

February 22, 2023

Via Electronic Mail & Hand Delivery

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: Bayou Midstream, LLC
Jurisdictional Determination
Our File No. 131097-000002

Dear Mr. Kahl:

On behalf of Bayou Midstream, LLC, please find enclosed for filing in the above-referenced matter, eight copies of the following:

- Bayou Midstream, LLC's Request for Jurisdictional Determination;
- Exhibit A (East Fairview Terminal Schematic);
- Exhibit B (Aerial Overview); and
- Exhibit C (Plot Plan).

Please feel free to call should you have any questions. Thank you.

Sincerely,

/s/ Casey A. Furey

Casey A. Furey

CAF/lh
Enc.

cc: Wade Mann (via email)
John Schuh (via email)
Brian Johnson (via email)

Travis Roby (via email)
Sheldon Tullos (via email)
Spencer Nordgran (via email)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

**Bayou Midstream, LLC
Jurisdictional Determination**

Case No. PU-23-___

**BAYOU MIDSTREAM, LLC’S REQUEST
FOR JURISDICTIONAL DETERMINATION**

Bayou Midstream, LLC (“Bayou”), through its undersigned counsel of record, hereby submits the enclosed Request for Jurisdictional Determination pursuant to N.D. Admin. Code § 69-06-02.1-01. Bayou proposes to construct a crude blend facility at its East Fairview Crude Terminal in McKenzie County, North Dakota. The blend facility would be located upstream of its subsidiary Alexander Connector, LLC’s jurisdictional 12-inch crude oil pipeline, which was originally sited in Case No. PU-15-232. For the reasons further explained herein, the proposed blend facility does not meet the definition of a transmission facility under the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) regulations, nor does it meet the Commission’s definition of a liquid transmission facility under N.D.C.C. Ch. 49-22.1. As such, Bayou respectfully requests a jurisdictional determination from the Commission concurring that the proposed blend facility is a non-jurisdictional facility exempt from siting under Ch. 49-22.1.

I. Description of Existing Facilities and Operations at East Fairview Crude Terminal

Bayou currently owns and operates the East Fairview Crude Terminal which was acquired by Bayou from Northstar Midstream in May 2022. A visual depiction of the site and associated facilities is provided on the attached **Exhibit A** “East Fairview Schematic” which contains corresponding reference numbers to the below listed facilities. The site is located approximately

one-half mile north of East Fairview, North Dakota. The site consists of a truck unload station “①” with twelve truck lacts capable of unloading crude and condensate, five 103,000-barrel tanks “②”, five vertical can pumps for railcar loading “③”, one booster/charge pump to feed mainline pump “④”, one custody transfer meter “⑤”, and one mainline pump “⑥” which moves crude to the 12-inch Alexander Connector pipeline (formerly NST Express pipeline) “⑦”. The 12-inch pipeline was originally sited in Case No. PU-15-232 and NST Express, LLC was issued Certificate of Corridor Compatibility No. 173 and Route Permit No. 185 for the pipeline.¹ It is Bayou’s understanding the crude oil and rail load out terminal were considered an existing rail loading terminal outside of the Commission’s jurisdiction when the 12-inch pipeline was sited. It is further Bayou’s understanding that because these existing facilities fell outside the jurisdiction of the Commission, they were not included in the original siting application for the 12-inch pipeline in Case No. PU-15-232.

The East Fairview Terminal and rail loading facility were originally built in 2015 to handle crude by offloading trucks “①” into the five 103,000-barrel tanks “②” moving the crude via vertical can pumps to load rail cars “③”. Once the Dakota Access Pipeline (DAPL) came online, Northstar customers switched over to crude movement by pipeline as opposed to rail. Northstar then proposed to expand their operations by installing a meter “⑤” and mainline pump “⑥” at East Fairview Terminal along with the installation of the 12-mile NST Express (n/k/a Alexander Connector) pipeline “⑦” that would allow them to directly inject crude into the DAPL pipeline. The flow meter “⑤”, main line pump “⑥”, and the pipeline “⑦” were sited under Certificate of

¹ Bayou subsequently acquired Northstar’s assets and became the upstream owner of NST Express, LLC which underwent a name change to Alexander Connector, LLC. Alexander Connector, LLC recently requested, and was granted, a reissuance of Certificate No. 173 and Permit No. 185 in accordance with its name change. *See* Case No. PU-22-345.

