

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

MICHELLE KNIGHT and JEFFERY BARTH,)

Plaintiffs,)

v.)

ENBRIDGE PIPELINES (FSP) L.L.C. and)
CCPS TRANSPORTATION, LLC,)

Defendants.)

Case No. 12-CV-01244

ENBRIDGE PIPELINES (FSP) L.L.C. and)
CCPS TRANSPORTATION, LLC,)

Counterclaimants,)

v.)

MICHELLE KNIGHT and)
JEFFERY BARTH,)

Counterdefendants.)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR JUDGMENT ON THE PLEADINGS AS TO LESS THAN ALL THE ISSUES
PURSUANT TO FED. R. CIV. P. 12(c).**

I. INTRODUCTION

The 1952 easement at issue, contained in Exhibit A hereto, is perpetual and provides that the grantee has a right to purchase a second grant, now the issue in this case. The interest of the grantee in the second grant did not become vested when the easement was signed because the grantee had no present interest in the second grant until it was purchased. The right to purchase was not limited by time. Since the payment of the purchase price was payable in the future, at the option of the grantee, the easement created an option to purchase. Both an interest in real estate which may possibly vest in an indefinitely defined future and a perpetual option to

purchase a real estate interest are void under the Rule Against Perpetuities [RAP]. Additionally, the 2012 plans of the Defendants far exceed the scope of the easement.

Plaintiffs would respectfully reserve the right to proffer evidence on the issues presented in this Motion if judgment is not granted to Plaintiffs. The issues of whether the expansion language creates an unreasonable restraint on alienation, whether the unsafe conditions being created by the proposed new pipeline conflict with farming and therefore exceed the scope of the easement, and whether the initial easement is 30' in width based on subsequent use, are best decided with the benefit of extrinsic evidence, which the Plaintiffs' reserve for a future proffer, if a decision under this Motion does not resolve the case.

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III. STANDARDS REGARDING A MOTION FOR JUDGMENT ON THE PLEADINGS

Federal Rule of Civil Procedure 12(c) provides that a party may move for judgment on the pleadings after the pleadings are closed. Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is “designed to provide a means of disposing of cases when the material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings and any facts of which the court will take judicial notice.” *All Amer. Inc. Co. v. Broeren Russo Const., Inc.*, 112 F.Supp.2d 723, 728 (C.D. Ill. 2000). Rule 12(c) permits judgment based on the pleadings alone, which include the complaint, the answer, and any written instruments attached as exhibits. *Northern Indiana Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998). The court may also “take judicial notice of documents

that are part of the public record, including pleadings, orders, and transcripts from the prior proceedings.” Hernandez ex rel. *Gonzalez v. Tapia*, 2010 WL 5232942, at *3 (N.D. Ill. 2010). “A motion for judgment on the pleadings is subject to the same standard as a Rule 12(b)(6) motion to dismiss.” *Medeiros v. Client Services, Inc.*, 2010 WL 3283050, at *1 (N.D. Ill. 2010), citing *Piscotta v. Old Nat'l Bancorp*, 499 F.3d 629, 633 (7th Cir.2007). That is, the “complaint must allege sufficient facts which—accepted as true—state a claim to relief that is facially plausible.” *Elliot v. Price*, 2011 WL 3439240, at *2 (S.D. Ill. 2011). The Court accepts as true all well-pleaded facts in the complaint and draws all reasonable inferences in the plaintiff’s favor. *Midwest Gas Services, Inc. v. Indiana Gas Co., Inc.*, 317 F.3d 703, 709 (7th Cir. 2003).

IV. ARGUMENT

A. The First Grant Was Vested When It Was Paid For In 1952.

There were two construction grants in the 1952 business easement. The first grant, located in the first sentence, was written as a right to “lay” a pipeline, among other things. It was simply stated. The grantor conveyed to the grantee. The first grant helps construe the language surrounding the second grant.

Nothing was said about timing in the first grant. In the context of real estate vesting, it is important to take into consideration that the right to “lay” was a purchased grant, not a gift. The easement was created at “arm’s length.” No one now doubts when the first grant became vested. It vested immediately when it was paid for. Furthermore, no one would suggest that the grantor would have intended for the grantee to lay the first pipeline without first paying for it. The Grantor received no benefit other than a payment. The easement created a perpetual burden. Common sense would suggest that it must first be paid for.

The easement was neither testamentary in nature nor given to the natural bounty of the grantor. The Illinois Supreme Court recognized long ago that when family transactions are considered, the “rules of construction yield to the intention of the testator plainly expressed.”

Fifer v. Allen, 228 Ill. 507, 517 (1907). The forgiving concept of gratuity and a court's efforts to stretch its findings out of deference to the family member [usually a decedent] who may have gone to the far edges of the RAP or a bit further, play no role in deciding this case. The idea that the grantor would have intended for there to be a delay in receiving payment for the first grant would be utter nonsense. This is especially true when one considers what would occur when the grantee would lay its pipeline. It would involve a massive excavation literally through the middle of a special area, uniquely existing like no other in the world.

