

July 3, 2014

VIA HAND DELIVERY

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: BASIN TRANSLOAD, LLC
CRUDE OIL PIPELINE – MERCER
COUNTY, CASE NUMBER: PU-12-675**

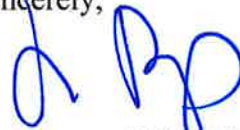
Dear Mr. Nitschke:

Pursuant to the Public Service Commission's ("Commission") request at the July 2, 2014 pre-construction meeting regarding Basin Transload, LLC's ("Basin Transload") crude oil pipeline in the above-referenced matter, please find enclosed herewith for filing an original and ten (10) copies of the following documents:

1. Mercer County Conditional Use Permit;
2. Application (Notice of Intent) to Obtain Overage for NDPDES General Permit;
3. Utility Occupancy Application and Permit; and
4. Pipeline License to cross BNSF Railway.

Also enclosed is a CD containing the above-referenced documents in electronic format. If you should have any questions, please advise.

Sincerely,



JILLIAN RUPNOW

Enclosures

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Attorneys & Advisors
main 701.221.4020
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www.fredlaw.com

Fredrikson & Byron, P.A.
200 North Third Street, Suite 150
Bismarck, North Dakota
58501-3879

51 PU-12-675 Filed 07/03/2014 Pages: 46
Permits
Basin Transload, LLC
Jillian Rupnow, Fredrikson&Byron, P.A.

MERCER COUNTY BOARD OF COMMISSIONERS
STANTON, NORTH DAKOTA

CERTIFICATE OF APPROVAL OF A CONDITIONAL USE
ZONING CASE NO 13-06-02

ISSUED TO: Basin Transload LLC
3529 Gabel Road
Billings, MT 59102

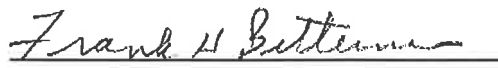
CONDITIONAL USE: Install 10" diameter crude oil pipeline from Tesoro's High Plains Pipeline North Knife River Valve Station to Basin Transloads storage tanks approximately 4 miles north.

LEGAL DESCRIPTION: Sections 1 & 2 T144N R89W, Sections 19, 24, 25, 26, & 35 T144N R88W of the 5th Principle Meridian, Mercer County ND

PLANNING COMMISSION: Recommended approval June 20th 2013

REMARKS: Install pipe in accordance with the Public Service Commission regulations. Basin Transload LLC has filed an application for A Certificate of Corridor Compatibility and Route Permit Case Number PU-12-675 on May 10th 2013.

Issued this 3rd day of July 2013, by the Board of Mercer County Commissioners.


Frank Bitterman, Chairman


Shana Brost, County Auditor



**APPLICATION (NOTICE OF INTENT) TO OBTAIN
OVERAGE UNDER NDPDES GENERAL PERMIT
FOR STORMWATER DISCHARGES ASSOCIATED
WITH CONSTRUCTION ACTIVITY (NDR10-0000)**
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19145 (12/13)

FOR DEPT. USE ONLY

Application No.
Date Received

GENERAL INFORMATION

1. Name of Owner of Construction Project Basin Transload LLC	2. Contact First Name Ray	3. Contact Last Name Sheldon	4. Contact Phone No. 406/855-5008	
5. Contact E-mail Address rsheldon@basintransload.com				
6. Mailing Address P.O. Box 80284	7. City Billings		8. State/Province MT	9. Zip Code 59108
10. Name of Operator Working at Site Tresco Constructors Inc.	11. Contact First Name Ron	12. Contact Last Name Kroshus	13. Contact Phone No. 406/671-5530	
14. Contact E-mail Address rkroshus@gmail.com				
15. Mailing Address P.O. Box 80745	16. City Billings		17. State/Province MT	18. Zip Code 59108

PROJECT INFORMATION

19. Name of Construction Project Beulah Pipeline				
20. Brief Description of Construction Activity Installation of crude oil pipeline from THPP Knife River valve station to Republic rail terminal				
21. Project Start Date 7/14/2014	22. Estimated Completion Date 10/31/2014	23. Estimated Total Area of Site (acres) 50	24. Estimated Area of Disturbance (acres) 35	
Project Location	25. Physical Address 6550 County Road 20		26. City Beulah, ND 58523	
	OR	27. Township	28. Range	29. Section
	30. Quarter Section (ABCD Format)		31. County	
	32. Latitude (Decimal Degrees)		33. Longitude (Decimal Degrees)	
Receiving Waters	34. Name of Municipal Storm Sewer System or Description of Receiving Water Spring Creek to the north / Knife River to the south			

35. A SWPPP must be prepared and available for review at the time of application. A copy of the SWPPP must be submitted with this application if the project is 50 or more acres or is within 2000 feet of, and flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity. See Part I.D.2 of NDR10-0000 for more detail.

RETURN COMPLETED APPLICATION TO: North Dakota Department of Health Division of Water Quality, 4 th Floor 918 East Divide Avenue Bismarck, ND 58501-1947 Telephone: (701) 328-5210 Fax: (701) 328-5200	I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.	
	36. Printed Name of Owner(s) Ray Sheldon	37. Title General Manager
	38. Signature of Owner(s) <i>Ray Sheldon</i>	39. Date 7/1/2014
	40. Printed Name of Operator(s) James R. Bennett	41. Title President
	42. Signature of Operator(s) <i>James R. Bennett</i>	43. Date 7/1/2014

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STORMWATER POLLUTION PREVENTION PLAN TEMPLATE
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19388 (12/2010)

Stormwater Pollution Prevention Plan

For:

Project Name: Beulah Pipeline Project
Site Location/Address: 6550 County Road 20
City: Beulah, ND 58523
County: Mercer
Site Telephone Number: 701/880-8305
(if applicable)

Owner(s):

Company or Organization: Basin Transload, LLC
Contact Name: Ray W. Sheldon
Mailing Address: P.O. Box 80284
City, State, Zip Code: Billings, MT 59108
Telephone Number: 406/652-6328
Fax: 406/652-6320
E-mail: rsheldon@basintransload.com

SWPPP Preparation Date:

07/01/2014

NDPDES Permit Coverage Number:

Stormwater Pollution Prevention Plan (SWPPP)

Foreword:

All construction projects covered by the North Dakota Pollutant Discharge Elimination System General Permit associated with stormwater discharges from construction activity, NDR10-0000, shall prepare and implement a stormwater pollution prevention (SWPP) plan as part of the permit requirements. The SWPP plan and revisions are subject to review by the North Dakota Department of Health. The objectives of the plan are to identify potential sources of stormwater pollution from construction activity and to ensure practices are implemented to minimize the contribution of pollutants to stormwater runoff. Stormwater management measures developed under other regulatory programs (e.g., Spill Prevention, Control and Countermeasure requirements) can be included in the SWPP plan or incorporated by reference.

The SWPP plan may identify more than one permittee and may specify the responsibilities of each permittee by task, area, and/or timing. Permittees may coordinate and prepare more than one SWPP plan to accomplish this. However, in the event there is a requirement under the SWPP plan for which responsibility is ambiguous or is not included in the SWPP plan, each permittee shall be responsible for implementation of that requirement. Each permittee is also responsible for ensuring that its activities do not render another permittee's controls ineffective.

The SWPP plan is an enforceable document; the purpose of the plan is not for regulators to review but for owners and operators to implement.

The SWPP plan shall include the following information:

1. Site description
2. Operational controls
3. Erosion and sediment controls
4. Stormwater management
5. Maintenance
6. Inspections
7. Records location and retention
8. Plan review and revisions
9. Final stabilization
10. Construction stormwater general permit, NDR10-0000
11. Copy of the notice of intent
12. Coverage letter from the North Dakota Department of Health
13. Guidelines, specifications or manuals for selected best management practices

Stormwater Pollution Prevention Plan (SWPPP)

1. **Site Description.** The plan must include a description of the construction site and potential pollutant sources.

a. Project location. Please complete one of the selections.

Street Address: 6550 County Road 20 City: Beulah, ND 58523
 Subdivision (if known): _____

Township: 143-144 N Range: 88 W & 89 W
 Section: 1,2,35,26,25,30,19 --- 1/4 1/4 _____ 1/4 ; or
 ABCD: _____

Latitude: N 47° 14' 16" to N 47° 16' 50" Longitude: W 101° 54' 44" to W 101° 52' 52"

General Location: Pipeline route is generally northerly from THPP Knife River VS to Republic rail terminal

b. Describe the overall project and type of construction activity. Attach additional pages if needed and label 1-b.

Development of crude oil pipeline to transport oil from Tesoro pipeline to Republic rail transloading terminal (see attached map)

c. Estimated total area of the project and total area expected to be disturbed by excavation, grading, grubbing or other activities. Include the estimated total area of offsite support activities that will be covered by the construction general permit. This includes concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, and borrow areas not already covered by another stormwater permit.

