

RESOLUTION NO. DB-07-09-07-A

A RESOLUTION, APPROVING VARIANCES FOR THE  
PANHANDLE EASTERN PIPELINE LP

WHEREAS, Panhandle Eastern Pipeline LP, ("Panhandle") has filed a Variance Application with the Hamilton County Surveyor's office, which variance seeks to reduce the separation between the bottom of certain regulated drains, and the top of a proposed natural gas line to be constructed by Panhandle; and,

WHEREAS, the Variance Application was dated the 1<sup>st</sup> day of May, 2007, a copy of which is attached hereto and made hereof and marked Exhibit A; and,

WHEREAS, the original Variance Application included forty-one (41) specific crossing requests, which request are identified on the attached Exhibit B; and,

WHEREAS, the applicant has added two (2) additional crossing requests to the variance request for a total of forty-three (43) requests; and,

WHEREAS, the standards imposed by the Hamilton County Surveyor's office for the construction of pipelines, require pipelines to be constructed ten (10') feet below either an open drain, pipe, or other regulated drainage structure ("the Board Standard"); and,

WHEREAS, the Hamilton County Surveyor's office has made certain recommendations as to the Variance Application of Panhandle, taking into consideration the reasonably anticipated maintenance and reconstruction for all of the drains which are listed in the Variance Application of Panhandle; and,

WHEREAS, the Surveyor has recommended that thirty-four (34) of the crossing requests be approved as submitted and believes Panhandle's variance requests for those crossings can be granted, without interfering with the reasonably foreseeable uses of the regulated drains listed in the Variance Application as amended; and,

WHEREAS, the Surveyor has evaluated the balance of nine (9) proposed crossings, and has recommended the approval of variances at those with the least

change from Panhandle's variance request, but still allow the Drainage Board to reasonably accommodate the anticipated drainage needs of the Drainage Board; and,

WHEREAS, the nine (9) crossing permits and variances which are not being granted in full accordance with Panhandle's request, are crossings of regulated drains, which drains had been established with the appropriate easements before Panhandle was granted any easement rights across said drains; and,

WHEREAS, Indiana Code 36-9-27-48, as well as its predecessor statutes, deprived the rights of drainage boards, and authorized drainage boards to required utilities with easement rights inferior to the boards, to relocate the utilities facilities; and,

WHEREAS, the Drainage Board believes that it has the authority to exercise the pre-existing easement rights granted to the Drainage Board under Indiana Code 36-9-27-48, so long as said rights are necessary to accommodate reasonably foreseeable drainage interests of the Drainage Board; and,

WHEREAS, Panhandle, or its predecessors have installed other pipes across certain regulated drainage easements and rights of way in Hamilton County without seeking approval of this Drainage Board, which pipes are hereinafter referred to as ("the Pre-existing Pipes").

IT IS THEREFORE RESOLVED by the Hamilton County Drainage Board as follows:

1. The Board grants unto Panhandle a variance from the Board Standard to cross the Stultz and Almond Drain, which was established on the 19 day of Dec, 1885 at Tract 18L4.2 at an elevation no higher than seven (7') feet below the bottom of existing ditch. Based on the recommendation of the Hamilton County Surveyor, this portion of the Stultz and Almond Drain is in need of maintenance and potentially reconstruction to lower the flow line at an anticipated depth of four (4') feet in order to enhance the drainage in the existing watershed. Therefore, the variance is granted to the depth of seven (7') feet below the bottom of the existing ditch to provide for the four (4') foot anticipated excavation and the additional three (3') feet of coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

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2. The Board grants unto Panhandle a variance from the Board Standard to cross the O.F. Henley Drain, which was established on the 21<sup>st</sup> day of May, 1908, at Tract 22L4 at an elevation no higher than seven (7') feet below the bottom of existing ditch. Based on the recommendation of the Hamilton County Surveyor, this portion of the O.F. Henley Drain is in need of maintenance and potentially reconstruction to lower the flow line at an anticipated depth of four (4') feet in order to enhance the drainage in the existing watershed. Therefore, the variance is granted to the depth of seven (7') feet below the bottom of the existing ditch to provide for the four (4') foot anticipated excavation and the additional three (3') feet of coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

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3. The Board grants unto Panhandle a variance from the Board Standard to cross the Charles Osborn and J.R. Collins Drain, which was established

