No. 16-56562

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES SERRANO, et al.
Plaintiffs—Appellees,

v.

UNION PACIFIC RAILROAD COMPANY,
Defendant—Appellant,

SFPP, L.P., et al.,
Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
JAMES V. SELNA, DISTRICT JUDGE • CASE NO. SACV 8:15-00718 JVS (DFMX)

AMICUS CURIAE BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF UNION PACIFIC'S APPEAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, disclosure is hereby made by amicus curiae Chamber of Commerce of the United States of America of the following corporate interests:

a. Parent companies of the corporation or entity:

None.

b. Any publicly held company that owns ten percent or more of the corporation or entity:

None.

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INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business federation, representing three hundred thousand direct members and indirectly representing the interests of more than three million businesses and professional organizations of every size. The U.S. Chamber routinely advocates for the interests of the business community in courts across the nation by filing amicus curiae briefs in cases implicating issues of vital concern to the nation's business community.

The U.S. Chamber's membership includes railroad companies that lease subsurface rights of way as well as businesses that lease and sublease such rights, including utilities, pipeline companies and telecommunications companies. The U.S. Chamber believes that the decision below will generate significant uncertainty for businesses that both grant and use railroad rights of way. These business relationships contribute to the economic wellbeing of the country by facilitating the intra- and interstate delivery of fuel and transmission of information. The uncertainty generated by the lower court's decision threatens to disrupt

longstanding energy and telecommunications investments, and to undermine the viability of in-progress and future projects.

STATEMENT OF COMPLIANCE WITH RULE 29(c)(5)

This brief is submitted pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, accompanied by a motion for leave to file. No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no other person except amicus curiae, its members, or its counsel contributed money to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

For over sixty years, Union Pacific Railroad Company has granted subsurface easements on its rights of way for pipelines conveying oil, gas, and other petroleum products across the western United States. This practice followed the over century-long tradition of railroads granting permission for others to use their rights of way (surface and subsurface), for economically valuable purposes.

Although there have been numerous lawsuits and appeals involving the easement agreements between Union Pacific and the pipeline companies, there was never any suggestion that Union Pacific could not permit its rights of way to be used in such a manner until the California Court of Appeal addressed the issue sua sponte in *Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.* (*SFPP*), 231 Cal. App. 4th 134, 144 (2014). Indeed, the relevant opinions published by the United States Department of Interior confirm the century-old understanding that Union Pacific has been well within its rights to lease its subsurface rights of way for pipelines under the General Railroad Right-of-Way Act of March 3, 1875 ("1875 Act") and Congress's earlier land grant statutes (the "pre-1871 Acts"). (Union Pacific's Opening Br. 33-34.) But contrary to the federal agency view and a century of practice, the California Court of Appeal held Union Pacific may not grant easements for pipelines on its rights of way by virtue of the federal government's initial conveyance of those rights of way to Union Pacific. *SFPP*, 231 Cal. App. 4th at 177-78.

Here, the district court similarly discounted the persuasive views of the federal agency charged with overseeing public land as well as longstanding practice and dismissed Union Pacific's counterclaim that the

federal land grants permitted it to lease the subsurface of its congressionally-granted rights of way for a pipeline. As we explain in greater detail below, these two decisions have disrupted the century-long settled expectations of numerous contracting parties involving significant portions of the nation's economy. Accordingly, this Court should reverse the district court's decision in order to ensure the predictable recognition of property rights and enforcement of contracts governing the use of railroad subsurface rights of way by pipeline and fiber optic cable companies that provide essential services for our economy.

ARGUMENT

I. THE DISTRICT COURT'S DECISION SHOULD BE REVERSED BECAUSE IT WILL DISRUPT THE STABILITY OF CONTRACTUAL AND PROPERTY RIGHTS INVOLVING RAILROAD RIGHTS OF WAY.

A. Predictability and stability of contractual and property rights are important for economic prosperity.

It is widely acknowledged that "contractual or property rights" are "matters in which predictability and stability are of prime importance." *Landgraf v. USI Film Products*, 511 U.S. 244, 271 (1994); *see Freeman & Mills, Inc. v. Belcher Oil Co.*, 11 Cal. 4th 85, 98 (1995) (acknowledging "the importance of predictability in assuring commercial stability in

contractual dealings"); *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1188 (9th Cir. 2016) (same).

