in significant adverse cumulative effects.

In addition to the above relatively routine matters, the Board notes the particular concerns raised with respect to the technically more complex issue of the HDD crossing of the Bow River, addressed below.

2.5.2 *Bow River HDD Crossing*

The Bow River is a large watercourse with fish species of provincial concern with good spawning, rearing, migration, and overwintering potential in the Project study area. The Bow River is important to Indigenous communities, supports an important recreational fishery, and serves as a source of drinking water for the Town of Cochrane and the City of Calgary. NGTL's proposed crossing and contingency crossings will use trenchless HDD construction methods. The potential interactions and effects of the Project are to fish and fish habitat and water quality due to accidents and malfunctions, specifically the release of drilling fluids during HDD activities. Potential socio-economic interactions with human occupancy may also occur relating to noise during HDD activities.

Views of NGTL

NGTL stated that the Bow River crossing will be constructed using a trenchless method, which will employ mitigation measures in the EPP, including the Horizontal Directional Drilling Management Plan and Drilling Mud Release Contingency Plan, to mitigate potential effects on surface water quality. Installation of the Bow River crossing by HDD avoids in-stream work and is the primary means of avoiding harm to fish and fish habitat and issues with timing, site selection and bank restoration and stabilization. The HDD entry and exit points are located well above the riparian zone, therefore no fish habitat needs to be re-established, and no bank restoration is required. Should the HDD installation not succeed, NGTL would re-attempt it again with alterations in geometry and/or alignment. If that re-attempt is not feasible, then either an alternative HDD path or Direct Pipe installation methods will be considered. In NGTL's view, no residual effects on water quality and fish and fish habitat are anticipated.

NGTL submitted that the potential release of drilling fluid into a watercourse during an HDD is discussed in the Accidents and Malfunctions section of the ESA. The occurrence of an inadvertent release of drilling mud was assessed as unlikely to occur because of NGTL's design and prevention measures, but if it did occur, the effects are expected to be localized, short-term in duration, and of low magnitude for wildlife and wildlife habitat, fish and fish habitat, vegetation and wetlands, and traditional land and resource use. In the view of NGTL, with the implementation of the Drilling Mud Release Contingency Plan, the effects of an inadvertent drilling mud release on the environment are predicted to be not significant.

In regard to potential Project interactions with human occupancy due to increased noise during HDD activities, NGTL noted that ESA Section 11.4 provides the mitigation measures to be applied relating to general construction noise and specific measures pertaining to the HDD entry and exit points. NGTL also stated that ESA Section 11.5.1.2 details the anticipated noise sources and sound outputs used in noise modeling, as presented in Table 11-9 of the ESA and illustrates that the three nearest receptors modeled will be at or below the Health Canada recommended mitigated noise levels during construction. NGTL also confirmed that no increased noise is anticipated during operation of the Rocky View Section, and the Burton Creek CS and Turner Valley CS will remain within the Alberta Energy Regulator Directive 038 guidelines.

For further discussion regarding the Board's proposed noise monitoring plan condition, and NGTL's response, refer to **Appendix III**.

Views of Participants

Mr. Bower and Mr. Costigan

Mr. Bower had questions about the potential effects of HDD construction on groundwater quality and quantity. Mr. Costigan and Mr. Bower raised specific concerns regarding the potential effects of HDD construction on their water wells, including risk of contamination due to accidents or malfunctions, and potential disruption of their limited water supply.

Káínai First Nation and Piikani Nation

Káínai and Piikani raised concerns regarding the potential human health risks associated with the inadvertent release of drilling fluids and regarding monitoring during HDD activities.

Métis Nation of Alberta – Region 3

MNA3 argued that there is a potential risk to the Bow River during HDD and that NGTL's ESA and HDD Construction Risk Assessment do not make any mention of water quality monitoring to conduct continuous turbidity sampling during the Bow River HDD. MNA3 requests that NGTL include a 24-hour water quality monitoring program for turbidity monitoring in the Bow River during the occurrence of HDD activities and should include stationary water quality devices that are equipped with an alert system that notifies the drill operators if elevated turbidity levels are detected.

Stoney Nakoda Nations

SNN requested further information regarding NGTL's water quality monitoring and response to a release of drilling fluids.

Reply of NGTL

NGTL stated that the potential effects to groundwater along the HDD path, including the possible interception of a high yield aquifer, were assessed in the ESA. The HDD has been designed considering a proven and conservative engineering model that takes fractured bedrock into account and the model considers any breach of the borehole wall by drilling fluid as an inadvertent release. Based on the modelling for the proposed HDD across the Bow River, the drilling fluid should be confined to the limits of the borehole for the full length of the crossing with a low risk of contamination of the groundwater or nearby water wells as well as a low risk of vertical or other fracturing in the bedrock.

NGTL also stated that if Mr. Bower continues to have concerns regarding impacts on his water well, NGTL would assess whether testing is appropriate. In response to Mr. Costigan's concerns, NGTL has committed to testing water wells to assess any impacts from the Project.

NGTL explained that closer to construction, the HDD drilling contractor will prepare an HDD Execution Plan, and NGTL will have a Water Quality Monitoring Plan prepared for the Bow River HDD. These construction documents will include details for execution, monitoring and contingency planning for the planned HDD installations.

NGTL disputes MNA3 claims that the ESA and the HDD Construction Risk Assessment do not include a proposal for monitoring water quality during HDD installation, stating that the EPP expressly provides for a water quality monitoring plan that includes monitoring for total suspended sediments and/or turbidity during trenchless watercourse crossings.

NGTL submitted that Project planning and design, equipment selection, hazard analysis and corrective action, emergency response planning, security management, and the implementation of established effective environmental protection measures in the EPP and ERP will reduce the potential for the assessed accidents and malfunction events to occur and reduce effects of an event if it occurs. In NGTL's view, the assessment followed NEB requirements, assessments for previous projects of similar scope, and concluded that effects on the environment and socio-economic factors for all events will not be significant.

Views of the Board

The Board has assessed the potential effects of the Bow River crossing portion of the Project, including accidents and malfunctions, on the environment and socio-economic factors. In considering the evidence, the Board is of the view that the mitigation proposed and commitments made by NGTL will minimize the potential environmental and socio-economic effects of the Project.

The Board is satisfied with the mitigation measures proposed in the Application and EPP, and imposes **Condition 7** requiring NGTL to file an updated EPP for the Rocky View Section pipeline, including any updates to HDD-related mitigation, prior to construction.

The Board also notes that many aspects of NGTL's engineering design for the Project address environmental risks, in particular with respect to accidents and malfunctions, and the effects of the environment on the Project. To ensure the appropriateness and sufficiency of watercourse crossing plans, the Board imposes engineering **Conditions 13, 14, and 15** pertaining to site-specific drilling execution plans, reporting, and mitigation measures associated with alternative crossing methods.

The Board is of the view that with NGTL's proposed mitigation measures and with the Board imposed conditions, there are not likely to be significant adverse effects on aquatic resources resulting from the Project's Bow River HDD activities. With regard to concerns raised by participants, the Board is of the view that any potential project impacts on aquatic resources are likely to be minimal and can be effectively addressed through NGTL's proposed mitigation and the Board's imposed conditions.

The Board is of the view that NGTL's proposed mitigation measures to address noise concerns are appropriate. The Board also notes that construction activities are anticipated to fall within the Health Canada thresholds, and all operational activities will be within Alberta Energy Regulator Directive 038 requirements. However, given the nature of HDD activities, and the proximity of landowners to the drill entry and exit locations, the Board has decided to impose **Condition 12 (Bow River Crossing Noise Management Plan)**, requiring that NGTL file a Noise Management Plan, which includes a description of the specifics of the proposed mitigation measures, and confirmation that landowners have been engaged regarding potential noise impacts.

2.6 Indigenous Matters

The Board has considered all of the evidence provided by Indigenous communities and by others, including NGTL, about the potential impacts of the Project on the rights and the interests of Indigenous peoples, NGTL's proposed mitigation of the Project's potential effects, requirements in the regulatory framework and the conditions imposed by the Board in the Orders. The Board interprets its responsibilities in a manner consistent with the *Constitution Act, 1982*, including subsection 35(1), which recognizes and affirms the existing Aboriginal and treaty rights of Indigenous peoples. Further discussion of the Board's role in upholding section 35 of the *Constitution Act, 1982* appears below in Views of the Board.

The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed.

This section includes summaries of evidence provided directly to the Board by Indigenous communities through their participation in the hearing, as well as summaries of NGTL's consultation with affected Indigenous communities, which noted the concerns and interests, assessment methods and rationales, and any mitigation proposed by Indigenous communities as recorded by NGTL. The Board notes that identifying and referring to specific passages within the record can lead to other direct and indirect references being overlooked. Therefore, anyone

wishing to fully understand the context of the information and evidence provided by Indigenous communities should familiarize themselves with the entire record of the hearing. In addition, **Appendix II** and **Appendix III** provides a summary of the general and specific concerns and issues raised by Indigenous communities through this proceeding, related to potential conditions which the Board may attach in its approval of the Project, as well as summaries of the responses to these concerns provided by NGTL, responses by the Board (including its conditions), and applicable requirements provided through regulation and/or legislation.

2.6.1 NGTL's Consultation with Indigenous Communities

NGTL stated that its *Aboriginal Engagement Program* is designed to foster productive dialogue and exchange of information with potentially affected Indigenous groups interested in the Project. It is developed and adapted according to the nature, location and potential effects of the Project, and to the interests, information needs and concerns of Indigenous communities.

NGTL also stated that it identified potentially affected Indigenous communities based on the location of the Project within asserted traditional territories, regional boundaries and/or areas of interest. NGTL stated that this initial identification was compiled through a combination of desktop research, TransCanada's own operating experience, including past projects in the region, existing agreements, and an established network of contacts with Indigenous communities in the Project area. NGTL also indicated that on November 2017, it requested a preliminary list of potentially impacted Indigenous communities from the Board.

NGTL noted that its engagement with potentially affected Indigenous communities began on 5 July 2017, with Project information packages being provided to Indigenous communities initially identified by NGTL. NGTL stated that on November 24, 2017, Project notification packages were provided to the additional Indigenous communities identified by the NEB, except for Foothills Ojibway First Nation who was provided the Project notification package on December 7, 2017.

NGTL stated that the Project notification packages included a detailed description of the Project and information on how communities can provide comments and concerns to the Board. The package also included brochures prepared by TransCanada regarding its engagement and safety programs, and by the NEB regarding non-hearing processes. NGTL stated the Project information packages were provided to the following communities:

- Blood Tribe also known as Káínai First Nation (Káínai)
- Enoch Cree Nation (ECN)
- Foothills Ojibway First Nation (FOF)
- Métis Nation of Alberta (MNA)
- Métis Nation of Alberta – Region 3 (MNA3)
- Nakcowinewak Nation of Canada (NNC)
- O'Chiese First Nation (OCFN)
- Piikani Nation (Piikani)
- Samson Cree Nation (SCN)
- Siksika Nation (SN)

- Stoney Nakoda Nations (Bears paw First Nation, Chiniki First Nation, and Wesley First Nation) (SNN)
- Sunchild First Nation (SFN)
- Tsuut'ina Nation (Tsuut'ina)

NGTL stated that it held a Project Open House in Cochrane, AB in September 2017, and sent invitations to Káínai, Piikani, SN, SNN, Tsuut'ina, MNA and MNA3. NGTL stated that these communities were also sent a Project Update on 2 November 2017, advising of the selected route. NGTL also stated that on 5 January 2018, invitations were sent to all potentially affected Indigenous communities, inviting them to another Open House in Cochrane, AB on 18 January 2018.

NGTL indicated that on 8 May 2018, as identified by the Alberta Consultation Office, NGTL emailed a notification letter to Káínai, Piikani, SN, SNN and Tsuut'ina to inform of the filing of the application to obtain Crown land authorizations for the potential alternate locations for the Burton Creek CS. In the letter, NGTL noted it may need to pursue an alternate location due to unanticipated land constraints at the proposed Burton Creek CS location and provided a map of potential alternate locations for the Burton Creek CS. NGTL stated that on 17 May 2018, NGTL contacted Piikani, Tsuut'ina and SN to follow up on the notification and confirm their interest in the potential alternate locations for Burton Creek CS. NGTL further stated that on 22 June 2018, NGTL emailed a Project update to all potentially affected Indigenous communities to inform of the filing of a letter with the Board on 21 June 2018, describing the potential alternate location for the Burton Creek CS (Burton Creek CS Alternate Site).

NGTL indicated that it provided interested Indigenous communities with opportunities to meet to discuss the Project, route selection and express any concerns they might have about the Project, as well as opportunities to provide further input into the Project planning through activities such as Project-related site visits and other studies. NGTL stated that it met with Káínai, MNA3, Piikani, SN, SNN and Tsuut'ina to discuss the Project.

NGTL indicated that it conducted site visits, of the applied-for Project, as well as the potential Burton Creek CS Alternate Site with interested Indigenous communities. NGTL stated that on 21 March 2018, it met with Tsuut'ina and reconfirmed with Tsuut'ina that it had completed a site visit for the applied-for Project. On 12 September 2018, NGTL confirmed that Tsuut'ina completed a site visit to the Project's Burton Creek CS Alternate Site on 10 September 2018. NGTL also stated that it completed a joint site visit of the Burton Creek CS Alternate Site on 19 July 2018 with Piikani Nation, Káínai and Siksika Nation.

NGTL stated that information sharing will continue through the regulatory review process until the completion of Project construction and that NGTL remains available to respond to questions or concerns about the Project.

2.6.2 The Board's Hearing Process and Participation of Indigenous Communities

The Board's hearing process was designed to obtain as much relevant evidence as possible on Indigenous concerns regarding the Project, the potential impacts on Indigenous interests, as well

as possible mitigation measures to minimize adverse impacts on Indigenous interests. The Board was provided with and considered information about concerns related to the Project, and the measures that would be required to address those concerns, as brought forward through consultation undertaken by NGTL and through the participation of potentially affected Indigenous communities.

The Board, through its own assessment of publicly known or asserted Indigenous traditional territory information, identified Indigenous communities who may be potentially affected by any applied-for project. After receiving NGTL's application, the Board reviewed the list of potentially affected Indigenous communities identified in the Application and confirmed that the list was complete.

Indigenous communities concerned with potential Project-related impacts on their interests, including rights, had opportunities to present their views directly to the Board through preliminary comments following early notification, as well as through the hearing process outlined in the Hearing Order, which included opportunities to provide oral statements and oral traditional evidence, as well as to provide written evidence, ask written questions to the proponent on its evidence, comment on Board proposed conditions, and present final argument. While the Board required NGTL to implement a consultation program and undertake an assessment of the Project's potential effects, including its environmental and socio-economic effects, the Board also took steps to facilitate the direct participation of these communities in its assessment process as outlined in **Section 1.2 (The NEB Process)**. Complete information about the hearing process and process steps, as well as the assistance offered by the Board's Process Advisors are outlined in Hearing Order GH-002-2018 and related procedural updates.

The Board adopted the processes described above so that its decisions with respect to the Application were consistent with section 35 of the *Constitution Act, 1982* and with the requirements of procedural fairness. The Board determined that the hearing process was appropriate, given the scope of the Project, the nature of the concerns raised, the importance of constitutionally protected Indigenous rights and the Board's obligation to make a decision as to whether the Project is in the Canadian public interest.

2.6.3 Participation of Indigenous Peoples in the Board's Process

Section 55.2 of the NEB Act requires the Board to hear from any person who is directly affected by the granting, or refusing of an application. All Indigenous communities identified as being directly affected by the Project were granted Pre-decided Standing. The listing of all participants granted Pre-decided Standing can be found in Appendix D of the Notice of Public Hearing ([A92511-1](#)). Any communities wishing to participate in the hearing process with Pre-decided Standing were only required to register their participation prior to the Application to Participate deadline.

The following Indigenous communities registered their participation and were granted Intervenor status, as requested: Káínai, MNA3, Piikani, SCN, and SNN (comprised of Bearspaw First Nation, Chiniki First Nation and Wesley First Nation). The Board notes that Bearspaw First Nation, Chiniki First Nation and Wesley First Nation participated individually in the hearing

process. However, the Stoney Tribal Administration, identifying itself as the Stoney Nakoda Nations or SNN, indicated that it was representing these three distinct Nations. As many of the concerns raised through the hearing process were shared by all three Nations, this Letter Decision will reference SNN as representing the collective rights and interests of the three Nations, as represented by SNN. In cases where concerns or information may be unique to one of the member Nations, this Letter Decision will refer to each Nation by name.

On 26 October 2018, Tsuut'ina also submitted a letter request to file late evidence which, although filed after the registration deadline, the Board accepted as late registration, and granted Tsuut'ina Intervenor status "in progress" and also accepted the late evidence.

During the proceeding, and as mentioned earlier, these intervenors were able to present their views to the Board in numerous ways, including submitting written evidence, providing oral statements, providing oral traditional evidence, asking written questions of NGTL and other parties through Information Requests (IRs), providing comments on draft conditions and providing written final argument.

Piikani, SCN and SNN provided oral statements and OTE before the Board on 17 October 2018 and 19 October 2018.

The Board also received motions from Káínai and Piikani regarding the adequacy of NGTL's responses to IRs. The Board also received motions from SNN requiring IR responses from the ADOE, as well as requesting additional information requests. The Board also received a motion from Tsuut'ina requesting to file late written evidence. For a complete list of motions and Board rulings, please see **Appendix I**.

Views of the Board

The Board thanks all participants in the West Path Delivery Project hearing, and in particular, the Elders and Traditional Knowledge holders from Piikani Nation, Samson Cree Nation and Stoney Nakoda Nations (Bears paw First Nation, Chiniki First Nation, Wesley First Nation) for sharing their local, traditional, and cultural knowledge during the oral portion of the hearing.

2.6.4 Issues and Concerns raised by Indigenous Communities

2.6.4.1 Burton Creek CS Alternate Site

Views of Participants

SNN, MNA3, SCN and Tsuut'ina raised concerns regarding the Burton Creek CS Alternate Site and the potential for increased environmental impacts, and subsequently a potential for impacts to traditional land and resource use. Several Indigenous communities also raised concerns regarding NGTL's approach to consultation and assessment of impacts to Traditional Land Use and Resource Use (TLRU) for the Project.

Reply of NGTL

NGTL indicated that on 22 June 2018, NGTL emailed a Project update to all potentially affected Indigenous communities to inform of the filing of a letter with the Board on 21 June 2018, describing the potential alternate location for the Burton Creek CS.

NGTL stated that its Indigenous engagement summaries on the record demonstrate that NGTL made substantial efforts to provide Indigenous groups with opportunities to participate in the planning of the Project and identify possible concerns, including for both the applied-for and alternate locations for the Burton Creek CS.

Views of the Board

As previously noted, the Board has determined that the applied-for Burton Creek CS Unit Addition location is in the public interest. The Board also determined that it was not further considering the Alternate Site for the Burton Creek CS and was therefore not approving the latter.

The Board notes that concerns were raised by Indigenous communities regarding the potential for Project impacts as it related to the Burton Creek CS Alternate Site. This includes concerns regarding impacts to traditional land and resource use and the adequacy of consultation. The Board acknowledges that engagement activities with Indigenous communities regarding the proposed Project began in July 2017, whereas engagement activities regarding the potential Burton Creek CS Alternate Site did not begin until May 2018. As a result, Indigenous communities and others did not benefit from the same level of engagement, consultation or time for the review of this potential Project site.

The Board is of the view that a company's early consultation with Indigenous communities is a critical part of the development of a proposed project. Timely, accessible, and inclusive consultation facilitates the meaningful exchange of information, and provides opportunities for the company to learn about the concerns of potentially affected Indigenous communities, to discuss how those concerns can be addressed through project design and operations, and to develop and discuss measures to reduce and mitigate the effects a project may have on the rights and the interests of Indigenous communities. Timely and meaningful consultation can help establish productive relationships that can carry on throughout the life of the project.

The Board notes the concerns raised by Indigenous communities regarding the Burton Creek CS Alternate Site. While the Board notes that NGTL appropriately designed and implemented consultation activities for the preferred site, in the Board's view, NGTL did not carry the same consultation activities for the Alternate Site, and yet, NGTL was asking the Board to approve this Alternate Site, if the Board could not determine the preferred site to be in the public interest. If companies do not properly design and implement consultation activities for all components of a Project that are applied for, then the Board may find itself in a position to impose additional process steps or

accommodation measures, or deny that component or even the Project. In this case, in the end, the Board did approve the preferred site and did not approve the Alternate Site. As a result, the Board is of the view that the concerns raised by Indigenous communities as they pertained to the Alternate Site are not applicable to the Project being assessed.

2.6.4.2 NGTL's Consultation Activities

Views of Participants

Several Indigenous communities raised concerns regarding NGTL's consultation activities and the appropriateness of their consultation and engagement program.

For example, SCN raised concerns regarding NGTL's consultation activities and argued that SCN was not meaningfully consulted or accommodated on the Project.

SNN also stated that it was not properly consulted regarding environmental, cultural, water, wildlife, hunting, fishing, trapping concerns within the Project area, and that consultation with NGTL was limited. SNN stated that it met with NGTL on a few occasions and could not come to an understanding on how to identify potential impacts to SNN rights.

Similarly, Káíñai and Piikani stated that NGTL's consultation on the Project was limited to NGTL sharing project information with Káíñai and Piikani staff, and that this information sharing did not constitute consultation.

Tsuut'ina stated that the Project route ends very close to the northern border of the Tsuut'ina Reserve, and comes within a few km of the Reserve at another location. In addition to the close proximity, Tsuut'ina submitted that the Project traverses important areas of Tsuut'ina's traditional territory. Tsuut'ina stated that the process of engagement was highly technical and abbreviated, particularly given the proximity of the Project to their reserve lands and Tsuut'ina's concerns about direct and cumulative impacts to their section 35 Aboriginal rights.

Reply of NGTL

NGTL stated that summaries of NGTL's engagement to date with potentially affected Indigenous groups demonstrate that NGTL made substantial efforts to provide Indigenous groups with opportunities to participate in the planning of the Project and identify possible concerns. NGTL stated that it responded to all concerns that were identified through the Board's hearing process. NGTL stated that its engagement summaries also demonstrate that it engaged with potentially affected Indigenous groups to maximize the potential benefits of the Project for local communities, including through NGTL's *Aboriginal Contracting and Employment Program*. NGTL submitted that its engagement activities for the Project, including through the Board's hearing process, were meaningful and appropriate relative to the nature and scope of the Project.

