

Ord.

2015-0290

INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT

(CHIEF ADMINISTRATIVE OFFICER/DEPARTMENT OF WATERWORKS)

ORDINANCE NO. 15-9-5

An ordinance to accept the Department of the Army Easement for pipeline right-of-way (8" waterline) in the Bonnet Carre' Spillway, No. DACW29-2-94-77.

WHEREAS, the Department of the Army, has granted easement for a pipeline right-of-way (8" waterline), No. DACW29-2-94-77; and,

WHEREAS, said easement has been granted for a term of fifty (50) years beginning January 3, 1995 and ending January 2, 2045; and,

WHEREAS, it has been determined that the executed easement for 8" waterline with Department of the Army is in the best interest of the citizens of St. Charles Parish.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the executed Department of the Army Easement for pipeline right-of-way (8" waterline) in the Bonnet Carre' Spillway, No. DACW29-2-94-77 is hereby accepted.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: LEWIS, WILSON, TASTET, BENEDETTO, HOGAN, COCHRAN, FLETCHER, FISHER-PERRIER

NAYS: NONE

ABSENT: SCHEXNAYDRE

And the ordinance was declared adopted this 8th day of September, 2015, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: [Signature]

SECRETARY: [Signature]

DLVD/PARISH PRESIDENT: [Signature]

APPROVED: [Signature] **DISAPPROVED:**

PARISH PRESIDENT: [Signature]

RETD/SECRETARY: [Signature]

AT: [Signature] **RECD BY:** [Signature]

**RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE**

ON September 10, 2015

AS ENTRY NO. 408970

IN MORTGAGE/CONVEYANCE BOOK

NO. 822 **FOLIO** 231

NO. DACW29-2-94-77

DEPARTMENT OF THE ARMY

EASEMENT FOR PIPELINE RIGHT-OF-WAY

LOCATED ON

BONNET CARRE SPILLWAY
Project, Installation

St. Charles Parish, Louisiana
County, State

THE SECRETARY OF THE ARMY under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2669, having found that the granting of this easement will be in the public interest and will not substantially injure the interest of the United States, hereby grants to, St. Charles Parish, Dept of Waterworks hereinafter referred to as the grantee, an easement for 28,000 feet of 8" waterline, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) "A", hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions.

1. TERM

This easement is hereby granted for a term of fifty (50) years beginning January 3, 1995, and ending January 2, 2045.

2. CONSIDERATION

a. The grantee shall pay in advance to the United States the amount of (\$), (in full for the term hereof) (payable) to the order of FAO-USAED-NOD, and delivered to U. S. Army, Corps of Engineers, P. O. Box 70267, New Orleans, Louisiana 70160-0267

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U. S. C. Section 3717. This statute requires the imposition of an interest charge to for the late payment of debts owed to the United States, an

DELETE

administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. That provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to

_____, and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division,

_____,⁴
or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the (District Engineer) (Installation Commander), New Orleans (District) (Installation), hereinafter referred to as said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privileges or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

14. REQUIRED SERVICES

The grantee shall furnish through said facilities such

services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

18. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to

abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state, and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

19. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on RESTORATION.

20. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

21. NON-DISCRIMINATION

The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

22. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1989 (30 Stat. 1151; 33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

Before the execution of this lease, conditions were deleted, revised and added in the following manner:

Condition Nos. 2 and 19 were deleted
Condition Nos. 24 and 25 were added

24. See Standard Pipeline Crossings Over Levees, (Attached).

25. That the pipeline be relocated for the construction of the Bonnet Carre Freshwater Diversion Channel at the applicant's expense upon notice from the New Orleans District.

THIS EASEMENT is not subject to Title 10 United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of
the Secretary of the Army, this 3 day of
January, 1995.