Accordingly, the United States Supreme Court has acknowledged that the pursuit of predictability and stability appropriately influences a court's interpretation of a Congressional land grant. *United States v. California*, 381 U.S. 139, 167 (1965) (adopting interpretation, in part, "to fulfill the requirements of definiteness and stability which should attend any congressional grant of property rights belonging to the United States"). The Supreme Court even emphasized "the special need for certainty and predictability where land titles are concerned" when construing the scope of a railroad's rights of way. *Marvin M. Brandt Revocable Tr. v. United States*, 134 S. Ct. 1257, 1268 (2014); *see also Leo Sheep Co. v. United States*, 440 U.S. 668, 687 (1979) (stating the Supreme Court has "traditionally recognized the special need for certainty and predictability where land titles are concerned").

Predictability and stability in contractual and property rights are important because they lead to economic prosperity. Predictability and stability "serve the instrumentalist goal of promoting market transactions—in a capitalistic society, the primary means of allocating

resources from less to more valuable uses." David Frisch, *Commercial Law's Complexity*, 18 Geo. Mason L. Rev. 245, 262 (2011).

Stability in property rights enhances incentives for investment in developing projects, reduces transaction costs, and otherwise increases the value of assets and decreases the costs of obtaining and defending those assets. Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 Cornell L. Rev. 531, 552-53 (2005). Stable property rights enable (1) the voluntary decoupling of ownership and possession, (2) discovery of how best to use an asset, and (3) the ability to assemble compatible assets, all of which increase the value of the property. *Id.* at 556-57. Indeed, numerous studies "show that long-term economic growth is intimately tied with the creation and defense of stable property rights." *Id.* at 562; *see* also Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might be Right*, 30 J. Legal Stud. 503, 523 (2001) (stating study results suggest "that the strong association between secure property and contract rights and growth is causal, and not simply a consequence of simultaneity").

B. The myriad of diverse activities permitted within railroad's rights of way demonstrate that those rights have long been accepted as broad.

Until recently, there was no serious dispute that railroad companies could grant subsurface easements along their congressionally-granted rights of way. "[F]or over a century, the railroads have been granting rights to utility companies to string cables and run pipelines in their corridors. Ever since the telegraph was invented, rails and wires have moved together across the country, the railroad dependent on the telegraph for communication to upcoming stations and switches, and the telegraph dependent on the railroad's corridor for placement of its poles and wires." Danaya C. Wright & Jeffrey M. Hester, *Pipes, Wires, and Bicycles: Rails-to-Trails, Utility Licenses, and the Shifting Scope of Railroad Easements from the Nineteenth to the Twenty-First Centuries*, 27 Ecology L.Q. 351, 359 (2000).

"For the most part, utility lines, sewer lines, oil and gas pipelines, and drainage systems have all coexisted peacefully in railroad corridors with remarkably little litigation over property rights." *Id.* at 363. Indeed, reported decisions have, for over a century, routinely assumed the ability of a railroad to grant permission for various uses of the railroad rights of