Views of the Board

The Board notes that consultation or engagement efforts undertaken by a proponent with Indigenous communities are considered within the context of the expectations set out in the Board's Filing Manual. While a proponent's consultation or engagement efforts are distinct from those of the Crown, the information gathered as a result of such efforts often provide helpful information to the Board's understanding of the views and concerns with respect to the rights and interests of potentially-affected Indigenous communities.

The Board expects companies to design and implement their consultation activities with regard to the nature and magnitude of a project's potential impacts early in the design phase and throughout the lifecycle of the Project. Where there is a greater risk of more serious impacts on the rights and interests of Indigenous communities, the Board has proportionally greater expectations in terms of the companies' consultation with potentially impacted Indigenous communities. In contrast, where there is a remote possibility of an impact on Indigenous rights and/or interests, or where the impacts are minor in nature, the applicant's consultation will generally not be expected to be as extensive.

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

The Board notes that NGTL, within its route selection process, found that alternative Route B would have traversed reserve lands, as well as one additional parcel of Crown land that may have the potential to support traditional land and resource use activities. The Board is of the view that this is a positive example of the interests of Indigenous communities being properly incorporated by NGTL into the planning and design phase of a project.

The Board notes the concerns raised by SCN, SNN and Tsuut'ina regarding NGTL's consultation activities. The Board notes the consultation activities undertaken by NGTL for the applied-for Project, including in-person meetings, open houses and site visits conducted with Indigenous communities that expressed an interest. The Board further notes NGTL's commitment to work with Indigenous communities such as SCN, SNN and Tsuut'ina to address any further concerns that may arise. The Board finds that, with regard to the applied-for Project, NGTL provided Indigenous communities who expressed an interest in the Project with reasonable opportunities to participate in Project planning, to share traditional knowledge, and to identify site-specific and general concerns about the Project.

Given the importance of ongoing engagement and consultation activities with Indigenous communities, the Board imposes **Condition 10**. The Board notes that this condition has been modified slightly from the version that was presented for comments to include information regarding any outstanding site visits.

Having assessed all of the evidence, and taking into account NGTL's commitments and the Board's imposed conditions, the Board finds that NGTL designed and implemented consultation activities that are appropriate for the size, scope and scale of the applied-for Project. The Board also notes that NGTL met the requirements and expectations set out in the Board's Filing Manual.

2.6.4.3 Capacity Funding

Views of Participants

Several Indigenous communities raised concerns regarding capacity funding provided by NGTL and specifically as it relates to the collection of traditional knowledge and TLRU information relating to the Project.

For example, MNA3 raised concerns regarding the provision of capacity funding to undertake an Indigenous Knowledge Study, provide independent monitors, review heritage resources mitigation measures, and participate in the delivery of the cultural heritage training.

Piikani and Káínai raised concerns regarding capacity funding, and requested that funding be provided for document reviews, completion of an Indigenous Knowledge Study, and support of cultural heritage monitors, and SNN stated that capacity funding offered by NGTL was insufficient.

SCN also stated that it was concerned that it did not have sufficient time to review the Project, including the commission of a study on potential impacts to SCN's rights and interests. SCN stated that it wishes to work toward consensus on conclusions about the potential impacts and proposed conditions to address those impacts.

Reply of NGTL

NGTL stated that it offered capacity funding to all Indigenous communities that expressed interest in the Project, including MNA3, Piikani, and Káínai. These funding offers covered potential engagement activities such as meetings with NGTL and site visits.

Views of the Board

The Board notes NGTL's offers of capacity funding to meet with and conduct site visits with any Indigenous communities who have expressed an interest. However, the Board also notes that some Indigenous communities disputed that they were provided any offer of funding from NGTL. The Board encourages NGTL and Indigenous communities to discuss funding opportunities as soon as possible in the planning and design phase of a

project, where appropriate. The Board also notes NGTL's commitments to working with Indigenous communities, such as Piikani and Káínai to identify opportunities for education and training initiatives.

In addition, the NEB administers a Participant Funding Program which provides financial assistance to support participation of Indigenous communities and other intervenors who meet the program criteria. See **Section 1.2.2 (Participant Funding)** for further details. The Participant Funding Program is administered independently of the hearing panel. The Board also assigned Process Advisors to support Indigenous communities and the public who participated in the hearing.

2.6.4.4 Traditional Land and Resource Use

Views of Participants

Several Indigenous communities raised concerns regarding the taking of Crown lands, reduction of lands available for TLRU activities, and the potential significant effects on TLRU activities that may result.

Several Indigenous communities, including Káínai, MNA3, Piikani, SCN, SNN and Tsuut'ina raised concerns regarding NGTL's methodology for assessing and incorporating TLRU and traditional knowledge. Several communities indicated that, in their view, NGTL's approach of utilizing desktop studies and relying on literature reviews and NGTL's own interpretations of information was inappropriate and inadequate, and that NGTL should be required to fund traditional knowledge and land use studies for each potentially affected group.

For example, Piikani and Káínai stated that the information identified from NGTL's literature review was cursory and could not be used to adequately assess potential impacts to TLRU within the assessment area. SCN indicated that the information shared in the ESA was from desktop analysis, or from literature that was publically available.

MNA3 also raised concerns regarding the potential impacts of the Project on TLRU. MNA3 provided information regarding preliminary land use, which included TLRU areas, such as fishing, hunting and gathering sites, as well as cultural and spiritual sites. MNA3 also noted some land use activities directly adjacent to the Project ROW, and others throughout Region 3. MNA3 stated the findings of these initial interviews are preliminary in nature and point to the need for a fulsome TLRU study.

In written evidence and oral traditional evidence presentations, each of the SNN nations raised concerns regarding TLRU activities and potential sites in the Project area and regional assessment area, which may include gathering and harvesting areas within the vicinity of the Project components, family camps no longer being used in the vicinity of one of the compressor station sites, and other sacred sites. Bears paw First Nation (BFN) specifically noted an infant burial site within a family camp near the existing Burton Creek Compressor Station site. SNN also raised the importance of the Porcupine Hills area as a spiritual area and harvesting area.

BFN also noted concerns regarding harvesting and hunting near developments, due fear of the risk of accidents.

Reply of NGTL

NGTL stated that its engagement program and its assessment of effects on TLRU conducted for the Project was based on requirements under section 58 of the NEB Act, NEB Filing Manual guidance, and standard assessment methods appropriate for the scope and nature of the Project.

NGTL stated that to identify potential Project effects on TLRU, NGTL relied on best available information, the results of NGTL's engagement activities and publicly available reports. NGTL further stated that the assessment conservatively assumes that TLRU sites, activities and resources have the potential to occur within the local assessment and regional assessment areas, even though specific sites, areas, or resources have not been identified by Indigenous groups through Project engagement.

In response to the concerns around availability of Crown lands for TLRU activities, NGTL noted that the Project has been designed to parallel existing disturbances for 88% of its length and the Project development area is located within predominately freehold and occupied Crown land, both of which are Project design measures that limit the potential for Project-related effects on TLRU.

NGTL also stated that although the Project area largely consists of private land that is unavailable for TLRU (unless consent is obtained from the landowner, which was not demonstrated for any of the Project footprint during the hearing), NGTL stated the ESA conservatively assumed that TLRU activities may occur throughout the local and regional assessment areas. NGTL stated that it proposed a comprehensive suite of mitigation measures in its Project specific EPPs to reduce the effects of the Project on the environment and, in turn, on the use of those lands. With application of this mitigation, NGTL stated the ESA concluded that the Project might have some temporary disruption to TLRU activities during construction but that it will not impede opportunities for Indigenous groups to exercise TLRU activities in the Project area in the long-term.

NGTL stated that several Indigenous groups intervened in the hearing and raised concerns with possible impacts on their TLRU activities and sites. However, NGTL submitted that these groups did not identify specific sites, resources or activities within the Project footprint that would require specific mitigation beyond what NGTL is already proposing in the EPPs. NGTL stated that for example, Káínai, Piikani, and MNA3 each raised general concerns about TLRU impacts but provided no details about specific sites, resources or activities of concern in response to Information Requests from NGTL.

NGTL also stated that although each group represented by SNN claimed that TLRU sites exist within the Project footprint, SNN provided no details about where these sites are, what they are, how (or whether) they are currently being used, or how the Project will affect these uses. NGTL noted that the Technical Reviews conducted for each SNN community confirmed that the entire Project footprint consists of land that is unavailable for TLRU, with the exception of the alternate

location for the Burton Creek CS. In response to the concerns raised by SNN, including BFN's specific concerns regarding burial and sacred sites, NGTL outlined the pre-construction heritage assessment it conducted of the Project area. NGTL indicated that this assessment identified thirteen heritage sites, four of which were mitigated in relation to the Project. NGTL also outlined the mitigation measures that would be implemented to reduce the potential adverse effects on habitation, cultural and sacred sites, which included providing Indigenous communities with the proposed Project construction schedule and maps. NGTL also outlined mitigation measures that it would implement to reduce potential adverse effects of the Project on hunting and gathering activities, wildlife, wildlife habitat, and plants of traditional importance.

NGTL stated that if traditional land use sites not previously identified are found on the construction footprint during construction, then NGTL will implement the measures outlined in the Traditional Land Use Sites Discovery Contingency Plan. NGTL also confirmed its commitment to continue to work with Indigenous communities, including BFN regarding implementation of recommended mitigation measures for the reported sacred sites within the Burton Creek CS Preferred and Alternate locations.

NGTL also provided its Heritage Resource Discovery Contingency Plan. This contingency plan outlines what to do in the event that suspected human remains are discovered during construction, and includes (but is not limited to) the following measures:

- Suspend work immediately within 10 m of the suspected human remains. Remains must be left in the condition they were found.
- The Company would undertake an initial non-invasive assessment of possible human remains. If there are clear visible indications that the remains are human the Company would contact the RCMP or regional police immediately.
- At the same time that the Provincial heritage agency is contacted, the Company's Aboriginal Engagement Lead would provide notification to appropriate Aboriginal groups (e.g., groups that have been engaged on the Project and whose traditional territory includes the location where the human remains were discovered). Aboriginal groups would be contacted and consulted to determine appropriate next steps, as guided by the Provincial ministry responsible for heritage resources.
- The human remains would be handled in accordance with all applicable provincial requirements and permits, and in keeping with participating Aboriginal groups to the degree that provincial regulations allow. The investigation and mitigation plan would be developed by the Provincial heritage agency and/or the Heritage Resource Specialist in consultation with the Environmental Advisor and any affected parties including applicable Aboriginal groups.

Views of the Board

The Board acknowledges that this Project is taking place on Treaty 7 territory, a traditional gathering place for diverse Indigenous peoples including the Blackfoot, Tsuut'ina, Stoney Nakoda Nations, Cree and the Métis. The Board also acknowledges the concerns raised by Indigenous peoples regarding the potential impacts of the Project to TLRU.

The Board notes that many of the concerns regarding potential impacts to traditional land and resource use and the reduction of available Crown land relates to the Burton Creek CS Alternate Site and the acquisition of Crown land that would have been required for that site. As noted above in **Section 2.3 (Land Matters)** of this Letter Decision, the Burton Creek CS Alternate Site is not being considered as part of the Project and was therefore not approved by the Board.

The Board notes that the lands required for the Project are almost entirely privately owned and unavailable for TLRU (i.e., without consent from the landowner), with the exception of a small quantity of temporary workspace required for the Burton Creek CS Unit Addition (4.94 acres) located on Crown land. For the Rocky View Section, the Board also notes the approximately 0.08 ha within the bed and banks of the Bow River, which are Crown lands traversed by the Project. The Board notes that the Bow River will be crossed using a trenchless crossing method, and no surface disturbance or effects to TLRU are anticipated.

The Board is of the view that NGTL made reasonable opportunities available to potentially affected Indigenous communities to conduct site visits and identify any concerns regarding Project impacts to traditional land and resource use. The Board notes that Indigenous communities have not raised any outstanding specific sites, resources or activities within the Project footprint that would require specific mitigation beyond what NGTL is already proposing in the EPPs. The Board expects that NGTL will effectively implement the suite of mitigation measures proposed in the EPPs to reduce any potential Project impacts on traditional land use, harvesting, gathering and sacred sites. Given all of the above, the Board is of the view that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous communities are not likely to be significant.

The Board further notes NGTL's commitment to work with Indigenous communities to address any further concerns that may arise. Given the importance of ongoing engagement and consultation activities with Indigenous peoples, and as previously noted, the Board is imposing **Condition 10**. The Board notes that this condition has been modified slightly from the version previously presented for comments to include information regarding any outstanding site visits.

2.6.4.5 Heritage Resources

Views of Participants

Several Indigenous communities raised concerns regarding existing heritage resources management systems, timing of notifications of Indigenous communities regarding heritage resources, and seeking an increased role in the development of heritage resources contingency plans. NGTL also stated that Káínai, ECN, Piikani, SN, SNN and SFN requested notification of any archaeological and paleontological resources encountered during construction.

For example, SCN raised concerns regarding its involvement in the identification and management of heritage resources. MNA3 also requested that NGTL provide MNA3 with any technical documents related to archaeology and cultural heritage, including the Heritage Resource Applications. MNA3 stated that it wished to review these documents prior to the start of further cultural heritage work and the Project in order to assess any cultural heritage work being completed.

Reply of NGTL

NGTL stated that effects on heritage resources were evaluated through the submission of Historical Resources Applications for each of the Project components to Alberta Culture and Tourism. NGTL stated that mitigation measures outlined in the Project EPPs and required by Alberta Culture and Tourism will be implemented prior to and during construction to avoid effects on heritage resources. If previously undocumented heritage resources (for example, arrow heads, modified bone, pottery fragments, or fossils) are encountered during construction, the Heritage Resources Discovery Contingency Plan in the Project EPPs will be implemented.

NGTL stated that it advised MNA3 that all copies of the Historic Resource Application report must be requested from Alberta Culture and Tourism, and provided MNA3 with the required contact information.

Following requests from Indigenous communities, NGTL committed to notifying Káínai, ECN, Piikani, SN, SNN and SFN regarding any archaeological resources encountered during construction.

NGTL indicated that, as stated in the TLRU Sites Discovery Contingency Plan and Heritage Resource Discovery Contingency Plan, sites of a heritage resources nature or where human remains may be identified, will be addressed in accordance with provincial laws and regulations while also considering the concerns of Indigenous groups. As such, should a site be identified, and be confirmed as a TLRU site, the TLRU Sites Discovery Contingency Plan states that if an initial assessment determines a location to be a previously unreported TLU site, the Company would contact any potentially affected Indigenous communities.

Views of the Board

The Board notes the commitments from NGTL to notify interested Indigenous communities if previously undocumented heritage resources are encountered during construction. Given this commitment, along with the standard mitigation measures to avoid and protect heritage resources, the Board is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.

The Board imposes **Condition 9 (Archaeological and Heritage Resource Permits and Clearances)**, requiring NGTL to file confirmation of its archaeological and heritage resources clearances, and **Condition 10**, requiring a Report updating the Board on consultation activities with Indigenous communities.

2.6.4.6 Monitoring by Indigenous Peoples

Views of Participants

In the Application, NGTL stated that Tsuut'ina expressed an interest in monitoring activities at the Bow River Crossing. In written evidence, oral statements and OTE, Piikani, Káínai, SCN, SNN and MNA3 have indicated an interest playing a more active role in monitoring the company's activities, and made specific requests regarding the community's involvement in monitoring activities during construction and operation.

In their final argument, Káínai and Piikani proposed an additional condition requiring the NEB to establish an Indigenous Advisory and Monitoring Committee (IAMC) in collaboration with relevant Indigenous groups.

Reply of NGTL

In response to Tsuut'ina's specific request for monitoring activities at the Bow River Crossing, NGTL stated that it proposed a site visit with the nation upon completion of construction, and committed to continuing to work with Indigenous communities, including Tsuut'ina through ongoing engagement.

NGTL requested that the NEB's proposed condition requiring NGTL to file a monitoring by Indigenous peoples Plan be struck, as the concerns that condition addresses have already been mitigated through NGTL's engagement activities, mitigation measures or other Conditions.

NGTL indicated that it has engaged with potentially affected Indigenous communities since May 2017. This engagement included opportunities to provide NGTL with information regarding TLRU and sites.

NGTL also states that proposed Condition 10 (Socio-Economic Matters - Indigenous Consultation) and Condition 9 (Socio-Economic Matters - Heritage Resources) will address Indigenous communities' concerns regarding TLRU and heritage resources.

In regard to Káínai and Piikani's request for an IAMC, NGTL stated that this request was made for the first time in argument and is not in the evidence and that insufficient detail about the function, mandate, governance and decision-making structures of an IAMC are provided in the proposal. NGTL also stated that a proposed IAMC for all NGTL projects is unreasonable, unsupported by evidence and beyond the Board's jurisdiction in this proceeding.

Views of the Board

The Board notes that a monitoring by Indigenous peoples Plan condition was initially floated as a draft condition. The proposed condition was based on the application and evidence before the Board. At the time, both the Burton Creek CS Addition preferred site and Burton Creek CS Addition Alternate Site were being considered and assessed.

The Board notes that the preferred Burton Creek Compressor Station Unit Addition component of the Project will be located adjacent to the existing Burton Creek Compressor Station site, and will require the expansion of the existing compressor station site to the south, onto private freehold land and will require a small quantity of Crown land for use as temporary workspace, with the remainder of the land required being located on privately held lands. The Board is of the view that the Alternate Site (which would have involved the need for about 19 ha of Crown Lands) may have justified the need for Indigenous monitors. However, given that the Burton Creek CS Alternate Site was not further assessed and is not approved by the Board, the proposed draft monitoring by Indigenous peoples Plan condition, in the Board's majority view, is no longer warranted given the size, scope, scale and potential effects of the applied-for Project.

The Board imposes **Conditions 9 and 10**. The Board expects NGTL to continue to engage and work with Indigenous communities to address any concerns that may arise. The Board also reaffirms NGTL's commitments to conducting Post-Construction site visits with Indigenous communities that have requested them and has modified **Condition 10** by adding item b) which will require updates on the status and results of any outstanding site visits.

As discussed for **Condition 10** above, early in the process, the Board did float a monitoring by Indigenous peoples Plan condition when the Alternate Site for the Burton Creek CS was being considered (which would have required the taking of Crown Lands). Given that the Board has approved the applied-for site and has not approved the Alternate Site, the majority of the Board decided that the monitoring by Indigenous peoples Plan condition was no longer warranted given the scope and scale of the Project and that **Conditions 9 and 10** were sufficient to capture and address Indigenous communities' concerns, if any arose.

Since, in the Board's majority view, monitoring by Indigenous peoples is not warranted in this case, the Board cannot see a justification that warrants a recommendation to the Government of Canada to establish an IAMC, the likes of which was established for major projects such as TMX and Enbridge Line 3.

Dissenting Views of Member Ron Durelle Regarding the Imposition of an Indigenous Monitoring Plan Condition

Unlike the majority, I would have imposed the following condition on Indigenous monitoring:

Indigenous Monitoring Plan

NGTL must file with the Board, **at least 30 days prior to commencing construction**, a plan describing participation by Indigenous communities in monitoring activities during construction for adverse environmental impacts, archaeological resources and items, areas related to traditional land and resource uses, and, areas of cultural significance. The plan must include:

- a) a summary of engagement activities undertaken with Indigenous communities to determine opportunities for their participation in monitoring activities;
- b) a list of potentially affected Indigenous communities, if any, who have reached agreement with NGTL to participate in monitoring activities;
- c) the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participating Indigenous community identified in b), including those elements of construction and geographic locations that will involve Indigenous monitor(s);
- d) a description of how NGTL will use the information gathered through the participation of Indigenous monitor(s); and
- e) a description of how NGTL will provide the information gathered through the participation of Indigenous monitor(s) to the participating Indigenous community, and other monitoring programs, as applicable.

NGTL must provide a copy of the plan to those Indigenous communities identified in b) **no later than three days after filing the plan with the Board**. NGTL must file with the Board, **prior to commencing construction**, confirmation that it did so.

While I agree with the majority that the applied for Burton Creek CS site is in the public interest as it will require significantly less Crown Lands and correspondingly will likely have less impact on Indigenous rights, I do not share the majority view that the condition is no longer warranted. In my opinion, the Indigenous Monitoring Plan condition would further the public interest of the Project. In the face of what Indigenous communities have claimed during our hearing to be significant unresolved concerns, I am of the view that the Indigenous Monitoring Plan condition would have assisted in addressing many of the issues that Indigenous communities saw as outstanding and should have been kept for the following reasons.

The NEB filing manual requires that consultation be proportionate to the size, scale and scope of the project being applied for. This has been referred to frequently in this Letter Decision and in NGTL's submissions. Direct comparisons with other project applications that have come before the Board for a decision are difficult because they may have involved a different set of facts (bigger scope, scale and size, more Crown land, different demonstrated degree of impact on Aboriginal and treaty rights, etc.) than the Project under assessment. I recognize that the Project is small in scale and size, involving mostly private freehold lands with minimal taking up Crown land that is currently used by Indigenous communities for traditional lands and resource use.

Yet, the application for the Project appears to have included more hearing process steps than would typically have been required for a project of this scale and size. The Board would not apply a different standard unless the set of facts presented in any particular project application justified it. In the absence of the level of landowner and Indigenous interest and involvement with the Project application, the Project would likely have been treated as a routine application that would have been handled through a streamlined review process requiring very limited, if any, hearing process. However, in this case,

there was significant interest shown by Indigenous communities. The Board established the process described above so that its decisions with respect to the Application were consistent with section 35 of the *Constitution Act, 1982* and with the requirements of procedural fairness. I agree that the hearing process was appropriate, given the scope of the Project, the nature of the concerns raised, the importance of constitutionally protected Indigenous rights and the Board's obligation to make a decision as to whether the Project is in the Canadian public interest.

NGTL indicated in its Final Argument that the Board does not typically hold public hearings for projects of this size, and that the Board's hearing process for the Project has ensured that all potentially affected parties had numerous opportunities to provide input and concerns to both NGTL and the Board. I also note that affected parties, including Indigenous communities, had the opportunity to provide input and express concerns through our hearing process.

In my view, however, even if the Project was small in scale and size, involving mostly private lands, the Indigenous Participants who appeared before us consistently raised concerns which they viewed as significant and unresolved. The Indigenous Monitoring Plan condition would have provided an appropriate avenue for the Indigenous Participants and NGTL to further discuss these concerns and resolve them where appropriate.

