

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STATEMENT OF BASIS**

PERMITTEE: TC Energy (previously TransCanada, Inc.) -
Northern Border Pipeline Company

FACILITY NAME: Northern Border Gas Transmission Pipeline

PERMIT NUMBER: MT-0030791

RESPONSIBLE OFFICIAL: Jackson Lamb, Senior Environmental Specialist
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PERMIT TYPE: Minor, Permit Renewal, Industrial

FACILITY LOCATION: Fort Peck Reservation, Valley and Roosevelt
Counties, MT

Natural gas transmission pipeline which crosses
the Fort Peck Reservation from a northwest to
southeast direction.

1 INTRODUCTION

This statement of basis (SoB) is for the issuance of a National Pollutant Discharge Elimination System (NPDES) renewal permit (the Permit) to TC Energy (previously TransCanada, Inc.) - Northern Border Pipeline Company for the Northern Border Gas Transmission Pipeline (Facility). The Permit establishes discharge limitations for the discharge(s) from hydrostatic testing water only. The Permit coverage does not include the discharge of stormwater and/or trench groundwater dewatering from the Facility within the Fort Peck Reservation to receiving waters within the reservation. The SoB explains the nature of the discharges, EPA's decisions for limiting the pollutants in the wastewater, and the regulatory and technical basis for these decisions.

TC Energy - Northern Border Pipeline Company owns and operates an underground natural gas pipeline system that exists in Montana, North Dakota, South Dakota, Minnesota, Iowa, Illinois, and Indiana. In Montana, a section of pipeline (the Facility) crosses the Fort Peck Reservation of the Assiniboine and Sioux Tribes (Tribes). EPA Region 8 is the permitting authority for facilities located in Indian country, as defined in 18 U.S.C. § 1151, located within Region 8 states and implements federal environmental laws in Indian country consistent with the EPA Policy for the Administration of Environmental Programs on Indian Reservations and the federal government's general trust responsibility to federally recognized Indian tribes.

2 MAJOR CHANGES FROM PREVIOUS PERMIT

Major changes from the last permit, issued in 2013, include the following:

- Since pipeline repairs are done on an as needed basis, discharges to specific receiving water bodies cannot be determined in advance of hydrostatic testing activities. The previous permit required the Permittee to submit the following information, prior to each discharge:

A topographic map of the project area and a written description of the best management practices (BMPs) which will be used to mitigate the effects of the discharge(s). The topographic map and BMP description shall either show the locations of the proposed discharge(s) and proposed receiving water(s) or have the latitude and longitude designations of the proposed discharge(s) and proposed receiving water(s) in the BMP description so the site may be located on the map. The BMP Plan shall also address endangered and threatened species and historic properties as addressed below.

At the time of Permit reissuance, the Tribes had status as Treatment as a State (TAS) for CWA §§ 303(c) and 401, with federally approved water quality standards (WQS) for receiving waters within the Fort Peck Reservation. With the reissuance of the Permit, this requirement will be removed as limits have been updated based on the most protective WQS for major waterbodies along the pathway of the Facility (see Figures 1a thru 9 of the SoB), including both aquatic life and human health standards, to account for potential discharges at various locations along the Facility. These standards would be protective of the permitted parameters for the identified beneficial use designations for these major waterbodies (i.e., agriculture, cultural, primary and secondary contact

recreation, Class 1 and Class 2 Cool Water Aquatic Life, Class 1 and Class 2 Warm Water Aquatic Life). See Section 3.1 of the SoB for an analysis of potential receiving waters.

Though the submission requirement has been removed, the Permit will still include a requirement that the Permittee maintain records of similar information for each discharge, as outlined in Section 10.1 of the SoB and Sections 6.2 and 7.9 of the Permit.

- The previous permit established Technology Based Effluent Limits (TBELs) for Total Settleable Solids based on the Effluent Guideline (ELG) for coal mine point source discharge (40 CFR 434) for source discharges. This ELG lists an effluent limitation of 0.5 milliliters per liter (ml/L) of settleable solids for discharges resulting from a 24-hour precipitation event which is less than or equal to the 10-year, 24-hour storm for the discharge area. EPA has reevaluated the applicability of this ELG and determined that the discharges from the Facility do not appear to meet the applicability criteria for this ELG. Based on 40 CFR §434.10, this ELG applies to discharges from any coal mine at which the extraction of coal is taking place or is planned to be undertaken and to coal preparation plants and associated areas. Since discharges associated with the Facility are not related to coal mining activities (i.e., will primarily consist of water from surface waterbodies and/or potable municipal sources used for the hydrostatic test water) the Total Settleable Solids limit has been removed from the renewal permit.

See Section 6.5 of the SoB for additional information regarding removal and antibacksliding requirements.

- Removal of “uncontaminated groundwater” provision. The previous permit contained a provision for the allowance of uncontaminated groundwater as source water for hydrostatic testing, as follows:

Only uncontaminated ground water will be allowed. Ground water affected with any man caused substance, such as landfill leachate, industrial pollutant plume, mining activity, oil or gas production activities, underground storage tank or other such pollutants shall not be used as a source of hydrostatic testing water.

The permit application and the Permittee have indicated that only surface and/or potable water will be used as source water for hydrostatic testing. Therefore, the use of groundwater as source water for hydrostatic testing will not be allowed by this Permit. The Permittee must notify EPA in advance of any operational changes that would include the use of groundwater as source water for hydrostatic testing (see Planned Changes, Section 9.1 of the Permit), as this could result in updates to Permit requirements.

- Removal of total dissolved solids (TDS) limitations in the Permit. Based on additional updated information provided by the Permittee, there will be no mixing or co-mingling of discharges from hydrostatic testing with stormwater/trench groundwater dewatering prior to discharge to receiving waters. The previous TDS limitations were based upon

groundwater data, which is more likely to be associated with discharges such as groundwater, and/or stormwater/trench groundwater dewatering. With the renewal of the Permit, based upon the updated information provided by the Permittee, the TDS limitation will be removed. Along with the removal of the uncontaminated groundwater allowance (previous paragraph, above), the Permit will be updated to include a provision that does not allow for the mixing or co-mingling of hydrostatic testing water with stormwater and/or trench groundwater dewatering prior to discharge to receiving waters.

The Permittee must notify EPA in advance of any operational changes that would include the mixing or co-mingling of stormwater/trench groundwater dewatering with hydrostatic testing water discharges prior to discharge to receiving waters (see Planned Changes, Section 9.1 of the Permit), as this could result in updates to Permit requirements.

See Section 6.5 of the SoB for additional information regarding removal and antibacksliding requirements.

- Total suspended solids (TSS) technology-based, water quality-based and C.F.R. regulatory-based (i.e., in alignment with 40 C.F.R. 122.45(g)) effluent limits have been incorporated into the Permit for hydrostatic testing dependent on source water type associated with hydrostatic test water discharges (see Section 6.1 Technology Based Effluent Limitations of the SoB for additional details).
- A total residual chlorine (TRC) limitation has been added when potable water is used as source water for hydrostatic testing. Chlorinated water may come from a rural or municipal potable water supply. The TRC limit is based on the Tribes' WQS for aquatic life which includes a TRC standard of 0.011 mg/L (chronic) and 0.019 mg/L (acute).
- The Permit will maintain the previous provision of visual inspection for oil and grease. However, since the discharge will be continuous when flowing but oil and grease may not be constantly present, the frequency of the visual inspections has been increased from weekly to daily on days when a discharge is occurring.
- The Tribal and state of Montana (should discharges occur near the reservation boundary with potential to impact state waters) WQS include standards for polychlorinated biphenyls (PCBs) and benzene. Since both are parameters that may be associated with natural gas transportations pipelines, monitoring has been included in the Permit to determine whether reasonable potential may exist for limitations to be set in future permitting actions.

3 BACKGROUND INFORMATION

The Facility consists of TC Energy - Northern Border Pipeline Company's natural gas transmission pipeline which crosses the Fort Peck Indian Reservation from a northwest to

southeast direction. Based on information from the previous permit, the pipeline route enters the reservation at the northwest corner approximately at 48° 36' 24" west longitude.

Based on the information provided in the permit application and by the Permittee, the Facility is used to transport only natural gas and does not include any current or previous liquid oil/gas (e.g., petroleum) operations, transportation or uses. Operation and maintenance activities along the Facility are typically short-term construction projects that require one to two weeks to complete. The activities generally require excavation of a pipe trench to visually inspect the pipe and perform possible repairs. Often the trench needs to be dewatered due to saturated soil conditions, groundwater infiltration or surface runoff from rainfall or snowmelt. If trench dewatering becomes necessary, the water is typically discharged at a rate of 200 to 600 gallons per minute continuously or intermittently throughout a workday. Specific discharge rates and volume will be dependent on site conditions. However, based on information provided in discussions with the Permittee on 5/18/2022, stormwater/trench groundwater dewatering will be treated separately from hydrostatic testing water, and there will be no mixing or co-mingling of these water types prior to discharge.

As provided by the Permittee in the application, where projects may disturb one acre of land or greater, TC Energy - Northern Border Pipeline Company will submit notification to the U.S. EPA and the Tribes for the discharge of stormwater associated construction activities and develop a Stormwater Pollution Prevention Plan (SWPPP) for implementation during the construction and restoration activities.

This Permit reissuance only establishes discharge limitations for the discharge(s) of hydrostatic testing water. Because there is no mixing or co-mingling of hydrostatic testing water with stormwater and/or trench groundwater dewatering, effluent limits for discharges containing only stormwater and/or trench groundwater dewatering (i.e., discharges that do not contain hydrostatic testing water) are not contained within this Permit. This Permit reissuance does not allow for the mixing or co-mingling of hydrostatic testing water with stormwater and/or trench groundwater dewatering prior to discharge to receiving waters.

3.1 FACILITY PROCESS DESCRIPTION

This Permit authorizes hydrostatic test water discharges from hydrostatic testing of new/existing pipes used by the Facility to transport natural gas. This includes discharges of hydrostatic test water only.

Note - This Permit does not authorize discharges from hydrostatic testing operations for pipeline equipment associated with liquid oil/gas (e.g., petroleum) operations, transportation or uses. Should the permitted facility pipeline operation change to include liquid oil/gas (e.g., petroleum) operations, transportation or uses, the Permittee must notify EPA in advance (see Planned Changes, Section 9.1 of the Permit).

Based on the permit application, discharge of hydrostatic test water would be conducted, as necessary, to evaluate pipeline integrity consistent with U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's safety requirements. Hydrostatic testing is done to ensure maintenance and repair to damaged pipeline is complete and to meet

the requirements of regulatory agencies. Associated trench dewatering is done to clear excavations of water allowing worker access to conduct pipeline repairs. Water in trench dewatering discharges would most likely originate from groundwater infiltration to the trench excavation, surface run-off which has entered the excavation, or directly from precipitation.