way, including for oil pipelines. *See Gregg v. Union Pac. Ry. Co.*, 48 Mo. App. 494, 496 (1892) (grain elevator); *Lake Erie & W.R. Co. v. Comm'rs of Hancock Cty.*, 57 N.E. 1009, 1010 (Ohio 1900) (drainage ditch); *State v. Dominion Hotel*, 151 P. 958, 960 (Ariz. 1915) (restaurant); *Mangold v. Am. Ins. Co. of Newark, N.J.*, 157 N.W. 632, 632 (Neb. 1916) (lumber yard and sheds); *Burnett v. Sapulpa Refining Co.*, 159 P. 360, 361 (Okla. 1916) (pipes carrying oil to railroad for shipping); *Louisville & N.R. Co. v. City of Covington*, 213 S.W. 568, 573 (Ky. Ct. App. 1919) (water pipes); *Dep't of Pub. Works & Bldgs. v. Caldwell*, 133 N.E. 642, 644 (Ill. 1921) (stockyard); *Y.D. Lumber Co. v. Refuge Cotton Oil Co.*, 120 So. 447 (Miss. 1929) (cotton seed house); *Knoxville v. Kaiser*, 33 S.W.2d 411, 414 (Tenn. 1930) (warehouse and cold storage plant); *Texas & N.O.R. Co. v. Davis*, 60 S.W.2d 505, 506 (Tex. Civ. App. 1933) (roadway); *State ex inf. McKittrick v. Sw. Bell Tel. Co.*, 92 S.W.2d 612, 613 (Mo. 1936) (en banc) (telephone poles and wire); *Blum v. Standard Oil Co.*, 279 N.W. 764, 765-66 (N.D. 1938) (bulk station for sale of petroleum); *Burton v. Burns*, 143 S.W.2d 874, 874 (Ark. 1940) (bulk oil plant); *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. Cent. Ill. Pub. Serv. Co.*, 43 N.E.2d 993, 996 (Ill. 1942) (utility transmission lines); *Bolin Lumber Co. v. Chicago & N. W. Ry. Co.* 134

N.W.2d 312, 315 (Minn. 1965) (lumber yard selling retail to public); *S. Pac. Transp. Co. v. Santa Fe Pac. Pipelines, Inc.*, 74 Cal. App. 4th 1232, 1235 (1999) (hydrocarbon pipeline).

In recent years, fiber optic cables have also been installed in railroad rights of way. *See* Jon W. Bruce & James W. Ely, Jr., *The Law of Easements & Licenses in Land* § 8:5 (2017); *Home on the Range v. AT&T Corp.* 386 F. Supp. 2d 999, 1016 (S.D. Ind. 2005) (holding validity of fiber optic cable leases by railroads did not turn on whether cables were close to surface, but rather that the properties adjoining railroad rights of way did not have rights infringed by the installation of cables within the boundaries of the rights of way).

C. The Department of the Interior's approval of railroads' authorization of oil pipelines in their rights of way further confirms the scope of those rights.

The 1875 Act and pre-1871 Acts may be viewed as akin to a contract between the United States and the railroads, in which the railroad's legal interest "was granted in return for the railroad's promise—well fulfilled, indeed—to construct and operate a transcontinental railroad." *See Union Pac. R.R. Co. v. Santa Fe Pac. Pipelines, Inc.* (*SFPP*), 231 Cal. App. 4th 134, 175 (2014). Where the parties to a contract do not dispute its

meaning, a third party ordinarily does not have standing to assert its own. *See GECCMC 2005-C1 Plummer St. Office Ltd. P'ship v. JPMorgan Chase Bank, Nat'l Ass'n*, 671 F.3d 1027, 1035-36 (9th Cir. 2012) (holding third party lacked standing to enforce its interpretation of asset purchase agreement). Here, where the grantor (the United States through its Department of the Interior) and the grantee (the railroad) agree on a reasonable meaning of the grants' terms, their views should control over the views of third parties who belatedly began asserting that the property rights included in the grants should be limited in a dramatic new manner at odds with over a century of practice and understanding.

Similarly, if the rights of way granted here via statutes are viewed as akin to traditional land conveyances by the government via deed or contract, then a third party likewise does not have standing to enforce restrictions that the government has placed on the grantee's activities. *Van Wyck v. Knevals*, 106 U.S. 360, 369 (1882) ("A third party cannot take upon himself to enforce conditions attached to the grant when the government does not complain of their breach."); *Bybee v. Oregon & C.R. Co.*, 139 U.S. 663, 675 (1891) ("'It is settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an

estate in fee but the grantor or his heirs, or the successors of the grantor if the grant proceed from an artificial person; and, if they do not see fit to assert their right to enforce a forfeiture on that ground, the title remains unimpaired in the grantee.'"); *Dismal Swamp R.R. Co. v. John L. Roper Lumber Co.*, 77 S.E. 598, 601 (Va. 1913) ("[A] cause of forfeiture, however great, cannot be taken advantage of, or enforced against corporations, collaterally or incidentally, or in any other mode than by a direct proceeding for that object in behalf of the government."). At least for the pre-1871 rights of way granted in fee, plaintiffs have no occasion to enforce the purported restrictions on the land the government conveyed, especially where the government itself has approved of the railroad's conduct.

