



**Item #14-8-10
Information**

Transportation Committee

July 31, 2014

Comment Letter on Valero Crude by Rail Project Environmental Impact Report

Issue: Should SACOG comment on the Valero Crude by Rail Project Environment Impact Report?

Recommendation: This is an information item to the Transportation, Land Use & Natural Resources, and the Government Relations & Public Affairs committees. The new Rail Ad Hoc Committee will make a recommendation to the Board.

Discussion: Staff will meet with representatives from throughout the region on the afternoon of July 31 and will finish a draft comment letter based upon input received from that meeting. Staff expects to circulate the draft letter to the Committee by August 4.

Approved by:

Mike McKeever
Chief Executive Officer

MM:KT:gg

Key Staff: Kirk Trost, Chief Operating Officer/General Counsel, (916) 340-6210

DRAFT COMMENT LETTER

Amy Million, Principal Planner
Community Development Department
250 East L Street
Benicia, CA 94510

Re: Valero Benicia Crude by Rail Project Draft Environment Impact Report

Dear Ms. Million:

On behalf of its 22 city and 6 county member jurisdictions, the Sacramento Area Council of Governments (SACOG) submits the following comments on the Draft Environmental Impact Report (DEIR) for the Valero Benicia Crude by Rail Project.¹ The Project, as described in the DEIR, proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery. The crude oil tank cars would originate at unidentified sites in North America, would be shipped to the Union Pacific Railroad Roseville Yard, and would be assembled there into two daily 50-car trains to Benicia.

Over the last several months, we have been meeting with our members to discuss this Project, to become informed about the risks associated with crude oil transportation by rail, and to discuss measures to avoid or minimize the serious risks associated with operating crude oil trains through the communities in our region. We have discussed our concerns with representatives from Union Pacific Railroad and the Valero Benicia Refinery. As our Board of Directors has made clear, SACOG's interest is to ensure that all appropriate measures, based upon a full investigation of the risks, are taken to protect the safety of our residents and their communities, and businesses and property throughout the region. In that regard, our Board has indicated that, at a minimum, the measures to protect our region should include the following:

- Advance notification to county and city emergency operations offices of all crude oil shipments (to facilitate more rapid and appropriate public safety responses);
- Limitations on storage of crude oil tank cars in urbanized areas (of any size), and appropriate security for all shipments;
- Support, including full cost funding, for training and outfitting emergency response crews;
- Utilization of freight cars, with electronically controlled pneumatic brakes, rollover protection, and other features, that mitigate to extent feasible the risks associated with crude oil shipments;
- Funding for rail safety projects (e.g., replacement/upgrade of existing tracks, grade separations, Positive Train Control, etc.);

¹ SACOG submits this letter as a joint powers agency, exercising the common powers of its members pursuant to a joint powers agreement. However, this letter is not an exhaustive treatment of the DEIR's compliance with the California Environmental Quality Act or of the concerns of all of its members, many of whom may also provide separate comments.

- Utilization of best available inspection equipment and protocols;
- Implementation of positive train controls to prioritize areas with crude oil shipments; and
- Prohibition on shipments of unstabilized crude oil that has not been stripped of the most volatile elements, including flammable natural gas liquids.

Unfortunately, the DEIR never gets to a discussion of these measures—or any other measures that might ensure the safety of our region—because the DEIR concludes that crude oil shipments by rail pose no “significant hazard” whatsoever. We believe that conclusion is fundamentally flawed, disregards the recent events demonstrating the very serious risk to life and property that these shipments pose, and contradicts the conclusions of the federal government, which is mobilizing to respond to these risks.

On May 7, 2014, the United States Department of Transportation in fact concluded that crude oil shipments by rail pose not merely a significant hazard, but an “*imminent hazard*,” stating:

“Upon information derived from recent railroad accidents and subsequent DOT investigations, the Secretary of Transportation (Secretary) has found that an unsafe condition or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. Specifically, a pattern of releases and fires involving petroleum crude oil shipments originating from the Bakken and being transported by rail constitute an imminent hazard under 49 U.S.C. 5121(d).”

...