APPROVED AS TO LEGAL SUFFICIENCY:

Marco Rosamano

MARCO ROSAMANO
ATTORNEY ADVISOR

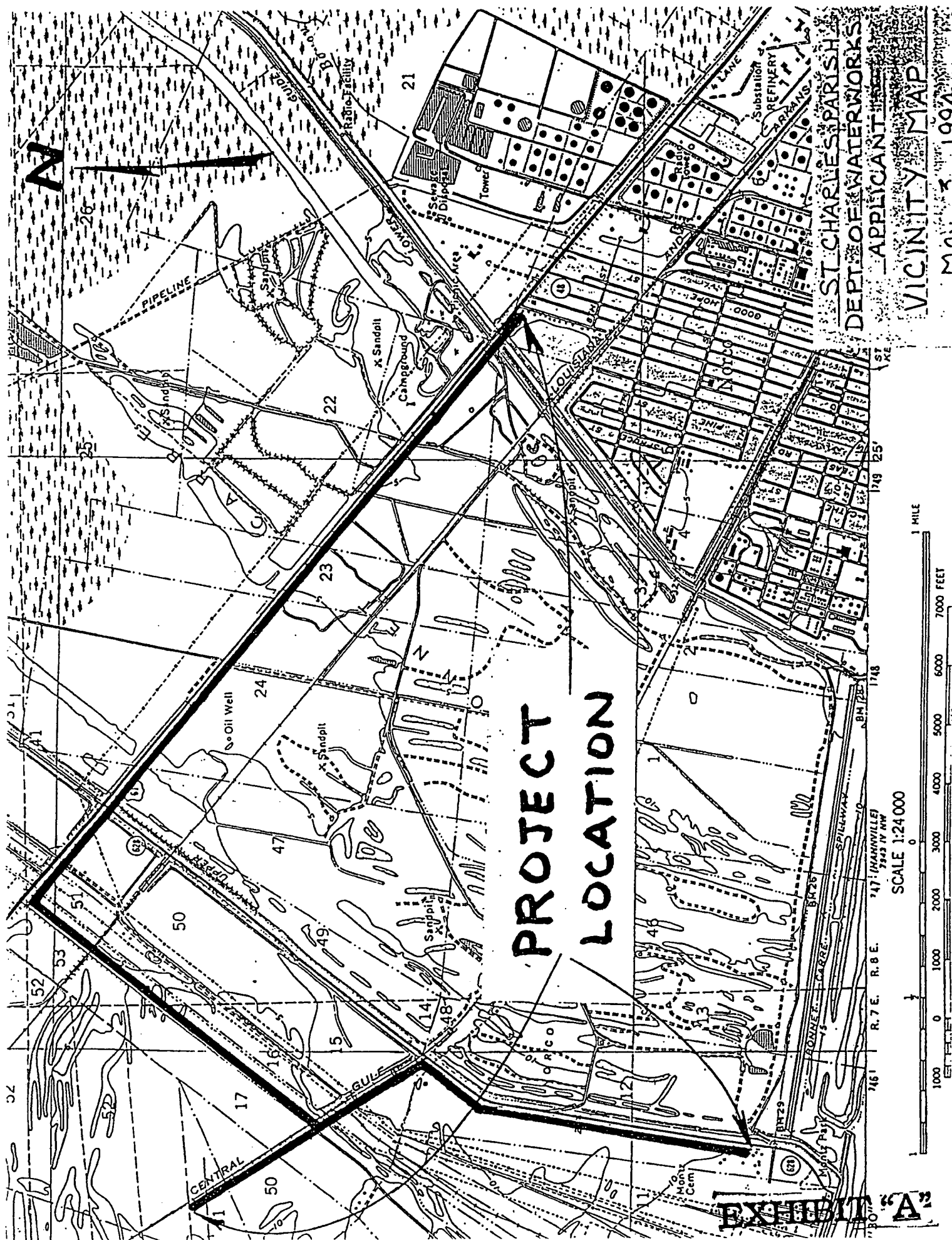
U. S. Army Engineer District
New Orleans