According to the permit application, hydrostatic test discharge would typically consist of a single continuous event for each tested pipeline segment at a rate less than 1,000 gallons per minute. The duration of discharge is relative to the length and diameter of the tested pipe sections, but generally does not exceed 24 hours. Additionally, the application indicated when hydrostatic testing for the Facility appropriates hydrostatic test water from nearby surface waterbodies, collection is performed in accordance with applicable regulations and in a manner that prevents sediment uptake and disturbance to the bed of the waterbody. In follow-up discussions with the Permittee, it was indicated that source water would consist of surface water (e.g., river, stream, lake, etc.) and/or potable water (i.e., municipal water). Hydrostatic testing is generally performed by sealing the piping to be tested and providing a water fill location. After the piping is full, pressure is applied and held for several hours. Following the test, the pressure is released and the piping is drained by gravity, pump or air pressure.

Based on the application and discussions with the Permittee, no additives or maintenance/treatment chemical are added to source water as part of the test. Additionally, stormwater/trench groundwater dewatering will be treated separately from hydrostatic testing water, and there will be no mixing or co-mingling of these water types prior to discharge. After testing is complete, the Permittee has indicated that test water would discharge back to its original source (for surface water) or to nearby surface waters (for potable water), either directly, or by overland flow. An energy dissipation device (e.g., splash pup, straw bales) would be used to prevent scouring or sediment runoff to the waterbody or any nearby wetland areas. Project personnel would also be trained in soil erosion and sedimentation control and would be equipped to monitor hydrostatic test water discharges in accordance with Permit requirements.

TC Energy - Northern Border Pipeline Company implements standard Best Management Practices (BMPs) throughout the duration of discharge and discharge activities with the intent to avoid nuisance conditions; prevent erosion and sediment runoff to receiving Waters of the U.S. or on downslope properties; and prevent inundation of wetlands. See Section 3.2 of the SoB for additional details regarding BMP practices.

The following topographic maps, provided in the application and obtained through the EPA's Permit/Enforcement/Inspection (PEI) Screener mapping tool which contains U.S. Geological Survey (USGS) National Map data, show the National Wetland Inventory wetlands and surface waterbodies crossed within the Fort Peck Indian Reservation.

Figure 1a. Overview: Northern Border Pipeline Path Across Fort Peck Indian Reservation

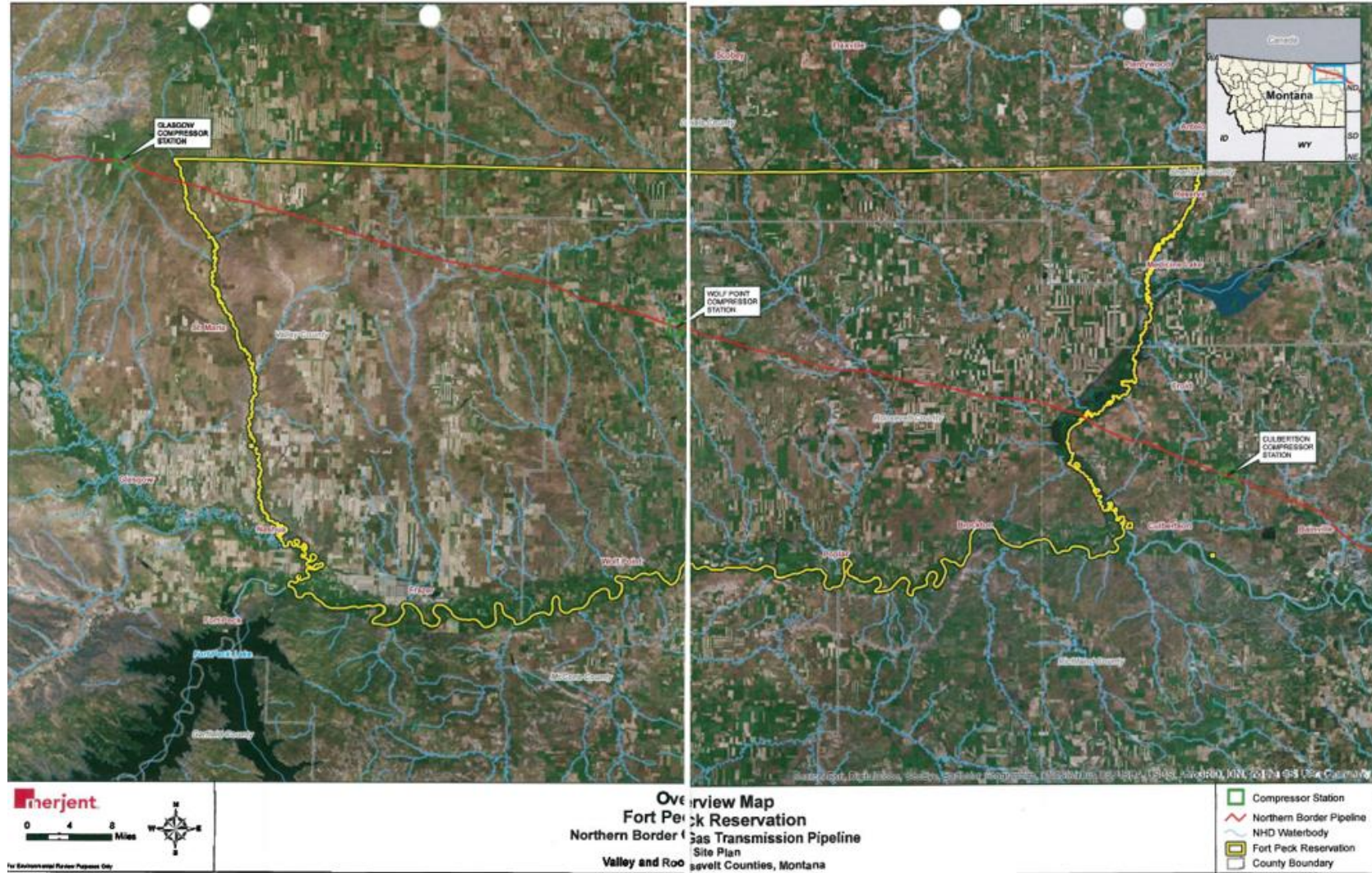


Figure 2b. Overview: Northern Border Pipeline Path Across Fort Peck Indian Reservation (Major Waters)

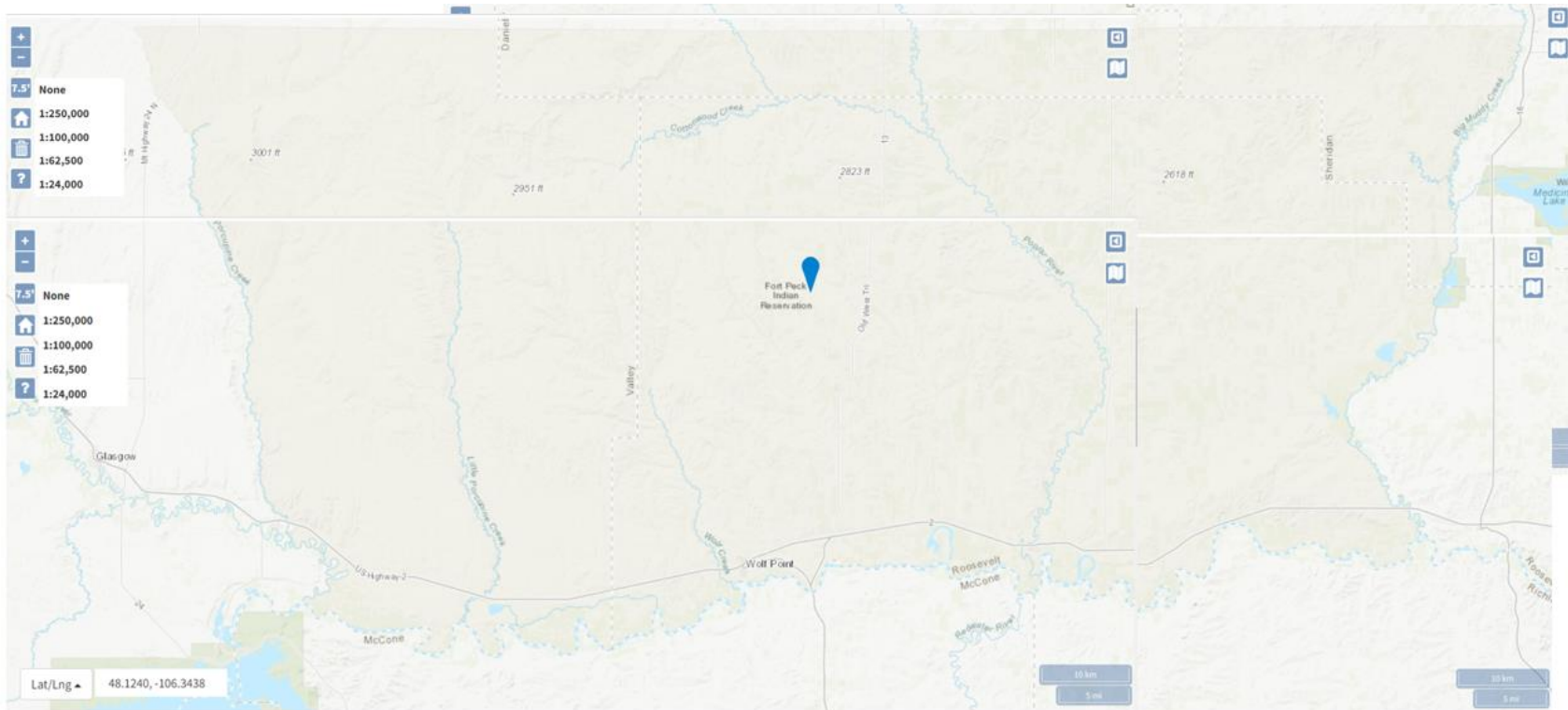
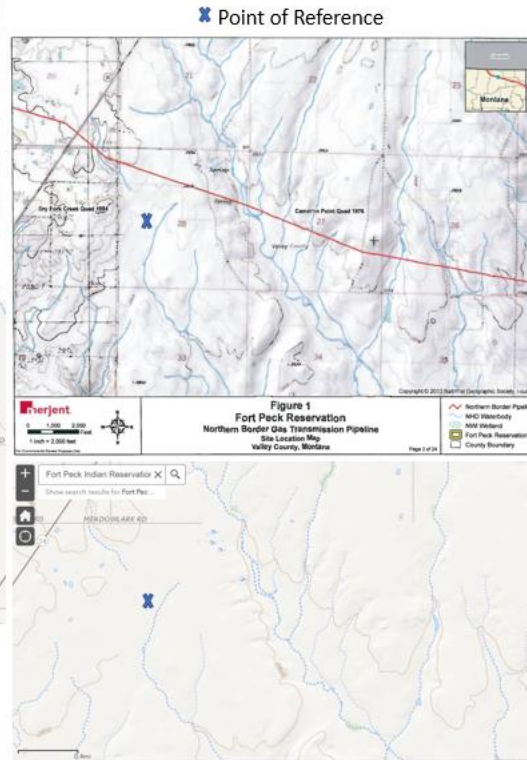


Figure 2. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:
West Fork Porcupine Creek, Middle Fork
Porcupine Creek,
(approx. 1 mile or less: Snow Coulee)