“An imminent hazard, as defined by 49 U.S.C. 5102(5), constitutes the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk that death, illness, injury or endangerment.”²

Under these circumstances, we urge the City of Benicia to revise the DEIR so that it will fully inform decision-makers and the public of the potential risks of the Project and address adequate mitigation measures to ensure the safety of our communities. With that objective in mind, in the following pages we address some of the very substantial deficiencies in the DEIR—deficiencies which apparently have caused the DEIR to fail to analyze and consider the significant adverse impacts of the Project and to evaluate all feasible mitigation to reduce those impacts to a less than significant level.

² Emergency Restriction/Prohibition Order DOT-OST-2014-0067 (May 7, 2014) (<http://www.dot.gov/briefing-room/emergency-order>).

Comments on the DEIR

The California Environmental Quality Act (CEQA) mandates that an EIR identify and analyze all potentially significant adverse effects of a project, including both direct and indirect impacts, and short-term and long-term impacts. (Pub. Resources Code, § 21100; Cal. Code Regs., tit. 14, §§ 15126, 15126.2.) The DEIR is deficient in numerous respects, as set forth below.

The DEIR fails to consider the risk of fire and explosion as a threshold of significance.

Although the sample Initial Study checklist found in Appendix G to the CEQA Guidelines is an obvious and commonly used source of thresholds of significance, agencies may not rely on it exclusively when a particular project, or particular circumstances, gives rise to environmental concerns not addressed in the checklist. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, the court held that an agency cannot rely on a reflexive determination to follow the significance thresholds in Appendix G without regard to whether those standards are broad enough to encompass the scope of the project at issue. The court explained that, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (116 Cal. App. 4th at p. 1109.)

In this instance, in complete reliance on Appendix G, and without considering the very real and substantial risks of the transportation of crude by rail, the DEIR does not address the risk of fire and explosion in its thresholds of significance. Specifically, in the only threshold of significance potentially applicable to the risk of transportation, the DEIR adopts the following for Hazards and Hazardous Materials:

“Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the *release of hazardous materials into the environment.*”³

As has been reported widely over the last several years, the character and quality of the domestic and Canadian crude oil currently being transported by rail across the United States has dramatically shifted the public safety concern from a hazardous material release to fiery explosions. A series of oil derailments in just the last two years has created a policy imperative in both Washington, D.C., and Sacramento. As United States Secretary of Transportation Anthony Foxx recently stated, “as a nation we are a little bit caught off guard by the growth of our energy production and we have to catch up very quickly.”⁴

Indeed, the following major accidents have heightened concern about the risks involved in shipping crude by rail.

³ DEIR, p. 4.7-13 (emphasis added).

⁴ Politico, Morning Transportation (April 24, 2014), <http://www.politico.com/morningtransportation/0414/morningtransportation13715.html>.

