

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**ENBRIDGE ENERGY, LIMITED
PARTNERSHIP,**

ENBRIDGE PIPELINES (LAKEHEAD) L.L.C.,

ENBRIDGE ENERGY PARTNERS, L.P.,

ENBRIDGE ENERGY MANAGEMENT, L.L.C.,

ENBRIDGE ENERGY COMPANY, INC.,

ENBRIDGE EMPLOYEE SERVICES, INC.,

ENBRIDGE OPERATIONAL SERVICES, INC.,

ENBRIDGE PIPELINES INC., and

ENBRIDGE EMPLOYEE SERVICES CANADA

INC.,

Defendants.

Civil Action No. 1:16-cv-914

Judge Gordon J. Quist

THIRD MODIFICATION OF CONSENT DECREE

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the United States Coast Guard, filed a complaint in this matter on July 20, 2016, asserting claims against Enbridge Energy, Limited Partnership and several affiliated entities (hereinafter collectively referred to as “Enbridge”) under the Clean Water Act, and the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*, arising from two 2010 oil transmission pipeline failures that resulted in discharges of oil into waters of the United States.

WHEREAS, on May 23, 2017, this Court approved and entered a Consent Decree resolving claims that the United States asserted against Enbridge in this action.

WHEREAS, the Consent Decree establishes numerous requirements applicable to fourteen separate oil transmission pipelines owned and operated by Enbridge, including requirements relating to Lakehead System Line 5.

WHEREAS, Paragraph 68 of the Consent Decree includes provisions pertaining to the installation and spacing of Screw Anchor supports along portions of Line 5 (referred to in the Consent Decree as the “Dual Pipelines”) located within the Straits of Mackinac.

WHEREAS, in 2016 Enbridge completed an initial underwater visual inspection of the Dual Pipelines as provided in Subparagraph 68.c of the Consent Decree, and in addition conducted sonar scans of the Dual Pipelines in order, in part, to better assess potential locations for installation of additional Screw Anchors.

WHEREAS, the availability of additional data from the inspections conducted in 2016, as well as other activities, led to further discussions between the Parties regarding Screw Anchor installation requirements. The Parties have agreed that establishing criteria governing suitable locations for installation of any additional Screw Anchors required pursuant to the Consent Decree will help avoid certain complications relating to installation of such Screw Anchors.

WHEREAS, on June 1, 2017, the Parties filed with this Court a Notice of First Modification of Consent Decree (ECF No. 15), which extended until October 1, 2018 the deadline for completing an initial round of Screw Anchor installations pursuant to the Consent Decree.

WHEREAS, the Parties have agreed to revise the Consent Decree to clarify requirements relating to installation of Screw Anchor supports on the Dual Pipelines in the Straits of Mackinac.

WHEREAS, the Parties agree that the Third Modification of Consent Decree includes material changes that are subject to approval by the Court in accordance with Paragraph 201 of the Consent Decree.

WHEREAS, the Third Consent Decree Modification will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw from or withhold its consent if the comments regarding this Third Consent Decree Modification disclose facts or considerations indicating that the Third Consent Decree Modification is inappropriate, improper, or inadequate. Enbridge consents to the entry of this Third Consent Decree Modification without further notice and agrees not to withdraw from or oppose entry of this Third Consent Decree Modification by the Court or challenge any provision of the Third Consent Decree Modification, unless the United States has notified Enbridge in writing that it no longer supports entry of the Third Consent Decree Modification.

WHEREAS, the Parties recognize, and the Court by entering this Third Consent Decree Modification finds, that this Third Consent Decree Modification has been negotiated at arm's length and in good faith, and that this Third Consent Decree Modification is fair, reasonable, and in the public interest.