Total area of project: ~50 acres

Total area expected to be disturbed: ~35 acres

d. Provide a proposed timetable of soil disturbing activities for major portions of the site (for example; excavation, grading, grubbing, building, temporary stabilization, final stabilization). A construction schedule may be used if available. Attach additional pages if needed and label 1-d.

Phase	Timetable
<u>Initial Right of Way Preparation</u>	<u>July 2014</u>
<u>Horizontal Directional Bores</u>	<u>July 2014</u>
<u>Pipeline ROW Development</u>	<u>July 2014</u>
<u>Pipeline Installation</u>	<u>Jul/Aug 2014</u>
<u>Testing & Initial Operations</u>	<u>Sep/Oct 2014</u>
<u>Reclamation</u>	<u>Sep/Oct 2014</u>

e. Describe the soil within the disturbed area(s). Attach additional pages if need and label 1-e. (Soil survey information may be found at websoilsurvey.nrcs.usda.gov/app/.)

Generally loams ranging from silt loam to sandy loams (see attached map)

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-
- f. Provide the drainage path runoff takes as it leaves the site. Include the municipal, county or state-operated storm sewer or drainage ditch, as well as the first named waterbody or wetland (if known) to which the site drains. Attach additional pages if need and label 1-f.

Also include whether or not the waterbody is listed in the most recent *North Dakota Integrated Section 305(b) Water Quality Assessment Report and Section 303(d) List of Water Needing Total Maximum Daily Loads* or if a total maximum daily load (TMDL) has been developed for the waterbody.

The Integrated Report and a list of waterbodies with a TMDL may be found at:
www.ndhealth.gov/WO/SW/Z2_TMDL/default.htm.

- If the waterbody is listed in the Integrated Report in the Section 303(d) List as impaired due to sedimentation/siltation, then distance to the waterbody must be included.
- If a TMDL allocation has been developed for the waterbody or overall watershed, then a list of the particular pollutants must be included and the SWPP Plan must be developed to satisfy Part I.B.5 of NDR10-0000. The pollutants of concern often are referenced in the title of the TMDL document.

For example: The site drains to the Bismarck storm sewer and discharges into a tributary of Hay Creek. Hay Creek is listed as impaired for sediment and is 1,000 feet from the site.

The pipeline route drains to the Knife River to the south or to Spring Creek (a tributary of the Knife River) to the north. Both Spring Creek and the Knife River in this area were delisted in 2012. The project most closely approaches either of these waterways at its terminus immediately above a bermed containment area approximately 900' from its closest point. (see attached map)

- g. Provide a site map showing the following items. Please note: Items 1 through 10 all must be shown on the site map. Label as 1-g.
- 1) Drainage patterns, including flow direction, dividing lines, existing grade and final grade
 - 2) Construction site boundaries
 - 3) Areas of soil disturbance
 - 4) Location of major structural controls identified in this plan
 - 5) Location of major nonstructural controls identified in this plan
 - 6) Location of areas that will be stabilized
 - 7) Surface waters, including an aerial extent of wetland acreage
 - 8) Locations where stormwater is discharged to surface waters
 - 9) Locations where stormwater enters municipal storm sewer systems
 - 10) If part of the project, additional site maps of:
 - Off-site concrete/asphalt batch plants
 - Equipment staging areas
 - Borrow sites
 - Offsite material disposal sites

2. **Operational Controls.** The plan must describe the best management practices (BMPs) used in day-to-day operations on the project site that reduce the contribution of pollutants in stormwater runoff.

- a. **SWPP plan contact.** The SWPP plan contact must be an individual who is knowledgeable and experienced in the application of erosion and sediment control BMPs who will oversee the implementation of the SWPP plan and the installation, inspection and maintenance of the erosion and sediment control BMPs before and during construction. The contact may be identified by name or title.

SWPPP contact: Ray W. Sheldon Phone: 406/855-5008

Title: General Manager

- b. **Chain of responsibility.** A chain of responsibility must be developed by the owner with all operators on site to ensure the SWPP plan will be implemented and remains in effect until (1) the project is complete, (2) final stabilization has been achieved, and (3) a notice of termination (NOT) has been submitted to the department.

Basin Transload's project manager will work closely with Treco Constructors to assure that all responsibilities under this SWPPP are conducted until the project is complete and final stabilization has occurred. Basin Transload's project manager shall be responsible to file a NOT to the department.

- c. **Good housekeeping.** Describe good housekeeping practices used to maintain a clean and orderly project.

Properly handle construction debris and waste materials. The appropriate containers for debris and waste material must be provided until disposal. Litter and debris must be picked up regularly to reduce the chance of being carried away by wind or water. Collected material must be taken to the appropriate facility for disposal or recycling.

Liquid or soluble material (i.e., oil, fuel, paint and hazardous substances) must be stored properly to prevent spills, leaks or discharges off-site. Restricted access to storage areas must be provided to prevent vandalism. Storage and disposal of hazardous waste must be in compliance with applicable regulations.

- 1) Describe how the following items will be properly handled to minimize exposure to stormwater and not be carried offsite by wind or water. Attach additional pages if needed and label 2-c-1.
- Litter
 - Debris
 - Chemicals
 - Parts

Trash receptacles will be available for the workers. The mobile equipment will be fueled from a fuel truck. All but minor maintenance of all equipment will be conducted off-site to minimize potential chemical contaminations of the site. The material stockpiles will be located to minimize run-off impacts to water discharges from the site.

- 2) Describe how off-site accumulations of tracked sediment caused by vehicles and equipment leaving the project will be reduced and cleaned up. Attach additional pages if needed and label 2-c-2.

Note: The general permit NDR10-0000 requires you to removed accumulated sediment tracked onto off-site paved surfaces within 24 hours or within a shorter time period specified by local authorities or the department. Be sure to check with local authorities, most specify either the end of the day or within 24 hours. You also should consider whether public safety will be an issue.

No paved surfaces are located within the project area and no traffic is projected on to the paved Highway 5 to the North of the site.

- 3) Describe how dust generation will be reduced and how off-site accumulations will be cleaned up. Attach additional pages if needed and label 2-c-3.

Dust generation will be reduced by controlling the speed of all construction equipment, use of a water truck and blade to keep the haulage areas watered and smooth.

d. **Preventative maintenance.** Describe what preventative maintenance practices are used, including routine inspections and maintenance, to ensure the proper operation of the following. Attach additional pages if needed and label 2-d.

- Stormwater management devices (for example: oil-water separators, catch basins, fiber rolls, etc.)

Good housekeeping will be use to maintain a clean and orderly site. Stormwater control devices, primarily silt fences and fiber rolls, will be properly operated and maintained. The site will be inspected weekly and maintained to eliminate and minimize impacts to run-off waters and ensure compliance with the plan.

- (Preventative maintenance-continued) Equipment used on-site, such as a pre-startup inspection

Silt fences and fiber logs will be used as well as preservation of existing vegetation where possible to prevent run-off from the construction areas leaving the site, affecting downstream landowners or waterways.

e. **Spill prevention and response procedures.** Describe spill prevention and response procedures used in areas where spills could occur. Bulk storage of petroleum products and other chemicals must have adequate leak and spill protection to prevent spilled material from entering waters of the state or storm sewer systems or from draining onto adjacent property.

Include, where appropriate:

- Specific handling procedures.
- Storage requirements.
- Spill containment procedures.
- Spill cleanup procedures.

Reportable spills are those that:

- Threaten or are in a position to threaten waters of the state, such as surface or ground water.
- Cause immediate danger to human health or safety.
- Cause harm or threaten to harm wildlife or aquatic life.
- Are releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

Note: CFR stands for *Code of Federal Regulations*, and CERCLA stands for *Comprehensive Environmental Response, Compensation, and Liability Act*.

Spill Reporting

Report any spill that may seriously endanger health or the environment as soon as possible, but no later than 24 hours from the time you became aware of the spill. The report must be made to EPA-Region 8, Emergency Response Branch, at 800.424.8802 and the state of North Dakota, Division of Homeland Security, at 800.472.2121.

Some releases may require immediate response by trained emergency personnel. This may be coordinated through the Department of Health, Department of Emergency Services and any other state or local emergency response agencies that may be

Stormwater Pollution Prevention Plan (SWPPP)

needed. If there is any question as to proper response, call the Department of Health at 701.328.5210 or the North Dakota hazardous materials emergency assistance and spill reporting number (800.472.2121) and provide all relevant information about the incident.