The value of the surrounding circumstances and the plan at issue have been recognized as helpful in deciding similar situations. In construing a will, the Illinois Supreme Court noted that it was proper to consider "...every provision giving due weight to ascertain the plan of the testator in the light of the facts and circumstances surrounding him, his family and property at the time the will was made." *Monarski v. Greb*, 407 Ill. 281, 287, 95 N.E.2d 433, 437 (1950). An Illinois Appellate decision was reversed when the Supreme Court considered several rules of contract construction, including "...previous agreements, negotiations and circumstances... in determining the meaning of words and clauses." *Martindell v. Lake Shore Nat. Bank*, 154 N.E.2d 683, 689, 15 Ill.2d 272, 283 (1958). The First District Appellate decision of *In re Estate of Constantine*, 711 N.E.2d 1190, 1193, 305 Ill.App.3d 256, 260 (1st Dist. 1999) stated something similarly when trying to follow the guidance of the Illinois Supreme Court, as follows:

When we consider the surrounding circumstances we do not change the terms of the release or create an ambiguity where none exists. (citation omitted) Instead, we consider the circumstances surrounding execution of the document as part of the agreement, reflecting the clear intent of the signators. We believe that is what the Supreme Court did in *Batteast*.

The year 1952 was well beyond the expansion west, when homesteaders sought a patent deed from the U.S. government and the naturally fertile flat land southwest of Pontiac was nothing more than a mosquito infested swamp along the Vermillion River. Man-made drainage

systems had been installed through this area for over seven decades, a fact recognized in the 1952 easement by the insertion into grantee's boilerplate of a special provision protecting the existing drainage system. The modern agriculture era was well-established. Farm machines with powerful combustion engines, and advanced genetics, had made this area in 1952 the most productive row-crop farmland in the world. No other country could match the natural fertility of the land, or the constantly advancing farm technology brought about by eight plus decades of research efforts by scientists at the land-grant Universities. But most importantly, it was the industriousness of the farm owner arising out of the pride inherent in individual farm ownership and a competitive market, which propelled farming to the peak of productivity and which made this area like no other. Farm owners, therefore, held the land dearly, considering it almost as precious as a new-born child. No farm owner would have acted recklessly. Without a fair payment in hand, no one would be allowed to scar the land.

Mutual, rather than unilateral, intent controls the instant case. The intention of the grantee, devisee, or trust beneficiary is entirely ignored in family settings. The parties in the instant case would both be expected to act with reasonable business sense. In another First District Appellate decision, when the issue was discretionary contract performance, an implied duty to exercise commercial reasonableness was considered. *Dayan v. McDonald's Corp.*, 466 N.E.2d 958, 971, 125 Ill.App.3d 972, 989 (1st Dist. 1984). The same sort of commercial reasonableness occurs and must be intended during contract formation, by both parties.

B. The Second Grant Was Not Vested And Is Void

The second grant occurs later in the easement, almost as if it was an afterthought, creating something which might be an added benefit to the grantee in the future, but not the primary purpose. The second grant was a right to "construct" a second pipeline, among other things. "Lay" and "construct" would have had the same meaning. Otherwise, there was no immediacy and no vesting expressed regarding the second grant.

The inchoate nature of the second grant is stated in several ways but the most obvious was the emphasis relating to timing, unlike the way the first grant was made. The future was the focus and the intention of the parties was that the second grant would vest, if at all, at a future “time or times”. Otherwise, the mention of timing would have been superfluous.

The first expression of the period of time when construction could occur is contained in grantee’s boilerplate. Grantee intended there to be a delayed vesting when the form contract was printed. If a vesting would have been intended to be immediate, like the first grant, the second grant would have been written without any reference to the future. The simpler language of the first grant creating an immediate vesting upon payment of the purchase price would have instead been used. Alternatively, if the second grant was intended to be in full force and effect when the easement was signed, the second grant would not have been located several provisions after the first grant. It would have been made a part of the first sentence of the easement by using the words “two pipelines” instead of a single pipeline.

A consideration in regard to timing was expressly made an inducement by the grantee when there was typed into the preprinted form grantee’s representation that a second pipeline was not planned for the immediate future. This implies that before a second pipeline would be constructed, there first needed to be a decision made to construct it. This decision has become the sole reason for this lawsuit. A future decision to construct makes the right to construct, the subject matter of the second grant, conditional. This condition could be satisfied anytime in the next millennium, thus violating the RAP.

