

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CITY OF OZARK, ARKANSAS, a municipal corporation)

Plaintiff,)

vs.)

UNION PACIFIC RAILROAD COMPANY,
the ARKANSAS STATE HIGHWAY
& TRANSPORTATION DEPARTMENT
(an Agency of) The State of Arkansas,
AND THE ARKANSAS STATE HIGHWAY
COMMISSION)

Defendants,)

CIVIL ACTION NO:2:14-CV-02196-TLB

**PLAINTIFF, CITY OF OZARK'S, RESPONSE AND OPPOSITION TO DEFENDANT,
UNION PACIFIC RAILROAD COMPANY'S, MOTION FOR SUMMARY JUDGMENT**

Comes now the Plaintiff, the City of Ozark, Arkansas, a municipal corporation by and through its undersigned counsel, Christopher D. Brockett of Sayre & Brockett, and for its Response and Opposition to the Defendant, Union Pacific Railroad Company's, Motion for Summary Judgment the Plaintiff alleges and states as follows:

1. Plaintiff admits the allegations contained in Paragraph 1 of the Defendant's Motion.

2. Plaintiff admits the allegations contained in Paragraph 2 of the Defendant's Motion.

3. Plaintiff admits the allegations contained in Paragraph 3 of the Defendant's Motion. Plaintiff pleads in the affirmative that in the area that Plaintiff has leased from the U.S. Corps of Engineers (the "Corps") for development of Plaintiff's

walking trail and park, the Defendant's easement does not go into the Arkansas River or extend into the Plaintiff's leased area. See copy of Map showing the Plaintiff's leased area attached hereto as **Exhibit A** and incorporated herein.

4. Plaintiff admits the allegations contained in Paragraph 4 of the Defendant's Motion.

5. Plaintiff admits the allegations contained in Paragraph 5 of the Defendant's Motion.

6. Plaintiff generally and specifically denies the allegations set forth in Paragraph 6 relating to the house tracks located on the directional north side of the Defendant's mainline track. Plaintiff pleads in the affirmative that the track located on the directional north side of the Defendant's mainline track is not used often, if at all. See Affidavit of George Soliz dated November 12, 2014 ¶¶6 attached hereto as **Exhibit B** and incorporated herein.

7. Plaintiff admits the allegations contained in Paragraph 7 of the Defendant's Motion.

8. Plaintiff admits the allegations contained in Paragraph 8 of the Defendant's Motion. Plaintiff pleads in the affirmative that the side track has been used for train meets and storage during the entire time that the crossing at issue herein was in existence from at least June 30, 1916 until February 2001. See Missouri Pacific Railroad Company ("MoPac") Track Right of Way Map dated June 30, 1916 attached hereto as **Exhibit C** and incorporated herein.

9. Plaintiff admits the allegations contained in Paragraph 9 of the Defendant's Motion.

10. Plaintiff admits the allegations contained in Paragraph 10 of the Defendant's Motion.

11. Plaintiff admits the exact date that the crossing was installed is unknown as set forth in Paragraph 11 of the Defendant's Motion. Plaintiff pleads in the affirmative that based on MoPac's Map (**Exhibit C**), the crossing was in existence as of June 30, 1916 and was classified as a public crossing at this time and continued classified as a public crossing until it was removed in 2001 by the Defendant. See MoPac's Station and Structures Map dated April 15, 1946 attached hereto as **Exhibit D-1** and the Defendant's 2000 Map attached hereto as **Exhibit D-2**, which are both incorporated herein.

12. Plaintiff admits the allegations contained in Paragraph 12 of the Defendant's Motion.

13. Plaintiff admits the allegations contained in Paragraph 13 of the Defendant's Motion. Plaintiff pleads in the affirmative that it was a normal at-grade crossing similar to other railroad at-grade crossings in this area of Arkansas. See Dep. M. Canady, Pg. 14:9-25, attached hereto as **Exhibit E-1** and Dep. K. Smith, Pg. 11:1-12, attached hereto as **Exhibit E-2**, which are both incorporated herein.

14. Plaintiff generally and specifically denies the allegations set forth in Paragraph 14 of the Defendant's Motion. Plaintiff pleads in the affirmative that the at-grade crossing was wide enough that gas companies could cross in large trucks and those trucks could be hauled across the crossing with small and large wreckers. See Dep. H. Allred, Pg. 18:10-15 attached hereto as **Exhibit F-1** and Dep. B. Brockett, Page 11:13-17 attached hereto as **Exhibit F-2**, which are incorporated herein.

15. Plaintiff admits the allegations contained in Paragraph 15 of the Defendant's Motion.

16. Plaintiff admits the allegations contained in Paragraph 16 of the Defendant's Motion. Plaintiff's pleads in the affirmative that Plaintiff's residents used this land for various recreational activities, including shooting rats and turtles, hunting, fishing, riding horses, and playing around Plaintiff's city dump. See Dep. R. Anderson, Pg. 12:15-20, Pg. 41:19-25 and Pg. 43:7-21, which are attached hereto as **Exhibit G** and incorporated herein.

17. Plaintiff, upon information and belief, admits the allegations contained in Paragraph 17 of the Defendant's Motion.

18. Plaintiff admits the allegations contained in Paragraph 18 of the Defendant's Motion. Plaintiff pleads in the affirmative that the Plaintiff maintained the portion of the gravel road on the south side of the Defendant's railroad tracks that led to the propane tanks, the businesses located on the gravel road and the Plaintiff's city dump. Plaintiff pleads further, that the Plaintiff mowed the grass around the propane tanks until at least 1991, when H. Allred an employee of the gas company retired. See Dep. H. Allred, Pg. 11:7-23, Pg. 17:6-25 and Pg. 18:1-5, attached hereto as **Exhibit H-1**, Dep. M. Canady, Pg. 19:13-25 and Pg. 20:1-15 attached hereto as **Exhibit H-2**, and Dep. K. Smith, Pg. 23:21-25 and Pg. 24:1-3, attached hereto as **Exhibit H-3**, which are all incorporated herein.

19. Plaintiff admits the allegations contained in Paragraph 19 of the Defendant's Motion.

20. Plaintiff admits the allegations contained in Paragraph 20 of the Defendant's Motion.

21. Plaintiff admits the allegations contained in Paragraph 21 of the Defendant's Motion.

22. Plaintiff admits the allegations contained in Paragraph 22 of the Defendant's Motion. Plaintiff pleads in the affirmative that F & S Lumber Company's main office was located in Fort Smith, Arkansas, not in Ozark, Arkansas and the main office was where mail was delivered. See Dep. K. Smith, Pg. 16:15-21, Pg. 19:23-25, and Pg. 20:1-3, which are attached hereto as **Exhibit I** and incorporated herein.

23. Plaintiff admits the allegations contained in Paragraph 23 of the Defendant's Motion.

24. Plaintiff denies the allegations set forth in Paragraph 24 of the Defendant's Motion. Plaintiff pleads in the affirmative that the barn was located directly south of the Defendant's railroad tracks as soon as you crossed the tracks at the at-grade crossing and well before F & S Lumber company. See Dep. H. Allred, Pg. 16:16-25, which is attached hereto as **Exhibit J** incorporated herein.

25. Plaintiff admits the allegations contained in Paragraph 25 of the Defendant's Motion. Plaintiff pleads in the affirmative that the Plaintiff's city dump was located south of the Defendant's railroad tracks prior to F & S Lumber company being built and at least since June 5, 1940. See Dep. H. Allred, Pg. 12: 6-25, which is attached hereto as **Exhibit K-1**, and June 5, 1940 City Council minutes attached hereto as **Exhibit K-2**, which are incorporated herein.

26. Plaintiff admits there was a small neighborhood of several house located south of the Defendant's railroad tracks as set forth in Paragraph 26 of the Defendant's Motion. Plaintiff generally denies the neighborhood was south of the horse barn as set forth in Paragraph 26 of the Defendant's Motion. See **Exhibit K-1**.

27. Plaintiff admits the allegations contained in Paragraph 27 of the Defendant's Motion. Plaintiff pleads in the affirmative that Plaintiff does not designate funds for specific streets, but allocates funds to the Plaintiff's road department for maintenance of all of Plaintiff's city streets. Plaintiff pleads further in the affirmative that the road known as Oliver St. was maintained by the Plaintiff's employee Bull Southerland with Plaintiff's 8-N tractor. See Affidavit of Carol Sneath regarding allocation of Plaintiff's funds attached hereto as **Exhibit L** and See **Exhibits H-1 and H-2**.

28. Plaintiff admits the allegations contained in Paragraph 28 of the Defendant's Motion. Plaintiff pleads in the affirmative that no evidence exists of any ordinance of any street of the Plaintiff's downtown area. Plaintiff pleads further in the affirmative that all of Plaintiff's official maps show Oliver St., in existence and crossing the Defendant's railroad tracks at the location of the at-grade crossing at issue herein. See Dep. R. Johnson, Pg. 17:3-24 attached hereto as **Exhibit M-1**, affidavit of Plaintiff's City Clerk Sonya Eveld attached hereto as **Exhibit M-2**, Plaintiff's October 13, 1942 City council resolution attached hereto as **Exhibit M-3**, Plaintiff's February 1962 Map attached hereto as **Exhibit M-4A** and enlarged portion of the February 1962 Map attached hereto as **Exhibit M-4B**, A copy of the 1965 Water Distribution Map attached hereto as **Exhibit M-5**, A copy of the Corps Relocation Map attached hereto as **Exhibit**

M-6, a copy of the Plaintiff's 1975 Map attached hereto as **Exhibit M-7**, a copy of the Arkansas Highway and Transportation Department ("AH&TD") 1980 map attached hereto as **Exhibit M-8**, and a copy of the Mickle-Wagner Assoc., Inc., Bike Route 1 1980 Map attached hereto as **Exhibit M-9**, which are all incorporated herein.

29. Plaintiff admits the allegations contained in Paragraph 29 of the Defendant's Motion. Plaintiff pleads in the affirmative that no evidence exists of any documentation of any street of the Plaintiff's downtown area. Plaintiff pleads further in the affirmative that all of Plaintiff's official maps show Oliver St., in existence and crossing the Defendant's railroad tracks at the location of the at-grade crossing at issue herein. See all **Exhibits M-1 through M-7**. Plaintiff pleads further in the affirmative that the Plaintiff has no ordinances or resolutions prior to 1929. See **Exhibit M-2**.

30. Plaintiff admits there is no evidence of a dedication of a crossing at this location for public use in the possession of the Plaintiff as set forth in Paragraph 30 of the Defendant's Motion; however, the Plaintiff generally denies there is no evidence, as the Defendant's maps show the at-grade crossing at this location was a public crossing since at least 1916. Plaintiff pleads further in the affirmative that all of Plaintiff's official maps show Oliver St., in existence and crossing the Defendant's railroad tracks at the location of the at-grade crossing at issue herein. See all **Exhibits M-1 through M-7**. Plaintiff pleads further in the affirmative that the Plaintiff has no ordinances or resolutions prior to 1929. See **Exhibit M-2**.

31. Plaintiff admits the allegations contained in Paragraph 31 of the Defendant's Motion. Plaintiff pleads in the affirmative that no evidence exists of a recorded plat of the Plaintiff that shows of any street of the Plaintiff's downtown area

was recorded for the public use. Plaintiff pleads further in the affirmative that **all** of Plaintiff's official maps show Oliver St., in existence and crossing the Defendant's railroad tracks at the location of the at-grade crossing at issue herein. See all **Exhibits M-1 through M-7**. Plaintiff pleads further in the affirmative that the Plaintiff has no ordinances or resolutions prior to 1929. See **Exhibit M-2**.

32. Plaintiff admits the allegations contained in Paragraph 32 of the Defendant's Motion. Plaintiff pleads in the affirmative that no evidence exists of an ordinance accepting a plat to dedicate any street of the Plaintiff's downtown area. Plaintiff pleads further in the affirmative that all of Plaintiff's official maps show Oliver St., in existence and crossing the Defendant's railroad tracks at the location of the at-grade crossing at issue herein. See all **Exhibits M-1 through M-7**. Plaintiff pleads further in the affirmative that the Plaintiff has no ordinances or resolutions prior to 1929. See **Exhibit M-2**.

33. Plaintiff admits there is no evidence of an ordinance passed by the Plaintiff accepting a plat to dedicate a crossing at the location of the at-grade crossing in dispute in this matter for public use in the possession of the Plaintiff as set forth in Paragraph 33 of the Defendant's Motion; however, the Plaintiff generally and specifically denies there is no evidence, as the Defendant's own maps show the at-grade crossing at this location was a public crossing since at least June 30, 1916. See **Exhibit C**. Plaintiff pleads in the affirmative that all of Plaintiff's official maps show Oliver St., in existence and crossing the Defendant's railroad tracks at the location of the at-grade crossing at issue herein. See all **Exhibits M-1 through M-7**. Plaintiff pleads further in the

affirmative that the Plaintiff has no ordinances or resolutions prior to 1929. See **Exhibit M-2**.

34. Plaintiff admits the allegations contained in Paragraph 34 of the Defendant's Motion. Plaintiff pleads in the affirmative that a condemnation proceeding was not necessary as the property located south of the Defendant's railroad tracks was owned and utilized by Plaintiff's citizens; therefore, a public crossing was created when the Defendant's predecessors in interest built the railroad tracks across the existing gravel road known as Oliver St. See deed from John Hail & Sarah to William Hail attached hereto as **Exhibit N-1**, see deed from William Cureton to James F. Quaile attached hereto as **Exhibit N-2**, see deed from J.V. Bourland & Bonnie J. to Samuel Church attached hereto as **Exhibit N-3**, see deed from Samuel Church and Jinnie to J.V. Bourland attached hereto as **Exhibit N-4**, see deed from J.V. Bourland and Bonnie J. to Redmond R. Walting attached hereto as **Exhibit N-5**, and see deed from Julia Walting to Martin Oliver attached hereto as **Exhibit N-6**, which are all incorporated herein.

35. Plaintiff admits the allegations contained in Paragraph 35 of the Defendant's Motion.

36. Plaintiff generally and specifically denies the allegations in Paragraph 36 of the Defendant's Motion. Plaintiff pleads in the affirmative that substantial amount of real property remained in existence after the Corps constructed the Dam, which was purchased by the Corps and such real property has been leased to the Plaintiff. See **Exhibit A**.

37. Plaintiff admits the allegations contained in Paragraph 37 of the Defendant's Motion. Plaintiff pleads in the affirmative that in the area the Plaintiff intends to develop, the Defendant's easement does not extend into the land leased by the Plaintiff and at the smallest area; the Defendant's easement is at least 10 to 12 feet away from the Arkansas River. See **Exhibit A**.

38. Plaintiff lacks sufficient information to admit or deny the allegations set forth in Paragraph 38 of the Defendant's Motion; therefore, the Plaintiff generally denies the allegations set forth in Paragraph 38 of the Plaintiff's Motion.

