

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**PETITION OF UNION PACIFIC RAILROAD COMPANY
FOR DECLARATORY ORDER**

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GLOSSARY

1955 Agreement	May 25, 1955 Agreement between Southern Pacific Company and Southern Pacific Pipelines, Inc. The 1955 Agreement was restated and superseded by the 1994 Agreement.
1956 Agreement	December 1, 1956 Agreement between Southern Pacific Company and Southern Pacific Pipelines, Inc. The 1956 Agreement was restated and superseded by the 1994 Agreement.
1994 Agreement	July 29, 1994 Amended and Restated Easement Agreement between SFPP, L.P., and Southern Pacific Transportation Company (predecessor in interest to Union Pacific). The 1994 Agreement is referred to in the Rescission Complaint as the “AREA.”
BNSF	BNSF Railway Company
ICC	Interstate Commerce Commission
ICCTA	Interstate Commerce Commission Termination Act of 1995
Railroad Right-Of-Way Protections	The rights reserved to the railroad in the 1994 Agreement and the easement agreements replaced by the 1994 Agreement to protect the railroad’s control over its right-of-way, as detailed at pages 11-12 of this Petition and in Section III of the Verified Statement of Tony K. Love.
Rescission Complaint	The Complaint filed by SFPP in Los Angeles County Superior Court seeking rescission of the 1994 Agreement and a declaratory order that SFPP may remain on Union Pacific’s right-of-way without being subject to the Railroad Right-Of-Way Protections of that Agreement.
Santa Fe, Inc.	Santa Fe Industries, Inc. (the parent company of the Atchison, Topeka, and Santa Fe Railway Company)
Santa Fe Railway	Atchison Topeka & Santa Fe Railway
SFPP	SFPP, L.P., the successor pipeline entity to SPPL and the current plaintiff in the Rescission Complaint.

Southern Pacific	Southern Pacific Rail Corporation and its predecessors, including SPT and all other subsidiaries
SPPL	Southern Pacific Pipelines, Inc., a former subsidiary of Southern Pacific Rail Corporation. SPPL is the predecessor pipeline entity to SFPP, L.P.
SPT	Southern Pacific Transportation Company, a rail carrier
STB	Surface Transportation Board
Union Pacific	Union Pacific Railroad Company

**BEFORE THE
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**PETITION OF UNION PACIFIC RAILROAD COMPANY
FOR DECLARATORY ORDER**

Congress passed unmistakably clear and broad language in ICCTA that expressly preempts all state regulation of rail transportation. Applying this language, the Board repeatedly has found that ICCTA preempts state law causes of action that unreasonably interfere with rail transportation. This is another such case. Long ago, a company was allowed to construct pipeline under hundreds of miles of Union Pacific track subject to the pipeline's explicit agreement that it would not interfere with railroad operations and would relocate when deemed necessary at the railroad's request. Now the pipeline company has asked a California state court to void and rescind that agreement in its entirety and to order that the pipeline may remain in place on Union Pacific's operating property without Union Pacific's consent or control—even where relocation of the pipeline is necessary to accommodate critically needed rail capacity improvements. This attempted use of state law to extinguish the very conditions under which the railroad allowed the pipeline to be constructed on its property in the first place directly and substantially interferes with Union Pacific's rail transportation in a way that ICCTA plainly preempts.

This Petition for a Declaratory Order therefore asks the Board to declare that ICCTA preempts the pipeline's California state law causes of action to rescind the agreement and strip the railroad of control over its operating property, because

these actions constitute regulation of rail transportation that unduly burdens and interferes with Union Pacific's rail transportation.

This Petition for Declaratory Order implicates significant national transportation needs. Freight traffic on much of the railroad right-of-way used by the pipeline has grown and is expected to grow in the future. To meet this demand, Union Pacific must be able to construct needed infrastructure improvements and track expansions on that right-of-way. As detailed below, capacity expansion projects can require relocation of the pipeline. Examples of rail projects that have required—and will in the future require—the pipeline to relocate include constructing double track, expanding rail yards, and building infrastructure to serve new customers. *See infra* at 12-14; Verified Statement of John J. Hovanec at 4-8. If successful, the pipeline's state law causes of action would remove the long-standing protections that have required pipeline relocation when necessary to accommodate rail facilities and that otherwise have ensured the pipeline does not unreasonably interfere with rail operations on the right-of-way. The pipeline's state law causes of action therefore would undermine the substantial public policy interest in improving the capacity and fluidity of the rail network. There is thus a compelling need for the Board to declare that ICCTA forbids this attempted use of state law to burden rail transportation.

EXECUTIVE SUMMARY

Decades ago, Southern Pacific¹ allowed an affiliate company, then known as Southern Pacific Pipelines, Inc. ("SPPL"), to construct a petroleum products pipeline

¹ Between 1955 when the initial agreement took effect and 1996 when Union Pacific Corporation acquired Southern Pacific Rail Corporation and its various subsidiaries, Southern Pacific's corporate structure and the names of the legal entities involved in the pipeline agreement changed several times. For ease of reference, "Southern Pacific" is used to refer to the holding company and railroad collectively, and more specific terminology is used when more precision is needed.

beneath key railroad operating corridors in six western states. The rail corridors and pipelines at issue are illustrated in Exhibit 1, which is reproduced below:



Southern Pacific only allowed the affiliate to use its railroad operating property subject to the terms of written agreements dating from the 1950s, which ensured that the railroad would maintain control over the active railroad corridors where the pipeline was to locate. Critically, the pipeline promised that its operations would not interfere with or endanger railroad operations and that the pipeline would relocate when the railroad deemed necessary for purposes of rail transportation. The pipeline also agreed that the railroad would reclaim the property if the pipeline ceased operations or breached the agreements. These rights and obligations are collectively described in this Petition as the “Railroad Right-Of-Way Protections.”

Flash forward 60 years, and a lot has changed: Southern Pacific now has merged with Union Pacific. The pipeline is now known as SFPP, L.P., and it is no longer affiliated with any railroad. Instead, SFPP now is part of U.S. energy giant Kinder Morgan, Inc.’s corporate family. Freight traffic also has grown on the railroad corridors where the SFPP pipeline is located from levels in the mid-20th Century when the pipeline was first installed. Because of that growth and future anticipated growth, Union Pacific is making substantial investments in capital projects in these same key transportation corridors to improve service and increase capacity for rail shippers. Sometimes these capital projects require that portions of the SFPP pipeline be relocated to accommodate additional track, ensure a safe and stable roadbed, or allow for the heavy construction equipment and vehicles needed for certain projects.

One thing has not changed: the critical Railroad Right-Of-Way Protections that guard against pipeline interference with railroad operations over hundreds of miles of active right-of-way remain in place. The currently operative version of the agreement under which SFPP is allowed to use Union Pacific’s railroad property—

the Amended and Restated Easement Agreement (“1994 Agreement”)²—contains almost word-for-word the same express requirements ensuring railroad control over these key corridors as the original 1950s-era agreements. It is in these Railroad Right-Of-Way Protections that the Board will find the heart of this dispute. SFPP no longer wishes to be bound by its agreement to these protections and has asked the state of California through its courts to void and extinguish the 1994 Agreement in its entirety and to declare that SFPP’s pipeline may remain in place on Union Pacific’s operating property without the railroad’s agreement or the negotiated Railroad Right-Of-Way Protections.

The theory of SFPP’s state law action is that Union Pacific allegedly did not have a sufficient property interest in its right-of-way to enter into the 1994 Agreement, because Union Pacific obtained portions of its right-of-way via Federal grants. Therefore, SFPP asserts, the California courts should use the rescission remedy in the California Civil Code to void and rescind the 1994 Agreement entirely. At the same time, SFPP also seeks a declaratory order that SFPP may remain on Union Pacific railroad operating property without the railroad’s agreement or any obligation to adhere to the Railroad Right-Of-Way Protections. SFPP thus seeks to use state remedies to enable it to operate and maintain its pipeline in its present location on Union Pacific’s railroad operating property free of Union Pacific’s control and the agreed Railroad Right-Of-Way Protections.

These Railroad Right-Of-Way Protections are critical to preventing the SFPP pipeline from unreasonably interfering with Union Pacific’s rail transportation. The pipeline forms a longitudinal non-railroad encroachment along hundreds of miles of active railroad operating property. The mere presence of SFPP’s pipeline on the right-of-way creates ongoing challenges for railroad maintenance, repair and

² The 1994 Agreement is referred to in the Rescission Complaint as the “AREA.”

construction activities. Pipeline interference is a particular concern when Union Pacific must perform capacity expansion and safety projects. As detailed below, Union Pacific repeatedly has needed to enforce its contractual rights to require relocation of the SFPP pipeline for construction projects critical to improving safety or to meeting the needs of Union Pacific’s customers.

In short, Union Pacific agreed to SFPP’s presence on its right-of-way through the 1994 Agreement. But with its current action, SFPP is seeking by state regulation—and not by agreement—to use Union Pacific’s railroad property in a way that will harm rail transportation.

The history of how the SFPP pipeline came to be located literally in, upon, along and across Union Pacific’s railroad over hundreds of miles in six states is perhaps unique, but the question presented for the Board’s determination here is not. Because SFPP’s asserted state law causes of action would eliminate Union Pacific’s Railroad Right-Of-Way Protections and unreasonably interfere with its railroad operations, these causes of action are prohibited by the preemption provisions of ICCTA. Both the Board and federal courts have recognized that using state law to place legal requirements on railroad operating property in a way that prevents or unreasonably interferes with rail transportation is preempted.³ Here, SFPP’s state law cause of action, if allowed, would impermissibly regulate rail transportation by imposing under state authority the terms—or lack of them—for SFPP’s location on Union Pacific’s operating property in place of the Railroad Right-Of-Way Protections in the 1994 Agreement. Such a state action would, among other

³ See, e.g., *Union Pac. R.R. v. Chi. Transit Auth.*, 647 F.3d 675 (7th Cir. 2011); *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010); *Maynard v. CSX Transp., Inc.*, 360 F. Supp. 2d 836, 842 (E.D. Ky. 2004); *Thomas Tubbs—Pet. for Decl. Order*, STB Fin. Docket No. 35792 (served Oct. 31, 2014) (“*Tubbs*”); *Mark Lange—Pet. for Decl. Order*, STB Fin. Docket No. 35037 (served Jan. 28, 2008) (“*Lange*”).

things, strip the railroad of its right to cause the pipeline to relocate on its operating property when deemed necessary for rail transportation, including importantly for capacity and safety projects, and it would divest the railroad of its right to eject the pipeline and reclaim the operating property if SFPP breaches the 1994 Agreement or abandons the pipeline.

Section I of this Petition summarizes the relevant background facts. It describes the historical relationship between Union Pacific and SFPP, including the terms under which the pipeline obtained access to railroad operating property and how ownership of the railroad and pipeline diverged. It also details how the pipeline interferes with Union Pacific's operations, including capacity and safety projects, and why the Railroad Right-Of-Way Protections secured under the 1994 Agreement are essential to protect Union Pacific's rail transportation. **Section II** demonstrates that SFPP's state law causes of action are preempted by ICCTA under the applicable principles established by ICCTA and the Board. This section demonstrates that SFPP's state law causes of action satisfy the three basic requirements that the Board has established for preemption—*i.e.*, there must be (1) "rail transportation" (2) that is affected by "regulation" (3) that unreasonably burdens or interferes with that rail transportation. **Section III** demonstrates why the Board should issue a declaratory order here to remove any uncertainty as to how its exclusive jurisdiction applies to the issue presented.

This Petition is supported by two verified statements. First, Tony Love, Assistant Vice President of Real Estate for Union Pacific, explains the history of the railroad right-of-way at issue in this Petition and the agreed conditions under which pipeline was permitted to be installed on that right-of-way, including the contractual Railroad Right-Of-Way Protections designed to ensure that the pipeline would not interfere with rail transportation. Second, John J. Hovanec, Assistant Vice President – Engineering Design for Union Pacific Railroad Company, describes

ways in which the presence of the SFPP pipeline along Union Pacific’s right-of-way can interfere with Union Pacific’s maintenance and operations and needed capacity and safety projects.

I. Factual Background

A. SFPP Was Allowed To Build Pipeline On Active Rail Corridors Based On Its Explicit Agreement To Right-Of-Way Protections.

Rail corridors at issue in this Petition have been used for rail transportation in most cases for more than a century. The right-of-way shown in Exhibits 1, 2, and 3 was acquired by the Southern Pacific and its predecessors between 1864 and 1926.⁴ *See* V.S. Love at 2. Some portions of this right-of-way were acquired in fee simple through quitclaim deeds. *Id.* at 3-6. Other portions were acquired through easements, and still others were acquired through varying federal land grants, including the Pacific Railroad Act and the General Right of Way Act of 1875.⁵ As Mr. Love’s verified statement shows, all these parts were assembled into a contiguous railroad right-of-way that has been used continuously to provide rail transportation in most cases since the 19th Century. *See id.* at 3-7.

In the mid-1950s, the Southern Pacific—then the parent of Southern Pacific Transportation Company (“SPT”)—created a wholly-owned petroleum pipeline subsidiary, SPPL. Southern Pacific and SPPL then agreed on terms that would allow SPPL pipelines to be installed on SPT’s right-of-way. These terms were set forth in two master agreements, executed in May 1955 and December 1956 respectively. *See* Exhibit 6 (“1955 Agreement”); Exhibit 7 (“1956 Agreement”).

⁴ Exhibit 1 is a map that illustrates the locations where SFPP pipelines are located on Union Pacific’s right-of-way; Exhibits 2 and 3 are maps illustrating the various predecessor railroads that originally assembled that right-of-way.

⁵ *See* V.S. Love at 3-6; Exhibits 2 & 3; Pacific Railroad Act, ch. 120, §§ 1-20, 12 Stat. 489 (1862), Act of July 2, 1864, ch. 216 § 1-22, 13 Stat. 356 (1864); General Right of Way Act of 1875, 18 Stat. 482, 43 U.S.C. § 934 *et seq.*

Pursuant to those agreements, Southern Pacific granted perpetual easements to SPPL for portions of the pipeline constructed on railroad property in California, Arizona, New Mexico, Texas and Nevada. (Certain property in Oregon was later added by agreement.)

The easement agreements contained multiple provisions confirming the railroad's superior rights and protecting the continued and uninterrupted operation of the railroad (*i.e.*, the Railroad Right-of-Way Protections). The Railroad Right-Of-Way Protections provided that the easement agreements were expressly granted "subject to and subordinate to the prior and continuing right and obligation of Railroad and its respective successors or assigns to use and maintain the entire railroad right of way and property in performance of its public duty as a common carrier." 1955 Agreement, § 1; 1956 Agreement § 1. The pipeline's rights were also subordinate to the railroad's right to "construct, maintain, use and operate . . . existing or additional railroad tracks and appurtenances thereto . . . and other railroad facilities and structure of any kind," and to do so "freely . . . at all time or times . . . without liability for compensation or damage." 1955 Agreement, § 1; 1956 Agreement § 1.

Furthermore, SPPL agreed to operate the pipeline "in such a manner as not to interfere with or endanger railroad property or operations" and to relocate the pipeline at its sole cost and expense "[i]n the event that Railroad shall at any time deem it necessary." 1955 Agreement, § 3; 1956 Agreement § 3.

The railroad maintained the ability to terminate the agreement and reacquire the property in the event of a breach. Southern Pacific granted the easements "upon the express condition subsequent that . . . in the event of breach by [the pipeline] Company . . . of any covenant or condition herein contained and such default is not remedied within six (6) months" the easement would terminate

and the railroad “shall have the right . . . to resume exclusive possession of” the property occupied by the pipeline. 1955 Agreement, § 8; 1956 Agreement § 8.

Furthermore, Southern Pacific granted the easements “subject to all valid and existing . . . claims of title which may affect the property.” 1955 Agreement, § 10; 1956 Agreement § 10.

Collectively, the Railroad Right-Of-Way Protections ensured that SPPL’s ability to construct and operate a pipeline on the active railroad right-of-way that Southern Pacific and its predecessors had been using since the 19th Century would not interfere with that right-of-way’s primary purpose of providing rail transportation. Pursuant to these Right-of-Way Protections, SPPL and its successors installed hundreds of miles of pipelines on Southern Pacific’s right-of-way through six western states between 1955 and the early 1990s. The pipeline runs in the north from San Francisco Bay Area ports across California and into Nevada, with branches running south through the Central Valley and north into Oregon. In the South, the pipeline runs from the Los Angeles area into Arizona while another branch runs from El Paso, across New Mexico, and into Arizona from the other direction. *See* V.S. Love at 7-9; Ex. 1; Ex. 2.

B. Separation Of The Ownership Of The Railroad And Pipeline Did Not Alter The Agreement That The Pipeline’s Use Of The Corridor Would Be Subordinate To Rail Transportation.

Joint control of the railroad and the pipeline did not last. In 1983, Southern Pacific and Santa Fe Industries, Inc. (“Santa Fe, Inc.”), the parent company of the Atchison Topeka & Santa Fe Railway (“Santa Fe Railway”), announced a proposed merger. Santa Fe, Inc.’s acquisition of SPT was subject to ICC jurisdiction, but the acquisition of the pipeline entity SPPL was not. As a result, SPPL was immediately acquired by Santa Fe, Inc. and became the Santa Fe Pacific Pipelines, Inc. (“SFPP”).

SPT stock was placed into a voting trust to ensure the railroad's independence while the ICC reviewed the proposed merger.

The ICC ultimately disapproved the merger of SPT and Santa Fe Railway. *See Santa Fe Southern Pac. Corp.—Control—Southern Pac. Transp. Co.*, 2 I.C.C. 2d 709 (1986). In light of the disapproval, Santa Fe, Inc. sold SPT in 1988 to the parent company of the Denver and Rio Grande Western Railroad. *See Rio Grande Indus.—Control—Southern Pac. Transp. Co.*, 4 I.C.C. 2d 834 (1988) (approving the control of SPT by Rio Grande Industries). The pipeline company, however, remained with Santa Fe, Inc. As a result, the companies were no longer affiliates under the same corporate umbrella.

While their corporate relationship changed, the railroad's and pipeline's bargain did not. The 1955 and 1956 easements were renewed and amended several times over the years, most recently in the 1994 Agreement. *See Exhibit 4 (1994 Agreement)*. The 1994 Agreement maintained the same essential rights and obligations of the parties that were agreed to in the 1955 and 1956 Agreements, including all the Railroad Right-of-Way Protections:

- The rights granted to SFPP's pipeline were at all times subordinate to the rights of the railroad.⁶
- SFPP's pipeline was to be maintained and operated in a manner that would not interfere with railroad operations.⁷
- The railroad maintained the right to require relocation of the pipeline if the railroad "shall at any time deem it necessary."⁸

⁶ *See Exhibit 4, 1994 Agreement § 1(f)* ("This grant is subject to and subordinate to the prior and continuing right and obligation of Railroad and its respective successors or assigns to use and maintain the entire railroad right-of-way and property in performance of its public duty as a common carrier . . .").

⁷ *See id.*, 1994 Agreement § 3 ("pipe line shall be constructed, reconstructed, renewed, maintained, and operated . . . in such manner as not to interfere with or endanger railroad property or operations").

- The railroad maintained the ability to terminate the agreement and reclaim any property used by the pipeline in the event of a breach.⁹

Thus, the 1994 Agreement—like the earlier agreements—ensures that the location of SFPP’s pipelines on the railroad right-of-way is subordinate to the primary corridor purpose of providing rail transportation and cannot interfere with railroad operations or block the railroad’s improvements or expansions of facilities on those rail corridors.

Since the 1994 Agreement, both the railroad and SFPP have undergone additional corporate changes. In 1996, the Board approved the merger of the rail carriers controlled by Union Pacific Corporation and Southern Pacific. *Union Pac. Corp. et al.—Control & Merger—Southern Pac. Rail Corp, et al.*, 1 S.T.B. 233 (1996). In 1997, SFPP, L.P. became part of energy giant Kinder Morgan. But none of these transactions in any way altered the Railroad Right-Of-Way Protections established under the 1994 Agreement.

C. Union Pacific’s Railroad Right-Of-Way Protections Under The 1994 Agreement Are Essential To Rail Transportation.

The mere presence of the SFPP pipeline causes interference with Union Pacific’s rail operations. The pipeline encroaches upon hundreds of miles of railroad right-of-way and creates ongoing challenges for regular maintenance and repair

⁸ *See id.*, 1994 Agreement § 3 (“In the event that Railroad shall at any time deem it necessary, the Company shall, upon receipt of written notice so to do, at Company’s sole cost and expense, change the location of said pipe line, its adjuncts or appurtenances, on railroad property to such points or points thereon as Railroad shall designate and reconstruct or reinforce the same.”).

⁹ *See id.*, 1994 Agreement § 8 (“This grant is made upon the express condition subsequent that in the event [the pipeline] Company, its successors or assigns, abandon the use of said property . . . or in the event of breach by Company , its successors or assigns, of any covenant or condition herein contained and such default is not remedied within six (6) months” the easement would terminate and SPT “shall have the right . . . to resume exclusive possession of” the property occupied by the pipeline.).

activities. *See* V.S. Hovanec at 2. Changes in railroad operations and capacity needs requiring significant investments and alterations to UP's facilities over the years also have been impacted by the SFPP's presence. *Id.* at 2-4. In particular, rail capacity improvement projects can require that the pipeline be relocated, either to accommodate expanded rail infrastructure or to allow heavy construction equipment and vehicles to operate on often-narrow rail corridors. *Id.* at 4-7.

Union Pacific's rights secured under the 1994 Agreement have been essential to multiple infrastructure development projects. While Union Pacific always seeks to reach agreement with the pipeline prior to beginning construction projects, SFPP has declined to relocate the pipeline as requested by Union Pacific on several occasions. In these instances, Union Pacific's ability to use its contractual rights to require relocation has allowed it to complete construction projects that otherwise would have been delayed even longer or blocked entirely. *See* V.S. Hovanec at 7.

Indeed, in California alone, Union Pacific has been forced to litigate multiple actions relating to relocation of the SFPP pipeline along Union Pacific's right-of-way. For example, a Union Pacific plan to add a second track to increase capacity in Riverside County, California required pipeline relocation to comply with Union Pacific's standards for separation between pipeline and track. *See* V.S. Hovanec at 8-9. SFPP did not relocate when requested by Union Pacific, leading to litigation.¹⁰ In another example, a grade crossing safety improvement proposed by the Alameda Corridor-East Construction Authority required pipeline relocation because of the narrow right-of-way at the project site. *See id.* at 10. This project, too, was significantly delayed and required litigation because SFPP did not relocate or

¹⁰ *See* V.S. Hovanec at 8-9; *Union Pac. R.R. Co. v. SFPP, L.P.*, Cal. Super. Ct. Cty. of Riverside, Case No. INC 055339 (the "Beaumont Hill Action"). The Superior Court entered judgment for Union Pacific on July 15, 2014. *See id.*

protect the pipeline as requested by Union Pacific.¹¹ And earlier this year SFPP filed a lawsuit seeking to resist relocation of its pipeline to accommodate a double-track project on the Alhambra Subdivision in Los Angeles County that is needed to eliminate a bottleneck currently slowing eastbound traffic from the Ports of Los Angeles and Long Beach.¹² The fact that these suits have been necessary is compelling evidence of the role that the 1994 Agreement plays in securing Union Pacific's ability to make necessary capital investments and of the significant damage that would be caused by removing these protections.

D. SFPP Now Seeks To Use State Law To Rescind The 1994 Agreement And Its Railroad Right-Of-Way Protections—Yet Remain On The Active Operating Right-Of-Way.

On June 8, 2015, SFPP filed a civil action in Superior Court in Los Angeles County that, among other things, asks the Court to void and rescind the 1994 Agreement in its entirety under the California Civil Code and to declare that SFPP may remain on Union Pacific's operating property without Union Pacific's agreement or any obligation to perform its obligations under the 1994 Agreement. *See* Complaint, *SFPP, L.P. v. Union Pac. R.R. Co. et al.*, Cal. Super. Ct. Cty. of Los Angeles, Cent. Dist. Case No. BC584518 (filed June 8, 2015) (Exhibit 5) (“Rescission Complaint”).

In the Rescission Complaint, SFPP claims that the 1994 Agreement must be rescinded, because Union Pacific supposedly did not have a sufficient interest in its right-of-way to act as consideration for the contract. Rescission Compl. ¶ 23. The

¹¹ *See* V.S. Hovanec at 10; *Union Pac. R.R. Co. v. SFPP, L.P.*, Cal. Super. Ct. Cty. of Riverside, Case No. PSC 1402455 (the “Pomona Action”) (Compl. filed Aug. 23, 2013).