North Dakota Department of Health:

Division of Water Quality	701.328.5210
Division of Waste Management	701.328.5166
Division of Air Quality	701.328.5188
Division of Municipal Facilities	701.328.5211

North Dakota hazardous materials emergency assistance and spill reporting:
800.472.2121 (24-hour hotline)

Nonemergency releases may be reported by filling out the online [Environmental Incident Report Form](http://www.ndhealth.gov/WQ/GW/spills.htm) at www.ndhealth.gov/WQ/GW/spills.htm.

Stormwater Pollution Prevention Plan (SWPPP)

Material/Chemical	Quantity	Handling Procedures	Storage Requirements	Spill Containment Procedures	Spill Clean-up Procedures

Attach additional pages if needed

Stormwater Pollution Prevention Plan (SWPPP)

- f. **Employee training.** Describe how personnel are informed about their responsibility in implementing the practices and controls in the plan. Employee training can include spill response procedures, good housekeeping practices, and erosion and sediment control practices. Note: Employee training must be provided at least annually, as new employees are hired or as necessary to ensure compliance with the plan and the general permit, NDR10-0000. Attach additional pages if needed and label 2-f.

Personnel are instructed as to their responsibilities and the procedures for spill prevention, response, housekeeping and erosion and sediment control by the site supervision.

- g. **Concrete wash water, grindings and slurry.** Concrete wash water may not be discharged to any water of the state or any storm sewer system or allowed to drain onto adjacent properties. Disposal must be limited to a defined area or an area designated for cement washout. The area must be sufficient to contain the wash water and residual cement.

Please note that as the project progresses, the wash out area will probably move. Be sure to keep the current position of the wash out area up-to-date on the site map.

Describe what practices will be used to prevent concrete wash water, grindings and slurry from entering waters of the state and storm sewer systems, or draining onto adjacent property. Attach additional pages if needed and label 2-g.

Concrete wash water will not be discharged to any water. Any concrete wash water will be disposed in defined basins adjacent to the foundation installation area.

- h. **Dewatering and basin draining operations.** These operations must not adversely affect receiving waters or downstream landowners. The operation should be inspected daily and a record should be maintained. The following conditions apply to dewatering activities covered by the construction general permit:

- Dewatering is limited to stormwater and groundwater that may collect on site, and the following allowable non-stormwater sources: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

Note: You are allowed to discharge the non-stormwater discharges sources only if you describe what measures will be used to minimize their impact to water quality.

A temporary dewatering permit, NDG07-0000, is required for other sources such as hydrostatic testing, contaminated groundwater or surface water. Information about the temporary dewatering permit may be found at: www.ndhealth.gov/WQ/Dewatering/DewateringHome.htm. Discharging wastewater from processing operations or sanitary facilities is not authorized by the construction general permit, NDR10-0000.

- The operation must not lead to sediment deposits within storm sewers, ditches and surface waters. The operation must not cause or potentially cause a visible plume in a surface water.

Describe how dewatering operation will be operated to minimize the release of sediment and amount of erosion caused by the discharge.

Not applicable to this site

3. **Erosion and Sediment Controls.** An erosion and sediment control plan must be developed for the project. The plan must identify the appropriate control measures and when they will be implemented during each major phase of the project (e.g., clearing, grading, and building phases).

Stormwater Pollution Prevention Plan (SWPPP)

The basic requirements of an erosion and sediment control plan are:

- a. Sediment basins – or an appropriate combination of equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc. – are required for all down-slope boundaries of the disturbance area and for those side-slope boundaries as may be appropriate for site conditions.
- b. Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided where activities have been completed or temporarily ceased. For areas with a continuous positive slope within 200 lineal feet of a surface water, this must be accomplished within 21 days. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.

A general rule of thumb is that seed germination will occur when the soil temperature is above 50°F. Soil temperature information may be found at ndawn.ndsu.nodak.edu.

- c. All control measures must be properly selected, installed and maintained in accordance with the manufacturer's specifications and good engineering practices. Include with this plan a copy of the use or installation directions for measures that are used during the project. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, it must be replaced or modified for the situation. You may deviate from the manufacturer's specifications and erosion and sediment control guidelines below if you provide justification for the deviation and document the rationale for the deviation in your SWPP plan.
- d. If sediment escapes from the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.
- e. Stormwater controls are expected to withstand and function properly up to a two-year, 24-hour precipitation event. Visible erosion and/or off-site sediment deposits should be minimal. A two-year, 24 hour rain event in North Dakota ranges from 1.9 inches in the west to 2.3 inches in the east.
- f. If the project discharges to a waterbody that has a TMDL allocation for sediment, suspended solids or turbidity, this plan must be consistent with the requirements of the TMDL. If the TMDL requires certain practices be used to meet the waste load allocation (WLA), then the practices must be included in this plan.

The erosion and sediment control plan must conform to the guidelines outlined in Appendix 1 of NDR10-0000 for designing, implementing and maintaining effective erosion and sediment controls. The following questions break down the requirements of Appendix 1.

<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<p>1. Where practical, temporary or permanent sediment basins must be provided when 10 or more acres of disturbed area drains to a common location. The basins must be provided prior to runoff leaving the site or entering surface waters. The use of sediment basins is encouraged, but not required, in areas with steep slopes or highly erodible soils even if less than 10 acres drains to one area.</p> <p>Is the use of sediment basins practical for the project? If no, skip to question #10. Things to consider include public safety, soil type, slope and available area.</p>
<input type="checkbox"/> Yes <input type="checkbox"/> No	2. Where appropriate, are temporary sediment basins installed in areas with steep slopes or highly erodible soils?
<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>3. Are all basins sized or designed to meet one of the following guidelines?</p> <ul style="list-style-type: none"> • Basins must be sized to provide 3,600 cubic feet of storage for every acre of disturbed area draining to the basin; or • Basins must be designed to provide storage for a two-year, 24-hour storm event plus more than 1,800 cubic feet of storage from each disturbed acre that drains to the basin.
<input type="checkbox"/> Yes <input type="checkbox"/> No	4. Are basin outlets designed to avoid short-circuiting? Short-circuiting usually occurs when the outlet is near the inlet. This causes water to exit the basin immediately upon entering and little treatment is achieved.
<input type="checkbox"/> Yes <input type="checkbox"/> No	5. Are basin outlets designed to avoid the discharge of floating debris?
<input type="checkbox"/> Yes <input type="checkbox"/> No	6. Are the basins designed to allow complete drawdown for maintenance activities? Examples of

Stormwater Pollution Prevention Plan (SWPPP)

	drawdown devices include perforated riser pipes, pumps, skimmers or other means.
<input type="checkbox"/> Yes <input type="checkbox"/> No	7. Is the drawdown designed to release the storage volume in a 24-hour or longer period?
<input type="checkbox"/> Yes <input type="checkbox"/> No	8. Does the basin have a stabilized emergency overflow to prevent failure of pond integrity?
<input type="checkbox"/> Yes <input type="checkbox"/> No	9. Does the basin outlet have an energy dissipater?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	10. If temporary sediment basins are not practical in areas where 10 or more acres of disturbed area drains to a common location, then a combination of erosion and/or sediment controls with equivalent storage must be used for all down-slope construction boundaries and side-slope boundaries as appropriate. Examples of additional controls include smaller sediment basins, sediment traps, silt fences, vegetative buffer strips, etc. Have erosion and sediment controls been provided that have the same sediment-control capabilities as the sediment basins they replaced?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	11. Has temporary erosion protection been provided for exposed soil areas where activities have been completed or will temporarily cease?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	12. Has permanent cover been provided for exposed soil areas where activities have been completed or will temporarily cease?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	13. For areas with a continuous positive slope within 200 lineal feet of a surface water, does the plan address how temporary erosion protection or permanent cover will be applied within 21 days of completing or ceasing earthmoving activities in these areas (pond embankments, ditches, berms, soil stockpiles)? Temporary stockpiles without significant silt, clay or organic components, such as clean aggregate stockpiles, demolition concrete stockpiles, and sand stockpiles, are exempt.
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	14. Do temporary soil stockpiles have effective sediment controls?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the plan address how temporary soil stockpiles will not be placed in surface waters, stormwater conveyance systems, curb and gutter systems, conduits or ditches?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	15. Are there any temporary or permanent drainage ditches that drain water from the construction site or divert water around the site?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the plan address how the normal wetted perimeter of these ditches will be stabilized within 200 lineal feet of the property edge or point of discharge to a surface water?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the plan address how the normal wetted perimeter will be stabilized within 24 hours of connecting to a surface water?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	16. Does the plan address how pipe outlets will be provided with temporary or permanent energy dissipation within 24 hours of connecting to a surface water?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	17. Where applicable, are splash pads and/or downspout extensions provided for roof drains to prevent erosion?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	18. For slopes with a grade of 3:1 or steeper, is the slope length broken up every 75 feet?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	19. Do temporary or permanent drainage ditches and sediment basins that are part of a treatment system have appropriate sediment controls?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	20. Are all storm drain inlets within the project limits and in the immediate vicinity of the site protected?