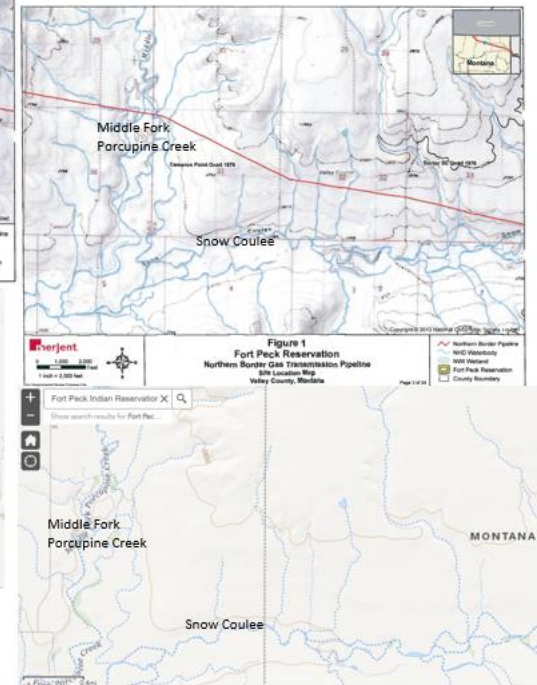
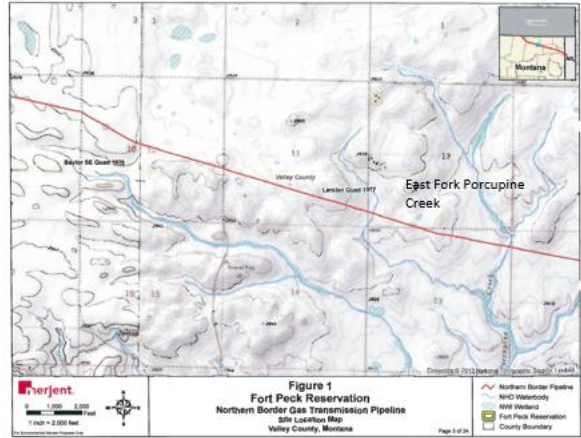
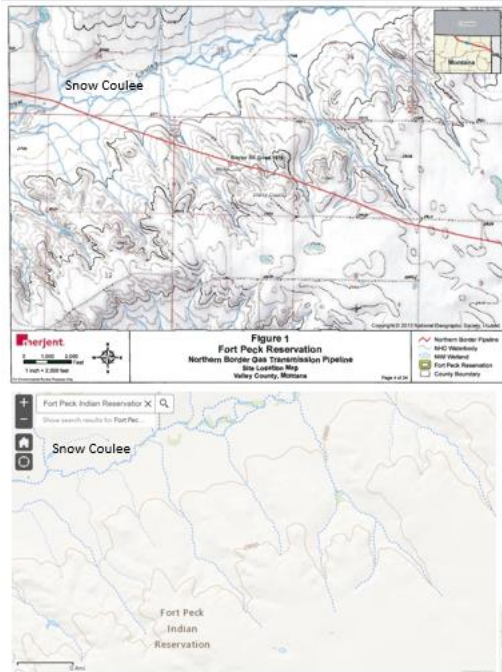


Figure 3. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:
West Fork Little Porcupine Creek, East Fork Porcupine Creek, Snow Coulee

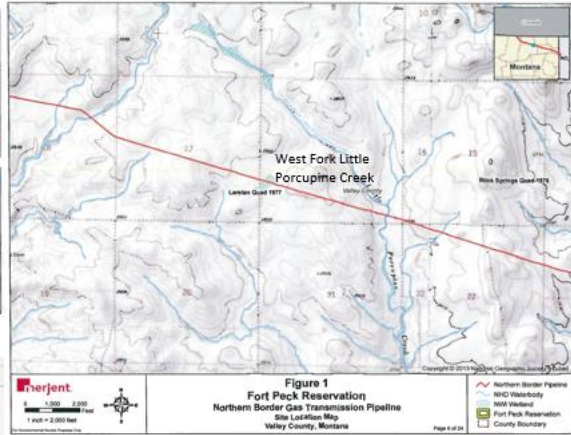
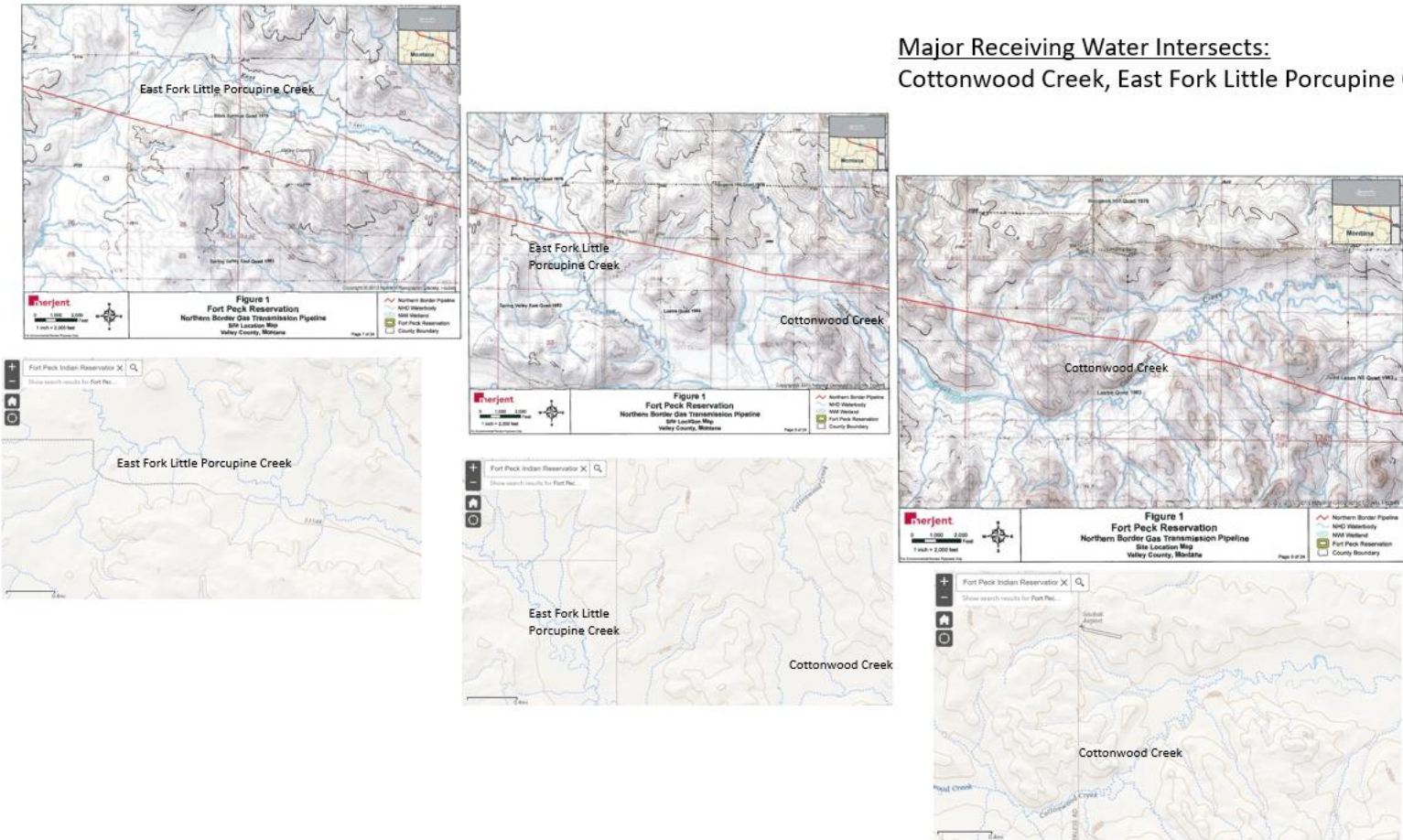
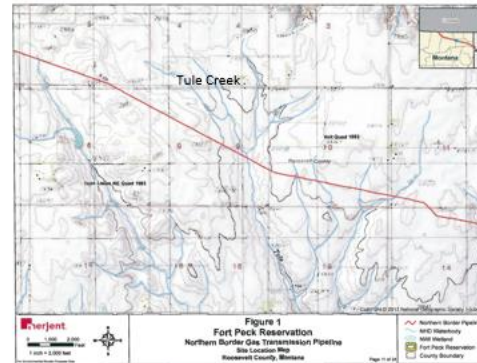
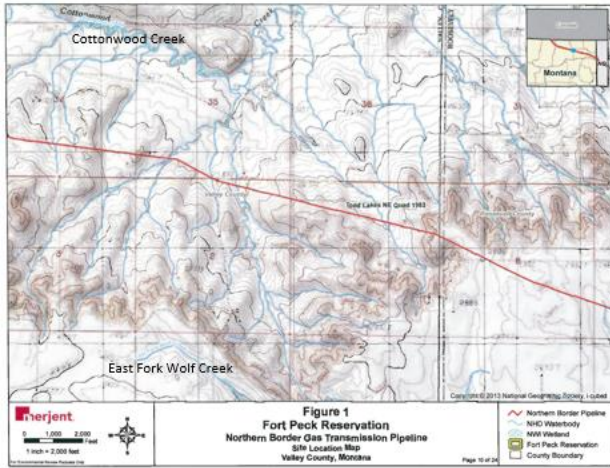


Figure 4. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:
Cottonwood Creek, East Fork Little Porcupine Creek

Figure 5. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:

Tule Creek,

(approx. 1 mile or less: Cottonwood Creek, East Fork Wolf Creek)

✕ Point of Reference

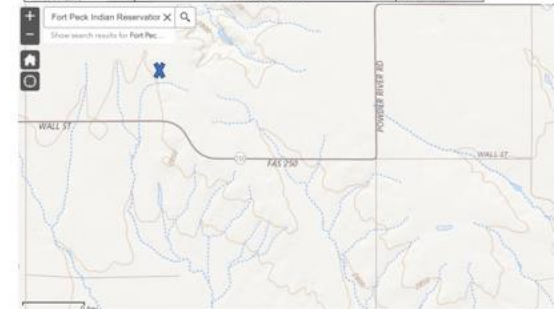
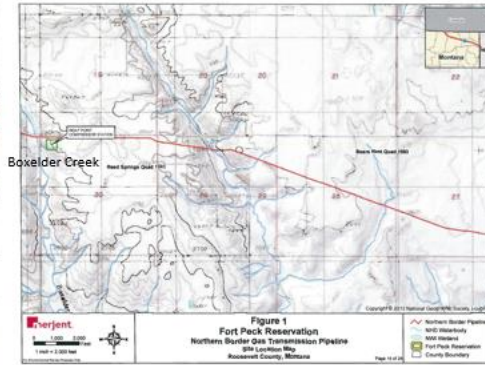
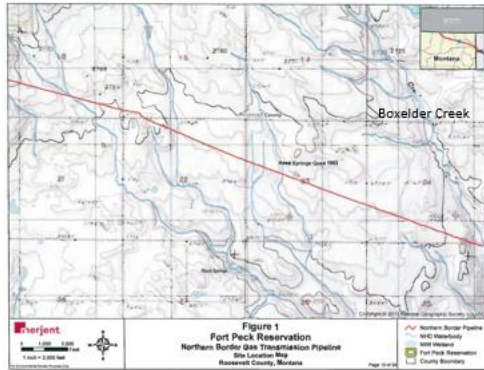