As noted above, Indigenous participants raised concerns with NGTL's approach to consultation, its approach for its TLRU study and on the extent that Traditional Knowledge was or was not incorporated in refining the Project.

While the Project involves a very small amount Crown land (bed and banks of the Bow River for the Rocky View Section and 4.94 acres of Crown Land required for temporary workspace for the Burton Creek CS site) which will likely have minimal impacts on Aboriginal and treaty rights, it may nonetheless have some impact. As stated above, NGTL indicated that the Project might have some temporary disruption to TLRU activities during construction but that it would not impede on opportunities for Indigenous groups to exercise TLRU activities in the Project area in the long term. Evidence presented during the hearing indicated that the Project is located in an area where Indigenous communities already have limited access to Crown lands where they can exercise their TLRU Rights. The SNN stated the following in their final argument:

“As a result, the project will further reduce available unoccupied Crown lands for the exercise of Section 35 Rights. This is very concerning considering that there is little available unoccupied Crown Land in the vicinity of the project for the exercise of Section 35 Rights, which, in any event, are often location specific.”

SNN members noted that it is often not possible to move to other areas for the exercise of Section 35 Rights. Certain vegetation and wildlife are only found on certain types of habitat.

In my view, it is difficult to determine at which point the impact of each successive development reaches the tipping point of permanent diminishment and erosion of Indigenous communities' abilities to exercise their TLRU rights. The limited access to Crown land available to Indigenous communities within the vicinity of the Project is a factor that helped me understand the level of Indigenous concerns and interests expressed in this Project application. Indigenous communities in this hearing have raised that potential impacts on their Aboriginal and treaty rights could be significant despite the scope, size and scale and location of the Project.

I agree with the majority that NGTL designed and implemented consultation activities that are appropriate for the size, scope and scale of the applied-for Project, and that meet the requirements and expectations set out in the Board's Filing Manual. However, I find that NGTL has met this just minimally and could have done more, hence why I would have added the Indigenous Monitoring Plan condition so that the dialogue could have continued.

The Filing Manual is a goal oriented document that sets the minimum guidance standards. The Board's completeness determination is an indication that the Project is complete enough to proceed to assessment; it should not be interpreted to mean that all Project-related requirements relating to consultation have been achieved. Based on the ongoing level of Indigenous concerns presented during the hearing and reiterated in Final Argument, I am of the view that NGTL could have done a better job at designing an Indigenous engagement program that truly fostered productive dialogue and exchange of information with potentially affected Indigenous groups interested in the Project, even if the taking of Crown land in this case was minimal. But I concede, its engagement program was "sufficiently adequate" in this case.

As discussed in **Appendix III**, the proposed draft Indigenous Monitoring condition, NGTL indicated that the Indigenous Monitoring condition should be struck since the concerns that the condition addresses have already been mitigated through NGTL's engagement activities, mitigation measures and other conditions. The majority of the Board also explained that given that the Burton Creek CS Alternate Site (which would have required the taking of Crown land) was no longer being considered, the proposed draft Indigenous Monitoring Plan condition would no longer be appropriate given the size, scope, scale and potential effects of the applied-for Project, and that other conditions were sufficient to capture and address Indigenous communities' concerns. **I disagree with NGTL's position and with the views of the majority on this issue and would have imposed the Indigenous Monitoring Plan condition.**

What follows below are some of the concerns that some Indigenous communities have specifically raised. They are not an exhaustive list nor are they even necessarily the most significant concerns expressed, but in my opinion, they are adequate to describe the extent and nature of outstanding Indigenous concerns and why in my view the Indigenous Monitoring Plan condition would further the public interest. Some of these concerns may have been previously referenced above, and I note **Appendix II** discusses all the

concerns raised by Indigenous communities and how NGTL and the Board responded to them, but I feel that they are worth repeating in this context.

I was particularly concerned when SNN stated in its final argument that: “It is important to note that there is an infant burial site in close proximity to where the project is proposed. An Indigenous monitoring and advisory committee for the project with SNN members appointed may prevent adverse impacts from the Project to SNN’s cultural and spiritual sites like the incident that occurred at the former Sharphead Reserve.” I understand the latter incident occurred in or about 1966, where approximately 26 different human remains were unearthed and were not reburied until 2014 when a special plot of Crown Land was set aside for reburial. Having an Indigenous Monitoring Plan condition would help ensure that the company appreciates the importance of properly handling sites of special cultural and heritage significance.

I note that several Indigenous communities raised concerns regarding NGTL’s methodology for assessing and incorporating TLRU and traditional knowledge. Several communities indicated that, in their view, NGTL’s approach of utilizing desktop studies and relying on literature reviews and NGTL’s own interpretations of information was inappropriate and inadequate. Several communities indicated that NGTL should be required to fund traditional knowledge and land use studies for each potentially affected group. They expressed the view that NGTL did not sufficiently integrate Indigenous Knowledge or Traditional Land Use specific to them which represents a gap in knowledge that undermines the ability of NGTL to adequately consult with the communities. Indigenous communities expressed that the details for monitoring plans related to the Project are not sufficiently detailed to provide them with confidence that environmental effect will be monitored and managed properly. Indigenous communities expressed that Project impacts on asserted and established Treaty and Indigenous rights, impacts on TLRU and impacts on heritage resources were not properly assessed.

SNN and Tsuut’ina argued that they had not been meaningfully or properly consulted. Piikani indicated that simply providing information about the Project is not consultation but rather “information dumping”. SCN submitted that it had not been meaningfully consulted or accommodated and that NGTL’s ESA contained information deficiencies relating to the identification and assessment of potential impact on SCN Rights.

Káínai stated that without a methodologically sound and culturally appropriate approach to identifying site specific TLRU and cultural heritage sites, it is impossible for NGTL and the Board to adequately assess what impacts the Project will pose to Káínai TLRU and cultural heritage sites, and in turn, address these impacts. Káínai also stated that NGTL’s consultation had been limited to NGTL sharing Project information with Káínai staff. Káínai stated that any meaningful ‘two way’ dialogue between NGTL and Káínai on potential impacts and concerns related to the Project had been virtually non-existent.

Piikani, Káínai, SCN, SNN and MNA3 argued in favour of Indigenous monitoring of the Project to ensure that valuable traditional ecological knowledge is integrated into the Project implementation and also ensure an enhanced Indigenous understanding of the

Project. I also note that Piikani and Káínai asked for a condition requiring the Board to establish an IAMC.

In my view the public interest would be better served if the Board imposed the Indigenous Monitoring Plan condition. While there may be limited monitoring opportunities without private landowner permission, there should be opportunities on NGTL owned lands and Crown land. As I have mentioned, while the Indigenous consultation program initiated by NGTL met the minimal consultation standard, greater Indigenous involvement in Project oversight could be achieved through the Indigenous Monitoring Plan condition. This would help, in my view, to address what Indigenous participants viewed as outstanding concerns that have not been adequately addressed.

The NEB Filing Manual References the desire for collaboration in relation to Indigenous consultation. In section 3.4.2, the Filing Manual states: “When consultation includes Aboriginal groups, applicants should consider establishing a consultation protocol in collaboration with these groups that takes into consideration their needs and cultural elements.” Also in section 3.4.2, the Filing Manual expresses a desire for **Local and Traditional Knowledge** to be reflected in the project design through the following reference where it states: “Consider augmenting the application with local and traditional knowledge and integrating the information and knowledge, where appropriate, into the design of the project. Where local and traditional knowledge is obtained, provide an opportunity for the individual who provided the information to confirm the interpretation of the information and how it was used in the project design.”

In my opinion the Indigenous Monitoring Plan condition would allow for opportunities for interested Indigenous communities to participate in the Project. The condition could have helped to address concerns which Indigenous participants claimed to be outstanding in relation to areas of 1) cultural significance; 2) traditional land and resource use; 3) archaeological resources; 4) environmental impacts, and 5) heritage resources. In my opinion, including Indigenous monitors would facilitate the effective exchange of information and reduce and/or mitigate the effects that the Project may have on Aboriginal and treaty rights and concerns. The Indigenous communities who expressed an interest to participate as monitors in our process could, in my view, provide a unique perspective which should be sought after and welcomed rather than being brushed aside or discounted. This unique Indigenous perspective and local Traditional Knowledge should be required, in my view, to help ensure that planned mitigation measures are implemented and that they are effective in minimizing any potential damage to TLRU and to other Indigenous Rights and interests, even if these monitoring opportunities may be limited in this case.

This Indigenous Monitoring Plan condition could help ensure that the consultation with affected Indigenous communities during the remainder of the Project is undertaken in a meaningful and respectful way. While I do find the Project to be in the public interest, the public interest would be furthered by this condition as it could address what Indigenous communities have raised as concerns related to TLRU and Heritage Resources and could

help mitigate potential impacts on Aboriginal and treaty rights which Indigenous communities have claimed.

However, I do not believe that there should be an Indigenous Advisory Monitoring Committee similar to the IAMC established for TMX and Line 3 replacement, as was requested by some Indigenous participants in our process. In my opinion a committee would not be warranted given the scope, scale and size of the Project.

I also believe that the Board's Filing Manual is in need of significant update as it relates to Indigenous consultation, based on recent court decisions and in the context of proposed new legislation under Bill C-69. In my opinion the manual should reflect a requirement for an Indigenous monitoring process or condition with standardized expectations as to timing, process and expected outcomes. These Filing Manual amendments should recognize the value and unique perspective that Indigenous peoples can provide to a project, and promote meaningful and respectful consultation with potentially affected Indigenous communities during construction and post-construction activities. This is an emerging best practice and proponents should be proactively offering these opportunities to potentially affected Indigenous communities. This may be especially needed for project applications with significant Indigenous interests and concerns and for the significant number of project applications that go through a streamlined review process that requires little if any hearing components. I would hope that projects that garner significant Indigenous interest would always trigger the need for a public hearing with full opportunities for Indigenous communities to make their concerns known to the Board, but I am not assured that they always would, as it is always a case-by-case determination of what process is appropriate and fair in any given case. In such instances the Board should set out conditions of approval that are considered necessary or desirable in the public interest. The purpose of the condition would be to mitigate potential risks and effects on Indigenous Rights associated with projects that have a streamlined review process.

2.6.4.7 *Emergency Management*

Several Indigenous communities raised concerns regarding Emergency Management. These concerns are addressed in **Section 2.2.6** above (**NGTL's Emergency Preparedness and Response Planning**), **Appendix II**, and **Appendix III**.

2.6.4.8 *Employment and Economic Benefits*

Views of Participants

Several Indigenous communities indicated an interest in training, education, employment and contracting opportunities relating to the Project. Káínai, MNA3, Piikani, and Tsuut'ina specifically indicated an interest in employment, contracting, training, and other economic benefits. MNA3 indicated concerns regarding the availability of opportunities for MNA3 citizens to participate in training, direct employment and contracts for services resulting from the Project.

Reply of NGTL

NGTL provided details regarding its *Aboriginal Contracting and Employment Program*. NGTL stated that it is committed to supporting local communities by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated that it implements many measures that enhance the opportunity for local and Indigenous communities to participate in the Project. For example, NGTL includes requirements in contracts with prime contractors to hire qualified and competitive, local, Indigenous contractors and employees.

Views of the Board

The Board notes NGTL's *Aboriginal Contracting and Employment Program* and its commitments to engage with Indigenous communities. The Board also notes NGTL's commitments to work with interested Indigenous communities such as Káínai and Piikani to identify opportunities for education and training initiatives. While the Board did not float the following condition, the Board imposes **Condition 17 (Indigenous Employment, Contracting, and Procurement Report)** requiring NGTL to report on Employment, Contracting, and Procurement. The Board is interested in knowing how many Indigenous communities, businesses, or individuals were employed by NGTL, if any, for this Project.

2.6.4.9 Subsection 35(1), Constitution Act, 1982 and Duty to Consult

Views of Participants

Several Indigenous communities raised concerns regarding the assessment of potential impacts to the exercise of their section 35 rights, particularly as it relates to the taking of Crown land, and fulfilling the Crown's duty to consult and accommodate.

For instance, SCN stated that an inquiry into SCN's treaty rights and the Project have not been conducted or completed by either the Board or by NGTL, and that SCN, the Board and/or NGTL have not yet engaged in a dialogue on practical means, enforceable conditions and an acceptable level of accommodation to prevent, reduce, or otherwise address potential impacts on SCN's rights and interests. Tsuut'ina also stated concerns regarding the potential impact of the Project on Tsuut'ina's rights and interests, and the Crown's ability to rely on the Board's process.

Káínai and Piikani stated that, in their view, the duty to consult and accommodate has not been fulfilled and impacts of the Project and concerns of Indigenous groups have not been substantially addressed. Káínai and Piikani stated that they raised significant concerns in regard to the evidence gathered by NGTL to inform its submissions. Specifically, in their view, NGTL has not collected primary data relating to Káínai and Piikani's TLRU of the Project area, and instead has relied on generalized information about TLRU through the conduct of a literature review.

SNN raised concerns regarding the Project and adverse impacts to its section 35 rights, specifically the availability of lands to exercise these rights. In particular, SNN stated that the Project would further reduce unoccupied Crown land available to exercise these rights.

SNN also raised concerns regarding the potential impacts of the Project on its water rights. SNN stated that they believe these rights are being impacted by the Project through the application of the directional drill that is being proposed underneath the Bow River. SNN indicated that although the Project will use a trenchless crossing method and there will be minimal surface disturbance to the banks and bed of the Bow River, the Project deviates from the existing pipeline corridor and requires NGTL to take-up or pass through Crown lands of the banks and bed of the Bow River. SNN stated that these lands are within the traditional territory of SNN, previously undisturbed, and the proposed route of the Project infringes upon SNN's unextinguished Aboriginal title and Aboriginal and treaty rights. SNN stated that they have enjoyed the continuous use of the water resources, including the banks and beds thereof, originating and flowing through their traditional territory to facilitate traditional activities. SNN stated that they have not surrendered or ceded the use of waters, including the banks and beds thereof, originating and flowing through their traditional territory.

In regard to SNN's water rights concerns, ADOE stated that it confirms that this is an ongoing matter that is currently before the Courts and under case management (Court Action). ADOE stated Alberta is fully defending the Court Action, and that the Court Action has an extensive record. ADOE respectfully submitted that the Board is not the appropriate forum for the determination of the issues in that Court Action.

Reply of NGTL

NGTL notes that the potential effects of the Project on Aboriginal and treaty rights were considered through the assessment of potential Project effects on current use of lands and resources for traditional purposes. NGTL stated that the analysis, discussion and conclusions of the Project's residual effects on TLRU are provided in the ESA and include information gathered through engagement with Indigenous communities on the Project and a review of publicly available literature.

NGTL stated that several of the Indigenous intervenors claim that the Project will impact their Aboriginal rights and interests because it will be located on undisturbed Crown land. NGTL further stated that for example, SNN argued that a significant portion (350 acres) of unoccupied Crown land will be taken up by the Project, which will impact SNN's rights to use that land for traditional purposes. NGTL stated that these claims are incorrect, and that if the Board approves the preferred location for the Burton Creek CS, the Project will have minimal overlap with unoccupied Crown land. NGTL argued that it has demonstrated in its evidence that this disturbance will have minimal impacts on TLRU.

NGTL addressed SNN's concerns regarding its Aboriginal title and rights to waters, water powers, water beds and banks originating and flowing through its traditional territory, and the Project affecting these rights where it crosses the Bow River. NGTL stated that regarding SNN's claim that it owns title to river beds, based either on Aboriginal or treaty rights, NGTL

understands this is an unresolved matter between SNN and the Crown. NGTL stated that regardless of the state of the claim, the Project will not affect the claimed rights. NGTL explained that the entire Rocky View portion is on either freehold land or previously disturbed, TransCanada-leased land with no third party access, with the exception of approximately 0.08 ha within the bed and banks of the Bow River, which are Crown. However, NGTL explained that since the Bow River will be crossed using a trenchless crossing method, there will be no surface disturbance or access restrictions within the bed and banks of the Bow River as a result of Project construction activities.

Views of the Board

The Board notes that the Supreme Court of Canada has acknowledged in two recent decisions, *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*¹⁰ and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*¹¹, that the Board has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures as well as the requisite technical expertise. The Supreme Court of Canada also acknowledged the Crown's ability to rely on the Board's regulatory assessment process to fulfill its duty to consult. The Board is the final decision-maker in relation to this Project.

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

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

The framework within which the Board operates and decisions under the NEB Act are made, which include the requirement that a project assessment process be conducted in a procedurally fair manner, can provide a practical, effective and efficient way within which Indigenous communities can request and receive meaningful assurances from the proponent or the Board about project-related effects on the rights and interests of

¹⁰ 2017 SCC 40, [2017] 1 SCR 1069.

¹¹ 2017 SCC 41, [2017] 1 SCR 1099.

Indigenous communities. Hearing directly and indirectly about Indigenous communities' concerns about project-related impacts allows the Board to impose measures to mitigate the impacts and balance, as appropriate, any residual effects with the other societal interests at play when assessing a project. As a result, decisions on pipeline projects can be made in a constitutionally appropriate manner consistent with the doctrine of the honour of the Crown.

The Board's consideration of what is required in terms of consultation with Indigenous communities is an iterative process as more information is obtained and assessed in the Board's proceeding. There are several points in a Board proceeding where the existence and extent of Indigenous rights and/or interests, and the Project's potential impact on them will be considered with a view to determining the procedural opportunities that must be provided and the substantive outcomes that are warranted.

For example, such factors may be considered when:

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

The Board's process is designed to be thorough and accessible to Indigenous communities so that they may make their concerns known to the Board and have those concerns addressed as appropriate. In addition to the mandated one-on-one consultation that is to occur between an applicant and potentially impacted Indigenous communities, the Board's hearing process itself (described in **Section 1.2** above), including this Letter Decision, is part of the overall consultative process.

The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is also of the view that any potential Project impacts on the rights and interests of affected Indigenous communities are not likely to be significant and can be effectively addressed.

With regard to SNN's concerns with Project effects related to water rights, including rights to river beds and banks, the Board is of the view that NGTL's proposed mitigation measures to address potential impacts of the Project, including potential impacts to SNN claimed water rights, are appropriate. As previously discussed, the Board notes that only 0.08 ha of Crown land may be taken within the beds and banks of the Bow River. Given

the proposed trenchless method for crossing the Bow River, there will be no surface disturbance or access restrictions within the bed and banks of the Bow River. Therefore, the Board is of the view that no significant adverse effects on the rights and interests of affected Indigenous communities are anticipated, including within the bed and banks of the Bow River.

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

3.0 Conclusion

For the reasons explained above, the Board has determined that it is in the public interest to approve NGTL's Application to construct and operate the Project. The Board finds the preferred site for the Burton Creek compressor station to be in the public interest and therefore approves it. The Alternate Site was not further assessed and therefore the Board did not approve it. While Member Durelle shares the view that the Project is in the public interest and ought to be approved, Member Durelle would have added two conditions (i.e., Indigenous Monitoring Plan condition and a Tax Indemnification condition) to further the public interest.

The Board has decided to grant an order pursuant to section 58 of the NEB Act exempting the applied-for facilities from the application of paragraph 30(1)(a) and section 31 of the NEB Act in respect of the Project, and from the provisions of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain partial Leave to Open before installing certain tie-in and valve assemblies for the Project.

The Board has decided to grant an order pursuant to subsections 48(2.1) and 48(2.2) of the NEB Act exempting certain low-pressure piping systems associated with the Project from the 100 per cent non-destructive examination requirement in section 17 of the *National Energy Board Onshore Pipeline Regulations* for the auxiliary and utility systems.

The Board has also decided to grant NGTL an order pursuant to section 45.1 of the *National Energy Board Onshore Pipeline Regulations* to decommission and remove certain existing facilities for the Burton Creek compressor station component of the Project.

All of the above constitute the Board's Letter Decision for Orders XG-N081-005-2019 and MO-006-2019 issued on 11 April 2019. The Board directs NGTL to serve a copy of this Letter Decision on all interested parties.



R. R. George



R. Durelle



P. Davies

April 2019
Calgary, Alberta

Attachments

Appendix I – Rulings and Procedural Updates

Date	Filing ID	Description
19 July 2018	A93121	Board Ruling No. 1 – established the List of Participants (comprised of NGTL and Intervenor) and the List of Commenters for the GH-002-2018 proceeding. Opened a comment period on two motions requesting extensions to upcoming hearing deadlines.
10 August 2018	A93472	Board Ruling No. 2 – partially granted the deadline extension requested by St. Peter's Lutheran Church (St. Peter's) and West Path Agricultural Producers Group (CAEPLA-WPAPG) to provide intervenors with additional time to more fully prepare information requests and evidence. The Ruling also did not grant Stoney Nakoda Nations' (SNN) request for a meeting with the Board to further discuss its concerns with the Board's process and issues with NGTL's Project application process. The Board encouraged SNN to raise concerns related to the Project in the hearing process. The Ruling also provided an upcoming procedural update with a revised timetable outlining remaining steps in the hearing and related dates. The Ruling further provided the opportunity for NGTL and intervenors to provide oral statements expressing their views on the Project directly to the Board and extended an invitation to Indigenous intervenors to provide oral traditional evidence (OTE).
22 August 2018	A93690	Board Procedural Update No. 1 – provided guidance to NGTL and intervenors who intended to present oral statements or OTE and to those who wanted to attend the oral portion of the hearing.
18 September 2018	A94072	Board Ruling No. 3 – partially granted the deadline extension requested by St. Peter's to provide intervenors with additional time to more fully prepare their written evidence.
19 September 2018	A94091	Board Procedural Update No. 2 – provided additional information on the oral portion of the hearing.
24 September 2018	A94132	Board Ruling No. 4 – granted Mr. Edward (Ted) Smith and Mrs. Heather Smith standing to participate as a Commenter in the hearing.
12 October 2018	A94808	Board Procedural Update No. 3 – updated schedule for participants in the GH-002-2018 hearing to provide oral statements or OTE on 16-19 October 2018. The updated schedule was based on correspondence from the Government of Alberta, Bears paw First Nation, Chiniki First Nation, Wesley First Nation, and Cochrane/Springbank Landowners Group.
18 October 2018		Board Ruling No. 5 – granted a motion from Mr. Bower to compel full and adequate responses from NGTL to certain portions of its Information Requests (IRs). The Ruling also noted that CAEPLA-WPAPG filed a motion to compel full and adequate responses to certain portions of its IRs. However, CAEPLA-WPAPG stated in its reply comments that with the supplemental information provided, it was satisfied that it could address any ongoing concerns in argument. Thus, the Board considered CAEPLA-WPAPG's motion withdrawn.
24 October 2018	A95113	Board Procedural Update No. 4 – offered NGTL the opportunity to provide reply evidence orally.
6 November 2018	A95503	Board Ruling No. 6 – partially granted a motion by Tsuut'ina First Nation (Tsuut'ina) to submit written evidence and extended the deadline for submission of their written evidence to 20 November 2018. The Ruling also allowed NGTL to submit IRs on Tsuut'ina's filed written evidence and Tsuut'ina to reply to NGTL's IRs.

