

Memorandum

AUTHOR ECA Environmental Sub-Group
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	NAME	ORGANISATION
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BTC: Potential Breaches of Local Environmental Law

The ECA Environmental Sub-Group asked the Lenders' local counsel in Azerbaijan, Georgia and Turkey to identify those environmental laws in each of the three Project States that could potentially be breached by the BTC Project but for the operation of the Host Government Agreements (*HGAs*) and the Intergovernmental Agreement (*IGA*). A list of such laws is attached to this memorandum as Appendix I.

Please note that in drawing up this list, Lenders' local counsel does not imply that the BTC Project has in fact breached the laws set out in Appendix I. Counsel is not in a position to make such a determination. Counsel was asked to highlight those environmental laws that could **potentially** be breached by the BTC Project.

The ECA Environmental Sub-Group understands that, because of the operation of the HGAs and the IGA, BTC Co. cannot be held liable for a breach of local environmental law that contains environmental standards that are "different from or more stringent than"¹ the environmental standards with which BTC Co. is required to comply under the HGAs and IGA. The ECA Environmental Sub-Group would be grateful for confirmation:

- (i) that the BTC Project is not in breach of the laws identified in Appendix I; and
- (ii) if the BTC Project is in fact in breach of any such laws, that such laws contain standards that are "different from or more stringent than" the environmental standards set out in the IGA and HGAs, and are therefore inapplicable to the BTC Project.

Please do not hesitate to contact any member of the ECA Environmental Sub-Group with questions.

¹ Azerbaijan HGA, Appendix 3, Section 3.3.

APPENDIX I

Part I. Azerbaijan

Legislation	Potential breach
Water Code of 26 December 1997 (the <i>Water Code</i>)	<p>Construction of project facilities above the underground aquifer complex at Garayazy could potentially breach the following Articles of the Water Code:</p> <ol style="list-style-type: none"> 1. Article 88 of the Water Code prohibits the installation of industrial, agricultural and other facilities that may potentially result in contamination of groundwater aquifers that provide drinking water. In Azeri counsel's view, this provision, if broadly interpreted, imposes a restriction on any activity that may have a negative affect on an underground aquifer. 2. Under Article 82 of the Water Code, the water protection zones where sources of fresh (potable) water are located are declared a specially protected area. In addition, water sanitary protection zones have been established for protection of drinking water and domestic water supply, as well as water used for health and resort purposes under Article 85 of the Water Code. 3. Article 84 of the Water Code prohibits entities and individuals (activities of which could potentially impact the quality of water) from contaminating or polluting water resources with oil and other chemicals as a result of technical accidents or with oil products and other chemicals and waste.
Decree No. 77 of the Cabinet of Ministers dated 01 May 2000 (the <i>Decree</i>)	Groundwater aquifers (such as the Garayazy aquifer) are categorised as specially protected water objects under the Decree. If the Garayazy aquifer were to be categorised as a specially protected water object, the Ministry of Environment and Natural Resources and the Melioration and Water Economy Committee could propose that a water object be withdrawn from economic activity, temporarily or permanently, in whole or in part.
Law on Specially Protected Natural Areas and Objects of 24 March 2000	<p>The Garayazy National Reserve was created in 1978 in the area of the proposed pipeline route.</p> <p>Article 10 of the Law on Specially Protected Natural Areas and Objects provides for two legal regimes applicable to such areas and objects: (i) a legal regime of special protection, under which all activity, including economic, which impacts negatively on natural habitats or the environment of such area or object is restricted; and (ii) a restricted regime of economic activity, under which economic use of natural resources in such area or object is restricted.</p> <p>If the proposed pipeline route were to cross the Garayazy National Reserve,</p>

	no construction would be allowed in this area. In addition, any construction would be restricted if the preferred pipeline route were to pass through the area immediately adjacent to the Garayazy National Reserve.
Code of Delinquencies effective since 1 September 2000	<p>The Code of Delinquencies sets out penalties for violations of provisions of environmental legislation.</p> <ol style="list-style-type: none"> 1. Article 78 penalises (i) the violation of quality standards of the environment while constructing or re-constructing enterprises, installations or other facilities and (ii) any failure to undertake measures to re-cultivate lands, restore natural resources, ameliorate the area and to improve the environment while conducting construction activities. 2. Article 84 penalises the violation of rules for use of, and of the regime that applies to, specially protected areas. 3. Article 102 penalises the violation of the rules applied to protected water resources, and, in particular, the violation of the regime applying to specially protected water resources. 4. Article 103 penalises the violation of requirements in respect of sources of potable water, water-purifying facilities, sanitary protection zones around water pipelines and quality standards for potable water. 5. Article 113 provides for penalties for various violations of the legislation on ecological safety, including any activity which could potentially cause serious ecological consequences.
Criminal Code (effective since 1 September 2000)	<ol style="list-style-type: none"> 1. Article 247 of the Penal Code criminalises the violation of rules for the protection of the environment while conducting works if the works result in significant changes in the level of radioactivity in the environment, damage to human health or mass destruction of animals or other serious consequences. 2. Article 250 criminalises pollution of water or water sources if such pollution causes damage to human health or mass destruction of animals or significant damage to flora and wildlife, fish stocks, forests or agriculture or if the pollution occurs within the area of a national reserve or an ecological zone at risk or, in an extreme situation, or if such pollution causes human death. 3. Article 261 criminalises the violation of the protective regime of specially protected natural areas or objects if such violation results in significant damage.
The Law on	According to Azeri counsel, Article 9.1.2 of the Law on Ecological Safety prohibits executive authorities, municipalities and officials from allowing