Stormwater Pollution Prevention Plan (SWPPP)

	<p>This includes inlets affected by sediment tracked from the site.</p> <p>Note: Inlet protection is a last line of defense. Additional sediment and erosion control practices must be used on-site. Inlet protection must conform to local ordinances or regulations. Maintenance and cleaning of inlet protection must be performed in a timely manner.</p> <p>Inlet protection may be removed for a particular inlet if a specific concern, such as street flooding/freezing or snow removal, has been identified and documented in the SWPP plan. In these situations, additional erosion and sediment control practices must be used in place of the lost inlet protection.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	21. Do inlet protection devices provide adequate drainage to prevent excessive flooding?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	22. Do vegetative buffers have a minimum width of 25 feet for every 125 feet of disturbed area that drains to the buffer? For each additional 5 feet of disturbance, an additional 1 foot of buffer must be added.
	<p>The buffer should have a slope of 5 percent or less, and the area draining to the buffer should have a slope of 6 percent or less.</p> <p>Note: In some instances, a minimum width of 25 feet may not be necessary based on past experience with buffers. In those cases, a short explanation about what your experience has shown should be included in this plan.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	23. Are concentrated flows being minimized throughout the vegetative buffer?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	24. Do vegetative buffers consist of dense, grassy vegetation? Dense, grassy vegetation is 3 to 12 inches tall with uniform coverage over 90 percent of the buffer. No more than 10 percent of the buffer may consist of woody vegetation.

4. Stormwater Management. The plan must identify what permanent practices will be used to control pollutants in stormwater discharges once construction is complete. This refers to post-construction controls like permanent infiltration devices or low-impact development practices. This does not refer to devices used to stabilize the site as a result of construction activity, such as silt fence or erosion control blanket, so this section may not apply to all projects.

Maintenance of on-site stormwater management features is your responsibility until a notice of termination has been submitted or the feature is accepted by the party responsible for long-term maintenance (e.g., a municipality accepts a stormwater pond built during the project). In the site map identify:

- a. Stormwater ponds; flow reduction practices that use open vegetated swales and natural depressions; infiltration of on-site runoff; and sequential systems that combine several practices.
- b. Velocity / energy dissipation devices placed at discharge locations (e.g., riprap) and appropriate erosion protection for outfall channels and ditches (e.g., hard armor or soft armor practices).

5. Maintenance. All erosion and sediment control (ESC) measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate the appropriate maintenance or cleanout interval for selected erosion and sediment controls. Attach additional pages if needed and label 5.

If site inspections identify BMPs that are not operating effectively, maintenance must be arranged and accomplished as soon as practicable.

When describing the maintenance and cleanout frequency of selected measures, try not to use vague terms like "as needed." Instead describe what is meant by "as needed," such as when one-third full or at the end of each work day.

ESC Measure	Maintenance Frequency	Cleanout Frequency
Silt Fences	weekly	when one-third full
Fiber rolls	weekly	when one-third full

--	--	--

Maintenance Considerations:

- a. All erosion prevention and sediment control practices must be inspected to ensure integrity and effectiveness. All nonfunctional practices must be repaired, replaced or supplemented with functional practices.
 - b. At a minimum, you must investigate and comply with the following maintenance requirements:
 - All control devices that function similarly to silt fence or fiber rolls must be repaired, replaced or supplemented with effective controls when they become nonfunctional or the sediment reaches one-third the height of the device. These repairs must be made within 24 hours of discovery or as soon as field conditions allow access.
 - Sediment that has collected within temporary or permanent sedimentation basins must be removed when one-half of the sediment storage volume has been reached. Drainage and removal must be completed within 72 hours of discovery or as soon as field conditions allow access.
 - c. All sediment deltas and deposits must be removed from surface waters, drainage ways, catch basins and other drainage systems. All areas where sediment removal resulted in exposed soil must be restabilized. The removal and stabilization must take place immediately, but no more than seven (7) days after the discovery unless precluded by legal, regulatory or physical access constraints. All reasonable efforts must be used to obtain access. Once access is obtained, removal and stabilization must take place immediately, but no more than seven (7) days later. You are responsible for contacting all of the appropriate authorities and receiving the applicable permits prior to conducting any work.
 - d. Accumulations of tracked and deposited sediment must be removed from off-site paved surfaces within 24 hours or sooner if required. Sediment tracking must be minimized by the appropriate management practice, like a dedicated site exit with an aggregate surface or designated off-site parking area. You are responsible for street sweeping and/or scraping if your practices are not adequate to prevent sediment from being tracked from the site.
 - e. Off-site accumulations of sediment must be removed in the manner and frequency sufficient to minimize off-site impacts; for example, fugitive sediment in the street could be washed into the storm sewer by the next rain event and/or pose a safety hazard to users of public streets.
 - f. If a vegetative buffer is silt covered, contains rills, or is otherwise rendered ineffective, other control measures must be implemented. Any eroded areas have to be repaired and stabilized.
- 6. Inspections.** Site inspections must be conducted to monitor the condition of stormwater discharge outlets and the effectiveness of erosion and sediment controls and other best management practices. Personnel conducting inspections must be familiar with the permit conditions and the proper installation and operation of erosion and sediment control measures. At a minimum, inspections must be performed and recorded once every 14 calendar days and within 24 hours of a 0.50-inch or more rain event. You may use a rain gauge or the nearest National Weather Service precipitation gauge station; each must be within 5 miles of the project. Inspection frequency may be reduced based on site conditions. Refer to part III.A of the construction general permit for more information.

All erosion and sediment control measures **identified in the plan** must be inspected to ensure they are operating correctly and in serviceable condition.

Surface waters, drainage ditches and conveyance systems must be inspected for sediment deposits.

Exit points from the construction site (onto paved surfaces) must be inspected for sediment being tracked by vehicles or equipment.

Vegetative buffers must be inspected for the proper distribution of flows, sediment accumulation and signs of rill formation.

Erosion and sediment controls found in need of maintenance between inspections need to be repaired or supplemented with appropriate measures as soon as possible.

Discharge outlets from material storage areas, vehicle maintenance areas and permanent stormwater control measures must be inspected. Look for evidence of, or the potential for, pollutants entering a drainage system. The plan must be revised if any deficiencies are noted.

Stormwater Pollution Prevention Plan (SWPPP)

- a. Some erosion and sediment control measures may require more frequent inspections based on location or as a result of a recurring maintenance issue. The measure, location and inspection frequency should be outlined below:

ESC Measure	Location	Inspection Frequency

- b. Location of rain gauge being used: _____
- c. In some instances, more than one inspector may be responsible for reviewing different areas of the site, or there may be different inspectors involved with different phases.

Inspector(s)	Area of Inspection	Construction Phase of Inspection	Start Date	End Date
Ron Kroshus	All	ROW / Trenching/ Backfilling	07/14/2014	10/31/2014

- e. All inspections and maintenance activity must be recorded in writing. Records of each inspection and maintenance activity shall include:
- 1) The date and time of the inspection.
 - 2) The name of the person(s) conducting the inspection.
 - 3) The findings of the inspection, including recommendations for corrective actions.
 - 4) Any corrective actions taken (including dates, times and party completing the maintenance activity).
 - 5) The date and amount of all rainfall events greater than 0.05 inches in 24 hours.
 - 6) Documentation that the SWPP plan was amended when substantial changes were made to erosion and sediment controls or other best management practices.

7. Records Location and Retention.

- a. The following documents must be kept in a field office, trailer, shed or vehicle that is on-site during normal working hours:
- 1) A completed and signed copy of the notice of intent
 - 2) The permit coverage letter from the North Dakota Department of Health
 - 3) The stormwater pollution prevention plan
 - 4) Site inspection records
 - 5) A copy of the North Dakota Pollutant Discharge Elimination System General Permit associated with stormwater discharges from construction activity, NDR10-0000
- b. If a reasonable on-site location is not available, then the documents may be retained at a readily available alternative location, preferably with the SWPP plan contact. If the site is inactive, then the documents may be stored at a local office.
- c. All records and information must be kept for at least three years or longer if requested by the North Dakota Department of Health or United States Environmental Protection Agency.

8. Plan Review and Revisions.

- a. The plan must be signed in accordance with Part IV-E of NDR10-0000.
- b. The plan must be made available, upon request, to the North Dakota Department of Health, United States Environmental Protection Agency, or operator of the local municipal separate storm sewer system.
- c. The plan must be amended whenever there is a change in design, construction, operation or maintenance that could have a significant effect on the potential for the discharge of pollutants to the waters of the state. It also must be amended if it is found to be ineffective in controlling pollutants present in stormwater.