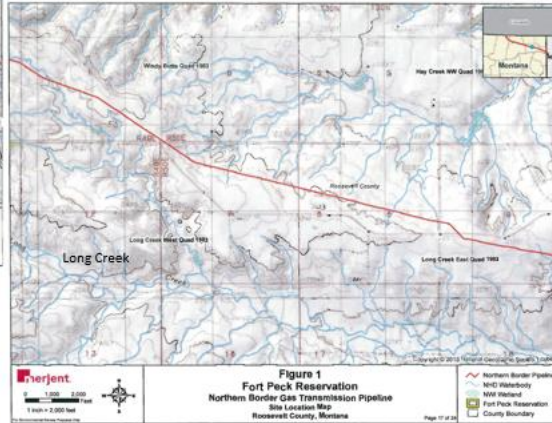
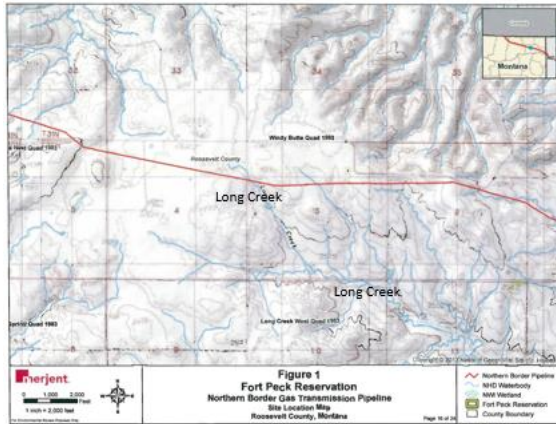
Figure 6. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:
Boxelder Creek,
(approx. 1 mile or less: Assiniboine Creek)



Figure 7. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:
Long Creek

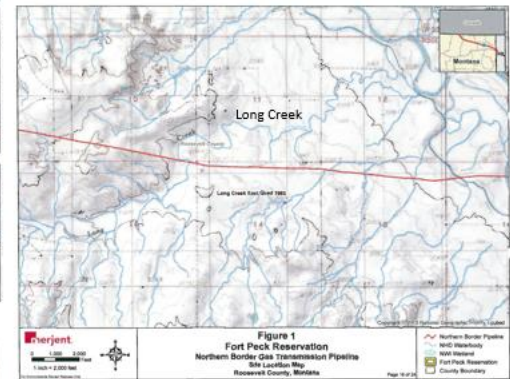
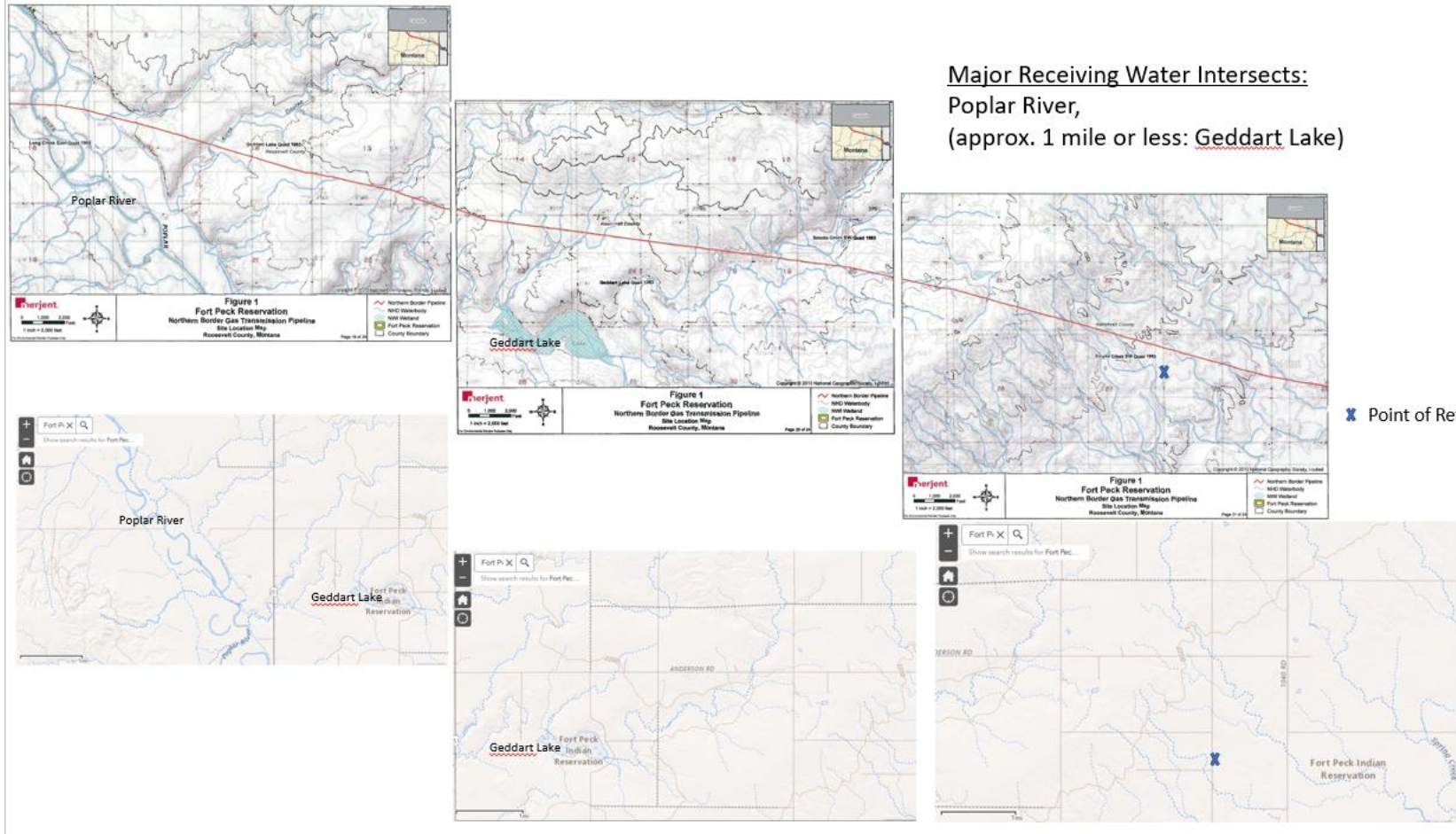


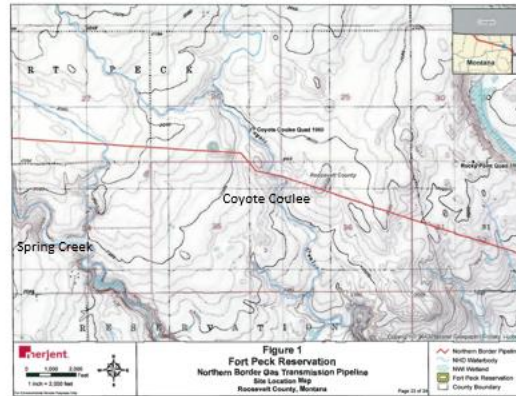
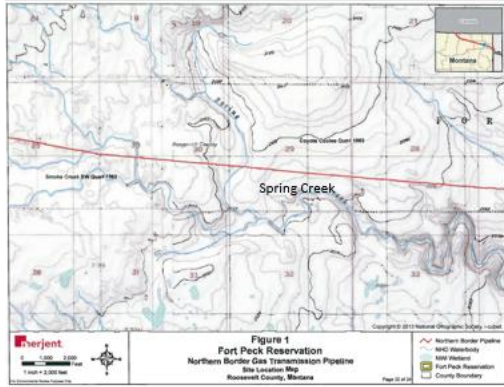
Figure 8. Northern Border Pipeline Path Across Fort Peck Indian Reservation



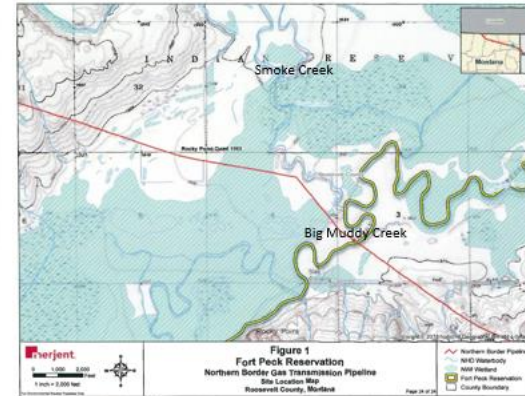
Major Receiving Water Intersects:
Poplar River,
(approx. 1 mile or less: Geddart Lake)

X Point of Reference

Figure 9. Northern Border Pipeline Path Across Fort Peck Indian Reservation



Major Receiving Water Intersects:
Spring Creek, Coyote Coulee, Big Muddy Creek, Smoke Creek



3.2 Treatment Process

Based on the application and discussions with the Permittee, no additives to the source water are used as part of Facility hydrostatic testing. Additionally, stormwater/trench groundwater dewatering will be treated separately from hydrostatic testing water, and there will be no mixing or co-mingling of these water types prior to discharge. As indicated previously, BMPs for discharge activities are implemented to avoid nuisance conditions; prevent erosion and sediment runoff and prevent inundation of wetlands. The application also indicates that all hydrostatic testing water discharges are generally directed to well-vegetated upland areas using filtration/energy dissipation devices (e.g., geotextile filter bags, straw bales, splash pup, etc.) in order to remove solids/sediments from discharges and prevent erosion.

3.3 Chemicals Used

Based on discussions with the Permittee, no chemicals (e.g., chlorine, etc.) or additives to the source water would be used as part of Facility hydrostatic testing and only potable and/or nearby surface waters (e.g., lakes, rivers) would be used. This Permit does not cover the pipe or tank cleaning process or disposal of wastes from the cleaning process. Therefore, this Permit prohibits discharges where cleaning, additive or other chemical products have been added by the Permittee (e.g., treatment chemicals, chemicals/additives to maintain and clean pipe or associated pipeline components, etc.) that could come in contact with hydrostatic testing water. Discharges of pre-cleaning wastewater and discharges of hydrostatic test water to which the Permittee has added corrosion inhibitors, antifreeze compounds, biocides, or other treatment chemicals/additives are prohibited under the Permit.

4 PERMIT HISTORY

According to EPA records maintained for the Facility, this renewal is at least the 3rd issuance of an NPDES permit for this Facility. The previous permit for the Facility became effective October 1, 2013.

4.1 Discharge Monitoring Report (DMR) Data

DMR data submitted from 10/1/2013 up until the drafting of the renewal Permit indicated “no discharge” from this Facility.

4.2 Other Facility History

No EPA Region 8 site inspections were conducted over the previous permit term.