- **Lac Mégantic, Quebec**—On July 5, 2013, a train with 72 loaded tank cars of crude oil from North Dakota moving from Montreal, Quebec, to St. John, New Brunswick, stopped at Nantes, Quebec, at 11:00 pm. The operator and sole railroad employee aboard the train secured it and departed, leaving the train on shortline track with a descending grade of about 1.2%. At about 1:00 AM, it appears the train began rolling down the descending grade toward the town of Lac-Mégantic, about 30 miles from the U.S. border. Near the center of town, 63 tank cars derailed, resulting in multiple explosions and subsequent fires. There were 47 fatalities and extensive damage to the town. 2,000 people were evacuated. The initial determination was that the braking force applied to the train was insufficient to hold it on the 1.2% grade and that the crude oil released was more volatile than expected.
- **Gainford, Alberta**—On October 19, 2013, nine tank cars of propane and four tank cars of crude oil from Canada derailed as a Canadian National train was entering a siding at 22 miles per hour. About 100 residents were evacuated. Three of the propane cars burned, but the tank cars carrying oil were pushed away and did not burn. No one was injured or killed. The cause of the derailment is under investigation.
- **Aliceville, Alabama**—On November 8, 2013, a train hauling 90 cars of crude oil from North Dakota to a refinery near Mobile, Alabama, derailed on a section of track through a wetland near Aliceville, Alabama. Thirty tank cars derailed and some dozen burned. No one was injured or killed. The derailment occurred on a shortline railroad's track that had been inspected a few days earlier. The train was traveling under the speed limit for this track. The cause of the derailment is under investigation.
- **Casselton, North Dakota**—On December 30, 2013, an eastbound BNSF Railway train hauling 106 tank cars of crude oil struck a westbound train carrying grain that shortly before had derailed onto the eastbound track. Some 34 cars from both trains derailed, including 20 cars carrying crude, which exploded and burned for over 24 hours. About 1,400 residents of Casselton were evacuated but no injuries were reported. The cause of the derailments and subsequent fire is under investigation.
- **Plaster Rock, New Brunswick**—On January 7, 2014, 17 cars of a mixed train hauling crude oil, propane, and other goods derailed likely due to a sudden wheel or axle failure. Five tank cars carrying crude oil caught fire and exploded. The train reportedly was delivering crude from Manitoba and Alberta to the Irving Oil refinery in Saint John, New Brunswick. About 45 homes were evacuated but no injuries were reported.
- **Philadelphia, Pennsylvania**—On January 20, 2014, 7 cars of a 101-car CSX train, including 6 carrying crude oil, derailed on a bridge over the Schuylkill River. No injuries and no leakage were reported, but press photographs showed two cars, one a tanker, leaning over the river.
- **Vandergrift, Pennsylvania**—On February 13, 2014, 21 tank cars of a 120-car train derailed outside Pittsburgh. Nineteen of the derailed cars were carrying crude oil from western Canada, and four of them released product. There was no fire or injuries.

- **Lynchburg, Virginia**—On April 30, 2014, 15 cars in a crude oil train traveling at low speed derailed in the downtown area of this city. Three cars caught fire, and some cars derailed into a river along the tracks. The immediate area surrounding the derailment was evacuated. No injuries were reported.⁵

Notwithstanding that the United States Department of Transportation, among others, has determined that Bakken Crude “has a higher gas content, higher vapor pressure, lower flash point and boiling point...which correlates to increased ignitability and flammability,”⁶ and that the recent events listed above have spurred a massive emergency effort at the federal level to address safety concerns,⁷ the DEIR dismisses them in a footnote, stating that “Not every tank car derailment results in a spill, fire, or explosion.”⁸ With that simple artifice, the DEIR justifies limiting its analysis to “derailments that result in a release of crude oil.”⁹ As discussed below, even the Release Rate Analysis used to conclude that there is a less than significant impact from Hazards and Hazardous Materials completely ignores the risk of fire and explosion.¹⁰

Having failed to establish a significance threshold that addresses the most critical health and safety risk from crude oil shipments by rail—fire and explosion—the DEIR fails to conduct the necessary analysis of such risks and fails to identify the mitigation measures necessary to protect the communities along the rail routes to the Project site.

⁵ Congressional Research Service, U.S. Rail Transportation of Crude Oil: Background and Issues for Congress (May 5, 2014). In March and April 2013, there were also two derailments of Canadian Pacific trains, one in western Minnesota and the other in Ontario, Canada; less than a tank car of oil leaked in each derailment and neither incident caused a fire. While operators may have implemented safety precautions to address the operational deficiencies exposed over the last few years, these incidents also demonstrate the unpredictability of what can happen by transporting such volatile materials by rail. Addressing safety concerns on such an ad hoc basis will not reduce the overall risks.

⁶ Report summarizing the analysis of Bakken crude oil data:
http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_8A422ABDC16B72E5F166FE34048CCCBFED3B0500/filename/07_23_14_Operation_Safe_Delivery_Report_final_clean.pdf.

⁷ DEIR at pp. 4.7-5 to 4.7-10.

⁸ DEIR, at p. 4.7-17, fn. 4.

⁹ DEIR, at p. 4.7-17, fn. 4.

¹⁰ See Railroad Crude Oil Release Rate Analysis for Route between Roseville and Benicia, DEIR, Appendix F.

The Project poses a “significant hazard” to the public and the environment through reasonably foreseeable upset and accident conditions.