39. Plaintiff admits the allegations contained in Paragraph 39 of the Defendant's Motion.

40. Plaintiff admits the allegations contained in Paragraph 40 of the Defendant's Motion.

41. Plaintiff admits the allegations contained in Paragraph 41 of the Defendant's Motion.

42. Plaintiff generally and specifically denies the allegations set forth in Paragraph 42 of the Defendant's Motion. The Rule 30(b)(6) testimony was that no vote occurred on this issue and that former mayor Timmerman did not read the letter to the Plaintiff's city council. Plaintiff pleads further in the affirmative that there is a dispute between the Plaintiff's city council whether it was even mentioned to all members. See Dep. R. Hall, Pg. 20:9-25, Pg. 27:1-18, Pg. 41:17-25, Pg. 42:1-25 and Pg. 43:1-2, attached hereto as **Exhibit O-1**, Dep. R. McClellan, Pg. 15:17-20, attached hereto as **Exhibit O-2**, Dep. T.R. McNutt, Pg. 146:24-25, Pg. 147:1-10, attached hereto as **Exhibit O-3**, Dep. J. Milam, Pg. 26:1-20, Pg. 27:1-10, Pg. 35:13-25, Pg. 38:3-23,

attached hereto as **Exhibit O-4**, Dep. T. Timmerman, Pg. 21:7-25, attached hereto as **Exhibit O-5**, and Dep. J. Tom Edgin, Pg. 19:16-25, Pg. 25:11-21, Pg. 26:3-18, Pg. 27:12-19, Pg. 38:4-25, attached hereto as **Exhibit O-6**, which are all incorporated herein.

43. Plaintiff admits that former mayor Timmerman may have contacted the Defendant's representatives, including Charlie Felkins, as alleged in Paragraph 43 of the Defendant's Motion; however, the Plaintiff generally and specifically denies the implication that the Plaintiff's city council authorized this action by former mayor Timmerman, as no vote authorized former mayor Timmerman to contact the Defendant or the Defendant's representatives as required by Arkansas law. See **Exhibit O-1 through Exhibit O-6**.

44. Plaintiff generally and specifically denies the allegations set forth in Paragraph 44 of the Defendant's Motion. Plaintiff pleads in the affirmative that the testimony was disputed as to whether a letter was read to the Plaintiff's city council, but it was not shown to the Plaintiff's city council. See **Exhibit O-1 through Exhibit O-6**.

45. Plaintiff generally and specifically denies the allegations set forth in Paragraph 45 of the Defendant's Motion. Plaintiff pleads in the affirmative, that all members of the Plaintiff's city council agree that no vote took place on this issue, including current Mayor T.R. McNutt. See **Exhibit O-1 through Exhibit O-6**.

46. Plaintiff admits the Defendant removed the at-grade crossing in 2001, but generally and specifically denies the remaining allegations set forth in Paragraph 46 of the Defendant's Motion. Plaintiff pleads in the affirmative that the minutes from all city council meetings from 1999 through 2001 do not show any communication or action by

the Plaintiff authorizing the removal of the at-grade crossing. See **Exhibit L** and Affidavit of Sandy Key attached hereto as **Exhibit P** and incorporated herein.

47. Plaintiff generally and specifically denies the allegations set forth in Paragraph 47 of the Defendant's Motion. Plaintiff pleads in the affirmative that as early as 1996, the Plaintiff and Main St. Ozark, developed a walking trail plan that utilized the existing at-grade crossing. See cover page for Main St. Ozark, walking trail plan attached hereto as **Exhibit Q** and incorporated herein.

48. Plaintiff generally and specifically denies the allegations set forth in Paragraph 48 of the Defendant's Motion. The Plaintiff pleads in the affirmative that the Corps recently rescinded the rejection letter and issued a new letter authorizing the Plaintiff to move forward with the Plaintiff's proposed Marina project. See letter from Randy Hathaway dated April 27, 2015 attached hereto as **Exhibit R** and incorporated herein.

49. Plaintiff admits the allegations contained in Paragraph 49 of the Defendant's Motion. Plaintiff pleads in the affirmative that the Corps has tentatively approved the Plaintiff's concept for the floating dock, but will not approve or deny the Plaintiff's proposed floating dock until the issue of the Plaintiff's access over the Defendant's track is resolved by the Plaintiff obtaining written consent to cross the Defendant's tracks. See letter from Colonel Glen Massett attached hereto as **Exhibit S** and incorporated herein.

50. Plaintiff admits it has a conceptual idea for a walking trail as stated in Paragraph 50 of the Defendant's Motion; however, the Plaintiff generally and specifically

denies that any portion of the Plaintiff's walking trails would be on the Defendant's right-of-way easement. See **Exhibit A**.

51. Plaintiff admits the allegations contained in Paragraph 51 of the Defendant's Motion.

52. Plaintiff admits the allegations contained in Paragraph 52 of the Defendant's Motion. Plaintiff pleads in the affirmative that an at-grade crossing existed from at least June 30, 1916 until February 2001 when it was removed by the Defendant. See **Exhibits C and D-1 and D-2**.

53. Plaintiff admits the allegation contained in Paragraph 53 of the Defendant's Motion. Plaintiff pleads in the affirmative that a shuttle service would be a hassle and deter visitors to the Plaintiff's downtown area who are traveling up or down the Arkansas River. See Dep. C. Sneath, Pg. 71:4-12, attached hereto as **Exhibit T** and incorporated herein.

54. Plaintiff admits that current Mayor TR McNutt made the statement set forth in Paragraph 54 of the Defendant's Motion. Plaintiff pleads in the affirmative that Mayor McNutt is against the lawsuit and believes it to be a frivolous lawsuit; however, the Plaintiff's current city council voted unanimously in March 2015 to continue the lawsuit against the Defendant to obtain the reinstallation of the Plaintiff's at-grade crossing. See Dep. T.R. McNutt, Pg. 138:18-25, Pg. 139:1-25, and Pg. 154:13-18, attached hereto as **Exhibit U** and incorporated herein.

55. Plaintiff admits the allegations contained in Paragraph 55 of the Defendant's Motion. Plaintiff pleads in the affirmative that Defendant carries these chemicals throughout the United States of American, not just through the Plaintiff's

downtown area. See **Exhibit B ¶16** and Affidavit of Bill Huston ¶ 2 attached hereto as **Exhibit V** and incorporated herein.

56. Plaintiff admits the allegations contained in Paragraph 56 of the Defendant's Motion. Plaintiff pleads in the affirmative that Defendant carries these chemicals throughout the United States of American, not just through the Plaintiff's downtown area. See **Exhibit B ¶16** and **Exhibit V ¶ 2**.

57. Plaintiff admits the allegations contained in Paragraph 57 of the Defendant's Motion. Plaintiff pleads in the affirmative that this crossing location was previously in existence from June 30, 1916 until February 2001 and Plaintiff's expert states this crossing has no more safety concerns than other crossings in this area. See **Exhibits C, D-1, D-2 and Exhibit B ¶2, 11, 15, and 27**.

58. Plaintiff admits the allegations contained in Paragraph 58 of the Defendant's Motion. Plaintiff pleads in the affirmative that any crossing has the risk of a train striking a pedestrian or a vehicle, causing serious injury or death. Plaintiff pleads further in the affirmative that during the entire period of time that the at-grade crossing was in existence that only one (1) accident is known to have occurred on June 27, 1985, which information was provided by the Defendant. See **Exhibit B ¶2, 11, 15, and 27** and a copy of a report of highway crossing accident attached hereto as **Exhibit W** and incorporated herein.

59. Plaintiff admits the allegations contained in Paragraph 59 of the Defendant's Motion. Plaintiff pleads in the affirmative that any crossing has the risk of a train striking a pedestrian or a vehicle, causing serious injury or death. See **Exhibit B ¶2, 11, 15, and 27** and **Exhibit W**.

60. Plaintiff admits the allegations contained in Paragraph 60 of the Defendant's Motion.

61. Plaintiff admits the allegations contained in Paragraph 61 of the Defendant's Motion.

62. Plaintiff admits the allegations contained in Paragraph 62 of the Defendant's Motion.

63. Plaintiff admits the allegations contained in Paragraph 63 of the Defendant's Motion.

64. Plaintiff admits the allegations contained in Paragraph 64 of the Defendant's Motion. Plaintiff pleads in the affirmative that during the period of 1971 until 2001, there has not been any type of derailment at this crossing location, which is the period of time that Maxey Helmert worked for the Defendant and the Defendant's predecessor. See Dep. M. Helmert, Pg. 34:2-18 attached hereto as **Exhibit X** and incorporated herein.

65. Plaintiff admits the allegations contained in Paragraph 65 of the Defendant's Motion.

66. Plaintiff admits the allegations contained in Paragraph 66 of the Defendant's Motion. Plaintiff pleads in the affirmative at derailment will always carry the potential for injury or loss of life whether the crossing exists or does not exist.

67. Plaintiff admits the allegations contained in Paragraph 67 of the Defendant's Motion. Plaintiff pleads in the affirmative at derailment will always carry the potential for injury or loss of life whether the crossing exists or does not exist.

68. Plaintiff admits the allegations contained in Paragraph 68 of the Defendant's Motion. Plaintiff pleads in the affirmative that during the period the crossing existed from at least June 30, 1916 until February 2001, there has only been one (1) reported accident at the location of the at-grade crossing. See **Exhibit W**.

69. Plaintiff admits the allegations contained in Paragraph 69 of the Defendant's Motion. Plaintiff pleads in the affirmative that during the period the crossing existed from at least June 30, 1916 until February 2001, there has only been one (1) reported accident at the location of the at-grade crossing location. See **Exhibit W**.

70. Plaintiff admits the allegations contained in Paragraph 70 of the Defendant's Motion. Plaintiff pleads in the affirmative that during the period the crossing existed from at least June 30, 1916 until February 2001, there has only been one (1) reported accident at the location of the at-grade crossing and people have had the opportunity to utilize the at-grade crossing during this period of time without any reported incidences. See **Exhibit W**.

71. Plaintiff admits the allegations contained in Paragraph 71 of the Defendant's Motion. Plaintiff pleads in the affirmative that during the period the crossing existed from at least June 30, 1916 until February 2001, there has only been one (1) reported accident at the location of the at-grade crossing and people have had the opportunity to utilize the at-grade crossing during this period of time without any reported incidences. See **Exhibit W**.

72. Plaintiff admits the allegations contained in Paragraph 72 of the Defendant's Motion. Plaintiff pleads in the affirmative that during the period the crossing existed from at least June 30, 1916 until February 2001 no gates or flashing lights

CERTIFICATE OF SERVICE

I, Christopher D. Brockett, hereby certify that a copy of the foregoing Amended Complaint has this date been served by U.S. Mail on the following:

Scott H. Tucker
Friday, Eldredge & Clark, LLP
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Done at Ozark, Arkansas, this 25th day of May 2015.

/s/ Christopher D. Brockett
Christopher D. Brockett

TABLE OF EXHIBITS

- Exhibit A: Map showing Plaintiff's leased area
- Exhibit B: Affidavit of George Soliz dated November 12, 2014
- Exhibit C: Missouri Pacific Railroad Company ("MoPac") track right of way map dated June 30, 1916
- Exhibit D-1: MoPac's Station and Structures Map dated April 15, 1946
- Exhibit D-2: Defendants 2000 Map
- Exhibit E-1: Deposition of M. Canady Pg. 14
- Exhibit E-2: Deposition of K. Smith Pg. 11
- Exhibit F-1: Deposition of H. Allred Pg. 18
- Exhibit F-2: Deposition of B. Brockett Pg. 11
- Exhibit G: Deposition of R. Anderson Pg. 12, Pg. 41 and Pg. 43
- Exhibit H-1: Deposition of H. Allred Pg. 11, Pg. 17 and Pg. 18
- Exhibit H-2: Deposition of M. Canady Pg. 19 and Pg. 20
- Exhibit H-3: Deposition of K. Smith Pg. 23 and Pg. 24
- Exhibit I: Deposition of K. Smith Pg. 16, Pg. 19 and Pg. 20
- Exhibit J: Deposition of H. Allred Pg. 16
- Exhibit K-1: Deposition of H. Allred Pg. 12
- Exhibit K-2: June 5, 1940 City Council minutes
- Exhibit L: Affidavit of Carol Sneath
- Exhibit M-1: Deposition of R. Johnson Pg. 17
- Exhibit M-2: Affidavit of Plaintiff's City Clerk Sonya Eveld
- Exhibit M-3: Plaintiff's October 13, 1942 City Council minutes
- Exhibit M-4A: Plaintiff's February 1962 map
- Exhibit M-4B: Enlarged portion of February 1962 map
- Exhibit M-5: Copy of 1965 water distribution map
- Exhibit M-6: Copy of the Corps relocation map
- Exhibit M-7: Copy of the Plaintiff's 1975 map
- Exhibit M-8: Copy of the Arkansas Highway and Transportation Department ("AH&TD") 1980 map
- Exhibit M-9: Copy of the Mickle-Wagner Assoc., Inc., Bike Route 1980 map
- Exhibit N-1: Deed of John Hail & Sarah to William Hail
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- Exhibit N-3: Deed of J.V. Bourland and Bonnie J. to Samuel Church
- Exhibit N-4: Deed of Samuel Church and Jinnie to J.V. Bourland
- Exhibit N-5: Deed from J.V. Bourland and Bonnie J. to Redmond R. Walting
- Exhibit N-6: Deed from Walting to Oliver
- Exhibit O-1: Deposition of R. Hall Pg. 20, Pg. 27, Pg. 41, Pg. 42 and Pg. 43
- Exhibit O-2: Deposition of R. McClellan Pg. 15
- Exhibit O-3: Deposition of T.R. McNutt Pg. 146 and Pg. 147
- Exhibit O-4: Deposition of J. Milam Pg. 26, Pg. 27, Pg. 35 and Pg. 38
- Exhibit O-5: Deposition of T. Timmerman Pg. 21
- Exhibit O-6: Deposition of J. Tom Edgin Pg. 19, Pg. 25, Pg. 26, Pg. 27 and Pg. 38
- Exhibit P: Affidavit of Sandy Key
- Exhibit Q: Cover page for Main St. Ozark, Walking trail plan

Exhibit R: Letter from Randy Hathaway dated April 27, 2015
Exhibit S: Letter from Colonel Glen Massett
Exhibit T: Deposition of C. Sneath Pg. 71
Exhibit U: Deposition of T.R. McNutt Pg. 138, Pg. 139 and Pg. 154
Exhibit V: Affidavit of Bill Huston
Exhibit W: Copy of a report of highway crossing accident
Exhibit X: Deposition of M. Helmert Pg. 34
Exhibit Y: Deposition of M. Canady Pg. 14
Exhibit Z: Affidavit of Royce Gattis