Corridor Compatibility No. 173 and Route Permit No. 185 in Case No. PU-15-232. At this time, the rail loading facility was removed from service. Once Bayou acquired the Northstar assets in May 2022, Bayou installed an 8-inch carbon steel pipeline “⑧” from Richland County, Montana approximately 7.9 miles in length and crossing over into North Dakota approximately 0.15 miles tying into East Fairview 103,000-barrel tanks.

II. Proposed New Blend Facility at East Fairview Crude Terminal

Bayou proposes to install a new blend facility at the East Fairview Terminal. The location of the proposed blend facility is depicted on an aerial overview attached as **Exhibit B** hereto. The new blend facility “⑨” will be located on an approximately 375 feet by 425 feet site within a larger parcel of land that is entirely owned by Bayou. *See Exhibit B*. The site will consist of two 3,000-barrel crude tanks, one 90,000-gallon bullet, and pump skids. Light and/or heavy hydrocarbons will be trucked in and offloaded into their respective tanks. A plot plan is attached at **Exhibit C** hereto. These hydrocarbons will be mixed with the crude from the five 103,000-barrel tanks “②”. This will take place downstream of the 103,000-barrel tanks before the Alexander Connector custody transfer meter “⑤”. The blend facility will connect to the outbound flow from East Fairview. The tie-in will occur downstream of the recycle / charge pump “④” and upstream of the Alexander Connector Pipeline custody transfer meter “⑤” and mainline pump “⑥”. The purpose behind installation of the new facility is optimize storage at East Fairview and segregate lighter and heavy hydrocarbons from being stored in the 103,000-barrel tanks.

III. Jurisdictional Assessment

The proposed blend facility will have hydrocarbons trucked into the new tanks as opposed to coming in via pipeline. Thus, the new facility does not meet the definition of “transmission”

under PHMSA’s regulations set forth in 49 CFR Part 195. Specifically, PHMSA regulates breakout tanks and defines a “breakout tank” to include “a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.” 49 C.F.R. § 195.2 (emphasis added). The tanks proposed to be installed as part of the blend facility do not meet the relevant part of the above definition because they will not receive and store crude by pipeline. The facility will tie-in upstream of the first custody meter block valve “⑩”, custody meter “⑤”, and mainline pump “⑥”.

The Commission “may establish and enforce minimum safety standards for the design, construction, and operation of . . . intrastate pipeline facilities used for the distribution and intrastate transportation of . . . hazardous liquids . . .” N.D.C.C. § 49-02-01.2(1). The Commission has adopted PHMSA Regulations 49 CFR Part 195 pursuant to N.D. Admin. Code § 69-09-03-02 however, the Commission’s requirements “may not be more stringent than the corresponding federal regulations applicable to interstate pipelines and related facilities.” N.D.C.C. 49-02-01.2(1). The Commission regulates the construction of liquid transmission facilities under N.D.C.C. Ch. 49-22.1. A liquid transmission facility excludes facilities upstream of the “first pipeline storage site where pressure is increased for further transport.” N.D.C.C. § 49-22.1-01(7)(a)(5). Consistent with PHMSA’s regulation referenced above, because the blend facility will receive crude via truck, the blend facility is not otherwise a “pipeline storage site” under N.D.C.C. Ch. 49-22.1 and is exempt from siting.

Based on the above PHMSA definitions and Commission regulations, Bayou respectfully requests the Commission issue a jurisdictional determination concurring that the proposed blend facility is non-jurisdictional and exempt from siting under N.D.C.C. Ch. 49-22.1.

Dated this 21st day of February, 2023.