By any measure or standard, the Project poses a “significant hazard” to the communities along the rail routes to the Project site. First, the Release Rate Analysis used to conclude that the transportation of crude oil by rail poses a less significant hazard to people and the environment is fundamentally flawed in numerous respects. Second, even if the Release Rate Analysis were accurate, its findings do not support the conclusion of less than significant impacts.

The Release Rate Analysis is flawed as a tool to assess the potential environmental impacts of the project.

As a threshold matter, it should be noted that the Release Rate Analysis is the sole basis in the DEIR for concluding that the hazards posed by the Project are less than significant. That Analysis is flawed.

First, the Analysis does not even address the most significant risks to persons, property, businesses, and the sensitive lands along the rail routes to the Project site. As noted above, the risk of fire and explosion are substantial, as evidenced by the series of events over the last two years which have attracted national and international attention and a call for immediate rail operations reforms. In fact, the Analysis does not even consider the recent events, limiting its analysis to derailments over the 5-year period from 2005-2009. This narrow focus misses most of the massive growth in crude oil shipments nationwide. Since 2007, crude oil by rail has seen a 6000% increase, driven largely by the extraordinary increases in energy development in the Bakken Formation in North Dakota and Montana.¹¹ The Analysis never, in fact, analyzes the impact of this tremendous growth in dangerous crude oil rail shipments.

Second, as discussed in more detail below, the Analysis does not accurately assess the potential environmental impacts of the Project because it disregards the full geographic scope of the Project. Specifically, the Analysis only considers potential derailments from Roseville to Benicia. This Analysis does not evaluate potential derailments along the entire rail routes from the oil fields to Roseville, the assemblage and other activities in the Roseville Rail Yard, and the utilization of siding or storage tracks during transportation.

Third, the Analysis minimizes the potential risk of derailment by assuming a “just-in-time” supply chain—that is, that Union Pacific 50-car unit trains will travel from Roseville to Benicia without incident and will be immediately available for processing at Valero, that the trains or tank cars would never be stored or moved to sidings, and that no incidents (including accidents or maintenance) would ever delay delivery to Valero. As the DEIR readily acknowledges, however, Valero does not control the movement of tank cars on the rail line—Union Pacific does. And freight shipments do not operate on regular

¹¹ <http://www.franken.senate.gov/files/letter/140404RailSafety.pdf>. Note that in Northern California alone, crude oil shipments by rail increased by 57% in 2013. (<http://www.planetizen.com/node/67904>.) Crude oil production in the Bakken region has nearly tripled from 2010 to 2013. (http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_8A422ABDC16B72E5F166FE34048CCCBFED3B0500/filename/07_23_14_Operation_Safe_Delivery_Report_final_clean.pdf.)

schedules. Valero can request Union Pacific to meet certain schedules, but has no ability to control the ultimate schedule of the rail operations. As such, it cannot guarantee the “just-in-time” service assumed in the Release Rate Analysis. The shipments also may come with greater frequency and fewer tank cars, which would increase traffic on the alignment and substantially increase the risk.

Fourth, by using national derailment rates the Analysis does not assess the Project specific conditions of these shipments. Of particular note, the Analysis reveals that over 1.3 miles of rail from Roseville to Benicia is FRA Class 1 track—track which has a 15.5 times greater risk of derailment than FRA Class 5 track.¹² However, the Analysis does not consider the location of the Class 1 track, the operational components of the track, the proximity of the track to highly populated areas, schools, hospitals, dangerous facilities, or sensitive lands or habitat.¹³

In light of these flaws, the Rate Release Analysis does not adequately assess the risks associated with the Project’s crude oil shipments.

Even were it not flawed, the Release Rate Analysis does not assess the potential environmental impacts of the Project or support the conclusion that crude oil by rail shipments do not pose a significant hazard.

While the DEIR adopts a “significant hazard” test as the threshold of significance, the DEIR never defines or describes the nature of that test. Rather, it merely determines that, under the optimum conditions described in the DEIR, a crude oil train release incident exceeding 100 gallons will only occur every 111 years and then concludes on that basis that the Project poses no significant hazard risk. The DEIR can only reach that conclusion by ignoring the nature of the crude oil being shipped, the specific risks posed by such shipments, and the circumstances of the shipments (including all operational possibilities, specific track and facilities in use, and operating conditions) in relation to the communities, populations, businesses, and land through which the shipments will travel.