EXHIBIT A
MAP SHOWING PLAINTIFF'S LEASED AREA

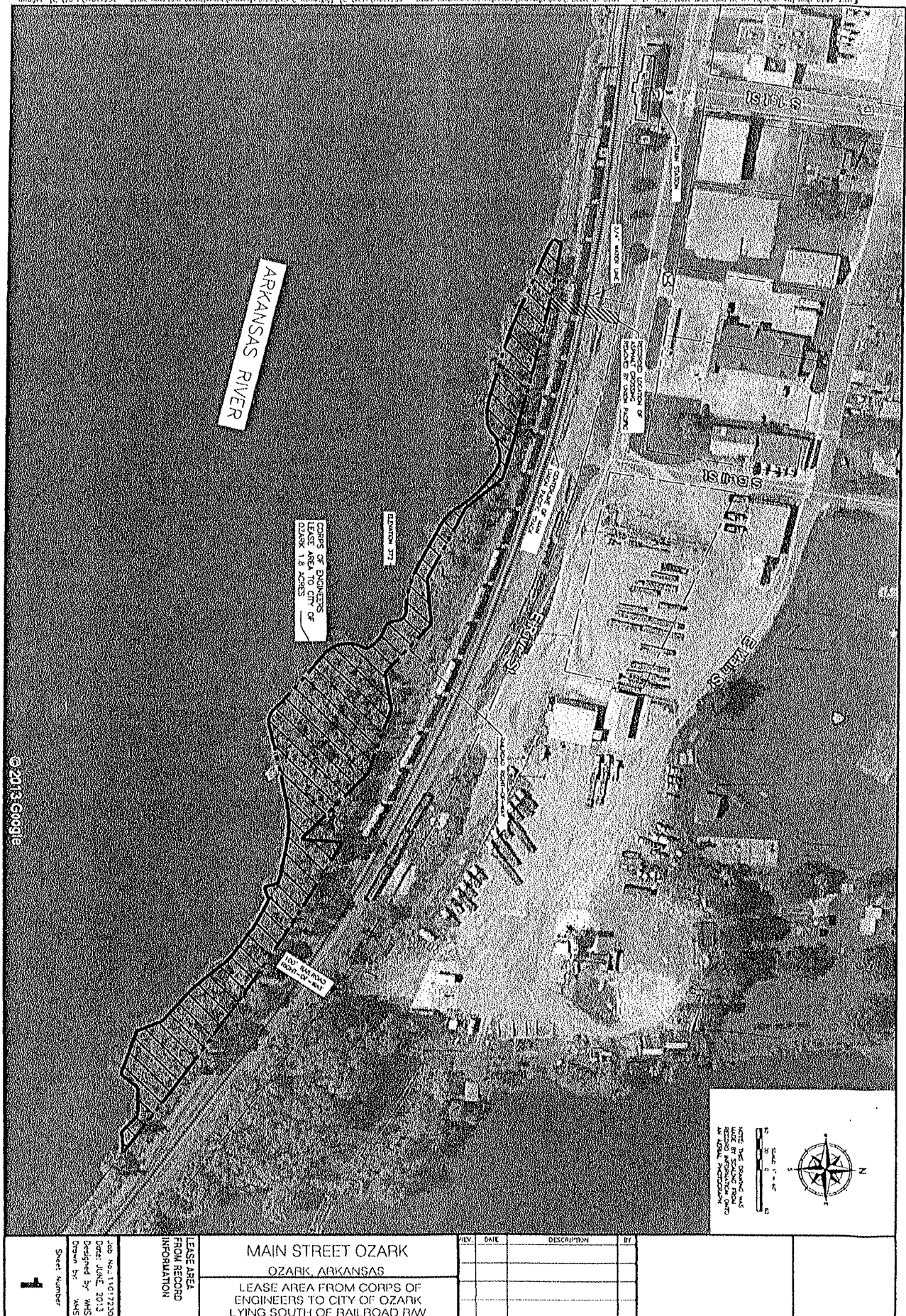


EXHIBIT B

AFFIDAVIT OF GEORGE SOLIZ DATED NOVEMBER 12, 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

**CITY OF OZARK, ARKANSAS, a municipal
corporation**)

Plaintiff,)

vs.)

**UNION PACIFIC RAILROAD COMPANY,
the ARKANSAS STATE HIGHWAY
& TRANSPORTATION DEPARTMENT
(an Agency of) The State of Arkansas,
AND THE ARKANSAS STATE HIGHWAY
COMMISSION**)

Defendants,)

CIVIL ACTION NO:2:14-CV-02196-TLB

AFFIDAVIT OF GEORGE B. SOLIZ OF GBS CONSULTING SERVICES, LLC

I, George B. Soliz, having first been duly sworn, state:

1. I am a resident of the State of Texas. I am more than 21 years of age. I have lived in Texas for all of my life approximately 64 years. I am making this affidavit with my own personal knowledge and personal site inspection. The statements made by me are for rebuttal and opposition to the affidavit of Bill Huston, Manager of Train Operations for Union Pacific Railroad Company.

2. In addition, the affidavit is made to provide the Court with information and an opinion that re-installing the Oliver Street vehicular rail crossing (the "Oliver St. Crossing") does not cause any more safety concerns than those in small town communities with low volume vehicular traffic passing over railroad crossings experience every day. Further, the inspection work and loss of rail car capacity that UP

complains that it would suffer would be minimal. Finally, the risk of the safety of railroad employees and the general public is slight at the Oliver St. Crossing location.

3. I am a retired safety inspector (Chief Inspector) from the Federal Railroad Administration (FRA), where I served in numerous capacities for approximately 34 years. I served as a Chief Inspector for approximately 19 years, having oversight responsibilities over rail accident investigations. Additionally, I was the Chief Investigator at numerous highway rail grade crossings. During various investigations, I worked with teams of investigators some from the National Transportation Safety Board (NTSB) to determine cause, evaluate cause in relation to public use and offer prevention solutions. 16 of my 19 years that I served as Chief Inspector, I was assigned to the FRA's Region 5 in Houston, Texas. Region 5 consists of 5 states, Arkansas, Louisiana, Oklahoma, New Mexico and Texas. Union Pacific Railroad Company ("UP") is the largest railroad that operates in Region 5. Their trains operate in and out of the largest metropolitan cities in the 5 states.

4. In anticipation of this lawsuit, I was requested by representatives of the City of Ozark, Arkansas to travel to Ozark, Arkansas and review a previously at-grade crossing that was removed by UP and to provide an opinion as to the safety issues that might develop by the reinstallation of the at-grade crossing.

5. In August 2013, I traveled to Ozark, Arkansas and was shown the UP rail facility located at the Oliver St. Crossing location. I personally observed that the trackage in this area was not totally utilized with the exception of the 17 rail cars standing on the siding. (**See Exhibit 1**)

6. Specifically, the "house tracks" that Mr. Hudson refer to were covered with gravel and grass and did not appear that UP utilized them in their railroad operations.

7. On August 6, 2013, I was accompanied by Royce Gattis, who assisted me during assessing sight distances, roads approaching crossings and type of protection at five (5) vehicular rail crossings near Ozark, Arkansas. During a 5 hour time frame one (1) train passed through this area that was in close proximity to the Oliver St. Crossing. I also observed about 17 freight rail cars were standing on a siding track that paralleled the main track near the location of the Oliver St. Crossing. However, during this period of time, the side track was not utilized for train meets, only for the 17 freight cars that stayed stationary blocking Ozark's view of the Arkansas River.

8. The tracks at the Oliver St. Crossing location are not used for major train classification purposes. They serve as utility tracks for occasional storage of rail cars for later movement and to add or remove rail cars from passing trains.

9. In addition, within a 10 miles radius, UP has two (2) different storage facilities that UP can utilize for these purposes that are more rural and less populated than the Oliver St. Crossing location. One of these alternative locations is west of Ozark, Arkansas and is known as Poppin Bottoms, and the other location is east of Ozark, Arkansas in the township of Denning, Arkansas. Mr. Gattis was able to show me both of these locations that were not being utilized in August 2013.

10. Further, the sweeping curve that Mr. Hudson refers to actually assists with sight clearance; however, according to representatives of Ozark, UP refuses to allow them to cross their tracks to clean up land they have leased from the U.S. Army Corps of Engineers. The tall grass and trees that the representatives desire to clean up and

improve currently restrict the view and once cleared, would provide a one mile unobstructed view of any train approaching from the east.

11. Further, UP has numerous rail lines with sweeping curves running parallel to waterways that cross public highway crossings with trains hauling regulated materials every day. Again, the hazards created by reopening the Oliver St. Crossing are no more than those faced every day at low volume vehicular traffic railroad crossings in other small towns.

12. Upon reinstallation of the Oliver Street Crossing, UP could still elect to hold a train on the siding or main track; however, the crew would be required to separate the train at the Oliver St. Crossing, which they were required to do prior to the removal in 2001. If UP's trains were left standing for more than 4 hours the portion of the train not connected to a source of compressed air greater than 60 psi would require that part of the train to receive a Class I brake test and inspection. The solution to avoid the need for a Class I train air brake test and inspection would be to use the technology and practice currently used by the UP at their Moody Road vehicular rail crossing northwest of Hearne, Texas. (See Exhibit 1) The suggested technology and practice is described in more detail below.

13. The Oliver St. Crossing would require the separation of cars and trains and add to the number of rail car hand brakes to be applied at times. However the time needed is minimal and would not be unreasonable for UP, as they are required to do this in other towns all across Region 5. Separating trains and rail cars at vehicular rail crossings are made daily throughout the railroad industry and by using good train management the time needed can be kept to a minimum.

14. I reviewed FRA safety data concerning UP train accident/incidents for Ozark, Franklin County, Arkansas and no reports were found. The search covered all train accidents including those with trespasser injuries and fatalities from January 2010 through July 2014.

15. Additionally, the reopening of the Oliver St. Crossing will not create any more safety concerns than those found at any small town community railroad crossing including vandalism or pedestrian traffic.

16. Although Mr. Hudson argues that the reinstalling the Oliver St. Crossing would create a hazard regarding potential spill of hazardous waste, many trains have rail cars carrying the regulated materials over UP rail lines each day. Especially into and out of the Gulf Coast areas of Texas and Louisiana. These trains reach their destinations each day without incidences. Accidents do occur but the rail industry is the safest mode of transportation for hauling bulk freight.

17. During my time at the FRA, I worked closely with UP while headquartered in Houston and have firsthand knowledge the railroad has a strong conductor and engineer training program. Currently, engineers and conductors are required by CFR Title 49 Parts 240 and 242 to be qualified and certified as competent train service employees. They are required to have familiarization trips over the territory (rail line) they are assigned to operate a train over. These requirements reduce the risk for train accidents including derailments and at railroad crossings.

18. Further, as a railroad safety consultant, I stay knowledgeable of railroad accidents, injuries and fatalities occurring in the industry. Currently, I know of no train

accidents that UP has experienced in region 5 that involved the release of a regulated material into a waterway.

19. Finally, UP is one of the largest railroads if not the largest in the continental United States with thousands of miles of rail lines. Over their rail lines are many vehicular rail crossings throughout rural and metropolitan areas. To meet challenges posed by these crossings to train operations, UP deploys the latest technology and practices to expedite train movements. One such practice is installing a pipe line that runs underneath and across the street just before the vehicular rail crossing that permits train crews to keep the train's air brakes system connected when separating the train at the vehicular rail crossing. (See Exhibit 2 photographs)

20. Another practice used by UP is telemetry link control technology that permits the train operator by use of a head end control unit to communicate with an end of train unit. This type of technology aids the operator to determine train brake pipe pressure and to initiate emergency train brake applications from the rear of the train. The use of this technology has reduced the time in performing train air brake test and inspections; reduced stopping distance; and helps prevent train derailments cause by slack action. (See Exhibit 3)

21. When the train operator reduces the train's brake pipe pressure by making an air brake application the operator can see that the brake pipe pressure is being reduced at the rear of his train by observing the head end control unit. When the train's brake pipe pressure is reduced this causes the air brake to apply on the rail cars and when pressure is restored the brakes release. The telemetry control technology

eliminated the need for a member of the train crew to be stationed at the rear of the train during a train air brake test and inspection.

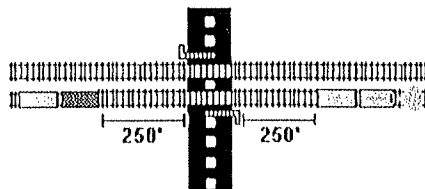
22. The Code of Federal Regulations Title 49 Part 213.9 (Classes of Track-Operating speed limits) regulation requires UP to maintain its rail line to class 4 track standards if the company elects to operate its trains to a maximum speed of 60 mile per hour. However, train speeds are affected by speed restrictions such as at highway/rail crossings, track curvature, bridges, and slow orders for track repairs and through metropolitan areas. Speed restrictions can be found over many areas of the UP's rail lines.

23. UP's operating rule that governs clearance at railroad crossings is stated below and may be found in the Union Pacific's General Code of Operating Rules, 6th Addition:

6.32.4: Clear of Crossings and Signal Circuits

Leave cars, engines, or equipment clear of road crossings and crossing signal circuits.

When practical, avoid leaving cars, engines, or equipment standing closer than 250 feet from the road crossing when there is an adjacent track. When cars, engines, or equipment are left on a siding or a main track closer than the required distance, the train dispatcher must be notified.



[Diagram A]^ In the state of Arkansas the distance is 300 feet

The amount of rail car space lost by re-installing the Oliver Street vehicular rail crossing would be 600 feet or the equivalent to losing space for 8 rail cars each 70 feet in

length. Rail cars come in various sizes but for common use to determine car capacity is a 70 foot car length.

The UP operating rule that governs blocking public crossing is stated below and found in the Union Pacific's General Code of Operating Rules 6th Addition.

6.32.6: Blocking Public Crossings

When practical, a standing train or switching movement must avoid blocking a public crossing longer than 10 minutes.

24. UP's operating rule that provides protection at road crossings is stated below and may be found in the Union Pacific's General Code of Operating Rules 6th Addition:

6.32.1: Cars Shoved, Kicked, or Dropped

When cars are shoved or kicked over road crossings at grade (except those used exclusively by railroad employees), a crew member must be on the ground at the crossing to warn traffic until the crossing is occupied. Make any movement over the crossing as directed from that crew member. Such warning is not required when gates are known to be in the fully lowered position.

25. Federal regulations for performing train air brake test and inspections are found in CFR Title 49 Part 232. These regulations outline the test and inspections that are required when trains are assembled, when adding or removing rail car(s) to or from a train and other special haul train operations.

26. Federal regulation for performing safety inspections of rail car(s) are found in CFR Title 49 Part 215. These regulations require a railroad to perform an equipment safety inspection of rail car(s) added to a train.