Moreover, governmental acquiescence has long been a proper consideration in establishing land boundaries, including boundaries between the states and boundaries between federal and Indian lands. *See California v. Nevada*, 447 U.S. 125, 131 (1980) ("If Nevada felt that those lines were inaccurate and operated to deprive it of territory lawfully within [its] jurisdiction the time to object was when the surveys were conducted, not a century later."); *United States v. Stone*, 69 U.S. 525, 537 (1864) (recognizing a boundary between federal and Indian lands because

it was "acquiesced in for more than thirty years"); *New Mexico v. Texas*, 275 U.S. 279, 300 (1927) (holding border determination "is reinforced by the tacit and long-continued acquiescence of the United States").

The United States' representations can lead to reasonable expectations by property owners that are respected by the courts. *See Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 604-05 (1977) (holding longstanding practice "not only demonstrates the parties' understanding of the meaning of [a statute], but has created justifiable expectations which should not be upset"); *Kaiser Aetna v. United States*, 444 U.S. 164, 179 (1979) (holding consent of individual officials may give rise to property "expectancies that, if sufficiently important," the government cannot take without just compensation).

Further, the United States has good policy reasons to recognize a railroad's ability to authorize pipelines within its rights of way. Such a view not only promotes the stability of property rights, *see supra* Part I.A., I.B., and preserves the infrastructure made possible by building along railroad rights of way, *see infra* Part II, but also saves the United States from potentially expensive oversight obligations that may be implicit in the district court's reasoning that the acts granted merely surface

easements to the railroads. *See* 42 U.S.C. § 9620 (2012) (CERCLA); 33 U.S.C. § 1323 (2012) (Clean Water Act).

This Court should therefore give great weight to the United States' view about the scope of lands that it transferred through the various congressional acts at issue here.

D. The district court's decision undermines the predictability and stability of contractual and property rights.

The district court's decision here, combined with the California Court of Appeal's decision in *SFPP* which the district court endorsed, upsets these settled expectations regarding the title to railroad rights of way by holding that railroads cannot enter into contracts for the use of their rights of way for subsurface pipelines, in direct conflict with the longstanding views of the United States Department of the Interior and longstanding practice. *See Proposed Installation of MCI Fiber Optic Communications Line*, 96 Interior Dec. 439, 446 n.7, 450 (Office of the Solicitor Jan. 5, 1989); U.S. Dep't of Interior, Memorandum M-37025, at 12 n.26 (Nov. 4, 2011), http://goo.gl/uZ7P0f; *see also* Union Pacific's Opening Br. 33-34.

American businesses depend on the predictable enforcement of contracts and property rights, especially those relating to title to land. If

the rights underlying a large and complicated investment are less certain, a business will be less likely to undertake the burden of investment even if a successful project would be massively beneficial to the public.

The pipeline projects at issue here originated in the 1950s based on the long-settled understanding that Union Pacific had the ability to authorize the construction of pipes within its right of way. *SFPP*, 231 Cal. App. 4th at 144. This understanding was entirely reasonable based on the plethora of activities others had been undertaking within the rights of way pursuant to the railroad's permission long before the 1950s. The district court's decision should be reversed because it undermines the incentives of American businesses to invest in substantial infrastructure projects by showing a willingness to upend the legal landscape that had long served as the foundation for those projects.

II. THE DISTRICT COURT'S DECISION SHOULD BE REVERSED TO PROTECT THE MULTITUDE OF BENEFITS DERIVED FROM INFRASTRUCTURE WITHIN THE RAILROAD RIGHTS OF WAY.

A. Railroad rights of way are the only practical location for many pipelines and other infrastructure.

The contractual and property rights at issue here are uniquely important to the local, state, and national economy because railroad rights

of way are vital to the country's network of oil and natural gas pipelines, as well as to the telecommunications industry. The district court's decision threatens to undermine the multitude of benefits that pipeline and telecommunication easements along railroad rights of way have historically provided and promise to deliver in the future.