Perhaps even more insightful into when the easement makers intended the second grant to vest is the language used to sell the second grant. The consideration was identical to the consideration for the first grant. It was therefore intended to be the purchase price for the second grant. However, the payment for the second grant was delayed, unlike the first grant. The provision creating the timing of the payment for the second grant is the controlling language in

this case. By delaying the payment for the second grant, the easement makers delayed the vesting of the second grant. The second grant is unambiguous. Before the second grant exists, it must be purchased. Here is the single sentence used to partially describe the second grant, with only the most pertinent provisions included:

The Grantor hereby grant unto said Grantee... the right at any time or times... to construct...and Grantee agrees to pay... Sixty-eight & no/100===== Dollars...on or before the time Grantee commences to construct....

The other circumstances of who the parties were, where the land was located, what type of transaction was being agreed to, indeed everything else surrounding the transaction, remained the same for the second grant. The second grant was part of a serious business transaction and the grantor would receive no benefit from it other than a payment. The perpetual burden created would likewise have been at least doubled by the second grant. As a result, the grantor would not have held at the time a gratuitous intention which would delay the payment of the purchase price for the second grant to sometime in the next millennium, while at the same time agreeing to an immediate vesting. Suggesting grantee would have held this intention is unreasonable. For the grantee to have intended a potential payment in the next millennium, with an immediate vesting, would have been “bad faith”. Contract interpretation and construction are done in a way to search for a fair and reasonable meaning of the intention of the parties. *Marriage of Belk, In re*, 605 N.E.2d 86, 89, 229 Ill.App.3d 806, 810 (2nd Dist.1992). The intention of both parties must be found.

The pattern creating the vesting of the first grant would have controlled the grantor’s intention regarding the second grant. Vesting would happen only after there was a fair payment in hand. Both logically and legally, the intention of grantee would be the same for both grants.

It might be easier to determine if the second grant vested by answering this question. What right in real estate did the grantee have regarding the second grant after the easement was signed? The answer is none. The language of grantee’s boilerplate which said there would be

payment to grantor “on or before the time Grantee commences to construct” means simply that the grantee would have no possessory rights under the second grant until grantee paid. Possessory rights create the vesting. Since grantee could only vest its rights with a \$68.00 payment, grantee did not receive any immediate present interest in the second grant. The second grant was simply not vested. If the use of the word “grant” contained in the language pertaining to the second grant created an interest in real estate, it was void under the RAP since there was a possibility it could vest in infinity. It was an unvested grant and now unenforceable in 2012. *Smith v. Renne*, 46 NE 2d 587, 382 Ill. 26 (1943).

The Illinois Supreme Court defined vesting, in the context of estate taxation applying to future interests, in *People v. Strom's Estate*, 363 Ill. 241, 244, 2 N.E.2d 94, 95 (1936), as follows:

[A vested interest is] not remote, contingent, or dependent upon the happening of any other event. What is meant is that vesting... be a practical and actual ownership, ... the ownership must be real and definite as distinguished from an expectancy or contingent interest which may never vest. (citation omitted) An estate is vested when there is an immediate right of present enjoyment or a present fixed right of future enjoyment. It carries with it the seizin in law or in equity, according to the character of the estate. (citation omitted). An estate is vested in possession when there exists a right of present enjoyment. (citation omitted) [inserting at beginning by Plaintiffs]

Four years later, this was a description given to the vesting of a future interest:

A remainder has been held to be vested when the right to present or future enjoyment is given to named or otherwise determinate persons ready to take possession at any time, and the postponement of their estate is not for reasons personal to them. *Danz v. Danz*, 373 Ill. 482, 486, 26 N.E.2d 872, 874(1940)

It would be improper to find an immediate vesting of the second grant coupled with a voluntary delay in enjoyment by the grantee, and grantee’s successors. In dozens of cases involving transfers to one’s natural bounty, Appellate and Supreme Court opinions have explained that a delay in enjoyment is not a basis upon which find an absence of vesting, which would invoke the RAP. However, in all of those cases, the delay in enjoyment was not a voluntary action by the grantee, devisee, or beneficiary, in whose shoes the Defendants now

stand. It was a circumstance created by the unilateral action of the testator, settler, or grantor. In *Chicago Title & Trust Co. v. Shellabarger*, 399 Ill. 320, 334, 77 N.E.2d 675, 687 (1948), the Illinois Supreme Court gave a thorough list of considerations when analyzing the RAP, including the following:

Immediate vesting is indicated when the postponement of enjoyment is merely because another estate precedes and where the postponement of enjoyment is for the convenience of the property and not because of reasons personal to the beneficiary.

There is no prior estate in the instant case. Vesting therefore had to occur, if at all, as a present interest. Furthermore, the convenience to the property was not considered. The 2012 plan of the Defendants came about entirely out of their desire to supply refineries south of the Chicagoland area and to some degree the export market at its recently acquired facility in Port Arthur, Texas, facts all described in Plaintiffs' Complaint.