Stormwater Pollution Prevention Plan (SWPPP)

SWPPP Revision Documentation

<u>Item Revised</u>	<u>Revision Made</u>	<u>Date</u>	<u>Initials</u>

9. Final Stabilization.

Final stabilization means that:

- a. All soil-disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions or geotextiles) has been achieved.
- b. For areas with an average annual rainfall of less than 20 inches only, all soil-disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed and installed, along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.
- c. For soil-disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the state, and areas that are not being returned to their pre-disturbance agricultural use must meet the final stabilization criteria in (a) or (b) above.

Final stabilization has been achieved when one of the criteria above has been met and:

- a. All drainage ditches constructed to drain water from the site following construction have been stabilized to preclude erosion.
- b. All temporary, synthetic and structural erosion and sediment controls have been removed.
- c. Sediment has been removed from all stormwater conveyances and basins used for permanent water quality management. Removed sediment must be stabilized to prevent subsequent erosion in the future.

Final stabilization also can be achieved when a new permittee has assumed control of the site.

In the case of residential construction, final stabilization is achieved when erosion protection and down-gradient perimeter controls for individual lots have been installed and the residence has been transferred to the homeowner. In addition, a "homeowner fact sheet" must be given to the homeowner to inform them of the need for, and benefit of, stabilizing their property. You also must demonstrate that the homeowner received the fact sheet.

Stormwater Pollution Prevention Plan (SWPPP)

The individual(s) described below is(are) responsible for the following portion(s) of the Stormwater Pollution Prevention Plan:

<u>Ray Sheldon</u> Name	<u>Basin Transload</u> Company	<u>General Manager</u> Title
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Plan Development and Revision
SWPP Plan Responsibility

<u>Ron Kroshus</u> Name	<u>Treco Constructors</u> Company	<u>Site Superintendent</u> Title
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Erosion / Sediment control / Trenching/Backfill
SWPP Plan Responsibility

_____ Name	_____ Company	_____ Title
---------------	------------------	----------------

SWPP Plan Responsibility

_____ Name	_____ Company	_____ Title
---------------	------------------	----------------

SWPP Plan Responsibility

_____ Name	_____ Company	_____ Title
---------------	------------------	----------------

SWPP Plan Responsibility

Attach additional pages if needed.

CERTIFICATION

Certification Instructions:

The stormwater pollution prevention plan (SWPPP) must be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

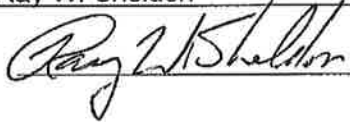
The SWPPP may be signed by a duly authorized representative of the individual described above if:

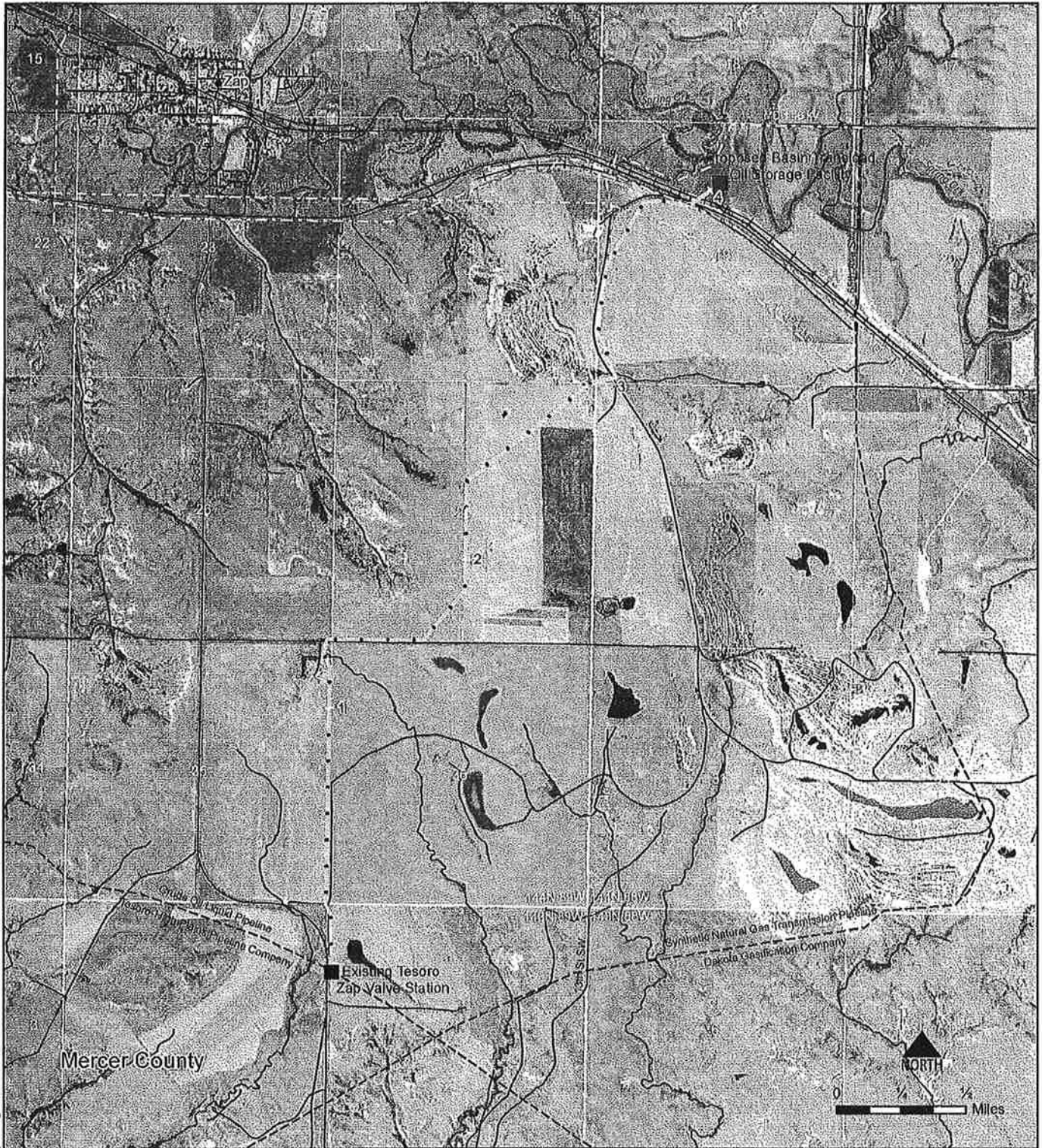
- The authorization is made in writing by the person described above and submitted to the North Dakota Department of Health; and
- The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the plant manager, the superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If the authorization is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department of Health prior to or together with any reports, information or applications signed by the authorized representative.

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Name Ray W. Sheldon Title General Manager
Signature  Date 7/1/2014



File: E:\thpp\Beulah\Map_4_Lateral\Map_4_Lateral\Beulah_Map_4_Lateral.mxd, 3/10/2007, 10:51:00 AM