5 DESCRIPTION OF RECEIVING WATER

Based off of EPA’s PEI Screener mapping tool, which contains USGS National Map data, EPA has identified the following large/major receiving waters that are crossed by or within approximately 1 mile of the path of the pipeline: Big Porcupine Creek (West Fork, Middle Fork, and East Fork), Snow Coulee, Cottonwood Creek, Little Porcupine Creek (East Fork), Wolf Creek (East Fork), Tule Creek, Boxelder Creek, Assiniboine Creek, Long Creek, Poplar

River, Geddart Lake, Spring Creek, Coyote Coulee, Smoke Creek, and Big Muddy Creek. See Figures 1a through 9 in Section 3.1 of the SoB showing the path of the Facility pipeline. The designated uses identified in the Tribes' WQS are as follows:

Receiving Water	Designated Use(s)
Big Porcupine Creek	Primary contact Recreation, class 1 warm water aquatic life, agriculture, cultural
Little Porcupine Creek	Secondary contact recreation, class 1 warm water aquatic life, agriculture, cultural
Wolf Creek	Primary contact rec, class 1 cool water aquatic life, agriculture, cultural
Tule Creek	Secondary contact rec, class 2 cool water aquatic life, agriculture, cultural
Long Creek	Primary contact rec, class 1 cool water aquatic life, agriculture, cultural
Poplar River	Primary contact rec, class 1 cool water aquatic life, agriculture, cultural
Smoke Creek	Primary contact rec, class 2 warm water aquatic life, agriculture, cultural
Big Muddy Creek	Primary contact rec, class 2 warm water aquatic life, agriculture, cultural

Therefore, the beneficial use designations applied generally to these water bodies include agriculture, cultural, primary and secondary contact recreation, Class 1 and Class 2 Cool Water Aquatic Life, Class 1 and Class 2 Warm Water Aquatic Life.

Because specific receiving water bodies cannot be determined in advance of pipeline repairs (i.e., performed on an as needed basis), protections in the Permit have been set using the most stringent of these standards to be protective of discharge to any of these receiving water types.

6 PERMIT LIMITATIONS

6.1 Technology Based Effluent Limitations

Dirt and solids may find their way into the discharge from the transmission pipelines during hydrostatic testing maintenance activities. Therefore, discharge from hydrostatic testing of the pipeline has the reasonable potential for increased levels of suspended solids in the discharge.

Total suspended solids (TSS) technology-based, water quality-based, and C.F.R. regulatory-based effluent limits (i.e., in alignment with 40 C.F.R. 122.45(g)) have been incorporated into the Permit for hydrostatic testing based on source water associated with hydrostatic test water discharge. Based on discussions with the Permittee, source water for hydrostatic testing will utilize potable municipal water and/or water from existing surface waterbodies (e.g., rivers, lakes). TSS will be limited in the Permit as follows:

TSS Limits Based on Source Water Type:

Hydrostatic Test Source Water:	Permit limit and basis of limitation:
a/ Potable water only	45 mg/L (7-day average); 30 mg/L (30-day average) Secondary Treatment Standards (40 C.F.R. 133)

b/ Surface water only	Pollutants in intake may be considered in accordance with 40 C.F.R. 122.45(g). TSS may not exceed source water TSS and the limit is 0% increase in TSS. Additionally, the following conditions apply: <ul style="list-style-type: none"> - A source water sample for TSS will be required at the time of the source water collection for the hydrostatic testing. The TSS level of the discharge shall not, at any time, exceed the TSS level of the source water. - The source water must be taken from only one surface water source waterbody and the return discharge must go back into the same source surface waterbody.
c/ Any mix of potable water with surface water or multiple surface waters as source water	80 mg/L Daily Max Tribal Narrative WQS <i>(Note: This is not a TBEL but is listed here to demonstrate the three scenarios in which TSS limits apply. See Section 6.2.4 of the SoB for additional details on this water quality- based effluent limit).</i>

a/ Limitation for potable source water ONLY:

The National Secondary Treatment Standards establish total suspended solids (TSS) standards of 30 mg/L (30-day average) and 45 mg/L (7-day average) for wastewater treatment facilities (e.g., publicly owned treatment works or POTW). The TSS limit is based on the secondary treatment standards and will be applied when only potable municipal water is used as source water. The secondary treatment standard for TSS is commonly used in POTW permits and equivalent limits have been included in the state of Montana’s NPDES general permit for similar hydrostatic testing discharges.

Secondary Treatment Standard for TSS

Parameter	30-day average (mg/L)	7-Day Average (mg/L)
TSS	30	45

Due to the level of treatment of potable water, potable water is expected to be of higher quality (i.e., drinking) than that of wastewater discharges from a POTW (i.e., which are expected to meet secondary treatment standards). Therefore, it is reasonable to assume that the source potable water should meet secondary treatment standards and that Facility discharges of potable water would also meet these standards since the Permittee has indicated that no treatment, chemicals or additives will be added to the potable water during hydrostatic testing. The Permittee has also indicated that filtration/energy dissipation devices (e.g., geotextile filter bags, straw bales, splash pup, etc.) will be used to remove solids/sediments from discharges.

Therefore, based on permit writer discretion, these TSS Permit limits for any discharges from hydrostatic testing using potable municipal water as source water have been established for protection of the beneficial uses of the potential receiving waters. With the water quality considerations above and proper use of these solid/sediment removal devices prior to discharge, the TSS is expected to be at a concentration that can meet these standards if no treatment, chemicals or additives are added to the potable water during hydrostatic testing.

b/ Limitation for surface source water ONLY:

Upon request of the Permittee, technology-based effluent limitations have been adjusted to reflect credit for pollutants in the Permittee's intake water. Pollutants in intake water may be considered in accordance with 40 C.F.R. 122.45(g), provided the following conditions are met:

- If source water is taken from one existing surface waterbody for hydrostatic testing, a source water sample for TSS will be required at the time of the source water collection for the hydrostatic testing.
- Since the Permittee has indicated that no treatment, chemicals or other chemicals/additives will be added during hydrostatic testing, the Facility discharge may not exceed the TSS level for the surface source water that was measured at the time of source water collection.
- The source water must be taken from only one surface water source waterbody and the return discharge must be returned back into the original source surface waterbody for this limit to apply.

This limitation is being implemented in accordance with 40 C.F.R. 122.45(g) and is justified as follows:

40 C.F.R. 122.45(g) Requirement for Pollutants in Intake Water:	Justification of Permit Limit with Regulatory Requirement:
<p><i>(1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if: (i) The applicable effluent limitations and standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or (ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.</i></p>	<p>Since the Permittee has indicated that no treatment chemicals or other chemicals/additives will be added during hydrostatic testing, no increase in TSS pollutant content to the source water is anticipated prior to discharge. Therefore, TSS levels in Facility discharges should not increase from those of the surface source water that were measured at the time of source water collection. Therefore, discharges should meet the Permit limitation in the absence of pollutants in the intake waters.</p>
<p><i>(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.</i></p>	<p>As indicated above, the Permittee has indicated that no treatment chemicals or other chemicals/additives will be added during hydrostatic testing, and no increase in TSS pollutant content to the source water is anticipated prior to discharge. Therefore, TSS levels in Facility discharges should be substantially similar to the constituents of the TSS in the intake (source) surface water.</p>

<p><i>(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.</i></p>	<p>Since the Permittee has indicated that no treatment chemicals or other chemicals/additives will be added during hydrostatic testing, the Permit limit has been set such that Facility discharge may not exceed the TSS level for the surface source water that were measured at the time of source water collection (i.e., 0% increase in TSS from the influent value).</p>
<p><i>(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.</i></p>	<p>For these source surface water discharges from hydrostatic testing, the return discharge must be from one surface water source waterbody and returned back into the original source surface waterbody for this limit to apply.</p>
<p><i>(5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.</i></p>	<p>The permitted Facility discharges will only be related to hydrostatic testing waters and will not include discharge of raw water clarifier sludge generated from the treatment of intake water.</p>

c/ Limitation for source water that is a mix of potable and surface water, or multiple surface waters:

See Section 6.2.4 of the SoB.

6.2 Water Quality Based Effluent Limitations (WQBELs)

Should the Facility perform hydrostatic testing within the Fort Peck Reservation, discharges may occur to receiving waters within the reservation. At the time of Permit reissuance, the Tribes had status as Treatment as a State (TAS) for CWA §§ 303(c) and 401, with federally approved water quality standards for receiving waters within the Fort Peck Reservation. Additionally, because the Facility extends up to the Fort Peck Reservation boundaries, there is the potential that discharges could impact state of Montana waters. Therefore, based on the potential to discharge to Tribal receiving waters and on the potential proximity of the discharge to the state of Montana waters, EPA has reviewed both Tribal and Montana WQS, as well as state of Montana permits for similar discharges, for consideration in the development of WQBELs for the Facility’s renewal Permit and to meet the requirements of 40 CFR 122.44(d). EPA has not approved the state of Montana to administer any Clean Water Act (CWA) programs on the Fort Peck Reservation. Consideration of downstream state of Montana WQS for purposes of protection of the downstream waters does not grant or infer any rights to the State.

Tribes’ Water Quality Standards:

The most recent revision to the Tribes’ WQS was approved by EPA and effective on June 4, 2018. “Waters of the Tribes” as defined in the Tribes’ WQS refer to:

- 1) *all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tribe;*
- 2) *all interstate waters, including interstate wetlands;*
- 3) *all other waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use or degradation of which would affect or could affect interstate or foreign commerce, including any such waters:*
 - i. *which are or could be used by interstate or foreign travelers for recreational or other purposes;*
 - ii. *from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
 - iii. *which are or could be used for industrial purposes by industries in interstate commerce.*
- 4) *all impoundments of water otherwise defined as waters of the Tribes under this definition;*
- 5) *tributaries of waters in paragraphs (1) through (4) of this definition;*
- 6) *the territorial sea; and*
- 7) *wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. Wetlands are defined as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria for this definition are not waters of the Tribes.

In addition, the antidegradation policy in the Tribes' WQS indicates that the existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

6.2.1 Total Residual Chlorine (TRC)

Chlorinated water may come from a municipal potable water supply (i.e., if chlorination is used in the treatment process) when potable municipal water is used as source water. The Tribes WQS includes an aquatic life TRC standard of 0.011 mg/L (chronic) and 0.019 mg/L (acute). The use of potable water for hydrostatic testing indicates that there may be reasonable potential for TRC levels in the effluent to cause or contribute to an excursion above the WQS. Therefore, a TRC limitation will apply when potable water is used as source water for hydrostatic testing.

6.2.2 pH

The use of water for flushing and hydrostatic testing could be contaminated with any substance found within the pipelines. Therefore, there is a reasonable potential for pH levels in the effluent to cause or contribute to an excursion above the WQS. In order to ensure adequate protection of beneficial uses of the receiving water, a maximum pH limit of 9.0 and a minimum limit of 6.5 S.U. have been established in alignment with the Tribes' WQS chronic aquatic life

standard. This limit was also included in the previous permit and will be maintained for the renewal Permit for any Facility discharges of hydrostatic testing water.

6.2.3 Oil and Grease

Implementation of Narrative Criteria:

Standards for oil and grease as potential pollutants from hydrostatic testing are addressed in the Section V. Narrative Water Quality Criteria of the Tribes' WQS. This section of the Tribes' WQS requires surface waters to be "free from" substances that:

- a) settle to form objectionable deposits,
- b) float as debris, scum, oil, or other matter forming nuisances,
- c) produce objectionable color, odor, taste, or turbidity,
- d) cause injury to, or are toxic to, or produce adverse physiological responses in humans, animals, or plants; or
- e) produce undesirable or nuisance aquatic life.