NOW THEREFORE, before taking any further testimony, without further adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Subparagraph 68.b of the Consent Decree is modified to read as follows:

b. As of the Effective Date, Enbridge shall ensure that all sections of the Dual Pipelines located within 65-feet of water or less are continuously covered in a buried trench on

the floor of the Straits. For uncovered portions of the Dual Pipelines in water deeper than 65 feet, Enbridge shall at all times support and anchor the pipelines with a series of screw-anchor pipe supports (“Screw Anchors”). More specifically, Enbridge shall ensure uncovered portions of the Dual Pipelines in water deeper than 65 feet are adequately supported and anchored as provided below in this Subparagraph 68.b. Each Screw Anchor shall hold the Dual Pipelines in place by means of a steel saddle connected to two ten-foot-long steel screws, with each screw augured into the floor of the Straits on either side of the pipelines.

(1) By October 1, 2018, Enbridge shall install Screw Anchors at the locations identified in Table 1 of Attachment A. A graphic representation showing the approximate locations of these Screw Anchors in relation to existing Screw Anchor locations and previously observed span locations is provided in Table 2. As necessary to facilitate installation of Screw Anchors in light of conditions at particular locations identified in Table 1 of Attachment A, Enbridge may adjust the location of any Screw Anchor by up to five feet in either direction.

(A) If Enbridge determines that it is impracticable to complete installation of any Screw Anchor at the location specified in Table 1 of Attachment A (including any allowable tolerance), Enbridge may, after consulting with the Independent Third Party, vary the location of such Screw Anchor, provided that the alternate location selected by Enbridge does not leave any span that exceeds 75 feet.

(B) If Enbridge varies the location of one or more Screw Anchor installations pursuant to Subparagraph 68.b.(1)(A), above, Enbridge shall, in the next Semi-Annual Report required pursuant to Paragraph 143 of the Consent Decree, provide the following information for each such Screw Anchor: (i) a discussion of the basis for the determination that it was impracticable to complete the Screw Anchor installation at

the location specified for such Screw Anchor in Table 1 of Attachment A (including the allowable tolerance), and (ii) the specific location where the such Screw Anchor was installed, and information demonstrating that such location satisfies the requirements of Subparagraph 68.b.(1)(A).

(2) Subject to the limitations set forth in Subparagraph 68.b.(3), below, following visual inspections required pursuant to Subparagraph 68.f, Enbridge shall install additional Screw Anchors in uncovered portions of the Dual Pipelines in water deeper than 65 feet, in accordance with the criteria set forth below in this Subparagraph 68.b.(2).

(A) In any area where a span on either Dual Pipeline exceeds 65 feet, Enbridge shall install one or more Screw Anchors as needed to limit the span to not more than 65 feet.

(B) In any area where a span on either Dual Pipeline exhibits a growth trend such that the span is projected to exceed 75 feet on or before the next required visual inspection, Enbridge shall install a Screw Anchor at a location which ensures that such span will not exceed 75 feet.

(C) In any area on either Dual Pipeline where spans are separated by a “touchdown length” where the pipeline rests on a sandy lake bottom for a distance less than 40 feet, Enbridge shall install one or more Screw Anchors as needed to assure that the resulting distance between adjacent Screw Anchors on either side of the touchdown length does not exceed 75 feet. For the purposes of this criteria, “sandy lake bottom” means that the lake bottom is composed primarily of sand in at least one of the two locations where it initiates contact with the pipeline.

(D) In any area where spans are separated by a touchdown length where either Dual Pipeline rests on a clay lake bottom for a distance less than 10 feet, Enbridge shall install one or more Screw Anchors as needed to assure that the resulting distance between adjacent Screw Anchors on either side of the touchdown length does not exceed 75 feet. For the purposes of this criteria, “clay lake bottom” means that the lake bottom is composed primarily of clay at either end of the touchdown length.

(E) Enbridge shall install one or more Screw Anchors, as provided below in this Subparagraph 68.b.(2)(E), within each area where one of the Dual Pipelines rests on sandy lake bottom for a distance greater than 40 feet and the depth of cover on the pipeline is continuously less than 10% of the diameter of the pipe for a distance of at least 40 feet (“Shallow Cover Area”). In each area where installation of Screw Anchors is required pursuant to this Subparagraph 68.b.(2)(E), Enbridge shall install Screw Anchors at locations which ensure that each such Screw Anchor is located within 70 feet of one of the following: (i) the end of the area where the lake bottom is sandy, (ii) the end of the “Shallow Cover Area” or (iii) another Screw Anchor.