28 November 2018	A96163	Board Ruling No. 7 – denied motions from two intervenors, Blood Tribe also known as Káínai First Nation and Piikani Nation, respectively, to compel full and adequate responses from NGTL to certain portions of their respective IRs.
28 November 2018	A96181	Board Ruling No. 8 – denied SNN’s motion to ask IRs of the Alberta Department of Energy and additional IRs of NGTL.
4 December 2018	A96390	Board Procedural Update No. 5 – provided additional information on NGTL’s oral reply evidence portion of the hearing, as well as the requirement for parties who filed written evidence to provide affidavits.
11 December 2018	A96600	Board Procedural Update No. 6 – provided notice of the cancellation of NGTL’s oral reply evidence as NGTL no longer intended to present oral reply evidence.

Appendix II – Summary of Concerns raised by Indigenous Communities, and Applicant and the National Energy Board (NEB or the Board) Response

This annex provides a summary of the general and specific concerns and issues raised by Indigenous communities through this proceeding, as well as summaries of the responses to these concerns provided by the Applicant, responses by the Board (including draft conditions), and applicable requirements provided through regulation and/or legislation. The issues and concerns include those raised directly by Indigenous communities through their participation in the Hearing, as well as summaries of Indigenous concerns and interests as recorded by the Applicant in its evidence. Appendix II refers to information and evidence sources provided by Indigenous communities who participated in the Hearing. The Board notes that identifying and referring to issues and concerns as contained within the record (as provided in this Appendix) may have resulted in some issues being categorized in a summary manner. Some direct and indirect references within the record of the Hearing may therefore not be exhaustively listed in the issues below. Anyone wishing to fully understand the context of the information and evidence provided by Indigenous communities, as well as the applicable responses to these concerns by the Applicant, should therefore familiarize themselves with the entire record of the Hearing.

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
Consultation with Indigenous Communities				
Lack of meaningful consultation by NGTL (e.g., timing, capacity funding, requests to engage with communities based on traditional territories)	Blood Tribe also known as Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Samson Cree Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation)	NGTL stated that it identified and contacted those Indigenous groups that it considered to have the potential to be impacted by the Project. Each of these groups was provided with information about the Project, opportunities to meet with NGTL to discuss the Project, and opportunities to provide input into Project planning through activities such as Project-related site visits and other studies. NGTL stated that it offered capacity funding to all Indigenous groups that expressed interest in the Project. NGTL stated that these funding offers covered potential engagement activities such as meetings with NGTL and site visits.	The Board finds that NGTL has designed and implemented an appropriate and effective consultation program that meets the requirements and expectations set out in the Board’s Filing Manual. The Board notes NGTL’s offers of capacity funding to meet and conduct site visits with any Indigenous communities who expressed an interest. The Board has imposed Condition 10 (Consultation with Indigenous Communities Report) .	2.6.4.2 NGTL’s Consultation Activities 2.6.4.3 Capacity Funding

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
	Tsuut'ina Nation			
Lack of meaningful consultation by the Crown	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Samson Cree Nation Tsuut'ina Nation	NGTL stated that as section 35 rights are based on agreements between Aboriginal groups and the Crown, NGTL is unable to address specific concerns regarding a group's ability, or inability, to exercise those rights.	The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project.	2.6.4.9 Subsection 35(1), Constitution Act, 1982 and Duty to Consult
Effects on the interests, including rights, of Indigenous communities				
Project impacts on asserted and established treaty and Indigenous rights	Káínai First Nation Piikani Nation Samson Cree Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation)	<p>NGTL, within its route selection process, considered but dismissed alternative Route B that would have traversed reserve lands, as well as one additional parcel of Crown land that may have the potential to support traditional land and resource use activities.</p> <p>NGTL notes that the potential effects of the Project on Aboriginal and treaty rights were considered through the assessment of potential Project effects on current use of lands and resources for traditional purposes.</p> <p>NGTL stated that the analysis, discussion and conclusions of the Project's residual effects on traditional land and resource use (TLRU) are provided in Section 13.0 of the Environmental and Socio-Economic Assessment (ESA) and include information gathered through engagement with Indigenous communities and a review of publicly available literature.</p>	<p>The Board finds that the applied-for preferred Burton Creek CS is in the public interest and therefore approves it. Therefore, the Board has not further assessed the Burton Creek CS Alternate Site and is therefore not approving it.</p> <p>The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is also of the view that any potential Project impacts on the rights and interests of affected Indigenous communities are not likely to be significant and can be effectively addressed.</p>	2.6.4.9 Subsection 35(1), Constitution Act, 1982 and Duty to Consult 2.6.4.4 Traditional Land and Resource Use

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		<p>NGTL noted that the Bow River crossing will be completed by Horizontal Directional Drilling (HDD) and all activities will be completed above the high-water mark. NGTL confirmed that no proposed instream works are anticipated and no effects on fish and fish habitat or fish mortality risk are predicted.</p>		
<p>Project impacts on the current use of lands and resources for traditional purposes (e.g., no comprehensive TLU studies, reduction of Crown land available for traditional activities)</p>	<p>Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Samson Cree Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation) Tsuut’ina Nation</p>	<p>NGTL stated that to identify potential Project effects on TLRU, NGTL relied on best available information, the results of NGTL’s engagement activities and publicly available reports.</p> <p>NGTL stated that several Indigenous groups raised concerns with possible impacts on their TLRU activities and sites. However, these groups did not identify specific sites, resources or activities within the Project footprint that would require specific mitigation beyond what NGTL is already proposing in the EPPs.</p> <p>NGTL stated its engagement program and its assessment of effects on TLRU conducted for the Project were based on requirements under Section 58 of the <i>National Energy Board Act</i> (NEB Act), NEB Filing Manual guidance, and standard assessment methods appropriate for the scope and nature of the Project.</p> <p>NGTL noted that the Project has been designed to parallel existing disturbances for 88% of its length and the project development area is located within predominately freehold and occupied Crown land, both of which are Project design measures that</p>	<p>The Board is of the view that NGTL made reasonable opportunities available to potentially affected Indigenous communities to conduct site visits and identify any concerns regarding Project impacts to traditional land and resource use.</p> <p>The Board notes that Indigenous communities have not raised any outstanding specific sites, resources or activities within the Project footprint that would require specific mitigation beyond what NGTL is already proposing in the Environmental Protection Plans (EPPs). As a result, the Board is of the view that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous communities are not likely to be significant.</p>	<p>2.6.4.4 Traditional Land and Resource Use</p>

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		limit the potential for Project-related effects on TLRU.		
Project impacts on heritage resources (e.g., notification of discovery of resources, notification protocols, contingency plans, potential effects of integrity digs)	Enoch Cree Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Samson Cree Nation Siksika First Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation) Sunchild First Nation	<p>NGTL stated that mitigation measures outlined in the Project EPPs and required by Alberta Culture and Tourism will be implemented prior to and during construction to avoid effects on heritage resources. If previously undocumented heritage resources are encountered during construction, the Heritage Resources Discovery Contingency Plan in the Project EPPs will be implemented.</p> <p>Following requests from Indigenous communities, NGTL committed to notifying potentially affected Indigenous communities regarding any archaeological resources encountered during construction.</p> <p>NGTL stated that no additional effects to heritage resources are anticipated during operations.</p>	<p>Given the commitment from NGTL to notify interested Indigenous communities, along with the standard mitigation measures to avoid and protect heritage resources, the Board is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.</p> <p>The Board has imposed Condition 9 (Archaeological and Heritage Resource Permits and Clearances) and Condition 10 (Consultation with Indigenous Communities Report).</p> <p>While Member Durelle agrees on this finding and the imposition of Conditions 9 and 10, Member Durelle would have added the Indigenous Monitoring Plan condition which was initially floated as a draft condition, but which the majority found was no longer warranted.</p>	<p>2.6.4.5</p> <p>Heritage Resources</p>
Opportunities for employment, training, contracting and economic benefits for Indigenous communities	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	NGTL provided details regarding its <i>Aboriginal Contracting and Employment Program</i> . NGTL stated that it is committed to supporting local communities by providing contracting and	The Board is of the view that the Project would benefit Indigenous, local, regional and provincial economies.	<p>2.6.4.8</p> <p>Employment and Economic Benefits</p>

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
	Tsuut'ina Nation	<p>employment opportunities to qualified Indigenous and local businesses and individuals.</p> <p>NGTL stated it implements many measures that enhance the opportunity for local and Indigenous communities to participate in the Project.</p> <p>NGTL also stated that it will continue to work with Indigenous communities to identify training opportunities.</p>	The Board has imposed Condition 17 (Indigenous Employment, Contracting and Procurement Report) .	
Involvement of Indigenous communities in monitoring/follow-up (including Bow River Crossing)	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Samson Cree Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation) Tsuut'ina Nation	<p>NGTL stated that information sharing will continue through the regulatory review process until the completion of Project construction and that NGTL remains available to respond to questions or concerns about the Project.</p> <p>NGTL also stated that Condition 9 (Archaeological and Heritage Resource Permits and Clearances) and Condition 10 (Consultation with Indigenous Communities Report) will address Indigenous communities' concerns regarding traditional land use (TLU) and heritage resources.</p>	<p>The Board expects NGTL to continue to engage and work with Indigenous communities to address any concerns that may arise, as well as acknowledges NGTL's commitments to conducting Post-Construction site visits with Indigenous communities that have requested them.</p> <p>The Board has imposed Condition 9 (Archaeological and Heritage Resource Permits and Clearances) and Condition 10 (Consultation with Indigenous Communities Report).</p>	2.6.4.6 Monitoring by Indigenous Peoples
Environmental effects				
Environmental Assessment methodology (e.g., adequacy of baseline data, identification of valued	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	NGTL noted that the specific methodology requested is not applicable to the nature and scale of the Project. NGTL indicated that its assessment methodology complies with the requirements of section 58 of the NEB Act.	The Board is of the view that the ESA methodology adopted by NGTL is appropriate given the size, scope and scale of the Project. The Board is of the view that the ESA	2.5 Environment and Socio-Economic Matters

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
components (VC), cumulative effects)	Samson Cree Nation Tsuut'ina Nation	<p>Regarding the identification of VCs, NGTL stated that direct engagement with Indigenous communities and the Board process provided opportunities to review Project information and to provide input to NGTL.</p> <p>NGTL provided the Board with the information required by the Filing Manual, including a cumulative effects assessment as part of the ESA. None of the intervenors filed evidence demonstrating any deficiency in NGTL's cumulative effects assessment.</p>	<p>conducted meets the guidance of the Filing Manual.</p> <p>The Board expects applicants, through its guidance to proponents including the Filing Manual, to use a VC approach to focus the effects analysis on practical and representative components of the biophysical and socio-economic environment.</p>	
Soil and soil productivity, including mitigation measures for topsoil	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	NGTL argued that it has provided specific soil handling measures, including measures to avoid admixing such as topsoil stripping and separation from subsoil in the Application, Environmental Protection Plan (EPP), and information request (IR) responses.	<p>The Board is of the view that the soil and soil productivity concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL's Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p>	<p>2.5</p> <p>Environment and Socio-Economic Matters</p>

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
Vegetation and Wetlands, including mitigation measures for rough fescue grasslands and wetland baselines	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	<p>NGTL stated the Application includes detailed mitigation measures addressing the root/seed bed for natural vegetation. Mitigation measures to reduce potential Project-related effects on sensitive plant communities (both upland and wetland) are provided in the Application and EPP.</p> <p>Mitigation measures to minimize disturbance to rough fescue grasslands are provided as described in the Application, the EPP, and NGTL's response to NEB IR No. 1.7.</p> <p>With regard to wetland baseline information, NGTL referred to its post-construction monitoring methods outlined in its Application and responses to Káínai (Blood)/Piikani IR No. 1.11.</p>	<p>The Board finds that NGTL's assessment of the potential effects of the Project on vegetation and wetlands meets the requirements and expectations set out in the Board's Filing Manual.</p> <p>The Board is of the view that the vegetation and wetlands concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL's Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p> <p>The Board notes that the EPP filed with the Application contains specific mitigation measures for Foothills fescue and the protection and restoration of wetlands.</p>	<p>2.5</p> <p>Environment and Socio-Economic Matters</p>
Surface water quality and quantity, including borrow material sources, assessment areas, baseline information, riparian buffers, hydrostatic	Káínai First Nation Métis Nation of Alberta – Region 3	The assessment of water quality and water quantity was scoped relative to the nature and potential effects of the Project and following the guidance of the NEB Filing Manual. Surface water	The Board finds that NGTL's assessment of the potential effects of the Project on surface water quality and quantity meets the	<p>2.5</p> <p>Environment and Socio-Economic Matters</p>

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
testing, and mitigation measures	Piikani Nation Tsuut'ina Nation	<p>quantity data sources are provided in the Application.</p> <p>The Project has limited potential for interactions with surface water. Due to proposed construction activities required for the Project and the potential for effects, the information summarized in the Application is sufficient for the assessment of potential effects on water quality and water quantity.</p> <p>Onsite borrow pits are not planned at the compressor stations. If required, fill material will be locally sourced.</p> <p>NGTL characterized water resources within 100 metres (m) of the compressor station unit additions in the ESA. The assessment of surface water quality and quantity in the local assessment areas (LAAs) include the project development area (PDA) and an area that extends 500 m upstream from each watercourse crossing and 1.5 kilometre (km) downstream from the crossing; drainages (with no defined channels) and all other surface water bodies (e.g., wetlands) within a 100 m buffer of the project development areas (PDAs).</p> <p>NGTL notes that there is currently water monitoring being undertaken in the region by the province. NGTL will develop water quality monitoring plans prior to construction of a watercourse crossing. NGTL notes that because water quality and quantity fluctuates, it is more appropriate to take measurements upstream and downstream of the crossing location at the time of</p>	<p>requirements and expectations set out in the Board's Filing Manual.</p> <p>The Board is of the view that surface water quality and quantity concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL's Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p>	

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		<p>construction to identify any Project-related changes to baseline conditions.</p> <p>The Application notes that environmental screening will be undertaken for all temporary facilities as locations are identified prior to construction. Preferential siting to minimize environmental effects will be applied to the degree possible. In all cases, the mitigation measures identified in the EPP will be implemented to ensure environmental protection, including avoidance of riparian areas and the implementation of measures to avoid siltation and other potential risks to water bodies and drainages.</p> <p>NGTL will provide requisite reporting to the provincial regulatory agency responsible for administering the <i>Water Act</i> and associated Codes of Practice for Board-regulated projects in Alberta.</p> <p>NGTL will undertake hydrostatic testing in a manner that meets the technical requirements of the Project and adhere to provincial requirements.</p>		
Ground water resources, including baseline information, and mitigation measures	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	<p>NGTL states that due to the shallow depth of the pipeline trench depth of the Rocky View Section, interaction with groundwater is unlikely. However, dewatering may be required and would follow methods outlined in the EPP. The response to Bower IR No. 3 provides additional information regarding measures to avoid effects to groundwater.</p> <p>In the event springs and/or artesian groundwater flows are encountered, the EPP states that NGTL will review the location and determine the</p>	<p>The Board finds that NGTL’s assessment of the potential effects of the Project on groundwater resources meets the requirements and expectations set out in the Board’s Filing Manual.</p> <p>The Board is of the view that the groundwater resource concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in</p>	<p>2.5 Environment and Socio-Economic Matters</p>

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		<p>appropriate mitigation. Site specific plans are employed in response to site specific variables and conditions.</p> <p>NGTL typically offers to undertake domestic water well sampling in relation to conventional pipeline construction (i.e., trenched construction) depending on the proximity of the well to the construction footprint or a specific concern expressed by a landowner, if warranted.</p>	<p>NGTL’s Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p>	
<p>Fish and fish habitat, including soil erosion, baseline surveys, hydrostatic testing, acoustic effects, and species of concern</p>	<p>Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bears paw First Nation)</p>	<p>NGTL stated that data collected for fish and fish habitat and water quality and water quantity was scoped to be appropriate for the proposed Project footprint and construction methods. This includes a trenchless crossing of the Bow River and the use of temporary access crossings at drainages which will be based on accepted best practices. NGTL further detailed the methods and rationale for the assessment of fish and fish habitat, as well as water quality and water quantity, in the responses to SNN information requests (IRs) 1.3 and 1.4.</p> <p>NGTL specifies that no in-stream work is planned on the Bow River crossing, therefore no specific post-construction monitoring activities related to bank restoration will be necessary.</p> <p>The proposed crossing methods for the Project and the mitigation measures identified in the Application will reduce potential effects on fish and fish habitat, including bull trout. As discussed in the Application, there are no anticipated residual</p>	<p>The Board finds that NGTL’s assessment of the potential effects of the Project on fish and fish habitat meets the requirements and expectations set out in the Board’s Filing Manual.</p> <p>The Board is of the view that the fish and fish habitat concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL’s Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to</p>	<p>2.5 Environment and Socio-Economic Matters</p>

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		effects on fish and fish habitat and, therefore, no residual effects on bull trout.	Indigenous communities that express an interest in the filing.	
Wildlife and Wildlife habitat, including survey adequacy, species at risk, nesting birds, timing effects on bird species, grizzly bears, cervids, and sensory disturbance	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	<p>NGTL noted there are mitigation measures to minimize effects on key wildlife species and species groups that are provided in the Application and the EPP. NGTL does not anticipate the need for additional field studies but has provided allowance for pre-construction surveys if construction activities are delayed which could cause an overlap with sensitive timing for some wildlife species. Mitigation measures to minimize effects on breeding birds are provided in the Application and the EPP, including the Breeding Bird and Nest Management Plan. These measures include the potential for undertaking pre-construction surveys if construction activities are initiated during the Primary Nesting Period as well as recommended mitigation measures if active nests are observed. Setbacks will be based on existing provincial and federal regulatory guidance. NGTL notes that its Breeding Bird Nest Management Plan is not intended to assess long-term impacts or nest fidelity, but to reduce the risk of incidental take of birds during construction.</p> <p>Reasonable measures will be implemented to limit construction noise, including ensuring that noise abatement equipment on machinery is in good working order.</p>	<p>The Board finds NGTL's assessment of the potential effects of the Project on wildlife and wildlife habitat meets the requirements and expectations set out in the Board's Filing Manual.</p> <p>The Board is of the view that the wildlife and wildlife habitat concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL's Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p> <p>The Board has imposed Condition 8 (Breeding Bird Survey and Protection) requiring NGTL to file information related to its bird and nest surveys, including any additional mitigation measures and consultation with the relevant</p>	<p>2.5</p> <p>Environment and Socio-Economic Matters</p>

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
			provincial and federal authorities, during construction. NGTL will be required to provide notice of Condition 8 filings to Indigenous communities that express an interest in the filing.	
Atmospheric environment, including GHG emissions, criteria air contaminants, dispersion modelling, and methane emissions	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	<p>NGTL stated that the assessment of GHG emissions follows national guidance within the context of federal environmental assessment, therefore upstream GHG emissions were not assessed and are outside the Project scope.</p> <p>Following industry practice, effects to air quality from the construction phase criteria air contaminants (CAC) emissions and dust were not assessed in the Application because emissions are expected to be minor, transient and occur for only short intervals. These interactions will be addressed using standard mitigation measures and best management practices included in the Application. Operation of the Rocky View Section will not result in any CAC emissions.</p> <p>Plume dispersion modelling was undertaken for the compression station additions. Methane emissions are not included in air dispersion modelling as regulatory objectives for ground-level methane concentrations do not exist.</p> <p>To manage fugitive emissions the Project will adopt TransCanada’s Fugitive Emissions Management Program that involves identifying leaks on pipeline components, such as valves, flanges and fittings, and conducting repairs.</p>	<p>The Board finds that NGTL’s assessment of the potential effects of the Project on the atmospheric environment meets the requirements and expectations set out in the Board’s Filing Manual.</p> <p>The Board is of the view that the atmospheric environment concerns raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL’s Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p>	2.5 Environment and Socio-Economic Matters

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
Accidents and Malfunctions, including cumulative effects, water quality monitoring	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	<p>NGTL stated that, while cumulative effects of accidents and malfunctions from other current reasonably foreseeable future projects and physical activities in combination with Project related accident and malfunction are possible, they are unlikely to occur and no cumulative effects assessment was conducted.</p> <p>NGTL has detailed the implementation of water quality monitoring plans to monitor for sediment events during drilling activities in the Application, EPP and in the response to SNN IR No. 1.4.</p>	<p>The Board finds that NGTL's assessment of the potential effects of the Project relating to accidents and malfunctions meets the requirements and expectations set out in the Board's Filing Manual.</p> <p>The Board is of the view that the concerns regarding accidents and malfunctions raised by Indigenous communities can be mitigated through the use of standard mitigation as presented in NGTL's Application and its EPPs. The Board has imposed Conditions 6 and 7 (Updated Environmental Protection Plans) to file updated EPPs that incorporate all mitigation and monitoring commitments made by NGTL during the hearing process. NGTL will be required to provide notice of EPP filings to Indigenous communities that express an interest in the filing.</p>	<p>2.5</p> <p>Environment and Socio-Economic Matters</p>
Post-Construction Monitoring, including methods and methodology	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	<p>NGTL outlined its post-construction monitoring methods in the ESA, and provided the construction monitoring methodology and associated success targets and measures in the response to Káínai IR No. 1.11. NGTL also notes that it will adhere to its monitoring methodology developed for all NGTL projects to ensure consistency and support continuous improvement.</p>	<p>To be satisfied that post-construction environmental monitoring is thorough and effective and that reports are to be developed and submitted, the Board has imposed Condition 18 (Post-Construction Monitoring Report). NGTL will be required to provide notice of report filings to</p>	<p>2.5</p> <p>Environment and Socio-Economic Matters</p>