Based on the nature of the Facility's operations, there is a potential that piping could be coated with residual oils and other oil and grease components. During the flushing and hydrostatic testing, there is reasonable potential for oil and grease levels in the effluent to cause or contribute to an excursion above the Tribes' narrative WQS if these residual oils and/or other oil and grease components are transferred to receiving waters in the discharge. Therefore, the Permit will maintain the previous provision of visual inspection for oil and grease that must be performed during discharge. If a visible sheen or floating oil is detected in the discharge, a grab sample shall be taken immediately, analyzed and recorded in accordance with the requirements of 40 CFR Part 136. The concentration of oil and grease shall not exceed 10 mg/L in any sample.

6.2.4 Total Suspended Solids

Section V. Narrative Water Quality Criteria, of the Tribes' WQS, are used to address standards for hydrostatic testing water when the source water for hydrostatic testing is mixed (i.e., potable combined with surface water, or multiple surface waters).

This section of the Tribes' WQS requires surface waters to be "free from" substances that:

- a) settle to form objectionable deposits,
- b) float as debris, scum, oil, or other matter forming nuisances,
- c) produce objectionable color, odor, taste, or turbidity,
- d) cause injury to, or are toxic to, or produce adverse physiological responses in humans, animals, or plants; or
- e) produce undesirable or nuisance aquatic life.

Due to the lack of an applicable numeric tribal WQS for TSS and limited TSS data for potentially impacted surface waters on the Fort Peck Reservation (i.e., a search of nearby USGS field location data only yielded one TSS result, 15 mg/L, from field station ID 06180400

West Fork Poplar River near Bredette MT from 3/13/1984), the following EPA data review was used to help determine an applicable TSS limit for these types of discharges.

Section VI of the EPA sponsored Suspended and Dissolved Solids Effects on Freshwater Biota A Review¹ indicates that when establishing criteria concerning suspended solids it must be kept in mind that the concentration of suspended solids in natural waters is influenced by many variables, and most flowing waters have considerable variation in the suspended solids concentration from day-to-day. Since natural variation in suspended solids is so great, it is suggested that the effects upon aquatic organisms living in the system be used to determine the suspended solids standard. The review, Suspended and Dissolved Solids Effects on Freshwater Biota A Review¹, also indicated that, on recommending water quality criteria for the protection of aquatic communities, the Committee on Water Quality Criteria (CWQC, 1973) relied strongly on a European Inland Fisheries Advisory Commission (EIFAC, 1965) study (promulgating protective standards on salmonid and other fish types). The Committee on Water Quality Criteria indicated that the maximum concentration of suspended solids to provide a moderate protection level was 80 mg/L.

Therefore, for the above listed types of Facility discharges from hydrostatic testing with mixed source water, a TSS limit of 80 mg/L is being implemented to protect the narrative standard for protection of aquatic life.

6.2.5 Benzene and PCBs:

The Tribal and state of Montana WQS include standards for polychlorinated biphenyls (PCBs) and benzene.

- Benzene: Benzene is among the hydrocarbons typically found in water contaminated by liquid or gaseous petroleum hydrocarbons. Therefore, hydrocarbon condensates left by the natural gas may be the source of benzene in hydrostatic test water discharges from existing natural gas pipelines.
- PCBs: Natural gas transportation pipelines have historically used compressor lubricants containing PCBs, therefore there is a potential for PCB contamination in hydrostatic test water.

Since both parameters are potentially associated with natural gas transportation pipelines, monitoring has been included in the Permit to determine whether reasonable potential may exist for limitations to be set in future permitting actions.

6.2.6 Flow:

The previously permitted requirement for monitoring discharge flow will be maintained since the length and volume of discharge will vary with each discharge event. This will allow EPA to maintain data on overall discharge volumes from the Facility and provide information to evaluate whether any discharges may have the potential to cause severe erosion at any discharge location(s) that would require additional limitations and/or conditions in future permitting actions.

¹ Environmental Protection Agency, Office of Research and Development. Suspended and Dissolved Solids Effects on Freshwater Biota A Review, by Darwin L. Sorensen, Margaret M. McCarthy, E. Joe Middlebrooks, and Donald B. Porcella. EPA-600/3-77-042, Utah State University Foundation and the Utah Water Research Laboratory, April 1977

6.2.7 Total Maximum Daily Load

On June 21, 2000 and September 21, 2000, U.S. District Judge Donald W. Molloy issued orders stating that until all necessary total maximum daily loads (TMDLs) under Section 303(d) of the Clean Water Act are established for a particular water quality limited segment, the EPA is prohibited from issuing new permits or from increasing already permitted discharges under the NPDES program. (The orders were issued pursuant to the lawsuit Friends of the Wild Swan, et al., v. U.S. EPA, CV 97-35-DWM, District of Montana, Missoula Division.)

The Fort Peck Tribes have not listed water bodies as impaired and has not developed a 303(d) list to require TMDLs. When EPA approved the state of Montana’s 1996 list of impaired streams and lakes which included water bodies within tribal reservation boundaries, EPA specifically stated that the approval did not extend to waters in Indian country. Additionally, based on the mapping of the path of the Facility (see Section 3.1), there did not appear to be any state of Montana listed impaired streams and lakes that could immediately be impacted should a Facility discharge occur at a location where the Facility path meets the Fort Peck Reservation boundaries (i.e., discharge from Facility points along reservation boundaries are not anticipated to immediately flow into state of Montana listed impaired streams and lakes outside of reservation boundaries). If a future waste load allocation is set for any parameter which could apply to the Facility, the Permit contains a provision that would allow the Permit to be reopened and modified.

6.3 Final Effluent Limitations

Applicable TBELs and WQBELs were compared, and the most stringent of the two was selected for the following effluent limits (Tables 2 and 3). Since hydrostatic testing locations are not permanent, “Outfall 001” has been generally designated to cover any Facility effluent discharge location.

Table 2. Final Effluent Limitations for Outfall 001 (See Table 3 for TSS Limitations)

Effluent Characteristic	30-Day Average Effluent Limitations a/	7-Day Average Effluent Limitations a/	Daily Maximum Effluent Limitations a/	Limit Basis b/
Oil and Grease, mg/L c/	N/A	N/A	10	WQBEL/narrative
Oil and grease, visual observation, c/	A visual inspection must be performed daily.			WQBEL/narrative
Total Residual Chlorine, mg/L d/	0.011	N/A	0.019	WQBEL/aquatic life
pH	Must remain in the range of 6.5 to 9.0 standard units at all times			WQBEL/aquatic life
Flow/Total Volume Discharged, mgd e/	Report only			N/A
Polychlorinated biphenyls (PCBs), (µg/L)	Report only			N/A

Effluent Characteristic	30-Day Average Effluent Limitations a/	7-Day Average Effluent Limitations a/	Daily Maximum Effluent Limitations a/	Limit Basis b/
Benzene, (µg/L)	Report only			N/A

a/ See Section 1 of the Permit for definition of terms.

b/ [WQBEL = Limitation based on water quality-based effluent limit; TBEL = Limitation based on technology based effluent limit; PP = Limitation based on previous permit]

c/ If a visible sheen or floating oil is detected in the discharge, a grab sample shall be taken immediately, analyzed and recorded in accordance with the requirements of 40 CFR Part 136. The concentration of oil and grease shall not exceed 10 mg/L in any sample.

d/ This limit applies if the Facility uses potable water as source water during hydrostatic testing.

e/ Total water volume discharged shall be calculated using the flow or pipe volume and duration of the discharge, in either hours or days, whichever is appropriate.

Total suspended solids (TSS) effluent limits have been incorporated into the Permit for hydrostatic testing based on source water associated with hydrostatic test water discharge. Based on discussions with the Permittee, source water for hydrostatic testing will utilize potable municipal water and/or water from existing surface waterbodies (e.g., rivers, lakes). All discharges shall, as needed, be filtered or otherwise treated (as indicated by the Permittee, see Section 3.2 of the SoB) to remove suspended solids to a level consistent with the TSS Permit limits, prior to discharge. TSS will be limited in the Permit as listed in Table 3.

Table 3. Final TSS Effluent Limitations for Outfall 001

Source Water Category	Effluent Characteristic	30-Day Average Effluent Limitations a/	7-Day Average Effluent Limitations a/	Daily Maximum Effluent Limitations a/	Limit Basis b/
Potable water only	Total Suspended Solids (TSS), mg/L	30 mg/L	45 mg/L	N/A	TBEL/ secondary treatment
Potable water and surface water mix, or multiple surface waters	Total Suspended Solids (TSS), mg/L	N/A	N/A	80 mg/L	WQBEL/ narrative
Surface water only c/	Total Suspended Solids (TSS), mg/L	0% increase from source water sample c/			40 C.F.R. 122.45(g)

- a/ See Section 1 of the Permit for definition of terms.
- b/ [WQBEL = Limitation based on water quality-based effluent limit; TBEL = Limitation based on technology based effluent limit; PP = Limitation based on previous permit]
All discharges shall, as needed, be filtered or otherwise treated (as indicated by the Permittee, see Section 3.2 of the SoB) to remove suspended solids to a level consistent with the TSS Permit limits, prior to discharge.
- c/ If source water is taken from one existing surface waterbody for hydrostatic testing, a source water sample for TSS will be required at the time of the source water collection for the hydrostatic testing. The return discharge back into the original source surface waterbody may not exceed the TSS level of the source water that was measured at the time of source water collection.
NOTE: For this limit to apply, the source water must be taken from only one surface water source waterbody and the return discharge must go back into the same source surface waterbody.

The percent change of the effluent TSS concentration compared to the source surface water TSS concentration must be equal to or less than 0 to demonstrate a 0% increase.

6.4 Antidegradation

EPA believes the potential receiving streams are not subject to Tier 3 protection. At the time of Permit development, no specific Outstanding Natural Resource Waters (ONRW) waterbodies were identified or referenced in the Tribes' WQS on the Fort Peck Reservation, which would require Tier 3 protection. EPA also believes renewal of the Permit satisfies the Tribes' antidegradation requirements for both Tier 1 and Tier 2 protection since the permit aligns with the Tribes' WQS. The Tribes will also be given the opportunity review the Permit during the 401 certification process and may provide feedback on EPA's antidegradation determination at that time.

6.5 Anti-Backsliding

Federal regulations at 40 CFR Part 122.44(l)(1) require that when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit were based have materially and substantially changed since the time the Permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.

Total Settable Solids:

The previously permitted effluent limit for Total Settable Solids has been removed from this Permit reissuance and is therefore less stringent than the previous permit. 40 CFR Part 122.44(l)(2)(i) allows a permit to be renewed, reissued, or modified that contains a less stringent effluent limitation for a pollutant if, based on 40 CFR 122.44(l)(2)(i)(B)(2), it is determined that technical mistakes or mistaken interpretations of law were made in issuing the Permit under section 402(a)(1)(b).

