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# TRAILBLAZERS

ENERGY & ENVIRONMENTAL

STEVEN M. STRAUSS

COOLEY LLP

**PIONEER SPIRIT** Steve Strauss describes himself as a real estate litigator, which means his work also involves energy and environmental cases. "I once walked into court and heard the judge say, 'Oh, it's Strauss. This must involve dirt with money attached to it.'"

**TRAILS BLAZED** Strauss has represented Santa Fe Pacific Pipelines, a subsidiary of Kinder Morgan, which operates about 1,800 miles of pipeline to transport and store natural gas, crude oil, gasoline, jet fuel, ethanol and other products beneath Union Pacific Railroad's right of way. The rental agreement between SFPP and Union Pacific is subject to a rent reset every 10 years. In 2004, the parties ended up in court, and Union Pacific gained a \$100 million judgment for back rent due and interest. Strauss argued to the Court of Appeals, however, that the right of way that Union Pacific originally received from Congress, which was at the time interested in transportation, communication and national security, only granted it surface rights. "They don't have the ability to charge rent for underground pipelines because it's not their property." The Court of Appeals agreed, as has the California Supreme Court.

**FUTURE EXPLORATIONS** The impact of this ruling is substantial for the railroad industry and other industries that have easements in railroad rights of way. Strauss also expects to see more effort toward using groundwater as a source of drinking water, more challenges to fracking and more battles over pipelines, oil trains and terminals. "If you don't increase the pipelines, you have to ship by rail and build terminals. That creates risks and cost that may exceed those of pipelines."



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