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
			Indigenous communities that express an interest in the filing.	
Emergency preparedness and response				
Concerns over potential releases, emergencies, and consequences, including community notifications and procedures for incident response.	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Samson Cree Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation) Tsuut’ina Nation	NGTL stated that it will notify any and all communities potentially affected during an emergency via phone or email, and via in-person visits to homes by first responders if the incident nature dictates it. NGTL stated it has and will continue to consult with Indigenous communities and provide information on: NGTL’s emergency response planning process and procedures; the collaborative process for the development of Emergency Response Plans, engagement and involvement of first responders, local officials, landowners and Indigenous groups in the event of an emergency; training and emergency response exercises NGTL and TransCanada undertake on a regular basis to prevent and respond to an emergency or incident; how natural gas reacts/dissipates in the event of an incident; and community investment and support opportunities for local first responders.	The Board asked an IR to NGTL regarding emergency preparation and response consultation with Indigenous communities. The Board received a response from NGTL that meets current regulatory and legislative requirements. The Board will encourage NGTL to host emergency response exercises that involve more Indigenous communities in the future. These activities may be in addition to the safety seminar NGTL already outlined and offered to each Indigenous community. The Board’s Emergency Notification snapshot details its expectations for notifications of potentially affected communities and people in the event of an emergency involving Board regulated infrastructure and operations. Specifically, the Board expects that companies liaise with these communities and individuals on a regular basis in order to ensure that the company’s plans for emergency notifications are current,	2.6.4.7 Emergency Management

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
			and that their communication methods and contact information is up to date, accurate and meets the needs of those to be contacted.	
Participation in development of emergency response plans and procedures.	Káínai First Nation Métis Nation of Alberta – Region 3 Samson Cree Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation) Piikani Nation Tsuut'ina Nation	<p>NGTL confirmed that emergency management (EM) during Project construction will be governed by the Project-specific Emergency Response Plan, and during operations by TransCanada's overarching Emergency Management Corporate Program Manual and related operating procedures, which include provisions for notification of Indigenous communities in proximity.</p> <p>NGTL has offered to meet with any interested Indigenous community and deliver safety presentations that would include an overview of NGTL's local facilities, operations and TransCanada's emergency preparedness plans. It would also include information on how NGTL manages pipe safety and integrity, NGTL's Monitoring, Safety and Emergency Management programs, information on TransCanada's Public Awareness program, and TransCanada's plans, procedures, and responsibilities in the event of an emergency. NGTL has not heard back from anyone to arrange for this presentation, or to arrange meetings to review the project-specific ERPs. The offer remains to date. NGTL does not plan to create individual ERPs for each Indigenous community or translate ERPs into an Indigenous communities' language. They do not have the technical expertise available for this undertaking and will rely on the Indigenous communities to</p>	<p>NGTL has met the regulatory and legislative requirements in <i>National Energy Board Onshore Pipeline Regulations</i> (NEB OPR) section 32 for companies to develop Emergency Response Plans (ERPs). NGTL enables feedback on their ERPs via consultation meetings, safety seminars, and NGTL exercises. NGTL produces public materials and ERPs available on the TransCanada public website and by request.</p> <p>The Board reiterates Indigenous communities' interest in being more involved in ERP development in the EM section of the letter. The Board will also address concerns regarding the public awareness programs' effectiveness through compliance verification activities, including EM Inspection activities that verify compliance via the NEB OPR requirements 33-35 for the company to have and maintain effective continuing education and liaison programs.</p>	2.6.4.7 Emergency Management

Concern	Community/ Communities	NGTL’s Response	The Board’s Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		translate Emergency Program information for their community members.		
Request for emergency response training for community members	Métis Nation of Alberta – Region 3 Samson Cree Nation Tsuut’ina Nation	<p>NGTL stated that it does not intend to use Métis people, or other Indigenous communities, to staff positions and respond as part of their emergency response procedures and program; incident response positions and functions will be staffed by NGTL internal staff and contractors. MNA3, and all other Indigenous communities, will be encompassed in the emergency response plans as potentially effected people alongside landowners and general public. NGTL will continue to follow up and engage with each of the Indigenous communities on any EM related discussions and keep them informed of Project-specific emergency response plans.</p> <p>NGTL has engaged and continues to engage with Indigenous communities to inform them of ERPs and funds the Métis SAIT program for training opportunities and continues to seek out more funding and training opportunities.</p>	The Board assessed NGTL’s response as adequate and in line with current industry practices to rely on internal staffing and specialized contractors for emergency response. The Board encourages further involvement and training opportunities to be sought by NGTL to ensure all groups are educated in emergency response procedures and practices.	2.6.4.7 Emergency Management
Design, construction and operations of facilities				
Evaluation, design and construction of the proposed Bow River Crossing and diversion channel of proposed Springbank Reservoir project HDDs	Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation Siksika Nation	NGTL confirmed the information provided in both the Geotechnical Report and HDD Feasibility report concluded that the location and proposed design is suitable. The HDD Construction Risk Assessments provided within the HDD Feasibility Reports outlined a number of mitigation strategies developed to minimize challenges that may arise during construction.	The Board acknowledges the concerns raised and has imposed Condition 13 (HDD and/or Direct Pipe Installation (DPI) Execution Plan), Condition 14 (HDD Unsuccessful Attempts Reports) and Condition 15 (Contingency HDD or DPI Crossing Method Feasibility Report) , requiring	2.2.3 Horizontal Directional Drilling (HDD)

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
			NGTL to file its HDD and/or DPI crossings execution plans, report on any unsuccessful HDD attempts, and feasibility reports in case of using a contingency trenchless crossing method, as well as notify any Indigenous communities that have expressed an interest in receiving this filing.	
Requested Exemptions from specific sections of the NEB Act and related regulations	Tsuut'ina Nation	NGTL stated the Project will comply with all applicable codes, regulations and standards. The applied for exemptions are industry-standard as these exemptions relate to portion of the applied-for facilities where adherence to a particular section of the NEB Act is not practical, or possible, and therefore an exemption to that section is requested.	<p>The Board notes that it is impractical to pressure test tie-in welds as they are tie-ins to existing systems, and requiring a pressure test of these welds will mean that additional untested welds be created. CSA Z662-15 Clause 8.12.1 does not require retesting of the completed piping after tying in, provided that any tie-in piping is pretested and is suitably identified.</p> <p>The Board notes the applied for tie-in piping and valve assemblies will be pre-tested in accordance with the CSA Z662-15 requirements.</p> <p>The Board has imposed Condition 2 (Design, Location, Construction, and Operation).</p>	2.2.1 Requested Exemptions
Impact of existing integrity digs (e.g., exposed pipe)	Tsuut'ina Nation	NGTL stated that it currently has two operation and maintenance digs in the general area near or within Tsuut'ina's reserve along the existing NGTL Western Alberta System Mainline Loop.	Ongoing O&M activities are outside of the scope of this application, and issues raised will be addressed	2.2.4 Operation – Integrity

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
		NGTL confirmed that the work at both sites has been conducted in accordance with all applicable standards and regulations.	through the Board's Lifecycle Oversight.	Management Program
Concerns related to the general safety of the Project (including construction camps)	Káínai First Nation Piikani Nation Stoney Nakoda Nations (refers to Wesley First Nation, Chiniki First Nation, and Bearspaw First Nation)	Safety and environmental protection measures will be incorporated into the design of the pipeline and facilities to prevent and reduce the potential for accidents and malfunctions. Integrity Management Program (IMP) will be used during operations.	The Board is satisfied that the Project will be incorporated into TransCanada's IMP.	2.2.4 Operation – Integrity Management Program
Project interactions with Springbank Off-Stream Reservoir project	Samson Cree Nation	NGTL stated that TransCanada and Stantec have been in communication regarding the Reservoir Project since 2015, as the existing Western Alberta System Mainline (WASML) and Foothills Zone 7 Pipeline will be impacted by the proposed diversion channel crossing. As a result, a trenchless methodology (HDD) is proposed for the Project in order to cross the proposed diversion channel of the Reservoir Project. NGTL has also engaged Alberta Transportation to provide Project details and receive additional information on the proposed Springbank Reservoir project. NGTL confirmed that the ESA cumulative effects assessment considered the Springbank Off-Stream Reservoir project as a foreseeable future project or physical activity and found that the Project's contributions to cumulative effects were predicted to not be significant.	The Board is satisfied with the approach NGTL used for the proposed diversion channel of Springbank Reservoir crossings. The Board has imposed amended Condition 11 (Landowner, Government, and Municipalities Issue Report) , requiring a consultation update to include government agencies, to ensure that engagement regarding the proposed Springbank Reservoir project is ongoing.	2.2.3 Horizontal Directional Drilling (HDD) 2.4 Public Consultation (Public and Government Stakeholders)

Concern	Community/ Communities	NGTL's Response	The Board's Response (including conditions, and applicable regulatory and legislative requirements)	Decision Section
Project splitting	O'Chiese First Nation Káínai First Nation Métis Nation of Alberta – Region 3 Piikani Nation	NGTL stated that the projects referenced by the Intervenor have different commercial underpinnings and utility within the NGTL System, materialize within different timelines and have different contractual start dates than the Project. While the Project, if approved, will be a fully integrated part of the NGTL System, it was applied for in response to economic and system requirements that are wholly independent of those driving other projects on the NGTL System. In addition, each NGTL project (including the Project) is supported by an ESA that assesses the cumulative effects of the project in combination with other projects (including NGTL projects) that may have overlapping effects.	The Board is of the view that the approach followed by NGTL with regard to its project applications does not amount to deliberate project-splitting.	N/A

Appendix III – Intervenor Comments on Conditions for Order XG-N081-005-2019 and the National Energy Board (NEB or the Board) Response

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>I. Condition Compliance</p>	<ul style="list-style-type: none"> • Samson Cree Nation (SCN) proposed that whether specific in actual conditions or separately, that there needs to be a clear commitment that the Board will not permit any deviations from the final conditions without first engaging in a consensus-based decision making with SCN to obtain prior consent. • NGTL opposed this suggested change by SCN as it submits that any condition requiring a “government-to-government” agreement is not appropriate content for draft conditions, which are meant primarily to bind the proponent, and are separate from any negotiations between the Crown and Indigenous communities. • Blood Tribe also known as Káínai First Nation (Káínai) and Piikani Nation (Piikani) proposed additional wording: <ul style="list-style-type: none"> - ...otherwise, “<i>and must communicate condition compliance activities through filing compliance reports with the National Energy Board on the public registry.</i>” • NGTL stated that it opposed the suggested change by Káínai and Piikani as it is redundant. NGTL noted that it is already required to publicly file notice of any non-compliances with the Board’s Order through the NEB electronic repository. 	<ul style="list-style-type: none"> • The Board notes that: <ul style="list-style-type: none"> - conditions were developed through the Board’s hearing process with input from Indigenous communities; - NGTL is required to publicly submit condition filings with the Board; and - any party may file comments regarding Condition filings received by the Board. • As part of the Board’s requirements for Condition 10 (Consultation with Indigenous Communities Report), NGTL must report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>2. Design, Location, Construction and Operation</p>	<ul style="list-style-type: none"> • SCN requested, in order to ensure effective enforcement of the conditions, anything that has been “otherwise agreed to during questioning” or in NGTL’s related submissions should be clearly specified and attached as a schedule to the final approval conditions. • NGTL opposed these suggested changes from SCN on the basis that effective enforcement of Project conditions is already provided for by the Board’s processes, including inspection, enforcement, and any post-in-service condition compliance filings. • NGTL further stated that for the Board to re-list what is already required is redundant and administratively inefficient. • Káínai and Piikani proposed additional wording: <ul style="list-style-type: none"> - ...submissions, “<i>and must develop all outstanding environmental protection plans, programs, and measures in collaboration with impacted Indigenous groups.</i>” • In reply to Káínai and Piikani’s proposed changes, NGTL stated that it has already responded to similar proposed changes in response to SCN’s comments on several of the Board’s Draft Conditions (including as noted above). • NGTL further argued that it would be burdensome and inefficient for NGTL to continue to provide Project Environmental Protection Plans (EPPs), or other plans, for public review and solicit comments this late in the regulatory process. 	<ul style="list-style-type: none"> • The Board notes that other conditions, such as Conditions 8 (Breeding Bird Survey and Protection), 10 (Consultation with Indigenous Communities Report) and 11 (Landowner, Government, and Municipalities Issue Report), will appropriately capture and place on the public record commitments made during the application process. • The Board promotes safety, security and environmental protection through its compliance programs throughout the life of a project (planning and application assessment, construction, operation, deactivation, decommissions or abandonment). The objective of these programs is to monitor compliance with the Board’s requirements and enforce them as necessary. Compliance may be verified through compliance meetings, inspections, emergency response exercises, audits, incident investigations, and/or in response to concerns and complaints.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>3. Environment Protection</p>	<ul style="list-style-type: none"> • SCN requested the same as comments under Board Draft Condition 2 (Design, Location, Construction and Operation). • NGTL reiterates its responses to SCN outlined for Board Draft Condition 2 (Design, Location, Construction and Operation) (above). • Káínai and Piikani proposed additional wording for the condition as follows: <ul style="list-style-type: none"> - ...submissions, “<i>and must develop all outstanding environmental protection plans, programs, and measures in collaboration with impacted Indigenous groups.</i>” • In response to Káínai and Piikani’s suggested changes, NGTL reiterated its comments as outlined above for Board Draft Condition 2 (Design, Location, Construction and Operation). 	<ul style="list-style-type: none"> • Refer to Board Response under Board Condition 2 (Design, Location, Construction and Operation) (above).
<p>4. Construction Oversight</p>	<ul style="list-style-type: none"> • NGTL requested that wording of the condition be revised from (“NGTL’s proposed revisions”) <p>“...commencement of construction of the approved facilities detailed construction schedule or schedules identifying major construction activities...” to</p> <p>“...commencement of construction of each approved Project component, a detailed construction schedule identifying major construction activities for that component...”</p> • NGTL stated that this change is meant to clarify that individual schedules may be filed independently for each Project component. NGTL noted that this is important as both compression components are scheduled to start 	<ul style="list-style-type: none"> • The Board notes that NGTL has committed to providing potentially affected Indigenous communities with the construction schedule in advance. • The Board also notes that the construction schedule must be filed with the Board. Condition 4 (Construction Schedule). • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board also notes that NGTL has committed to continuing to work with Indigenous communities, including SNN, to answer any questions, and address any concerns, including construction-specific

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>construction in Q1/Q2 2019 while the Rocky View Section is not scheduled to start construction until Q3 2019.</p> <ul style="list-style-type: none"> • SCN requested the following revisions: <ul style="list-style-type: none"> - Revision: the construction schedule(s) be provided (i) at least 30 days before any construction commences (rather than only 14 days); - Addition: that such construction schedule(s) be provided to SCN at the same time as they are provided to the Board; and - Revision: that NGTL provide, to both the Board and to SCN, at least 7 day notice of any schedule modifications before they occur (rather than as they occur as currently proposed). • NGTL opposed SCN’s proposed changes and submitted that the suggested language imposed additional administrative requirements without any stated benefit. • NGTL argued that its general practice is to provide notice to all potentially affected Indigenous communities of the construction start date at least two weeks prior to construction commencing. NGTL noted that 14 days is a previously accepted review period and that construction plans are often not finalized 30 days prior to construction. • NGTL noted that construction schedules can change without warning and requiring a 7 day wait period between filing a revised schedule and proceeding with work would be overly burdensome. • NGTL committed to notifying any third-party who self-identifies interest in a specific condition when the condition is filed with the Board. 	<p>questions. Condition 10 (Consultation with Indigenous Communities Report) requires NGTL to file an Indigenous consultation update with the Board, which would include such questions or concerns.</p> <ul style="list-style-type: none"> • In the Board’s view concerns raised by SCN, SNN, Káínai, Piikani and Tsuut’ina are addressed through Conditions 4 (Construction Schedule) and 10 (Consultation with Indigenous Communities Report), and through NGTL’s commitment to working with Indigenous communities to address any outstanding concerns. • The Board is of the view that NGTL’s proposed revisions are acceptable. Considering that the Project includes distinct components (i.e., two compressor station unit additions, and the Rocky View pipeline section), it is reasonable to expect that the construction may take place in parallel or separately with distinct construction schedules. • Given the nature of construction planning, and unforeseen changes that may occur, the Board is of the view that 14 days is appropriate for this condition. An accurate construction schedule aids the Board in the planning and scheduling of related compliance verification activities. • Refer to Letter Decision Section 2.6.4.9- Subsection 35(1), Constitution Act, 1982 and Duty to Consult and Appendix II - Summary of Concerns raised by Indigenous Communities, and Applicant and the National Energy Board (NEB or the Board) Response.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> • Stoney Nakoda Nations (SNN) requested the following revisions: <ul style="list-style-type: none"> - Addition: NGTL is required to consult with impacted Indigenous communities, including SNN, to collect feedback on construction schedule. Consultation should seek to mitigate interference or conflict of construction with the exercise of Section 35 Rights. - Addition: NGTL must report the outcome of consultation efforts to the Board prior to construction. Reporting must include details on how Project impacts to the exercise of Section 35 Rights for each impacted Indigenous community was considered in guiding decision making on the construction schedule, including any rationale for exclusion. - Addition: NGTL must notify all impacted Indigenous communities, including SNN, directly of construction schedule 14 days prior to the commencement of construction of the approved facilities and of any alterations to the schedule as they appear. - Addition: NGTL must develop, at least 45 days prior to the commencement of construction of the approved facilities, a notification or communication plan with each Indigenous community to ensure that the necessary information is being communicated in a timely and fulsome manner. • NGTL opposed these suggested changes arguing that SNN have not provided evidence that shows these changes are required or warranted in these circumstances. NGTL also stated that the potential effects of the Project on Aboriginal and treaty rights were considered through the assessment 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>of potential effects on current use of lands and resources for traditional purposes.</p> <ul style="list-style-type: none"> • Káínai and Piikani proposed new wording for the condition as follows: <ul style="list-style-type: none"> - <i>“NGTL must file a detailed construction schedule or schedules identifying major construction activities with the Board and provide copies of such construction schedule to all impacted Indigenous groups, at least 14 days prior to the commencement of construction of the approved facilities.”</i> - <i>“NGTL must notify the Board and all impacted Indigenous groups of any modifications to the schedule or schedules as they occur.”</i> • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments for Board Draft condition 4 (Construction Oversight). • Tsuut’ina Nation (Tsuut’ina) adopted SNN’s proposed changes and provided some additional minor changes (additions in Italics): <ul style="list-style-type: none"> - Addition: NGTL is required to consult with impacted Indigenous communities, including SNN, <i>and Tsuut’ina</i>, to collect feedback on construction schedule <i>prior to it being filed with the Board</i>. Consultation should seek to mitigate interference or conflict of construction with the exercise of Section 35 Rights. - Addition: NGTL must report the outcome of consultation efforts to the Board prior to construction <i>contemporaneously with the filing of the detailed construction schedule</i>. Reporting must include details 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>on how Project impacts to the exercise of Section 35 Rights for each impacted Indigenous community was considered in guiding decision making on the construction schedule. Including any rationale for exclusion.</p> <ul style="list-style-type: none"> - Addition: NGTL must notify all impacted Indigenous communities, including SNN, and Tsuut’ina, directly of construction schedule 14 days prior to the commencement of construction of the approved facilities and of any alterations to the schedule as they appear, <i>including a justification of any alterations to the schedule.</i> - Addition: NGTL must develop, at least 45 days prior to the commencement of construction of the approved facilities, a notification or communication plan <i>in consultation with each Indigenous community</i> to ensure that the necessary information is being communicated in a timely and fulsome manner. <ul style="list-style-type: none"> • In response to Tsuut’ina, NGTL reiterated its comments as outlined in its response to SNN’s comments for Board Draft Condition 19 (Emergency Management) (below). 	
<p>5. Integrity and Safety</p>	<ul style="list-style-type: none"> • NGTL requested that the timing of the condition be revised from 30 days to 14 days. NGTL stated that 14 days is a previously accepted review period and that contractors are often not fully on-boarded 30 days prior to construction. • SCN requested the following revisions: <ul style="list-style-type: none"> - Addition: <i>that NGTL provide, to both the NEB and to SCN, the Construction Safety Manual;</i> 	<ul style="list-style-type: none"> • The Board finds that NGTL’s requested timing revision is acceptable based on the rationale provided by NGTL and has amended Condition 5 (Programs and Manuals – Safety) to reflect the requested revision. • The Board’s expectation is that any concerns raised by any Indigenous community will be considered and addressed through ongoing engagement activities and throughout the lifecycle of the Project.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> - Addition: <i>that NGTL promptly address any concerns raised by the NEB or SCN in a revised version of the Construction Safety Manual.</i> • NGTL stated that it is unable to provide the Site-Specific Safety Manual to any third parties as it contains proprietary information, and would be commercially detrimental to NGTL and its contractors. • NGTL also argued that an additional review of the Site-Specific Safety Manual would be redundant as these manuals, and the technical standards they are based on, are subject to periodic audits, conducted both by the Board and external contractors, which are more appropriate to address deficiencies than through the condition compliance process. • Káínai and Piikani proposed amending the condition to read as follows (additions in italics): <ul style="list-style-type: none"> - NGTL must file with the Board a Construction Safety Manual pursuant to section 20 of the <i>National Energy Board Onshore Pipeline Regulations (OPR)</i> “<i>and provide copies of such Construction Safety Manual to all impacted Indigenous groups,</i>” at least 30 days prior to commencing construction, a Construction Safety Manual pursuant to section 20 of the <i>National Energy Board Onshore Pipeline Regulations (OPR)</i>. - “<i>NGTL must permit and facilitate the presence of Indigenous environmental and archaeological monitors including representatives from Káínai/Piikani. NGTL must communicate any instances of any archaeological finds during the Integrity Management Program to the Board and to all Indigenous groups.</i>” • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments 	<ul style="list-style-type: none"> • As part of the Board’s requirements for Condition 10 (Consultation with Indigenous Communities Report), NGTL must report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>for Board Draft Conditions 5 (Integrity and Safety), 9 (Socio-Economic Matters – Heritage Resources) and 11 (Indigenous Monitoring).</p>	
<p>6. Environmental Protection Plans</p>	<ul style="list-style-type: none"> • SCN requested the following revisions: <ul style="list-style-type: none"> - Provide to both the Board and SCN, the updated Project Specific EPPs at least 60 days prior to construction. - Promptly address any concerns raised by the Board or SCN in revised versions of the EPPs to the satisfaction of the party raising the concerns. - Provide evidence of meaningful engagement with affected Indigenous groups. - Fund and provide for meaningful involvement of third party environmental monitors (during construction and operation). • NGTL noted that the individual EPPs were filed publically with the NGTL West Path Delivery Project application (Application), and NGTL has not received any specific comments regarding the EPP, and no group has filed evidence that suggests that any of these three EPPS is deficient. NGTL stated that it provided Indigenous communities with opportunity to discuss the Project and provide traditional knowledge that can be considered in the EPP. • NGTL confirmed that should an Indigenous community have specific concerns with the EPP, they are welcome to provide them to NGTL, who will review and provide additional mitigation as appropriate. 	<ul style="list-style-type: none"> • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board notes that draft EPPs are filed on the record. The Board is of the view that appropriate opportunities were provided through NGTL’s engagement activities and the Board’s hearing process to raise any specific concerns regarding the draft EPP. • As per Condition 10 (Consultation with Indigenous Communities Report), NGTL must report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns. • Given this, and the nature of the Project, the Board finds that the existing Conditions remain appropriate. • NGTL did not raise any issue with the 30 day timeframe and the Board maintains that 30 days is appropriate for this condition, especially given that a draft EPP was filed with the Application and available for comment during the hearing review process. • In the Board’s view, the concerns identified by Indigenous communities have been addressed in Condition 10 (Consultation with Indigenous Communities Report).