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on the 6 day of Dec, 1882 at Tract 29L4.1 at an elevation no higher than seven (7') feet below the bottom of existing ditch. Based on the recommendation of the Hamilton County Surveyor, this portion of the Charles Osborn and J.R. Collins Drain is in need of maintenance and potentially reconstruction to lower the flow line at an anticipated depth of four (4') feet in order to enhance the drainage in the existing watershed. Therefore, the variance is granted to the depth of seven (7') feet below the bottom of the existing ditch to provide for the four (4') foot anticipated excavation and the additional three (3') feet of coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

4. The Board grants unto Panhandle a variance from the Board Standard to cross the Cool Creek Drain, which was established on the 15 day of March, 1882 at Tract 39AL4 at an elevation no higher than five (5') feet below the bottom of existing ditch. Based on the recommendation of the Hamilton County Surveyor, this portion of the Cool Creek Drain is in need of maintenance and potentially reconstruction to lower the flow line at an anticipated depth of two (2') feet in order to enhance the drainage in the existing watershed. Therefore, the variance is granted to the depth of five (5') feet below the bottom of the existing ditch to provide for the two (2') foot anticipated excavation and the additional three (3') feet of coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

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5. The Board grants unto Panhandle a variance from the Board Standard to cross the Mary Kreag Drain, which was established on the 4 day of April, 1914, at Tract 42L4 at an elevation so that the top of the new pipe will be no higher than the top of Panhandle's lowest pipe which is

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presently installed at the crossing. Based on the recommendation of the Hamilton County Surveyor, this portion of the Mary Kreag Drain, which is a buried pipe will need to be lowered in the future to enhance the drainage in the existing watershed. Therefore, the variance is granted to the depth described above will ultimately provide for relocation of the pipe and provide for the coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

6. The Board grants unto Panhandle a variance from the Board Standard to cross the Fred Hines Drain, which was established on the 8 day of April, 1929, at Tracts 50L4.1 and 52L4.1 at an elevation no higher than five (5') feet below the bottom of existing ditch. Based on the recommendation of the Hamilton County Surveyor, this portion of the Fred Hines Drain is in need of maintenance and potentially reconstruction to lower the flow line at an anticipated depth of two (2') feet in order to enhance the drainage in the existing watershed. Therefore, the variance is granted to the depth of five (5') feet below the bottom of the existing ditch to provide for the two (2') foot anticipated excavation and the additional three (3') feet of coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

7. The Board grants unto Panhandle a variance from the Board Standard to cross the Mallery Grager Drain, which was established on the 21 day of Dec, 1881, at Track 70L4 at an elevation no higher than five (5') feet below the bottom of existing ditch. Based on the recommendation of the Hamilton County Surveyor, this portion of the Mallery Grager Drain is in need of maintenance and reconstruction to lower the flow line at an anticipated depth of two (2') feet in order to enhance the drainage in the existing watershed. The down stream crossing of the railroad right of way

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near the crossing has already been lowered. Therefore, the lowering of this portion of the drain is present necessity to enhance upstream drainage. Therefore, the variances granted to the depth of five (5') feet below the bottom of the existing ditch to provide for the two (2') foot anticipated excavation and the additional three (3') feet of coverage mandated by the standards imposed by the Secretary of Transportation codified at 49 USCA, Chapter 601.

8. The Board grants unto Panhandle a variance to raise the crossing of the proposed pipeline to cross the Oak Manor Drain at an elevation of one (1') foot over the existing siphon drainage structure. This variance is necessary to increase the distance between Panhandle's new pipeline and the siphon structure.
9. All other crossing permits included in the Variance Application of Panhandle which are not specifically listed above are approved as submitted.
10. Nothing in this Resolution shall be construed as an approval of any Pre-existing Pipes of Panhandle crossing any regulated drain within Hamilton County. The Drainage Board expressly reserves unto itself all rights to just compensation, and/or payment of relocation expenses by Panhandle, which it may have because of any encroachment by Panhandle, its predecessors, successors or assigns into any pre-existing regulated drainage rights of way or easements.

ALL OF WHICH IS ORDAINED by the Hamilton County Drainage Board this 9<sup>th</sup> day of July, 2007.

BOARD

HAMILTON COUNTY DRAINAGE

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Steven C. Dillinger

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Steven A. Holt

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Christine Altman

ATTEST:

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Robin M. Mills, Auditor