Ecological Safety	<p>activities that could result in serious ecological consequences.</p> <p>The Law on Ecological Safety provides for the division of Azerbaijan into different zones, depending on the degree of ecological danger in each zone. Special rules apply to govern activities in each zone.</p> <p>If the Garayazy aquifer falls into a zone in which construction activities are prohibited, construction at Garayazy could breach this law.</p>
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Part 2. Georgia

Legislation/pending development	Potential breach
<p>The Law on Water: reclassification of the Qtsia-Tabatskuri area as a sanitary protection Zone 1</p>	<p>The Law on Water creates sanitary protection zones in order to protect drinking water, household supply water and water used for therapeutic and recreational purposes, as well as general purpose or industrial water pipelines for public water supply. According to Georgian counsel, in the Qtsia-Tabatskuri area, the pipeline route will run across the Tsalka fresh water reservoir. Georgian counsel advises that an expert report (of which Georgian counsel does not have a copy) has indicated that the Qtsia-Tabatskuri area may be classified as a sanitary protection Zone 1.</p> <p>The effect would be to prohibit pipeline construction activity in the area.</p> <p>In addition, the pipeline route runs across water protection zones, such as rivers. Under the Law on Water, construction activities in such zones are prohibited, other than in "directly stipulated cases". Georgian counsel notes that such "directly stipulated cases" are not defined in the Law on Water.</p>
<p>The Law on Sanitary Protection of Resorts and Resort Areas: a draft Presidential Order on Approving Sanitary Protection Zones for the Borjomi Resort</p>	<p>The Law on Sanitary Protection of Resorts and Resort Areas sets out the legal regime applicable to all resorts and resort areas in Georgia. Works that would damage forest, cause soil erosion or have a negative impact on natural recreational resources and sanitary conditions are prohibited in all three types of sanitary protection zones.</p> <p>Counsel confirms that the Borjomi area was granted "resort status" by Presidential Order No. 669, dated November 30, 1998. More recently, Presidential Order No. 346, dated July 10, 2003, on Approving Sanitary Protection Zones for the Borjomi Resort has been enacted, which introduced boundaries for sanitary protection zones within the Borjomi resort with applicable legal regimes for each zone. This order is based on the Law on Sanitary Protection of Resorts and Resort Areas.</p> <p>Consequently, construction works in the Borjomi region could breach the Law on Sanitary Protection of Resorts and Resort Areas.</p>



Part 3. Turkey

Legislation	Potential breach
Turkish Environmental Law No. 2872 of 1983 and its underlying regulations (the <i>Environmental Law</i>)	<p>The Environmental Law sets out certain principles relating to the protection of the environment, including underground water resources.</p> <p>The Environmental Law is supplemented by certain rules concerning the protection of groundwater resources, contained in the Water Pollution Control Regulation (the <i>WPCR</i>) of 1988. Article 22, paragraph (d) of the WPCR requires a 50-metre protection zone to be set up around sources of Class I and Class II groundwater (such as wells, springs, etc.), which are used as a common source of drinking water. Neither the construction of any building nor the passage or release of any solid or liquid waste is permitted within this 50-metre protection zone.</p> <p>In the opinion of Turkish counsel, however, the pipeline route may cross the 50-metre protection zone at certain places along the Turkish section of the pipeline. Turkish counsel makes reference to paragraph 4.3 of the Groundwater Report, which states that the pipeline route crosses four major plains (the Pasinler, Erzurum, Göksun and Ceyhan Plains), that all have a high quality (Class I and II) groundwater capacity and potential for extensive utilisation by local communities, including as a source of drinking water.</p> <p>The effect would be to prohibit pipeline construction activity in these areas.</p>
Law No. 2863 on the Protection of Natural and Cultural Assets of 1983 (<i>Law No. 2863</i>)	<p>Article 9 of the Law No. 2863 provides that no construction, digging or similar activity may be undertaken in Natural Site Areas, unless the prior consent of the relevant Protection Committee is obtained and the activity is conducted in accordance with the conditions and limitations stipulated by the relevant authorities.</p> <p>Turkish counsel has identified over 20 Natural Site Areas in the vicinity of the pipeline route although Turkish counsel is not in a position to determine whether these areas actually cross the pipeline route. The EIA identifies only one Natural Site Area, Sarıkamış Forest as being on the pipeline route.</p> <p>Construction activity along the pipeline route may be restricted by and could potentially breach Law No. 2863 if it falls within a Natural Site Area.</p>
National Parks Law No. 2873 of 1983 (the <i>National Parks Law</i>)	<p>National parks, natural reservation areas and natural parks are subject to the National Parks Law. No facility or building is permitted in national parks, natural reservation areas or natural parks, unless such facility or building conforms to the plans approved by the Ministry of Agriculture for such areas in accordance with Article 14 of the National Parks Law.</p>