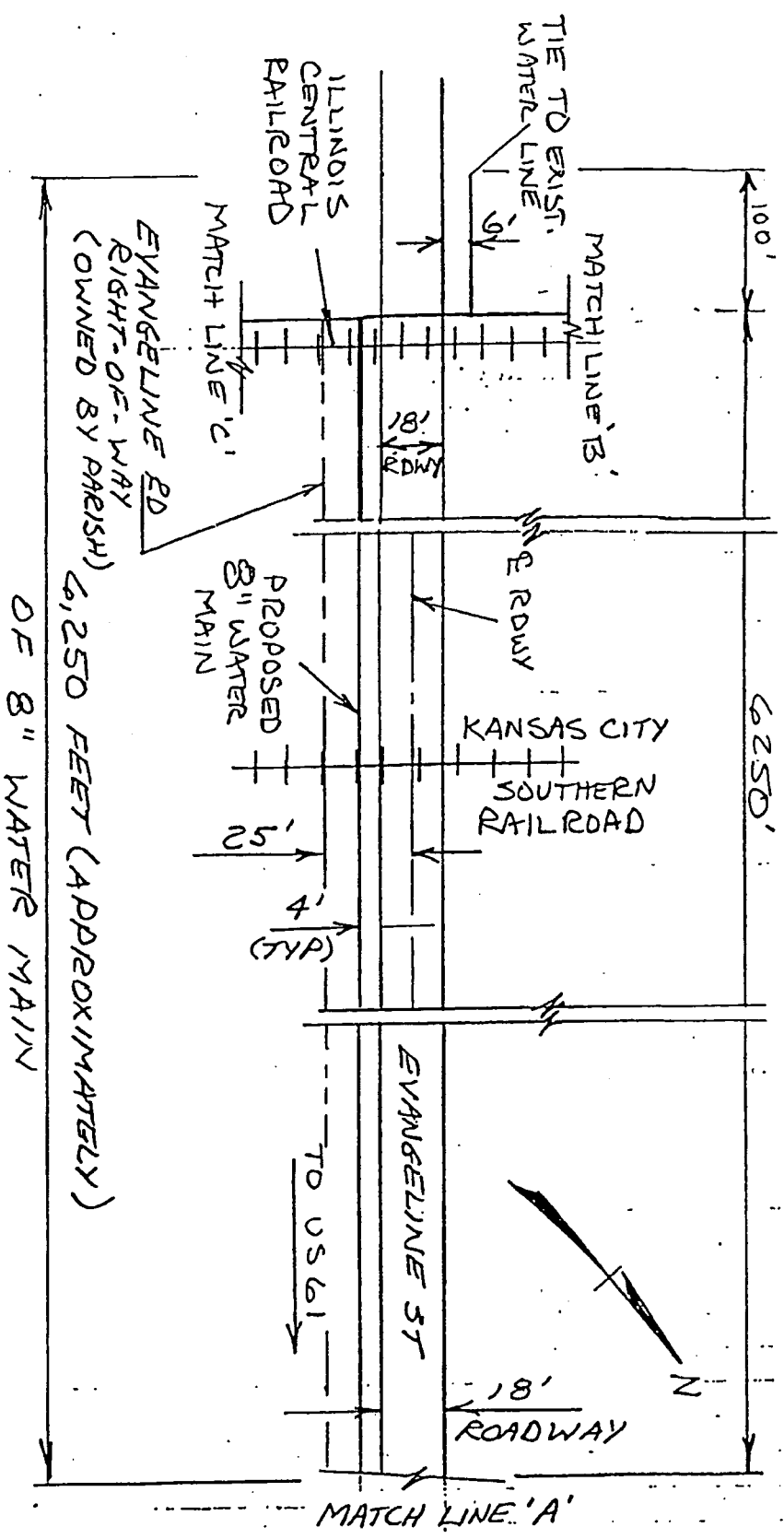
Clyde H. Sellers

CLYDE H. SELLERS
Chief, Real Estate Division
U. S. Army Engineer District
New Orleans