(3) Enbridge shall not be required to install one or more additional Screw Anchors –

(A) in any area described in Subparagraph 68.b.(2)(A)-(E) if the nearest Screw Anchors on either side of such area are no more than 75 feet apart; or

(B) in any area described in Subparagraph 68.b.(2)(A) if either of the nearest Screw Anchors on either side of such area was installed in accordance Subparagraph 68.b.(1).

(4) Nothing in this Subparagraph 68.b alters or affects Enbridge's obligations under the terms of the 1953 easement related to the Line 5 Straits crossing.

(5) Before installing any Screw Anchor pursuant to this Subparagraph 68.b, Enbridge shall submit to EPA for review and approval a work plan that includes (A) installation procedures designed to minimize damage to the coating of the Dual Pipelines; (B) procedures to inspect for damage to the coating of the Dual Pipelines caused by the Screw Anchor installation upon completion of any installation; and (C) procedures to repair any damage to the coating caused by Screw Anchor installation as well as any other damage that has resulted in an area of bare metal on one of the Dual Pipelines that is discovered during the inspection. Enbridge shall implement the approved work plan.

2. The Parties agree that this Agreed Third Modification of Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Department of Justice policy. The United States may withdraw or withhold its consent to this Agreed Third Modification of Consent Decree if comments disclose facts or considerations that indicate that the Agreed Third Modification of Consent Decree is improper, inappropriate, or inadequate. Enbridge consents to entry of this Agreed Third Modification of Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Agreed Third Modification of Consent Decree by the Court or to challenge any provision of this Agreed Third Modification of Consent Decree, unless the United States has notified Enbridge in writing that it

no longer supports entry of the Agreed Third Modification of Consent Decree as originally submitted to the Court.

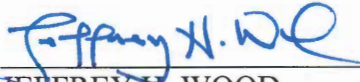
THIS THIRD MODIFICATION OF CONSENT DECREE IS HEREBY APPROVED AND
ENTERED this 20th day of September, 2019.

/s/ Gordon J. Quist

Gordon J. Quist
United States District Judge

THE UNDERSIGNED PARTY enters into this Third Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, 1:16-cv-914 (W.D. MI)

FOR PLAINTIFF UNITED STATES OF AMERICA:



JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division

s/Steven J. Willey (OH 0025361)

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Environmental Enforcement Section
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United States Department of Justice
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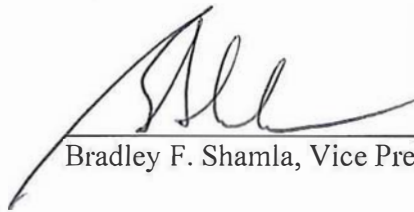
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THE UNDERSIGNED PARTY enters into this Third Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, 1:16-cv-914 (W.D. MI)

FOR DEFENDANTS:

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,
ENBRIDGE PIPELINES (LAKEHEAD) L.L.C.,
ENBRIDGE ENERGY PARTNERS, L.P.,
ENBRIDGE ENERGY MANAGEMENT, L.L.C.,
ENBRIDGE ENERGY COMPANY, INC., and
ENBRIDGE EMPLOYEE SERVICES, INC.

A handwritten signature in black ink, appearing to read 'BSH', is written over a horizontal line.

Bradley F. Shamla, Vice President, U.S. Operations

THE UNDERSIGNED PARTY enters into this Third Modification of Consent Decree in *United States v. Enbridge Energy, Limited Partnership, et al.*, 1:16-cv-914 (W.D. MI)

FOR DEFENDANTS:

ENBRIDGE OPERATIONAL SERVICES, INC.,
ENBRIDGE PIPELINES INC., and
ENBRIDGE EMPLOYEE SERVICES CANADA INC.