¹² *See* V.S. Hovanec at 10; *SFPP, L.P. v. Union Pac. R.R. Co. et al.*, Cal. Super. Ct. Cty. of Los Angeles Cent. Dist., Case No. BC 573396 (the “Alhambra Action”) (Compl. filed Feb. 28, 2015).

Complaint describes SFPP's interpretation of a non-final intermediate appellate decision by the California Court of Appeals in a case to determine the amount of rent SFPP should pay for its use of the railroad corridor.¹³ The California Court of Appeals held that Union Pacific should be required to submit evidence of its property interest in its right-of-way in order to collect rent from SFPP.¹⁴ Significantly, the decision cited by SFPP only relates to rental payments. The court made clear that its narrow ruling did not touch on the validity of the 1994 Agreement, including SFPP's obligations not to interfere with railroad operations or to relocate its pipeline at the railroad's request.¹⁵

II. ICCTA Preempts SFPP's State Law Action Seeking To Rescind Union Pacific's Right-Of-Way Protections.

Under the Board's well-established standards, SFPP's state law causes of action are preempted by Section 10501(b) of ICCTA, because they seek to eliminate the Railroad Right-Of-Way Protections which Union Pacific required in voluntarily allowing the pipeline to locate on its railroad right-of-way in the first place. The weapon chosen by SFPP is a state law rescission action coupled with a request for a declaratory order. But the practical impact on Union Pacific's rail operations would be no different had SFPP brought an eminent domain action seeking to force its way onto Union Pacific's active railroad right-of-way without agreed protections against unreasonable pipeline interference with the railroad. Such an eminent domain action plainly would be preempted by ICCTA. But SFPP's choice of weapon is irrelevant—"[a]ll state-born attacks aimed at the target, no matter the weapon

¹³ *Union Pac. R.R. Co. v. Santa Fe Pac. Pipelines, Inc., et al.*, 231 Cal.App.4th. 134 (Cal. Ct. App. 2014).

¹⁴ *Id.*

¹⁵ *Id.* at 209 ("we make no global ruling as to the validity of the AREA or the 1994 settlement agreement as a whole.").

used, are rebuffed by the shield of federal supremacy.” *Kiser v. CSX Real Prop., Inc.*, No. 8:07-cv-1266-T-24, 2008 U.S. Dist. LEXIS 90676, at *11 (M.D. Fla. Nov. 7, 2008). In this case, SFPP’s court action, if successful, on its face would regulate rail transportation and interfere with Union Pacific’s ability to operate its railroad and expand capacity to meet shipper demand—precisely the result that Section 10501(b) was enacted to prevent.

A. ICCTA Prohibits The Use Of State Law Remedies That Unreasonably Interfere With Railroad Operations.

Section 10501(b) of ICCTA is an unusually “clear and broad” statement of Federal intent to preempt state regulation of railroads.¹⁶ Section 10501(b) gives the Board exclusive jurisdiction over “transportation by rail carriers,” including “the construction . . . [and] operation . . . of spur, industrial, team, switching, or side tracks, or facilities,” and expressly provides that “[t]he remedies provided under this part with respect to regulation of rail transportation *are exclusive and preempt the remedies provided under Federal or State law.*” 49 U.S.C. § 10501(b) (emphasis added). As one court has stated, “[i]t is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” *CSX Transp., Inc. v. Ga. Pub. Serv. Comm’n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996).¹⁷

Under ICCTA, “it is well settled that states cannot take an action that would have the effect of foreclosing or unduly restricting a railroad’s ability to conduct any

¹⁶ *Wisconsin Cent., Ltd. v. City of Marshfield*, 160 F. Supp. 2d 1009, 1013 (W.D. Wis. 2000) (ICCTA preemption clause is “clear and broad”).

¹⁷ *See also, e.g., CSX Transp., Inc.—Pet. for Declaratory Order*, STB Fin. Docket No. 34662, at 7 (served Mar. 14, 2005) (“*CSXT 2005*”) (“Every court that has examined the statutory language has concluded that the preemptive effect of section 10501(b) is broad and sweeping, and that it blocks actions by states and localities that would impinge on the Board’s jurisdiction or a railroad’s ability to conduct its rail operations.”).

part of its operations or otherwise unreasonably burdening interstate commerce.” *CSX Transp., Inc.—Petition For Declaratory Order*, STB Fin. Docket No. 34662, at 5 (served May 3, 2005).¹⁸ Four aspects of ICCTA preemption are particularly important here.

First, state law causes of action are “regulation” prohibited by ICCTA. ICCTA preemption encompasses state law causes of action that unduly interfere with rail transportation just as much as it would encompass a local ordinance or zoning regulation applied for the same purpose. The House Report on ICCTA, for example, stated that the “Federal or State law” preempted by Section 10501(b) “is intended to encompass all statutory, common law, and administrative remedies addressing the rail-related subject matter jurisdiction of the [Board].” H. Rep. No. 104-311, 104th Cong., 1st Sess. 95 (1995). Both the Board and federal courts have uniformly held that ICCTA preemption applies to state remedies brought under state statutory or common law.¹⁹ As the Fifth Circuit has explained, the “all-encompassing language

¹⁸ See also *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 332 (5th Cir. 2008) (quoting with approval Board’s statement in *CSX Transp., Inc.—Pet. for Decl. Order*); *CSXT 2005* at 7; *Borough of Riverdale—Pet. for Decl. Order*, STB Fin. Docket No. 35299, at 1 (served Aug. 5, 2010) (“*Riverdale*”); *Joint Pet. for Decl. Order—Boston and Maine Corp. & Town of Ayer*, STB Fin. Docket No. 33971, at 8 (served May 1, 2001) (“*Ayer*”) (ICCTA preempts all “state and local regulation . . . used to veto or unreasonably interfere with railroad operations”).

¹⁹ See, e.g., *Pace*, 613 F.3d at 1069 (ICCTA preempted nuisance action brought against railroad’s operation of sidetrack); *City of Auburn v. United States*, 154 F.3d 1025, 1031 (9th Cir. 1998) (Section 10501(b) preempts state environmental review laws); *Maynard*, 360 F. Supp. 2d at 842 (ICCTA preempts state common law claims for nuisance based on allegations that railroad operated side track in a way that unreasonably blocked access to plaintiffs’ property); *Kiser*, 2008 U.S. Dist. LEXIS 90676, at *8 (state nuisance action seeking relocation of planned intermodal facility was preempted); *Tubbs* at 4 (finding that Missouri state law claims of trespass, nuisance, negligence, and inverse condemnation for damages from flooding and property damage allegedly caused by railroad’s improper design, maintenance, and construction of rail line were preempted); *Norfolk Southern Ry. Co.—Pet. for Decl. Order*, STB Fin. Docket No. 35701, at 2 (served Nov. 4, 2013) (lawsuits asserting claims against railroad for damage to properties allegedly caused by noise,

of the ICCTA’s preemption clause” does not “permit the federal statute to be circumvented by allowing liability to accrue under state common law.” *Friberg v. Kan. City S. Ry.*, 267 F.3d 439, 444 (5th Cir. 2001).

*Second, ICCTA preemption is triggered by the **use** of property in rail transportation, not the **ownership** of such property.* The statute makes this clear by defining “transportation” to include any property or facilities “related to the movement of passengers or property, or both, by rail, *regardless of ownership or an agreement concerning use.*” 49 U.S.C. § 10102(9) (emphasis added). What matters for ICCTA is whether a facility is being used for rail transportation—not whether the railroad is using it via fee ownership, easement, or federal land grant.

Third, ICCTA preemption is particularly applicable to actions that could interfere with rail construction projects. “[C]onstruction” is, of course, explicitly identified in § 10501(b), and the Board has made clear that ICCTA preemption equally applies to rail construction projects within the Board’s licensing jurisdiction and to projects outside the Board’s jurisdiction such as improvements to an existing rail line. *See, e.g., Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005) (ICCTA preempted state environmental land use permitting requirements as applied to a rail carrier’s planned construction of a loading facility); *City of Auburn*, 154 F.3d at 1029-31 (ICCTA preempted local environmental review of a railroad’s track improvements).²⁰

vibration, and “discharge of smoke, dust, dirt and other particulates” are preempted by ICCTA).

²⁰ *See also Ayer*, at 8 n.24 (May 1, 2001) (citing cases holding that the scope of ICCTA preemption over rail transportation activities was not affected by whether the Board had licensing authority over those activities); *New England Transrail, LLC, d/b/a/ Wilmington & Woburn Terminal Railway—Construction, Acquisition and Operation Exemption—in Wilmington & Woburn, MA*, STB Fin. Docket No. 34797, at 12 (served July 10, 2007) (recognizing that ICCTA preempts state regulation of ancillary track even though ancillary track projects would not be subject to the Board’s environmental review).

Fourth, ICCTA prevents the unilateral termination (without STB approval) of a small subset of agreements that are needed to protect a carrier from unreasonable interference with carrying out its common carrier obligations. Simple examples include attempts to terminate an easement, lease, or trackage rights agreement. *See, e.g., Thompson v. Tex. M. Ry., 328 U.S. 134, 144 (1946); Pinelawn Cemetery—Pet. for Decl. Order, STB Fin. Docket No. 35468, at 11 (served Apr. 21, 2015) (“Pinelawn”).* More complicated examples include agreements between state landowners and rail carriers that are specifically designed to protect carriers from unreasonable interference with common carrier service. *See, e.g., Wisconsin Dept. of Transp.—Pet. for Decl. Order, STB Fin. Docket No. 35455, at 5 (served Nov. 10, 2011) (cautioning the parties that the “default, term, termination, transfer, and arbitration provisions” of the agreement between the state and rail carrier “cannot be interpreted or enforced in a way that would affect [the rail carrier’s] common carrier service” (emphasis added)).*

The common theme is the fundamental principle that some agreements—once entered into with a federally licensed common carrier—become infused with the greater public interest. According to the Supreme Court, these kinds of agreements “involve not only the interests of the two parties . . . but phases of the public interest.” *Thompson*, 328 U.S. at 143, *see also Pinelawn*, at 11 (extending that principle to agreements between carriers and non-carriers and to agreements that do not require Board approval).

Therefore, a key question presented in this dispute is whether the agreement between Union Pacific and the pipeline company—laying out right-of-way protections designed to protect the railroad’s ability to fulfill its common carrier obligations—has been infused with a public interest and no longer involves just the interests of the two parties. If so, then this state action to void the agreement is

improper because it would unreasonably interfere with interstate commerce and is preempted by ICCTA.

B. ICCTA Preempts SFPP’s State Rescission Action, Which Could Permit SFPP’s Pipeline To Remain Under Active Rail Lines And Unreasonably Interfere With Interstate Rail Transportation Without Railroad Agreement.

The Board has recognized two forms of ICCTA preemption: “categorical preemption” of certain types of regulation that are always preempted (such as permitting or preclearance requirements); and “as-applied preemption,” which applies to regulations that have the effect of unreasonably burdening or interfering with rail transportation. *Tubbs* at 3-4.

SFPP’s state law causes of action are preempted under the “as-applied” test. The elements necessary to establish that a state law or court action is preempted under the “as applied” framework are: (1) “rail transportation” (2) that is affected by “regulation” which (3) unreasonably burdens or interferes with that rail transportation. *See id.* at 4; *Riverdale* at 2. All three elements are met here.

1. Union Pacific’s Ability To Maintain And Construct Improvements To Track On Its Right-Of-Way Is Quintessential “Rail Transportation.”

To be covered by § 10501(b) preemption, “the activities at issue must be transportation, and that transportation must be performed by, or under the auspices of, a ‘rail carrier.’” *Town of Babylon and Pinelawn Cemetery—Pet. for Declaratory Order*, STB Fin. Docket No. 35057, at 4 (served Jan. 31, 2008). ICCTA defines “transportation” to include (1) any “property, facility, instrumentality, or equipment related to the movement of passengers or property . . . by rail, regardless of ownership or an agreement concerning use,” and (2) “services related to that movement, including receipt [and] delivery.” 49 U.S.C. § 10102(9). Here, there can be no dispute that Union Pacific is a rail carrier or that Union Pacific’s right-of-way

is a “property” and “facility” that is “related to the movement of . . . property by rail.” Union Pacific’s ability to maintain facilities and to construct improvements on that right-of-way thus is plainly “transportation performed by a rail carrier” for ICCTA preemption purposes.

As Mr. Hovanec’s verified statement explains, the rail transportation activities that are affected by the existence of the SFPP pipeline include Union Pacific’s maintenance of track and facilities on its right-of-way and its construction of improvements to that right-of-way. *See* V.S. Hovanec at 2-7. The pipeline’s presence has a significant impact on maintenance work, which must take account of where the pipeline is located and often must take measures to ensure that the planned maintenance work can be performed safely and without impacting the pipeline. *See id.* at 2-4. The pipeline similarly has a substantial impact on Union Pacific construction projects to improve capacity on its right-of-way. *See id.* at 4-7.

The Union Pacific maintenance and construction projects that are affected by the pipeline are quintessential “transportation” for ICCTA preemption purposes. *See, e.g., City of Auburn*, 154 F.3d at 1029-31; *Green Mountain*, 404 F.3d at 644; *Riverdale* at 2. And as demonstrated below, SFPP’s pending California action is an attempted “regulation” that unreasonably interferes with Union Pacific’s rail transportation.

2. The California State Court Action Is “Regulation” Of Rail Transportation Because It Asks A State Court To Set Aside The 1994 Agreement And To Proclaim That The Pipeline May Under State Law Remain At Its Present Location Indefinitely.

The next critical element is whether SFPP’s state court action constitutes “regulation” of rail transportation. There can be no doubt that “regulation” would exist if, for example, a state passed a law that gave pipelines the unequivocal right to locate under an active rail line and to remain at that location—even if the

pipeline is interfering with interstate rail operations. Federal law would trump such a state law, which would unquestionably be “regulation” of rail transportation preempted by ICCTA. *See, e.g., City of Lincoln—Pet. for Decl. Order*, STB Fin. Docket No. 34425 (served Aug. 11, 2004) (ICCTA preempted city’s attempt to use eminent domain to construct trail on railroad right-of-way), *aff’d sub nom. City of Lincoln v. STB*, 414 F.3d 858 (8th Cir. 2005); *CTA*, 647 F.3d at 682. It follows inevitably that a pipeline or utility cannot use the state power of eminent domain—or any other state remedy—to remain under an active rail line without the railroad’s agreement, where the third party’s presence places an unreasonable burden on interstate commerce.

The same result must prevail here, where the SFPP is using causes of action under state law to set aside the Railroad Right-Of-Way Protections that Union Pacific required as conditions for allowing the pipeline on its railroad operating right-of-way in the first place. Stripped to its core, SFPP is claiming that under state law it is free to disregard those Railroad Right-Of-Way Protections and maintain its pipeline at its present location without Union Pacific’s consent and without complying with the conditions of the 1994 Agreement. If successful, SFPP’s causes of action would regulate and interfere with Union Pacific’s rail transportation service, no different than if the state were to pass a law that gave the pipeline the right to remain beneath an active rail line forever.

SFPP’s court action neatly fits within the accepted definition of “regulation.” As the Seventh Circuit observed: “[T]he dictionary definition of ‘regulation’ is ‘the act or process of controlling by rule or restriction.’” *CTA*, 647 F.3d at 679 n.2 (quoting Black’s Law Dictionary 1386 (9th ed. 2009)). In that case, the transit authority instituted condemnation proceedings with the Illinois Commerce Commission to establish a permanent easement over Union Pacific’s property. The

Seventh Circuit found that the proceeding was “regulation” because “the CTA wants to control a piece of land through condemnation.” 647 F.3d at 679 n.2.²¹

The Board has similarly found that where, as here, a party attempts to use litigation to control a portion of the railroad’s property, such litigation is “regulation” preempted by Section 10501(b). Recently, for example, the Board held that ICCTA preempted a state court action brought by a landowner to evict railroads from its property on the ground that the lease for the property had expired. *Pinelawn* at 11. The Board held that “[i]t is by now well settled that the provisions of 49 U.S.C. § 10501(b) preempt permitting or other laws or legal processes that try to regulate rail transportation directly or that could be used to deny a railroad’s ability to conduct rail operations.” *Id.* at 10. The landowner’s eviction action would constitute such regulation because it would “give the landowner the right to completely cut off shippers and prevent the common carrier from carrying out its obligations to serve them.” *Id.*

Recently, the Board held that ICCTA preempted an order issued by a Kansas court requiring a railroad to install a crossing over its interchange tracks “because it would have the effect of managing or governing property that is part of the

²¹ See also *Pace*, 613 F.3d at 1069-1070 (nuisance claim for damages stemming from railroad’s construction and use of a side track preempted because it would be controlling such construction and use); *Kiser*, 2008 U.S. Dist. LEXIS 90676, at *12 (state nuisance action seeking to prevent railroads from applying for development permits for proposed intermodal facility, or beginning development of such facility, was preempted because plaintiffs “seek to directly regulate or prevent the railroads’ development plan via their claims against defendants CSX and EWR”); *Maynard*, 360 F.Supp.2d at 843-844 (nuisance claim against railroad alleging that side track regularly blocked access to plaintiff’s houses for hours and caused reduction in their property value was preempted, because it would regulate CSXT’s construction and operation of side tracks); *Guckenberg v. Wis. Cent. Ltd.*, 178 F.Supp.2d 954, 948 (E.D. Wis. 2001) (state nuisance claim brought by neighboring property owners based on railroad’s operation of side track constituted “regulation” of rail transportation preempted by ICCTA).

national rail network.” *Wichita Terminal Ass’n, BNSF Ry. Co. & Union Pac. R.R.—Pet. for Decl. Order*, STB Fin. Docket No. 13765, at 5 (served June 23, 2015) (“*Wichita Terminal*”).²² The Board found that requiring a crossing across the railroad’s interchange tracks would “unreasonably burden or interfere with interstate commerce,” because it would dramatically reduce the railroad’s ability to interchange the significant number of cars that operate between adjoining BNSF and Union Pacific arteries. Moreover, requiring the crossing would “reduce capacity on the [railroad’s interchange tracks], thereby impeding rail operations that are part of the national rail network. . . . State and local actions that have the effect of foreclosing or unduly restricting a rail carrier’s ability to conduct its operations over property that is part of the national rail network are preempted.” *Id.* at 9.

This case would be different if Union Pacific had voluntarily agreed to permit the pipeline to remain under its right-of-way without the Railroad Right-Of-Way Protections. For example, in *PCS Phosphate Co. v. Norfolk Southern Corp.*, 559 F.3d 212 (4th Cir. 2009), the Court found that ICCTA did not preempt an action to enforce a voluntary agreement *by a railroad* that the railroad would relocate its lines after a period of time pursuant to the terms of deeds of easement granted by

²² See also *California High-Speed Rail Authority—Pet. for Decl. Order*, STB Fin. Docket No. 35861, at 10 (served Dec. 12, 2014) (“*CA Rail*”) (suits for injunctive relief under California Environmental Quality Act to prevent or delay construction of high-speed passenger rail line are preempted by ICCTA because such a suit “attempts to regulate a project that is directly regulated by the Board. Section 10501(b) expressly preempts any state law attempts to regulate rail construction projects, as they are under the Board’s exclusive jurisdiction.”); *Tubbs* at 4 (holding that state law tort claims seeking to recover damages allegedly caused by rail carrier’s improper design, construction, and maintenance of its tracks were preempted “because they have the effect of regulating and interfering with rail transportation”); *Lange* at 3 (ICCTA preempted state law trespass claim to have railroad remove fence and equipment from land owned by landowner or to recover damages for trespass, because trespass suit would effectively regulate rail transportation by depriving railroad of its ability to use property for rail operations).

mine owners to the railroad. There is a critical distinction between a suit to enforce rights and obligations set forth in a voluntary agreement (like *PCS Phosphate*)²³ and a suit (like SFPP's) to *void* a voluntary agreement in a way that would remove the Railroad Right-Of-Way Protections negotiated to ensure that the pipeline would not interfere with rail service. Unlike the railroad in *PCS Phosphate*, Union Pacific never voluntarily agreed, by contract or otherwise, to relinquish its Railroad Right-Of-Way Protections, including its rights to prevent pipeline interference with rail operations and order the pipeline to relocate when Union Pacific deemed it necessary.

Put differently, SFPP is not seeking to enforce the terms of the 1994 Agreement; instead, it is seeking to use state law to rescind the contract entirely and have a state court declare that the pipeline is free to disregard the Railroad Right-Of-Way Protections granted to the railroad in the agreement. SFPP's court case is therefore a state action seeking remedies that would conflict with the rights of Union Pacific to undertake construction, operations and maintenance to meet the growing demand for interstate rail service.

SFPP's court action also constitutes "regulation" because it would deprive Union Pacific of its contractual remedies under the 1994 Agreement—the rights to terminate the agreement and resume exclusive possession of the right-of-way—

²³ The enforcement of a private contractual agreement against a railroad is not preempted because the agreement reflects a presumption that the railroad concluded that the benefits from the agreement outweighed the burden on interstate commerce. *See CTA*, 647 F.3d at 682 ("Federal preemption does not apply to all situations where the use of property prevents or unreasonably interferes with railroad transportation; it applies to those situations where a regulation prevents or unreasonably interferes with railroad transportation. If a state or local government secures the use of property in a way that affects railroad transportation by contract or other agreement, there is no issue of federal preemption. But if it attempts to secure such use by regulation . . . then the possibility of federal preemption may arise.").

while giving SFPP control over a portion of the property without being subject to termination. In *CTA*, the Seventh Circuit held that the loss of these “valuable property rights” constitutes “regulation” that unreasonably interferes with railroad transportation on the right-of-way. *CTA*, 647 F.3d at 683.

In view of the undisputed facts that (1) SFPP’s pipeline encroaches on Union Pacific’s rail corridor, (2) Union Pacific allowed SFPP to build its pipeline on the rail corridor but never relinquished its right to protect future rail operations pursuant to the Right-Of-Way Protections in the 1994 Agreement, and (3) SFPP is attempting to use state law to rescind the agreement and obtain additional rights over Union Pacific’s right-of-way, SFPP’s causes of action improperly seek to regulate rail transportation within the meaning of ICCTA.

3. SFPP’s Action Unreasonably Burdens Interstate Rail Transportation By Interfering With Track Expansions And Capital Investments To Improve Network Fluidity.

Notwithstanding the interference currently posed by SFPP’s pipeline, Union Pacific has accommodated the pipeline’s existence for decades because of SFPP’s agreement to comply with various conditions in exchange for allowing the pipeline onto the railroad’s right-of-way. As previously discussed, SFPP agreed in Section 3 of the 1994 Agreement to avoid interfering with Union Pacific’s rail operations and to relocate its pipeline when Union Pacific deemed it necessary. *V.S. Love* at 10. These and the other Railroad Right-Of-Way Protections—which SFPP agreed to perform regardless of any pre-existing encumbrances or claims of title affecting the property—ensured that SFPP’s pipeline would not interfere with railroad operations. *Id.*

The importance of the Railroad Right-Of-Way Protections is well illustrated by the fact that Union Pacific has had to rely repeatedly on those contractual protections to move forward with critical capacity projects. Where SFPP has

declined to relocate its pipeline to accommodate rail construction as requested by Union Pacific, Union Pacific has needed to invoke the Railroad Right-Of-Way Protections to require SFPP to do so.

In some cases, SFPP's failure to relocate has caused years of delay and litigation. V.S. Hovanec at 8-10. For example, Union Pacific's construction of a second mainline track near Palm Springs, California was delayed by several years due to SFPP's failure to relocate as requested; a court eventually ruled that the Railroad Right-Of-Way Protections required relocation.²⁴ In another example, a safety-related road project in Pomona, California to replace an at-grade crossing with a grade-separated crossing was delayed for several years because of SFPP's failure to relocate or protect the pipeline as requested by Union Pacific.²⁵ And SFPP recently filed a lawsuit seeking to prevent a pipeline relocation that is essential to Union Pacific's plan to eliminate a freight bottleneck by double-tracking a section of the Alhambra Subdivision between West Colton and Pomona.²⁶ Mr. Hovanec's verified statement details other instances where the Railroad Right-Of-Way Protections have had or may need to be invoked to secure the pipeline relocation necessary to complete a construction project.

SFPP's effort to have a state court void the 1994 Agreement and its Railroad Right-Of-Way Protections thus would remove the contractual provisions that have allowed Union Pacific to complete critical construction projects that require pipeline relocation. If SFPP were successful in voiding these protections, Union Pacific would have no way in the future to require SFPP to relocate pipeline that

²⁴ See Hovanec V.S. at 8-9; Beaumont Hill Action, *supra* n. 10.

