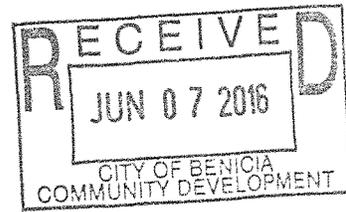




## Amy Million

---

**From:** Prange, Jackie <jprange@nrdc.org>  
**Sent:** Monday, June 06, 2016 3:08 PM  
**To:** Amy Million  
**Cc:** Heather McLaughlin  
**Subject:** STB filing re Valero project  
**Attachments:** 2016\_06\_06 Request for Extension.final.pdf



Amy and Heather - Please see the attached document, which we filed with the STB today.

JACKIE PRANGE  
*Staff Attorney*

NATURAL RESOURCES  
DEFENSE COUNCIL  
111 SUTTER ST., 21TH FLOOR  
SAN FRANCISCO, CA 94104  
T 415.875.6184  
F 415.875.6161

[JPRANGE@NRDC.ORG](mailto:JPRANGE@NRDC.ORG)  
[NRDC.ORG](http://NRDC.ORG)

Please save paper.  
Think before printing.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 36036

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REQUEST FOR EXTENSION BY BENICIANS FOR A SAFE AND HEALTHY  
COMMUNITY, CENTER FOR BIOLOGICAL DIVERSITY, COMMUNITIES FOR A  
BETTER ENVIRONMENT, NATURAL RESOURCES DEFENSE COUNCIL, SAN  
FRANCISCO BAYKEEPER, SIERRA CLUB, AND STAND

Jaclyn H. Prange  
Natural Resources Defense Council  
111 Sutter Street, 21st floor  
San Francisco, CA 94104  
Phone: (415) 875-6100  
Fax: (415) 795-4799  
jprange@nrdc.org

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Fax: (415) 795-4799  
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*Attorneys for Benicians for a Safe and Healthy  
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Phone: (510) 844-7100  
clakewood@biologicaldiversity.org

*Attorney for Center for Biological Diversity*

## INTRODUCTION

Pursuant to 49 C.F.R. § 1104.7(b), Benicians for a Safe and Healthy Community, Center for Biological Diversity, Communities for a Better Environment, Natural Resources Defense Council, San Francisco Baykeeper, Sierra Club, and Stand (together, Benicians) request an extension until July 8, 2016, for any replies to the Petition for Declaratory Order filed by Valero Refining Company on May 31, 2016, STB FD No. 36036. In its Petition, Valero seeks a declaratory order that the Benicia Planning Commission's denial of a permit for Valero's proposed crude-by-rail offloading facility in Benicia, California, was preempted by the Interstate Commerce Commission Termination Act (ICCTA). Petition at 1. Benicians plan to participate as parties of record and file a reply or replies to Valero's Petition explaining, among other things, why the ICCTA does not apply to the denial of a permit for a non-rail carrier facility.

This request is timely, *see* 49 C.F.R. § 1104.7(b), and the requested extension does not allow Benicians more time than the schedule proposed by Valero in its Petition. Accordingly, Benicians respectfully request that the Board grant their request for an extension until July 8, 2016. For reasons that Benicians will set forth more fully in their reply, it would be inappropriate for the Board to institute a declaratory proceeding here, and thus the Board should not set a deadline for replies to the Petition based on the commencement of such a proceeding. Given the prohibition against replies to replies, 49 C.F.R. § 1104.13(c), and the need for expedited consideration of this matter, Benicians also request that the Board deny Valero's request to file "Rebuttal Comments."

## DISCUSSION

### I. Benicians' request for an extension is supported by good cause

Under the Board's Rules of Practice, "[a] party may file a reply . . . to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided." 49 C.F.R. § 1104.13(a). Because Valero filed its Petition on May 31, 2016, any replies to the Petition would be due on June 20, 2016, unless the Board provides otherwise. The Board may extend this reply period in its discretion, upon request and for good cause. *Id.* § 1104.7(b).