A handwritten signature in dark ink, appearing to read 'D. Jarvis', is written over a horizontal line. The signature is stylized with a large initial 'D' and a long, sweeping horizontal stroke.

D. Guy Jarvis, President

Attachment A

Table 1



East Pipeline Proposed Anchor Locations		
	Proposed Anchors	Chainage (in ft)⁺
1	EAP-1	1999326.40
2	EAP-2	1999816.09
3	EAP-3	1999886.23
4	EAP-4	2000143.09
5	EAP-5	2000454.47
6	EAP-6	2001602.93
7	EAP-7	2001674.04
8	EP-17-1	2001724.56
9	EAP-8	2001773.05
10	EAP-9	2001863.01
11	EP-17-2	2002092.50
12	EAP-10	2002208.10
13	EAP-11	2002352.44
14	EAP-12	2002388.45
15	EAP-13	2002791.71
16	EAP-14	2003900.10
17	EP-17-3	2003968.18
18	EAP-15	2004263.58
19	EAP-16	2004441.26
20	EP-17-4	2005186.03
21	EAP-17	2005871.71
22	EAP-18	2006087.04
23	EAP-19	2007120.07
24	EAP-20	2007206.88
25	EAP-21	2007279.23
26	EAP-22	2007341.16
27	EP-17-5	2007721.68
28	EAP-23	2007762.16
29	EAP-24	2007811.54
30	EAP-25	2008584.69
31	EAP-26	2008651.45
32	EAP-27	2008876.48
33	EAP-28	2009320.99
⁺ Trap door at Superior is at chainage 556		