Railroad rights of way often provide the ideal location, and sometimes the only suitable location, for petroleum products pipelines or telecommunications cable because they offer already existing linear routes over great distances and varying topography. *See* Jane Tanner, *New Life for Old Railroads; What Better Place to Lay Miles of Fiber Optic Cable*, N.Y. Times (May 6, 2000), http://goo.gl/1yCK1O (stating railroad rights of way are particularly "good paths for telecommunications cable because they offer cleared, linear routes").

Using existing railroad rights of way also provide a practical solution to securing the right to lay the pipelines or telecommunications cable because the company making the massive infrastructure investment is only required to negotiate with one landowner (the railroad) as opposed to potentially thousands of small adjoining landowners. Jeffery M. Heftman, *Railroad Right-of-Way Easements, Utility Apportionments, and Shifting*

Technological Realities, 2002 U. Ill. L. Rev. 1401, 1401 (2002) ("The use of existing corridors avoided the expense of high transaction costs which would accompany negotiation with countless individual landowners."). Negotiating with individual landowners is not a viable option to assemble the many-miles-long, uninterrupted rights required for this infrastructure because a single holdout anywhere along the route might render the investment worthless. *See* Thomas W. Merrill, *Private Property and Public Rights*, *in* Research Handbook on the Economics of Property Law 75, 93-94 (Kenneth Ayotte & Henry E. Smith eds., 2011) (stating assembly problems explain why projects requiring "a long corridor of access rights, such as the right of way for a railroad, pipeline, or highway" often use preexisting corridors). Eminent domain is also not sufficient because it depends on the will of various governments along the route, and imposes substantial administrative costs including locating the owner of each parcel and litigating against them. *See* Thomas W. Merrill, *The Economics of Public Use*, 72 Cornell L. Rev. 61, 77 (1986).

Because of the physical and legal advantages of locating critical infrastructure within railroad rights of way, "[f]or many years the railroad [corridor] has played a vital role in many areas including: transportation,

communication, gas and electric and many other public needs." *Hynek v. MCI World Commc'ns, Inc.*, 202 F. Supp. 2d 831, 838 (N.D. Ind. 2002). The myriad of benefits that the public enjoys from these services "lend further weight to an expansive definition" of a railroad's rights to convey easements within its rights of way. *Id.*

B. Pipelines provide significant economic benefits to the country, and continued growth requires additional pipeline capacity.

Pipelines in railroad rights of way have benefitted and will benefit the economy in much the same way that railroads themselves benefit the economy. Both railroads and pipelines serve the public by efficiently transporting materials to where they are needed. Thus, the third parties who lease pipeline rights of way from railroads "satisfy[ ] similar purposes to those which the railroad typically serves, albeit in a different manner." Kayla L. Thayer, *The 1875 General Railway Right of Way Act and* Marvin M. Brandt Revocable Trust v. United States*: Is This the End of the Line?*, 47 U. Pac. L. Rev. 75, 100 (2015).

While railroads and pipelines can be viewed as alternative means to move materials, they have enjoyed a mutually beneficial relationship. Indeed, the development of oil pipelines improved the operation of

railroads because the pipelines "increased the quantities of crude oil that could reach railroads, which would then carry the oil longer distances." Alexandra B. Klass & Danielle Meinhardt, *Transporting Oil and Gas: U.S. Infrastructure Challenges*, 100 Iowa L. Rev. 947, 955 n.22 (2015) (citing George S. Wolbert, Jr., U.S. Oil Pipe Lines 3 (1979)).

"Although rail served an important role in transporting petroleum in the early and middle parts of the 20th century, pipelines have dominated petroleum and [natural gas liquids] transport in recent decades." *Id.* at 969. "In 2013, pipelines carried nearly 15 billion barrels of crude oil, petroleum products and natural gas liquids to their destinations reliably and safely more than 99.999 percent of the time." Am. Petroleum Inst., *Infrastructure—The Essential Link to a Secure Energy Future*, Energy Tomorrow 25 (2015), http://goo.gl/eIGcDO.