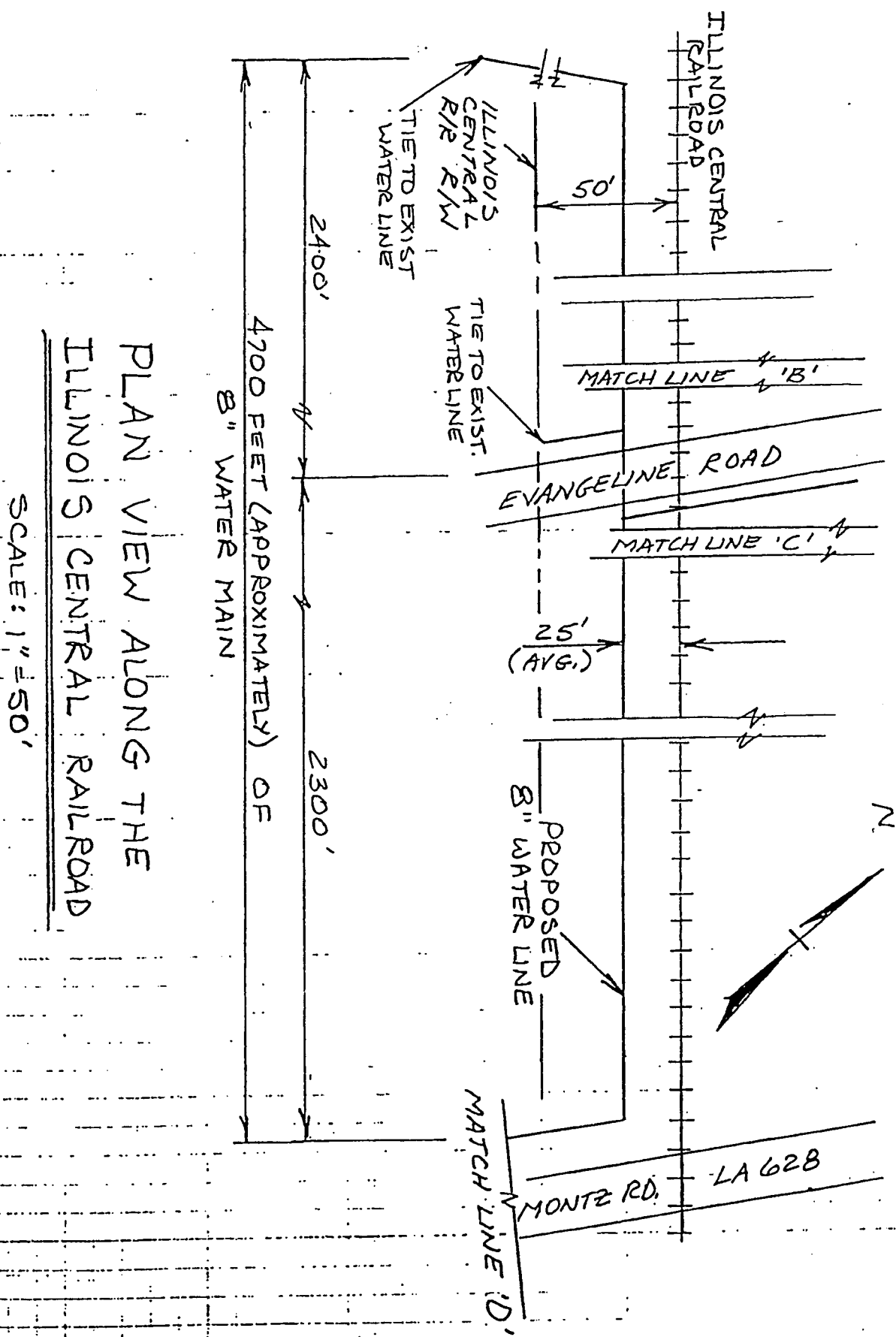
THIS EASEMENT is also executed by the grantee this
4TH day of JANUARY, 1995.