Since Valero filed its Petition, Benicians have been diligently reviewing the legal and factual issues raised. Valero's Petition raises statutory preemption issues of potential national significance that require substantial research and analysis. Granting Benicians an additional 18 days would facilitate coordination between the various organizations and increase the chances of them filing one, coordinated reply. In addition, Valero's Petition implicates matters of significant public interest, and the extension would allow time for other organizations and government entities that may have an interest in the Petition to file comments.<sup>1</sup>

A Board order granting the requested extension would also provide clarity regarding the deadline for replies. In its proposed procedural schedule, Valero did not set forth any date-certain deadline for replies to its Petition. *See* Petition at 21. Rather, Valero proposed that replies be due within 30 days of an "STB order instituting a

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<sup>1</sup> The California Attorney General and many local and regional governments submitted comments to the City of Benicia expressing the view that the ICCTA does not preempt denial of the permit.

declaratory proceeding.” *Id.* For reasons that Benicians will set forth more fully in their reply, it would be inappropriate for the Board to institute a declaratory proceeding here because it is clear that ICCTA does not apply to a project proposed by a non-rail carrier. “Where the law is clear, the Board may decline to institute a proceeding and instead provide guidance on the preemption issue presented . . . .” Decision, *SEA-3, Inc., Petition for Declaratory Order*, STB FD No. 35853, 2015 WL 1215490, at \*4 (Mar. 17, 2015).

Accordingly, Benicians submit that it would be unworkable to set deadlines based on the commencement of such a proceeding.

Finally, Valero would not be prejudiced by Benicians’ requested extension, as Valero itself proposed a period of at least 30 days, and likely significantly more, for the filing of replies. *See* Petition at 21.

## **II. The Board should not authorize Valero to reply to any replies**

The Board’s Rules of Practice clearly state that “[a] reply to a reply is not permitted,” 49 C.F.R. § 1104.13(c), and a reply to a reply to a petition for a declaratory order is no exception, *see, e.g.,* Decision, *Cal. High-Speed Rail Auth., Petition for Declaratory Order*, STB FD No. 35861, 2014 WL 7149612, at \*4 (Dec. 12, 2014) (denying motion for leave to file a reply to a reply to a petition for a declaratory order). Despite this explicit prohibition, Valero provided for the submission of “Rebuttal Comments” in its proposed schedule. Petition at 21. Because such “Rebuttal Comments” to the reply filed by Benicians (or any other replies) would violate the Board’s prohibition on “[a] reply to a reply,” 49 C.F.R. § 1104.13(c), the Board should deny Valero’s proposal to submit “Rebuttal Comments.”

Allowing Valero to file a reply to Benicians' reply would, moreover, be inequitable and prejudice Benicians. After the Benicia Planning Commission denied Valero's permit, Valero appealed the Commission's decision to the Benicia City Council. Thereafter, on March 15, 2016, Valero requested that the City Council delay its decision so that Valero could obtain declaratory relief from the Board. On the same day, Valero's attorney informed the City Council that Valero would file a petition within 30 days.<sup>2</sup> Valero then failed to file a petition within 30 days.

Subsequently, on April 18, 2016, Valero's attorney again told the City Council that Valero would file a petition within 30 days.<sup>3</sup> The City Council voted to defer its decision on the permit until September 20, 2016, on the basis of this representation. And, once again, Valero failed to file a petition within 30 days. It was not until May 31, 2016 – 77 days after Valero first requested that the City Council defer deciding Valero's appeal – that Valero actually filed its Petition before this Board.

Allowing Valero to file a reply to Benicians' reply would unjustifiably further delay a decision on Valero's Petition – a delay caused by Valero's own, unexplained delays in filing its Petition. It would leave the Board with much less time to reach a

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<sup>2</sup> Transcription of the Videotaped City of Benicia – City Council Meeting, at 114 (Mar. 15, 2016), *available at* [http://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/City\\_Council\\_March\\_15\\_2016\\_Transcript.pdf](http://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/City_Council_March_15_2016_Transcript.pdf).