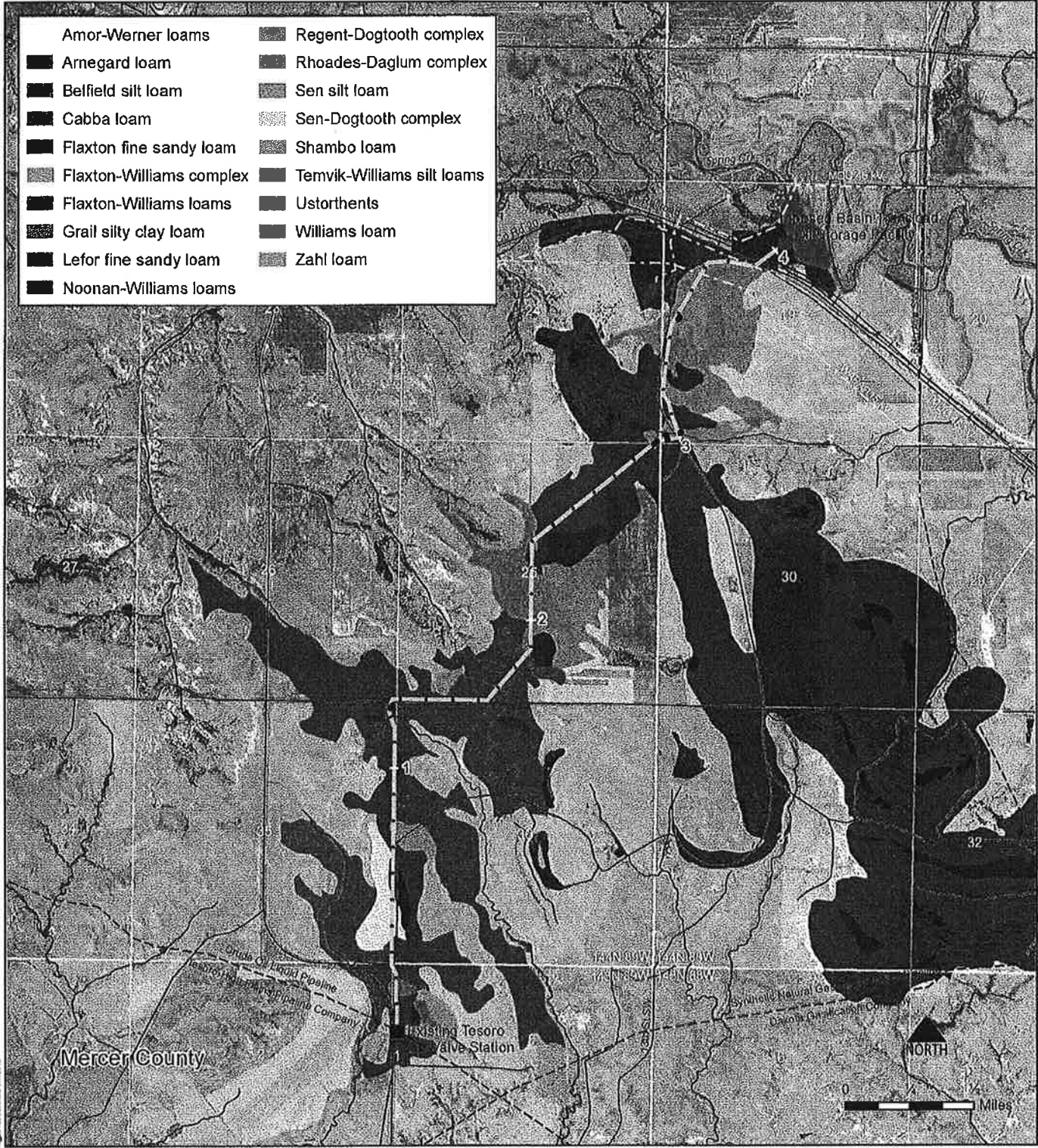
Existing Facility	Transmission Lines
Proposed Facility	Roads
Proposed 10" Pipeline Route (with mile posts)	Railways
Existing Pipelines	Streams
	State Trust Land

Figure 1-2

THPP Beulah Lateral Pipeline Project Route



Source: ESRI, ND GIS HUB, MAFFIGER, NAD



File: I:\Projects\14-002 Day 4 Update\GIS\Soils\Map_Soils_2-2_2012.mxd and 1/12/2012 8:00:10 AM

Source: ERI, ND GIS 10/11, MAP7/IGER, USCA NRCS 3/2/11 (SSURGO), MAP

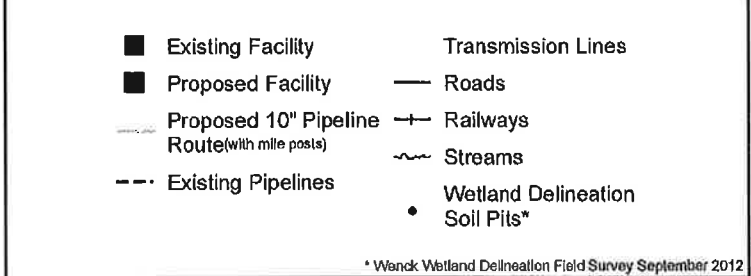
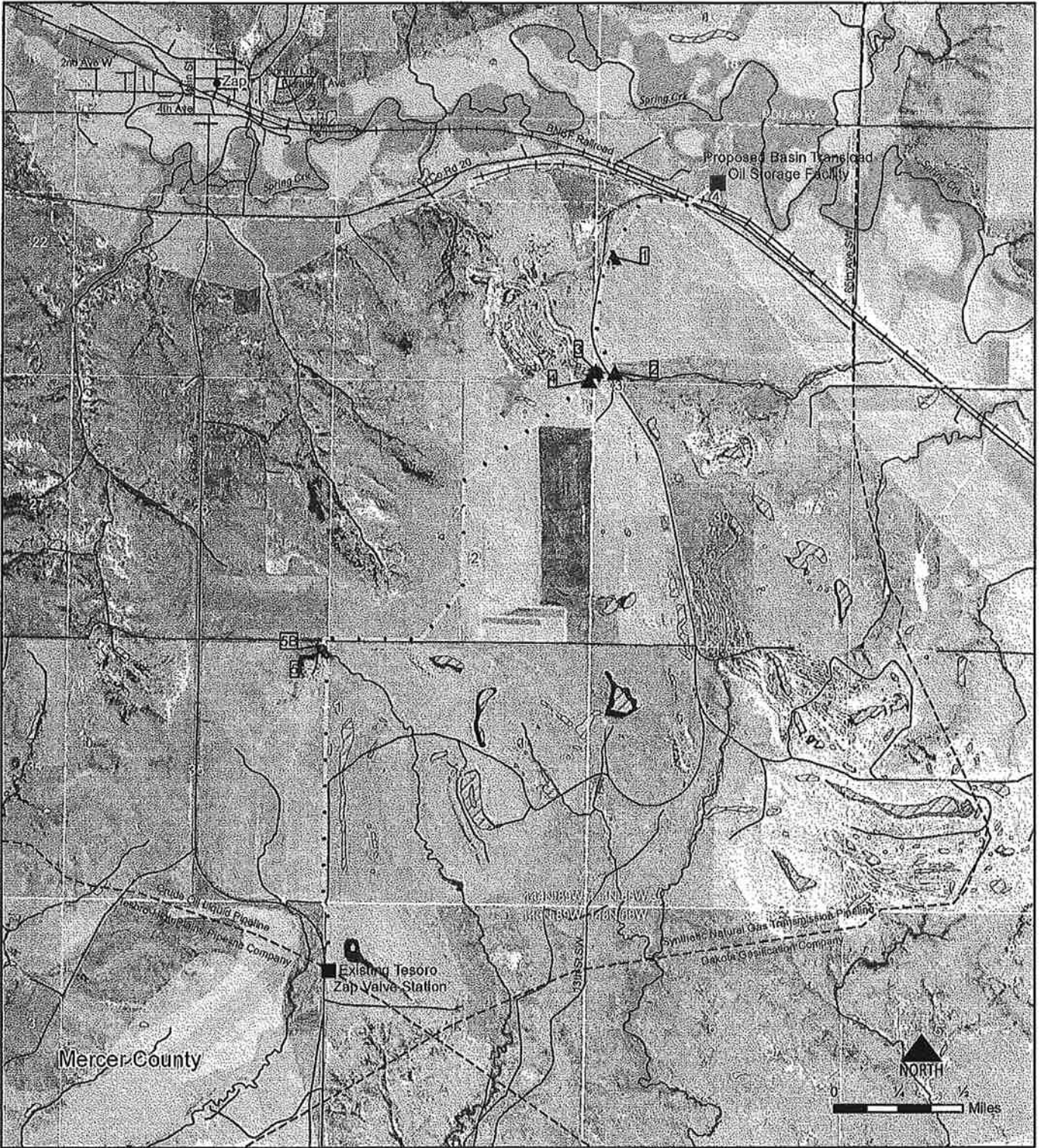


Figure 2-2
THPP Beulah Lateral Pipeline Soils



File: R:\Project\GAS-002 Zap & Lateral\GIS\Map\Map_2-3_Vetland.mxd, 2/17/2017 9:58:03 AM

Source: EBRI, ND 018 HUB, MAFITIGER, FEMA 2006, HAP

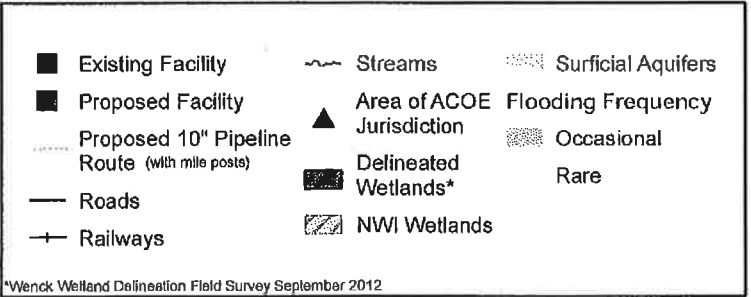


Figure 2-3
THPP Beulah Lateral Pipeline Wetlands

ELECTRICAL CONSULTANTS, INC.