Jack Spiers
ST. CHARLES DEPT OF WATERWORKS



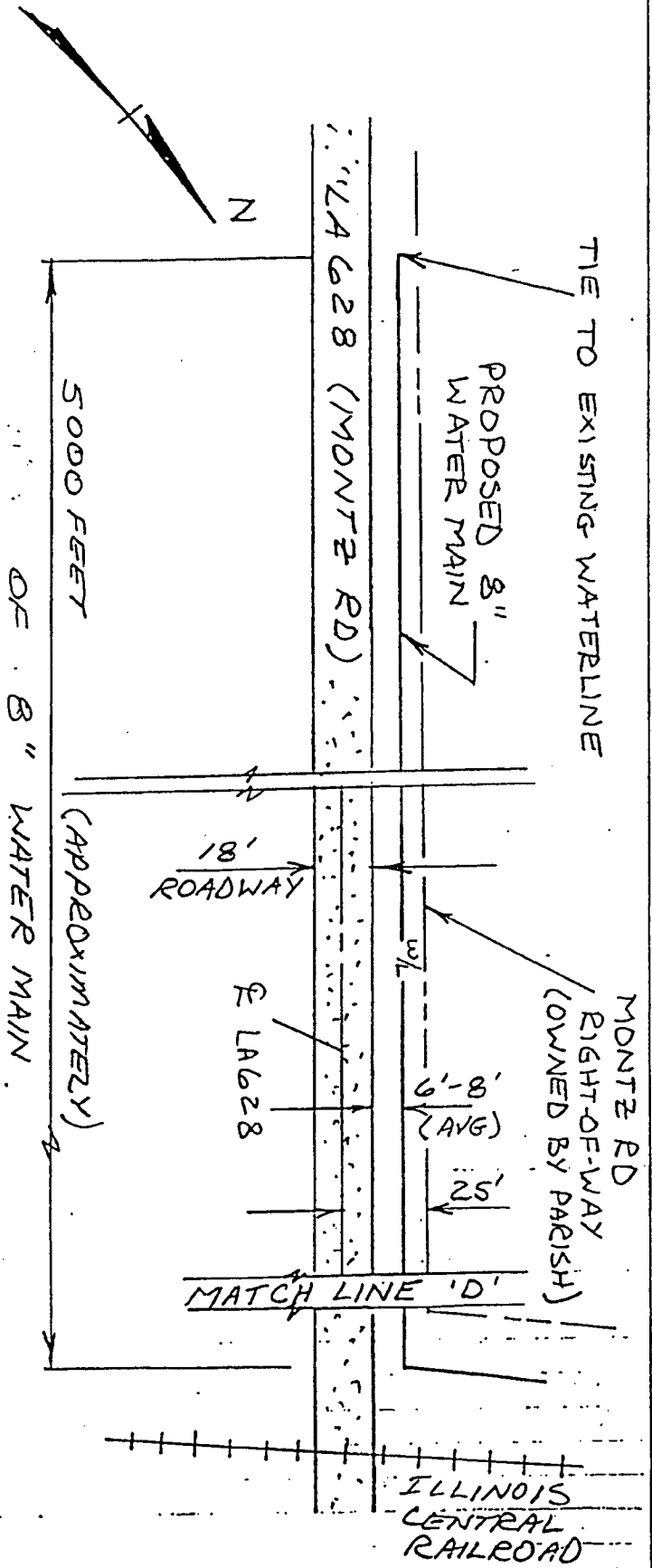


PLAN VIEW ALONG
 EVANGELINE ST.
 SCALE: 1"=50'