If the boilerplate or other provisions of the easement, in the instant case, create an ambiguous meaning regarding the vesting of the second grant, then it is to be construed against the drafter, especially when a form contract is considered. *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 607 N.E.2d 1204, 1217, 154 Ill.2d 90, 109 (1992). The Illinois Supreme Court described as compelling an argument based on a Maryland decision in *American States Ins. Co. v. Koloms*, 687 N.E.2d 72, 76, 177 Ill.2d 473, 481 (1997) when considering whether the simple, straightforward language contained in an insurance policy exclusion was latent with ambiguity.

This was how the analysis in Maryland was described by the Illinois Supreme Court:

First, the language itself " 'may be intrinsically unclear, in the sense that a person reading it without the benefit of some extrinsic knowledge simply [could] not determine what it means.' " (citations omitted) Second, the language, although clear on its face, may become uncertain when applied to a particular object or circumstance. (citations omitted) As to this latter type of ambiguity, the court noted that it is well settled " '[t]hat a term may be free from ambiguity when used in one context but of doubtful application in another context.' " (citations omitted) After reviewing the language of the exclusion, the court of appeals determined that neither type of ambiguity was present. The court explained that, although the title [177 Ill.2d 482] "pollution exclusion" could, standing alone, be viewed as

ambiguous, the actual language contained in the exclusion was "quite specific." (citation omitted) The court also found that "a person of ordinary intelligence reading the language" would conclude that the exclusion applied to carbon monoxide poisoning. (citation omitted)

In the *Martindell* case cited earlier, the implied covenant of good faith was employed to avoid a "bad faith" intention by one of the contracting parties if the words at issue were given their literal meaning. In the instant case, the idea that the second grant may be paid for in the unreasonably distant time, but a vesting occurs immediately, is the type of construction which the Illinois Supreme Court wants avoided.

The Defendants have boldly taken the position that extrinsic evidence is inadmissible in this case and so in the face of an ambiguous or dual meaning found by the Court, rather than open the case up for an evidentiary process, a decision resolving ambiguity against the Defendants would be appropriate.

In construing a contract, the primary objective is to give effect to the intention of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). A contract must be construed as a whole, viewing each provision in light of the other provisions. *Id.* The parties' intent is not determined by viewing a clause or provision in isolation, or in looking at detached portions of the contract. *Id.* If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). However, if the language of the contract is susceptible to more than one meaning, it is ambiguous. *Gallagher*, 226 Ill. 2d at 233. When the contract contains pre-printed, typed and handwritten words which are arguably conflicting or ambiguous; preference should be given in the following order: (1) handwritten, (2) typed, and then (3) pre-printed words. Restatement of Contracts (Second) § 203 Comment f. Punctuation may be entirely ignored if helpful in finding the right context of a contract provision. So too may grammatical errors be corrected. Restatement of Contracts (Second) § 202 Comment d.

C. The Second Option Was The Subject Matter Of An Option To Purchase.

The terms pertaining to the second grant contain all of the elements of an option to purchase. The Illinois Supreme Court, two years after the easement was signed in this case, described an option contract in the case of *Whitelaw v. Brady*, 3 Ill.2d 583, 588, 121 N.E.2d 785, 789 (1954) this way:

Option contracts have been repeatedly defined by the decisions of this court. An option contract is one by which the owner of property agrees with another person that the latter shall have the right to buy the former's property at a fixed price within a certain time. The owner does not then sell his land or any interest in it, or agree to sell, but he does sell the right or privilege to buy at the option of the other party. The second party gets, in praesenti, not lands or an interest therein or an agreement that he shall have lands, but the right to call for and receive lands if he so decides. (citations omitted) An option contract is an executed unilateral contract, and not an executory one. Yet the provisions of the same may be made bilateral and executory at any time during the life of the contract. (citations omitted) An option is a right acquired by contract to accept or reject a present offer within the time limited. In such contract two elements exist: first, the offer to sell, which does not become a contract until accepted; second, a contract to leave the offer open for a specified time. (citation omitted)

In its boilerplate, the grantee cleverly tried to disguise the option by not using the word “purchase” and stating it like there was a second “grant” being made when the easement was signed. But that does not change the outcome. A farmer in 1952 would have thought that he or she was going to be paid the same “arm’s length” negotiated payment in a sale of the second grant as he or she was paid for the first grant, and that the use of the grant would not begin until the purchase price was in hand. So would any other reasonable person. This case is not about technicalities and subtle wording, which would only be recognized by a specialist in real estate law. It is about the intentions held by a reasonable, ordinary person, after reading the easement. Technical interpretations have long been held as “contrary to the basic tenets of construction.” *Sigma Delta Tau Soc. v. Alongi*, 358 N.E.2d 906, 909, 44 Ill.App.3d 650, 653 (2nd Dist. 1976); *The Phoenix Ins. Co. v. Tucker*, 92 Ill. 64, 1879 WL 8479, 34 Am.Rep. 106 (1879).