Utility Occupancy Application and Permit

Permit #

1332 (13)

Applicant Information:

Basin Transload LLC of Billings, Montana
 Owner of Facility City State

P.O. Box 80284, 59108 406-652-8328
 Mailing Address Telephone Number

Ray W. Sheldon General Manager 406-855-5008
 Applicant's Agent Title Telephone Number

Location of Facility:

Mercer County Road # 20 Direction N-S-E West miles from city of _____
 or 1.6 miles from Junction Mercer County Road # 17

Section(s) 19 & _____ Township 144N Range 88W

Type of Facility:

10 inch crude oil pipeline to storage tanks at transloading facility (see attached sketch)

Description of proposed facility (include drawings/sketches/staking sheet)

To be installed by horizontal directional drilling

Description of proposed method of installation

10.75" OD 0.365" thick wall

Size of Facility

Number of Cables

Length of Down Guys

1480 psi MAOP

Pipeline Pressure

N/A

Size of Casing

Length of Casing

Markers @ ROW

Location of Pole(s)

Location of Appurtenances

Location-Others

(Vents, Manholes, Valves, etc.)

Terms & Conditions: Installation and method of said facilities on highway right of way shall be subject to the following terms & conditions; and the installation & maintenance provisions, attached hereto and made a part hereof.

- A. Installation of said facility shall be done in a manner satisfactory to the Mercer County Road Superintendent.
- B. Applicant shall notify the Mercer County Road Superintendent 48 hours prior to maintaining, relocating, or removal of said facilities. All disturbed areas shall be restored to their original condition in a manner satisfactory to the Mercer County Road Superintendent.
- C. Mercer County shall not be liable for damage to said facilities resulting from reconstruction or maintenance of the highway. Applicant shall hold Mercer County and any of its employees harmless for injury to persons or damage to property resulting from the location of said facilities on highway right of way.
- D. Applicant shall repair or replace highway structures and appurtenances, and any existing facilities located on, over, or under highway right of way; which may be damaged as a result of the installation & maintenance of said facilities on highway right of way.
- E. Applicant shall remove said facilities from highway right of way or shall relocate or adjust said facilities at its sole cost & expense when they are requested to do so by Mercer County, which shall be completed as soon thereafter as is practicable.
- F. Additional installation & maintenance requirements are as follows (if applicable):
- G. Installation shall be completed on or before November 30, 2013

6-13-2013

Date

Ray W. Sheldon
Applicant Signature

Applicant is hereby granted permission to install & maintain the facilities applied for, as shown on the plans attached hereto & made a part hereof.

Approved by Mercer County Board of Commissioners/Road Superintendent this _____ day of _____ 20_____.

Tom J. Mull

Road Superintendent

Frank H. Bitterman
Chairman, Mercer County Commission

Longitudinal:

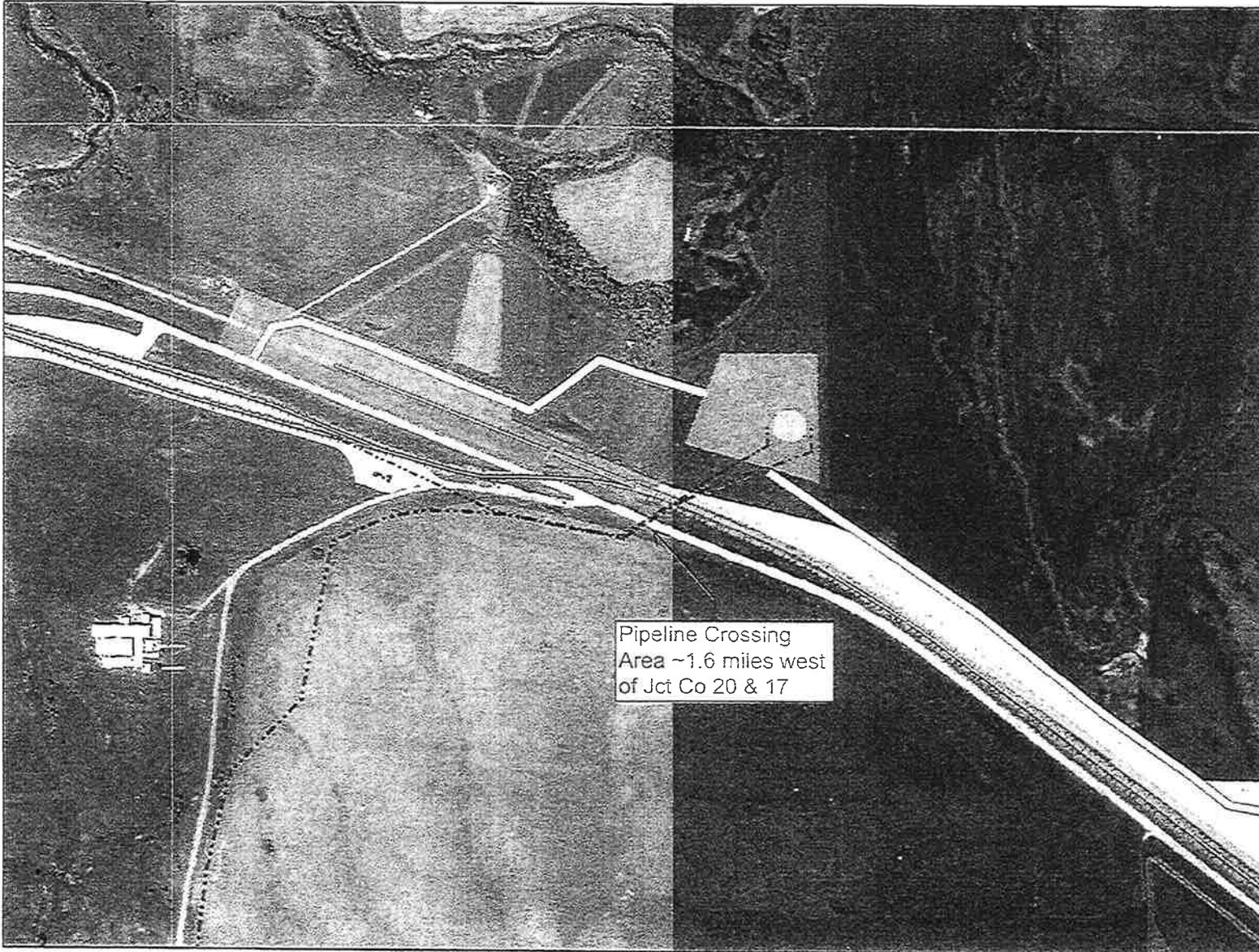
Location # _____
_____ Highway # _____ Lanes of Traffic 2 4
Direction N S E W _____ feet from mile marker _____
Direction N S E W _____ miles from city of _____
or _____ miles from junction highway # _____

Location # _____
_____ Highway # _____ Lanes of Traffic 2 4
Direction N S E W _____ feet from mile marker _____
Direction N S E W _____ miles from city of _____
or _____ miles from junction highway # _____

Location # _____
_____ Highway # _____ Lanes of Traffic 2 4
Direction N S E W _____ feet from mile marker _____
Direction N S E W _____ miles from city of _____
or _____ miles from junction highway # _____

Location # _____
_____ Highway # _____ Lanes of Traffic 2 4
Direction N S E W _____ feet from mile marker _____
Direction N S E W _____ miles from city of _____
or _____ miles from junction highway # _____

Interstate Highways (applicant's description of the proposed method of ingress and egress to each work location).