	<p>Permission may be granted where there is an overriding public interest.</p> <p>Although there are over 30 national parks in Turkey, the EIA identifies no national parks along the pipeline route. However, Turkish counsel thinks it important to note that according to the EIA, the southern Turkish section of the pipeline passes only 3 km away from the Karatepe-Arsıntaş National Park.</p> <p>According to Turkish counsel, there are three natural reservation areas that are in the vicinity of the Turkish section of the pipeline. These areas are (i) Sultansazlığı Natural Protection Land in Kayseri (between the Counties of Develi, Yaylalı and Yeşilhisar), (ii) Kırçoban Natural Protection Land in Kahramanmaraş (Ardırın County), and (iii) Yumurtalık Natural Protection Land in Adana (Yumurtalık). However, Turkish counsel is not in a position to determine whether such areas are, in fact, on the pipeline route.</p> <p>Construction activity along the pipeline route may be restricted by and could potentially breach the National Parks Law if it falls within a national park, natural reservation area or a natural park.</p>
Law No. 4915 on Land Hunting (the <i>Law on Land Hunting</i>)	<p>The Turkish Parliament has recently approved the Law on Land Hunting which came into force on July 1st, 2003. Article 4(5) of that Law generally prohibits establishment of facilities in wildlife protection areas. The same Article, however, includes a carve out for facilities that conform to plans approved by the relevant authorities for such areas. The EIA refers to two wildlife protection areas along the Turkish section of the pipeline, (i) the Posof Wildlife Protection Area; and (ii) the Kelkit Wildlife Protection Area.</p> <p>Construction activity along the pipeline route may be restricted by and could potentially breach the Law on Land Hunting if it falls within a wildlife protection area.</p>
Regulation on the Protection of Wetlands of 2002 (the <i>Regulation on Wetlands</i>). At international level, Turkey is a party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the <i>Ramsar Convention</i>).	<p>The Regulation on Wetlands was enacted to implement the Ramsar Convention.</p> <p>There are nine "Internationally Important Wetland Areas" in Turkey as defined in the Ramsar Convention. According to the EIA, none of the Internationally Important Wetland Areas lie along the pipeline route. However, the Turkish EIA notes that the pipeline route passes through two Ramsar candidate areas, namely (i) the Kurulake and (ii) the Ulas and Alacorak Lakes.</p> <p>The primary aim of both the Ramsar Convention and the Regulation on Wetlands is the promotion and conservation of wetland areas. However, the Ramsar Convention does not specifically prohibit construction of facilities or the undertaking of other activities in such areas. Nonetheless, Turkish counsel has commented that the lack of an express prohibition does not mean that those kinds of activities are permitted in such areas.</p>

	<p>Furthermore, according to Article 17 of the Regulation on Wetlands, any activity in a wetland, including construction activity, can only be conducted with the prior permission of the Ministry of Environment and Forestry.</p> <p>Articles 18-21 of the Regulation on Wetlands sets out a number of wetland categories such as absolute protection areas, wetland areas, ecological impact areas, and buffer areas. There are over 100 wetland areas specified in the Regulation on Wetlands that generally prohibit construction activities.</p> <p>According to Turkish counsel, the EIA does not appear to specify any wetlands as being along the pipeline route. While the EIA does refer to a number of “Ecologically Sensitive Areas”, it does not explain what this term means. Turkish counsel is of the view that this term may have been used to refer to ecological impact areas stipulated by the Regulation on Wetlands. If this is the case, the Regulation would be applicable to such areas.</p> <p>Construction activity along the pipeline route may be restricted by and could potentially breach the Ramsar Convention and the Regulation on Wetlands if it falls within an Internationally Important Wetland Area.</p>
Civil initiatives for determination of Important Bird Areas (<i>IBAs</i>)	<p>The IBAs are part of a worldwide bird conservation initiative that has been adopted by Turkey. There are currently over 100 IBAs in Turkey. Although the IBAs have not been directly implemented into Turkish law, some of the IBAs have gained legal protection in Turkey as they overlap with many of the legally protected areas described above. The EIA identifies three IBAs on the current route of the pipeline; (i) the Ardahan Forest; (ii) the Erzurum Marshes; and (iii) the Erzurum Plain.</p>
Civil initiatives for determination of Important Plant Areas (<i>IPAs</i>)	<p>The IPA is another worldwide initiative that has been adopted in Turkey. IPAs entail the protection of flora through the creation of protection sites. There are over 120 IPAs in Turkey. Although there is no direct legal protection of IPAs under Turkish law, Turkish counsel has advised that some of the IPAs are protected as they overlap with the legally protected areas described above. The EIA does not identify any IPAs within the pipeline route.</p>