It is proper for the Court to consider by judicial notice the disparity of expertise between grantor and grantee. The Sinclair Pipeline Company had been laying pipelines since 1916, including several from Cushing, Oklahoma to Chicago before 1952 and the making of the easement now at issue. The first such pipeline crossed Illinois north of Peoria and is depicted in one of the Sinclair Corporate Magazines, available now in Google Books. http://books.google.com/books/about/Sinclairs_magazine.html?id=hlguAAAAYAAJ. The map, which is attached hereto as Exhibit B, from this one of the Sinclair Magazines, shows the first pipeline Sinclair built in 1918 to be located north of Peoria, so the farms south of Pontiac would have been missed. With decades of experience, the grantee had “every trick in the book” for obtaining landowner signatures and knew well prior to 1952 what a farmer may or may not recognize from a technical legal sense.

It is also proper using the same basis to consider that for \$68.00 of consideration, the grantor was on his own, not empowered with a battery of high-paid lawyers.

The fact that in today’s dollars, the consideration seems a bit light is one reason why perpetual options are void. Fixing the price forever would likely skew the consideration. Since the easement at issue was signed, a statutory modification of the RAP has made the time restriction a period certain. Although this statute is not applicable, today no option to acquire an interest in real estate may exceed 40 years. 765 ILCS 305/4(a)7.

Since the option to purchase was not limited in time, it is void under the RAP. In *Threlkeld v. Inglett*, 124 NE 368, 371, 289 Ill. 90, 96 (1919), the maxim accepted today in Illinois law is stated, as follows:

It is true that an agreement to sell real estate at any time in the future when a party may choose to buy it is void for remoteness under the rule against perpetuities....

D. The Defendants Plans For Expansion Violate The Scope Of The Easement.

It is asserted in Plaintiffs’ Complaint in Paragraphs 53 and 57, now admitted by

Defendants in their Answer, that the area proposed is new and not previously used by the easement owner. To be clear, Defendants are now proposing a new 50' perpetual easement for the Flanagan South Pipeline running parallel to the initially installed pipeline. Exhibit B of Plaintiffs' Complaint, which is referred to in Paragraph 57, specifically describes what it is that Defendants now seek in this case. The Defendants intend the newly proposed 50' easement to be adjacent to what Defendants have asserted is the existing 50' easement. This 50' width is contested in this lawsuit by the Plaintiffs. In total, the easement is expanded from 50' to 100' in Defendant's plan. Here is the language used by Defendants which describes the newly claimed easement [from Exhibit B of Complaint]:

DESCRIPTION OF GRANTEE'S RIGHT-OF-WAY ACROSS ABOVE-DESCRIBED PROPERTY:

Right of Way for a new pipeline, the centerline of which will be located 50 feet <insert direction> of the centerline of the pipeline owned and operated by CCPS transportation, LLC, as successor-in-interest to Sinclair Pipe Line Company in Section _____, Township _____, Range _____ in <county>, <State>.

This excerpt must be read with some care. Making the centerlines of the existing pipeline easement and the newly proposed pipeline easement 50' apart results in the original pipeline easement being 50' wide and the newly proposed pipeline easement also being 50' wide. Each Defendant will have ownership of a separate 50' easement, making the total right-of-way then 100' in width. What is legally significant, however, is that even the most generous reading of the 1952 easement does not authorize this bold action.

The easement provides in an insertion into grantee's boilerplate that the second pipeline will be "no place more than 10 feet from said original pipe line." Please note that the easement language is not referring to the two easements being within 10' of each other but the pipelines being within 10' of each other. If the new pipeline is laid on the centerline of the newly proposed easement, the Defendants miss the mark by 40'.

The owner of an express easement in gross has no right to unilaterally expand the easement beyond its terms. *Elser v. Gross Point*, 240 Ill. 508, 511, 88 N.E. 1018, 1019 (1909).

Wherefore, the Plaintiffs pray for a decision of the Court, as follows:

1. The right to construct a second pipeline did not vest. An expressed pre-condition to construction was the payment of the purchase price for the second grant. Without payment of the purchase price, the grantee did not have any possessory interest which could have vested. Any grant created for a second pipeline by the easement was therefore void under the Rule Against Perpetuities.

2. The right to construct a second pipeline was contained in a perpetual option to purchase. A perpetual option to purchase is void under the Rule Against Perpetuities and as a result, the Defendants may not now exercise this option.

3. The proposed expansion by the Defendants exceeds the scope of the easement in regard to location. The easement contains a 10' expansion limitation. Therefore, the Defendants may have only laid the second pipeline within 10' of the first pipeline, but having ruled in Plaintiffs' favor on the earlier issues, this issue is now moot. Alternatively, if the Court determines that the Second Grant vested in 1952 and that the language describing the second grant is not a perpetual option to purchase an interest in real estate, the Defendants are exceeding the scope of the easement in regard to location and will only have a right to construct the second pipeline within 10' of the first pipeline.