27. In closing I would like to say, I have strong feelings for the safety of railroad employees and the general public. The 34 years with the FRA has been my working career to serve their interest. With this said, the reopening of the Oliver St.

Crossing causes no more safety concerns to railroad employees or the general public than those experienced in any other small town with low volume vehicular traffic.

Further Affiant sayeth not.

George B. Soliz,

Date: _____

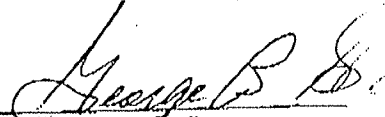
STATE OF TEXAS)
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me on this _____ day of November, 2014.

NOTARY PUBLIC

Crossing causes no more safety concerns to railroad employees or the general public than those experienced in any other small town with low volume vehicular traffic.

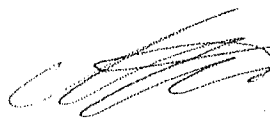
Further Affiant sayeth not.


George B. Soliz,

Date: 11-12-2014

STATE OF ~~TEXAS~~ ^{ARKANSAS}
COUNTY OF Franklin

SUBSCRIBED AND SWORN to ^{via telephone} before me on this 12th day of November, 2014.



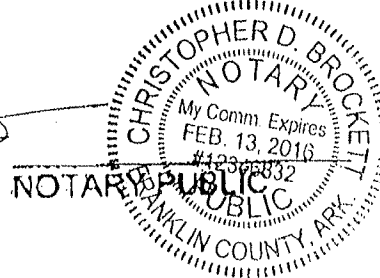


Exhibit 1

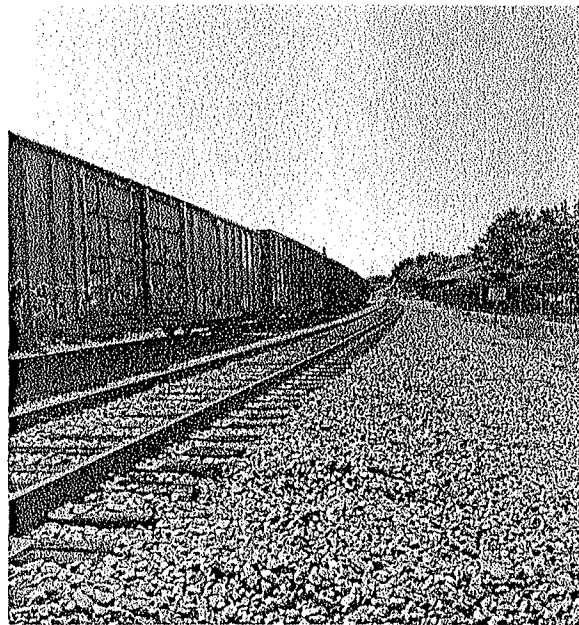
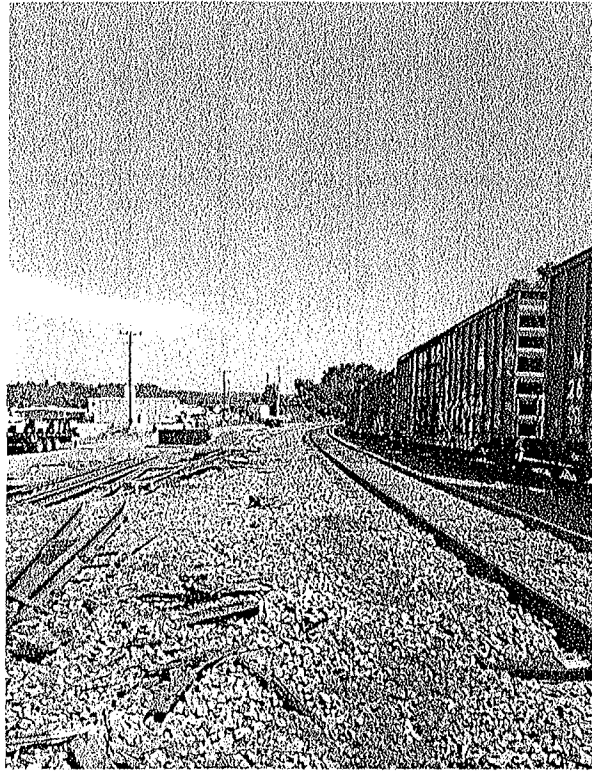


Exhibit 1

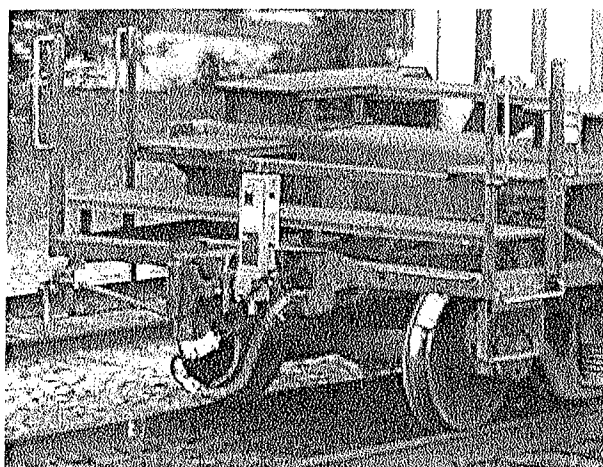


The 3 photographs depicts that the UP utility tracks are not totally utilized at and near the Oliver Street Rail Crossing

EXHIBIT 3



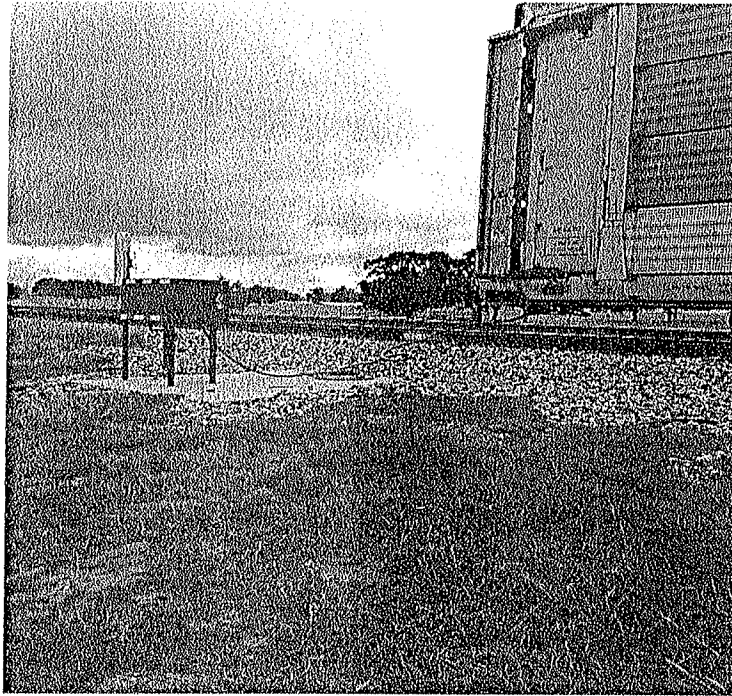
This picture depicts an electronic component referred to as the Head End Telemetry Device and is located on the console of the controlling locomotive of a train.



This picture depicts the rear portion of the Telemetry Device known as the End of Train Device (ETD). The ETD transmits brake pipe pressure data via a telemetry link to the Head-End-Train Device (HTD) in the controlling locomotive.

This telemetry technology aids railroads in performing train air brake test when changing the makeup of the train. The telemetry technology gives the engineers the ability to make emergency brake application from the rear of the train that reduces stopping distance and prevents train derailments. The newest models provides various types of information to the engineer that aids in the operation of the train.

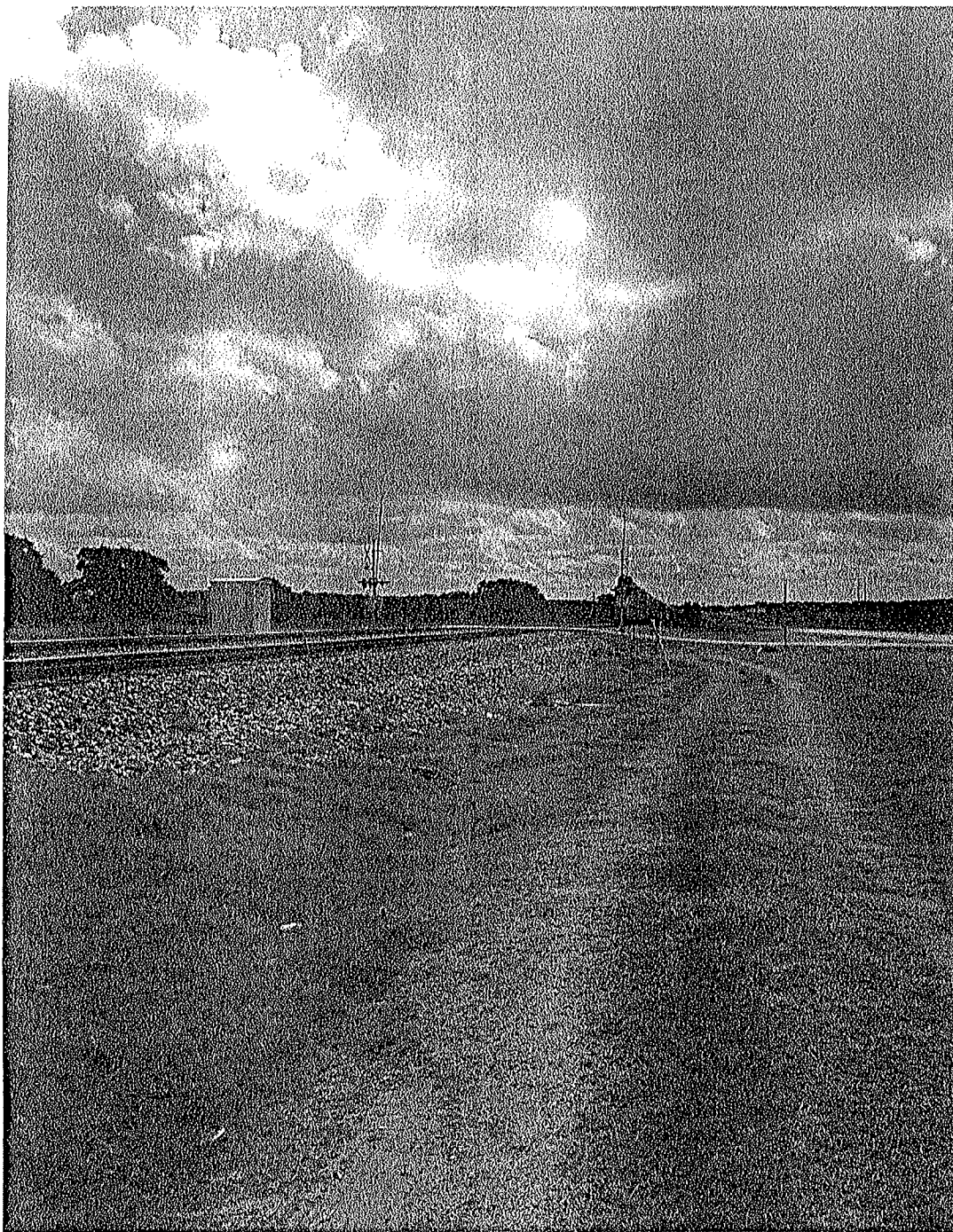
EXHIBIT 2



The two photographs depicts a UP train separated at a railroad crossing west of Hearne, Texas adjacent to Hwy 6.

The top photograph depicts the UP train standing on the east side of the Moody Road railroad crossing with an air line connected to the train's air brake system (brake pipe). The bottom photograph depicts the same train standing on the west side of the crossing with an air line connected to the train's air brake system. The air lines at each end of the train keeps the train's air brake system connected and charged with air from the locomotive consist. This practice eliminates the need to perform a Class I train air brake test when trains are left standing and separated for more than 4 hours.

EXHIBIT 2



The photograph above depicts the Moody Road rail crossing.

The view shows the separated train standing on the east side of the crossing

EXHIBIT C

MOPAC'S TRACK RIGHT OF WAY MAP DATED JUNE 30, 1916

REVISED AS TO	SOURCE		DATE	DRAFTSMAN
	A.F.E.N.	MISCELLANEOUS		
T.O. Signal	B-2502	1970-X File	8-18	2-16-24 J.A. Wolfgram
Repl B-344-A with Conc. Box	B-4700	A.F.E.B-4700	3-20	2-16-24 J.A. Wolfgram
Trk. No. 3 Lineq over & Extd.	C-1688	M.V.44 Report	10-20	2-19-24 J.A. Wolfgram
Const. Ramp at Frt. Plfm.	242475	1537-B	11-24	2-7-25 A.G. Stevenson
Install 18" C.I.P. 30	242314	1537-B	1-25	2-21-25 R.H. Kruse
Install Mail Crane	25502	1537-B	1-25	4-17-25 E.I. Brown
Const. Covered Extn to Cotton Plfm.	757380	1537-B	4-26	6-10-26 A.G. Stevenson
Water Sta. Removed	262667	1537-B	12-26	2-7-27 C.M. Hamlin
Trk. No. 3 Extd. 16 ft. & Dr. No. 20-65 Shortened 11 ft. - Asst. Relay	25197	1537-B	2-27	5-10-27 W.W. Locke
Install Carbody	262456	1537-B	8-28	9-25-28 B.F. Winkelman
Replace C.I. Pipe with G.I. Pipe	28882	1537-B	1-29	4-2-29 E.S. Acheson
2 Lines G.I.P. Installed	261438	1537-B	3-29	7-11-29 G.L. Church
Trk. No. 4 Const'd. (SEE PAGE 3282)	302247	1537-B	8-30	4-21-30 J.A. Wolfgram
T.O. 292 Ev'd. to agree with Deed	None	Doc. #75		5-12-31 J.A. Wolfgram
Install 19x28' Lineq. Tool Ho.	31314	1537-B	4-31	6-23-31 J.A. Wolfgram
Track No. 4 Removed	3282	1537-B	4-32	6-28-32 A.G. Stevenson
Install Corr. I. Pipes	35839	1537-B	11-35	1-10-36 A.G. Stevenson
Install Wood Box & Corr. I. P.	351285	1537-B	7-36	9-11-36 A.G. Stevenson
Tool Ho. Removed	38300	1537-B	3-37	6-27-38 A.G. Stevenson
Install Corr. I. Pipes	38857	1537-B	4-38	6-17-39 A.G. Stevenson
Repl. Stone Box with Corr. I.P.	38858	1537-B	4-39	6-20-39 A.G. Stevenson
Lineq. Tool Ho. Removed	391112	1537-B	5-39	12-29-39 A.G. Stevenson
Con. Forces	40218	1537-B	5-40	9-25-40 R.H. Kruse
Trk. No. 3 Extd. 16 ft. & Dr. No. 20-65 Shortened 11 ft. - Asst. Relay	41032	1537-B	5-41	12-13-41 A.G. Stevenson
Inst. 3-72 C.M.P.S. 44	670354	24018	1-70	12-9-70 J. McLard
Retired Trk. 20-203 & 20-215	720011	72001	2-72	3-30-72 T.R.W.
Land Acquired - Piece 1 No. 30	710116	24018	3-72	1-10-73 J.M.H.
Replace 48" C.I.P. with 48" C.M.P. - 2:1 beveled ends	700354	24018	4-1-71	7-6-73 A.M.S.