At a common sense level, the conclusion that no “significant hazard” exists is absurd in light of the massive mobilization at the federal level to intervene to make crude oil transport by rail safer. As noted above, the United States Department of Transportation recently concluded that crude oil shipments by rail pose an “imminent hazard.”¹⁴ And while the DEIR cites the extensive and repeated federal regulatory

¹² Railroad Crude Oil Release Rate Analysis for Route between Roseville and Benicia, DEIR, Appendix F, at p. 6.

¹³ Although the DEIR lists schools within a quarter mile of the rail line (DEIR, at p. 4.7-23), it does not analyze the risks associated with the risks associated with such proximity other than the air quality impacts.

¹⁴ Emergency Restriction/Prohibition Order DOT-OST-2014-0067 (May 7, 2014) (<http://www.dot.gov/briefing-room/emergency-order>).

calls to improve the safety of crude oil shipments,¹⁵ the DEIR simply concludes that no significant hazard exists.

In a similar context, the National Inventory of Dams classification system defines as a significant hazard circumstances when “Failure or misoperation results in no probable loss of human life but can cause economic loss, environmental damage, disruption of lifeline facilities, or can impact other concerns.” As noted, the DEIR does not even attempt to define a significant hazard, and it never gets to the real crux of risk assessment because it never evaluates—either on a general basis or on a community-specific basis—the specific nature of the hazard, the potential risk of harm to people, property, or human activities, and the potential impacts and magnitude of the hazard.¹⁶ It merely concludes that a crude oil release every 111 years is not significant.

The critical component missing from the DEIR’s analysis is the magnitude of the risk, even from events that may only occur rarely, because small risks of serious illness or death are potentially significant. For example, Sacramento Metropolitan Air Quality Management District’s evaluation criterion for cancer risk is *276 in a million*.¹⁷ And in this regard the DEIR completely fails. Not only does it completely disregard the magnitude of the risk to the communities along the rail alignment, it appears to assume that they do not even exist.¹⁸ It fails to discuss the impact of a crude oil release in those communities and, as noted, it specifically excludes any discussion of fire or explosion. The DEIR also fails to discuss or analyze the specific nature of the crude oil likely to be shipped to Valero. Clearly, the flammability and volatility of the Bakken Formation crude oil, and the high viscosity and toxicity of the Canadian bitumen, were not previously anticipated by the shipping industry. Only now—after significant loss to life and property—is the federal government responding to this emergency. The facts are that qualities and characteristics of crude oil in the United States are not even known at this point. Sixteen United States Senators recently called for funding of Operation Classification, a study of the crude oil properties by the Pipeline and Hazardous Materials Safety Administration (PHMSA), that is viewed as an important step in informing future regulatory actions.¹⁹

A September 2013 report from the National Oceanic and Atmospheric Administration highlighted the risks of Canadian bitumen. In order to transport bitumen, natural gas condensate or synthetic crude oil

¹⁵ DEIR, at pp. 4.7-5 to 4.7-10.

¹⁶ See, e.g., FEMA Risk Assessment Process, at <http://www.ready.gov/risk-assessment>.

¹⁷ See, e.g., SMAQMD Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (March 2011), at <http://www.airquality.org/ceqa/SLUMajorRoadway/SLURecommendedProtoco2.4-Jan2011.pdf>.)

¹⁸ The DEIR makes passing reference to the cities between Roseville and Benicia, but even then it does not list the cities of Citrus Heights or West Sacramento, nor the unincorporated areas of Placer, Sacramento, and Yolo counties. DEIR, at p. 4.7-16.