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> • NGTL also committed to notifying any third-party who self-identifies interest in a specific condition when the condition is filed with the Board. • SNN requested that NGTL be required to file the updated Project specific EPPs with Indigenous communities at least 30 days prior to submission with the Board, to allow time for community consultation and SNN to review and comment on the EPP. • SNN suggested the following wording be added to the condition: <i>including any subsequent filings</i>; and that the EPPs must provide evidence and summary of NGTL’s consultation with affected Indigenous communities, any issues or concerns raised, impacts to Section 35 Rights, and NGTL’s measures to address concerns, or explanations as to why no further action is required. • NGTL opposed the recommendations from both SNN and SCN, noting that it has not received specific EPP comments since the Application was filed nor have any groups submitted evidence suggesting the EPPs are deficient. NGTL argued that the hearing process is the most appropriate forum to address issues and not during the post-approval condition compliance phase. NGTL stated that it remains available to discuss Indigenous concerns with the Project and to discuss mitigation. • Káínai and Piikani proposed additional wording to the end of the condition: <ul style="list-style-type: none"> - ...submissions, “<i>and must develop all outstanding environmental protection plans, programs, and measures in collaboration with impacted Indigenous groups.</i>” 	<ul style="list-style-type: none"> • For further details regarding the Board’s views, refer to Section 2.6 Indigenous Matters.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments Board Draft Condition 2 (Design, Location, Construction and Operation). • Tsuut’ina adopted SNN’s proposed changes and provided the additional change that the revised condition include both Stoney Nakoda <i>and Tsuut’ina</i> in summary of consultation with affected Indigenous communities. 	
<p>7. Environmental Protection Plan (EPP)</p>	<ul style="list-style-type: none"> • SCN provided the same comments as for Board Draft Condition 6 (Environmental Protection Plans), above. • NGTL requested 30 days rather than 45 days prior to construction to align with the EPP filings for the compressor stations (Board Draft Condition 6 Environmental Protection Plans). SCN argued that a 60 day deadline is more appropriate. • SCN requested that the EPP be sent to the Board and SCN at least 60 days before construction and that NGTL address any concerns regarding the EPP from the Board and SCN; the EPP provide evidence of meaningful engagement with Indigenous communities regarding mitigation measures; and that NGTL fund and provide for a third party environmental monitor for the duration of construction and operations. • SNN requested that NGTL be required to file the updated Project specific EPPs with Indigenous communities at least 30 days prior to submission with the Board, to allow time for community consultation and SNN to review and comment on the EPP. • SNN also suggested the following wording be added to the condition; <i>including any subsequent filings</i>; and that the 	<ul style="list-style-type: none"> • Refer to the Board response to the Comments from Intervenors under Board Condition 6 (Environmental Protection Plans), in the row above. • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board agrees with NGTL that 30 days is appropriate for this condition, especially given that a draft EPP was filed with the Application and available for comment during the hearing process. • In the Board’s view, the concerns identified by Indigenous communities have been addressed in Condition 10 (Consultation with Indigenous Communities Report). • In the Board’s view, concerns outlined by SCN, SNN, Káínai, Piikani and Tsuut’ina have been addressed through a combination of the Board’s hearing process which allowed for affected Indigenous communities to participate and have Project specific concerns considered, along with the Board’s modified Condition 10 (Consultation with Indigenous Communities Report), which requires NGTL to report

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>EPP describes a summary of NGTL’s consultation with Indigenous communities which includes issues and concerns that were raised, impacts to Section 35 Rights, measures that NGTL has taken or will take to address issues, and rationale or explanations as to why no further action is required, if applicable.</p> <ul style="list-style-type: none"> • NGTL opposed the recommendations from both SNN and SCN, noting that it has not received specific EPP comments since the Application was filed nor have any groups submitted evidence suggesting the EPPs are deficient. NGTL argues that the hearing process is the most appropriate forum to address issues and not during the post-approval condition compliance phase. • NGTL stated that it remains available to discuss any Indigenous communities’ concerns with the Project and to discuss mitigation. • Káínai and Piikani proposed additional wording to the end of the condition: <ul style="list-style-type: none"> - ...submissions, “<i>must be developed in collaboration with impacted Indigenous groups.</i>” • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments Board Draft Condition 2 (Design, Location, Construction and Operation). • Tsuut’ina adopted SNN’s proposed changes and provided the additional change that the revised condition include both SNN <i>and Tsuut’ina</i> in summary of consultation with affected Indigenous communities. • In response to Tsuut’ina, NGTL reiterated its comments as outlined in its response to SCN’s comments of Board 	<p>on how it intends to address any outstanding concerns, and on NGTL’s commitment to working with Indigenous communities to address any outstanding concerns.</p>

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>Draft Condition 6 (Environmental Protection Plans) (above). NGTL also referenced their response to Káinai and Piikani’s comments on Board Draft Condition 2 (Design, Location, Construction and Operation) (above).</p>	
<p>8. Breeding Bird Survey and Protection</p>	<ul style="list-style-type: none"> • NGTL requested the condition be amended to reflect the regional context of the Project and the applicability to activities that might directly affect breeding bird habitat. • SNN requested that traditional knowledge (TK) be incorporated into the survey work, NGTL report on the outcome of TK inclusion from each Indigenous community including consideration and rationale for exclusion, and that NGTL report directly to communities including how TK was included in Bird Survey and Protection work. • NGTL opposed these changes, arguing that: the surveys are a time sensitive exercise to minimize the risk of incidental take of breeding birds with established protocols and setback distances as directed by provincial and federal regulatory agencies; the Board’s Draft Condition 10 (Socio-Economic Matters – Indigenous Consultation) is a preferable mechanism for Indigenous engagement; and that SNN has not identified traditional resource use locations along the Project footprint. • SCN requested the following additions: that all surveys be submitted to SCN and monitoring and mitigation be completed in consultation with Indigenous communities; <i>NGTL must also invite and support inclusion of Indigenous knowledge specialists, including from SCN, in bird surveys;</i> that part d) be replaced with: <i>evidence to confirm that affected Indigenous groups and authorities were</i> 	<ul style="list-style-type: none"> • The Board has made modifications to the condition to incorporate NGTL’s suggestions to better focus the purpose of the condition. • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board notes that under Condition 10 (Consultation with Indigenous Communities Report), NGTL must report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p><i>consulted, and Indigenous knowledge appropriately and meaningfully considered within the proposed methodology for the survey, the results from the survey and the mitigation and monitoring to be used; and a description of any outstanding concerns raised by Indigenous knowledge specialists, and proposals to address such concerns.</i></p> <ul style="list-style-type: none"> • NGTL opposed the proposed changes, arguing that the surveys are a time sensitive exercise to minimize the risk of incidental take of breeding birds with established protocols and setback distances as directed by provincial and federal regulatory agencies; SCN has repeatedly declined to provide Project-specific TK; and that the Board’s Draft Condition 10 (Socio-Economic Matters – Indigenous Consultation) is a preferable mechanism for Indigenous engagement. • Káínai and Piikani proposed adding the phrase; “<i>and impacted Indigenous groups,</i>” in sub-bullets b), c) and d) of the condition. • Piikani proposed additional wording in the condition as follows: <ul style="list-style-type: none"> - ...NGTL must retain a qualified avian biologist “<i>and Indigenous Guardians,</i>” to carry out a survey... • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments Board Draft Condition 8 (Breeding Bird Survey and Protection). • Tsuut’ina adopted SNN’s proposed changes. 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>9. Socio-Economic Matters - Heritage Resources</p>	<ul style="list-style-type: none"> • SCN requested the following additions to the condition: <ul style="list-style-type: none"> - <i>NGTL file a description of how it has and will engage Indigenous groups in identification of outstanding concerns related to Indigenous heritage values not otherwise recognized in any plans for Heritage field surveys;</i> - <i>NGTL file a description of how it will work with Indigenous groups to develop culturally appropriate measures to respond to these concerns; and</i> - <i>NGTL file a description of how it has incorporated additional mitigation into the EPP given the concerns raised.</i> • NGTL stated that it has committed to receiving all clearances required under the <i>Alberta Heritage Resources Act</i>, and that its Heritage Resource Discovery Contingency Plan, already filed with the Board addresses most of the issues raised by SCN. NGTL also reiterated that Alberta Culture and Tourism is the responsible agency for heritage resources in Alberta. NGTL noted that any concerns regarding heritage resources for the Project are best addressed through ongoing engagement with NGTL. NGTL also committed to notifying any third-party who self-identifies interest in a specific condition when the condition is filed with the Board. • Káínai and Piikani proposed additional wording in the form of sub-bullets d) and e): <ul style="list-style-type: none"> - <i>“d) a description of a chance find protocol developed in collaboration with Indigenous groups e) a description of how Indigenous monitors will be</i> 	<ul style="list-style-type: none"> • The Board notes NGTL’s Heritage Resource Discovery Contingency Plan, NGTL’s commitment to receive all clearances required under the <i>Alberta Heritage Resources Act</i>, and NGTL’s commitment to work with Indigenous communities to address any heritage resource concerns or proposed mitigation. • The Board has modified Condition 9 (Archaeological and Heritage Resource Permits and Clearances) to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p><i>involved in meeting conditions or recommendations referred to in paragraph b).”</i></p> <ul style="list-style-type: none"> • Tsuut’ina proposed new wording for the condition as follows: <ul style="list-style-type: none"> - <i>Immediately upon discovering or taking any activity in respect of a heritage resource, NGTL shall file with affected Indigenous communities and the Board (including Tsuut’ina) information on the heritage resource in question and develop a plan with the affected Indigenous communities on how impacts to the heritage resource will be avoided or mitigated prior to taking any steps that may disturb or alter the heritage resource.</i> - <i>NGTL must provide information directly to affected Indigenous communities, including details on how their traditional knowledge was included in the heritage resources assessment and mitigation strategies.</i> - <i>NGTL must provide information directly to Indigenous communities, including details on how their designated Nation members were engaged in the execution of the heritage resources assessment and mitigation measures.</i> - <i>The Crown agency or agencies responsible for overseeing heritage resource conservation shall facilitate the participation of affected Indigenous communities in their heritage assessments and conservation processes in a manner that is consistent with their legislated processes. Such agency or agencies shall file with the Board a summary of steps taken to engage affected Indigenous community.</i> 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>10. Socio-Economic Matters - Indigenous Consultation</p>	<ul style="list-style-type: none"> - SCN has requested additions to the condition, requesting greater involvement in consultation approaches, consultation report drafting and reporting conditions. - SCN also requested consultation reports be provided to Indigenous groups at the same time as the Board. - SNN requested an Indigenous consultation report and a review period of 30 days prior to submission to the Board. SNN requested that NGTL be required to report to the Board on any outstanding concerns or impacts to section 35 Rights, and comments from Indigenous communities. - NGTL stated that SCN and SNN’s requested changes are not required as NGTL has an already established and active Aboriginal Engagement Program, which is consistent with the Board’s Filing Manual guidance. NGTL also stated that it would not be appropriate for a third party to review condition compliance filings prior to submission to the Board. NGTL noted that it generally provides notice to Indigenous groups that it has filed an update on the status of its Aboriginal engagement with the Board. NGTL also committed to notifying any third-party who self-identifies interest in a specific condition when the condition is filed with the Board. - NGTL further stated that it is opposed to the proposed changes by SNN, and the potential effects of the Project on Aboriginal and treaty rights were considered through the assessment of the Project and its potentially effects on current use of lands and resources for traditional purposes. NGTL also argued that section 35 rights are based on agreements between Aboriginal groups and the Crown, and as NGTL is unable to address specific concerns 	<ul style="list-style-type: none"> • The Board has modified Condition 9 (Archaeological and Heritage Resource Permits and Clearances) to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board modified Condition 10 (Consultation with Indigenous Communities Report) to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings and, as well as to include any outstanding site visits. The Board notes that any other party may file comments regarding Condition filings received by the Board.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board's Response to the Comments from Intervenors
	<p>relating to section 35 rights, such matters should be addressed through the Project approval process.</p> <ul style="list-style-type: none"> - Káínai and Piikani proposed additional wording to the end of the condition: <ul style="list-style-type: none"> - ...steps will be taken. <i>“Indigenous groups represented in the Indigenous Consultation Report must be provided an opportunity to verify its contents prior to its final submission to the Board.”</i> • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments Board Draft Condition 10 (Socio-Economic Matters – Indigenous Consultation) (above). • Tsuut’ina adopted some of the changes proposed by SNN and requested changes arguing that the Crown cannot rely upon the Board process as a basis of discharging its duty to consult with Tsuut’ina as the information that has been presented by NGTL in its Application and ESA has not been formulated based on meaningful engagement of the impacted Indigenous communities or a clear understanding of the Aboriginal and treaty rights of the impacted Indigenous Nations. • Tsuut’ina’s proposed a modified condition as follows: <p><i>The Crown agency or agencies responsible for overseeing heritage conservation shall facilitate the participation of Tsuut’ina. Such agency or agencies shall file with the Board, 45 days prior to construction of the Project, a report summarizing consultation with Tsuut’ina that identifies:</i></p> 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> - <i>the goals, principles and objectives for consultation and accommodation of Tsuut’ina in a manner consistent with Tsuut’ina’s consultation laws;</i> - <i>a summary of the concerns raised by Tsuut’ina and whether those concerns, in the view of the Crown, can be adequately addressed by the Board;</i> - <i>a description of how the Crown has addressed or will address the concerns raised and a description of any actions that may be required by the Board or NGTL to address those concerns;</i> - <i>a description of any outstanding concerns;</i> - <i>a description of how the Crown intends to address any outstanding concerns or gaps in consultation with Tsuut’ina, or an explanation as to why no further steps will be taken;</i> - <i>a description of the resources that will be available to support the participation of Tsuut’ina in ongoing consultation during the construction and operations phases of the Project; and where it becomes apparent that Crown engagement of Tsuut’ina in respect of the Project has been inadequate, the Crown agency or agencies responsible should include in its report the expedited steps that the agency or agencies will take to rectify consultation deficiencies, prior to the commencement of construction.</i> <ul style="list-style-type: none"> • In response to Tsuut’ina’s proposed condition NGTL noted that most of the suggested additions would apply to a provincial agency (Alberta Culture and Tourism [ACT]) and not NGTL. Therefore, NGTL argued, these changes 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>are not appropriate to be included in conditions issued by the Board.</p>	
<p><i>11. Indigenous Monitoring</i></p>	<ul style="list-style-type: none"> • NGTL has requested that the Indigenous Monitoring Plan condition be struck, as the concerns it addresses have been mitigated through NGTL’s engagement activities, mitigation measures or other conditions. • NGTL indicated that they have engaged with potentially affected Indigenous communities since May 2017, including opportunities to provide NGTL with information regarding Traditional Land and Resource Use and sites. • NGTL also stated that Board Draft Condition 9 (Socio-Economic Matters – Heritage Resources) and Condition 10 (Socio-Economic Matters – Indigenous Consultation) will address Indigenous communities’ concerns regarding TLU and heritage resources. • SCN has made several requests for additions to the condition, including providing SCN and the Board with monitoring plans to the satisfaction of each, providing training and capacity building for Indigenous monitors, and details of monitoring by Indigenous peoples processes. • SCN also requested an addition to the condition that NGTL will not use information provided by Indigenous monitors as “traditional knowledge” unless authorized in writing by the Indigenous monitor’s nation. • SNN requested review period (30 days) of Indigenous Monitoring Plan, prior to submission to the Board, to seek input for Indigenous communities and amend as needed. SNN also requested an establishment of an Indigenous 	<ul style="list-style-type: none"> • The majority of the Board is of the view that given that the Burton Creek CS Alternate Site is no longer being considered, the proposed draft Indigenous Monitoring condition would no longer be appropriate given the size, scope, scale and potential effects of the applied-for Project. Member Durelle does not agree and would have imposed the condition to further the public interest. • The Board imposes Conditions 9 (Archaeological and Heritage Resource Permits and Clearances) and 10 (Consultation with Indigenous Communities Report). The Board expects NGTL to continue to engage and work with Indigenous communities to address any concerns that may arise, as well as reaffirms NGTL’s commitments to conducting Post-Construction site visits with Indigenous communities that have requested them.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>Advisory and Monitoring Committee similar to Line 3 or TMX.</p> <ul style="list-style-type: none"> • SNN has requested additional wording be added b), to require “<i>a list of potentially affected Indigenous communities who have not reached an agreement with NGTL to participate in monitoring activities and reasons why, and any rationale for exclusion of information gathered through participation of Indigenous monitors</i>”. • Piikani proposed additional wording as follows (additions in Italics): <ul style="list-style-type: none"> - ...a plan describing participation by Indigenous communities in monitoring activities “<i>for the entire lifecycle of the project including but not limited to</i>” during construction during construction, “<i>operation, decommissioning and post-decommissioning stages of the project,</i>” for adverse environmental impacts, archaeological resources...; and - ...NGTL must provide a copy of the plan to those Indigenous communities identified in b), “<i>and appropriate capacity funding to those Indigenous communities identified in b) to facilitate their fulsome participation in monitoring,</i>” no later than three days after filing the plan... • Káínai proposed additional wording as follows (additions in Italics): <ul style="list-style-type: none"> - ...a plan describing participation by Indigenous communities in monitoring activities during construction, “<i>operation and decommissioning stages of the project, and for several years after decommissioning is completed,</i>” for adverse 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>environmental impacts, archaeological resources and items, areas related to traditional land and resource uses, and, areas of cultural significance...; and</p> <ul style="list-style-type: none"> - ...NGTL must provide a copy of the plan to those Indigenous communities identified in b), <i>“and appropriate capacity funding to those Indigenous communities identified in b) to facilitate their fulsome participation in monitoring,”</i> no later than three days after filing the plan... <ul style="list-style-type: none"> • Tsuut’ina opposed NGTL’s response to the Board’s Draft Condition 11 (Indigenous Monitoring). Tsuut’ina argued that NGTL proposal would effectively eliminate the monitoring by Indigenous peoples program. Tsuut’ina submits that monitoring by Indigenous peoples and oversight is vital for Tsuut’ina to protect their treaty and Aboriginal rights, and fulfil their duty to be stewards of their traditional territories. Tsuut’ina stated it was not engaged meaningfully or provided a process for Traditional Land and Resource Use [studies]. • Tsuut’ina adopted SNN’s proposed changes and provided the additional change that the revised condition include both SNN <i>and Tsuut’ina</i> in summary of consultation with affected Indigenous communities. <ul style="list-style-type: none"> - In response to Tsuut’ina, NGTL reiterated its own response to Board Draft Condition 11 (Indigenous Monitoring) (above), specifically that this condition be struck. - NGTL further reiterated its comments as outlined in its response to SCN and SNN’s comments of Board Draft Condition 11 (Indigenous Monitoring) (above). 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>12. Landowner Issue Monitoring Report</p>	<ul style="list-style-type: none"> • SCN requested that the landowner issue monitoring report be provided to Indigenous groups at the same time it is provided to the Board. • NGTL stated that not all Indigenous groups are interested in viewing all the condition filings related to the Project. NGTL confirmed that this report will be filed publicly, and committed to notifying any third-party who self-identifies interest in a specific condition when the condition is filed with the Board. 	<ul style="list-style-type: none"> • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings.
<p>13. Horizontal Directional Drilling (HDD) and/or Direct Pipe Installation (DPI) Execution Plan</p>	<ul style="list-style-type: none"> • SCN requested that the plan be provided to Indigenous communities at the same time as it is provided to the Board. • Káínai and Piikani proposed additional wording to the end of the condition: <ul style="list-style-type: none"> - ...to minimize the risk of drilling failures “<i>and details of what will be done in the event that a drill may have to be abandoned. NGTL must additionally file an HDD-specific Environmental Protection Plan (EPP), at least 30 days prior to performing an HDD, including response protocols for inadvertent release of drilling fluids or contaminants. Possible abandonment of a drill resulting from a failed HDD attempt should also be addressed.</i>” • NGTL opposed the recommended changes proposed by Káínai and Piikani as unnecessary and addressed by other commitments and draft conditions. NGTL argued that a separate EPP would be redundant as it would include most of the content of the EPP produced for the pipeline without any alteration or addition of the available mitigation measures. 	<ul style="list-style-type: none"> • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board is of the view that the concerns of Indigenous communities will be appropriately addressed through Condition 7 (EPP – Rocky View Section).

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board's Response to the Comments from Intervenors
	<ul style="list-style-type: none"> • Tsuut'ina proposed additional wording be added to the condition: <ul style="list-style-type: none"> - Addition: <i>NGTL must train and utilize Indigenous communities (including Tsuut'ina) in the execution of any water quality monitoring plan associated with the Horizontal Directional Drilling (HDD) and/or Direct Pipe Installation (DPI) Execution Plan.</i> • NGTL opposed the addition of Tsuut'ina's proposed changes as Water quality monitoring (WQM) is a specialized scientific and technical service requiring appropriate knowledge, expertise, experience and equipment. It takes years of post-secondary institutional training and applied experience to qualify to conduct a WQM program. Further, WQM requires in-stream activities which, without appropriate protective measures and expertise, could lead to safety and environmental risks. The skills and training necessary for this service are beyond the range of offering that NGTL can provide, and beyond the timeframe of the construction of this Project. 	