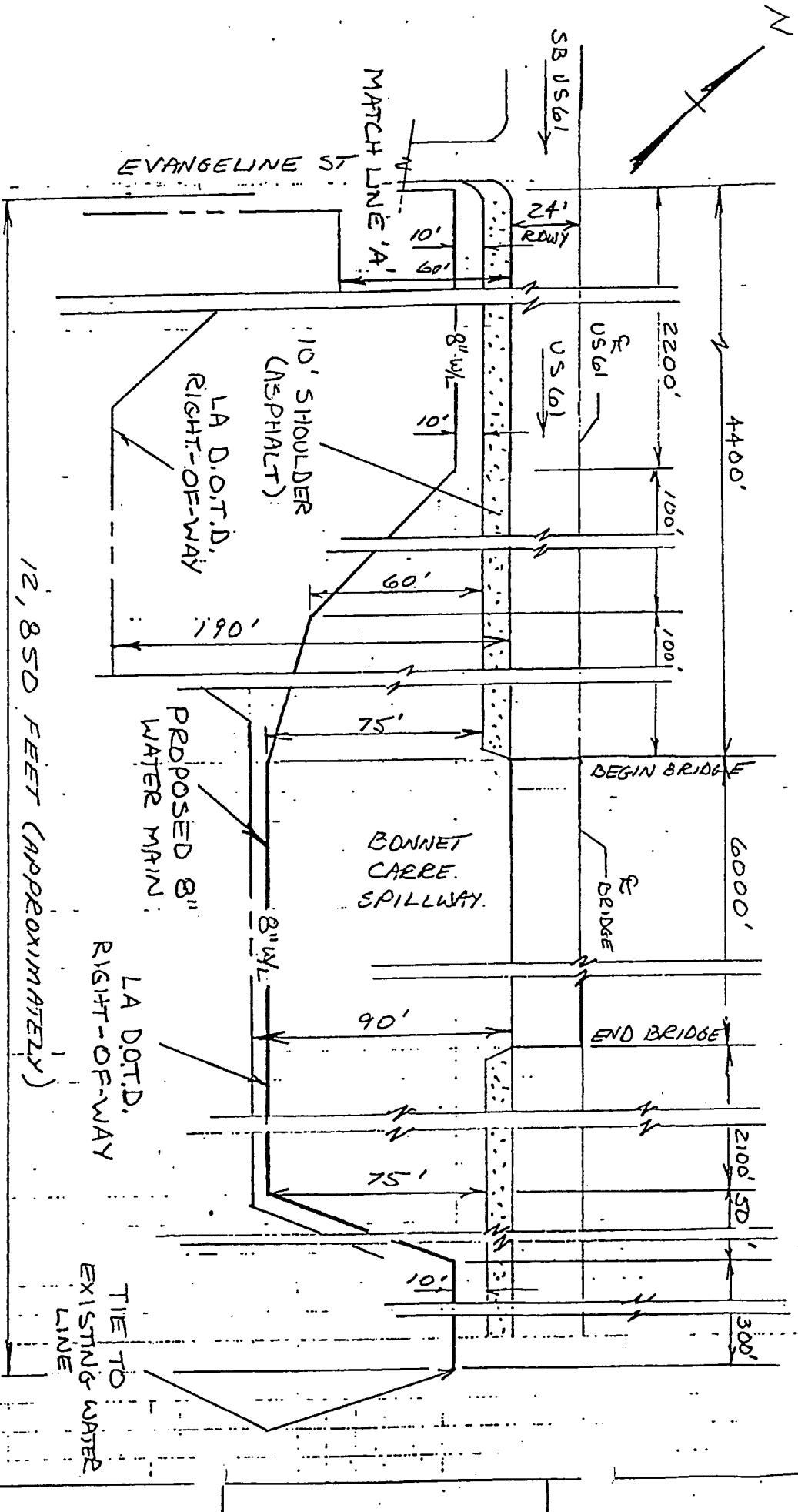
PLAN VIEW ALONG THE
 ILLINOIS CENTRAL RAILROAD

SCALE: 1" = 50'