4. Such other relief as the Court may consider just in the premises.

Respectfully submitted,

Michelle Knight and Jeffery Barth, Plaintiffs

By: /s/ Mercer Turner
Mercer Turner, Their Attorney

Mercer Turner
The Law Office of Mercer Turner, PC
202 North Prospect Road, Suite 202
Bloomington, Illinois 61704
(309)662-3078

Exhibit A

RIGHT OF WAY

FOR AND IN CONSIDERATION OF THE SUM OF Sixty-eight and no/100 DOLLARS,

to the grantors paid, the receipt of which is hereby acknowledged, JAMES H. FERITER, a bachelor

herein called Grantors, hereby grant unto SINCLAIR PIPE LINE COMPANY, a Delaware corporation, hereafter called Grantee, its successors and assigns, the right to lay, maintain, inspect, operate, protect, repair, replace and remove a pipe line for the transportation of liquids and/or gases on, over and through the following described land of which grantors warrant they are the owners

in fee simple, situated in Livingston County, State of Illinois to-wit:

Southeast quarter of the Northwest quarter (SE/4 NW/4) of Section 29, Township 28 North, Range 4 East,

together with the right of unimpaired access to said pipe line and the right of ingress and egress on, over and through said land for any and all purposes necessary and incidental to the exercise by said grantee of the rights granted hereunder, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of said state.

The said grantors have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said grantee. Grantors agree not to build, create or construct, any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others.

In addition to the above consideration, grantee agrees to pay any damages which may arise to crops, buildings, drain tile, fences and timber by reason of grantee's operations, and further agrees not to obstruct any drain tile, laid or planned, ~~to be laid~~ ~~to be constructed~~ by grantee across lands under cultivation shall, at the time of the construction thereof, be buried to such depth as will not interfere with such cultivation, except that at option of Grantee it may be placed above the channel of any stream, ravine, ditch or other watercourse.

As a part of the consideration hereinabove set forth Grantors hereby grant unto said Grantee the right at any time or times to construct and operate ~~an~~ ~~additional~~ ~~pipe~~ ~~line~~ ~~or~~ ~~pipe~~ ~~lines~~ alongside of said first pipe line on, over and through said land, and one said

Grantee agrees to pay Grantors for ~~each~~ additional pipe line so placed the sum of Sixty-eight & no/100 Dollars, on or before the time Grantee commences to construct such pipe line on the land hereinabove described. Said additional line ~~is~~ to be subject to the same rights, privileges and conditions as the original line.

Grantee shall have the right to change the size of its pipes, the damages, if any, in making such change to be paid by the said grantee.

It is agreed that any payment hereunder may be made direct to said grantors or any one of them, or by depositing such payment to the credit of said grantors or any one of them in the Graymont State Bank of

Graymont, Illinois and payment so made shall be deemed and considered as payment to each of said grantors.

The rights herein granted may be assigned in whole or in part.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

It is understood by the grantor herein and it has been represented to induce him to sign this right of way agreement that but one pipe line is contemplated by the grantee at the present time, said pipe line to enter the SE₄ of the NW₄ of Sec. 29, Twp. 28N, Range 4E of the 3rd PM, Livingston County, Illinois at a point on the south line of said quarter section not exceeding 525 feet west of the SE corner of said quarter section, and said pipe line to proceed in a straight line in a northeasterly direction and to leave said premises at a point not exceeding 350 feet north of the southeast corner of said quarter section.

The one additional pipe line which grantor hereinbefore gives and grants unto the grantee the right of way to construct and operate shall be laid parallel with the first or original pipe line and at no place more than 10 feet from said original pipe line.

IN WITNESS WHEREOF, I I have hereto set my hand and private seal this

27th day of February, 1962

Signed, sealed and delivered in the presence of

James H. Feriter (Seal)