²⁵ See Hovanec V.S. at 9; Pomona Action, *supra* n. 11.

²⁶ See Hovanec V.S. at 9; Alhambra Action, *supra* n. 12.

obstructed construction projects on the right-of-way, and necessary infrastructure improvements might never be built.

Courts and the Board have repeatedly held that actions such as SFPP's are preempted by Section 10501(b). For example, in *CTA*, the Chicago Transit Authority attempted to use condemnation to secure the right to operate over Union Pacific's lines without the restrictions of its lease with Union Pacific because "CTA [was] dissatisfied with the monthly rent arrangement that it agreed to when it first entered the lease." *CTA*, 647 F.3d at 680. The Seventh Circuit, however, found that the condemnation action was preempted by ICCTA because the CTA's condemnation action unduly interfered with rail operations:

The CTA's use of the Right of Way [through condemnation] has a significant impact on railroad transportation: it prevents Union Pacific from using the property itself for additional tracks; and it affects Union Pacific's current railroad operations, including requiring Union Pacific to use nonstandard procedures to maintain the Right of Way [T]he CTA is seeking, by regulation and not by agreement, to use Union Pacific's property in a way that has a significant impact on railroad transportation. And a regulation (instead of an agreement or contract) that prevents or unreasonably interferes with railroad transportation is preempted by the Act.

Id. at 682. Under the principles described in *CTA*, SFPP's attempt to use state law causes of action to maintain its pipeline at its present location without the agreed Railroad Right-of-Way Protections is preempted.²⁷ Like the condemnation action in

²⁷ Other courts have found preemption of state law claims brought on the theory that the railroad's use of its property was interfering with state law property rights. *See, e.g., Pace v. CSX Transp., Inc.*, 613 F.3d at 1069 (ICCTA preempted nuisance action brought against railroad's operation of sidetrack); *14500 Limited v. CSX Transp., Inc.*, 2013 U.S. Dist. LEXIS 39806, at *13 (N.D. Ohio, Mar. 14, 2013) (adverse possession claim preempted because taking of railroad's property "would affect railroad transportation in the future," since property is needed to accommodate railroad's future needs "due to increased traffic through the Rail Corridor"); *B & S Holdings, LLC, v. BNSF Ry. Co.*, 889 F.Supp.2d 1252, 1258 (E.D. Wash. 2012) (adverse possession cause of action preempted "because not only would

CTA, SFPP’s state causes of action, if successful, would substantially interfere with Union Pacific’s operations, including its ability to expand its capacity by adding additional track on its right-of-way.

The Board has similarly recognized that analogous state court actions that would interfere with a railroad’s operations and capacity are preempted by ICCTA. In *Wichita Terminal*, for example, the Board found that a state court order requiring the installation of a crossing across a railroad’s tracks is preempted because such installation “would reduce capacity on the [interchange tracks], thereby impeding rail operations that are part of the national rail network and unduly interfering with the Board’s ‘exclusive’ jurisdiction over ‘transportation by rail carrier.’” *Wichita Terminal* at 9. And in *14500 Limited LLC—Pet. for Decl. Order*, STB Fin. Docket No. 35788 (served June 5, 2014), the Board held that Section 10501(b) preempted an adverse possession claim brought against CSXT in state court because “CSXT needs the contested property to accommodate future transportation needs due to the potential for increased traffic” at the rail yard in question, and taking the parcel from CSXT would affect railroad transportation in the future. *Id.* at 4. Thus, the claim would unreasonably interfere with rail transportation. *Id.*²⁸

it interfere with railroad operations, but [it] would divest the railroad of the very property with which it conducts its operations”); *Kiser*, 2008 U.S. Dist. LEXIS 90676, at *8 (state nuisance action seeking relocation of planned intermodal facility was preempted); *Maynard*, 360 F. Supp. 2d at 842 (ICCTA preempted nuisance claim that railroad operated side track in a way that unreasonably blocked access to plaintiffs’ property).

²⁸ See also *Norfolk Southern Ry. Co. and Alabama Great Northern R.R. Co.—Pet. for Decl. Order*, STB Fin. Docket No. 35196, at 5 (served Mar. 1, 2010) (city’s court action to condemn railroad property was preempted because the property abuts an existing rail corridor, “NS has plans for significant improvement and increased rail traffic volume,” and “the park the City proposed to build [on the property in question] would interfere with or prevent these transportation activities, as well as prevent the railroad from properly conducting railroad maintenance activities and

The *CTA*, *Wichita Terminal*, and *14500 Limited* decisions make clear that a state cause of action is preempted by ICCTA if it would: (1) require the railroad to allow another entity, a facility, or a person access to—and the use of—the railroad’s right-of-way without honoring the Railroad Right-Of-Way Protections and (2) adversely affect the railroad’s ability to conduct its rail operations, including its ability to increase its capacity to meet shipper demand. That is precisely the situation here. SFPP is seeking a court order requiring Union Pacific to allow SFPP’s property to remain in its present location on Union Pacific’s right-of-way without Union Pacific’s consent. Such a requirement would unreasonably interfere with Union Pacific’s ability to add sufficient capacity to its system to serve future demand. Therefore, SFPP’s state law action is preempted.

III. The Board Should Exercise Its Discretion to Issue a Declaratory Order.

The Board would be well served to exercise its discretion to issue a declaratory order here. The Administrative Procedure Act provides that an agency, “in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.” 5 U.S.C. § 554(e). The Board “has, on many occasions, used the declaratory order process to address issues involving the Federal preemption provision contained in 49 U.S.C. § 10501(b).” *Pinelawn* at 6. Moreover, courts have recognized that, as the agency authorized by Congress to administer ICCTA, the Board is “uniquely qualified” to address whether 10501(b) preempts state law. *See Emerson v. Kan. City S. Ry. Co.*, 503 F.3d 1126, 1130 (10th Cir. 2007); *Green Mountain*, 404 F.3d at 642.

clearing derailments”); *Lange* at 3-5 (ICCTA preempted a state law trespass claim that would deprive a railroad of its ability to use property that for rail operations because it would effectively regulate rail transportation).

Union Pacific strongly urges the Board to issue a declaratory order for two reasons. *First*, Board guidance is needed here because this controversy presents an important preemption issue. Although the preemption principles that govern this case are well-established, the Board has not previously addressed the extent to which ICCTA preempts state court actions intended to: (1) nullify contractual Railroad Right-Of-Way Protections, such as those set forth in the 1994 Agreement, including the railroad’s right to require that the pipeline relocate when deemed necessary; and (2) enable the pipeline to remain on a railroad’s operating property indefinitely without the railroad’s agreement or consent, even where the pipeline’s presence unduly interferes with rail transportation. Resolution of this important issue by the Board—the agency tasked with administering the ICCTA—therefore would be beneficial to the parties and the courts. *See, e.g., CA Rail* at 5 (Board chose to issue declaratory order because it “will inform interested parties and the California Supreme Court of our views on federal preemption of [the California Environmental Quality Act] and the market participant doctrine as they relate to this matter involving railroad transportation within the Board’s jurisdiction under § 10501(b)”).

Second, the issuance of a declaratory order would promote the National interest in growing our interstate rail network. The Board can appropriately limit the reach of state remedies, such as those SFPP is pursuing here, which would have the effect of interfering with railroad operations and blocking, delaying, or interfering with needed investments in the rail network. *Cf. CA Rail* at 5 (Board will issue declaratory order because uncertainty as to preemption issue could impact California High-Speed Rail Authority’s ability to proceed with construction of rail line). The Board is aware of the growing demands placed on the existing rail network and that the best way to provide the highest levels of service and to meet the National appetite for rail transportation is with capital investments.

It is worth emphasizing that this Petition only asks the Board to decide the narrow question of whether SFPP may use its state law cause of action to rescind the 1994 Agreement to extinguish the Railroad Right-Of-Way Protections under that Agreement while remaining on Union Pacific right-of-way. This Petition does not ask the Board to consider any other questions that have been raised in any prior or current litigation between Union Pacific and SFPP, such as what rental Union Pacific may charge SFPP, nor does it ask the Board to interpret the Agreement in any way. Those disputes can be resolved either by mutual agreement of the parties or, if necessary, by the courts. But the Board can and should decide the issue that is squarely within its jurisdiction: whether SFPP, through court action, can rescind the Railroad Right-Of-Way Protections and maintain its pipeline on property used for rail transportation subject to the Board's exclusive jurisdiction, without the consent of Union Pacific, where such regulation would unduly interfere with Union Pacific's railroad operations and prevent Union Pacific from upgrading its rail lines. Applying settled principles of Federal law, the answer to that question is clearly no.

This controversy is not limited in geographic scope to some relatively small portion of the Union Pacific system. Rather, it impacts Union Pacific's ability to make needed capital investments across six states and along key transportation corridors that represent the core of Union Pacific's interstate rail operations in the Pacific Southwest. In the coming decades, this region of the Nation is projected to have population and economic growth well above the national average, making the need for capacity enhancements even more acute.²⁹ This is not a mere matter of money or a private dispute—it is a challenge to the Board's exclusive jurisdiction

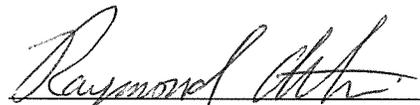
²⁹ See Exhibit 8 at 4, which is a presentation from Union Pacific's 2014 Investor Day that shows that California and Arizona are projected by the Census Bureau to be among the highest growth states in the nation. The presentation reproduced as Exhibit 8 is publicly available by following the "Growing the Franchise" link at http://www.up.com/investor/presentations/investor_day/agenda/index.htm.

and a threat to critical infrastructure investments over a wide swath of Union Pacific's network.

CONCLUSION

For the reasons detailed above and in the attached verified statements, Union Pacific asks the Board to declare that the state rescission action brought by SFPP is an attempt to regulate rail transportation and is therefore preempted by ICCTA because it would have the effect of foreclosing or unduly restricting Union Pacific's ability to conduct its rail operations and would otherwise unreasonably burden interstate commerce.

Respectfully submitted,



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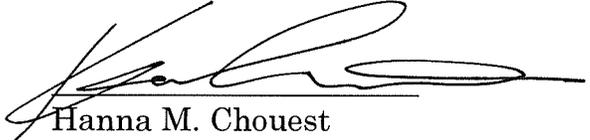
Counsel to Union Pacific Railroad Company

Date: September 24, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2015, I caused a copy of the foregoing Union Pacific Petition for Declaratory Order to be served by email and overnight delivery upon the following counsel of record for SFPP, L.P. in the rescission action addressed in the Petition:

Steven M. Strauss
M. Ray Hartman III
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Hanna M. Chouest

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35960

**UNION PACIFIC RAILROAD COMPANY
-PETITION FOR DECLARATORY ORDER-**

VERIFIED STATEMENT

OF

TONY K. LOVE

VERIFIED STATEMENT
OF
TONY K. LOVE

My name is Tony Love. I am Assistant Vice President of Real Estate for Union Pacific Railroad, and I am submitting this Verified Statement in support of Union Pacific's Petition for Declaratory Order. This statement will briefly describe the assembly of the railroad rights-of-way at issue in the Petition; the history of how the SFPP pipeline came to be present on those railroad rights-of-way and the protections imposed to limit pipeline interference with railroad operations; and the subsequent corporate transactions that resulted in separate ownership of the railroad and pipeline.

As Assistant Vice President of Real Estate, I have primary responsibility for Union Pacific's extensive real estate holdings. I run Union Pacific's Real Estate Department, which includes almost 100 employees. My responsibilities include overseeing the buying, selling, leasing and managing of Union Pacific's property. This includes managing new and existing agreements governing underground and overhead encroachments for pipelines, telecommunication facilities, sewers and other structures located on railroad property. As part of those responsibilities, I manage Union Pacific's

Amended and Restated Easement Agreement with SFPP, L.P., (“SFPP”), entered into in 1994, under which the SFPP pipeline is granted access to our operating rights-of-way (“1994 Agreement,” also known as the “AREA”). That agreement is attached as Exhibit 4 to Union Pacific’s Petition for Declaratory Order (“Petition”).

I worked for the Southern Pacific railroad from 1989 until its merger with Union Pacific in 1996. I began as a title specialist before advancing to be the Assistant Regional Director for a major region of the Southern Pacific system and then the Assistant Vice President of Real Estate. Following the merger, I was a Director of Real Estate for Union Pacific, managing a large region of the country including California and Arizona, until I was promoted to my present position.

Section I of this statement describes the railroad operating rights-of-way over which SFPP has installed its pipeline. Section II details how the pipeline, originally operated by Southern Pacific Pipe Lines, Inc. (“SPPL”), came to be constructed on railroad operating rights-of-way and the specific protections imposed by the agreement between the railroad and pipeline to limit pipeline interference with railroad operations. Section III describes the corporate transactions through which the ownership of the railroad and the pipeline became separated and shows that these changes did not alter the conditions under which the pipeline was permitted to operate on the railroad.

I. Assembly of the Railroad Rights-of-Way at Issue in the Petition.

The parts of the Union Pacific railroad system that today are occupied by the SFPP pipeline were constructed and assembled by one of Union Pacific’s predecessors, the Southern Pacific railroad, and several of its predecessor railroads between 1864 and 1926.

Southern Pacific and its predecessors assembled their operating rights-of-way, including the property the SFPP pipeline now occupies, through several different types of conveyances. Certain fee simple interests in the rights-of-way were acquired through deed conveyances; other portions were assembled by purchasing easements; and other portions were obtained through federal grants, including the 19th Century Land Grant Acts passed by Congress to encourage the construction of transcontinental railroads during and after the Civil War. For example, Southern Pacific and its predecessors obtained some portions of their rights-of-way through pre-1871 Acts, which granted right-of-way property along with alternating sections of land adjacent to the right-of-way. Other portions were obtained through the General Railroad Right-of-Way Act of 1875, which conveyed a right-of-way for railroad purposes.

Figure 1 on the following page is a map that illustrates the railroad operating rights-of-way assembled by the Southern Pacific railroad and its predecessors, and now part of the Union Pacific railroad system, on which SFPP pipelines ultimately were located. (A full-page copy of this map is attached as Exhibit 2 to our Petition.)

Figure 1: Historical Acquisitions of Union Pacific Right-of-Way



The green and yellow colored lines on Figure 1 are Northern California lines constructed by the Central Pacific Railroad. Construction of these lines began in Sacramento with the start of the Central Pacific Railroad in 1864. This line ran east

through Nevada, eventually connecting with Union Pacific at Promontory Point, Utah in 1869. The section of this line in yellow between Oakland and Sacramento was constructed by the Central Pacific in 1869. The majority of the line between Oakland and Utah was built on land received by the railroads under acts of Congress. The Central Pacific was merged into the Southern Pacific railroad in 1959.

The light-blue colored line on Figure 1 shows a second line between Oakland and Sacramento that was built by Southern Pacific in 1879. Southern Pacific acquired primarily fee title, instead of an easement, to the land on which this line was constructed.

The purple colored lines extending north from Sacramento to the Oregon border and south from Sacramento were constructed by the Central Pacific between 1869 and 1874 on land that Central Pacific acquired in fee and not by land grant.

Another Southern Pacific predecessor, the San Pablo and Tulare Railroad built the navy blue colored line connecting Oakland to the north-south yellow and purple line in 1873 on land acquired through a combination of land grants and acquisitions. The San Pablo was merged into the Southern Pacific in 1888.

The orange colored line between Portland and Eugene in Oregon was built by the Oregon and California Railroad and the Southern Pacific in 1871 and 1872, again on a combination of land grants and acquisitions. The Oregon and California was merged into the Southern Pacific in 1927.

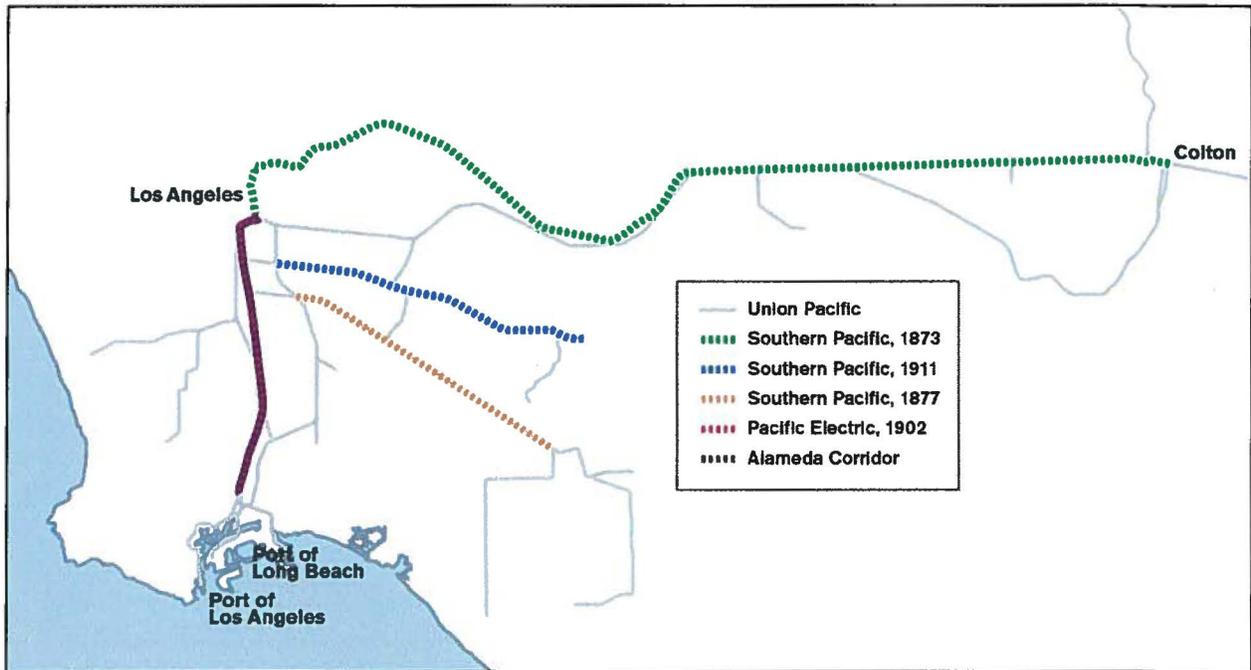
The piece of the track network now used by the pipeline, shown in red, is commonly referred to as the Sunset Route. Between 1877 and 1880, Southern Pacific constructed this route from Los Angeles to El Paso, primarily on right-of-way acquired

by land grant. The line that ran through Phoenix, not colored on Figure 1, to the north of today's mainline was added in 1926.

Southeast of El Paso, the Galveston, Harrisburg and San Antonio Railway (which was merged into Southern Pacific in 1961) built the green line to connect with Southern Pacific in 1881. The El Paso & Northeastern Railway (which was acquired by the El Paso & Southwestern Railway in 1905 then merged into Southern Pacific in 1955) built the blue line extending northeast from El Paso in 1899 to eventually create a connection to Chicago.

Figure 2 below focuses on the Los Angeles area and, like Figure 1, illustrates the Union Pacific rights-of-way assembled by the Southern Pacific railroad and its predecessors, on which SFPP pipelines ultimately were located. (A full-page copy of this map is attached as Exhibit 3 to our Petition.)

Figure 2: Union Pacific Rights-of-Way Assembled in Los Angeles Area



The majority of the track in the Los Angeles Basin was constructed by Southern Pacific. This track, shown in green on Figure 2, was constructed by Southern Pacific in 1873 with additional track extending southeast built in 1877 (the yellow line) and 1911 (the blue line). The track was extended by the Pacific Electric Railway to the south in 1902 (the red line). The Pacific Electric Railway was merged into Southern Pacific in 1961. This original Pacific Electric Railway line is now part of the Alameda Corridor and serves as a critical connection to the Ports of Long Beach and Los Angeles.

These railroad rights-of-way encompass virtually every type of land use and topography, from the densely populated urban centers of the Los Angeles area, the Bay Area, Reno and Phoenix; to the flat, agricultural expanses of California's Central Valley; to long stretches of high and low desert in some states; and across the Sierra Nevada Mountains. SFPP's pipeline typically is located parallel to the tracks near the edges of the right-of-way. In scores of locations, however, the pipeline crosses underneath the tracks from one side of the right-of-way to the other, or is located much nearer to the tracks than the edge of the right-of-way. In other places the pipeline runs within a rail yard or other large parcel of railroad property along the right-of-way. The depth of the pipeline varies depending upon the topography and other uses of the property.

Figure 3 on the following page is a map that illustrates the location of the SFPP pipeline on these railroad operating rail rights-of-way, which are now part of the Union Pacific system. (A full-page copy of this map is attached as Exhibit 1 to our Petition.)

Figure 3: SFPP Pipelines on Union Pacific Right-of-Way



While the railroad rights-of-way described here were assembled through various means, the common thread is that all were used for rail transportation for at least a quarter-century, most for much longer, before the pipeline was constructed. The ability

to construct and operate a pipeline on these rights-of-way is and always has been subordinate to the primary purpose of providing rail transportation.

II. SFPP's Pipeline Was Installed Subject to an Agreement that Explicitly Protected Rail Operations on the Right-of-Way.

The SFPP pipeline began as a creation of the parent in the Southern Pacific corporate family.¹ In the mid-1950s, the then-parent of the Southern Pacific railroad created a wholly-owned petroleum products pipeline company. Over time, the pipeline company and its successors constructed a pipeline through several western states. Because the railroad already possessed thousands of miles of right-of-way well-suited to the construction of such a pipeline due to the contiguous corridor it provided, much of the pipeline was installed on railroad operating property. The pipeline ultimately was installed on easements covering approximately 1,800 miles of railroad right-of-way through 42 different counties in California, Arizona, New Mexico, Texas, Nevada, and Oregon between 1955 and the early 1990s.

For the portion of the pipeline constructed on railroad property, Southern Pacific and the pipeline company entered into two master agreements—the 1955 Agreement (which is attached as Exhibit 6 to our Petition), and the 1956 Agreement (which is attached as Exhibit 7 to our Petition). The agreements provided that Southern Pacific would grant perpetual easements for the various portions of the pipeline to be constructed on railroad property in California, Arizona, New Mexico, Texas, and Nevada. Certain property in Oregon was later added by agreement.

¹ To simplify discussion, I use Southern Pacific to embrace both the holding company and the railroad and use more specific names for Southern Pacific-related entities only when necessary for greater precision.

The agreements documented the railroad's superior rights to the railroad right-of-way and ensured that the pipeline would not interfere with railroad operations.

For example, Section 1 of the agreements specifically provided that Southern Pacific granted the easements "subject to and subordinate to" the Railroad's "prior and continuing right and obligation . . . to use and maintain the entire railroad right of way and property in performance of its public duty as a common carrier" and to the Railroad's right to "construct, maintain, use and operate . . . existing or additional railroad tracks and appurtenances thereto . . . and other railroad facilities and structure of any kind," and to do so "freely . . . at all time or times . . . without liability for compensation or damage." 1955 and 1956 Agreement, §1.

Similarly, in Section 3 of the agreements, the parties agreed that "the pipe line shall be constructed . . . maintained and operated . . . in such manner as not to interfere with or endanger railroad property or operations." 1955 and 1956 Agreement, §3. In addition, the pipeline agreed to relocate at its sole cost and expense "[i]n the event that Railroad shall at any time deem it necessary." 1955 and 1956 Agreement, §3.

The railroad also maintained the ability to terminate the agreements and reacquire the property. The pipeline easements were granted "upon the express condition subsequent that . . . in the event of breach by [the pipeline] Company . . . of any covenant or condition herein contained and such default is not remedied within six (6) months" the easement would terminate and the Railroad "shall have the right . . . to resume exclusive possession of" the property occupied by the pipeline. 1955 and 1956 Agreement, §8.

In addition, the railroad granted the easements “subject to all valid and existing . . . claims of title which may affect the property.” 1955 and 1956 Agreement, §10.

III. The Corporate Transactions that Led to Separate Ownership of the Railroad and the Pipeline.

In 1983, Southern Pacific and the parent company of the Atchison Topeka & Santa Fe Railway (“Santa Fe”) announced a merger. It is my understanding that Santa Fe’s acquisition of the pipeline company created by Southern Pacific was not subject to Interstate Commerce Commission (“ICC”) jurisdiction, but its acquisition of the Southern Pacific railroad was. Santa Fe thus was able to proceed with its acquisition of the pipeline company, while it is my understanding that the Southern Pacific’s railroad stock was placed into a voting trust to ensure the railroad’s independence while the ICC reviewed the proposed merger.