Note:

For Continuation of Trk. No. 20-170
See Maps L-2500-B & 29-58-G

Tr. Coal Mine
C.G. 20-170-47811

C.G. 25+71
24-Cont. 1-32
25+55

C.G. 25+71
C.G. 26+43

FRANKLIN
ROAD
CO. A

P.S. 640

P.S. 640
Beg. Pifm. 640+32
T.O. Depot 640+75
18' x 94' Depot 6410+27

Plank Xing on Trk No. 3
A.P.E. 42043 W. 2- C&P Toilets 6412+03
End Pifm. Ext. W. 2- 6412+54
Whistle Post 6412+54

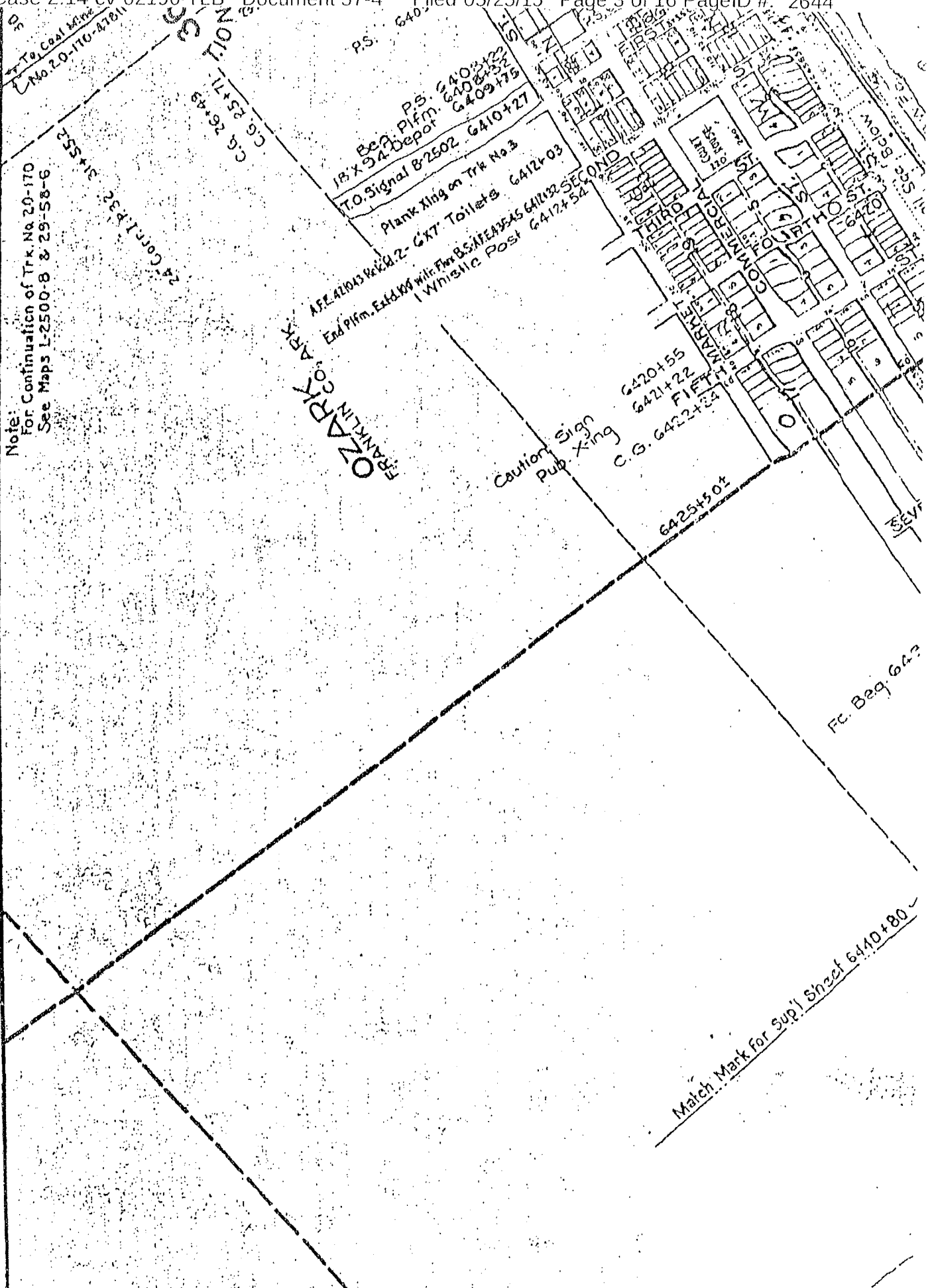
Caution sign
Pub. Xing

6420+55
6421+22
FIFTY
C.G. 6422+34

6425+50+

Fr. Beg. 642

Match Mark for sup'l Sheet 6440+80



This Sheet Not To Be Posted Between Station

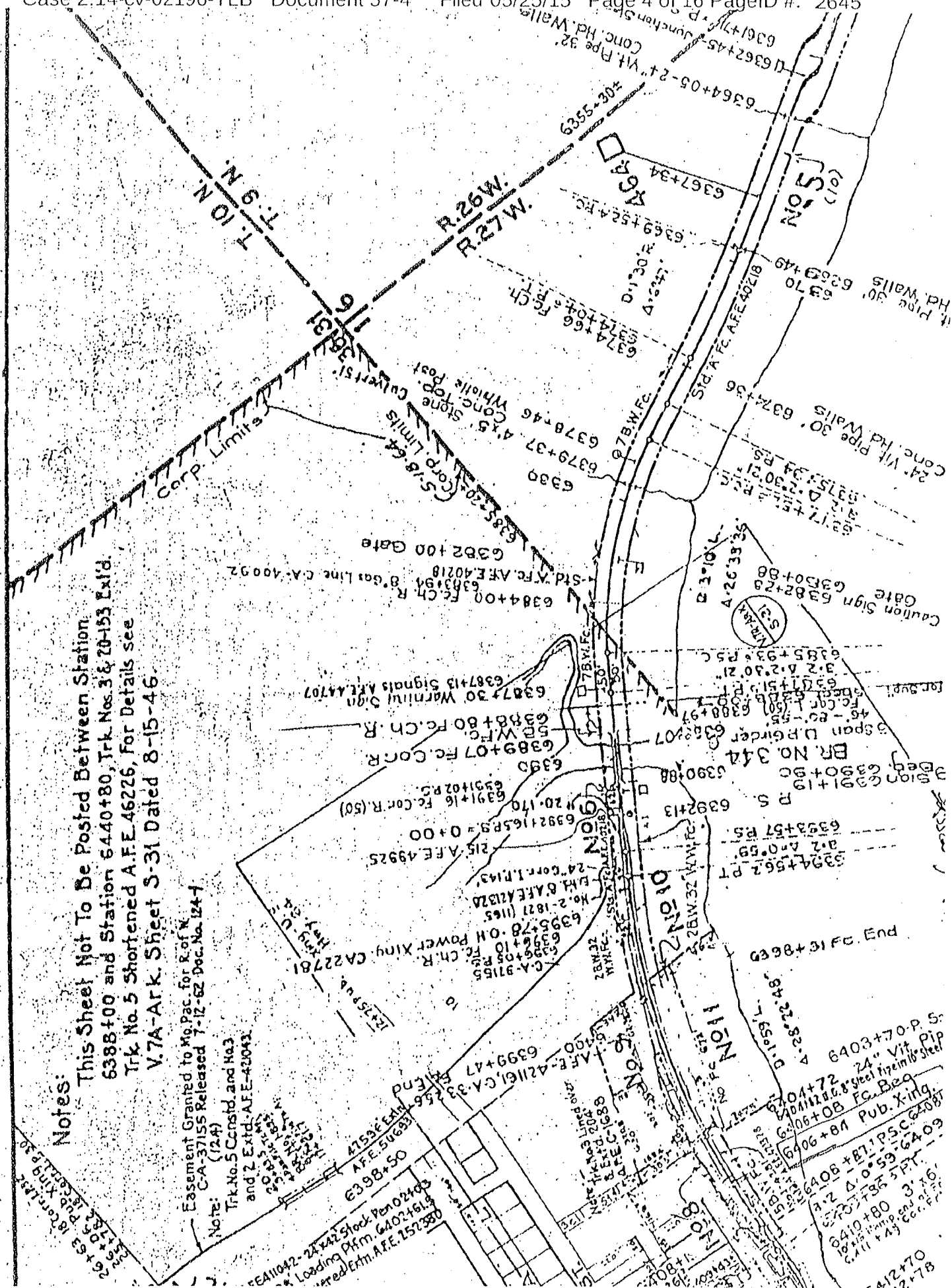
Trk No. 5 Shortened A.F.E. 46226, For Details see

V.7A-Ark. Sheet S-31 Dated 8-15-46.

Exemption Granted to Mo. Pac. for R. of M.
C-A-37155 Released 7-12-62 Doc. No. 124-1

Trk No. 5 Const. and Ho 3
and 2 Extd. AFE-42043

and
0
4
4
E398
FEA11042-24242 Stock Pen 02403
Loading Pfm. 64024619
rred Efm. AFE. 152380



See: Easements granting Mo. Pac. the right to locate Pole Lines
across the line of Sun Bell Tele. Co. and The Northern R. of W.
at the P.R. in part of Sec 35 (including Blocks 13, 21, 22)
- List of Sec 34, 35 Doc. No. 105, 107, 108, 111, 110, 112, 114, 118,
119, 120, 121, 122, 123, 124, 125, 126, 127.

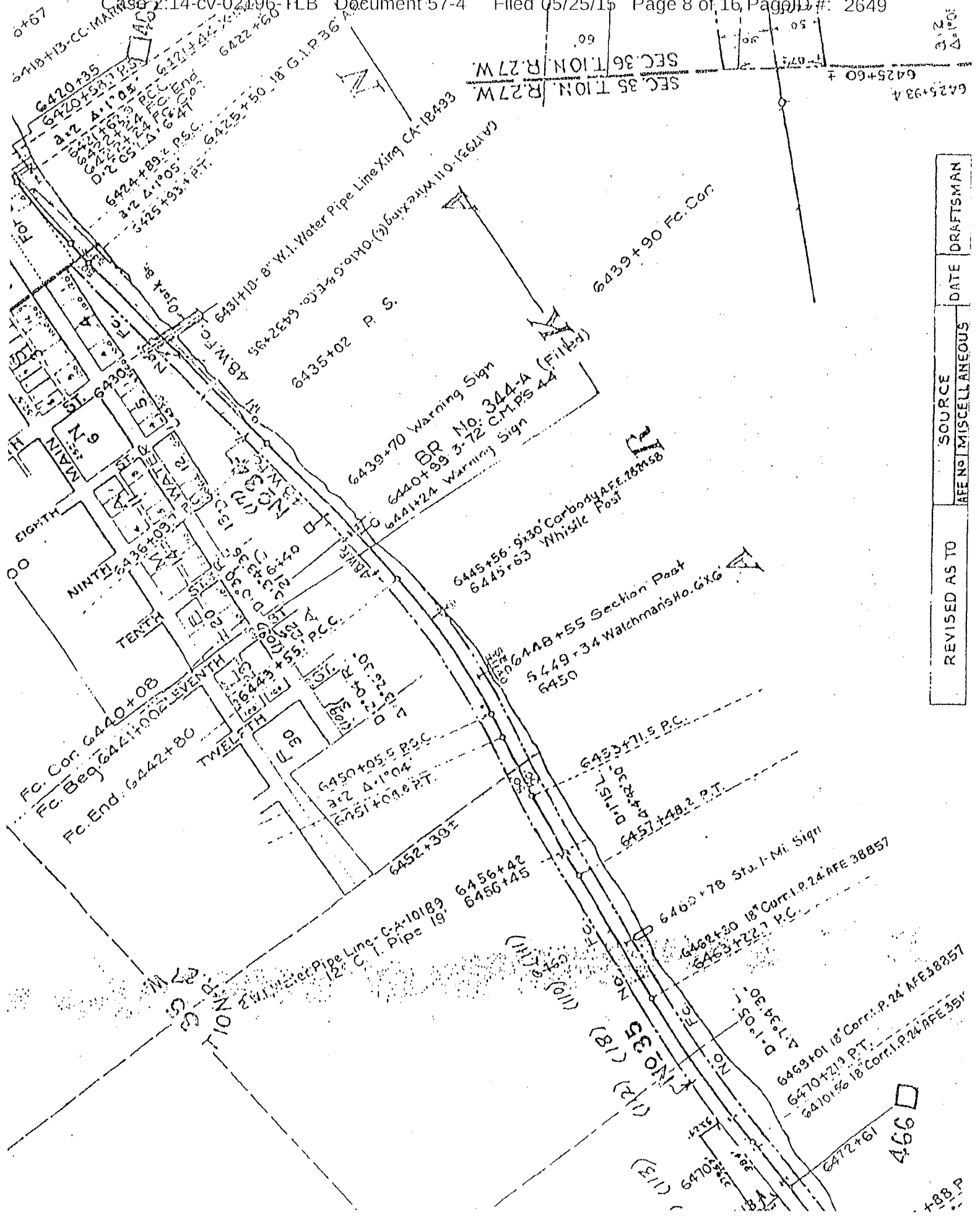
24" Vlt. Pipe
213 Battery

AF 242314-18 CIP 30 6476+18
Cone Apr 21
F. Beg 6479
479+53+

12" C. I. Pipe 19' 6480+03
12" Corrl. P. Extr. 10' AFE 38857
AFE 38857 24" Corrl. P. 24' 6481+93
Corrl. P. 34'