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>14. Horizontal Directional Drilling (HDD) Unsuccessful Attempt Reports</p>	<ul style="list-style-type: none"> • SCN requested that the Report be provided to Indigenous groups at the same time as they are provided to the Board. • SNN requested the following additions/amendments: <ul style="list-style-type: none"> - Addition: NGTL must directly notify SNN, within 7 days of occurrence, on any HDD unsuccessful attempts and any resulting adverse impacts to surrounding environment. - Addition: NGTL must develop individualized response plans with Indigenous communities, including SNN, to provide notice on any HDD unsuccessful attempts and any resulting adverse impacts to surrounding environment and to Section 35 Rights. - Addition: NGTL must include monitoring and field visit activities with Indigenous communities, including SNN, to follow-up on HDD unsuccessful attempts and any assess resulting adverse impacts to surrounding environment and to Section 35 Rights. • NGTL stated that it opposes the suggested changes to the condition, and it is unclear of the benefit of developing individualized response plans with Indigenous groups. NGTL noted that all relevant information that would be provided to Indigenous communities will be included in filings with the Board. • NGTL also noted that the Board Draft Condition 3 (Environmental Protection) required NGTL to adhere to all environmental protection measures, including those in the Rocky View EPP, which included obligations for NGTL to report drilling mud releases to water to Alberta Environment and Parks and the Board. 	<ul style="list-style-type: none"> • In response to SCN’s request the Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board is of the view that the concerns raised by Indigenous communities will be appropriately addressed through Conditions 7 (EPP – Rocky View Section) and 10 (Consultation with Indigenous Communities Report).

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> • Piikani and Káínai proposed amending the condition to read as follows (additions in Italics): <ul style="list-style-type: none"> - ... NGTL must “<i>cease HDD attempts and file a summary report for review and approval by the NEB and affected Indigenous groups,</i>” within 5 days of classifying a trenchless crossing option as “unsuccessful”, “<i>or an unsuccessful HDD attempt</i>” as referenced... • Tsuut’ina submitted that it should be permitted access to the HDD site in the case of an unsuccessful attempt so that it may monitor and assess the impact and take part in any necessary remediation. • Tsuut’ina adopted SNN’s proposed changes and provided the additional change that the revised condition include both SNN <i>and Tsuut’ina</i> be notified throughout. • NGTL opposed the addition of Káínai, Piikani and Tsuut’ina’s proposed changes as no evidence was provided for how these would provide additional environmental protection or are covered by previous NGTL commitment. 	
<p>15. Contingency HDD or DPI Crossing Method Feasibility Report</p>	<ul style="list-style-type: none"> • Alberta Department of Energy (ADOE) proposed the following revision: <ul style="list-style-type: none"> - Filing date: 60 days instead of 30 days prior to commencing contingency crossing method, particularly if NGTL intends on proposing a trenched construction methodology for Springbank Reservoir project before its construction. - Addition: A summary risk assessment and explanations if NGTL intends on proposing a trenched 	<ul style="list-style-type: none"> • In regard to ADOE’s comments, it is noted that the Board’s intent of this condition is to obtain the feasibility assessment report for the contingency trenchless crossing methods (i.e., HDD/DPI). It is also noted that if a trenched crossing method (open-cut) is utilized for the Springbank Off-stream Reservoir crossing, NGTL has committed to a minimum depth of cover for the proposed Rocky View section to be 1.2 m, which meets the criteria for a water crossing in CSA Z662-15, Table 4.9.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>construction as contingency crossing method for Springbank Reservoir.</p> <ul style="list-style-type: none"> - Addition: Discussions of the status including an update on discussions with Alberta Transportation and any other relevant Government of Alberta Ministries. - Addition: Discussion of how any proposed contingency crossing method may impact the Springbank Reservoir project (timing of construction, alignment, depth of cover, acquisition of any alternative rights of way). <ul style="list-style-type: none"> • SCN requested this report be provided to Indigenous groups at the same time as they are provided to the Board. • SNN requested the following additions/amendments: <ul style="list-style-type: none"> - Amendment under condition a): the summary risk assessment for the proposed HDD or DPI construction must include impacts to Section 35 Rights as an identified potential hazard/risk. - Addition: NGTL must include TK and potential impacts to Section 35 Rights in decision-making in contingency HDD or DPI Crossing Method Feasibility Report. - Addition: NGTL must provide details on how TK from each Indigenous community was gathered, how it was considered, and any rationale for exclusion. • NGTL stated that the changes proposed by ADOE are not required as the Government of Alberta is a landowner, and would typically be engaged. • NGTL opposed SNN’s suggested changes and noted that SNN has not filed evidence or provided TK information 	<ul style="list-style-type: none"> • NGTL committed to engaging with ADOE as part of its normal landowner engagement program, should a change in crossing methods be required. • The Board is of the view that 30 days in Condition 15 (Contingency HDD or DPI Crossing Method Feasibility Report) remains an appropriate timeframe for the filings of the HDD Crossing Method Feasibility Report. • The Board has imposed a revised Condition 11 (Landowner, Government, and Municipalities Issue Report), requiring NGTL to file a Landowner, Government and Municipalities Issue Report, in the case that a filing is required under Condition 14 (HDD Unsuccessful Attempts Reports). • The Board is of the view that the concerns raised by Indigenous communities will be appropriately addressed through Condition 7 (EPP – Rocky View Section) requiring an EPP for the Rocky View Section which will address the HDD crossing. • The Board has modified Conditions 7 (EPP – Rocky View Section), 11 (Landowner, Government, and Municipalities Issue Report), 14 (HDD Unsuccessful Attempts Reports) and 15 (Contingency HDD or DPI Crossing Method Feasibility Report) to require NGTL to notify any Indigenous communities who have expressed an interest in these conditions filings.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>questioning NGTL’s choice of HDD crossing or proposing alternate types of crossings. NGTL also sought to identify specific issues and concerns through its Aboriginal engagement program.</p> <ul style="list-style-type: none"> • Káínai and Piikani proposed additional wording in the condition as follows: <ul style="list-style-type: none"> - ...30 days prior to commencing the contingency crossing method, “and revise its HDD EPP accordingly.” The report... • Tsuut’ina adopted SNN’s proposed changes. • NGTL opposed the addition of Káínai and Piikani Nation’s proposed changes. NGTL submitted that the EPP filed for the Project includes mitigation measures that are sufficient and applicable to both the primary and contingency water crossing methods. 	
16. Technical Specifications Updates	<ul style="list-style-type: none"> • SCN requested these updates be provided to Indigenous groups at the same time as they are provided to the Board. 	<ul style="list-style-type: none"> • In response to SCN’s request the Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings.
17. Post-Construction Monitoring Report	<ul style="list-style-type: none"> • SNN requested the following: that NGTL submit reports to Indigenous communities for feedback prior to filing with the Board; an amendment that NGTL provide details on results from monitoring and TK information including comments from Indigenous monitors; and NGTL create and implement a mechanism that will track all monitoring commitments and maintain a record of documenting, tracking, and resolving issues and comments of Indigenous communities during post-construction monitoring. 	<ul style="list-style-type: none"> • The Board has modified the condition to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board notes that part g) of the condition specifies that NGTL consult with Indigenous communities and include a record of consultation in the Post-Construction Monitoring Report.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<ul style="list-style-type: none"> • NGTL responded that it opposed the proposed changes because the concerns are addressed in Board Draft Conditions 2 (Design, Location, Construction and Operation) and 10 (Socio-Economic Matters – Indigenous Consultation) (above), any identified TLU sites requiring mitigation would be included in the reports, and on-going engagement is the appropriate venue for the identification of specific issues and concerns. • SCN requested that: reports be provided to and approved by Indigenous communities; NGTL report on recovery of key values of cultural importance to SCN; and that NGTL engage with SCN to identify additional mitigation measures and implementation. • NGTL was opposed to the proposed changes, submitting that any identified TLU sites requiring mitigation would be included in the reports, and on-going engagement is the appropriate venue for the identification of specific issues and concerns. • Káínai proposed additional wording in sub-bullet c) of the condition as follows: <ul style="list-style-type: none"> - ... and the results found, “<i>the involvement of Indigenous monitors in monitoring</i>”; d) provide... • Piikani proposed additional wording in sub-bullet c) of the condition as follows: <ul style="list-style-type: none"> - ...and the results found, “<i>the involvement of Indigenous Guardians in monitoring</i>”; d) provide... • In response to Káínai and Piikani, NGTL reiterated its comments as outlined in its response to SCN’s comments 	<ul style="list-style-type: none"> • The purpose of the Board’s condition is to require NGTL to monitor the effects of the Project on the environment and the return of equivalent land capability. The Board considers the proposed Indigenous issue tracking list beyond the scope of this condition. • The Board assesses but does not approve the monitoring reports. If the Board identifies issues during its assessment, the Board follows up with companies using the appropriate compliance tool (e.g., meetings, inspections). • The Board is of the view that the relevant valued ecosystem components identified by SCN are captured in the condition. • In the Board’s view, the concerns identified by Indigenous communities have been addressed in Condition 10 (Consultation with Indigenous Communities Report).

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>of Board Draft Condition 11 (Indigenous Monitoring) (above).</p> <ul style="list-style-type: none"> • Tsuut’ina stated that NGTL should provide a plan by which Indigenous communities (including Tsuut’ina) will be present to oversee/witness the mitigation strategies employed to minimize effects to their Section 35 rights. • Tsuut’ina further submitted that the EPP must describe the locations and activities where Indigenous communities (including Tsuut’ina) will be present to oversee/witness the success of the measures implemented to minimize effects to their Section 35 rights. • Tsuut’ina adopted SNN’s proposed changes. • In response to Tsuut’ina, NGTL reiterated its comments as outlined in its response to SCN’s comments of Board Draft Condition 4 (Construction Oversight) (above), as well as its response to SNN’s comments on Board Draft Conditions 4 (Construction Oversight) and 15 (Contingency HDD or DPI Crossing Method Feasibility Report) (above). 	
<p>18. Pipeline Geographic Information System (GIS) Data</p>	<ul style="list-style-type: none"> • SCN requested the shape files be provided to Indigenous groups at the same time as they are provided to the Board. • SNN requests the following additions/amendments: <ul style="list-style-type: none"> - Addition: NGTL must report directly to Indigenous communities, including SNN, on how any GIS shapefiles differ from the shapefiles presented in the Project Application stage of the regulatory process at least 30 days prior to construction. - Addition: NGTL must provide directly to Indigenous communities, including SNN, a GIS file that depicts 	<ul style="list-style-type: none"> • The Board imposed Condition 18 (Post-Construction Monitoring Report), requiring NGTL to file Post-Construction Environmental Monitoring Reports (PCMRs), which typically include updated environmental alignment sheets. The primary purpose of Condition 19 (Pipeline Geographic Information System (GIS) Data) is to obtain geospatial data for the Project to be incorporated into the Board’s GIS facility database. As such, the Board is of the view that it is unnecessary to obtain GIS information on the temporary work sites of the Project.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>all temporary workspaces, including laydown yards, work camps, roadways and all other Project construction components at least 30 days prior to construction.</p> <ul style="list-style-type: none"> • Tsuut’ina adopted SNN’s proposed changes and provided the additional change that the revised condition include both SNN and Tsuut’ina throughout. • NGTL stated that due to security concerns, NGTL does not share the as-built GIS shapefiles. NGTL noted that Indigenous communities may request a specific location through Alberta One-Call to physically mark the facility. NGTL also noted that it generally files as-built environmental alignment sheets as part of its Post-Construction Monitoring Report (PCMR) filings under Board Draft Condition 17 (Post-Construction Monitoring Report), and that any changes to the Project footprint and resulting environmental mitigation require approval by the Board of a variance application. 	<ul style="list-style-type: none"> • The Board also notes the security concerns and sensitivity of the information contained in the as-built GIS files. • The Board notes in its direction above that condition filings for PCMRs be served upon any Indigenous communities who have specifically requested copies. This filing must include environmental as-built information, and typically includes updated environmental alignment sheets.
<p>19. Emergency Management</p>	<ul style="list-style-type: none"> • NGTL commented on draft conditions and proposed: NGTL be required within 3 years of Leave to Open (LTO) to perform a Table Top Exercise (these suggestions in place of within 18 months LTO and a full scale exercise). NGTL also responded to SCN, SNN, Káínai, Piikani, and Tsuut’ina comments on conditions stating “As stated in its response to NEB 3.10, should an Aboriginal group (or any other group) wish to self-identify to NGTL that it would like to be included on emergency response notification in a specific area, NGTL will take note of that concern and will contact the Aboriginal group, as applicable, in the event of an emergency situation. Additionally, NGTL notes that TransCanada’s general practice, when holding a field or table-top exercise in the 	<ul style="list-style-type: none"> • Notwithstanding NGTL’s request, the Board imposes the original 18 month timeline and full scale exercise requirement for the following reasons: <ul style="list-style-type: none"> - NGTL's exercise can be held in another close by area where NGTL facilities are present such as Morley, Turner Valley, Rocky View County, or other areas to engage other fire departments and stakeholders in learning response procedures. - By the time Leave To Open is granted (if granted) for this Project, sufficient time will have passed to interest previously engaged stakeholders to

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	<p><i>vicinity of an Aboriginal group’s reserve, is to invite that group to participate in, or observe, the exercise.”</i></p> <ul style="list-style-type: none"> • SCN requested the condition include reference to coordination and training of Indigenous groups in emergency planning and response. • SNN requested additional conditions to include: NGTL develop Emergency Response Procedures (ERPs) with Indigenous communities; translation into the Stoney Nakoda language; and NGTL develop and deliver training on ERPs with Indigenous communities. • Káínai and Piikani proposed additional wording in sub-bullet b) of the condition as follows: <ul style="list-style-type: none"> - ... b) notify the Board “<i>and Indigenous (all) groups</i>” in writing ... • Tsuut’ina stated that it opposed NGTL’s response to NEB Draft Condition 19 and argued that a project-specific emergency response is necessary in order to properly protect Tsuut’ina’s treaty and Aboriginal rights in the event of an emergency. They also stated that a one-size-fits-all approach is not sufficient to ensure Tsuut’ina’s rights are protected. Tsuut’ina further submitted that it does not support a smaller table top exercise. • Tsuut’ina adopted SNN’s proposed changes. 	<p>participate again if invited as the feedback from the last exercise the Board received indicated this.</p> <ul style="list-style-type: none"> - Hosting a full scale exercise instead of a table top exercise allows for more direct stakeholder engagement and can aid in groups with significant interest and concerns (such as the Indigenous communities taking part in this process) being permitted to observe or participate in the exercise and better understand their role and build confidence in the company in its response capabilities.
<p>20. Condition Compliance by the Accountable Officer</p>	<ul style="list-style-type: none"> • SCN requested these updates be provided to Indigenous groups at the same time as they are provided to the Board. • NGTL committed to notifying any third-party who self-identifies interest in a specific condition when the condition is filed with the Board. 	<ul style="list-style-type: none"> • The Board is of the view that the condition is appropriate as proposed. The Board notes that the confirmation sought here is not like “updates or reports” that may be required in other conditions. This is a final requirement for an Accountable Officer to confirm that all conditions have been met. As such, the Board does not deem it necessary for this confirmation

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		to be notified to parties. Participants, including Indigenous communities, can see this confirmation when it is filed on REGDOCS.
21. Order Expiration (Sunset Clause)	<ul style="list-style-type: none"> • SCN noted that it may be providing comments on this condition in the near future. No further comments were received. 	<ul style="list-style-type: none"> • N/A
<p>Proposed New Condition:</p> <p>22. Bow River Crossing Noise Management Plan</p>	<ul style="list-style-type: none"> • Given the proximity of HDD drill locations to residents in Cochrane (nearest receptor 150m), and the 24 hour nature of HDD activities, the Board floated an additional Condition to require NGTL to file an HDD noise management plan in advance of construction. • NGTL has requested that the proposed new Condition be struck, as the condition has already been addressed by NGTL’s existing filings in this proceeding. 	<ul style="list-style-type: none"> • The Board has modified the proposed condition to incorporate some of NGTL’s comments. However, the Board is of the view that this condition remains appropriate. This condition will become Condition 12 (Bow River Crossing Noise Management Plan) in Order XG-N081-005-2019.
<p>Proposed New Condition:</p> <p>Nature Conservancy of Canada (NCC) - Indemnification of NCC and landowner for costs related to land use at applied for Burton Creek Compressor Station</p>	<ul style="list-style-type: none"> • NCC proposed that any approval of the applied-for Burton Creek Compressor Station (CS) include a condition requiring NGTL to indemnify NCC and the landowner for all costs related to the conversion of the lands at the applied-for site to industrial land use. NCC stated that this would include the payment of the cost of any tax that might be imposed on these parties as a result of the unauthorized disposition of the Conservation easement. • NGTL stated that NGTL has offered to cover a tax penalty, if any, for the two hectares (ha) needed to expand the Burton Creek CS site, however, it appears that both NCC and the landowner are unwilling to grant to necessary land rights for the applied-for Burton Creek Compressor Station unless Environment and Climate Change Canada (ECCC) first authorizes the change in use. 	<ul style="list-style-type: none"> • The Board notes that ECCC has confirmed that if the Board were to grant approval of the Project through the issuance of a section 58 Order (and determine that the preferred Burton Creek site is in the public interest), ECCC would authorize the change in use, and no tax implications would apply. • The Board notes NGTL’s commitment to indemnify NCC and the landowner with respect to tax that would result from a disposition of only the two ha applied-for location. • While the Ecological Gifts Program under which the proposed lands to be acquired or leased appear to bring a unique aspect, in the end, the matter of a tax penalty is a matter of compensation which the Board has no authority to consider when determining the public

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	<ul style="list-style-type: none"> • On 21 December 2018, the Board floated a potential commitment or condition, commitment from NGTL requiring, unless the Board otherwise directed, NGTL to cover any and all tax penalties¹ related to the acquisition of land for the preferred Burton Creek CS site, even if the tax penalty applies to more than just the two ha needed to expand the Burton Creek CS preferred site. • NGTL responded that NCC has indicated to NGTL that if the Board grants a Section 58 Order approving the Project, ECCC would authorize the change in use. NGTL stated that in result there should not be imposition of tax liability on NCC for an unauthorized change in use or disposition of the lands for the applied for Burton Creek CS. location. • NGTL clarified that should any tax become payable pursuant to section 207.31 as a result of the Burton Creek CS, despite ECCC authorizing any change of use, NGTL is prepared to indemnify the NCC and the landowner with respect to tax that would result from a disposition of only the two ha applied for location for Burton Creek CS, but not for any tax that may be payable with respect to the entire 12,357 ha covered under the conservation easement. 	<p>interest nature of a pipeline project under Part III of the NEB Act.</p> <ul style="list-style-type: none"> • In the Board’s majority view, the proposed condition is neither warranted, nor appropriate. Member Durelle does not agree and would have imposed the condition floated by the Board on 21 December 2018. • For further details regarding the Board’s views, refer to Section 2.3.3 Land Rights and Land Acquisition Process.
<p>Proposed New Condition: <i>Nature Conservancy of Canada - Work with NCC, landowners and if possible, Environment and Climate Change Canada, to achieve net benefit for land conservation</i></p>	<ul style="list-style-type: none"> • NCC proposed that any approval of the applied-for Burton Creek Compressor Station include a condition requiring NGTL to Work with NCC, landowners and if possible, ECCC, to achieve net benefit for land conservation, in lieu of the loss of the Affected Land as conservation land. 	<ul style="list-style-type: none"> • The Board notes NGTL’s commitment, unless the Board otherwise directed, to work with the Landowner and NCC, and to the extent that ECCC is willing to, with ECCC, to achieve better or equivalent protection for the lands relative to existing conditions or, if possible, to achieve a net benefit for land conservation in lieu of a net loss. • The Board floated a potential commitment or condition in regards to this proposed condition. While in the Board’s view, the proposed condition is not warranted

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		as a condition of approval, the Board expects NGTL to fulfill its commitment to the extent possible.
<p>Proposed New Condition: <i>SNN - Bi-annual Review of Conditions</i></p>	<ul style="list-style-type: none"> • SNN proposed an additional condition that would allow for the Board, with input from impacted Indigenous communities, to conduct a bi-annual review of the conditions, to update and amend as required. • Tsuut'ina adopted SNN's proposed condition and noted that in <i>Tsleil-Waututh Nation v. Canada (Attorney General)</i>, 2018 FCA 153, the Board has delegated responsibility and authority to amend conditions as new information arises. This over the lifetime of the Project. 	<ul style="list-style-type: none"> • The Board notes that NGTL is required to publicly submit condition filings with the Board, and any party may file comments regarding condition filings received by the Board.
<p>Proposed New Condition: <i>SNN - Crown Land Offsets</i></p>	<ul style="list-style-type: none"> • SNN proposed a condition for a Crown Land Offset Measures Plan that requires NGTL to offset or compensate for the permanent loss of Crown lands available for the exercise of Section 35 Rights. • NGTL opposed the inclusion of this condition, noting that its assessment of Project effects on the availability of traditional resources or important sites were predicted to be negligible in magnitude and not significant, and the vast majority of the Project occurs on freehold land. • Tsuut'ina adopted SNN's proposed condition. 	<ul style="list-style-type: none"> • The Board is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed.
<p>Proposed New Condition: <i>SNN - Impacts to Section 35 Rights Offset Measures Plan</i></p>	<ul style="list-style-type: none"> • SNN proposed an additional condition requiring identification and accommodation for Project impacts to Section 35 rights. 	<ul style="list-style-type: none"> • The Board is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed.