Ultimately, the ICC disapproved the merger and required Santa Fe to divest itself of the Southern Pacific railroad. Santa Fe sold the railroad in 1988 to the parent company of the Denver and Rio Grande Western Railroad. However, it is my understanding that the pipeline company remained with Santa Fe. Thus, the ownership of the Southern Pacific railroad and its onetime affiliate, the pipeline, became separated.

In April 1994, the Southern Pacific railroad and the pipeline company, by then known as SFPP, entered into the 1994 Agreement, which consolidated into one agreement governance of all of the individual existing documented pipeline easement agreements and some previously granted but undocumented easements. Importantly, the 1994 Agreement contains the same essential protections for operation of the railroad as the original easements granted pursuant to the 1950s-era agreements.

Under Section 1(f) of the 1994 Agreement, the pipeline easements are:

subject to and subordinate to the prior and continuing right and obligation of Railroad and its respective successors or assigns to use and maintain the entire railroad right of way and property in performance of its public duty as a common carrier and is also subject to the right and power of Railroad, its successors or assigns in interest or ownership of the said railroad right of way and property, to construct, maintain, use, and operate on the present or other grade, existing or additional railroad tracks and appurtenances thereto, including water and fuel pipe lines and conduits and telegraph, telephone, signal, power and other electric lines and other railroad facilities and structures of any kind upon, along, or across any or all parts of said land above described, all or any of which may be freely done at all time or times by Railroad, or its successors or assigns, without liability for compensation or damage.
(emphasis added.)

Under Section 3 of the 1994 Agreement, SFPP agrees that the pipeline:

shall be constructed, reconstructed, renewed, maintained and operated and all work thereon or in connection therewith shall be performed in a careful, safe and workmanlike manner in accordance with all laws and regulations governing the same and *in such manner as not to interfere with or endanger railroad property or operations.*
(emphasis added.)

SFPP further agrees under Section 3 that:

In the event that Railroad shall at any time deem it necessary, the Company shall, upon receipt of written notice so to do, at Company's sole cost and expense, change the location of said pipe line, its adjuncts or appurtenances, on railroad property to such point or points thereon as Railroad shall designate and reconstruct or reinforce the same.

Under Section 8, SFPP agrees that:

in the event Company, its successors or assigns, abandon the use of said property or fail to use the same for the purposes herein granted for a continuous period of two (2) years, or *in the event of a breach by Company, its successors or assigns, of any covenants or condition herein*

contained and such default is not remedied within six (6) months after written notice from Railroad so to do, then, and in either of those events, the rights herein granted shall cease and terminate and *Railroad, its successors or assigns, shall have the right*, in addition to but not in qualification of the rights hereinabove reserved to *resume exclusive possession of said property* (emphasis added.)

Section 10 of the 1994 Agreement contains the same provisions as the earlier easement agreements concerning existing encumbrances, claims of title and the like:

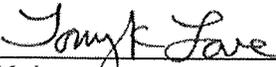
The easements granted herein are subject to all valid and existing contracts, leases, liens or encumbrances or claims of title which may affect the property, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

Thus, the SFPP pipeline today—just as it was when it originally was constructed on railroad operating rights-of-way—is subject to the railroad's obligation to operate as a common carrier without interference to its operations.

VERIFICATION

I, Tony K. Love, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this statement.

Executed on September 23, 2015



Tony K. Love

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35960

UNION PACIFIC RAILROAD COMPANY
-PETITION FOR DECLARATORY ORDER-

VERIFIED STATEMENT

OF

JOHN J. HOVANEC

VERIFIED STATEMENT
OF
JOHN J. HOVANEC

My name is John Hovanec. I am Assistant Vice President – Engineering Design for Union Pacific Railroad. This statement describes specific ways in which the presence of the SFPP pipeline in and along our right-of-way interferes with Union Pacific’s railroad operations and why the 1994 Agreement (attached as Exhibit 4 to Union Pacific’s Petition for Declaratory Order) is essential to Union Pacific’s ability to maintain and expand service on our railroad.

I have worked for Union Pacific in various design and construction positions since 1978. I started with the railroad as a Construction Designer and moved up through positions of increasing responsibility including Manager, Senior Manager, Director of Construction and General Director of Design. In my current position, which I have held since 2007, I manage engineering design projects across the Union Pacific system. These projects include both replacing existing infrastructure and installing new rail infrastructure that is needed to add capacity to and improve service on our railroad. I have been involved in numerous projects that required relocating pipelines or other utilities located along our right-of-way, including the projects described below involving the SFPP pipeline.

In Part I below, I provide a brief overview of Union Pacific’s system and explain how the presence of the SFPP pipeline on our right-of-way creates ongoing interference with Union Pacific’s maintenance and railroad operations. In Part II, I describe our process for evaluating and implementing capacity expansion projects and the effect of the pipeline’s presence on such projects. Finally, in Part III, I provide examples of specific capacity and safety projects that were delayed or prevented due to the presence of the SFPP pipeline.

I. Ongoing Pipeline Interference with Railroad Maintenance and Operations

Union Pacific's rail network consists of more than 32,000 miles of track in 23 states. The SFPP pipeline is located on our railroad operating rights-of-way in six of those states—California, Arizona, New Mexico, Texas, Oregon and Nevada. In my experience, the mere presence of the SFPP pipeline on and along our right-of-way creates ongoing challenges for railroad maintenance projects and operations.

As brief background, changes in railroad operations in recent decades have had a direct impact on the type and amount of maintenance we must perform and the design of our track. For example, the size and weight of the average train has increased significantly. In the 1960s, an average train size was approximately 4,000 feet; today, an average train size is over 6,000 feet, and even longer trains are planned in the future. During this same time period, the average weight of a loaded rail car increased from 263,000 pounds to 286,000 pounds. Consequently, we now design double track and sidings with more distance between tracks so that we can perform maintenance on one track while we continue to operate trains on the adjacent track. Greater distance between tracks means the tracks now occupy more right-of-way. And due to much higher volume, we have added and will continue to add more double track segments.

In my experience, track maintenance is an essential railroad function impacted by the pipeline's presence. Every time a maintenance crew performs any sub-surface work on a right-of-way where the SFPP pipeline is present, the crew must change how it operates to account for the presence of the pipeline. This type of work can include installing or replacing signal towers and PTC towers, constructing or maintaining drainage ditches, and performing smaller projects such as clearing trees. Before work can be performed on the right-of-way, the crew must first locate underground facilities, including the SFPP pipeline, to ensure the planned work can be

performed safely and will not impact these facilities. In such cases, the work plan may be affected by the SFPP pipeline's location. In some cases, we must consult with the SFPP pipeline before conducting work, because we do not have sufficiently detailed and reliable plans showing the pipeline location.

Similarly, maintenance work on the railroad is rarely confined just to the track area itself. Railroad crews and equipment need space to work and maneuver. We have less room for maintenance crews and equipment in places where the SFPP pipeline includes aboveground facilities such as markers, vent pipes and maintenance access ports. Even where the pipeline is entirely below ground, crews may have a limited work area because the pipeline may not be able to withstand the weight of heavy machinery (including trucks, cranes or earthmovers) which is used to deliver materials (including ballast and ties) to the work site, to unload materials from a rail car or to move materials after they are unloaded. When proximity to the pipeline cannot be avoided, large steel plates or wood mats must be placed on the ground to protect the pipeline by spreading the weight of the machinery over larger surface areas. Steel plates or wood mats also can be required when we perform work to put a track back in service after a derailment. Taking this additional step both complicates and prolongs the job because the plates or mats must arrive and be placed before the machinery can enter the work site and then be removed afterwards.

The pipeline also impacts our operations when pipeline employees need to enter onto our right-of-way to work. Anytime pipeline employees are present on our right-of-way, we must coordinate with the SFPP pipeline to ensure the safety of pipeline and railroad employees and to minimize disruption to railroad service. Although our employees have the training and experience to be mindful of the dangers in working near active track, employees of third parties, such as the pipeline, may be less aware of the risks. This typically requires us to notify our

dispatchers and train crews that a third party is working near the track. In areas where the pipeline is close to the track, we may have to slow down our trains or supply a flagger to notify passing trains that workers are in the area.

In addition to the above examples, I am aware of at least one instance where SFPP's work on the pipeline under our right-of-way disrupted Union Pacific's operations. This occurred in Arizona when SFPP personnel working on the pipeline caused an accidental release of petroleum product from the pipeline. This incident required us to stop running trains in the area for several hours while SFPP personnel repaired the pipeline.

II. The Pipeline's Effect on Railroad Capacity Projects

We constantly monitor customer demands and traffic projections to determine when and where our system may become capacity constrained. When a capacity constraint is identified, I coordinate with our Real Estate and Network Planning & Operations departments to determine the nature and location of a capacity improvement that will address the constraint.

A capacity improvement is any project that increases the number of trains that can use a line segment or improves the efficiency with which we can operate. For example, prior to the merger with Union Pacific, Southern Pacific operated an average of 30 trains per day on the Sunset Corridor from Los Angeles to El Paso (which is one of the rights-of-way used by the SFPP pipeline). Today, the Sunset Corridor regularly carries more than 45 trains per day and has carried 50 or more during high volume periods. In the last 20 years, we have added significant capacity along the Sunset Corridor to address this increased volume of trains, and we must maintain the flexibility to increase system capacity in the future wherever it is needed.

Capacity improvement projects can take different forms. These projects can include ones designed to increase corridor capacity, for example, by installing an additional track (*i.e.*, double-

tracking), installing a new siding, lengthening an existing siding, widening a bridge or upgrading a signal system. Other projects may be designed to increase terminal capacity, such as by expanding a rail yard or constructing a new rail yard.

Our process for capacity improvement projects is directly affected by the presence of third-party facilities on our operating right-of-way, such as the SFPP pipeline. After we determine which type of improvement will address the particular capacity constraint, as discussed above, we develop a preliminary design for the project. The preliminary design is followed by a field investigation to determine if the proposed track in the project area is located near any third-party facilities, such as pipelines, wire lines, culverts, fences, or fiber optics. It is always our preference to avoid having to relocate existing facilities and, when feasible, we will modify the project track design to avoid or minimize the impact with existing facilities.

When a pipeline or other facility is located on the right-of-way of the proposed project area, relocation or modification is sometimes necessary before work can proceed. Typically, pipeline relocation or modification is required because of insufficient lateral or vertical distance between the new track and the pipeline. For example, installing a new track generally first requires grading the road bed. Then, the track is built up to a higher elevation and ditches are dug to allow for proper drainage. In some cases, a pipeline along the right-of-way must be relocated because we cannot physically perform this work with the pipeline in place.

In other cases, track installation may be physically possible without relocating the pipeline, but the newly built track will be closer to the pipeline than we consider sufficient for safe operations. We typically require pipelines to be located no less than 25 feet from the centerline of the closest track. This distance normally is sufficient to allow us to perform most maintenance and other right-of-way work without requiring heavy equipment to operate over the

pipeline for significant periods of time. This distance also lowers the risk of a pipeline rupture caused by rail cars moving off of the track during a derailment. If a pipeline encroaches on the safe distance from the new track, then it should be relocated.

A pipeline may also have to be relocated or protected if it is too close to the surface in a project area. Track installation typically requires the use of heavy equipment (e.g., cranes, trucks loaded with fill or materials) on the right-of-way. If a pipeline is too close to the surface, it may have to be relocated or protected to allow railroad crews and equipment to access the right-of-way without the additional weight damaging the pipeline.

It is important to remember that railroad tracks consist of more than just the rail and ties. To be able to support a train, the track structure must be built to specific standards including the amount of ballast below and alongside the track and proper drainage. All of this is taken into account when we build a new track and requires that we are able to control the location of facilities on and along the right-of-way to ensure that the track can be installed properly and efficiently, without being obstructed by, or obstructing, those facilities.

Interference by an underground pipeline is a particular concern when we are contemplating larger capacity-enhancing projects. Capacity projects, like installing a second track, are major undertakings and typically take at least 18 months to complete from planning to execution. These jobs require the use of massive equipment and dozens of workers. The construction zone extends far beyond the track itself and often requires use of land outside the existing right-of-way.

When Union Pacific installs a new rail siding or double track, we typically try to leave the existing track in its current location and install the new track at a safe distance from the existing track (the distance between the tracks, or between the track and another obstruction is

referred to as separation). When there is a pipeline adjacent to a track, we evaluate all cost-effective options, including installing the new track on the opposite side of the existing track from the pipeline to avoid having to relocate or modify the pipeline. When that is not possible or feasible, we must wait until the pipeline is relocated before construction can proceed.

When modifying the project design is not feasible, we will approach the owner of the facility to coordinate modification, relocation, or removal of the interfering facility. For example, in some limited instances, instead of relocation a pipeline can be modified by adding more protection to the pipeline, such as pouring a concrete slab. Arriving at an optimum plan for a particular facility is usually a complex process that requires collaboration between Union Pacific and the facility owner so we can arrive at a plan that satisfies both parties. This process is typically guided by an agreement between Union Pacific and the facility owner that, among other things, requires the facility to relocate as needed. Union Pacific does not voluntarily allow third parties to install facilities on its right-of-way without such an agreement.

In my experience, the existence of agreements governing the obligations of third parties located on our right-of-way, such as the 1994 Agreement, is essential in allowing needed railroad capacity projects to move forward. Lack of a governing agreement can lead to disputes and a dispute with a facility owner over whether a facility must relocate or who must pay for the relocation can cause delay because the design and construction of the project are impacted by the presence or absence of the facility. An agreement with a facility owner provides a framework for us to work out relocations and funding issues and provides some certainty that a project will not be delayed indefinitely or prevented entirely. Without such rights, future capacity projects would be at risk because cost increases or the design changes may reduce project benefits, and their projected return may prevent them from going forward.

III. Examples of Rail Construction Projects that Have Required Relocation of the SFPP Pipeline

With the SFPP pipeline buried beneath hundreds of miles of Union Pacific's operating right-of-way, it was inevitable that important rail investment projects would require relocation of the pipeline. Below, I offer a few examples. These examples are offered to make the following points. First, rail projects can require the relocation of the pipeline. Second, Union Pacific tries to accommodate the pipeline without relocation wherever possible. In some cases, we were able to design the capacity projects so as not to require the pipeline to relocate, or we were able to work with SFPP to reach a design solution other than relocation. Third, SFPP sometimes has not relocated, and in these cases the planned projects may never have moved forward if Union Pacific was unable to invoke its right-of-way protections. Finally, even with these protections in place, SFPP's presence led to lengthy delays.

In every case, the agreement currently in effect with SFPP provided Union Pacific with the necessary rights to have the required work performed.

- *Sunset Corridor*. The Sunset Corridor is a 760-mile line between Los Angeles and El Paso, TX. In 1994, less than 25% of this line was double tracked. Since 1997, we have installed approximately 451 miles of double track at a total cost of over \$1 billion. Today, 83% of the Sunset is double tracked. During this project, we avoided conflicts with the pipeline whenever feasible, typically by installing the second track on the side of the right-of-way not occupied by the pipeline. I offer this example to show that Union Pacific will accommodate the presence of the pipeline when possible, and seeks relocation only where alternatives are impractical or infeasible. Even in this case, however, the presence of the SFPP pipeline still caused months of delay on this project because SFPP initially did not provide Union Pacific with sufficient data on the precise location of the pipeline located along our right-of-way to allow work to proceed.
- *Beaumont Hill*. In 2005, Union Pacific began planning a project to install a second mainline along a 10-mile section of track near Palm Springs, California to improve capacity and fluidity of operations. After determining that the SFPP pipeline ran through the project right-of-way, we looked at several alternative designs to accommodate the second track. Due to the geography of the area, there was no feasible design that would avoid the pipeline completely. Therefore, the

pipeline needed to be relocated to provide for safe separation between the pipeline and track. SFPP initially did not relocate as Union Pacific requested, leading to what I understand was more than six years of litigation, which I understand ended with a judgment in Union Pacific's favor. The project has now been completed.

- *Pomona.* In 2006, Alameda Corridor-East Construction Authority approached Union Pacific concerning rerouting trains from an at-grade road crossing to a grade-separated crossing. This safety-related project would require Union Pacific to install a new track and change the alignment of the existing tracks under the grade separation. Due to the narrow right-of-way beneath the roadway, the SFPP pipeline had to be relocated or protected to accommodate the realignment and new track. SFPP initially did not relocate as requested by Union Pacific, which, as I understand it, also resulted in litigation and more than two years of delay. I understand that litigation now has been concluded and the project is going forward.
- *Montclair Yard.* Montclair is a yard in the Los Angeles area that is used to stage trains moving to the Ports of Los Angeles and Long Beach. In 2012, we started design work on adding an additional track to accommodate increased train traffic due, in part, to the significant double track work on the Sunset Corridor. In this case, there was no conflict with installing the new tracks, but the weight of trains on the new tracks exceeded our standards and required the pipeline to relocate before rail operations could begin on the new track. This dispute was resolved without litigation, but the presence of the pipeline still resulted in the new track being unusable for more than one year.
- *Alhambra.* Adding a second track to the Alhambra Subdivision, between West Colton and Pomona is the last step in a series of projects to allow us to take full advantage of the recently completed Colton Flyover grade separation. After we install this 10 miles of double track, we will be able to run trains from the Ports of Los Angeles and Long Beach through to Yuma, Arizona in a single move without having to stop trains near Colton for a crew change. This efficient movement is not regularly available today because this section of the Alhambra Subdivision is a pinch point that often delays trains for hours at a time, making a through movement typically not possible without re-crewing a train. Besides improving service and increasing capacity, running trains without stopping will reduce locomotive emissions. It is my understanding that SFPP has filed a lawsuit seeking to prevent Union Pacific from requiring SFPP to relocate its pipeline to accomplish this project. We are ready to begin construction as soon as the current litigation with SFPP is resolved and the pipeline interference is eliminated.
- *Casa Grande.* As part of the Sunset Corridor double-track project, Union Pacific converted an industrial lead into a second main line track then sought to install a new industrial lead off the end of the second main line. This modification would improve service to the customer and allow us to fully utilize the capacity improvements. However, the new industrial lead will require relocating the

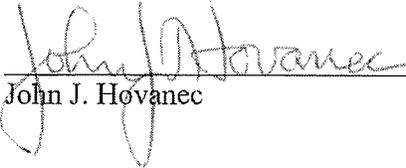
pipeline and, to date, SFPP has been unwilling to relocate. This project began in 2010 and is not yet complete. SFPP's unwillingness to relocate the pipeline has directly harmed service to our railroad customer in Arizona.

The unifying theme of these illustrations is that (1) the pipeline must be relocated to accommodate certain important rail construction projects and (2) our agreement is essential to protecting our railroad operations. In my experience, litigation always entails delay and raises the cost of these projects. But without the agreed protections for our operations, it could be far worse. Based on my experience, I do not see how Union Pacific in the future could undertake projects similar to the Alhambra investments for the Colton Flyover, the Beaumont Hill second main line, or the Montclair yard in Los Angeles, without the right to require SFPP to relocate the pipeline as outlined in the 1994 Agreement.

VERIFICATION

I, John J. Hovanec, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this statement.

Executed on September 23, 2015



John J. Hovanec

EXHIBIT 1

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960

SFPP Pipelines on Union Pacific Right-of-Way



EXHIBIT 2

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960

Historical Acquisitions of Union Pacific Right-of-Way



EXHIBIT 3

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960

Union Pacific Rights-of-Way Assembled in Los Angeles Area

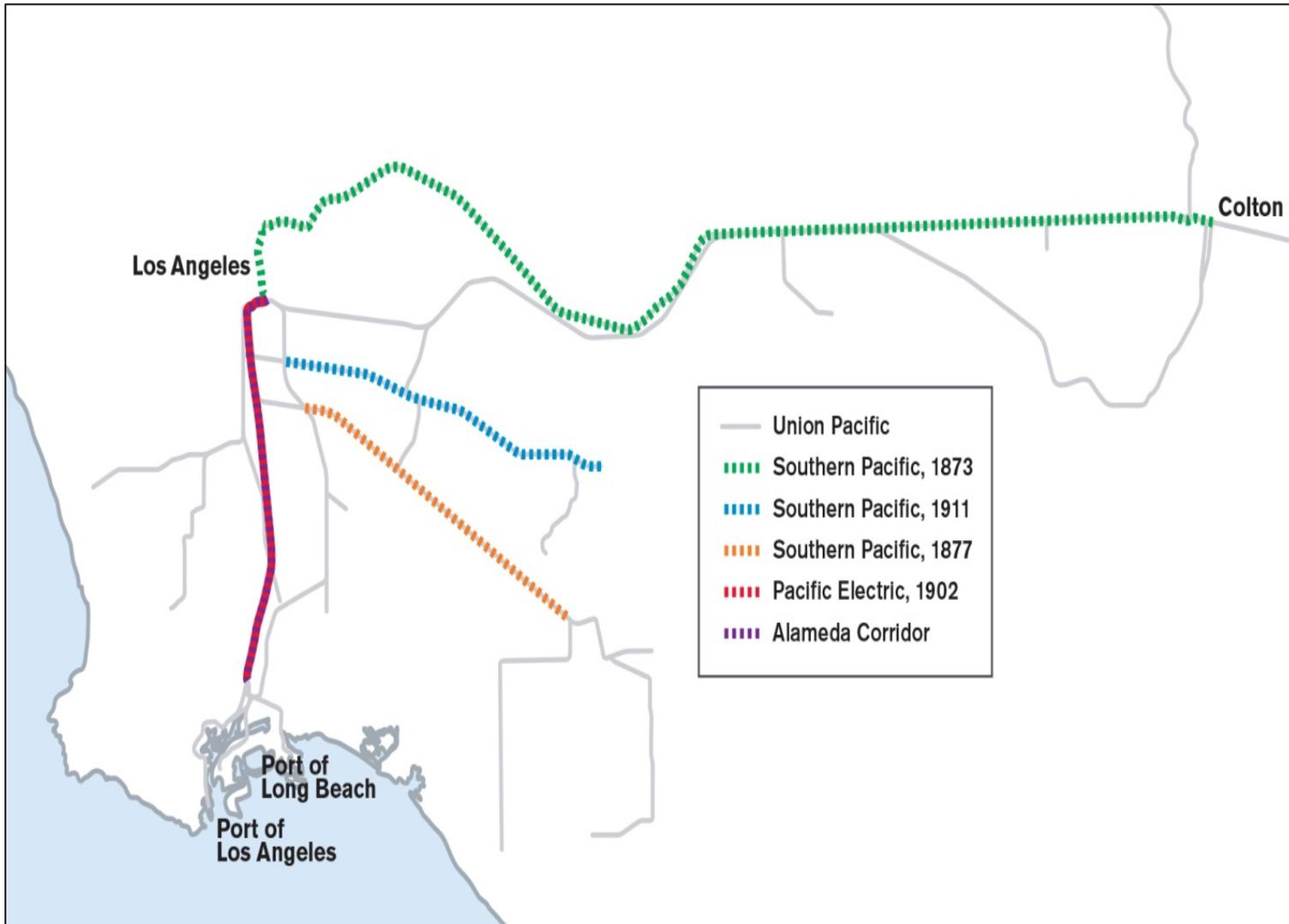


EXHIBIT 4

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960

ORIGINAL

AMENDED AND RESTATED
EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT ("Agreement"), dated as of July 29, 1994, is entered into between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("Railroad") and SANTA FE PACIFIC PIPELINES, INC., a Delaware corporation formerly known as Southern Pacific Pipe Lines, Inc. ("Santa Fe"), and SFPP, L.P., a Delaware limited partnership ("SFPP"). Santa Fe and SFPP are collectively referred to herein as "Company".

Recitals

A. Railroad (as successor in interest to the various entities defined as "Railroad" in the easement agreements and appurtenance agreements described in Exhibit A (hereinafter collectively referred to as the "Documented Easement Agreements")) and Santa Fe are parties to the Documented Easement Agreements. SFPP is successor in interest to all of Santa Fe's rights under the Documented Easement Agreements.

B. Railroad and Company have agreed (a) to amend and restate each of the Documented Easement Agreements in its entirety on the terms and conditions set forth herein and (b) to enter into this Agreement with respect to the pipelines described in Exhibit B, with respect to which formal easement agreements have not previously been executed by Railroad and Company (the "Undocumented Pipelines"). The Documented Easement Agreements and this Agreement with respect to the Undocumented Pipelines shall sometimes hereinafter collectively be referred to as the "Existing Easement Agreements." The easements granted pursuant to the Existing Easement Agreements shall sometimes hereinafter collectively be referred to as the "Existing Easements."