APR 7 1960
APR 1 P. 24
APR 1 P. 34
6485

AFE35839
A.F.E. 280



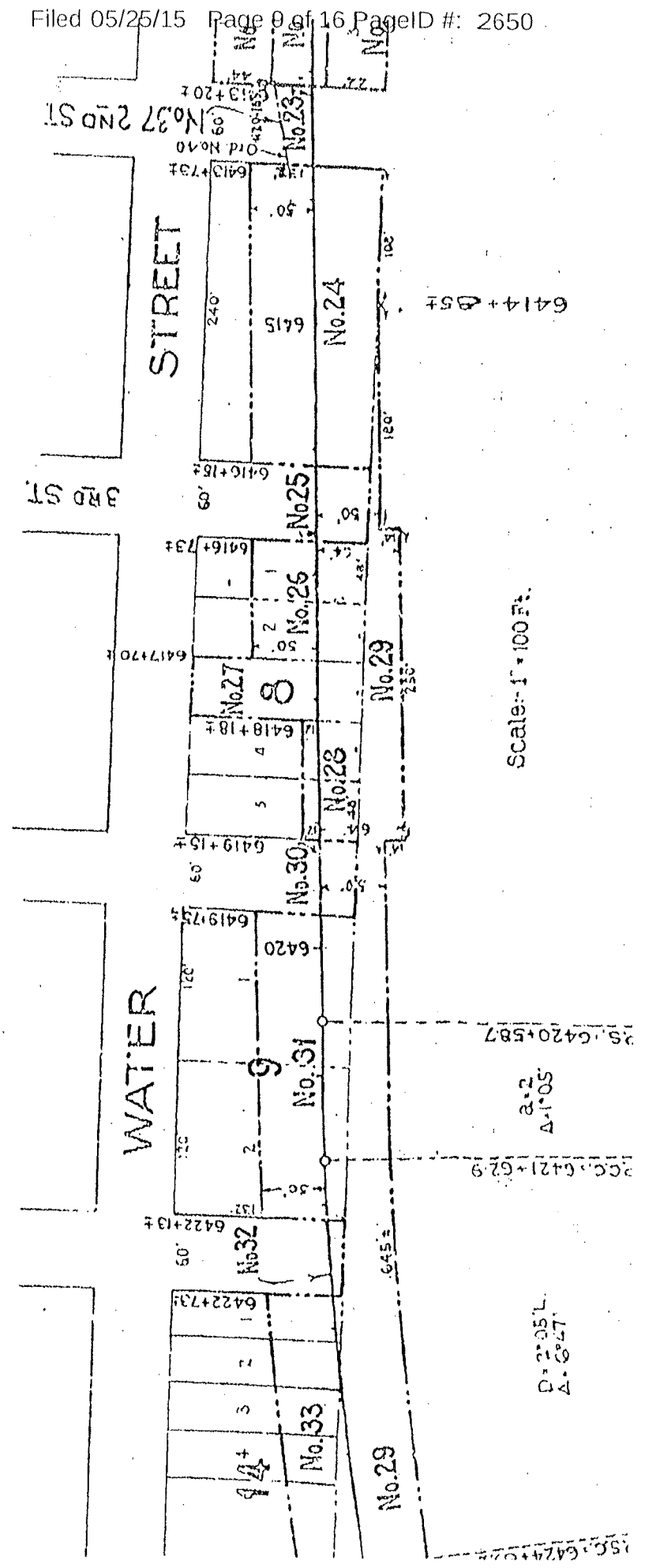
REVISED AS TO	SOURCE	DATE	DRAFTSMAN
	AFE No. MISCELLANEOUS		

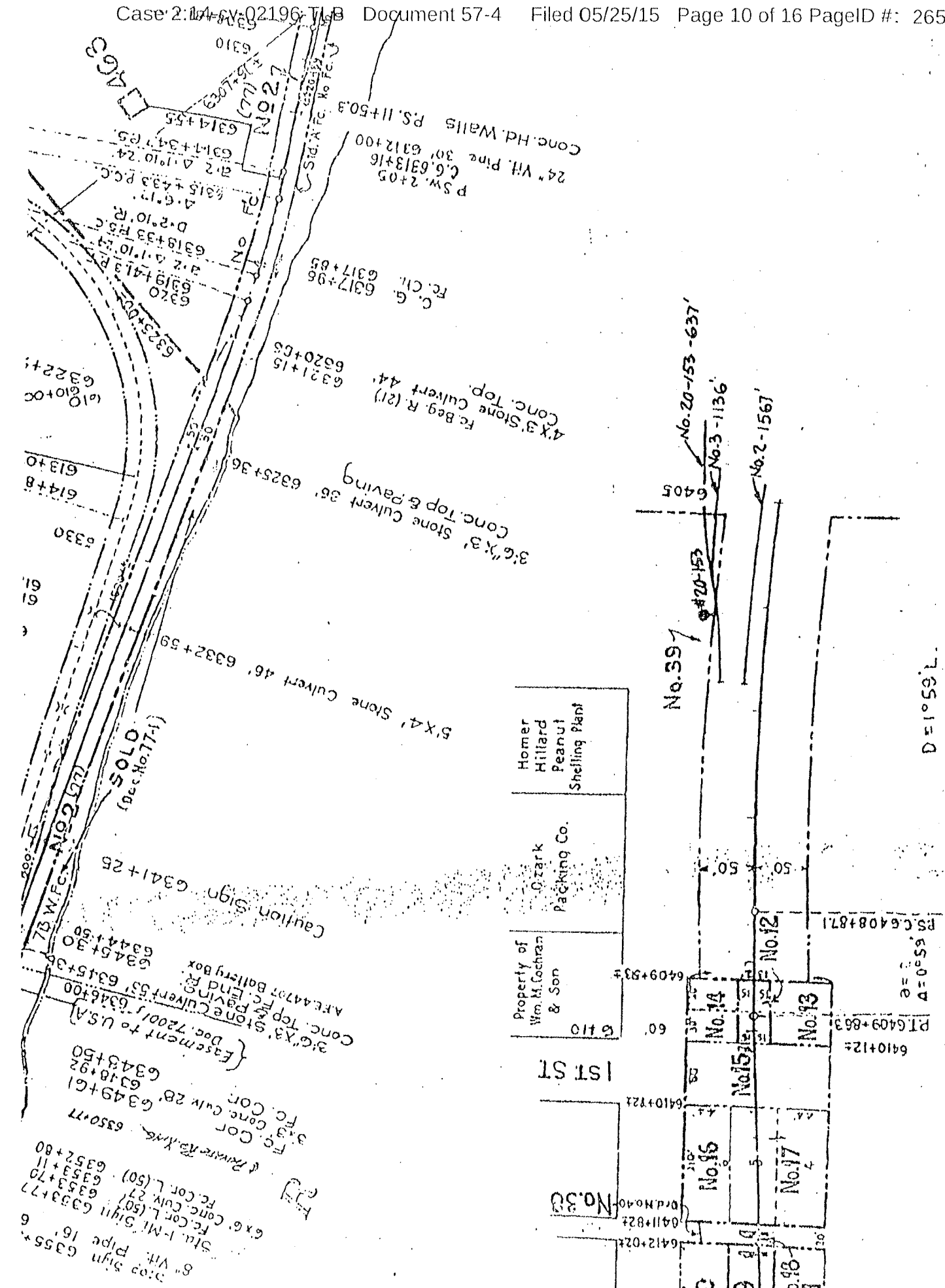
3x3' Conc. Culvert

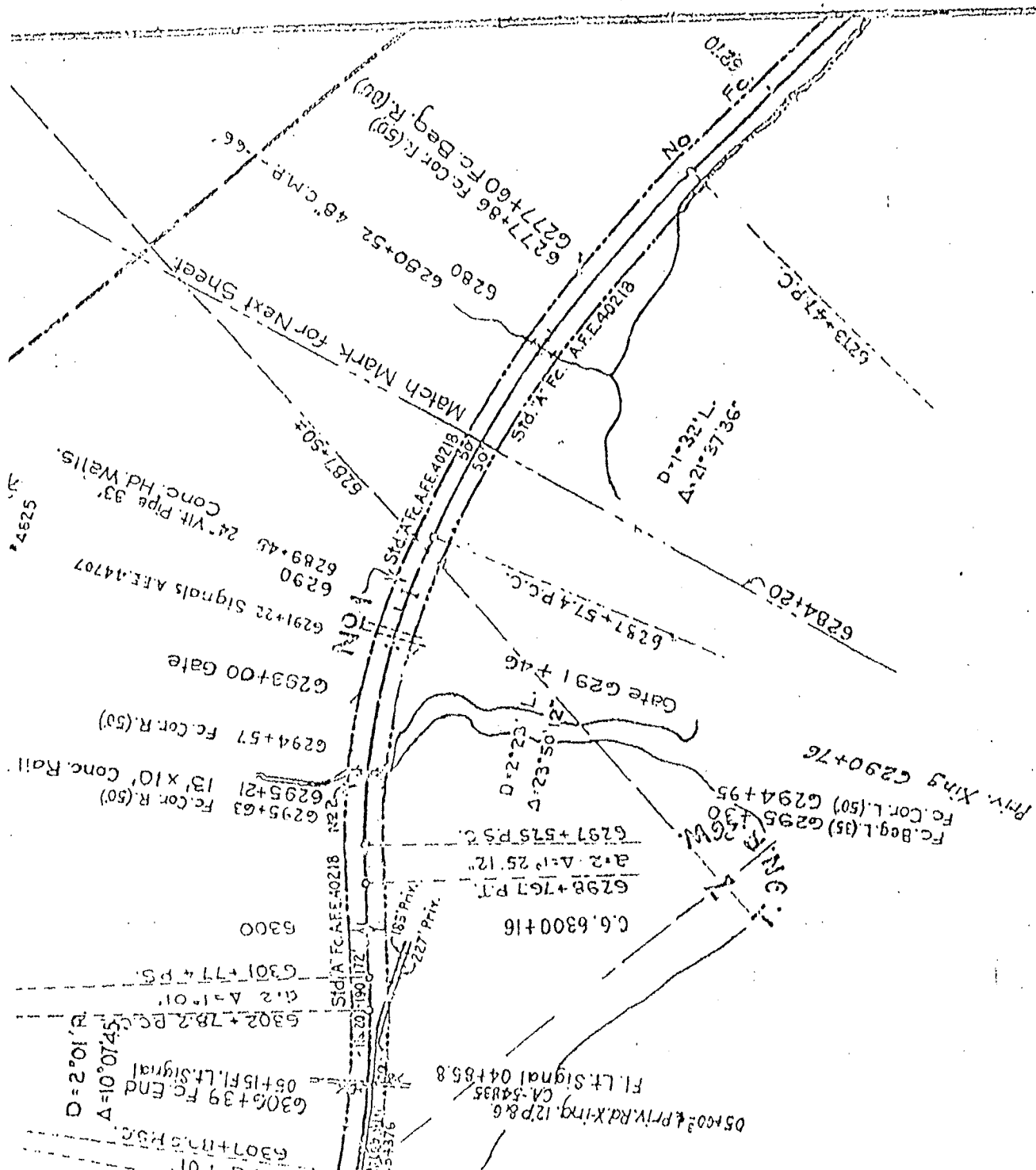
Con

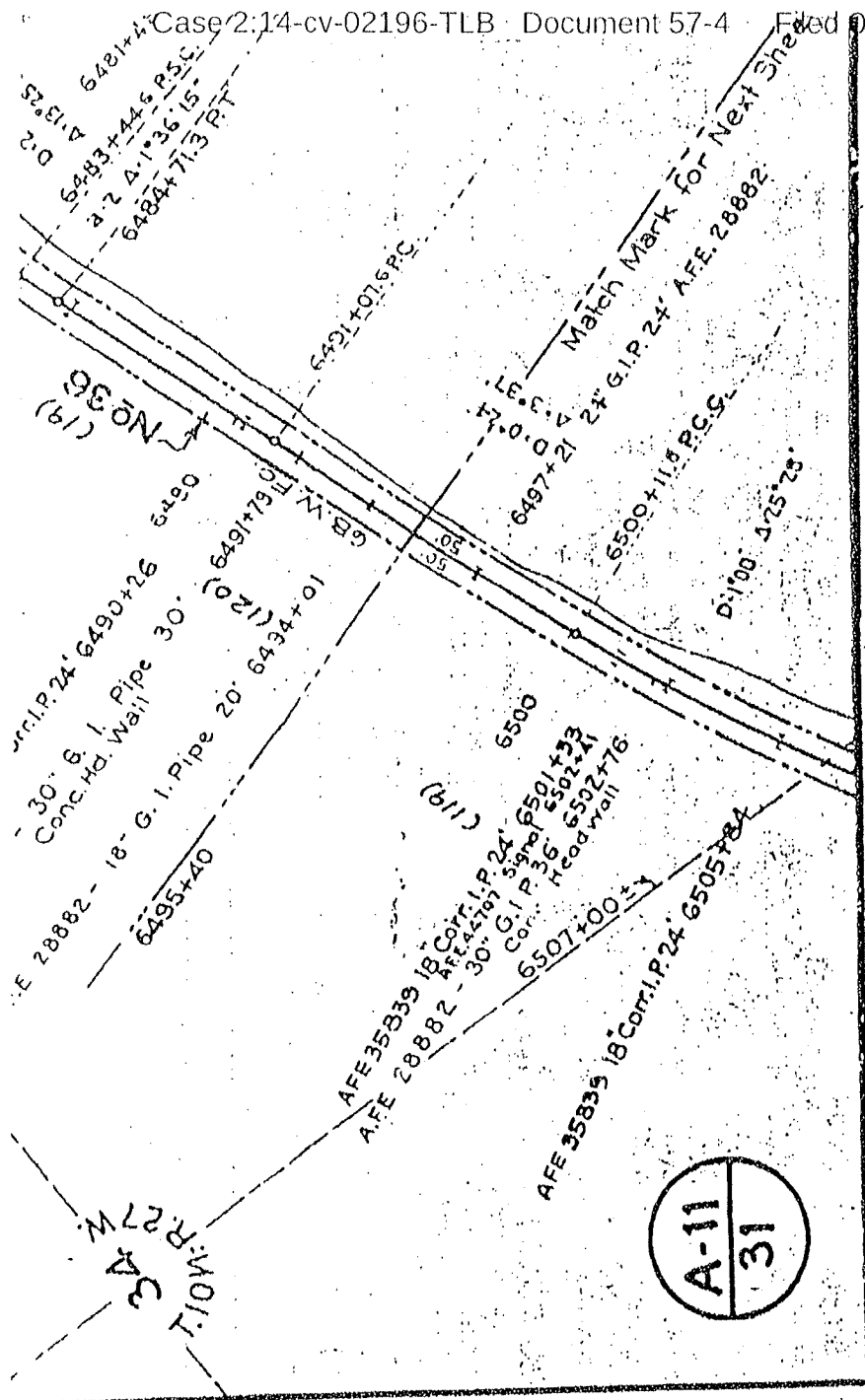
Warp
Mash

Loc. AFE 25197
108' Conc. Box 14' x 10'
ing Hall Gas line Xing
Wood Box 14' x 10' AFE 351285
23' Ec. End
311' Conc. Culvert 111' 2x6' Conc. Box Extn 34' R. AFE-45658
Loc. AFE 25502 6412+37 Relocated Total No. 3x14' R. AFE-421043
6412+59 Relocated Total No. 3x14' R. AFE-421043
il Grana AFE 25502
c. Dea.
6' Conc. Culvert 52'
MILE 465
I.P. 36' AFE 281A36
781A38