_____ (Seal)

Exhibit B

Another Sinclair Pipe Line

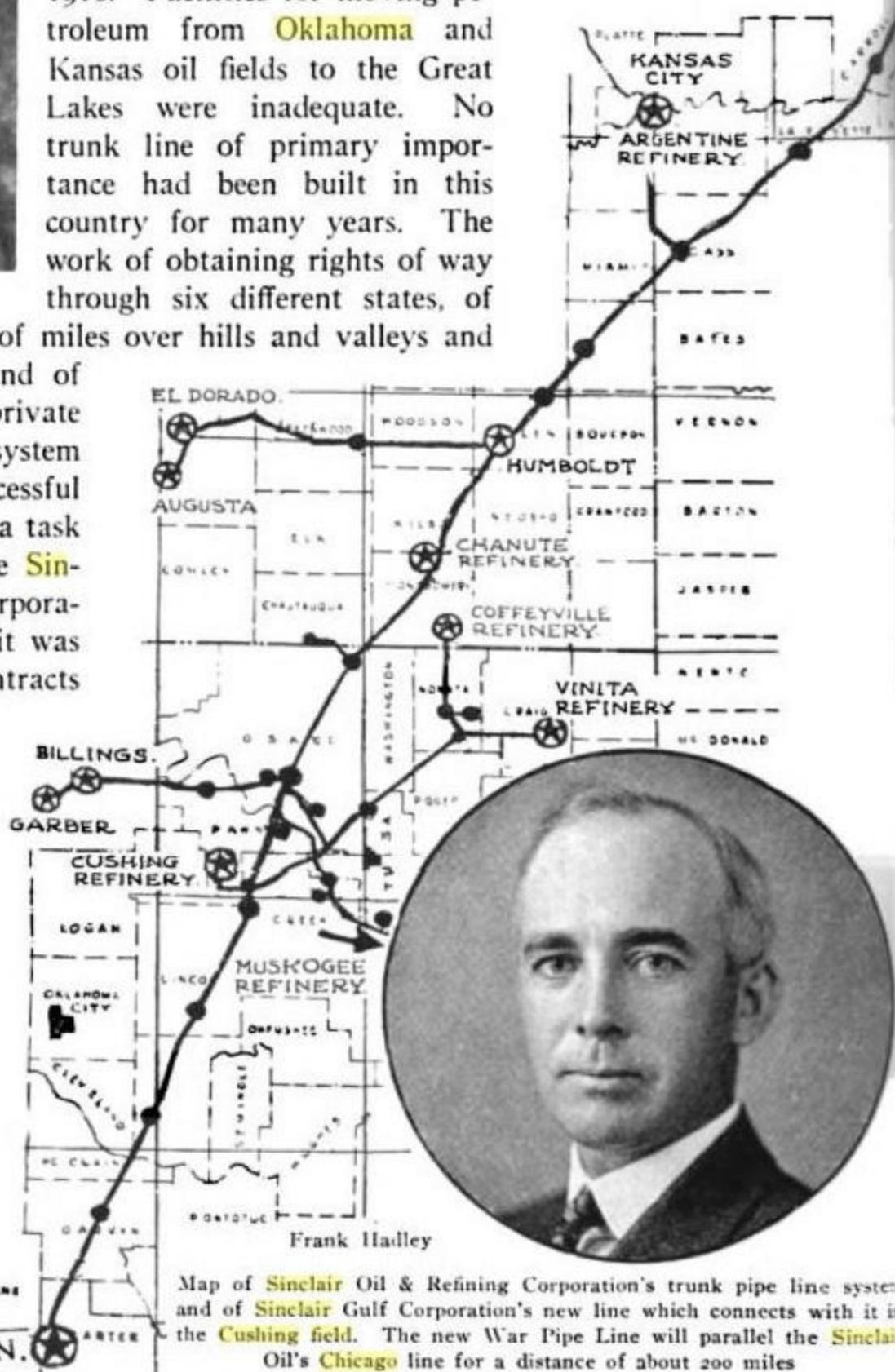


John R. Manion

IN times like these, if a thing is worth doing it should be done quickly. The United States Government fully appreciates that oil pipe lines stand high in the list of worth-while things, and the War Industries Board and the United States Fuel Administration have now given concrete recognition to the fact that **Sinclair** interests are both willing and able to accomplish results speedily.

The **Sinclair** pipe line program was started in 1916. Facilities for moving petroleum from **Oklahoma** and Kansas oil fields to the Great Lakes were inadequate. No trunk line of primary importance had been built in this country for many years. The work of obtaining rights of way through six different states, of