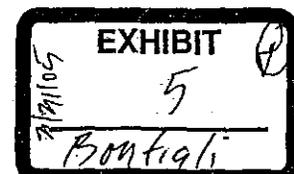
Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Railroad and Company hereby agree that, effective as of the date hereof each of the Documented Easement Agreements is hereby amended and restated in its entirety as set forth below and that each of the Undocumented Pipelines shall be governed by and subject to the terms and conditions set forth below:

-1-

Ex. 1

3



SF000419

EXHIBIT 186

1. (a) Railroad hereby grants to Company (subject to the reservations, covenants and conditions hereinafter set forth) the perpetual non-exclusive easement and right to construct, reconstruct, renew, maintain and operate a pipe line and appurtenances for the conveyance of petroleum or natural gas, or products derived from either or both thereof or utilized in the production or formulation of such products, or coal slurries or bio-solids (collectively, "Permitted Products"), in, upon, along and across the property of Railroad described in the Existing Easement Agreements, as modified by Exhibit C.

(b) Where the width of a segment of the Existing Easements is reduced hereby from the original 10-foot width to a narrower width specified on Exhibit B or Exhibit C, such reduction in width is effective as of January 1, 1994.

(c) Except as otherwise provided in this subsection 1.(c.), with respect to any longitudinal segment of the existing pipeline that is within Railroad's property as of the date hereof, the centerline of the Existing Easement, as modified by Exhibit C, with respect to such longitudinal segment shall be the existing pipeline; provided however, that if at any location (i) the distance between such longitudinal segment of the existing pipeline and the property line of Railroad's property as such property line exists on the date hereof (the "Property Line"), is less than one-half of the width specified for such location in the Existing Easement Agreements as modified by Exhibit C, and (ii) Railroad has not previously conveyed the property adjacent to Railroad's property at such location subject to the easement for said pipeline or reserving an easement therefor, then said easement at such location is, and Railroad hereby grants to the Company, a nonexclusive easement in, upon, along and across a strip of land of such specified width located adjacent to and contiguous with the Property Line, entirely within Railroad's property as of the date hereof.

(d) In the event that any longitudinal segment of the Company's existing pipeline is located on property previously owned by Railroad, but not owned by Railroad as of the date hereof, the location of the Existing Easement, as modified by Exhibit C, with respect to such longitudinal segment shall remain unchanged. Notwithstanding the foregoing, to the extent the Railroad's conveyance of any parcel in which such longitudinal segment is located to a third party prior to the date hereof has included a reservation of rights with respect to the Existing Easement relating to the such longitudinal segment or has conveyed such parcel subject to such Existing Easement, and such reservation of rights or conveyance subject to such Existing Easement specifically described the location of the Existing Easement relative to the existing pipeline, the Company agrees that it shall not challenge, dispute, contravene or upset the terms of such conveyance between Railroad and such transferee of Railroad with respect to the location of the Existing Easement as to such parcels unless reasonably necessary for the reasonable use and enjoyment of the rights, interests and estates previously granted to the Company.

(e.) The categories and types of "appurtenances" included within the granting clause of this easement agreement shall be determined by the past practices of the parties as evidenced by the specific appurtenances listed on Exhibit D, and shall include valves, gravimeters, scraper traps, location markers, vent pipes, cathodic protection devices, power and communication poles and cables and associated enclosures and/or fencing to the extent so evidenced, as well as pipeline appurtenances required by law, or government code or those set forth in industry codes or those common in the pipeline industry. Company shall not use the pipeline and appurtenances for any other purpose or for the conveyance of any substance other than a Permitted Product.

(f.) This grant is subject to and subordinate to the prior and continuing right and obligation of Railroad and its respective successors or assigns to use and maintain the entire railroad right of way and property in performance of its public duty as a common carrier and is also subject to the right and power of Railroad, its successors or assigns in interest or ownership of the said railroad right of way and property, to construct, maintain, use and operate on the present or other grade, existing or additional railroad tracks and appurtenances thereto, including water and fuel pipe lines and conduits and telegraph, telephone, signal, power and other electric lines and other railroad facilities and structures of any kind upon, along or across any or all parts of said land above described, all or any of which may be freely done at all time or times by Railroad, or its successors or assigns, without liability for compensation or damage.

2.(a) Company has paid to Railroad as the full rent for the calendar year 1993 for the Existing Easements the sums set forth on Exhibit E. Company has also paid to Railroad, to be applied in full for or as part of the rent due hereunder for calendar year 1994 for the Existing Easements, as modified herein by Exhibit C, the sums set forth on Exhibit E and agrees hereafter to pay rent to Railroad for said Existing Easements so modified, annually in advance, on or before the 1st day of January of each year for so long as this easement remains in effect, the sums set forth on Exhibit E and the additional amounts, if any, to be determined as set forth below in this Section 2.

(b) The rent payable by Company to Railroad shall be adjusted as follows:

(i) (A) Beginning January 1, 1994, and every ten (10) years thereafter, Railroad may seek an increase of rent to fair market value. Railroad shall give Company written notice of such a revision at least sixty (60) days before the commencement of each such consecutive ten (10) year period; otherwise, Company shall continue to pay the rent payments due hereunder in the same amount as then in effect, subject to the subsequent annual adjustments described below. If the parties hereto are unable to agree upon the amount of the rent increase, if any, for any such ten (10) year period on or prior to the

commencement date of any ten (10) year period, then upon request of either party the parties shall within 30 days thereafter enter into a stipulation pursuant to Rule 244.1 of the California Rules of Court for an order directing a judicial reference proceeding pursuant to California Code of Civil Procedure §638 *et seq.* by a single referee who will be a referee from the Judicial Arbitration and Mediation Services, Inc. ("JAMS") in Los Angeles, California to establish the amount of such rent increase in accordance with the fair market value of the easement. If, for any reason, a JAMS referee is unable to serve, the Court may select a referee from another recognized arbitration service. The referee shall be designated in accordance with the procedure set forth in California Code of Civil Procedure §§641 and 645.1. The judicial reference proceeding shall be conducted pursuant to the California Code of Civil Procedure and the California Evidence Code and shall include the right to reasonable discovery and the right to appeal. The rent increase, if any, will be retroactive to and effective on the commencement date of the ten (10) year period. Each party shall bear its own fees and expenses in connection with the judicial reference proceeding.

If, for any reason, any of the Rules of Court or Code of Civil Procedure sections specified above are not in effect at the time of any such request, the parties shall first follow the procedure set forth in any successor rules or statutes, and if there are none, then the parties shall use the procedure then in effect under California law for enforcing a private arbitration agreement and the appointment of a single, impartial, experienced and qualified arbitrator who has served as a California Superior Court judge, or the equivalent thereof, for a minimum of five years. Any such arbitration shall be conducted in the same manner with the same rights as set forth above for the judicial reference proceeding.

(B) The rent increase, if any, will be in effect for the next ten (10) years, subject to the subsequent annual adjustments described below. In no event shall such revised rent, prior to giving effect to any such subsequent annual adjustment, be less than rent at the conclusion of the prior ten (10) year period (after giving effect to all prior annual adjustments during such prior ten (10) year period). If rent for a pipeline or appurtenance constructed or reconstructed hereunder commences between ten (10) year rent increase dates, then such rent shall be subject to the interim annual adjustments described below until the next ten (10) year rent increase date.

(ii) Commencing on the first (1st) anniversary of each consecutive ten (10) year period and annually thereafter ("CPI Adjustment Dates"), the rent payable by Company to Railroad shall be equal to (1) the Annual Index (as hereinafter defined) as of the end of August prior to the CPI Adjustment Date in question, divided by (2) the Basic Index (as hereinafter defined) and multiplied by (3) the annual payment payable during the initial twelve-month period (or the first annual payment payable hereunder, if rent for a pipeline or appurtenance constructed or reconstructed hereunder commenced between ten (10) year rent

increase dates). For the purposes of this Section 2(b)(ii), the "Annual Index" shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984=100), published by the United States Department of Labor, Bureau of Labor Statistics, and "Basic Index" shall mean the Annual Index published as of the end of August preceding the anniversary of each consecutive ten year period. If the Index required for the calculation specified in this Section 2(b)(ii) is not available on the CPI Adjustment Date in question, Company shall continue to pay the same amount as was payable during the period immediately preceding the CPI Adjustment Date in question until the Index is available and the necessary calculation is made. As soon as such calculation is made, the parties shall immediately make an adjustment for the amount of any underpayment or overpayment for the month or months that have elapsed since the CPI Adjustment Date in question. In the event the compilation or publication of the Index shall be transferred to any other governmental department, bureau or agency or shall be discontinued, the index most nearly the same as the Index shall be used to make such calculation.

(c) In the event Company abandons any portion or portions of said pipe line, said annual sum shall be subject to reduction upon request by Company in an amount mutually agreed upon. If the parties are unable to agree upon the amount of such reduction, it shall be determined in the manner set forth in subsection 2(b)(i)(A) above.

3. The Company, its agents, employees and contractors, shall have the privilege of entry upon the property of Railroad for the purpose of constructing, reconstructing, renewing, maintaining and inspecting said pipe line. The location, plans and specifications for said pipe line upon Railroad's right of way and property shall be subject to the approval of Railroad. The Company agrees that said pipe line shall be constructed, reconstructed, renewed, maintained and operated and all work thereon or in connection therewith shall be performed in a careful, safe and workmanlike manner in accordance with all laws and regulations governing the same and in such manner as not to interfere with or endanger railroad property or operations. In the event that Railroad shall at any time deem it necessary, the Company shall, upon receipt of written notice so to do, at Company's sole cost and expense, change the location of said pipe line, its adjuncts or appurtenances, on railroad property to such point or points thereon as Railroad shall designate and reconstruct or reinforce the same.

4. Before performing any work of construction, renewal or repair of said pipe line (except emergency repairs) upon Railroad's property, Company shall notify in writing the Superintendent of Railroad's Division on which the work will be performed, stating the time it is proposed to do said work, so that Railroad will have ample time within which to arrange to have Railroad's representative present, if it so desires, while such work is being performed. In case of emergency repair work, such written notice shall be given as

soon as practicable.

5. Company agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with the construction, reconstruction, maintenance, relocation and removal of said pipe line, including, but not limited to, the installation and removal of falsework and other protection beneath or along Railroad's tracks, the removal and restoration of any structures of Railroad, the furnishing of such watchmen, flagmen, inspectors and representatives as Railroad deems necessary for the protection of railroad property and operations.

6. In the event any work upon or in connection with said pipe line, or its appurtenances, to be done upon or adjacent to the property of Railroad should be let to a contractor by Company, such work shall not be begun until such contractor shall have first entered into an agreement with Railroad, indemnifying Railroad from and against all liability, cost, expense, claims and actions for injuries to persons and damage to or loss of property growing out of the performance of the work to be done by such contractor and the subcontractors of such contractor. Such contractor shall furnish during the period said work is being performed at the option of and without expense to Railroad, a reliable surety company's bond, in an amount and in a form satisfactory to Railroad, guaranteeing the faithful performance of all the covenants and conditions contained in said agreement to be entered into with Railroad, and a certified copy of a policy of Public Liability and Property Damage Liability Insurance, with limits specified by and in a form satisfactory to Railroad, covering the contractual liability assumed by contractor in said agreement to be entered into with Railroad.

7. The Company assumes all risk of, and releases and discharges and agrees to indemnify and hold harmless Railroad of and from all liability for

(a) loss of or damage to said pipe line, its adjuncts or appurtenances, and to any and all other property of the Company or of its officers, agents, employees and contractors, or in the custody or control of the Company or any of its agents, employees or contractors, including loss of use thereof, and

(b) injuries to or deaths of persons while upon the property or right of way of the Railroad, or in proximity thereto, in connection with work upon said pipe line, or in the operation thereof,

resulting from or growing out of any cause whatsoever, including but not limited to the negligence of the agents, employees or contractors of Railroad, or defects or imperfections in railroad property or equipment.

Except as above provided in this Section 7, the Company agrees to indemnify and save harmless the Railroad from and against any and all loss and damage, and from liability for

(a) loss of or damage to property, including but not limited to, property of the Railroad, or of its officers, agents, employees or contractors, or property in the custody or control of the Company or of any of its officers, agents, employees or contractors, including the loss of use thereof, and

(b) injuries to or deaths of persons, including, but not limited to, Railroad's officers, agents, employees or contractors, invitees, passengers, or persons in its custody or control,

resulting from or growing out of any cause whatsoever connected with the construction, renewal, operation, maintenance, removal or presence of said pipe line, or defects or imperfections therein, or breakage thereof, or arising or growing out of acts or omissions of persons engaged in work upon or in the operation of said pipe line, save and excepting, however, any such injury, damage or death proximately caused solely by the negligence of the officers, agents, employees or contractors of Railroad or defects or imperfections in railroad property or equipment.

8. This grant is made upon the express condition subsequent that in the event Company, its successors or assigns, abandon the use of said property or fail to use the same for the purposes herein granted for a continuous period of two (2) years, or in the event of a breach by Company, its successors or assigns, of any covenants or condition herein contained and such default is not remedied within six (6) months after written notice from Railroad so to do, then; and in either of those events, the rights herein granted shall cease and terminate and Railroad, its successors or assigns, shall have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property provided, however, in the event of a partial abandonment or discontinuance of use, such termination shall apply only to the part thereof the use of which is so discontinued or abandoned. The waiver by Railroad of the breach of any covenant or condition hereof shall not be construed as waiver of any other or subsequent breach hereof, nor of any other covenant or condition hereof.

9. Upon termination of the easement herein granted in any manner, the Company may, at its option, at any time within six (6) months after such termination remove the said pipe line and appurtenances thereof, filling in all excavations made in connection with such removal and restoring the ground to conform to the natural contour

then existing, and leaving the premises in a neat, clean and safe condition; provided, however, that any such property not so removed within six (6) months from such termination shall become the property of the Railroad.

10. The easements granted herein are subject to all valid and existing contracts, leases, liens or encumbrances or claims of title which may affect the property, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

11. In case Railroad or Company shall bring suit to compel performance of or to recover for breach of any covenant or condition herein contained, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and expenses in addition to the amount of judgment and costs, except as set forth in Section 2 above.

12. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

13. The entities comprising Company shall be jointly and severally liable for the obligations of Company hereunder.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their officers thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a Delaware corporation

By:
Vice President

Attest:
Secretary

SANTA FE PACIFIC PIPELINES,
INC., a Delaware corporation

By: *A. Edwards*
Senior Vice President

Attest: *[Signature]*
Secretary

SFPP, L.P., a Delaware Limited
Partnership,

By: Santa Fe Pacific Pipelines, Inc.,
a Delaware Corporation, General Partner

By: *A. Edwards*
Senior Vice President

Attest: *[Signature]*
Secretary

MWC128.94/jcc

EXHIBIT "A"
DOCUMENTED PIPELINE AGREEMENTS

L/S	LEASE AUDIT NO.	DATE
1	110667	8/14/57
1	119376	4/27/60
1	PE11974	3/17/57
2	110667	8/14/57
3	110667	8/14/57
4	110667	8/14/57
5	110667	8/14/57
6	110667	8/14/57
7	110667	8/14/57
8	113689	6/24/63
9	113689	6/24/63
10	PE11974	3/17/57
10	110667	8/14/57
11	113689	6/24/63
12	113689	6/24/63
13	113689	6/24/63
14	124396	5/17/62
15	150803	11/12/69
16	150804	2/27/70
20	Filed with 113689	10/1/87
23	155551	11/12/69
24	156825	2/27/70
24	178848	2/27/70
32	152827	11/12/69
36	140027	3/8/78
37	174097	11/7/73
38	173454	11/7/73
39	173454	11/7/73
41	173455	11/7/73
42	173455	11/7/73
46	140027	3/11/63
47	140026	3/11/63
47	178832	3/11/63
48	123275	6/24/63
48	198317	11/01/82
49	110667	8/14/57
50	Filed with 113689	10/1/84
51	110667	8/14/57
52	110667	8/14/57
53	110667	8/14/57
54	110667	8/14/57
55	113689	6/24/63
56	113689	6/24/63
58	115654	1/7/58
60	Filed with 113689	10/1/84

L/S	LEASE AUDIT NO.	DATE
61	117912	9/10/59
62	123276	6/24/63
62	113689	6/24/63
64	123275	6/24/63
64	113689	6/24/63
65	123275	6/24/63
66	142590	7/1/61
66	PE14260	7/1/61
67	170421	8/29/72
67	171610	8/29/72
68	140028	3/11/63
69	113689	6/24/63
70	199996	8/19/83
71	113689	6/24/63
72	113689	6/24/63
72	140028	3/11/63
73	113689	6/24/63
74	113689	6/24/63
75	118398	11/18/59
75	118630	12/1/59
76	118630	12/1/59
88	184131	12/23/77
88	190890	12/23/77
90	Filed with 113689	6/1/86
92	184132	12/23/77
98	193347	3/30/81
99	184130	12/23/77
101	195268	12/5/69
103	186369	10/16/78
104	184130	12/23/77
105	178859	11/1/75
108	178859	11/1/75
108	Filed with 110667	9/1/85
111	Filed with 110667	1/1/89
112	Filed with 110667	1/1/89
114	Filed with 110667	1/1/89
117	709861	5/1/92
121	151980	1/1/63
122	151980	1/1/63
125	Filed with 151980	1/1/63
126	Filed with 151980	1/1/63

EXHIBIT "A"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	Date
115364N	SUMMIT / CATHODIC PROTECTION	09/30/58
118630N	RICHMOND / VALVE SITE	05/12/60
121126N	ROCKLIN / OIL, GAS & WATER LINES	12/07/60
143823N	FOWLER / GRAVITOMETER	04/28/64
150000N	SACRAMENTO / METER STATION	03/21/66
151788	BONN / WIRE	09/22/66
151928	GROWLER / WIRE	10/24/66
153452	WELLTON / CATHODIC	04/17/67
153655N	WUNOTOO / U/G ANODE WIRE	05/05/67
155402	TUNIS / CATHODIC	12/05/67
155615	SAGE / WIRE	01/15/68
155616	WILNA / WIRE	01/15/68
156753	RED ROCK / WIRE	05/13/68
160705	WISTER / CATHODIC	07/03/69
165138N	BERKELEY / U/G ELECTRICAL CONDUIT	01/05/71
166703N	DOUGHERTY / BOOSTER PUMP FACILITY	07/01/71
168359N	GIANT / CATHODIC PROTECTION FACILITY	02/10/72
171819	THERMAL / ANODE	04/16/73
173875N	TUCSON / GRAVITOMETER & FENCING	04/26/74
174732C	WILMOT / GRAVITOMETER	05/29/74
176796	WISTER / CATHODIC	04/30/75
178664	NAVSKA / WIRE	04/20/76
178672	LITCHFIELD / WIRE	06/21/76
178904	WISTER / CATHODIC	01/19/76
179951N	BUNSEN / FENCE & METER FAC.	06/30/76
181977	MECCA / CATHODIC	06/16/77
183699	FALLON / WIRE	11/11/58
185677N	WILMOT / GRAVITOMETER	09/05/78
189776	CALIPATRIA / CATHODIC	05/30/80
190978	DIXIE / CATHODIC	10/13/80
193486	DIXIE / CATHODIC	04/29/81
198432	TRAVER / CATHODIC	05/12/83
200607	TRAVER / CATHODIC	09/06/83

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EXHIBIT "A"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	Date
203330	NILAND / CATHODIC	04/23/85
203400C	LATHROP / CATHODIC PROTECTION	01/01/85
203752N	TURLOCK / W/G POWER	08/27/86
204097	HYDER / CATHODIC	01/14/86
204098	HYDER / CATHODIC	01/14/86
205320	HYDER / CATHODIC	05/30/86
205321	HYDER / CATHODIC	05/30/86
205322	HYDER / CATHODIC	05/30/86
206029N	THERMAL / CABLE ANODE	09/02/86
210508	ROLL / CATHODIC	11/08/89
211520	NILAND / CATHODIC	10/19/90
211540	CASA GRANDE / CATHODIC	01/04/91
707684	LOS ANGELES / CATHODIC	11/01/91
708661	SWINGLE / CATHODIC	12/31/91
709695	REYES / CATHODIC	06/16/92
709696	REYES / CATHODIC	06/16/92
	GILLESPIE / OH. WIRE	08/05/63
	OATMAN MTN. / OH. WIRE	08/05/63
	SADDLE / OH. WIRE	08/05/63
	MONTEZUMA / OH. WIRE	08/05/63
165693	BUCKEYE / OH. WIRE	02/22/71
167619	FOWLER / OH. WIRE	10/07/71
115257	LIBERTY / OH. WIRE	07/30/58
142563	CORTARO / OH. WIRE	11/01/63
145750	STOCKHAM / OH. WIRE	12/01/64
122743	MARICOPA / OH. WIRE	08/14/61
151789	BON / OH. WIRE	09/22/66
120641	MUNDO / OH. WIRE	08/15/60
165459	INDIO / ANODE	01/07/71
24008	HUGO / WIRE XING	08/12/64
167225	DRY CAMP / ANODE	08/30/71
144421	LISBON / WIRE XING	06/26/64
175702	MONDEL / UG. WIRE	10/01/74

EX. 1
14.