Trk. No. 20-150 Const'd.	42760	1537-B	9-42	11-10-42	A.G. Stevenson
Trk. No. 20-153 Const'd.	421161	1537-B	10-42	2-27-43	B.L. Bridgeman
Trk. No. 3 Const'd. No. 2 & 3 Extd. for File Rem'd. New Fr. 1.5 Const'd. for No. 2 & 3 Extd.	421043	1537-B	1-43	5-5-43	B.L. Bridgeman
Trks. No. 20-143, 20-144, 20-145 Extd.	421112	1537-B	1-43	5-6-43	B.L. Bridgeman
Station Plfm. Extd.	43545	1537-B	11-43	2-17-44	B.L. Bridgeman
Extd. Trk. No. 1 & No. 2	421328	1537-B	10-43	5-2-44	L.F. Fabry
Notes relating to Easements for Pole Line North of R.R.	44707	1537-B	6-45	9-11-45	B.L. Bridgeman
Trk. No. 20-163 Const'd.	45958	1537-B	1-46	3-29-46	B.L. Bridgeman
Priv. Extn. to Trk. No. 20-163 Const'd.	45859	1537-B	1-46	3-29-46	B.L. Bridgeman
Install Automatic Signals	44707	1537-B	5-46	8-12-48	H.D. Tong
Trk. No. 20-170 Const'd.	49925	1537-B	11-49	6-19-50	B.L. Bridgeman
Trk. No. 20-170 Extd.	50693	1537-B		12-3-51	B.L. Bridgeman
42" Corr. L. Pipe Installed	51752	1537-B	1-52	12-25-52	B.L. Bridgeman
Trk. No. 20-163 Extd.	610136	1537-B	4-61	8-21-61	B.L. Chartrand
Priv. Road X'ing. M.P. 462.52		CA-54835	5-62	8-7-62	W.C. Jones
Release Easement Coal Mine Trk.		Doc No. 1248	7-62	9-5-62	L.W. Robinson
Const. Trks. No. 20-189 & No. 20-190	610636	1537-B	6-62	1-2-63	L.W. Robinson
Land Sold Part of Par No. 2	660011	Doc No. 77-1	11-66	12-30-66	B.L. Chartrand
Trk. No. 20-203 Const'd.	650341	124015		5-31-66	G. A. B.

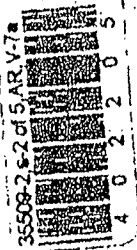
Caution Sign

SUBORDINATION AGREEMENT WITH U.S.A. - DOC. 70015
G382182 to G394110, G405185 to G441190

Set A 31 of 39
6284-20
6495-40

Handwritten signature

fc. Loc.
Fence Change.
B.W.
W.W.
Fc. Beg.



RIGHT OF WAY AND TRACK MAP

LITTLE ROCK AND FT. SMITH R. R. CO.

OWNED AND OPERATED BY

MISSOURI PACIFIC RAILROAD CO.

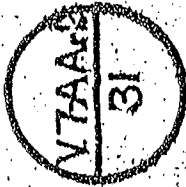
STATION 6284+20 TO STATION 6495+40

JUNE 30, 1918

SCALE 1 IN. = 400 FT.

OFFICE OF CHIEF ENGINEER

ST. LOUIS, MO.



I.C.C. Change - Dec. 1918

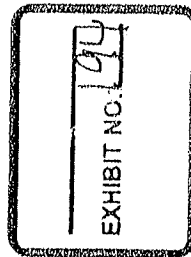
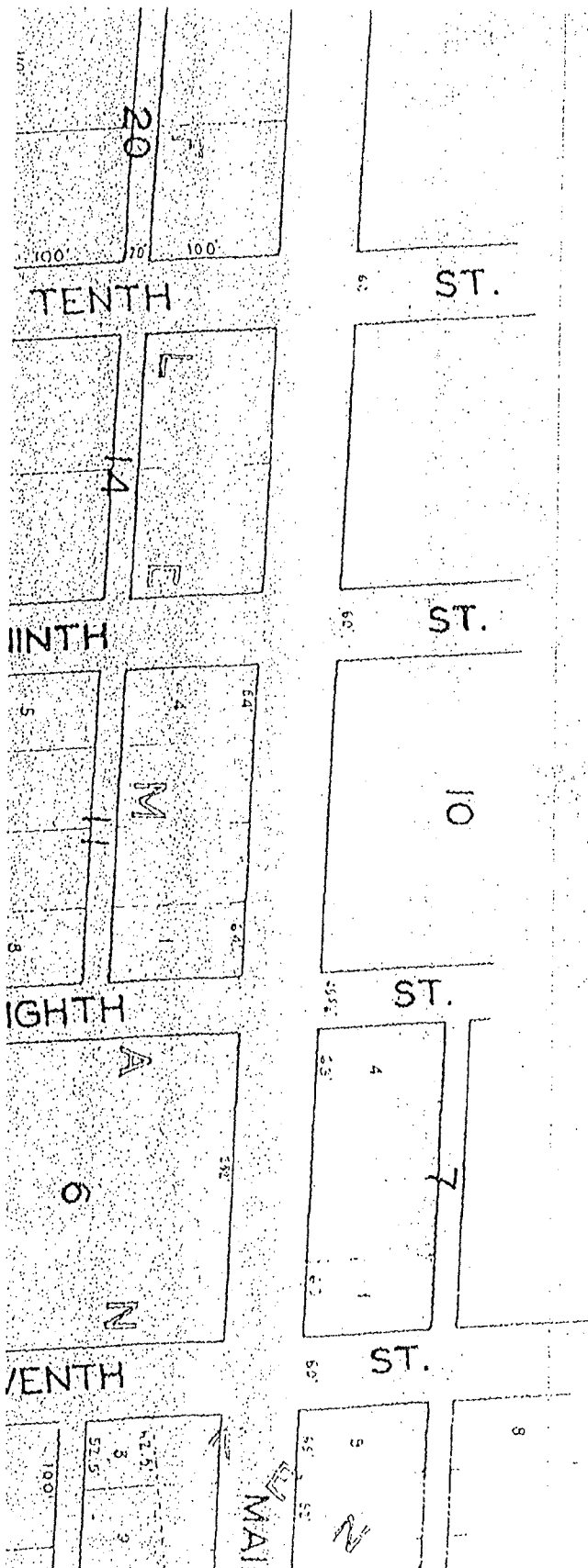
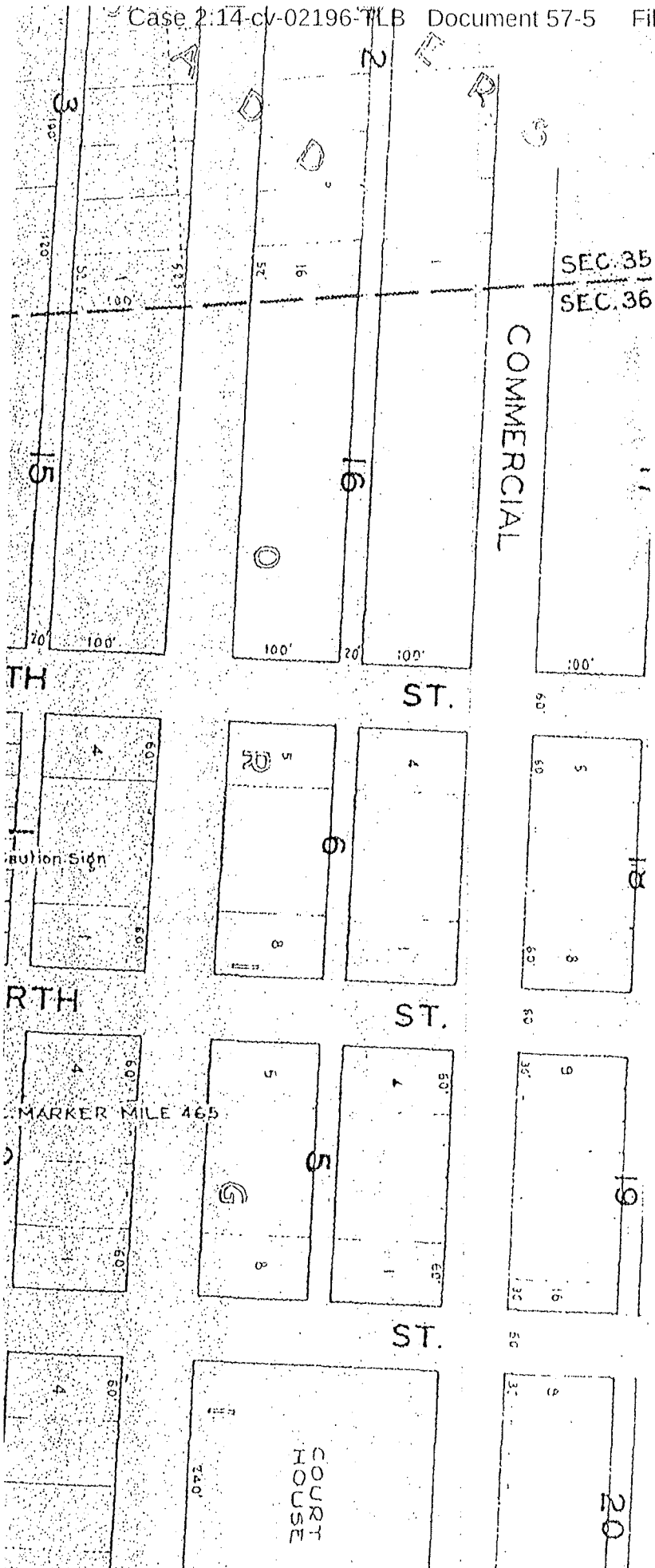
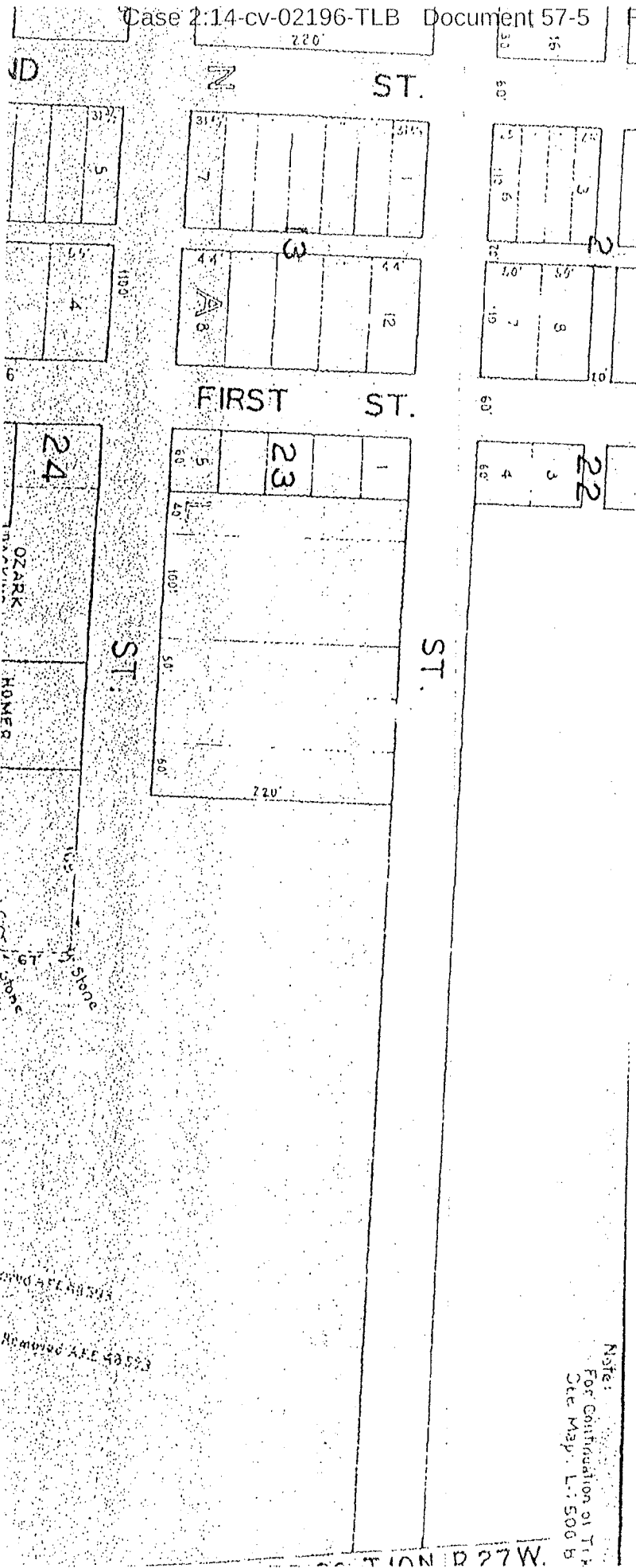