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	<ul style="list-style-type: none"> • SNN's proposed condition includes a requirement for an Impact to Section 35 Rights Offset Measures Plan, to be filed 30 days prior to commencing operation. • NGTL opposes this condition, as NGTL has limited ability to respond to Section 35 concerns, which are based upon agreements between Indigenous groups and the Crown. NGTL also noted that this condition would not be appropriate given the minor scope of the Project footprint on Crown land, and that the predicted residual effects on TLRU were predicted to be not significant. • Tsuut'ina adopted SNN's proposed condition. 	
<p>Proposed New Condition:</p> <p><i>SCN - Wetland Protection and Offsetting</i></p>	<ul style="list-style-type: none"> • SCN proposed a new condition for wetland protection and offsetting to avoid disturbance to existing wetlands. • NGTL responded by indicating it was opposed to the addition of this condition because the concerns have been addressed in the ESA and EPPs for the Project, and its post-construction monitoring includes wetlands. 	<ul style="list-style-type: none"> • The Board notes that the appropriate mitigation measures to limit the Project effects on wetlands was submitted by NGTL in its Application and during the hearing process. To monitor the recovery of wetlands, the Board has imposed Condition 18 (Post-Construction Monitoring Report) requiring NGTL to monitor and report on the effectiveness of restoration measures. The Board also notes NGTL's commitment to undertake wetland replacement via its provincial <i>Water Act</i> application to compensate for the area of wetland affected by the Turner Valley Compressor Station addition. • In the Board's view, the proposed condition is not warranted.
<p>Proposed New Condition:</p>	<ul style="list-style-type: none"> • SCN proposed a new condition for a Grizzly Bear Mitigation and Monitoring Plan that includes a historical habitat baseline survey focused on Indigenous TK; habitat 	<ul style="list-style-type: none"> • The Board notes that the pipeline is located within a populated region of Alberta with limited grizzly bear habitat, including the area adjacent to the Elbow River. The preferred compressor station additions are co-

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<p><i>SCN - Grizzly Bear Mitigation and Monitoring Plan</i></p>	<p>disturbance effects near the Elbow River; and mitigation for the Burton Creek CS temporary construction camp.</p> <ul style="list-style-type: none"> In its response, NGTL opposed this condition recommendation, stating that the concerns have been addressed in its Application and submissions, the current land use in the Project area has resulted in limited grizzly bear habitat, and the type of data requested is beyond the scope of the Project. 	<p>located with existing facilities, and the proposed temporary camp is located on cultivated land adjacent to residences and highway.</p> <ul style="list-style-type: none"> The Board is of the view that NGTL’s mitigation measures described in its Application and Information Request response will mitigate any potential adverse effects on grizzly bear habitat. In the Board’s view, the proposed condition is not warranted.
<p>Proposed New Condition: <i>SCN - Outstanding Bison Habitat Assessment and decommissioning, Indigenous End Land Use Planning and Restoration</i></p>	<ul style="list-style-type: none"> SCN proposed a new condition for an assessment of the potential for the Banff National Park bison range expansion into the Project area and the completion of an offset plan to reduce Project effects on bison. NGTL was opposed to the inclusion of the condition, noting that free ranging bison were extirpated from southern Alberta in the 19th century, the current land use in the Project area is not compatible with restoring the species, and the Project will not affect existing wild bison population habitat. 	<ul style="list-style-type: none"> The Board notes that the bison re-introduction program in Banff National Park is located a significant distance from the nearest Project component. The Board also notes that the current land ownership and land use within and surrounding the Project area is not conducive to a bison range expansion plan. In the Board’s view, the proposed condition is not warranted.
<p>Proposed New Condition: <i>SCN - Culturally Important Plants and Ecosystems Management Plan</i></p>	<ul style="list-style-type: none"> SCN proposed an additional condition, requiring NGTL to work with Indigenous groups, including SCN to develop a culturally important plants and ecosystem management plans, which would include: plans, timing and funding for additional baseline studies for culturally important plants and associated ecosystems, maps showing locations of culturally important plants, mitigations and measures for reducing impacts, re-vegetation and offsetting plans and evidence of approval of the plan by Indigenous groups. NGTL stated that as the Project is primarily located in agricultural, urban and industrial lands, and a vegetation 	<ul style="list-style-type: none"> The Board is of the view that SCN’s requests are addressed through NGTL’s proposed mitigation measures, and through Conditions 3 (Environmental Protection), 6 (Environmental Protection Plans (EPPs) – Turner Valley Compressor Station and Burton Creek Compressor Station), 7 (EPP – Rocky View Section) and 18 (Post-Construction Monitoring Report). The Board also imposed Condition 10 (Consultation with Indigenous Communities Report), requiring NGTL report to the Board any comments or concerns

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>survey was conducted as part of the ESA, this Condition is not required. NGTL noted that it has proposed appropriate mitigation, has engaged with SCN and other Indigenous groups in the areas and no locations for culturally important plants were identified.</p>	<p>expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns that may arise, including regarding culturally important plants.</p>
<p>Proposed New Condition: <i>SCN - Culture and Heritage Management Plan</i></p>	<ul style="list-style-type: none"> • SCN proposed an addition condition, requiring NGTL to file a Culture and Heritage Resources Management Plan, jointly developed with Indigenous groups, including a jointly agreeable chance find protocol for archaeological remains. • SCN’s proposed condition includes a cultural protocol for the treatment of human remains; Indigenous monitors during investigative activities implementation funding; a dispute resolution mechanism; commitments around the handling of cultural, historical or archaeological, grave sites and sacred locations; commitments to engagement with Indigenous groups, compensation or offset plans; and annual contributions to SCN. • NGTL stated that it opposes this additional condition as the concerns it addresses are already covered by Board Draft Conditions 6 (Environmental Protection Plans), 7 (Environmental Protection Plan (EPP)), 9 (Socio-Economic Matters – Heritage Resources) and 10 (Socio-Economic Matters – Indigenous Consultation). NGTL stated that it has assessed and engaged with Indigenous groups including SCN regarding the Project, including identifying any culturally significant sites. • NGTL reiterated that the Project EPPs contain contingency plans for unanticipated discovery of heritage resources or traditional land use sites, which include engaging Indigenous groups about the finding and appropriate 	<ul style="list-style-type: none"> • The Board notes NGTL’s Heritage Resource Discovery Contingency Plan, NGTL’s commitment to receive all clearances required under the <i>Alberta Heritage Resources Act</i>, and NGTL’s commitment to work with Indigenous communities to address any heritage resource concerns or proposed mitigation. • The Board has modified Condition 9 (Archaeological and Heritage Resource Permits and Clearances) to require NGTL to notify any Indigenous communities who have expressed an interest in condition filings. • The Board is satisfied that these concerns are already addressed though Conditions 6 (Environmental Protection Plans (EPPs) – Turner Valley Compressor Station and Burton Creek Compressor Station), 7 (EPP – Rocky View Section), 9 (Archaeological and Heritage Resource Permits and Clearances) and 10 (Consultation with Indigenous Communities Report).

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	<p>measures. NGTL confirmed that it will continue to comply with the provincial requirements.</p> <ul style="list-style-type: none"> • NGTL noted that it already contributes to community investment initiatives in the Project area and will continue to do so. 	
<p>Proposed New Condition: <i>SCN - Pre-Construction Engagement</i></p>	<ul style="list-style-type: none"> • SCN proposed an additional condition requiring NGTL to engage with each Indigenous group regarding outstanding concerns related to construction activities and Project design and file with the Board and Indigenous groups (including evidence of involvement of Indigenous groups): <ul style="list-style-type: none"> - maps of all ancillary and temporary workspace - process for including Indigenous Knowledge in operational siting - maps and descriptions of herbicide application and other treatment of vegetation - adjusted timing windows to accommodate Indigenous groups’ seasonal rounds, needs of harvested species and sensitivities of environmental features. • NGTL stated that it has already conducted engagement activities and filed details regarding the temporary construction camp and laydown yards for the Burton Creek Compressor Station Unit Addition. NGTL also noted that final as-built environmental alignment sheets will be filed as part of the PCMR. NGTL indicated that environmental screening will take place for all temporary locations and siting will be selected to minimize environmental effects. NGTL reiterated that ongoing engagement is the appropriate mechanism to address any siting concerns. 	<ul style="list-style-type: none"> • The Board is of the view that NGTL has appropriately engaged with Indigenous communities for the size, scope and scale of the Project. The Board notes NGTL’s commitment to continue to work collaboratively with Indigenous communities to address any concerns regarding siting, mitigation measures, and accommodation measures to address potential impacts to Indigenous rights and interests. • The Board also imposed Condition 10 (Consultation with Indigenous Communities Report), requiring NGTL report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns that may arise. This will include any concerns regarding siting of temporary workspace.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
<p>Proposed New Condition: <i>SCN - Outstanding Indigenous or Traditional Land Use (TLU) Investigations</i></p>	<ul style="list-style-type: none"> • SCN proposed an additional condition requiring NGTL to file a report with the Board 60 days prior to construction. This report is to include: <ul style="list-style-type: none"> - the status of TLU investigations for the Project (including groups specific TLU studies or planned supplemental studies); - how NGTL has considered and addressed information from any TLU investigations not reporting on during the proceeding; - any outstanding concerns raised by Indigenous groups regarding potential effects on TLU and how NGTL has or will address these concerns; - summary of all revisions to TLU Site Discovery Contingency Plan including evidence that revisions are to satisfaction of Indigenous groups; and - summary of any outstanding TLU investigations or follow up activities, including estimated completion date and how NGTL will identify and confirm TLU sites or resources with Indigenous groups prior to construction. • NGTL stated that it has previously addressed this concern in other filings, and has attempted to contact SCN to obtain traditional knowledge specific to the Project and SCN has declined to provide a response. NGTL stated that reasonable opportunities have been provided to SCN to provide NGTL with traditional knowledge, and no specific locations requiring additional mitigation have been identified. NGTL reiterated that ongoing engagement is the appropriate mechanism to address any concerns. 	<ul style="list-style-type: none"> • The Board imposed Condition 10 (Consultation with Indigenous Communities Report), requiring NGTL report to the Board any comments or concerns expressed by Indigenous communities, and how NGTL intends to address any outstanding concerns that may arise, including TLU. • The Board has also made modifications to Condition 10 (Consultation with Indigenous Communities Report) to include reporting on the results of any outstanding site visits.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board's Response to the Comments from Intervenors
<p>Proposed New Condition:</p> <p><i>Káínai and Piikani - Additional Condition 1 regarding Outstanding Project specific Indigenous Knowledge and TLRU studies</i></p>	<ul style="list-style-type: none"> • Káínai and Piikani proposed an additional condition requiring NGTL to file a report with the Board 60 days prior to construction outlining a plan for completing outstanding project specific Indigenous Knowledge and TLRU studies and incorporating the results of such studies in to its ESA, CEPP and EPPs. The report is to include: <ul style="list-style-type: none"> - a) a detailed inventory and corresponding maps of current use sites specific to each of the Indigenous communities engaged on the project to indicate their location within or in the vicinity of the PDA, LAA and RAA; - b) a detailed description and inventory of the Project's interactions with TLRU within or in the vicinity of the PDA, LAA and RAA, specific to each of the Indigenous communities engaged on the Project; - c) a summary of project-specific TLRU information still outstanding; and - d) a description of how NGTL has revised its CEPP and EPPs as a result of Indigenous Knowledge and TLRU studies and ongoing engagement. • NGTL stated that it responded to a similar proposed condition in its response to SCN. • NGTL stated that it opposes the addition of this condition as it has previously addressed this concern in several previous filings. NGTL stated that it has repeatedly attempted to contact SCN for the purpose of obtaining traditional knowledge specific to the Project and SCN has repeatedly declined to provide a response. • NGTL stated that in its view, reasonable opportunities have already been provided to SCN to provide NGTL with 	<ul style="list-style-type: none"> • The Board is of the view that appropriate opportunities have been provided to Indigenous communities, including Káínai, to provide project specific Indigenous knowledge and TLU information specific to the Project. • The Board also imposed Condition 10 (Consultation with Indigenous Communities Report), requiring NGTL report to the Board any comments or concerns expressed by Indigenous communities, which could include any Indigenous Knowledge and how NGTL intends to address any outstanding concerns that may arise, including TLU. • In the Board's view, the proposed condition is not warranted.

Board Condition or Proposed New Condition	Summary of Comments from Intervenors on Board Draft Conditions and Proposed New Conditions	The Board’s Response to the Comments from Intervenors
	<p>traditional knowledge that can be incorporated into its program.</p> <ul style="list-style-type: none"> • NGTL noted that while SCN has provided general concerns relating to regional issues, no specific locations requiring specific mitigation measures have been identified to date which would be incorporated into Project planning. NGTL stated that it believes ongoing engagement with SCN is the appropriate venue for the identification of any specific issues and concerns, and development of measures to address these concerns where warranted. 	
<p>Proposed New Condition: <i>Káínai and Piikani - Additional Condition 2 regarding Commitment Tracking Table</i></p>	<ul style="list-style-type: none"> • Káínai and Piikani proposed an additional condition requiring NGTL to file a commitment tracking table (30) days prior to construction which would include: <ul style="list-style-type: none"> - References to the document in which the commitment appears; - The accountable lead for implementing the commitment; - Estimated timeline associated with fulfillment of the commitment; and - That NGTL update the commitment table monthly providing it to both the Board and Indigenous groups starting ninety (90) days after the Certificate date until commencing construction, and quarterly during operations until all commitments are satisfied. • NGTL opposed the addition of this condition as it stated it is overly burdensome and unwarranted based on the scope of the Project. NGTL also stated that as the Project is almost entirely on freehold lands, many of NGTL’s commitments to landowners are already captured in the specific private agreements NGTL has signed with each 	<ul style="list-style-type: none"> • The Board imposed Condition 10 (Consultation with Indigenous Communities Report), requiring NGTL report to the Board any comments or concerns expressed by Indigenous communities, and how these concerns will be addressed. • The Board also notes that Condition 2 (Design, Location, Construction, and Operation) requires NGTL to construct and operate the Project in accordance with the specifications, standards and other information referred to in its application or as otherwise agreed to during questioning or in its related submissions, which includes any commitment made on the record. • The Board also imposed Condition 3 (Environmental Protection) that requires NGTL to implement or cause to be implemented all of the policies, practices, programs, commitments, mitigation measures, recommendations and procedures for the protection of the environment included in, or referred to in its Application or as otherwise agreed to in questioning or

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	<p>landowner and it would not be appropriate to publish those commitments publicly.</p> <ul style="list-style-type: none"> • NGTL also noted that some commitments it has made in its application are long-term enduring commitments that will continue for the life of the Project. NGTL submits that regular reporting on such commitments would be overly burdensome and inefficient for both NGTL and the Board. 	<p>in its related submissions which would include any commitments made on the record.</p> <ul style="list-style-type: none"> • The Board notes that commitments are binding even if a tracking table is not required in this case.
<p>Proposed New Condition: <i>Káínai and Piikani - Additional Condition 3 regarding Establishment of an IAMC with Terms Outlined</i></p>	<ul style="list-style-type: none"> • Káínai and Piikani proposed an additional condition requiring the Board to establish an Indigenous Advisory and Monitoring Committee (IAMC) in collaboration with relevant Indigenous groups, to provide for the collaborative, inclusive and meaningful Indigenous involvement in the review and monitoring of the environmental and socio-economic issues related to the NGTL system. The terms of the IAMC would include: <ul style="list-style-type: none"> - a) provision of training and involvement objectives of Indigenous guardians in all of NGTL system projects, including the West Path Delivery Project; - b) outline requirements for NGTL reporting on monitoring data related to the NGTL system; - c) outline appropriate communication and engagement protocols with Indigenous groups; and - d) outline commitments of capacity support to Indigenous groups and Indigenous representation. • NGTL argued that the request is not supported by the evidence and that insufficient detail about the function, mandate, governance and decision-making structures of an IAMC are provided in the proposal. 	<ul style="list-style-type: none"> • As discussed for Condition 10 above, the Board did at some point float a monitoring by Indigenous peoples Plan condition back when the Alternate Site for the Burton Creek CS was being considered (which would have required the taking of Crown Lands). Given that the Board has approved the applied-for site and has not approved the Alternate Site, the Majority of the Board decided that the condition was no longer warranted given the scope and scale of the Project and that Conditions 9 (Archaeological and Heritage Resource Permits and Clearances) and 10 (Consultation with Indigenous Communities Report) were sufficient to capture and address Indigenous communities’ concerns, if any arose. • In the Board’s majority view, a monitoring by Indigenous peoples Plan condition was found to be not warranted in this case which Member Durelle did not agree with. However, the entire Board (meaning the full panel) cannot see a justification that warrants a recommendation to the Government of Canada to establish an IAMC, the likes of which was established for major projects such as TMX and Enbridge Line 3.

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	<ul style="list-style-type: none"> • NGTL further argues that a proposed IAMC for all NGTL projects is unreasonable, unsupported by evidence and beyond the Board’s jurisdiction in this proceeding. 	
<p>Proposed New Condition: <i>Tsuut’ina - Additional Condition 1 regarding Traditional Land Use Study</i></p>	<ul style="list-style-type: none"> • Tsuut’ina proposed a condition requiring NGTL provide funding for Tsuut’ina to engage in a Traditional Land Use Studies in order to properly assess the potential impacts of the project and consider appropriate mitigation 60 days prior to commencing construction, NGTL shall file with the Board for approval a report including the following content: <ul style="list-style-type: none"> - a) a summary of the results of the detailed land use and occupancy study conducted by Tsuut’ina; - b) a summary of the effects of the proposed Project on the current use of lands and resources for traditional purposes by Tsuut’ina; - c) a summary of the mitigation measures proposed by NGTL and/or by Tsuut’ina to address the effects of the proposed Project; - d) a description of how NGTL has incorporated any additional mitigation measures into its project planning; - e) a description of any outstanding concerns raised by Tsuut’ina regarding potential effects of the proposed Project on the current use of lands and resources for traditional purposes description of how these concerns have been or will be addressed by NGTL; and - f) a summary of any outstanding land use and occupancy investigations or follow-up activities that will not be completed prior to commencing construction, including an explanation completed prior 	<ul style="list-style-type: none"> • The Board is of the view that the majority of Tsuut’ina’s concerns are addressed through NGTL’s publically filed Heritage Resources and Traditional Land Use Discovery contingency plans. The Board also notes that heritage resource management falls under provincial jurisdiction. • The Board is satisfied that NGTL will abide by the provincial requirements for Heritage Resources, and has committed to working with Indigenous communities to address any heritage resource concerns or proposed mitigation. • The Board encourages NGTL to continue to work with all potentially affected Indigenous communities and Alberta Culture and Tourism to address any concerns relating to heritage resource management.

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	<p>to commencing construction, and an estimated completion date, if applicable.</p> <ul style="list-style-type: none"> • NGTL noted that it already responded to a similar proposed condition in its response to SCN Additional Condition 7. NGTL stated that it is opposed to the addition of such a condition for the reasons discussed in the previous submission. 	
<p>Proposed New Condition: <i>Tsuut’ina - Additional Condition 2 regarding Indigenous Skills & Capacity Inventory & Implementation Plan</i></p>	<ul style="list-style-type: none"> • Tsuut’ina proposed a condition requiring that NGTL must file with the Board, at least two months prior to construction, an Indigenous skills and business capacity inventory and plan which must include: <ol style="list-style-type: none"> a) a description of the sources and methodology for the creating the inventory; b) a summary of Indigenous capacity amongst the affected Indigenous communities; c) a description of Indigenous capacities and possible gaps and measures NGTL will employ to increase skills, capacity and opportunity for the affected Indigenous communities; and d) an analysis and plan for maximizing opportunities for Indigenous business and members in respect of contracts and employment arising from the Project. • NGTL opposed the addition of this condition submitting it would be commercially detrimental to both NGTL and the Indigenous communities NGTL contracts with. NGTL confirmed it is committed to facilitating meaningful participation of Indigenous communities and businesses in NGTL’s projects. To this end NGTL stated that it proactively obtains labour market and business information through its ongoing engagement from 	<ul style="list-style-type: none"> • The Board notes NGTL’s <i>Aboriginal Contracting and Employment Program</i> and NGTL’s commitments to working with interested Indigenous communities such as to identify opportunities for education and training initiatives. • The Board imposes Condition 17 (Indigenous Employment, Contracting, and Procurement Report) requiring NGTL to report on Employment, Contracting and Procurement.

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	<p>potentially affected Indigenous communities to assess the overall interest and capacity of each group to participate in project employment and contracting opportunities. NGTL stated that it uses this information to understand gaps each group may have that could be supported by NGTL’s education and training, supplier development, or community legacy programs. NGTL noted that however, that this information is also considered to be sensitive and therefore is protected by NGTL in order to safeguard the privacy of Indigenous communities, Indigenous businesses and individual Indigenous members.</p>	
<p>Proposed New Condition: <i>Tsuut’ina Nation - Additional Condition 3 regarding Bi-Annual Review of Conditions</i></p>	<ul style="list-style-type: none"> • Tsuut’ina adopted SNN’s proposed condition as outlined above. Tsuut’ina also noted that in <i>Tsleil-Waututh Nation v. Canada (Attorney General)</i>, 2018 FCA 153, the Board has delegated responsibility and authority to amend conditions as new information arises over the lifetime of the Project. • NGTL noted that it already responded to a similar proposed condition in its response to SNN Additional Condition 1 (above). NGTL stated that it is opposed to the addition of such a condition for the reasons discussed in the previous submission. 	<ul style="list-style-type: none"> • The Board is of the view that given the public nature of conditions filings, this proposed addition to the condition is not required. • The Board notes any party may file comments regarding condition filings received by the Board. • In the Board’s view, the proposed condition is not warranted.
<p>Proposed New Condition: <i>Tsuut’ina - Additional Condition 4 regarding Crown Land Offset Measure Plan</i></p>	<ul style="list-style-type: none"> • Tsuut’ina adopted SNN’s proposed condition as outlined above. 	<ul style="list-style-type: none"> • The Board notes that the Project development areas for the pipeline and preferred compressor station additions primarily occur on private lands within a populated region of Alberta and will not result in physical disturbance to provincial Crown lands. In circumstances where Board-regulated projects occur on larger areas of Crown land, the Board is of the view that the most appropriate way to minimize TLRU impacts and access to Crown lands is via specific

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		<p>mitigation measures and conditions that focus on these issues, as required.</p> <ul style="list-style-type: none"> • The Board is of the view that potential effects on the availability of traditional resources and impacts to traditional land and resource use are not predicted to be significant. • In the Board’s view, the proposed condition is not warranted for the Project.
<p>Proposed New Condition: <i>Tsuut’ina - Additional Condition 5 regarding Accommodation for Identified Impacts to Section 35 Rights</i></p>	<ul style="list-style-type: none"> • Tsuut’ina adopted SNN’s proposed condition as outlined above. • NGTL reiterated its comments as outlined in its response to SCN’s comments for Board Draft Conditions 5 (Integrity and Safety), 9 (Socio-Economic Matters – Heritage Resources) and 11 (Indigenous Monitoring), (above). 	<ul style="list-style-type: none"> • The Board is of the view that SNN’s concerns will be adequately addressed through Condition 10 (Consultation with Indigenous Communities Report), and the mitigation measures for potential impacts to TLU committed to by NGTL. • In the Board’ view, the proposed condition is not warranted. • For further details regarding the Board’s views, refer to Section 2.6 Indigenous Matters.