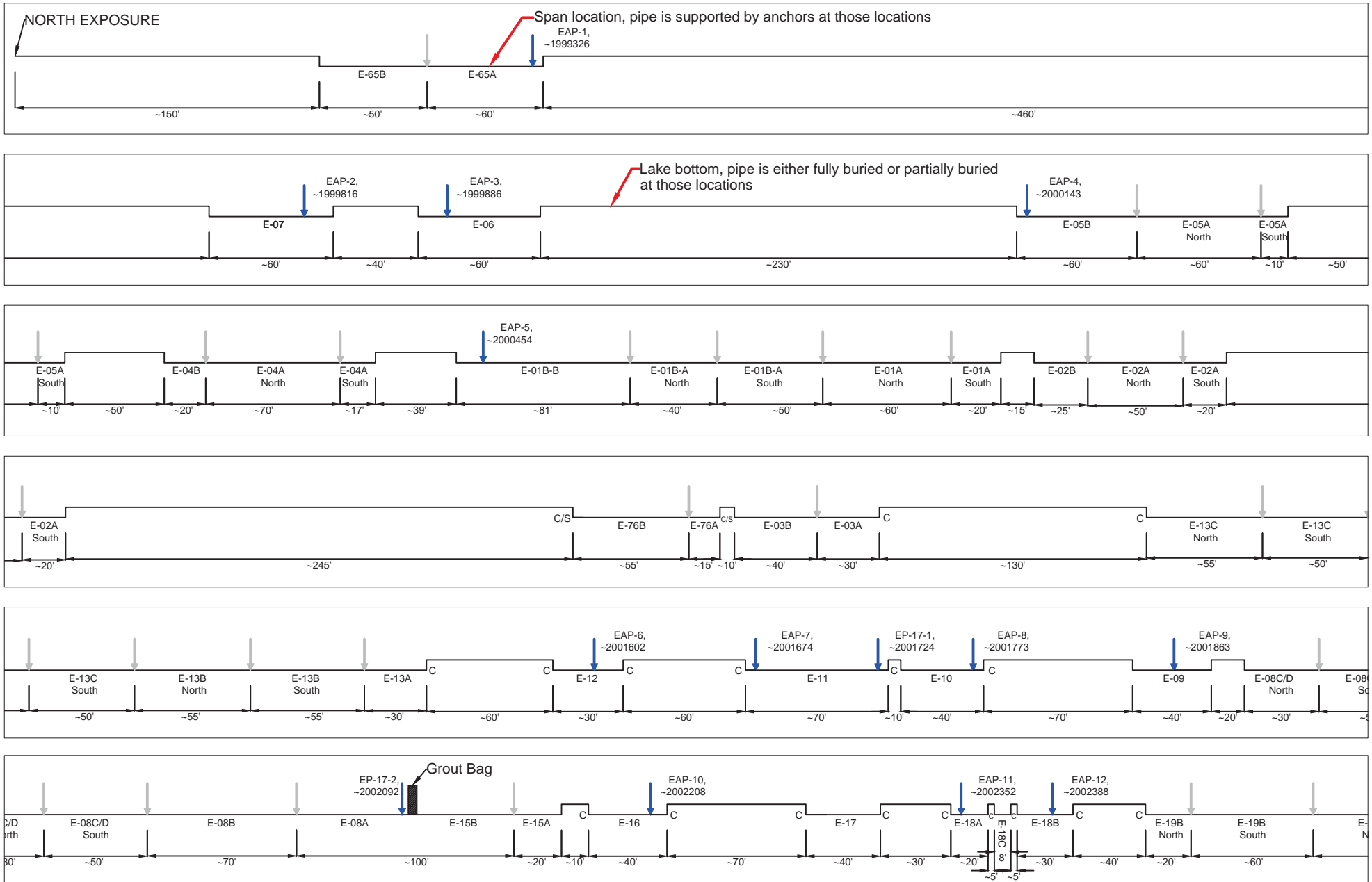
West Pipeline Proposed Anchor Locations		
	Proposed Anchors	Chainage (in ft)⁺
1	WAP-1	1999044.40
2	WAP-2	1999255.92
3	WAP-3	2001701.95
4	WAP-4	2002118.03
5	WP-17-1	2002975.97
6	WAP-5	2003279.89
7	WP-17-2	2003339.53
8	WP-17-3	2003430.31
9	WP-17-4	2003468.75
10	WAP-6	2003909.78
11	WAP-7	2003977.60
12	WP-17-5	2004030.47
13	WP-17-6	2004116.33
14	WAP-8	2004173.47
15	WP-17-7	2004264.77
16	WP-17-8	2004319.74
17	WP-17-9	2004698.58
18	WP-17-10	2004892.94
19	WAP-9	2004955.41
20	WAP-10	2005242.12
21	WP-17-11	2006041.49
22	WAP-11	2006542.45
23	WP-17-12	2006582.66
24	WAP-12	2006977.03
25	WAP-13	2007376.71
26	WAP-14	2007440.56
27	WAP-15	2007509.72
28	WAP-16	2007877.73
29	WP-17-13	2008017.49
30	WP-17-14	2008049.36
31	WP-17-15	2008088.28
32	WP-17-16	2008118.13
33	WP-17-17	2008190.94
34	WAP-17	2008591.60
35	WAP-18	2008635.36
36	WAP-19	2008853.47
37	WAP-20	2009656.52
⁺ Trap door at Superior is at chainage 556		