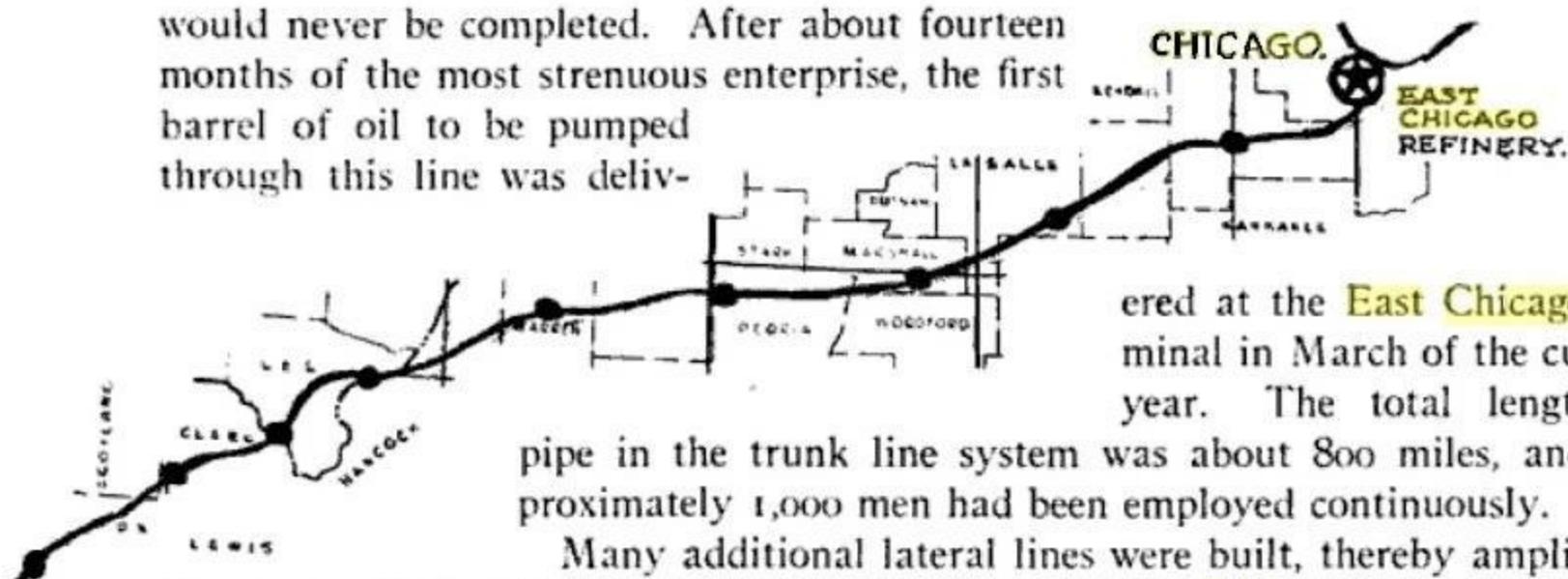
laying pipe for hundreds of miles over hills and valleys and under numerous rivers, and of building the necessary private telegraph and telephone system in order to assure successful operation of the line, was a task cheerfully assumed by the **Sinclair** Oil and Refining Corporation because the need of it was great. Having made contracts for materials in 1916, prior to the entrance of America into the war, the work was started energetically. Then industrial and transportation conditions became abnormal. The necessities of war were increasingly felt, and predictions were freely made that the line from Drumright, **Oklahoma**, to **East Chicago**, with its branch trunk lines,



Map of **Sinclair** Oil & Refining Corporation's trunk pipe line system and of **Sinclair** Gulf Corporation's new line which connects with it in the **Cushing** field. The new War Pipe Line will parallel the **Sinclair** Oil's **Chicago** line for a distance of about 200 miles

S I N C L A I R ' S M A G A Z I N E

would never be completed. After about fourteen months of the most strenuous enterprise, the first barrel of oil to be pumped through this line was deliv-



ered at the East Chicago terminal in March of the current year. The total length of pipe in the trunk line system was about 800 miles, and approximately 1,000 men had been employed continuously.

Many additional lateral lines were built, thereby amplifying the corporation's network of lines in the Mid-continent field and making possible more extended service to the independent oil producers.

Another extension of the trunk line has been completed. It is a line about 75 miles long, extending from the Hominy, Oklahoma, terminal westward to the Billings and Garber, Oklahoma, fields. This portion of the trunk line was started on June 25. It was completed and placed in operation on August 3, 1918, forty days having been consumed in the work of stringing, laying and finishing this additional system.

In the interim the vital necessity of oil to all forms of industry and to naval and military operations was emphasized as never before. Consumptive requirements were increasing daily and it was apparent that the increase would continue. The United States Fuel Administration was quick to see these necessities and formulated a program concerning the possibility of obtaining more petroleum products on the eastern seaboard without placing further strain upon the country's railroad transportation system. The carrying out of the program necessitated the Sinclair interests undertaking the construction of another line paralleling for a distance of 200 miles its Drumright-Chicago line. The request having been made of the Sinclair interests by the Fuel Administration, the Government provided a large part of the required capital, and the work on the line was started in August.

The pipe line will be operated by the Sinclair-Cudahy Pipe Line Company, a subsidiary of the Sinclair Oil & Refining Corporation, and will be known as the War Pipe Line Company. The new company will have its own right of way, but the pumping stations of the Sinclair-Cudahy Pipe Line Company will house the machinery necessary for the operation of the additional line. The oil handled by this line will be delivered at East Chicago to be transported by pipe line to the Atlantic coast. The new line probably will be completed within three months after its commencement. The difficulties to be overcome are small in comparison with those met in the building of the original line to Chicago. The Chicago line, for instance, passed under the Mississippi River at a point about two and one half miles wide; under the Missouri, Arkansas and Illinois rivers, each about one half mile wide; the Kankakee River, about 1,000 feet wide, and the Des Moines River, about 650 feet in width. It crossed also about 185 railroads, numerous telegraph and telephone lines, public highways, streets and alleys.

Prior to the starting of the work on the new pipe line of the War Pipe Line Company, the Sinclair Gulf Pipe Line Company built a pipe line from the Healdton, Oklahoma, field in the south-central part of Oklahoma, northward a distance of approximately 150 miles to connect with the Sinclair-Cudahy pipe line system

(Concluded on page 32)