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EXHIBIT "A"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	Date
122687	COOLIDGE / OH. WIRE	08/10/61
119923	HAZEN / UG. WIRE	07/05/60
149306	CARLTON / OH. WIRE	12/20/65
149199	MAGMA / OH. WIRE	01/03/66
115905	CRAIG / POLE LINE	12/06/60
14459	SEPAR / WIRE XING	06/05/58
113912	HIDALGO / OH. WIRE	02/20/58
112096	GARY / UG. WIRE	07/01/57
150483	TOLTEC / BOOSTER STATION	09/01/70

EXHIBIT "B"
UNDOCUMENTED PIPELINES

L/S	NEW C. E. DRAWING	TYPE	DATE
14	35763-4	8" P/L	5-17-62
17	32506-2	12" P/L	1-1-65
18	32505-3A, 4A	12" P/L	1-1-65
19	32505-1A, 2A, 3B	12" P/L	1-1-65
21	32505-1B	12" P/L	1-1-65
22	32504-10-2, 11-2	12" P/L	7-1-64
25	32503-42, 43, 44, 45	14" P/L	4-1-68
26	32503-54c	8" P/L	1-1-67
27	32503-11d,60	12" P/L	1-1-68
28	32503-32A	10" P/L	1-1-66
33	32503,11e,60A	12" P/L	1-1-68
63	32503-23A	6" P/L	1-9-61
85	35763-5	4" P/L	1-3-64
86	32506-3	6" P/L	1-1-70
93	32503-37,37A	4" P/L	6-1-64
95	32503-70, 71	10" P/L	1-1-70
102	32503-3-3	6" P/L	8-1-69
107	35763-6	8" P/L	1-1-74
108	32503-2-2,2b	20"/24" P/L	8-20-80
108	32503-3-2	20" P/L	8-85
109	32503-69A	16" P/L	7-1-83
110	32503-69B	10" P/L	7-1-83

EXHIBIT "C"
DOCUMENTED PIPELINE AGREEMENTS

L/S	NEW C. E. DRAWING	TYPE	DATE
1	32503-1, 2-1, 3-1	16" P/L	8/14/57
1	32503-1	16" P/L	4/27/60
1	32503-65B, 65C	16" P/L	3/17/94
2	32503-4B, 5B, 6B, 7, 8	12" P/L	8/14/57
3	32504-1, 2, 3b-1, 4b-1	12" P/L	8/14/57
4	32506-1	8" P/L	8/14/57
5	32505-1, 2, 3, 4	8" P/L	8/14/57
6	32504-6, 7-1, 10-1, 11-1	8" P/L	8/14/57
7	32504-4b-4, 5, 6A	8" P/L	8/14/57
8	32503-59a-1, 54-3	8" P/L	6/24/63
9	32503-11a, 12, 14, 15, 16	10" P/L	6/24/63
10	32503-1, 64A	16" P/L	3/17/57
10	32503-1	16" P/L	8/14/57
11	32503-16a, 17, 18	6", 10" P/L	6/24/63
12	32503-18a, 19, 21	8" P/L	6/24/63
13	33166-1	6" P/L	6/24/63
14	35763-1, 2, 3, 4	8" P/L	5/17/62
15	32503-29, 30, 31	8" P/L	11/12/69
16	32503-25a, 26, 27	10" P/L	2/27/70
20	44630-1, 2	12" P/L	10/1/87
23	32503-33, 34, 35, 36	10" P/L	11/12/69
24	32503-32	10" P/L	2/27/70
32	32503-54b-3	8" P/L	11/12/69
36	32503-58, 59 & 59a-2	12" P/L	3/8/78
37	32503-54, 54b-2, 54c-2, 59a-3	12" P/L	11/7/73
38	32503-53	12" P/L	11/7/73
39	32503-53a	8" P/L	11/7/73
41	32503-51, 52	10" P/L	11/7/73
42	32503-51a, 52a	12" P/L	11/7/73
46	32503-58-1, 59-1, 59a-4	8" P/L	3/11/63
47	32503-66, 67	8" P/L	3/11/63
48	32503-40	4" P/L	6/24/63
49	44784-1, 2	4" P/L	8/14/57
50	44632-2, 3, 4	12" P/L	10/1/84
51	32503-6c	6" P/L	8/14/57

EX. 1

EXHIBIT "C"
DOCUMENTED PIPELINE AGREEMENTS

L/S	NEW C. E. DRAWING	TYPE	DATE
52	32504-4b-2	6" P/L	8/14/57
53	32504-4b-3, 6B	6" P/L	8/14/57
54	32504-6C, 7-2, 10-3	6" P/L	8/14/57
55	33166-1a, 2, 3, 4A	6" P/L	6/24/63
56	32503-14a, 15a	3",4" P/L	6/24/63
58	32503-72, 73, 74	6" P/L	1/7/58
60	44632-4, 5	12" P/L	10/1/84
61	32504-12	6" P/L	9/10/59
62	32503-13, 22, 23	8" P/L	6/24/63
64	33593-1	8" P/L	6/24/63
64	33592-1	8" P/L	6/24/63
64	33594-1	8" P/L	6/24/63
64	32503-20	8" P/L	6/24/63
65	32503-24	6" P/L	6/24/63
66	32503-69	10" P/L	07/01/61
67	32503-48, 49, 50	6" P/L	08/29/72
68	32503-54c-1	8" P/L	03/11/63
69	32503-9-2	8" P/L	06/24/63
70	32503-9-1	12" P/L	08/19/83
71	32503-9-3	8" P/L	06/24/63
72	32503-54-1, 54b-1, 54c-3	8" P/L	06/24/63
72	32503-54-1, 54b-1, 54c-3	8" P/L	03/11/63
73	32503-11g	8" P/L	06/24/63
74	32503-9-4	8" P/L	06/24/63
75	32503-9-7	8" P/L	11/18/59
75	37150-1	8" P/L	12/01/59
76	37150-1A	3" P/L	12/01/59
88	32503-55	10" P/L	12/23/77
90	44632-1	12" P/L	06/01/86
92	32503-38	8" P/L	12/23/77
98	32503-76	8" P/L	03/30/81
99	32503-9-5	10" P/L	12/23/77
101	32503-75	12" P/L	12/05/69
103	32503-56, 57	10" P/L	10/16/78
104	32503-9-6	10" P/L	12/23/77

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EXHIBIT "C"
DOCUMENTED PIPELINE AGREEMENTS

L/S	NEW C. E. DRAWING	TYPE	DATE
105	32503-62, 63, 64	24" P/L	11/01/75
108	32503-65	24" P/L	11/01/75
108	32503-2A	24" P/L	09/01/85
111	32503-3-1b, 4b, 5b, 6b, 7b	20" P/L	01/01/89
112	32503-7b, 8b	20" P/L	01/01/89
114	32504-1b, 2b, 3b, 4b	20" P/L	01/01/89
117	44786-1, 2, 3, 4	12" P/L	05/01/92
121	34329-1-1, 2-1, 3-1	10" P/L	01/01/63
122	34329-3-1A, 4-1A	10" P/L	01/01/63
125	34329-1-2, 2-2, 3-2	16" P/L	01/01/63
126	34329-3-2A, 4-2A	16" P/L	01/01/63

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EX. 1
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EXHIBIT "D"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	Date
115364N	SUMMIT / CATHODIC PROTECTION	09/30/58
118630N	RICHMOND / VALVE SITE	05/12/60
121126N	ROCKLIN / OIL, GAS & WATER LINES	12/07/60
143823N	FOWLER / GRAVITOMETER	04/28/64
150000N	SACRAMENTO / METER STATION	03/21/66
151788	BONN / WIRE	09/22/66
151928	GROWLER / WIRE	10/24/66
153452	WELLTON / CATHODIC	04/17/67
153655N	WUNOTOO / U/G ANODE WIRE	05/05/67
155402	TUNIS / CATHODIC	12/05/67
155615	SAGE / WIRE	01/15/68
155616	WILNA / WIRE	01/15/68
156753	RED ROCK / WIRE	05/13/68
160705	WISTER / CATHODIC	07/03/69
165138N	BERKELEY / U/G ELECTRICAL CONDUIT	01/05/71
166703N	DOUGHERTY / BOOSTER PUMP FACILITY	07/01/71
168359N	GIANT / CATHODIC PROTECTION FACILITY	02/10/72
171819	THERMAL / ANODE	04/16/73
173875N	TUCSON / GRAVITOMETER & FENCING	04/26/74
174732C	WILMOT / GRAVITOMETER	05/29/74
176796	WISTER / CATHODIC	04/30/75
178664	NAVASKA / WIRE	04/20/76
178672	LITCHFIELD / WIRE	06/21/76
178904	WISTER / CATHODIC	01/19/76
179951N	BUNSEN / FENCE & METER FAC.	06/30/76
181977	MECCA / CATHODIC	06/16/77
183699	FALLON / WIRE	11/11/58
185577N	WILMOT / GRAVITOMETER	09/05/78
189776	CALIPATRIA / CATHODIC	05/30/80
190978	DIXIE / CATHODIC	10/13/80
193486	DIXIE / CATHODIC	04/29/81
198432	TRAVER / CATHODIC	05/12/83
200607	TRAVER / CATHODIC	09/06/83

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EXHIBIT "D"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	Date
203330	NILAND / CATHODIC	04/23/85
203400C	LATHROP / CATHODIC PROTECTION	01/01/85
203752N	TURLOCK / W/G POWER	08/27/86
204097	HYDER / CATHODIC	01/14/86
204098	HYDER / CATHODIC	01/14/86
205320	HYDER / CATHODIC	05/30/86
205321	HYDER / CATHODIC	05/30/86
205322	HYDER / CATHODIC	05/30/86
206029N	THERMAL / CABLE ANODE	09/02/86
210508	ROLL / CATHODIC	11/08/89
211520	NILAND / CATHODIC	10/19/90
211540	CASA GRANDE / CATHODIC	01/04/91
707684	LOS ANGELES / CATHODIC	11/01/91
708661	SWINGLE / CATHODIC	12/31/91
709695	REYES / CATHODIC	06/16/92
709696	REYES / CATHODIC	06/16/92
	GILLESPIE / OH. WIRE	08/05/63
	OATMAN MTN. / OH. WIRE	08/05/63
	SADDLE / OH. WIRE	08/05/63
	MONTEZUMA / OH. WIRE	08/05/63
165693	BUCKEYE / OH. WIRE	02/22/71
167619	FOWLER / OH. WIRE	10/07/71
115257	LIBERTY / OH. WIRE	07/30/58
142563	CORTARO / OH. WIRE	11/01/63
145750	STOCKHAM / OH. WIRE	12/01/64
122743	MARICOPA / OH. WIRE	08/14/61
151789	BON / OH. WIRE	09/22/66
120641	MUNDO / OH. WIRE	08/15/60
165459	INDIO / ANODE	01/07/71
24008	HUGO / WIREXING	08/12/64
167225	DRY CAMP / ANODE	08/30/71
144421	LISBON / WIREXING	06/26/64
175702	MONDEL / UG. WIRE	10/01/74

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EXHIBIT "D"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	Date
122687	COOLIDGE / OH. WIRE	08/10/61
119923	HAZEN / UG. WIRE	07/05/60
149306	CARLTON / OH. WIRE	12/20/65
149199	MAGMA / OH. WIRE	01/03/66
115905	CRAG / POLE LINE	12/06/60
14459	SEPAR / WIRE XING	06/05/58
113514	NILAND / UG WIRE	01/16/58
113912	HIDALGO / OH. WIRE	02/20/58
112096	GARY / UG. WIRE	07/01/57
150483	TOLTEC / BOOSTER STATION	09/01/70

EXHIBIT "E"
DOCUMENTED PIPELINE AGREEMENTS

Lease No	Description	1993 Rent	1993 CPI Adjustment	Total 1993 Rent
011974N	WATSON-DEL ALMO PIPELINE	180,703.28	5,179.50	185,882.78
014260N	DOLORAS PIPELINE	40,019.46	1,147.08	41,166.54
110667N	WATSON EL PASO	294,832.59	8,450.79	303,283.38
	COLTON TO PHOENIX	216,514.49	6,205.95	222,720.44
	CITY OF INDUSTRY TO VALLEY BLVD.	30,032.89	860.89	30,893.72
113689N	RICHMOND-FALLON PIPELINE (also 123275)	296,876.10	8,509.36	305,385.46
	BRENTWOOD TO FRESNO	165,527.23	4,744.51	170,271.74
	CONCORD TO BRENTWOOD	74,121.35	2,124.54	76,245.89
	SACRAMENTO TO ROSEVILLE	97,070.45	2,782.33	99,852.78
115654N	NILAND-IMPERIAL PIPELINE	16,995.13	487.13	17,482.26
117912N	YUMA PIPELINE	1,040.29	29.82	1,070.11
118398N	RICHMOND PIPELINE (also 118630)	913.51	26.18	939.69
119376N	NORWALK PIPELINE	15,546.02	445.60	15,991.62
123275N	ROCKLIN DEED 52086 PIPELINE	38,450.22	1,102.10	39,552.32
123276N	FRENCH CAMP ATWATER PIPELINE	70,077.86	2,008.64	72,086.50
124396N	BEAVERTON PETROLEUM & GAS PIPELINE	1,613.04	46.23	1,659.27
140026N	MOCOCO-SUISUN PIPELINE (also 178832)	28,073.69	804.68	28,878.37
140027N	RICHMOND PIPELINE	235,486.65	6,749.75	242,236.40
140028N	OLEUM-MARTINEZ PIPELINE (also 113689)	6,494.72	186.16	6,680.88
142590N	DOLORAS PIPELINE	85,054.51	2,437.92	87,492.43
150803N	BAKERSFIELD-FRESNO PIPELINE	72,392.94	2,075.00	74,467.94
150804N	CONCORD-SAN JOSE	527,892.79	15,130.99	543,023.78
151980N	GAS/OIL PIPELINES	157,910.00	0.00	157,910.00
152827N	RODEO (DEED 52085) PIPELINE	10,136.27	290.54	10,426.81
155551N	WATSON JCT.-TAYLOR YARD	559,421.59	16,034.70	575,456.29
156825N	BOYD-SACTO PIPELINE (also 178848)	76,750.27	2,199.89	78,950.16
170421N	COLTON (DEED 54627) PIPELINE (also 171810)	29,154.89	835.67	29,990.56
173454N	BRISBANE DEED 55543 PIPELINES	201,915.60	5,787.51	207,703.11
173455N	OAKLAND-BRISBANE	255,193.55	7,314.61	262,508.16
174097N	AMOCO DEED 55596 PETROLEUM & GAS PIPELINE	90,705.78	2,599.90	93,305.68
178859N	WATSON DEED 57134 PIPELINE	1,026.14	29.41	1,055.55
184130N	RICHMOND PIPELINE	405.45	11.62	417.07
184132N	BAKERSFIELD PIPELINE	754.58	21.63	776.21
186369N	HUMBLE (DEED 59187) PIPELINE	11,014.74	315.72	11,330.46
190890N	AMORCO PIPELINE (also 184131)	405.45	11.62	417.07
195268N	UNION - WATSON PIPELINE	92,637.93	2,655.28	95,293.21
199996N	RICHMOND DEED 62629 PIPELINE	140.15	4.02	144.17
	TOTAL	3,983,301.60	109,647.21	4,092,948.81

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EXHIBIT "E"
UNDOCUMENTED PIPELINES

Lease No	Description	1993 Rent	1993 CPI Adjustment	Total 1993 Rent
	14 35763-4 8" P/L			
	17 32506-2 12" P/L			
	18 32505-4a 12" P/L			
	18 32505-3a 12" P/L			
	19 32505-2a 12" P/L			
	19 32505-1a 12" P/L			
	19 32505-3b 12" P/L			
	21 32505-1b 12" P/L			
	22 32504-11-2 12" P/L			
	22 32504-10-2 12" P/L			
195266	25 32503-43,44. 14" P/L	15,587.32	446.78	16,034.10
195266	25 32503-42 14" P/L			
195266	25 32503-45 14" P/L			
	26 32503-54c 8" P/L			
	27 32503-11d & 60 12" P/L			
	28 32503-32a 10" P/L			
	33 32503-11e & 60a 12" P/L			
	63 32503-23a 6" P/L			
143880	85 35763-5 4" P/L	45,160.18	1,294.43	46,454.61
	86 32506-3 6" P/L			
195267	93 32503-37,37A 4" P/L	15,917.69	456.25	16,373.94
	95 32503-71 10" P/L			
	95 32503-70 10" P/L			
	102 32503-3-3 6" P/L			
	107 35763-6 8" P/L			
	108 32503-2-2 & 2b 20"/24" P/L			
	108 32503-3-2 20" P/L			
	109 32503-69a 16" P/L			
	110 32503-69b 10" P/L			
		76,665.19	2,197.46	78,862.65

Ex. 1
24

SF000439

EXHIBIT "E"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	1993 Rent	1993 CPI Adjustment	Total 1993 Rent
115364N	SUMMIT / CATHODIC PROTECTION	312.85	8.97	321.82
118630N	RICHMOND / VALVE SITE	175.20	5.02	180.22
121126N	ROCKLIN / OIL, GAS & WATER LINES	860.96	24.68	885.64
143823N	FOWLER / GRAVITOMETER	257.85	7.39	265.24
150000N	SACRAMENTO / METER STATION	1,171.31	33.57	1,204.88
151788	BONN / WIRE	0.00	0.00	0.00
151928	GROWLER / WIRE	0.00	0.00	0.00
153452	WELLTON / CATHODIC	0.00	0.00	0.00
153655N	WUNOTOO / U/G ANODE WIRE	292.83	8.39	301.22
155402	TUNIS / CATHODIC	0.00	0.00	0.00
155615	SAGE / WIRE	0.00	0.00	0.00
155616	WILMA / WIRE	0.00	0.00	0.00
156753	RED ROCK / WIRE	0.00	0.00	0.00
160705	WISTER / CATHODIC	0.00	0.00	0.00
165138N	BERKELEY / U/G ELECTRICAL CONDUIT	375.42	10.76	386.18
166703N	DOUGHERTY / BOOSTER PUMP FACILITY	11,209.95	321.80	11,531.25
168359N	GIANT / CATHODIC PROTECTION FACILITY	439.24	12.59	451.83
171819	THERMAL / ANODE	0.00	0.00	0.00
173875N	TUCSON / GRAVITOMETER & FENCING	326.76	9.37	336.13
174732C	WILMOT / GRAVITOMETER	255.13	7.31	262.44
176796	WISTER / CATHODIC	0.00	0.00	0.00
178664	NAVISKA / WIRE	0	0	0
178672	LITCHFIELD / WIRE	0.00	0.00	0.00
178904	WISTER / CATHODIC	0.00	0.00	0.00
179951N	BUNSEN / FENCE & METER FAC.	150.16	4.30	154.46
181977	MECCA / CATHODIC	0.00	0.00	0.00
183699	FALLON / WIRE	0.00	0.00	0.00
185677N	WILMOT / GRAVITOMETER	483.04	13.85	496.89
189776	CALIPATRIA / CATHODIC	0.00	0.00	0.00
190978	DIXIE / CATHODIC	0.00	0.00	0.00
193486	DIXIE / CATHODIC	0.00	0.00	0.00
198432	TRAVER / CATHODIC	0.00	0.00	0.00
200607	TRAVER / CATHODIC	0.00	0.00	0.00

Ex. 1
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SF000440

EXHIBIT 'E'
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No	Description	1993 Rent	1993 CPI Adjustment	Total 1993 Rent
203330	NILAND / CATHODIC	0.00	0.00	0.00
203400C	LATHROP / CATHODIC PROTECTION	284.00	0.00	284.00
203752N	TURLOCK / W/G POWER	120.00	0.00	120.00
204097	HYDER / CATHODIC	0.00	0.00	0.00
204098	HYDER / CATHODIC	0.00	0.00	0.00
205320	HYDER / CATHODIC	0.00	0.00	0.00
205321	HYDER / CATHODIC	0.00	0.00	0.00
205322	HYDER / CATHODIC	0.00	0.00	0.00
206029N	THERMAL / CABLE ANODE	125.00	0.00	125.00
210508	ROLL / CATHODIC	0.00	0.00	0.00
211520	NILAND / CATHODIC	0.00	0.00	0.00
211540	CASA GRANDE / CATHODIC	0.00	0.00	0.00
707684	LOS ANGELES / CATHODIC	0.00	0.00	0.00
708661	SWINGLE / CATHODIC	0.00	0.00	0.00
709695	REYES / CATHODIC	0.00	0.00	0.00
709696	REYES / CATHODIC	0.00	0.00	0.00
	GILLESPIE / OH. WIRE	0.00	0.00	0.00
	OATMAN MTN. / OH. WIRE	0.00	0.00	0.00
	SADDLE / OH. WIRE	0.00	0.00	0.00
	MONTEZUMA / OH. WIRE	0.00	0.00	0.00
165693	BUCKEYE / OH. WIRE	0.00	0.00	0.00
167619	FOWLER / OH. WIRE	0.00	0.00	0.00
115257	LIBERTY / OH. WIRE	0.00	0.00	0.00
142563	CORTARO / OH. WIRE	0.00	0.00	0.00
145750	STOCKHAM / OH. WIRE	0.00	0.00	0.00
122743	MARICOPA / OH. WIRE	0.00	0.00	0.00
151789	BON / OH. WIRE	0.00	0.00	0.00
120641	MUNDO / OH. WIRE	0.00	0.00	0.00
165459	INDIO / ANODE	0.00	0.00	0.00
24008	HUGO / WIRE XING	0.00	0.00	0.00
167225	DRY CAMP / ANODE	0.00	0.00	0.00
144421	LISBON / WIRE XING	0.00	0.00	0.00
175702	MONDEL / UG. WIRE	0.00	0.00	0.00

EX-1

EXHIBIT "E"
DOCUMENTED APPURTENANCE AGREEMENTS

Lease No.	Description	1993 Rent	1993 CPI Adjustment	Total 1993 Rent
122687	COOLIDGE / OH. WIRE	0.00	0.00	0.00
119923	HAZEN / UG. WIRE	0.00	0.00	0.00
149306	CARLTON / OH. WIRE	0.00	0.00	0.00
149199	MAGMA / OH. WIRE	0.00	0.00	0.00
115905	CRAG / POLE LINE	0.00	0.00	0.00
14459	SEPAR / WIRE XING	0.00	0.00	0.00
113514	NILAND / UG. WIRE	0.00	0.00	0.00
113912	HIDALGO / OH. WIRE	0.00	0.00	0.00
112096	GARY / UG. WIRE	0.00	0.00	0.00
150483	TOLTEC / BOOSTER STATION	0.00	0.00	0.00
TOTAL		16,839.70	467.50	17,307.20

SF000442

Ex. 1
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EXHIBIT 5

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960

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SFPP, L.P.
9

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County Of Los Angeles

JUN 08 2015

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 CENTRAL DISTRICT

BC 584518

14 SFPP, L.P.,

15 Plaintiff,

16 v.

17 UNION PACIFIC RAILROAD COMPANY,
and DOES 1-100, inclusive,

18 Defendants.
19

No.

COMPLAINT FOR RESCISSION,
RESTITUTION, UNJUST ENRICHMENT,
DAMAGES, AND DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 Railroad in the 1980s, however, the Railroad was sold to a third party. After this merger, the
2 predecessors of SFPP and Union Pacific became separate companies.

3 **10.** Shortly thereafter, disputes arose between the Railroad and the Pipeline regarding,
4 among other things, the amount of rent that the Railroad wanted to charge the Pipeline for the
5 subsurface easements. The disputes were eventually resolved by settlement agreement, and the
6 parties' predecessors entered into the AREA in 1994. A copy of the AREA is attached as **Exhibit**
7 **A** and incorporated here by reference as though set forth in full.

8 **11.** In the AREA, Union Pacific purported to grant SFPP a "perpetual non-exclusive
9 easement and right to construct, reconstruct, renew, maintain and operate a pipe line and
10 appurtenances . . . in, upon, along and across the **property of Railroad . . .**" (Ex. A, AREA
11 § 1(a) [emphasis added].) This "easement" is a network that consists of approximately 1,850
12 miles of subsurface pipeline easements running through California and five other western states
13 that traverse or lie underneath Union Pacific's railroad right of way.

14 **12.** The AREA requires SFPP to pay Union Pacific rent for the entire easement
15 network "in, upon, along and across the property of Railroad." Every year, SFPP pays to Union
16 Pacific a single specified base rent amount, adjusted annually for the Consumer Price Index
17 ("CPI"). Under Section 2(b)(i)(A) of the AREA, Union Pacific can seek a rent increase every ten
18 years, which Union Pacific has done in 1994, 2004, and 2014. (Ex. A, AREA § 2(b)(i)(A).)
19 Since entering into the AREA in 1994, SFPP has paid approximately \$80 million in rent to Union
20 Pacific in good faith for the network of pipeline easements that is purportedly "in, upon, along
21 and across the property of Railroad," and SFPP continues to pay Union Pacific rent to this day.

22 **13.** The AREA also requires SFPP to relocate its pipeline "on railroad property to such
23 point or points thereon" at any time that the Railroad deems "necessary," at SFPP's "sole cost and
24 expense." With respect to relocation, the AREA provides:

25 In the event that Railroad shall at any time deem it necessary, the
26 [Pipeline] shall, . . . at [Pipeline's] sole cost and expense, change
27 the location of said pipe line, its adjuncts or appurtenances, **on**
28 **railroad property to such point or points thereon** as Railroad
 shall designate and reconstruct or reinforce the same.

1 (Ex. A, AREA § 3 [emphasis added].) For at least the past decade, Union Pacific has demanded
2 that SFPP relocate its pipeline under non-binding standards adopted by the American Railway
3 Engineering and Maintenance-of-Way Association (“AREMA”). AREMA standards are more
4 onerous, often unnecessary – and millions of dollars more costly – than those required by the U.S.
5 Department of Transportation (“DOT”). Union Pacific thus uses the AREA to demand that SFPP
6 relocate its pipeline according to AREMA and pay the full expense of relocating to that standard,
7 notwithstanding SFPP’s objections and offers to relocate according to DOT standards, which are
8 safe, fully compliant with applicable engineering standards, and more efficient and economical.
9 To date, SFPP has incurred tens of millions of dollars in costs and expenses completing the
10 relocation projects required by Union Pacific under the AREA.

11 **14.** Both the rent and relocation provisions of the AREA are expressly premised upon
12 SFPP’s pipeline existing on and being relocated to property of the Railroad.

13 **15.** The parties’ predecessors entered into the AREA for the fundamental and material
14 purposes of (1) consolidating, amending, and restating in one agreement a comprehensive
15 network of easements “in, upon, along and across the property of Railroad,” and (2) establishing a
16 comprehensive fair market rental valuation process. As such, the rent required by Union Pacific
17 under the AREA for this entire network of easements is a single, annual rental payment.
18 Likewise, other privileges granted and obligations required under the AREA, including the
19 relocation provision in Section 3, apply to the entire easement network as a whole.

20 **16.** The AREA does not contain a severability clause, which reflects the parties’
21 mutual intent that the AREA not be severable.

22 **17.** Section 11 of the AREA provides for “reasonable attorneys’ fees and expenses” to
23 the prevailing party in a “suit to compel performance of or to recover for breach of any covenant
24 or condition herein contained.”

25 **18.** Since entering into the AREA in 1994, Union Pacific has initiated successive
26 litigation under the ten-year rent increase provision for the purpose of raising the rental rate based
27 on the railroad-created and railroad-friendly Across The Fence (“ATF”) valuation method.

28

1 **19.** Union Pacific filed the first ten-year rental proceeding in 1994, and the second ten-
2 year rental proceeding in 2004. After trial in the 2004 proceeding, the court set annual rental
3 value at over \$14 million, as of January 1, 2004, and entered a \$100 million judgment in Union
4 Pacific's favor. Approximately \$80 million of the judgment was for "back rent," over and above
5 the roughly \$5 million per year plus CPI that SFPP had already paid to Union Pacific. SFPP
6 appealed, however, and this \$100 million judgment was reversed.