Table 2

Line 5 SOM - East Span Profile and Anchor Locations

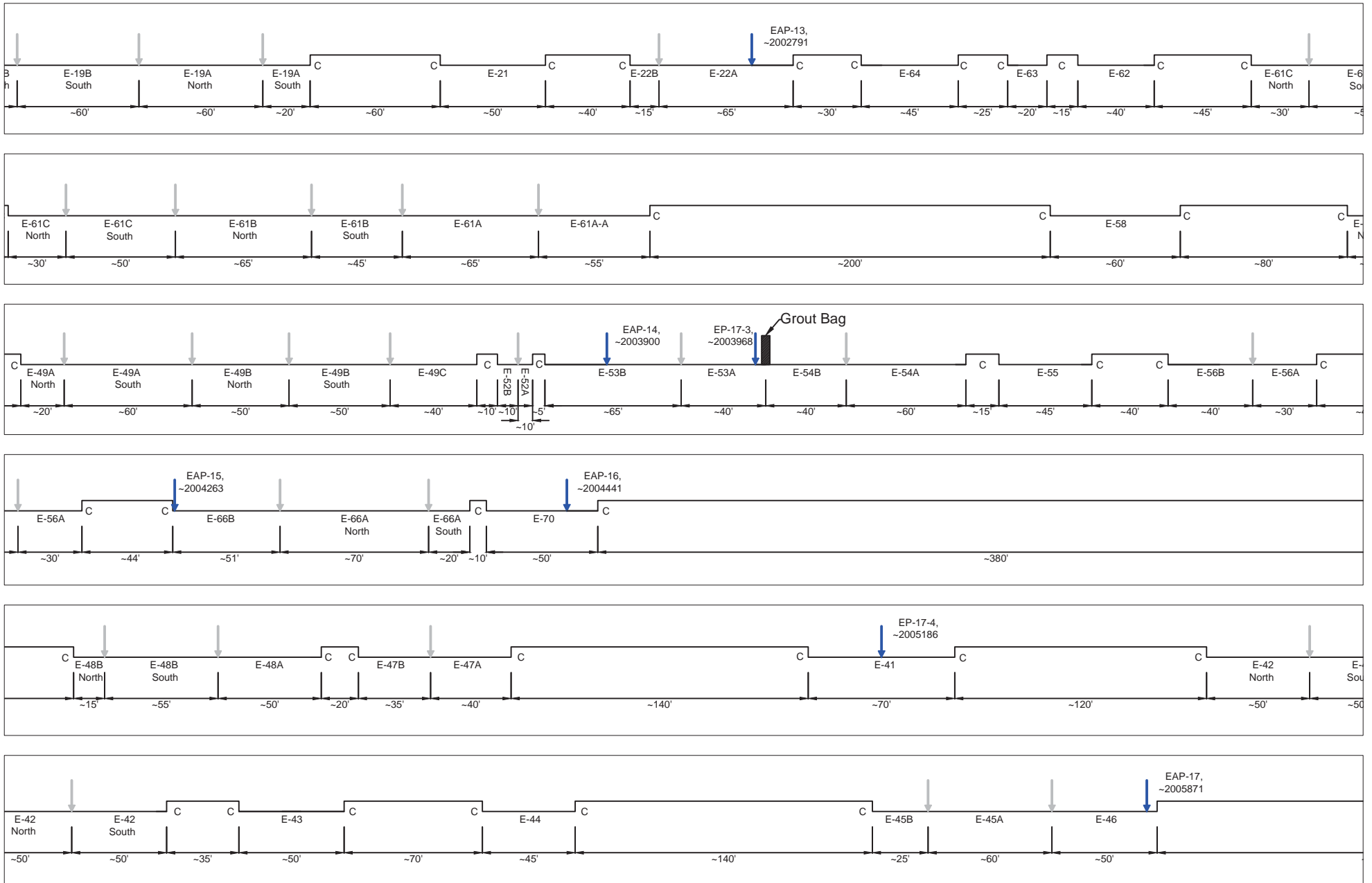
April 25, 2018

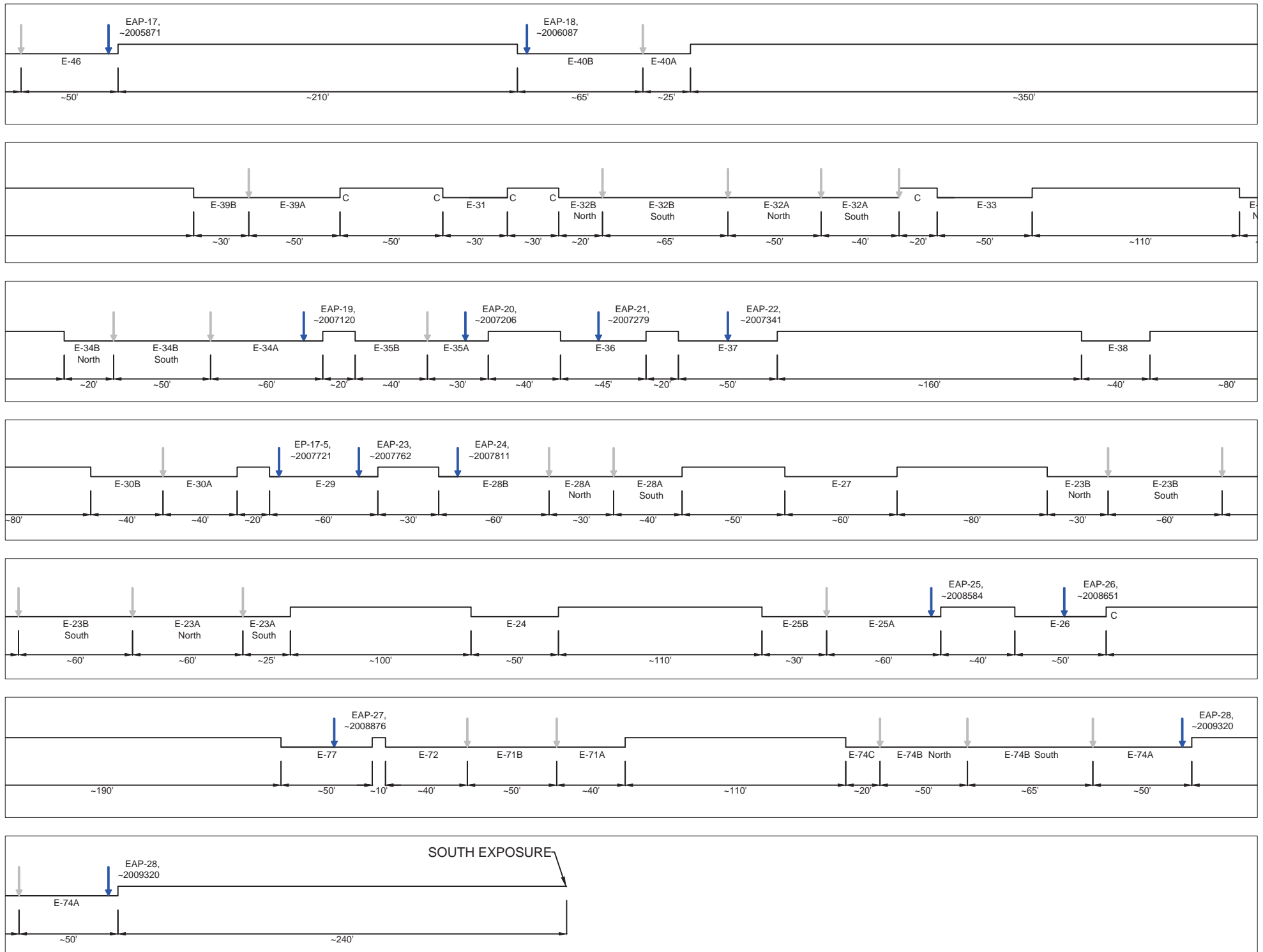
Legend:
 Existing Anchors (67)
 Planned New Anchors (33)
 Chainage in feet
 C= clay and S = sand



Notes:



1. Chainage is based ILI inspection data and is truncated.
2. Dimensions have been rounded and are based on previous inspection data. Span lengths are subject to change based on actual field measurements during anchor installation.