Respectfully submitted,

Bayou Midstream, LLC

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EAST FAIRVIEW TERMINAL

EXHIBIT
A

- NORTHSTAR PHASE 1
- NORTHSTAR PHASE 2
- BAYOU PIPELINE CONNECT
- BAYOU BLENDING (NEW)

TRUCK CRUDE/CONDENSATE
OFFLOAD BAY

①

②

FIVE
103,000 BBL TANKS

④
RECYCLE/CHARGE
PUMP

MOV

⑩ ⑤
CUSTODY
METER

⑥
MAINLINE
PUMP

⑦

12" ALEXANDER CONNECTOR
CRUDE PIPELINE
TO DAPL INJECTION

MONTANA

⑧

8" FAIRVIEW CONNECTOR
CRUDE PIPELINE

③

OUT OF SERVICE

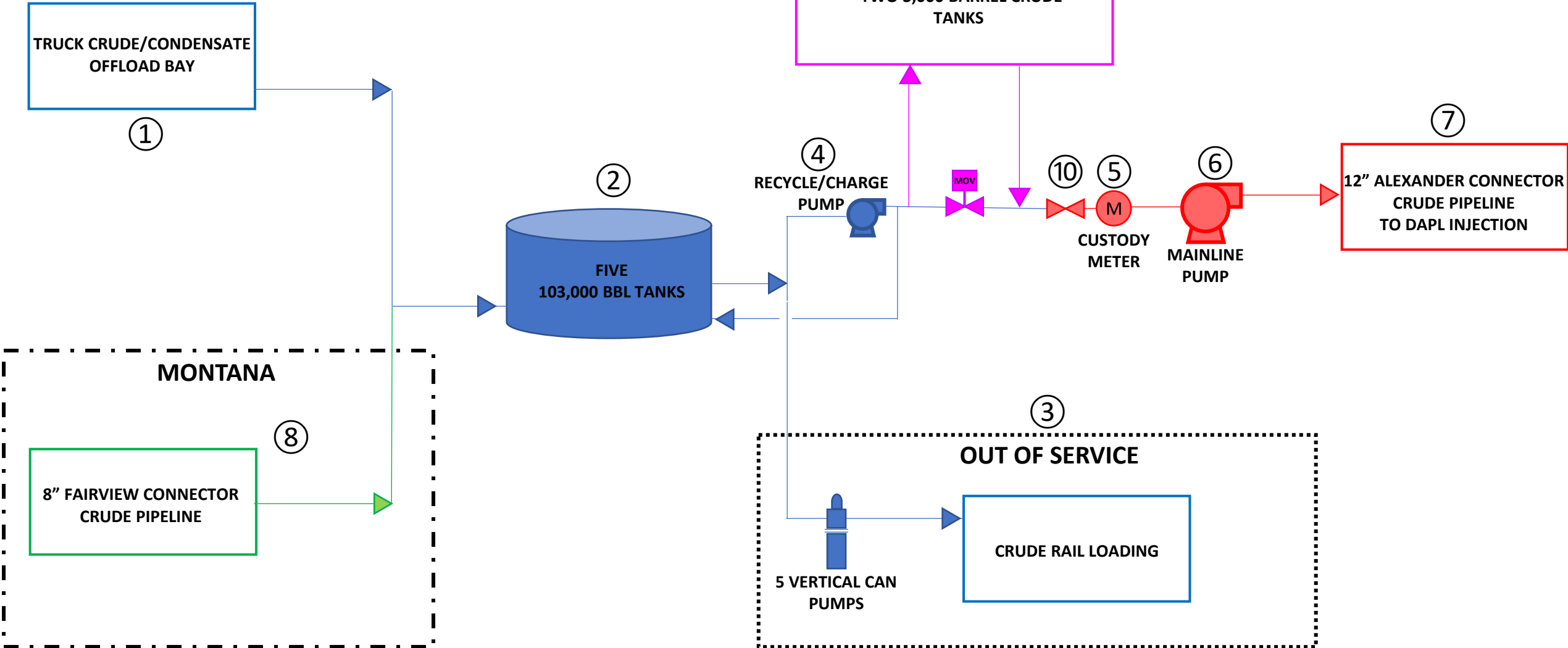
5 VERTICAL CAN
PUMPS

CRUDE RAIL LOADING

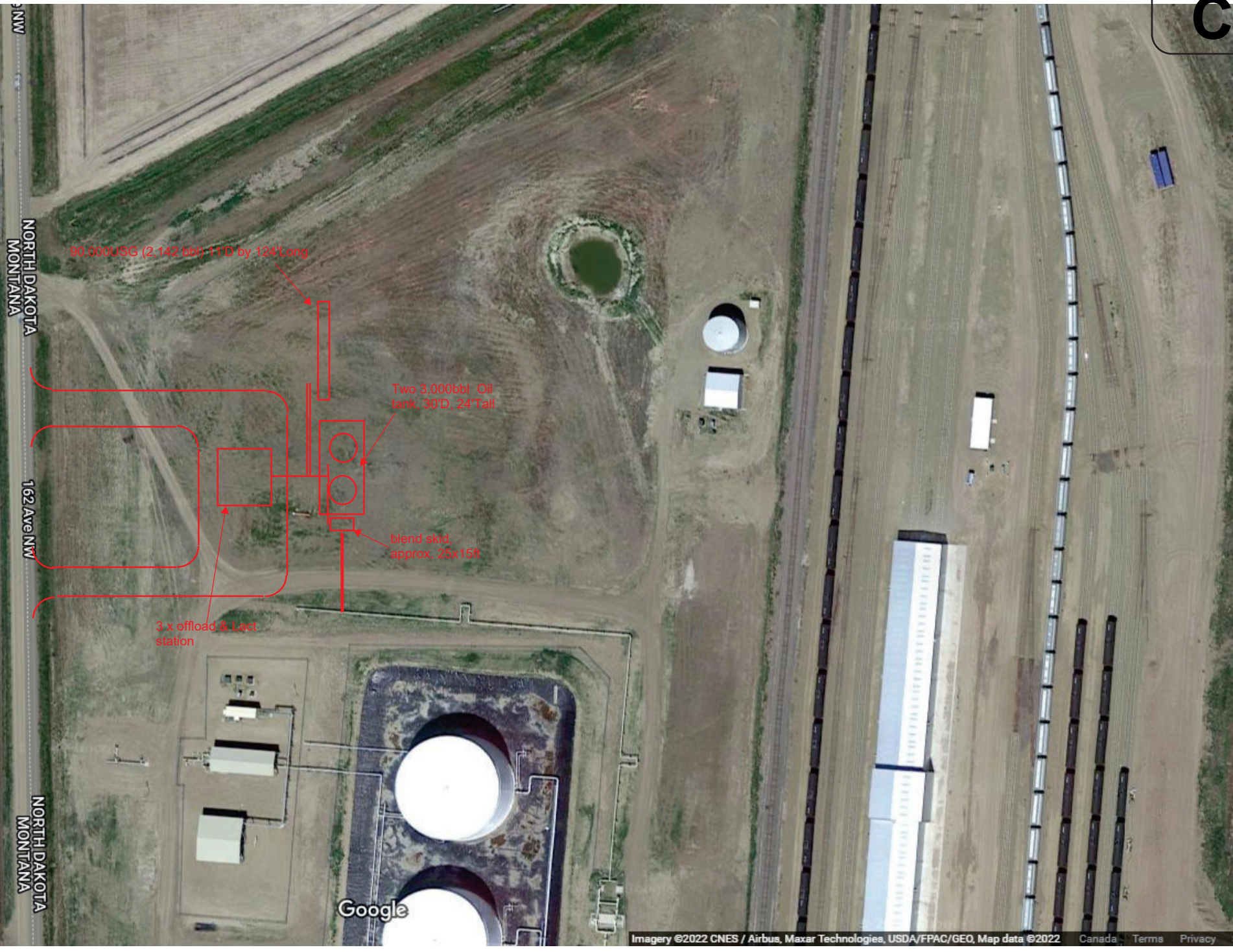
NEW CONSTRUCTION

⑨

-ONE 90,000 GALLON BULLET
TANK
-TWO 3,000 BARREL CRUDE
TANKS







90.5McuSS (2,142 bbl) 11'D by 134' long

Two 3,000bbl Oil tank, 39'D, 24'Tall

blend skid approx. 20x15ft

3 x offload & Lect station

NORTH DAKOTA MONTANA

162 Ave NW

NORTH DAKOTA MONTANA

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