The previous permit established TBELs for Total Settable Solids based on the ELG for coal mine point source discharge (40 CFR 434) for source discharges. This ELG lists an effluent limitation of 0.5 milliliters per liter (ml/L) of settleable solids for discharges resulting from a 24-hour precipitation event which is less than or equal to the 10-year, 24-hour storm for the

discharge area. Based on 40 CFR 434.20, this ELG is applicable to discharges from coal preparation plants and coal preparation plant association areas, as indicated, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite, and anthracite. EPA has reevaluated the applicability of this ELG and determined that this limit may have been added due to technical mistakes or mistaken interpretations, as the activities associated with discharges from the Facility do not align with the applicability criteria for discharges from coal facilities/activities associated with this ELG. Therefore, the Total Settable Solids limit has been removed from the renewal Permit.

Total Dissolved Solids (TDS):

The previously permitted effluent limit for TDS has been removed from this Permit reissuance and is therefore less stringent than the previous permit. 40 CFR Part 122.44(1)(2)(i) allows a permit to be renewed, reissued, or modified that contains a less stringent effluent limitation for a pollutant if, based on 40 CFR 122.44(1)(2)(i)(A), it is determined that material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation.

Based on additional updated information provided by the Permittee, there will be no mixing or co-mingling of discharges from hydrostatic testing with stormwater/trench groundwater dewatering prior to discharge to receiving waters. The previous TDS limitations were based on groundwater data, which is more likely to be associated with discharges such as stormwater/trench groundwater dewatering. The previous permit also authorized the discharge of trench dewatering associated with pipeline repairs and the use of uncontaminated groundwater as source water. With the renewal of the Permit, the discharge of trench dewatering associated with pipeline repairs is not covered and the Permit will be updated to include a provision that does not allow for the mixing or co-mingling of hydrostatic testing water with stormwater and/or trench groundwater dewatering prior to discharge to receiving waters. Additionally, the use of groundwater as source water for hydrostatic testing will not be allowed by this Permit

The updated Facility information from the Permittee indicating that stormwater and/or trench groundwater dewatering will be treated separately from hydrostatic testing water and that there will be no mixing or co-mingling of hydrostatic testing water with stormwater and/or trench groundwater dewatering prior to discharge, is being considered a material and substantial alteration or addition to the permitted facility discharge. Therefore, the TDS limit has been removed from the renewal Permit.

7 MONITORING REQUIREMENTS

7.1 Self-Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, as required in 40 CFR Part 122.41(j), unless another method is required under 40 CFR subchapters N or O.

7.1.1 Weekly Monitoring - TSS, TRC, and pH

Since discharge from the Facility is infrequent (i.e., no discharges have occurred over the course of the previous permit term) and discharges are not continuous (e.g., over multiple days), a weekly monitoring frequency during times of discharge is considered sufficient to characterize the effluent quality and to detect events of noncompliance. This frequency is also consistent with the monitoring frequency of the limited parameters that were included in the previous permit (i.e., pH).

Grab samples are appropriate because the flow and characteristics of the waste stream being sampled are relatively constant.

7.1.2 Daily Monitoring - Oil and Grease

According to the application and the Permittee, when discharges occur, Facility discharges will be continuous over multiple days when flowing. Since the transport of residual oils and/or other oil and grease components from piping may not be constantly occurring and could occur at any time during the hydrostatic testing process, the frequency of the visual inspections in the renewal Permit will be increased from weekly to daily, on days when a discharge is occurring. If a visible sheen or floating oil is detected in the discharge, a grab sample shall be taken immediately, analyzed and recorded in accordance with the requirements of 40 CFR Part 136. The concentration of oil and grease shall not exceed 10 mg/L in any sample.

Should a sheen be detected, an immediate grab sample is appropriate since a sample is needed to monitor an effluent that does not discharge on a continuous basis, to provide information about instantaneous concentrations of pollutants at a specific time, and to monitor parameters not amenable to compositing (i.e., oil and grease unless lab composited).

7.1.3 Once Per Discharge Monitoring - Flow/Total Volume Discharged, PCBs, and Benzene

Since discharge from the facility is infrequent (i.e., no recent sampling has occurred over the course of the previous permit term) and discharges are not continuous (e.g., over multiple days), a “Once per discharge” monitoring frequency during times of discharge is considered sufficient to provide EPA with information to characterize the effluent quality and evaluate discharge characteristics for any potential future permitting actions.

Grab samples for PCBs and benzene are appropriate because the flow and characteristics of the waste stream being sampled are relatively constant and a sample is needed to monitor an effluent that does not discharge on a continuous basis.

For flow, the total water volume discharged shall be calculated using the flow or pipe volume and duration of the discharge, in either hours or days, whichever is appropriate.

The following self-monitoring requirements are included in this Permit for each discharge event:

Table 4. Monitoring Requirements for Outfall 001

Effluent Characteristic	Monitoring Frequency	Samples Type a/	Data Reported on DMR b/
Total Suspended Solids, mg/L	Weekly c/	Grab	Daily Max. 30-Day Avg. 7-Day Avg. % Increase
Oil and Grease, visual observation d/	Daily	Visual	Narrative
Oil and Grease, mg/L d/	Daily	Grab	Daily Max.
Total Residual Chlorine, mg/L e/	Weekly c/	Grab	Daily Max. 30-Day Avg.
pH f/	Weekly c/	Grab or Instantaneous	Instantaneous Min. Instantaneous Max.
Flow/Total Volume Discharged, mgd g/	Once per discharge	Calculated	Daily Max.
Polychlorinated biphenyls (PCBs), µg/L	Once per discharge	Grab	Daily Max.
Benzene, µg/L	Once per discharge	Grab	Daily Max.

- a/ See Definitions, Part 1 of the Permit for definition of terms.
- b/ Refer to the Permit for requirements regarding how to report date on the DMR.
- c/ One sample is to be collected during the first 7 days of discharge. If the discharge exceeds 7 days, an additional sample must be collected on the first day of every additional week-long (7 day) period of discharge that follows (e.g., the 8th day for the second week, the 15th day for the third week, the 22nd day for the fourth week, etc.).
- d/ A visual observation is required daily during the discharge. If a sheen is detected a grab sample shall immediately be collected and submitted for analysis.
- e/ This monitoring is only required if the Facility uses potable water as source water during hydrostatic testing. The minimum limit of analytical reliability for TRC is considered to be 0.05 mg/L. For purposes of this Permit and calculating averages and reporting in the DMR form, analytical values less than 0.05 mg/L shall be considered in compliance with this Permit.
- f/ Analyze within 15 minutes of sample collection. (40 CFR 136.3, Table II)
- g/ Total water volume discharged shall be calculated using the flow or pipe volume and duration of the discharge, in either hours or days, whichever is appropriate.

Table 5. Monitoring Requirements for Surface Water Source Water (001-I)

Effluent Characteristic	Monitoring Frequency	Samples Type a/	Data Reported on DMR b/
Total Suspended Solids, mg/L, b/	Once per discharge	Grab	None – refer to data report for Outfall 001 in Table 4

- a/ See Definitions, Part 1 of the Permit for definition of terms.
- b/ Only required if the source water used for hydrostatic testing is from one surface water source. A source surface water sample for TSS will be required at the time of the source water collection for

the hydrostatic testing. The TSS of the discharge may not exceed the TSS level for the source water that was measured at the time of source water collection.

8 SPECIAL CONDITIONS

The previous permit included the following erosion provision:

The permittee shall take all necessary preventative measures to ensure that discharges do not cause erosion in the area of the operation nor to the bank of the receiving water.

Additionally, during the public comment period for the previous 2013 permit, the Tribes granted 401 certification contingent on the conditions listed below:

1. Erosion and sedimentation pollution control plans and Best Management Practices must be designed, installed, and maintained in effective operating condition at all times during construction activities.
2. Sediment and erosion control measures shall not be placed within surface water without prior approval by the Fort Peck tribes Office of Environmental Protection. All sediment and erosion control devices shall be removed and the natural grade restored within the completion timeline of the activities.
3. Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in the construction from entering the watercourse.
4. Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the Fort Peck Tribes Office of Environmental Protection shall be notified immediately.

These conditions will therefore be maintained and included in the Special Conditions section of the renewal Permit.

9 REPORTING REQUIREMENTS

Reporting requirements are based on requirements in 40 CFR §§ 122.44, 122.48, and Parts 3 and 127. A discharge monitoring report (DMR) frequency of semiannually was chosen, because the Facility has historically discharged less than quarterly.

10 COMPLIANCE RESPONSIBILITIES AND GENERAL REQUIREMENTS

10.1 Inspection Requirements

Specific inspection requirements are not included in the Permit. However, the Permittee shall maintain records of each Facility discharge, including a topographic map of the project area and a written description of the best management practices (BMPs) which will be used to mitigate

the effects of the discharge(s). The topographic map and BMP description shall either show the locations of the discharges(s) and receiving water(s) or have latitude and longitude designations of the discharge(s) and receiving water(s). The Permittee shall also maintain records of dates of discharges and source waters used for hydrostatic testing.

10.2 Operation and Maintenance

40 CFR § 122.41(e) requires permittees to properly operate and maintain at all times, all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this Permit. In addition to an operation and maintenance plan, regular facility inspections, an asset management plan, and consideration of staff and funding resources are important aspects of proper operation and maintenance. Asset management planning provides a framework for setting and operating quality assurance procedures and helps to ensure the permittee has sufficient financial and technical resources to continually maintain a targeted level of service. Consideration of staff and funding provide the Permittee with the necessary resources to operate and maintain a well-functioning facility. These requirements have been established in Section 6.3.4 of the Permit to help ensure compliance with the provisions of 40 CFR 122.41(e).

10.3 Industrial Waste Management

N/A

11 ENDANGERED SPECIES CONSIDERATIONS

The Endangered Species Act of 1973 requires all Federal Agencies to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS), that any Federal action carried out by the Agency is not likely to jeopardize the continued existence of any endangered species or threatened species (together, “listed” species), or result in the adverse modification or destruction of habitat of such species that is designated by the FWS as critical (“critical habitat”). See 16 U.S.C. § 1536(a)(2), 50 CFR Part 402. When a Federal agency’s action “may affect” a protected species, that agency is required to consult with the FWS (formal or informal) (50 CFR § 402.14(a)).

The U.S. Fish and Wildlife Information for Planning and Conservation (IPaC) website (<https://ecos.fws.gov/ipac/>) was accessed on 4/26/2022 to determine federally-listed Endangered, Threatened, Proposed and Candidate Species for the area near the Facility. The IPaC Trust Resource Report findings are provided below. The designated area utilized was identified in the IPaC search and covers approximately 796 square miles along the Facility pathway across the Fort Peck Reservation. For the mapped area shown below, the IPaC search indicated that “There are no critical habitats at this location”.