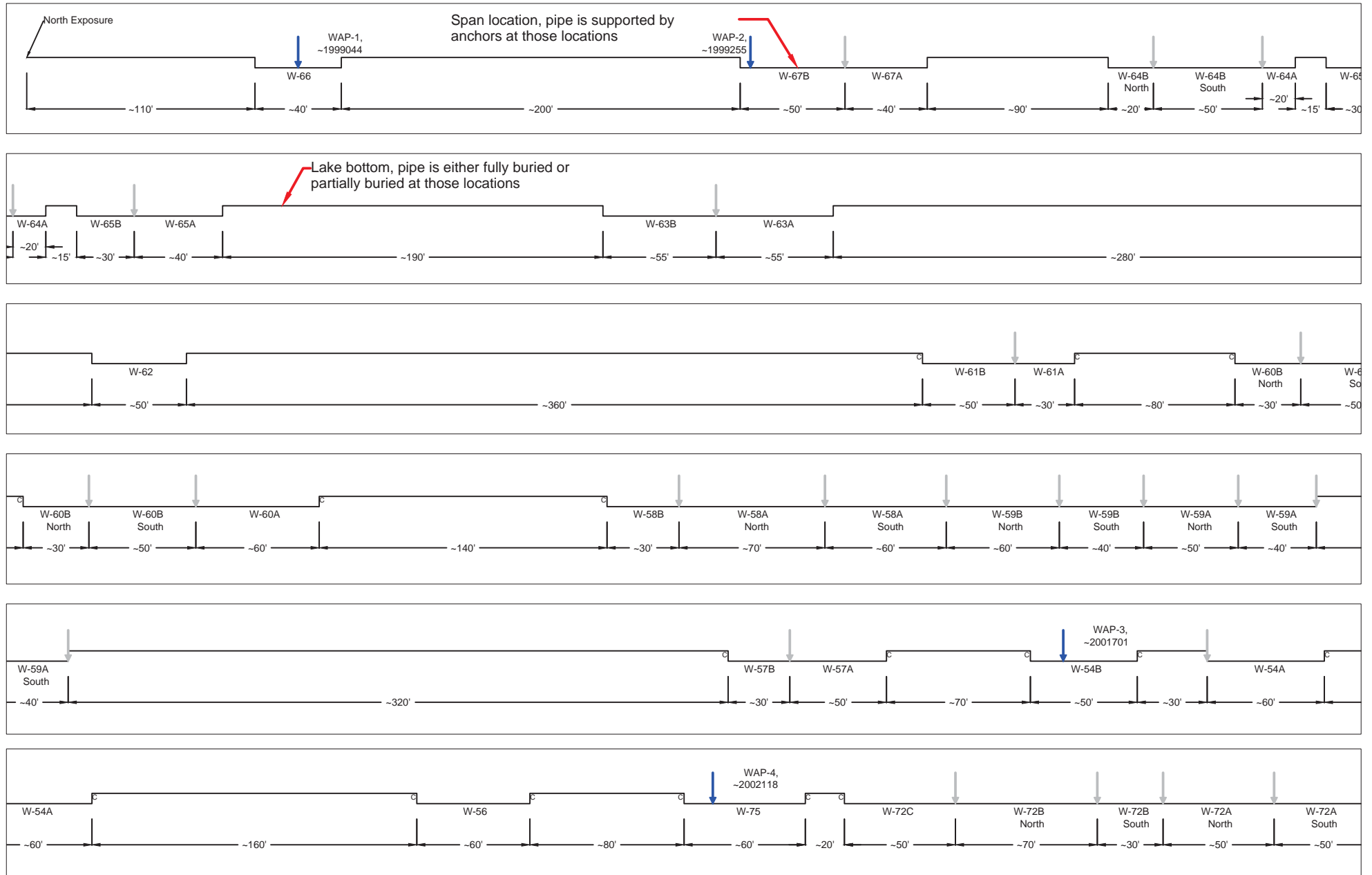




Line 5 SOM - West Span Profile and Anchor Locations

April 25, 2018

Legend:
 Existing Anchors (61)
 Planned New Anchors (37)
 Chainage in feet
 C=clay and S=sand



Notes:

1. Chainage is based on ILI inspection data and is truncated.
2. Dimensions have been rounded and are based on previous inspection data. Span lengths are subject to change based on actual field measurements during anchor installation.