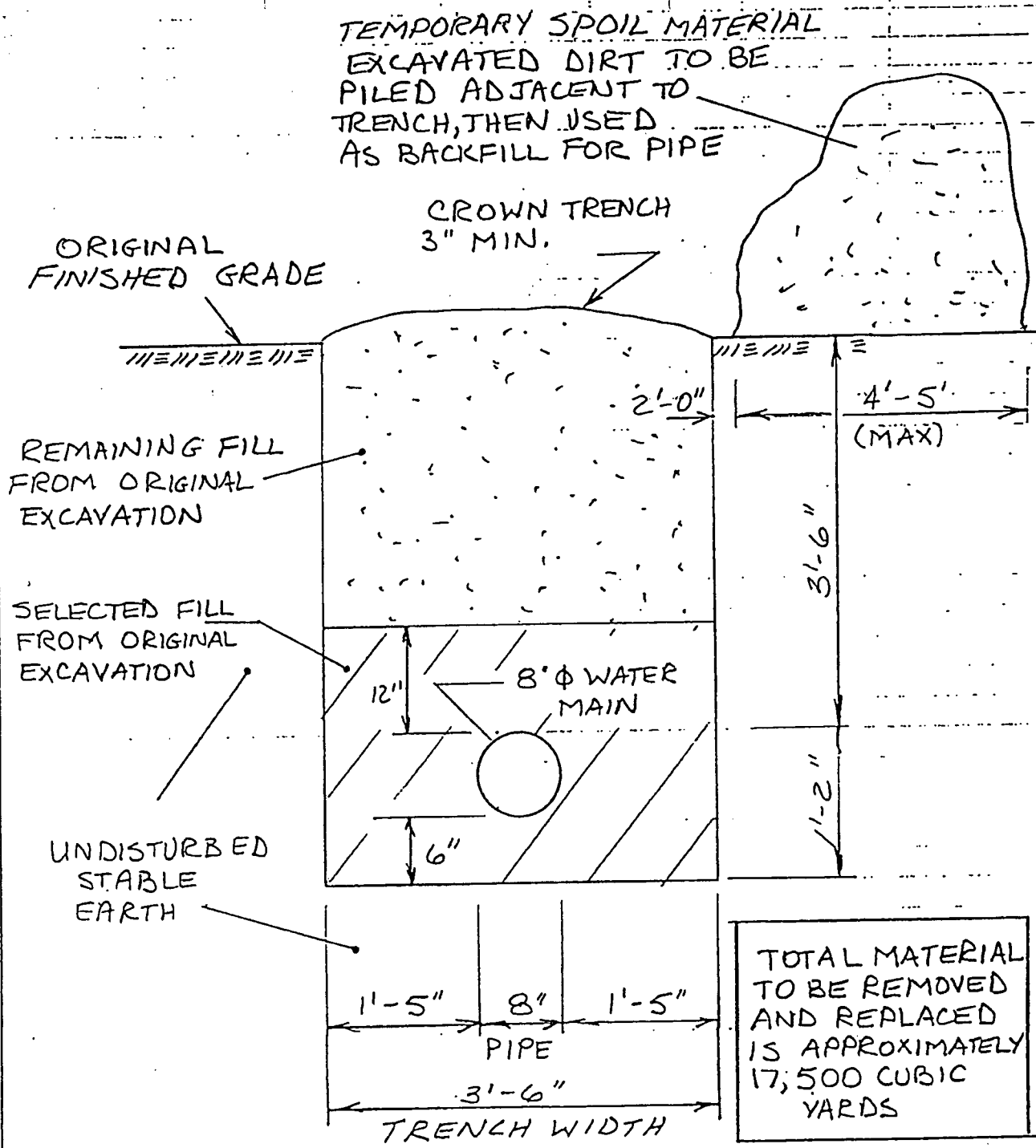
PLAN VIEW ALONG LA 628
 (MONTE ROAD)

TO NEW ORLEANS



PLAN VIEW ALONG US 61

SCALE: 1" = 50'



NOTE: NO DIRT SHALL BE HAULED AWAY. ALL DIRT WILL BE USED AS BACKFILL.

TYPICAL SECTION
OF PROPOSED PIPE
INSTALLATION