¹⁹ <http://www.franken.senate.gov/files/letter/140404RailSafety.pdf>. The letter erroneously referred to the study as “Operation Backpressure.”

is typically added, which may contain elevated benzene levels and sulfur content that is heavier than air, and has a relatively low flash point and flammability. Bitumen is also heavier than water, unlike most crude oil, which poses other risks. These facts lead to the conclusion that there is the potential for both environmental and human hazards from exposure to bitumen, whether leaked or burned.²⁰

Canadian bitumen also has raised particular concerns in the aftermath of a 2010 pipeline spill into Talmadge Creek, which flows into the Kalamazoo River in Michigan. The observations from the spill strongly suggest that the bitumen may pose different hazards, and possibly different risks, than other forms of crude oil. Approximately 850,000 gallons of oil spilled into the Creek. After three years of cleanup activities, the EPA observed that the bitumen “will not appreciably biodegrade,” which has led to a decision to dredge the river. As of September 2013, the response costs were \$1.035 billion, substantially higher than would be anticipated to remediate conventional oil.²¹

The properties of Bakken shale oil, although highly variable even within the same oil field, are generally much more volatile than other types of crude. In January of this year, PHMSA issued a safety alert warning that recent derailments and resulting fires indicate that crude oil being transported from the Bakken region may be more flammable than traditional heavy crude oil.²²

But the federal response to these, whatever its final form, does not relieve the DEIR of fully analyzing the nature of the potential crude oil to be shipped, regardless of the source, and of mitigating the risks presented by the Project’s crude oil shipments.

The DEIR fails to analyze the potential environmental impacts of crude oil transport beyond the Roseville to Benicia alignment.

Although the DEIR concedes the necessity to analyze the environmental impacts beyond the immediate Project site to include the crude oil transportation route, the analysis falls far short of the requirements of CEQA. As a threshold matter, the DEIR improperly limits its analysis to the route from Roseville to Benicia, claiming as “speculative” the originating site of the crude oil. In fact, within the Sacramento region there are only five rail subdivisions which lead to the Roseville Yard: Fresno, Martinez, Roseville, Sacramento, or Valley.²³ Of these, only the Roseville, Sacramento, and Valley subdivisions connect to

²⁰ Transporting Alberta Oil Sands Products: Defining the Issues and Assessing the Risks (September 2013) NOAA Technical Memorandum NOS OR&R 44.

²¹ Congressional Research Service, U.S. Rail Transportation of Crude Oil: Background and Issues for Congress (May 5, 2014), at p. 13.

²² PHMSA, Safety Alert—January 2, 2014, Preliminary Guidance from OPERATION CLASSIFICATION.

²³ See State Office of Emergency Services Rail Risk Map (<http://california.maps.arcgis.com/apps/OnePane/basicviewer/index.html?appid=928033ed043148598f7e511a95072b89>).

the north or east where such shipments will originate. Limiting the analysis to Roseville to Benicia is arbitrary and the DEIR must analyze the full environmental impacts of each potential route.

In *Muzzy Ranch v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372, the California Supreme Court made clear that it is a lead agency's responsibility to consider even geographically distant environment impacts. CEQA broadly defines the relevant geographical environment as "the area which will be affected by a proposed project." (Pub. Resources Code, § 21060.5.) Consequently, "the project area does not define the relevant environment for purposes of CEQA when a project's environmental effects will be felt outside the project area." (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1582-1583.) Indeed, "the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369.) The DEIR cannot just assume that crude oil tank cars will magically appear in Roseville, but must account for the potential impacts of transporting those cars through other communities and property in the Sacramento region.

Additionally, as noted above, the DEIR completely disregards the train assembly activities in the Roseville Yard in close proximity to residential neighborhoods. It also assumes that a "just-in-time" supply chain can and will be used for the Project. As a consequence, the DEIR's evaluation of the Project's potential impacts does not consider the risks associated with crude oil tank cars being stored before they can be processed at the Valero facility and does not discuss the possible locations for such storage. As noted, since Valero concedes that it ultimately cannot control the timing of the crude oil shipments, it must account for such events. By failing to discuss these storage needs, the DEIR fails to analyze the entire project. As set forth in the CEQA Guidelines, a "project" is "the whole of an action" that may result in either a direct physical environmental change or a reasonably foreseeable indirect change. (CEQA Guidelines, § 15378; see also *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297; *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1220.) In *Whitman v Board of Supervisors* (1979) 88 Cal.App.3d 397, for example, an EIR for oil facilities was overturned in part because it failed to analyze the impact of pipelines that would need to be built to service the facilities. Similarly here, the Project analyzed must consider all of the reasonably foreseeable operational details.