EXHIBIT D-1

MOPAC'S STATION AND STRUCTURES MAP DATED APRIL 15, 1946



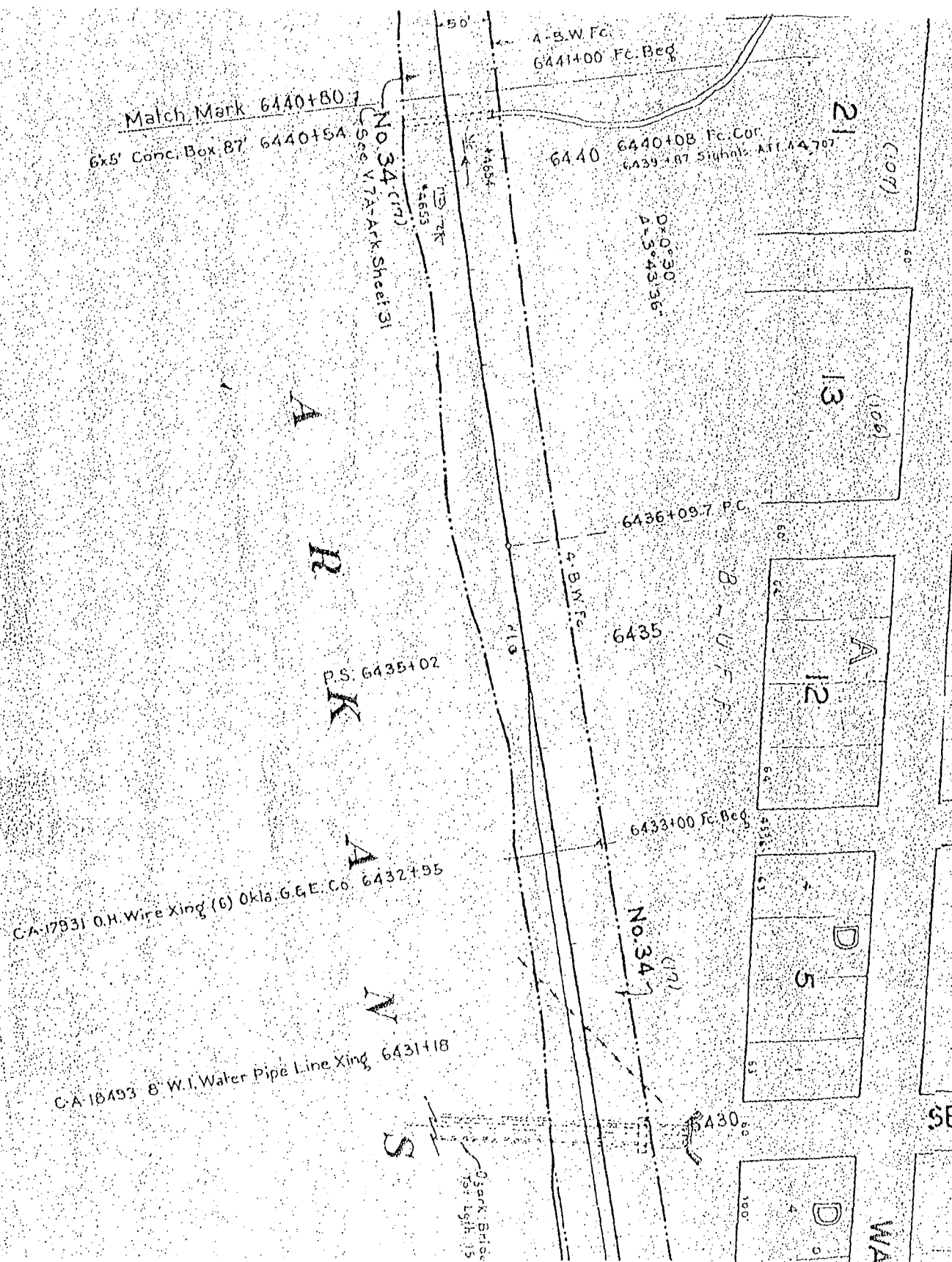


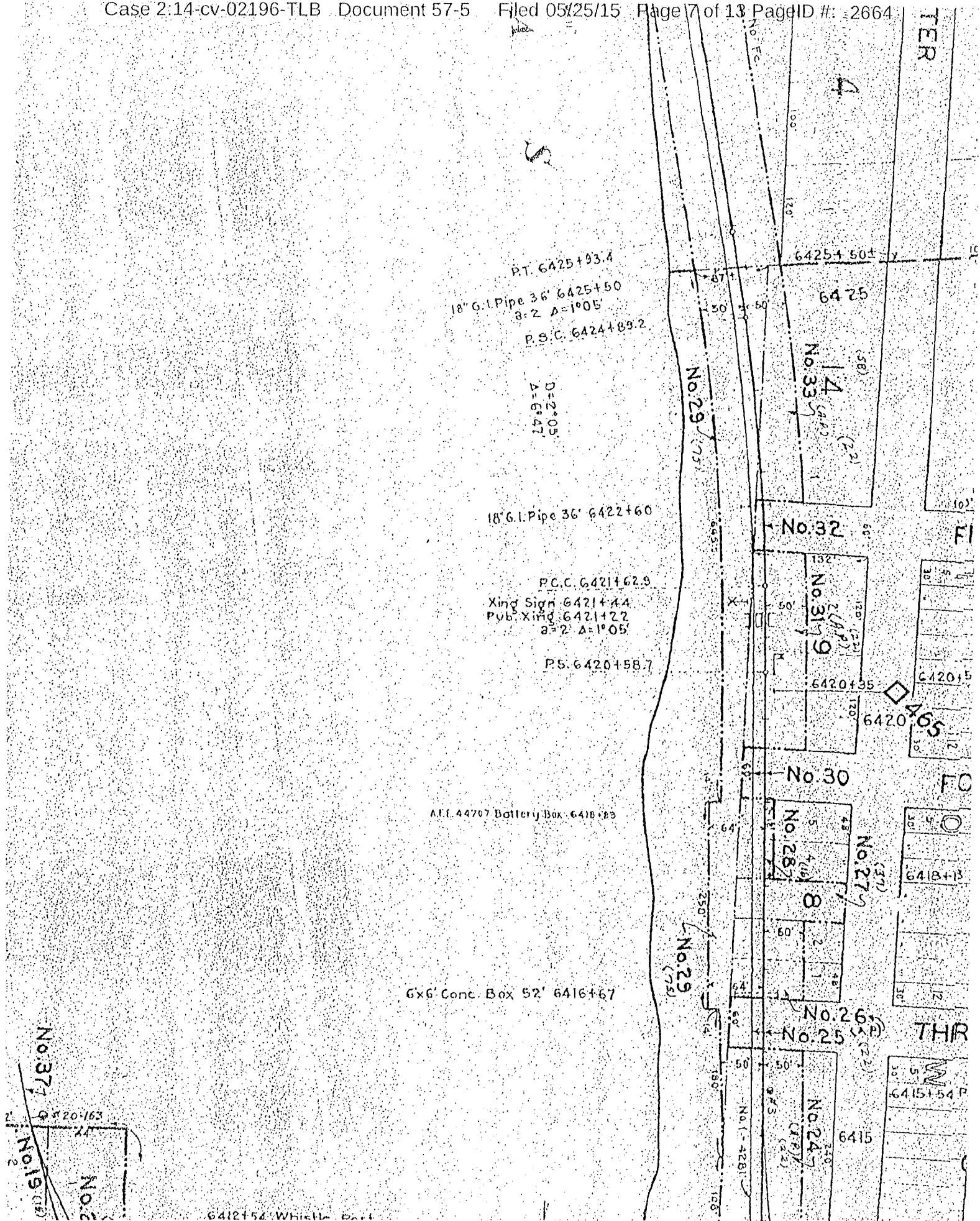


No. 1-11-1-2500

Easement Granted to M.D. for 1/2 of W
C.A. 37155 Ruled 7-12-62

REVISED AS TO	SOURCE	DATE	DRAFTSMAN
Land Sold-Part of Parcel 9	47849 1537-B	7-17-11-47	B.L. Bridgman
Install Automatic Signals	44707 1537-B	5-16-13-46	H.U. Tong
Trk No. 20-150 E x 1/2 1/2	48225 1537-B	7-18 10-29-48	L.T. Fabry
Ownership of Part 7 Discontinued	Supl Y.C. Malpas Letter of Jan 21-1949 Cont'd	2-3-42	B.L. Bridgman
Stock Pen & Platform Removed	42593	12-18 8-15-48	H.J. Penn
Trk No 20-170 Corridor	48925 1537-B	11-49 10-10-50	B.L. Bridgman
Trk No 20-170 E x 1/2	50630 1537-B	12-1-51	B.L. Bridgman
Water & Sewer Lines Installed to Depot	53158 1537-B	10-53 1-13-54	B.L. Bridgman
W.U. Litemanus Tool Ho	53841 1537-B	2-54 15-11-54	H.J. Penn
Remove Trk No 20-145 1/2 x 1/2	54263 1537-B	8-54 11-11-54	J.A. Wolfgram
Trk No 3 E x 1/2 3/28 Dime Rd 1/2	54263 1537-B	8-54 11-11-54	J.A. Wolfgram
Trk No 20-163 E x 1/2	610156 1537-B	4-61 8-21-61	E.L. Chaffard
Release of Easement 29-164	Doc No 1243	7-62 9-5-62	L.W. Robinson
Mail Carriage Service	7-62 7-31-62	5-62 9-19-62	E.L. Chaffard
Relining Track No 20-170	610658 1537-B	6-62 1-18-62	W.C. Jones
Trk No 5-21-1/2 Rail 24' x 10' 1/2	630 658 1537-B	5-63 1-9-64	E.L. Chaffard
Trk No 20-153 E x 1/2	650157 1537-B	5-65 10-65	E.L. Chaffard
Sold Part of Part 10 All on 11-65001	Doc 69024	6-69 11-25-69	J. McCard
Removed Tool Hds	688106 24018	12-69 2-12-70	J. McCard
Removed Pkwn	710276 24018	8-71 7-19-71	J. McCard
Tool House Sold	770106	2-78 8-11-78	M.A. Bass





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2000

205

BLACK & N

No. 39 ORD. No. 40

6412432 Plfm. End
6412422 Toilet
6412403 Toilet

8" Vil. Pipe 24' and Plank Xing (Trk. No. 3)

6410480 { 3'x6' Conc. Box III' Total Lgth. 145' AFE 44702 S
2'x6' Conc. Box 34' Ext'n. Under Trk. #20-163

4" C.I.P. Sewer

Water & Sewer Line

Water Line

6409+75 Depot

6409+4.3±R/W-Line

P.T./64094863

8-2 / Δ = 0° 59'
Fc. End 6409+23

PSC 6408-87

1x1 Wood / Box 14 6408+31

Xing Sign 6406+35
Pub. Xing 6406+84

Fc. Beg. 6406+08

24" Vit. Pipe 108' Conc. Rd. Walls 6404472

P.S. 6403+70

No. 39 ORD. No. 4
5405 383

1876

100

Journal of Management Studies, 19(1), 67-80.

221

100-443881-100

320
D
7845
112

11/11

1/10/19

118

SECRET

NO

57

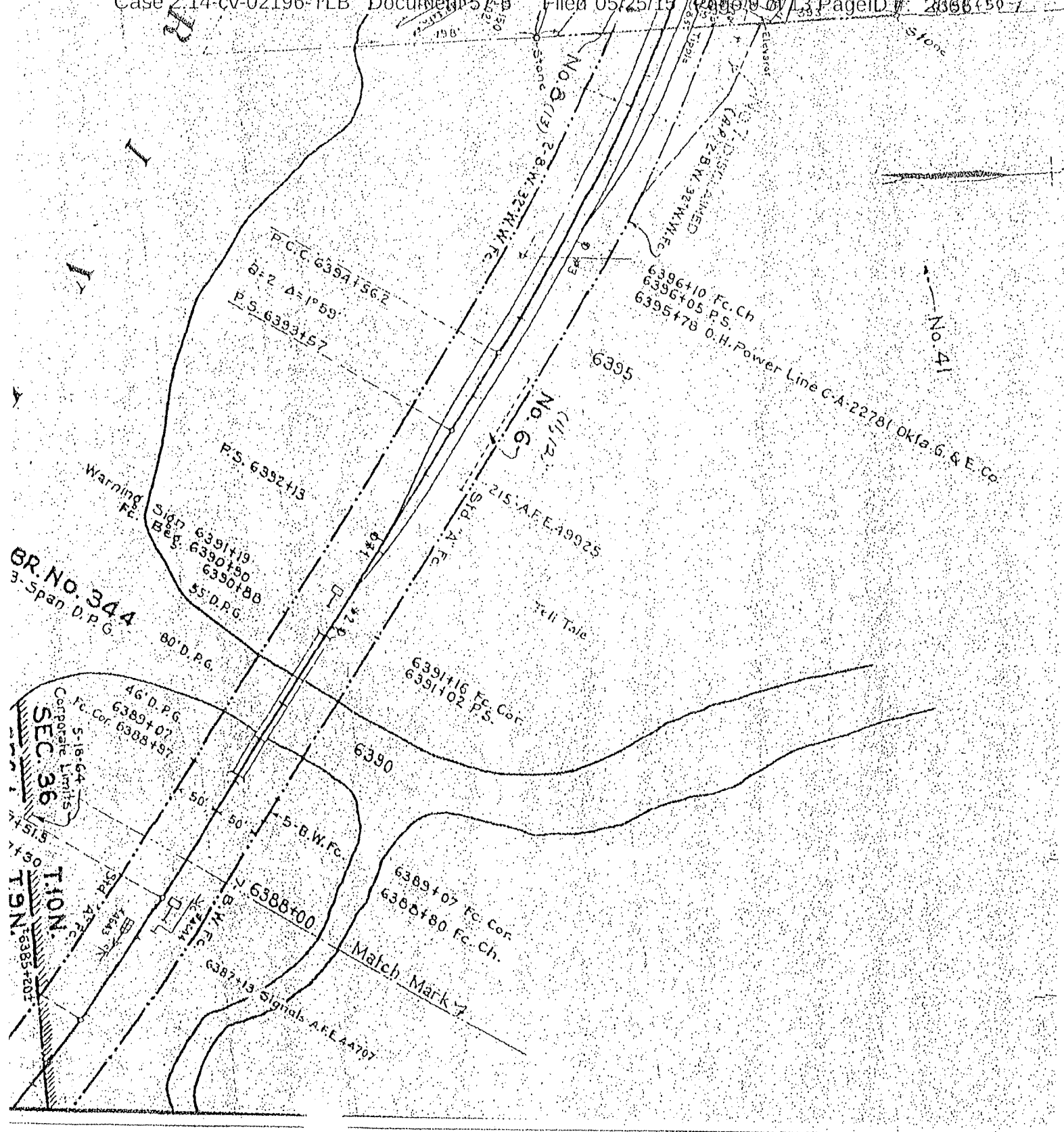
11/11/11

11/12

164

100-124 0.11.16

CA 38556
CA 38671
2" Gas Line
1" Water Line
6393, 63
6395



T NO. 136

A-11
S-31

COMPILED RECORD			
Information Used - General	USIT Base Work	Compiled by	Checked by
	Att. No.	Draftsman	Date
Map V7A-Ark. Sheet 31 dated June 30, 1918. Recorded Plat Record Map F-881. Eng. File 36206-52857, 56355, & Vendors (1557 B Reports) A-F, E's	46226 4-30-46	L.W. Fabry	8-15-46
			8-27-46

3 No. 1

Western Union Linemans Tool No. 6412105

INSERT "A"
Scale: 1 in. = 50 ft.

Sub-Station 6410+52

T.O. Signal 6410+27

P.T. 6409+86.3

3:2 A:055

P.S.C. 6408+B7.1

SUBORDINATION AGREEMENT WITH U
6382162 to 6394110, 6409185 to

Sheet No. 5 of 39 sheets of M
from survey station 6388+00 to 5

Doc. 10015
5-190

V7AS31

Pacific Railroad Company, Main Line,
Station 6440+80

Engineer

STATION MAP
RIGHT OF WAY, TRACKS AND STRUCTURES

LITTLE ROCK AND FT. SMITH R. R. CO.
OWNED AND OPERATED BY

MISSOURI PACIFIC RAILROAD CO.
OZARK, FRANKLIN CO., ARK.

STATION 6388+00 TO STATION 6440+80
SCALE 1-IN.=100 FT.

OFFICE OF CHIEF ENGINEER

ST. LOUIS, MO.

AUG. 15, 1946

V7AARK
S-317

Warning
B-2
A
2°30'21"
C
6385+93
D
4°3'10"
4°26'38"36"
O.O. 5
Sheet 31-A-4

EXHIBIT D-2
DEFENDANTS 2000 MAP