IPaC Information for Planning and Consultation
U.S. Fish & Wildlife Service
LOG IN

2 Define area

3 Confirm

Verify the area where project activities will occur

Modify the shape by clicking and dragging the vertices or clicking on a solid vertex to remove it

AREA: 796.05 mi²

[CONTINUE](#)

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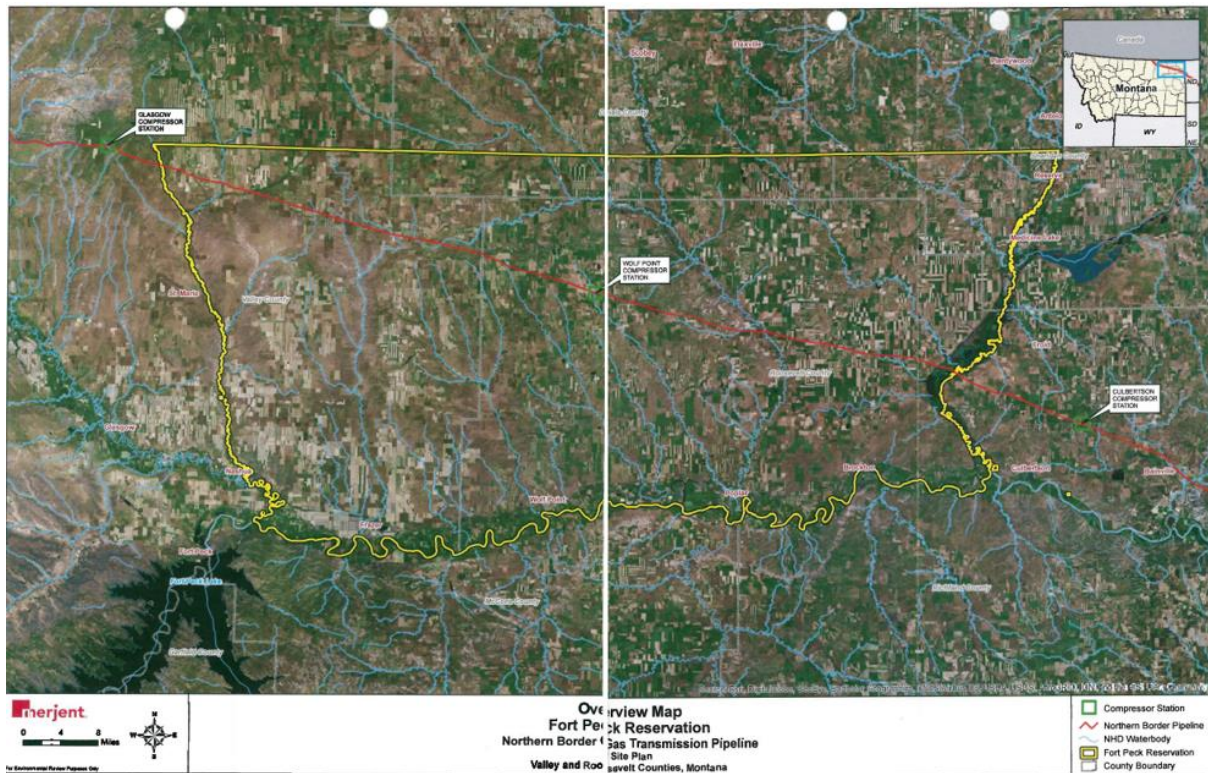


Table 6. IPaC Federally listed Threatened and Endangered Species

Species	Scientific Name	Species Status	Designated Critical Habitat
Northern Long-eared Bat	<i>Myotis septentrionalis</i>	Threatened	No critical habitat has been designated for this species.
Piping Plover	<i>Charadrius melodus</i>	Threatened	There is final critical habitat for this species (published in the Federal

Species	Scientific Name	Species Status	Designated Critical Habitat
			Register on May 19, 2009). The location of the critical habitat is not available.
Whooping Crane	<i>Grus americana</i>	Endangered	There is final critical habitat for this species (published in the Federal Register on May 15, 1978). The location of the critical habitat is not available.
Monarch Butterfly	<i>Danaus plexippus</i>	Candidate	No critical habitat has been designated for this species.

11.1 Biological Evaluation

Based on the IPaC information generated, the Facility location is outside of the critical habitat for all listed species in Table 6 (above) with “final critical habitat”, including the Piping Plover and Whooping Crane. There was no listed critical habitat for either the Northern Long-eared Bat or the Monarch Butterfly. Below are species-specific evaluations for each:

- Piping Plover:** These species are terrestrial species that may be associated with water sources and have limited contact with Facility discharges. Facility discharges related to hydrostatic testing are anticipated to be infrequent (e.g., once a year or less) since there were no discharges over the course of the previous permit term. If these species are present, they may use receiving waters for a short period of time during the year however, there are no expected significant adverse changes in water quality in the receiving water from discharges that meet permitted limitations. If there are no new major construction or major facility modifications expected for the permitted facilities, there is also no anticipated affect on the discharge or land areas/shorelines from these associated facility activities/modifications that will cause significant negative impacts to water quality. Under these conditions, the EPA has determined the impact for these species is “may affect, but is not likely to adversely affect” for permitted facilities.
- Whooping Crane:** These species are terrestrial species that may be associated with water sources and have limited contact with Facility discharges. Facility discharges related to hydrostatic testing are anticipated to be infrequent (e.g., once a year or less) since there were no discharges over the course of the previous permit term. If these species are present, they may use receiving waters for a short period of time during the year however, there are no expected significant adverse changes in water quality in the receiving water from discharges that meet permitted limitations. If there are no new major construction or major facility modifications expected for the permitted facilities, there is also no anticipated affect on the discharge or land areas/shorelines from these associated facility activities/modifications that will cause significant negative impacts to water quality. Under these conditions, the EPA has determined the impact for these species is “may affect, but is not likely to adversely affect” for permitted facilities.
- Northern Long-eared Bat:** These species are primarily terrestrial species and will have limited contact with Facility discharges. Facility discharges related to hydrostatic testing are anticipated to be infrequent (e.g., once in a year or less) since there were no

discharges over the course of the previous permit term. If these species are present, they may use receiving waters for a short period of time during the year however, there are no expected significant adverse changes in water quality in the receiving water from discharges that meet permitted limitations. If there are no new major construction or major facility modifications expected for the permitted facilities, there is also no anticipated affect on the discharge or land areas/shorelines from these associated facility activities/modifications that will cause significant negative impacts to water quality. Under these conditions, the EPA has determined the impact for these species is “may affect, but is not likely to adversely affect” for permitted facilities.

- **Monarch Butterfly:** There are generally no section 7 requirements for candidate species. Facility discharges related to hydrostatic testing are anticipated to be infrequent (e.g., once in a year or less) since there were no discharges over the course of the previous permit term. If this species is present, it is only expected to have limited contact with receiving waters. Discharges that meet permitted limitations are not expected to have significant adverse impacts on water quality in the receiving waters. Permit limitations have been established for those parameters with applicable federal, state and/or tribal water quality standards, to help ensure maintenance of water quality in receiving waters. Therefore, discharges from permitted facilities are not anticipated to cause significant changes to existing receiving water quality that will impact this species. If there are no new major construction or major facility modifications expected for the permitted facilities, there is also no anticipated affect on the discharge or land areas/shorelines from these associated facility activities/modifications that will cause significant negative impacts to water quality. Under these conditions, the EPA has determined the impact for this species is “may affect, but is not likely to adversely affect” for permitted facilities based on currently available data for this species.

Migratory Birds:

As related to migratory birds species identified in the IPaC search, those listed for a given area may be present for periods of time at locations covered by the Permit. However, due to the transient nature of these species, it is anticipated that they will have limited contact with Facility discharges. If these species are present, they may use receiving waters for a short period of time however, there are no expected significant adverse changes in water quality in the receiving water from discharges that meet permitted limitations. Therefore, R8 has concluded that there will be minimal impacts to migratory bird species from Facility permitted discharges.

Fish Hatcheries/National Wildlife Refuge lands:

There were no fish hatcheries or National Wildlife Refuge land areas identified in the IPaC mapped area.

Based on the IPaC information and the consultation determination with the Montana FWS field office representative(s), EPA determined the permitting action "may affect, but is not likely to adversely affect" the species listed above.

Before going to public notice, a copy of the draft Permit and this SoB was sent to the FWS requesting concurrence with EPA's finding that reissuance of this NPDES Permit "may affect, but is not likely to adversely affect" the species listed as threatened or endangered in the mapped IPaC action area by FWS under the Endangered Species Act, nor their critical habitat.

In a letter dated July 1, 2022, the FWS concurred with EPA's conclusion that this Permit renewal "may affect, but is not likely to adversely affect" listed species.

12 NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS

The National Register of Historic Places website (<https://www.nps.gov/subjects/nationalregister/database-research.htm>) and NPGallery search (<https://npgallery.nps.gov/nrhp>) was accessed on 4/27/2022. Based on the www.fortpecktribes.org site, the Fort Peck Reservation encompasses most of Montana's Roosevelt County and the remaining portions of the Reservation are situated throughout the Montana counties of Valley, Daniels and Sheridan. All of these counties were used in the search of both the National Register of Historic Places and NPGallery and no historic property listings were identified along the pathway of the Facility.

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f) requires that federal agencies consider the effects of federal undertakings on historic properties. The first step in this analysis is to consider whether the undertaking has the potential to affect historic properties, if any are present. See 36 CFR 800.3(a)(1). Permit renewals where there is no new construction are generally not the type of action with the potential to cause effects on historic properties. The Facility is not anticipated to have any new major construction projects as a result of discharges from hydrostatic testing related to this Permit.

13 401 CERTIFICATION CONDITIONS

The Assiniboine and Sioux Tribes of the Fort Peck Reservation are the Clean Water Act (CWA) Section 401 certifying authority for the Permit, and a CWA Section 401 certification was requested prior to Permit finalization.

14 MISCELLANEOUS

The effective date of the Permit and the Permit expiration date will be determined upon issuance of the Permit. The intention is to issue the Permit for a period not to exceed 5 years.

Permit drafted by Alysia Tien, U.S. EPA, 303-312-7021, August 2022

ADDENDUM

AGENCY CONSULTATIONS

On July 1, 2022, the FWS concurred with EPA's preliminary conclusion that the Permit reissuance may affect, but is not likely to adversely affect listed species.

On June 9, 2022, the Tribes' Tribal Historic Preservation Office was notified of EPA's Public Notice for Permit reissuance.

On June 14, 2022, EPA sent a CWA Section 401 certification request to the Fort Peck Reservation of the Assiniboine and Sioux Tribes. The Fort Peck Reservation of the Assiniboine and Sioux Tribes certified without Section 401 requirements. Any review or appeal of these conditions must be made through Tribal procedures pursuant to 40 CFR § 124.55(e).]

PUBLIC NOTICE AND RESPONSE TO COMMENTS

The Permit and statement of basis were public noticed on EPA's website and in the Northern Plains Independent on June 9, 2022. No comments were received.

ADDITIONAL EDITS:

During a final review of the Permit conditions, the following minor editorial change was made after the public comment period closed:

- In Section 7.10.3 (page 19) and 8.6.2.1 (page 22) of the Permit, an error was identified in the automatic Word formatting used to reference the specific section of the Permit related to section 7.6, Other Reporting Requirements. That error was corrected so that the referenced section number is now visible in the document without an error message.