7 **20.** On November 5, 2014, the Court of Appeal of the State of California, Second
8 Appellate District, issued an opinion in the matter *Union Pacific Railroad Co. v. Santa Fe Pacific*
9 *Pipelines, Inc., et al.*, Los Angeles Superior Court Case No. BC319170, Appellate Case No.
10 B242864, 231 Cal. App. 4th 134 (2014) (petition for California Supreme Court review denied)
11 (the "Opinion"). In the Opinion, the Court of Appeal held that Union Pacific does not have, and
12 did not ever have sufficient title in its right of way acquired by Congressional Act to grant
13 subsurface pipeline easements to SFPP, or to collect rent from SFPP under the AREA. A copy
14 of the Opinion is attached as **Exhibit B**. The Opinion became final when the remittitur issued on
15 January 26, 2015. The time for Union Pacific to petition the United States Supreme Court for
16 review expired on or about April 21, 2015.

17 **21.** As recently recognized by the district court in *SFPP, L.P. v. Union Pacific*
18 *Railroad Company*, "the AREA assumed that [Union Pacific] owned the property that was the
19 subject to the contract. That is the basis on which [Union Pacific's] predecessor granted the
20 easements through the AREA." Case No. 2:15-cv-01954-JAK-PLA, Dkt. #38 (C.D. Cal. June 3,
21 2015), *remanded to* Los Angeles Superior Court, Case No. BC573396. The district court also
22 noted that the "parties could have been mistaken about land ownership at the time they entered
23 the AREA." *Id.* This order also recognizes that the Opinion impacts the AREA as a whole,
24 including both the rent and the relocation provisions. A copy of the district court's June 3, 2015
25 order is attached as **Exhibit C**.

26 **22.** Approximately fifty percent (50%) of the total pipeline easements purportedly
27 granted by the AREA are located under railroad right of way obtained via Congressional Act.
28 Approximately twenty percent (20%) of the total pipeline easements purportedly granted by the

1 AREA are located under right of way on property that is owned or otherwise controlled by third
2 parties, including state, county, or municipal governments, or private parties. Only approximately
3 thirty percent (30%) of the total pipeline easements are located on property that Union Pacific
4 purportedly owns in fee. Accordingly, SFPP now believes that Union Pacific did not have
5 sufficient title to grant approximately **seventy percent (70%)** of the total easements purportedly
6 granted under the AREA, and for which SFPP has relied on and been paying Union Pacific tens
7 of millions of dollars in rent and relocation expenses since 1994.

8 **23.** SFPP cannot in equity be bound by an agreement requiring it to pay rent and
9 relocation expenses to Union Pacific for more than 1,200 miles of easements on property that
10 Union Pacific does not own, i.e., property that is not “property of [the] Railroad.” Likewise,
11 SFPP cannot be forced to relocate its pipeline on property that is not property of the Railroad.
12 Accordingly, SFPP seeks rescission of the AREA in its entirety, and restitution for all rent and
13 relocation expenses paid under the AREA, which is void, or has failed in all material respects.

14 **24.** SFPP recognizes that some amount of rent may be properly paid to Union Pacific
15 in equity for easements on the property that the Railroad does own in fee. But the fair market
16 value of any such amount is presently unknown, and must be determined outside the context of
17 the AREA, which is void, or has failed in all material respects.

18 **FIRST CAUSE OF ACTION**

19 **(For Rescission)**

20 **25.** SFPP incorporates each and every allegation in Paragraphs 1 through 24 as though
21 fully set forth here.

22 **26.** Under Civil Code section 1689 (“Section 1689”), a contract may be rescinded
23 where the consideration for the obligation of the rescinding party becomes entirely void, or fails
24 in a material respect, from any cause, or where the consent of the party rescinding was given by
25 mistake. A contract may also be rescinded under Section 1689 where the contract is unlawful or
26 the public interest will be prejudiced by permitting the contract to stand.

27 **27.** A contract requires sufficient, good, and lawful consideration. SFPP alleges that
28 there is no legally enforceable or binding contract between the parties, or that the contract must be

1 rescinded because the consideration promised by Union Pacific (i.e., the network of subsurface
2 pipeline easements) has failed in a substantial and material respect. Union Pacific did not have
3 the ability to grant SFPP over 70% of the easements promised under the AREA in exchange for
4 SFPP's promise to pay rent and other expenses. As the Opinion has made clear, Union Pacific
5 did not have sufficient title to grant subsurface pipeline easements under its Congressional Act
6 right of way, or on property that Union Pacific does not own in fee. Accordingly, the
7 consideration purportedly given to SFPP under the AREA, and for which SFPP agreed to pay rent
8 and other expenses, is now entirely void or has failed in a substantial and material respect. SFPP
9 is thus entitled to rescission of the AREA under Section 1689, subsections (3) and (4).

10 **28.** SFPP alleges that there is no legally enforceable or binding contract between the
11 parties or that the contract must be rescinded because both parties were mistaken, or SFPP was
12 unilaterally mistaken, about Union Pacific's ability to grant easements to SFPP, including under
13 Union Pacific's Congressional Act right of way, which is approximately fifty percent (50%) of
14 the right of way at issue in the AREA. SFPP or its predecessors would not have agreed to enter
15 into the AREA, or assume all of the obligations thereunder including, but not limited to, the
16 payment of rent and relocation expenses, if SFPP or its predecessors had known that over 70% of
17 the purported easements were invalid. This mistake is material or central to the AREA, and SFPP
18 does not bear the risk of the mistake. SFPP or its predecessors believed in good faith in the
19 existence of the purported easements, which are material to the AREA, and which SFPP is now
20 aware do not exist. Both parties mutually, or in the alternative SFPP unilaterally,
21 misapprehended the law, including the extent of the property interest granted by Congress to the
22 Railroad. SFPP is thus entitled to rescission of the AREA under Section 1689, subsection (1).

23 **29.** Both the consideration and the subject of a contract must be lawful and must not
24 be in conflict with statutes or public policy. If any part of a single consideration for one or more
25 objects, or of several considerations for a single object, is unlawful, the entire contract is void.
26 If a contract has a single object, and that object is unlawful (whether in whole or in part) the
27 entire contract is void. Union Pacific's purported grant of subsurface easements and collection of
28 rent and relocation expenses thereon is a single unlawful consideration, or several unlawful

1 considerations, or a single unlawful object. SFPP further alleges on information and belief that
2 over 70% of the subsurface property upon which Union Pacific purported to grant SFPP
3 easements is owned by third parties, including the federal government. Enforcing the AREA
4 therefore may be against public policy or the public interest because Union Pacific cannot be
5 permitted to profit from rent and relocation expenses for the use of property owned by third
6 parties, including the federal government. SFPP is thus entitled to rescission of the AREA under
7 Section 1689, subsections (5) and (6).

8 **30.** SFPP cannot restore possession of the subsurface property to Union Pacific
9 because over 70% of the easement network it is not on Union Pacific's property. Moreover,
10 SFPP cannot remove its pipeline network, which has occupied the subsurface for decades, and
11 regardless of whether the property is owned by Union Pacific or third parties, because SFPP's
12 pipelines serve an essential public utility function and provide the citizens of several western
13 states with critical energy transportation infrastructure. SFPP may also have other easement
14 rights to the subsurface against third parties by prescription or other equitable means, or rights to
15 condemn the subsurface as a public utility. SFPP is thus excused from making a restoration offer
16 before seeking rescission of the AREA.

17 **31.** SFPP intends service of the summons and complaint in this action to serve as
18 notice of rescission of the AREA.

19 **32.** As a result of any or all of the above allegations, the entire AREA must be
20 rescinded. Union Pacific cannot be permitted to continue to collect tens of millions of dollars in
21 rent from SFPP or demand that SFPP pay relocation expenses, at SFPP's sole cost and expense,
22 under Section 3 of the AREA.

23 **33.** SFPP seeks restitution for all amounts paid to Union Pacific under the AREA,
24 including rent, relocation expenses, and other amounts paid since July 29, 1994, and prejudgment
25 interest thereon. SFPP also seeks consequential damages incurred as a result of or in connection
26 with entering into or complying with the terms of the AREA, and prejudgment interest thereon.

27
28

1 47. For a judgment declaring that SFPP is entitled to restitution for all amounts paid in
2 rent to Union Pacific under the AREA, or alternatively for all amounts paid in rent to Union
3 Pacific under the AREA for easements on property that Union Pacific does not own in fee;

4 48. For a judgment declaring that SFPP is entitled to restitution for all amounts paid to
5 Union Pacific under the AREA for relocation expenses, or other costs, fees, or expenses required
6 under the AREA;

7 49. For restitution in an amount according to proof at trial, and prejudgment interest
8 thereon;

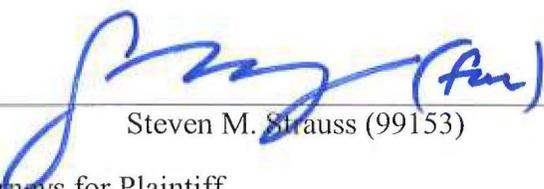
9 50. For consequential damages sufficient to make SFPP whole, in an amount
10 according to proof at trial, and prejudgment interest thereon;

11 51. For attorney's fees and costs of suit; and

12 52. For such other and further relief to which SFPP may show it is justly entitled, in
13 law or in equity, or as the Court may deem proper.

14 Dated: June 8, 2015

COOLEY LLP
STEVEN M. STRAUSS (99153)
M. RAY HARTMAN III (211205)
SUMMER J. WYNN (240005)
CATHERINE J. O'CONNOR (275817)

15
16
17
18 By:  (fms)
19 Steven M. Strauss (99153)

20 Attorneys for Plaintiff
21 SFPP, L.P.
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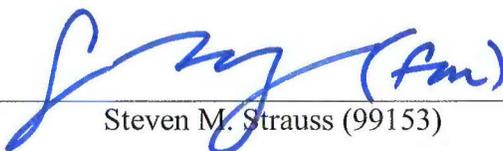
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DEMAND FOR JURY TRIAL

SFPP hereby demands a jury trial as to any and all factual matters as to which it may be entitled.

Dated: June 8, 2015

COOLEY LLP
STEVEN M. STRAUSS (99153)
M. RAY HARTMAN III (211205)
SUMMER J. WYNN (240005)
CATHERINE J. O'CONNOR (275817)

By:  (fm)
Steven M. Strauss (99153)

Attorneys for Plaintiff
SFPP, L.P.

EXHIBIT 6

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960



RJ - X - 5-19-55 (G-4470 338)

IN CONNECTION WITH AGREEMENT
116773

99130

THIS AGREEMENT, made this 25th day of May, 1955, by and between SOUTHERN PACIFIC COMPANY, a corporation, herein called "Railroad," and SOUTHERN PACIFIC PIPE LINES, INC., a corporation, herein called "Company";

WITNESSETH:

Railroad hereby permits Company (subject to the provisions contained in the form of agreement marked Exhibit "A," hereto attached and made part hereof), to enter upon Railroad's property in the States of California, Arizona, New Mexico and Texas for the purpose of constructing a pipe line to convey petroleum, natural gas and the products derived therefrom.

Company agrees in exercising the permission herein given to comply with and to be bound by all of the provisions contained in said Exhibit "A". Company further agrees to enter into easement agreements with Railroad and its lessor and affiliated companies in the same form and containing substantially the same provisions as said Exhibit "A," as soon as a satisfactory description of the location of said pipe line upon Railroad's property is prepared. Company shall pay an annual consideration to Railroad and Railroad's lessor and affiliated companies for the rights granted in said easement agreements, the amount of which shall be mutually agreed upon at the time of execution of said easement agreements. In the event the parties fail to agree as to the amount of such annual consideration, the matter shall be submitted to arbitration as provided in Section 2 of Exhibit "A."

Before any construction work is commenced upon Railroad's property, Company's contractors shall enter into agreements with Railroad indemnifying Railroad and its lessor and affiliated companies from and against all claims, demands, costs, loss, damage and liability growing out of the performance of the work to be done by such contractor. Said contractors shall furnish certified copies of policies of Public Liability and Property Damage Insurance within limits specified by, and in a form satisfactory to, Railroad, covering the contractual

Maguire Exh. 3
SF000732

EXHIBIT 1

RJ - X - 5-9-55

liability assumed by the contractors in said agreements to be entered into with Railroad.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their officers thereunto duly authorized, and their corporate seals to be hereunto affixed, as of the day and year first herein written.

IN DUPLICATE

SOUTHERN PACIFIC COMPANY,

By *J. M. [Signature]*
Vice President

Attest: *T. F. [Signature]*
Assistant Secretary

SOUTHERN PACIFIC PIPE LINES, INC.,

By *E. E. [Signature]*
Vice President

Attest: *T. F. [Signature]*
Assistant Secretary

SF000733

RJ - X - 5-19-55

EXHIBIT "A"

THIS AGREEMENT, made this _____ day of _____,
1955, by and between _____,
_____, and its lessee,
SOUTHERN PACIFIC COMPANY, a corporation of the State of Delaware,
hereinafter jointly and severally referred to as "Railroad," and
SOUTHERN PACIFIC PIPE LINES, INC., a corporation of the State of
Delaware, hereinafter called "Company";

WITNESSETH:

1. Railroad hereby grants to Company (subject to the reser-
vations, covenants and conditions hereinafter set forth) the perpetual
easement and right to construct, reconstruct, renew, maintain and
operate a pipe line and appurtenances for the conveyance of petroleum
or natural gas, or products derived from either or both thereof, in,
upon, along and across the following described property of Railroad:

(INSERT LEGAL DESCRIPTION)

This grant is subject to and subordinate to the prior and
continuing right and obligation of Railroad and its respective suc-
cessors or assigns to use and maintain the entire railroad right of
way and property in performance of its public duty as a common
carrier and is also subject to the right and power of Railroad, its
successors or assigns in interest or ownership of the said railroad
right of way and property, to construct, maintain, use and operate
on the present or other grade, existing or additional railroad tracks
and appurtenances thereto, including water and fuel pipe lines and
conduits and telegraph, telephone, signal, power and other electric
lines and other railroad facilities and structures of any kind upon,
along or across any or all parts of said land above described, all or
any of which may be freely done at all time or times by Railroad, or
its successors or assigns, without liability for compensation or
damage.

2. Company agrees to pay to Southern Pacific Company the sum

RJ - X - 5-10-55

of _____ per annum, payable annually in advance,
on the ____ day of _____, 19____ and thereafter on
the ____ day of _____ of each consecutive year for so
long as this easement remains in effect.

In the event Company abandons any portion or portions of said pipe line, said annual sum shall be subject to reduction upon request by Company in an amount mutually agreed upon. Railroad may seek an increase in the amount of said annual payment at the expiration of the first five (5) year period and each consecutive five (5) year period thereafter during the life of said easement, provided that Railroad shall give Company written notice of an increase in said rental at least sixty (60) days before the commencement of each such consecutive five (5) year period; otherwise, Company shall continue to pay the annual payments due hereunder at the same rate as for the preceding five (5) year period, except as herein otherwise provided. If the parties hereto are unable to agree upon the amount of the reduction for such abandonment or the amount of the increase of the annual payment for any such five (5) year period, as aforesaid, then upon request of either party the matter shall be submitted to and decided by three arbitrators, one to be appointed by Railroad, one by Company and the third by the two so appointed. Any party requesting arbitration shall give written notice to the other party to that effect in writing, appointing an arbitrator to act in its behalf. If the other party fails to appoint an arbitrator within thirty (30) days after notice has been given to it, the party giving such notice may appoint an arbitrator on behalf of the party so in default. If the two arbitrators cannot agree upon the third arbitrator, the third arbitrator shall be appointed upon petition by either party by any District Court of the United States of proper venue having jurisdiction, but such petition shall not be made until such party shall have given twenty (20) days' notice in writing to the other party of its intention so to do. As soon as possible after the selection of such arbitrators, they shall hold a hearing to

RJ - X 5-10-55

determine the amount of such annual payments, after giving the parties hereto reasonable notice of the time and place of such hearing and an opportunity to be heard. The written decision of the arbitrators, signed by a majority, shall determine whether changed conditions require an increase in the amount of said annual payments or a decrease in the event of abandonment of a portion of the easement, and, if so, the reasonable amount thereof, and such determination shall be final and conclusive upon the parties hereto. The fees and expenses of arbitration shall be borne one half by the Railroad and one half by the Company.

3. The Company, its agents, employees and contractors, shall have the privilege of entry upon the property of Railroad for the purpose of constructing, reconstructing, renewing, maintaining and inspecting said pipe line. The location, plans and specifications for said pipe line upon Railroad's right of way and property shall be subject to the approval of Railroad. The Company agrees that said pipe line shall be constructed, reconstructed, renewed, maintained and operated and all work thereon or in connection therewith shall be performed in a careful, safe and workmanlike manner in accordance with all laws and regulations governing the same and in such manner as not to interfere with or endanger railroad property or operations. In the event that Railroad shall at any time deem it necessary, the Company shall, upon receipt of written notice so to do, at Company's sole cost and expense, change the location of said pipe line, its adjuncts or appurtenances, on railroad property to such point or points thereon as Railroad shall designate and reconstruct or reinforce the same.

4. Before performing any work of construction, renewal or repair of said pipe line (except emergency repairs) upon Railroad's property, Company shall notify in writing the Superintendent of Railroad's Division on which the work will be performed, stating the time it is proposed to do said work, so that Railroad will have ample time within which to arrange to have Railroad's representatives present.

SF000736

RJ K 5-9-55

if it so desires, while such work is being performed. In case of emergency repair work, such written notice shall be given as soon as practicable.

5. Company agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with the construction, reconstruction, maintenance, relocation and removal of said pipe line, including, but not limited to, the installation and removal of falsework and other protection beneath or along Railroad's tracks, the removal and restoration of any structures of Railroad, the furnishing of such watchmen, flagmen, inspectors and representatives as Railroad deems necessary for the protection of railroad property and operations.

6. In the event any work upon or in connection with said pipe line, or its appurtenances, to be done upon or adjacent to the property of Railroad should be let to a contractor by Company, such work shall not be begun until such contractor shall have first entered into an agreement with Southern Pacific Company, indemnifying Railroad from and against all liability, cost, expense, claims and actions for injuries to persons and damage to or loss of property growing out of the performance of the work to be done by such contractor and the subcontractors of contractor. Such contractor shall furnish during the period said work is being performed at the option of and without expense to Southern Pacific Company, a reliable surety company's bond, in an amount and in a form satisfactory to Southern Pacific Company, guaranteeing the faithful performance of all the covenants and conditions contained in said agreement to be entered into with Southern Pacific Company; and a certified copy of a policy of Public Liability and Property Damage Liability Insurance, within limits specified by and in a form satisfactory to Southern Pacific Company, covering the contractual liability assumed by contractor in said agreement to be entered into with Southern Pacific Company.

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7. The Company assumes all risk of, and releases and discharges and agrees to indemnify and hold harmless Railroad of and from all liability for

(a) loss of or damage to said pipe line, its adjuncts or appurtenances, and to any and all other property of the Company or of its officers, agents, employees and contractors, or in the custody or control of the Company or any of its agents, employees or contractors, including loss of use thereof, and

(b) injuries to or deaths of persons,

while upon the property or right of way of the Railroad, or in proximity thereto, in connection with work upon said pipe line, or in the operation thereof, resulting from or growing out of any cause whatsoever, including but not limited to the negligence of the agents, employees or contractors of Railroad, or defects or imperfections in railroad property or equipment.

Except as above provided in this Section 7, the Company agrees to indemnify and save harmless the Railroad from and against any and all loss and damage, and from liability for

(a) loss of or damage to property, including but not limited to, property of the Railroad, or of its officers, agents, employees or contractors, or property in the custody or control of the Company or of any of its officers, agents, employees or contractors, including the loss of use thereof, and

(b) injuries to or deaths of persons, including, but not limited to, Railroad's officers, agents, employees or contractors, invitees, passengers, or persons in its custody or control,

resulting from or growing out of any cause whatsoever connected with the construction, renewal, operation, maintenance, removal or presence of said pipe line, or defects or imperfections therein, or breakage thereof, or arising or growing out of acts or omissions of persons engaged in work upon or in the operation of said pipe line, save and excepting, however, any such injury, damage or death proximately caused solely by the negligence of the officers, agents, employees or contractors of Railroad or defects or imperfections in railroad property or equipment.

SF000738

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8. This grant is made upon the express condition subsequent that in the event Company, its successors or assigns, abandon the use of said property or fail to use the same for the purposes herein granted for a continuous period of two (2) years, or in the event of a breach by Company, its successors or assigns, of any covenant or condition herein contained and such default is not remedied within six (6) months after written notice from Railroad so to do, then, and in either of those events, the rights herein granted shall cease and terminate and Railroad, its successors or assigns, shall have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property provided, however, in the event of a partial abandonment or discontinuance of use, such termination shall apply only to the part thereof the use of which is so discontinued or abandoned. The waiver by Railroad of the breach of any covenant or condition hereof shall not be construed as waiver of any other or subsequent breach hereof, nor of any other covenant or condition hereof.

9. Upon termination of the easement herein granted in any manner, the Company may, at its option, at any time within six months after such termination remove the said pipe line and appurtenances thereof, filling in all excavations made in connection with such removal and restoring the ground to conform to the natural contour then existing, and leaving the premises in a neat, clean and safe condition; provided, however, that any such property not so removed within six (6) months from such termination shall become the property of the Railroad.

10. Said easement herein is subject to all valid and existing contracts, leases, liens or encumbrances or claims of title which may affect the property, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

11. In case Railroad shall bring suit to compel performance

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RJ - X - 5-10-55

of or to recover for breach of any covenant or condition herein contained and shall prevail in such action, Company shall pay to Railroad reasonable attorney fees in addition to the amount of judgment and costs.

12. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their officers thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first herein written.

SOUTHERN PACIFIC COMPANY,

By _____
Vice President

Attest: _____
Assistant Secretary

SOUTHERN PACIFIC PIPE LINES, INC.,

By _____
President

Attest: _____
Secretary

-7-

SF000740

-7-

EXHIBIT 7

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960



115689

DOCUMENT
SPPL 350
AUDIT No. _____

THIS AGREEMENT, made this 1st day of December, 1956, by and between SOUTHERN PACIFIC COMPANY, a corporation, herein called "Railroad," and SOUTHERN PACIFIC PIPE LINES, INC., a corporation, herein called "Company";

WITNESSETH:

Railroad hereby permits Company (subject to the provisions contained in the form of agreement marked Exhibit "A", hereto attached and made a part hereof), to enter upon Railroad's property in the States of California and Nevada for the purpose of constructing pipe lines to convey petroleum, natural gas and the products derived therefrom.

Company agrees in exercising the permission herein given to comply with and to be bound by all of the provisions contained in said Exhibit "A". Company further agrees to enter into easement agreements with Railroad and its lessor and affiliated companies in the same form and containing substantially the same provisions as said Exhibit "A", as soon as a satisfactory description of the location of said pipe line upon Railroad's property is prepared. Company shall pay an annual consideration to Railroad and Railroad's lessor and affiliated companies for the rights granted in said easement agreements, the amount of which shall be mutually agreed upon at the time of execution of said easement agreements. In the event the parties fail to agree as to the amount of such annual consideration, the matter shall be submitted to arbitration as provided in Section 2 of Exhibit "A".

UP 00238

Before any construction work is commenced upon Railroad's property, Company's contractors shall enter into agreements with Railroad indemnifying Railroad and its lessor and affiliated companies from and against all claims, demands, costs, loss, damage and liability growing out of the performance of the work to be done by such contractors. Said contractors shall furnish certified copies of policies of Public Liability and Property Damage Insurance within limits specified by, and in a form satisfactory to, Railroad, covering

Magnum

the contractual liability assumed by the contractors in said agreements to be entered into with Railroad.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate by their officers thereunto duly authorized, and their corporate seals to be hereunto affixed as of the day and year first herein written.