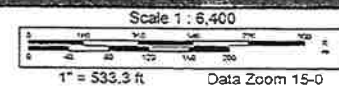


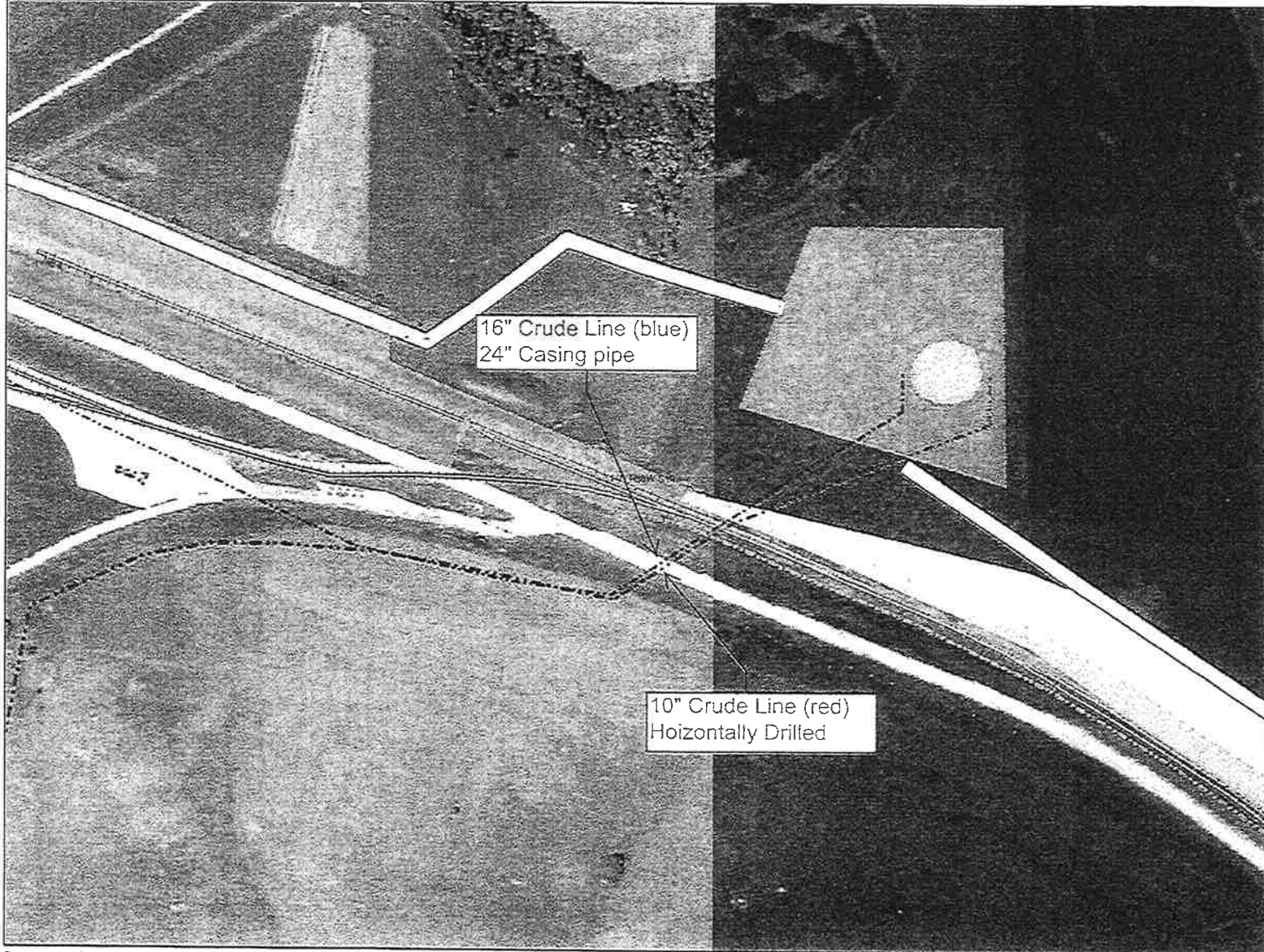
Pipeline Crossing
Area ~1.6 miles west
of Jct Co 20 & 17

Data use subject to license.

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www.delorme.com

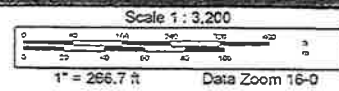




Data use subject to license.

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PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective June 26, 2014 (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **BASIN TRANSLOAD LLC** a Delaware limited liability company ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, ten point seven five zero (10.750") inches in diameter inside a fifteen point five zero (15.50") inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Republic, County of Mercer, State of North Dakota, Line Segment 0303, Mile Post 78.05 as shown on the attached Drawing No. 59312, dated May 27, 2014, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry *crude oil*, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose without the prior written consent of Licensor, which consent shall not be unreasonably withheld.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Five Thousand and No/100 Dollars (**\$5,000.00**) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" "expense or expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the *Pipeline*, including but not limited to the furnishing of Licensor's

flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. **Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.**

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**
- 11.1 Licensee shall notify Licensor's Roadmaster, at 300 1st Street SW, Mandan, ND 58554, telephone (701) 667-2235, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Except for the pipeline construction contemplated by this Agreement, under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Any use of the premises that will be within twenty-five (25) feet of the centerline of any railroad track will be discussed with Licensor's Roadmaster at the contact listed in Section 11.1 above. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that it will not at any time be a source of danger to or interference with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in Section 26 hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section 11, Licensor may, at its option and at Licensee's

sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees,

and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
 - 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
 - 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
 - 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
 - 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER NEGLIGENCE OF ANY INDEMNITEE.**
- 13.4 **TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13.3, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THE LICENSE SHOULD NOT BE SO CONSTRUED. IN THE EVENT ANY AGENCY OR COURT CONSTRUES THE LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.5 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR**

RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE. LICENSEE'S OBLIGATIONS UNDER THIS SECTION 13.5 ARE REGARDLESS OF ANY NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.

- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**
15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:
- 15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the worker's compensation laws of the state(s) in which the services are to be performed. If optional under state law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is **\$1,150.00**.

- I elect to participate in Licensor's Blanket Policy;
- I elect not to participate in Licensor's Blanket Policy.

- 15.5 Contractor's Pollution Legal Liability (CPL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per claim including but not limited to the following:
- Coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death.
 - Coverage for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
 - Coverage for defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
 - Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense.
 - If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually Licensee agrees to provide evidence of such coverage as required hereunder.
 - Amend the Contractual Liability exclusions and employers' liability exclusion to provide coverage for liability assumed under contract.
 - Amend the definition of Property Damage to provide coverage for natural resource damage.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its Insurers, through the terms of the policy or policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage and endorsements. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material

alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

- 15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.12 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees,

contractors, agents or invitees entering upon the Premises completes the safety training program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" or "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property except as provided for in this Agreement. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

- 17.4 In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.
- 18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**
19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**
20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that

failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. **Default and Termination.** In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee shall fail to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately in the event Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by Licensor, at any time, by serving thirty (30) days' written notice of termination upon Licensee.
- 23.5 This License may be terminated by Licensee upon execution of Licensor's then-current Mutual Termination Letter Agreement. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
24. **Surrender of the Premises.**
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date of this License.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Licensor may, at its election (i) either remove the Pipeline and the Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee may take and hold the Pipeline and the Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, in the event Licensor has consented to the Pipeline and the Improvements remaining on the Premises following termination, or in the event Licensor has elected to purchase the same as provided herein, Licensee shall, upon request by Licensor, provide a Bill of Sale in a form acceptable to Licensor conveying the Pipeline and the Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following

which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, in the event Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: Basin Transload LLC
c/o Global Companies LLC
800 South Street, Suite 200
P.O. Box 9161
Waltham, MA 02454-9161
Attn: Bill Davidson

With copy to: Basin Transload LLC
3529 Gabel Road
P O BOX 80284
Billings, MT 59108
Attn: Ray W Sheldon

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the Improvements are removed and the Premises are restored to its condition as of the Effective Date.
29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use, as defined in this Agreement, of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. Nothing contained herein shall supersede or alter other Agreements between the parties related to other uses of the Premises. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The Exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the

plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

End of page


Signature page follows

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: 

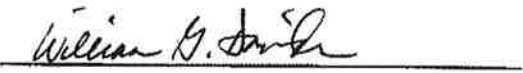
Name: Ed Darter

Title: Senior Vice President – National Accounts

Date: _____

LICENSEE:

BASIN TRANSLOAD LLC, a Delaware limited liability company

By: 

Name: William G. Davidson

Title: President

Date: June 19, 2014

EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

BASIN TRANSLOAD LLC

SCALE: 1 IN. = 100 FT.
TWIN CITIES DIV.
ZAP LINE SUBDIV. L.S. 0303
 DATE 05/27/2014

SECTION: 19
 TOWNSHIP: 144N
 RANGE: 88W
 MERIDIAN: 5PM



MAP REF. S53418



Source: Esri, DigitalGlobe, GeoEye, Earthstar (USA), USGS, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community

DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>10.750"</u>	<u>15.50"</u>	LENGTH ON R/W:	<u>100'</u>	<u>100'</u>
CONTENTS:	<u>CRUDE OIL</u>		WORKING PRESSURE:	<u>1440 PSI</u>	
PIPE MATERIAL:	<u>STEEL</u>	<u>STEEL</u>	BURY: BASE/RAIL TO TOP OF CASING		<u>6.0' MIN</u>
SPECIFICATIONS / GRADE:	<u>X52</u>	<u>A53B</u>	BURY: NATURAL GROUND		<u>4.0' MIN</u>
WALL THICKNESS:	<u>0.250"</u>	<u>0.250"</u>	BURY: ROADWAY DITCHES		<u>4.0' MIN</u>
COATING:	<u>FBE/ARO</u>	<u>-</u>	CATHODIC PROTECTION		<u>YES</u>

VENTS: NUMBER 2 SIZE 2" HEIGHT OF VENT ABOVE GROUND 4'
 NOTE: CASING TO BE JACKED OR DRY BORED ONLY

REPUBLIC
 COUNTY OF MERCER

STATE OF ND

JNC