It is especially important to protect the viability of the existing pipeline infrastructure along railroad rights of way, and the ability to efficiently build additional infrastructure along railroad rights of way, because economic growth requires a substantial increase in pipeline capacity. "With production soaring and refineries and consumers located far from producing wells in North Dakota and new shale plays in Texas,

the location of existing infrastructure is insufficient to move projected volumes of crude oil and petroleum products without also flaring and wasting natural gas and associated hydrocarbons produced with the crude oil." Klass & Meinhardt, *supra*, at 969-70. "Though nearly 12,000 miles of new crude oil and 11,000 miles of new natural gas liquids pipelines have been constructed [from 2005 to 2015], much more is needed to transport the high volumes of crude oil, natural gas and natural gas liquids being produced to refineries and chemicals plants where they can be made into the fuels and raw materials consumers rely on each day." Am. Petroleum Inst., *supra*, at 25 (footnote omitted).

C. The use of railroad rights of way for fiber optic cables is also essential to the economy.

Just as it is important to avoid jeopardizing the pipelines underlying the railroad rights of way, it is also important to avoid jeopardizing the telecommunications cables, which are similarly at risk under the rationale of the district court's decision. *See* Wright & Hester, *supra*, at 353 ("One quick and easy solution [to minimize societal disruptions from installing cable] has been to locate fiber-optic cables in railroad corridors where disruptions and licensing costs are minimal.").

"Reliable high-speed transmission of telecommunications is more than a convenience to our modern society—it is essential to the transaction of public and private business including national defense." *Williams Telecomm. Co. v. Gragg*, 750 P.2d 398, 403 (Kan. 1988). "The invention of fiber-optic cable has resulted in a myriad of benefits for consumers. In addition to improving the quality of long-distance and cellular communication, fiber-optic technology has provided more efficient Internet access and is leading to significant advances in the visual entertainment industry." Jill K. Pearson, Note, *Balancing Private Property Rights with Public Interests: Compensating Landowners for the Use of Railroad Corridors for Fiber-Optic Technology*, 84 Minn. L. Rev. 1769, 1769 (2000) (footnotes omitted). Schools, fire departments, police departments, and numerous small businesses across the country also benefit from the expanded use of railroad rights of way for broadband telecommunications and Internet connectivity. Nels Ackerson, *Right-of-way Rights, Wrongs and Remedies: Status Report, Emerging Issues, and Opportunities*, 8 Drake J. Agric. L. 177, 194 (2003).

"Historically, railway and telegraph companies often formed symbiotic alliances because of the numerous benefits the arrangement

afforded to both industries. Many of the same benefits enjoyed by the telegraph companies by association with the railroads, including availability of the rights-of-way, routing considerations, relative ease of acquisition, security, accessibility, and safety, were found to be of equal or greater value to modern long distance companies, and it was determined that fiber-optic cables would be placed within railroad rights-of-way. As one study concluded, 'Railroad rights-of-way provided the foundation for the earliest nation-wide telecommunications service, the telegraph; so why not the latest?'" *Int'l Paper Co. v. MCI Worldcom Network Servs., Inc.*, 202 F. Supp. 2d 895, 898 (W.D. Ark. 2002); *see also* Wright & Hester, *supra*, at 463 ("If a horse and buggy trail can be converted into a road for automobile traffic, then a fiber-optic cable ought to be permitted in a rail corridor where the mail was originally carried from town to town.").

* * *

In sum, the district court's decision narrowly construing railroad rights of way threatens their continuing use for pipelines and telecommunications, each of which deliver tremendous economic and social benefits consistent with the original rationale for Congress to grant the

rights. The district court's decision should be reversed to help protect the present and future development of the local, state, and national economy.

CONCLUSION

For the reasons set forth in Union Pacific's opening brief and this amicus curiae brief, this Court should reverse the district court's order holding that Union Pacific was not permitted to authorize a pipeline within its rights of way.

April 5, 2017

Respectfully submitted,

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April 5, 2017
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s/*Eric S. Boorstin*
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2017, I electronically filed the foregoing **AMICUS CURIAE BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF UNION PACIFIC'S PETITION FOR PERMISSION TO APPEAL** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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Eric S. Boorstin