The DEIR fails to analyze the cumulative impacts of the Project.

While the DEIR's purported cumulative analysis identifies some 17 crude oil by rail, refinery, and refinery related projects, it does not assess the increased risk of multiple crude oil rail shipments, from multiple trains, serving multiple projects in California.²⁴ The DEIR dismisses the potential for any increase in risk

²⁴ DEIR, at pp. 5-6 to 5-11, 5-16.

due to multiple crude oil rail projects by opining that any explosion/leakage from a rail car would be separate and apart from any other such explosion/leakage and thus there could be no cumulative impact. However, this omits the fact that a key factor in the risk analysis relied on in the DEIR is the number of train-miles traveled.²⁵ Therefore, as the cumulative number of train trips increase along a particular rail alignment, the risk of accidents increases. The DEIR should have considered whether the proposed Project's contribution to this risk is cumulatively considerable. And at least two of the projects identified in the DEIR are expected to result in new crude oil shipments along the same rail alignment: the WesPac Pittsburg Energy Infrastructure Project and the Phillips 66 Company Rail Spur Extension Project. The DEIR fails to analyze those cumulative impacts.

Additionally, when, as here, a DEIR's evaluation of cumulative impacts is based on a list of past, present, and probable future projects, it must include in that list any project "producing related impacts, including, if necessary, projects outside the lead agency's control." (CEQA Guidelines, § 15130(b)(1)(A).) Here, the DEIR has failed to consider in its list of reasonably foreseeable future projects the full potential for overall increase in rail cars traveling along the paths that will be taken by the Valero rail cars. Surely any addition of rail cars on the tracks would produce related impacts (e.g., collisions).

The DEIR improperly conflates its description of the Project with measures intended to reduce or avoid the clear impacts of the Project.

In at least two respects, although it is ambiguous at best on these points, the DEIR describes what purport to be elements of the Project intended to reduce, avoid, or mitigate the potential environmental impacts of the Project. The first is the general "commitment" to use CPC-1232 tank cars, rather than the legacy DOT-111 tank cars for transporting crude oil.²⁶ The second is the incorporation of the "General Railroad Safety" measures to be undertaken by Union Pacific.²⁷ Such a device was rejected by the court in *Lotus v. Dep't of Transportation* (2014) 223 Cal. App. 4th 645.

The *Lotus* court held that measures designed to avoid, minimize, rectify, reduce, or compensate for a significant impact are not "part of the project," but should be presented as mitigation measures in response to the identification of significant environmental effects. "By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA." This "short-cutting of CEQA requirements...precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences." CEQA requires a lead agency to consider a proposed project, evaluate its environmental impacts and, if significant impacts are identified, to describe feasible mitigation measures

²⁵ See Univ. of Illinois, Railroad Crude Oil Release Rate Analysis for Route between Roseville, CA and Benicia, CA (June 2014), p. 3, at http://www.ci.benicia.ca.us/vertical/Sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/Appendix_F_Railroad_Crude_Oil_Release_Rate_Analysis.pdf.

²⁶ DEIR, at p. 4.7-17.

²⁷ DEIR, at p. 4.7-15 to 4.7-16.

to reduce the impacts. The court explained that simply stating there will be no significant impacts because the project incorporates special attributes is not adequate or permissible. Among other things, the device avoids the requirement to adopt an enforceable mitigation monitoring program. (223 Cal. App. 4th at pp. 656-58.)

Similarly, conflating the mitigation measures with Project description shortcuts full disclosure of the potential environmental impacts and risks of the Project, avoids a full exploration of the feasible mitigation measures to address those impacts and risks, and circumvents a mitigation monitoring program, which is essential to make all of these elements enforceable.

Conclusion

We urge the City of Benicia to substantially revise the DEIR for this Project so that it will fully inform the public and the City Council of the full impacts of this Project and analyze all available mitigation to reduce those impacts to a less than significant level.

We appreciate your consideration and would be happy to answer any questions you may have about our comments.

Sincerely,
Sacramento Area Council of Governments

By: _____