SOUTHERN PACIFIC COMPANY,

By J. W. ...
Vice President

Attest: T. T. Ryan
Assistant Secretary

SOUTHERN PACIFIC PIPE LINES, INC.,

By A. M. ...
Vice President

Attest: T. T. Ryan
Secretary

UP 00239

EXHIBIT "A"

THIS AGREEMENT, made this _____ day of _____, 195____, by and between CENTRAL PACIFIC RAILWAY COMPANY, a corporation of the State of Utah, and SOUTHERN PACIFIC COMPANY, a corporation of the State of Delaware, as their respective interests may appear, (hereinafter jointly and severally referred to as "Railroad,") and SOUTHERN PACIFIC PIPE LINES, INC., a corporation of the State of Delaware, hereinafter called "Company";

WITNESSETH:

1. Railroad hereby grants to Company (subject to the reservations, covenants and conditions hereinafter set forth) the perpetual easement and right to construct, reconstruct, renew, maintain and operate a pipe line and appurtenances for the conveyance of petroleum or natural gas, or products derived from either or both thereof, in, upon, along and across the following described property of Railroad:

(INSERT LEGAL DESCRIPTION)

This grant is subject to and subordinate to the prior and continuing right and obligation of Railroad and its respective successors or assigns to use and maintain the entire railroad right of way and property in performance of its public duty as a common carrier and is also subject to the right and power of Railroad, its successors or assigns in interest or ownership of the said railroad right of way and property, to construct, maintain, use and operate on the present or other grade, existing or additional railroad tracks and appurtenances thereto, including water and fuel pipe lines and conduits and telegraph, telephone, signal, power and other electric lines and other railroad facilities and structures of any kind upon, along or across any or all parts of said land above described, all or any of which may be freely done at all time or times by Railroad, or its successors or assigns, without liability for compensation or damage.

UP 00240

2. Company agrees to pay to Southern Pacific Company the

sum of _____ per annum, payable annually in advance,
on the _____ day of _____, 19____ and thereafter
on the _____ day of _____ of each consecutive
year for so long as this easement remains in effect.

In the event Company abandons any portion or portions of
said pipe line, said annual sum shall be subject to reduction upon
request by Company in an amount mutually agreed upon. Railroad may
seek an increase in the amount of said annual payment at the ex-
piration of the first five (5) year period and each consecutive
five (5) year period thereafter during the life of said easement,
provided that Railroad shall give Company written notice of an in-
crease in said rental at least sixty (60) days before the commence-
ment of each such consecutive five (5) year period; otherwise,
Company shall continue to pay the annual payments due hereunder at
the same rate as for the preceding five (5) year period, except as
herein otherwise provided. If the parties hereto are unable to agree
upon the amount of the reduction for such abandonment or the amount
of the increase of the annual payment for any such five (5) year
period, as aforesaid, then upon request of either party the matter
shall be submitted to and decided by three arbitrators, one to be
appointed by Railroad, one by Company and the third by the two so
appointed. Any party requesting arbitration shall give written
notice to the other party to that effect in writing, appointing an
arbitrator to act in its behalf. If the other party fails to appoint an
arbitrator within thirty (30) days after notice has been given to it,
the party giving such notice may appoint an arbitrator on behalf of
the party so in default. If the two arbitrators cannot agree upon
the third arbitrator, the third arbitrator shall be appointed upon
petition by either party by any District Court of the United States
of proper venue having jurisdiction, but such petition shall not be
made until such party shall have given twenty (20) days' notice in
writing to the other party of its intention so to do. As soon as
possible after the selection of such arbitrators, they shall hold
a hearing to determine the amount of such annual payments, after

giving the parties hereto reasonable notice of the time and place of such hearing and an opportunity to be heard. The written decision of the arbitrators, signed by a majority, shall determine whether changed conditions require an increase in the amount of said annual payments or a decrease in the event of abandonment of a portion of the easement, and, if so, the reasonable amount thereof, and such determination shall be final and conclusive upon the parties hereto. The fees and expenses of arbitration shall be borne one-half by the Railroad and one-half by the Company.

3. The Company, its agents, employees and contractors, shall have the privilege of entry upon the property of Railroad for the purpose of constructing, reconstructing, renewing, maintaining and inspecting said pipe line. The location, plans and specifications for said pipe line upon Railroad's right of way and property shall be subject to the approval of Railroad. The Company agrees that said pipe line shall be constructed, reconstructed, renewed, maintained and operated and all work thereon or in connection therewith shall be performed in a careful, safe and workmanlike manner in accordance with all laws and regulations governing the same and in such manner as not to interfere with or endanger railroad property or operations. In the event that Railroad shall at any time deem it necessary, the Company shall, upon receipt of written notice so to do, at Company's sole cost and expense, change the location of said pipe line, its adjuncts or appurtenances, on railroad property to such point or points thereon as Railroad shall designate and reconstruct or reinforce the same.

4. Before performing any work of construction, renewal or repair of said pipe line (except emergency repairs) upon Railroad's property, Company shall notify in writing the Superintendent of Railroad's Division on which the work will be performed, stating the time it is proposed to do said work, so that Railroad will have ample time within which to arrange to have Railroad's representative present,

if it so desires, while such work is being performed. In case of emergency repair work, such written notice shall be given as soon as practicable.

5. Company agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with the construction, reconstruction, maintenance, relocation and removal of said pipe line, including, but not limited to, the installation and removal of falsework and other protection beneath or along Railroad's tracks, the removal and restoration of any structures of Railroad, the furnishing of such watchmen, flagmen, inspectors and representatives as Railroad deems necessary for the protection of railroad property and operations.

6. In the event any work upon or in connection with said pipe line, or its appurtenances, to be done upon or adjacent to the property of Railroad should be let to a contractor by Company, such work shall not be begun until such contractor shall have first entered into an agreement with ^{Railroad} [Southern Pacific Company] indemnifying Railroad from and against all liability, cost, expense, claims and actions for injuries to persons and damage to or loss of property growing out of the performance of the work to be done by such contractor and the subcontractors of contractor. Such contractor shall furnish during the period said work is being performed at the option of and without expense to ^{Railroad} [Southern Pacific Company] a reliable surety company's bond, in an amount and in a form satisfactory to ^{Railroad} [Southern Pacific Company] guaranteeing the faithful performance of all the covenants and conditions contained in said agreement to be entered into with ^{Railroad} [Southern Pacific Company] and a certified copy of a policy of Public Liability and Property Damage Liability Insurance, within limits specified by and in a form satisfactory to ^{Railroad} [Southern Pacific Company] covering the contractual liability assumed by contractor in said agreement to be entered into with ^{Railroad} [Southern Pacific Company].

7. The Company assumes all risk of, and releases and discharges:

and agrees to indemnify and hold harmless Railroad of and from all liability for

(a) loss of or damage to said pipe line, its adjuncts or appurtenances, and to any and all other property of the Company or of its officers, agents, employees and contractors, or in the custody or control of the Company or any of its agents, employees or contractors, including loss of use thereof, and

(b) injuries to or deaths of persons,

while upon the property or right of way of the Railroad, or in proximity thereto, in connection with work upon said pipe line, or in the operation thereof, resulting from or growing out of any cause whatsoever, including but not limited to the negligence of the agents, employees or contractors of Railroad, or defects or imperfections in railroad property or equipment.

Except as above provided in this Section 7, the Company agrees to indemnify and save harmless the Railroad from and against any and all loss and damage, and from liability for

(a) loss of or damage to property, including but not limited to, property of the Railroad, or of its officers, agents, employees or contractors, or property in the custody or control of the Company or of any of its officers, agents, employees or contractors, including the loss of use thereof, and

(b) injuries to or deaths of persons, including, but not limited to, Railroad's officers, agents, employees or contractors, invitees, passengers, or persons in its custody or control,

resulting from or growing out of any cause whatsoever connected with the construction, renewal, operation, maintenance, removal or presence of said pipe line, or defects or imperfections therein, or breakage thereof, or arising or growing out of acts or omissions of persons engaged in work upon or in the operation of said pipe line, save and excepting, however, any such injury, damage or death proximately caused solely by the negligence of the officers, agents, employees or contractors of Railroad or defects or imperfections in railroad property or equipment.

UP 00244

8. This grant is made upon the express condition subsequent that in the event Company, its successors or assigns, abandon the

use of said property or fail to use the same for the purposes herein granted for a continuous period of two (2) years, or in the event of a breach by Company, its successors or assigns, of any covenant or condition herein contained and such default is not remedied within six (6) months after written notice from Railroad so to do, then, and in either of those events, the rights herein granted shall cease and terminate and Railroad, its successors or assigns, shall have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property provided, however, in the event of a partial abandonment or discontinuance of use, such termination shall apply only to the part thereof the use of which is so discontinued or abandoned. The waiver by Railroad of the breach of any covenant or condition hereof shall not be construed as waiver of any other or subsequent breach hereof, nor of any other covenant or condition hereof.

9. Upon termination of the easement herein granted in any manner, the Company may, at its option, at any time within six (6) months after such termination remove the said pipe line and appurtenances thereof, filling in all excavations made in connection with such removal and restoring the ground to conform to the natural contour then existing, and leaving the premises in a neat, clean and safe condition; provided; however, that any such property not so removed within six (6) months from such termination shall become the property of the Railroad.

10. Said easement herein is subject to all valid and existing contracts, leases, liens or encumbrances or claims of title which may affect the property, and the word "GRANT" as used herein shall not be construed as a covenant against the existence of any thereof.

11. In case Railroad shall bring suit to compel performance of or to recover for breach of any covenant or condition herein contained and shall prevail in such action, Company shall pay to Railroad reasonable attorney fees in addition to the amount of judgment

and costs.

12. This agreement shall inure to the benefits of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their officers thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first herein written. (In Triplicate)

CENTRAL PACIFIC RAILWAY COMPANY,

By _____
Vice President

Attest: _____
Assistant Secretary

SOUTHERN PACIFIC COMPANY,

By _____
Vice President

Attest: _____
Assistant Secretary

SOUTHERN PACIFIC PIPE LINES, INC.,

By _____
President

Attest: _____
Secretary

UP 00246

EXHIBIT 8

to

**Petition of Union Pacific Railroad Company
for Declaratory Order**

Finance Docket No. 35960

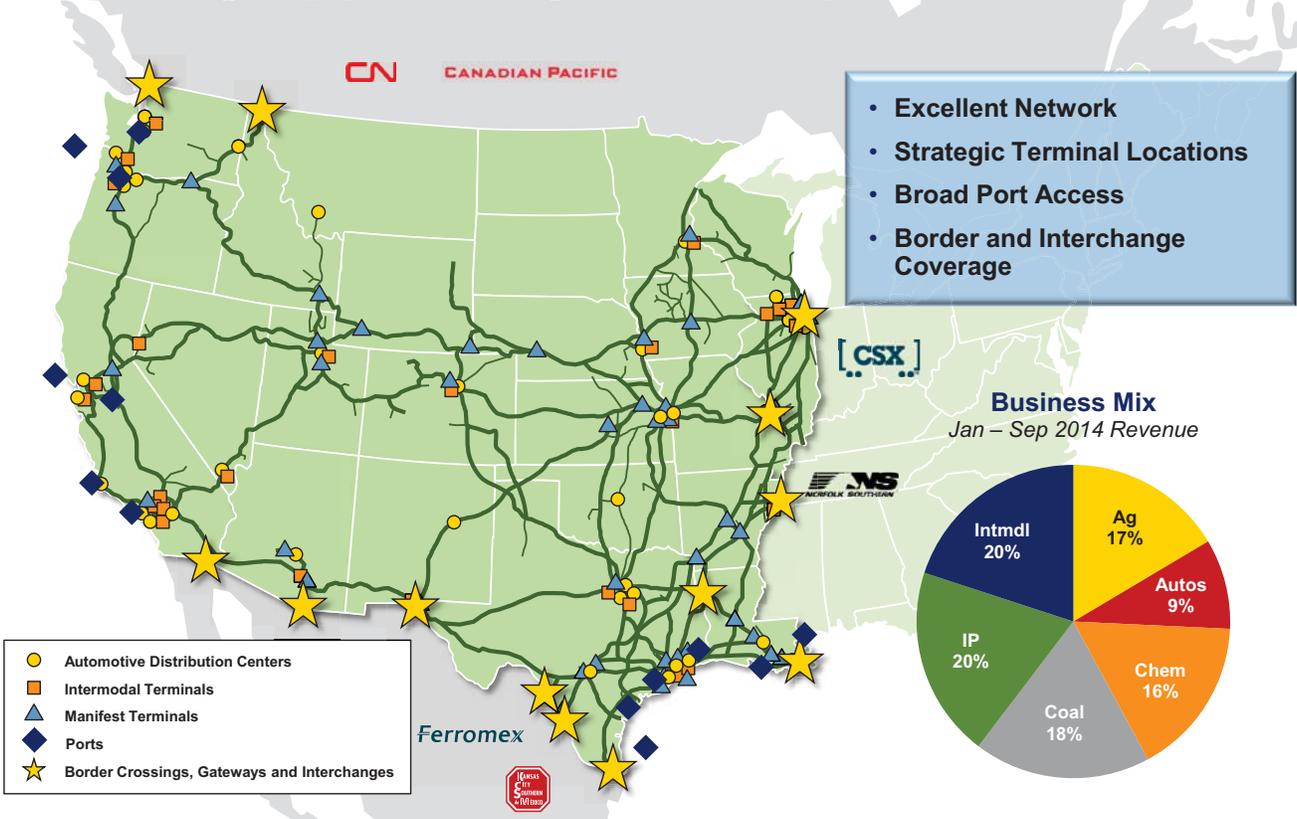
Growing the Franchise

Eric Butler, EVP Marketing & Sales



BUILDING AMERICA®

Growing Opportunity of a Unique Franchise



BUILDING AMERICA®

Strengthening Our Franchise



- New and Expanded Facilities
- Broad Geographic Coverage
- Diverse Commodities and Markets



Population Growth Provides Foundation



Key Insights

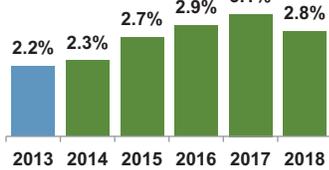
- Population Growth Provides Base Demand
- Creates Growth Potential in All Business Groups
- Well Positioned to Serve Growing Population

Source: U.S. Census Bureau

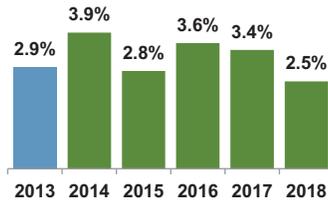


Strengthening U.S. Economy Adds Potential

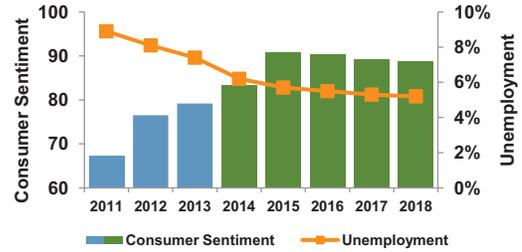
Gross Domestic Product



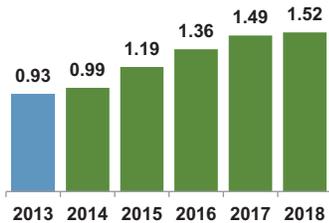
Industrial Production



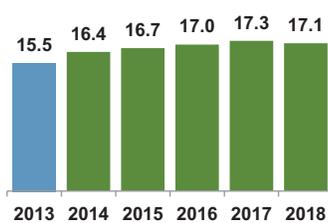
Consumer Sentiment & Unemployment



Housing Starts (millions)



Light Vehicle Sales (millions)



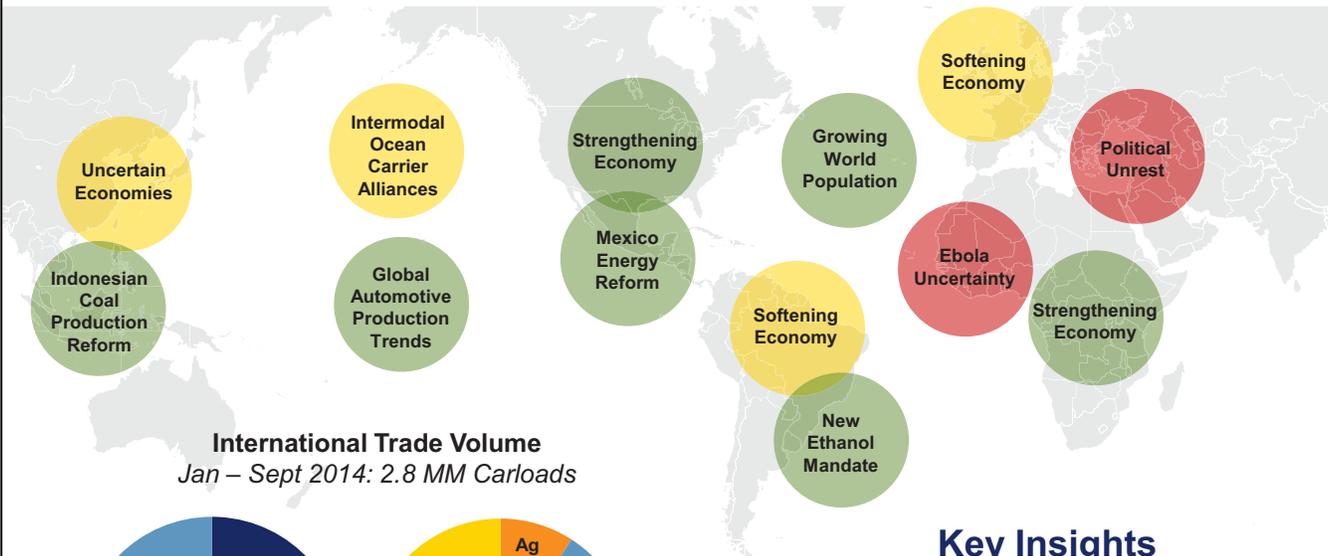
Key Insights

- Economy Expected to Continue to Strengthen
- Improving Unemployment and Consumer Sentiment Encouraging
- Economy and Population Create Strong Growth Foundation

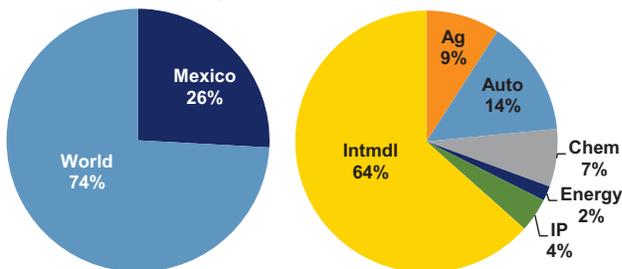
IHS Global Insight: October 2014 Forecast



Global Trade Expands Market Reach



International Trade Volume
Jan – Sept 2014: 2.8 MM Carloads

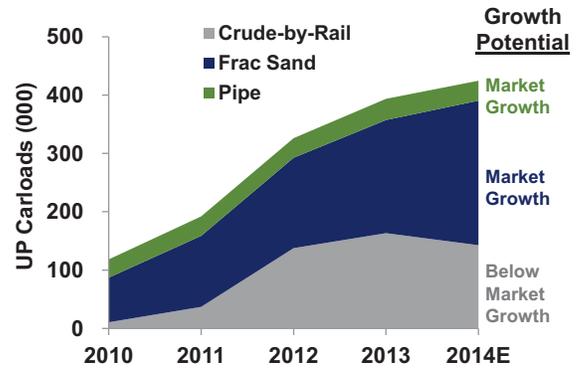
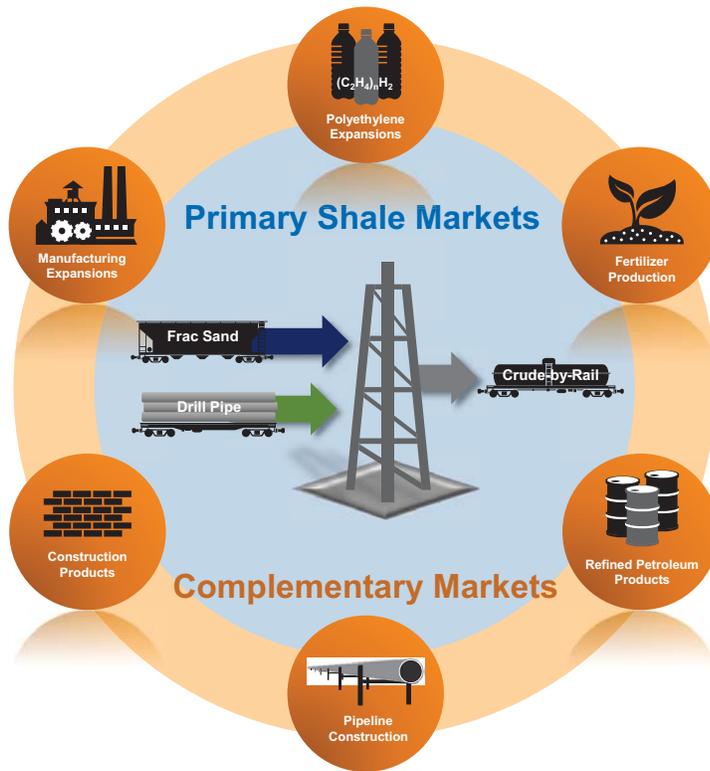


Key Insights

- Economy Drives International Intermodal
- Mexico Manufacturing Expansion and Energy Reform
- World Food Demand



Shale Energy Market Growth Continues

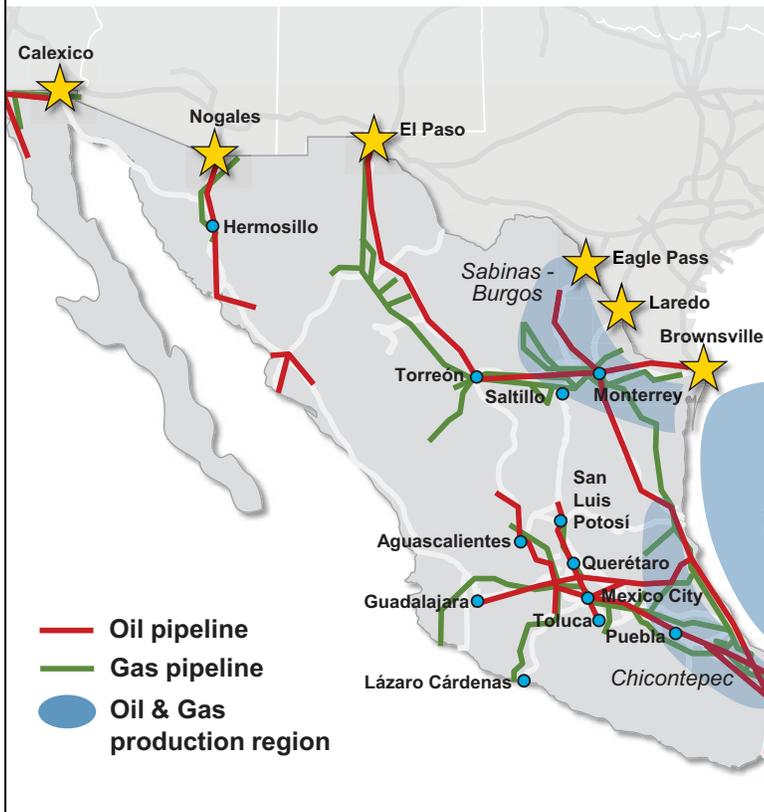


Key Insights

- Strongest Franchise for Frac Sand
- Potential in Pipe for Drilling and Pipelines
- Crude-by-Rail Flows Uncertain
- Other Markets Benefit Long Term



Potential From Mexico's Energy Reform



Key Insights

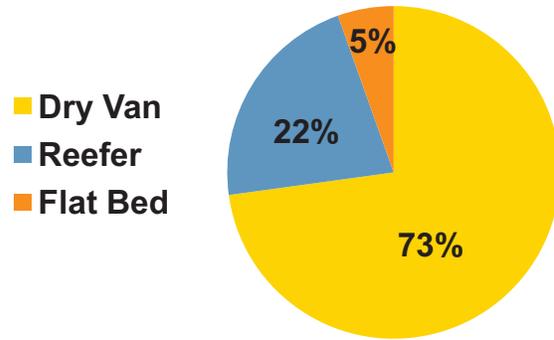
- Mexico's Energy Reform Transforms Sector
- New Gas Pipelines are Nearer Term Opportunities
- Longer Term Potential for Other Drilling Materials
- Lower Electricity Prices



Highway Conversion a Long-Term Trend



OTR Conversion Opportunity Mix*



Key Insights

- Highway Conversion Opportunities in All Business Groups
- Truck Capacity Constraints
- Long-term Highway Congestion

*Transearch, Company Analysis



Value Proposition Pulls It All Together

- Franchise Provides Opportunity
- Population and Economy are Favorable
- Diverse Market Opportunities
- Regulatory Uncertainty
- Focus on Business Development
- Price to the Value We Provide