<sup>3</sup> Reporter's Tr. of Recorded Proceedings, *In re Valero Crude by Rail Project*, Hearing and Public Comments, at 138 (Apr. 18, 2016), *available at* [http://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/City\\_Council\\_April\\_18\\_2016\\_Transcript.pdf](http://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/City_Council_April_18_2016_Transcript.pdf).

decision on Valero's Petition before September 20, 2016, when the City Council is scheduled to decide Valero's appeal.

**REQUEST FOR RELIEF**

Benicians respectfully request that the Board: (1) grant an extension until July 8, 2016, for any replies to Valero's Petition; and (2) deny Valero's proposal for the submission of "Rebuttal Comments" in reply to any replies.

June 6, 2016

Respectfully submitted,



---

Jaclyn H. Prange  
Margaret T. Hsieh

*Attorneys for Benicians for a Safe and Healthy  
Community, Natural Resources Defense Council,  
San Francisco Baykeeper, and Stand*

Clare Lakewood

*Attorney for Center for Biological Diversity*

Roger Lin

*Attorney for Communities for a Better  
Environment*

Devorah Ancel

*Attorneys for Sierra Club*

VERIFICATION

I, Jaclyn H. Prange, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed: June 6, 2016

A handwritten signature in cursive script, appearing to read "Jaclyn H. Prange", written in black ink.

---

Jaclyn H. Prange

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Extension was filed electronically today with the Surface Transportation Board and served by express mail upon the following:

Kevin M. Sheys  
John J. Flynn III  
Benjamin Z. Rubin  
Justin J. Marks  
Nossaman LLP  
1666 K Street, NW, Suite 500  
Washington, DC 20006

Elizabeth Bourbon  
Rita Diane Sinclair  
Valero Companies  
One Valero Way  
San Antonio, TX 78249

Chief, Section of Administration  
Surface Transportation Board  
395 E. Street, SW  
Washington, D.C. 20423  
(original plus 10 copies)

Dated: June 6, 2016



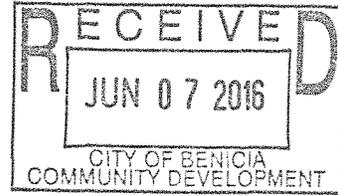
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Jaclyn H. Prange

## Amy Million

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**From:** Steve Young <steveyoung94510@gmail.com>  
**Sent:** Sunday, June 05, 2016 12:13 PM  
**To:** Amy Million; Elizabeth Patterson; Mark Hughes; Alan Schwartzman; Christina Strawbridge; Tom Campbell  
**Subject:** Mosier



Please insert this into the public record on the Valero Crude by Rail

<http://www.opb.org/news/series/oil-trains/oil-sheen-slick-found-columbia-river-mosier-train-derailment/>

thank you

steve young

## News

[Nation \(/News/Topic/Nation/\)](#) | [Water \(/News/Topic/Water/\)](#) | [News \(/News/Topic/News/\)](#) | [Environment \(/News/Topic/Environment/\)](#) | [Energy \(/News/Topic/Energy/\)](#) | [Oil Trains In The Northwest \(/News/Series/Oil-Trains/\)](#)

# Mosier Fire Chief Calls Shipping Bakken Crude Oil By Rail 'Insane'

by [Amelia Templeton \(/contributor/amelia-templeton/\)](#) OPB | June 4, 2016 4:39 p.m. | Updated: June 6, 2016 8:23 a.m.



Jim Appleton, Mosier fire chief, speaks Saturday, June 4, 2016, following the derailment of an oil train in his town near Hood River Friday.

Amelia Templeton/OPB

Jim Appleton, the fire chief in Mosier, Ore., said in the past, he's tried to reassure his town that the Union Pacific Railroad has a great safety record and that rail accidents are rare.

**He's changed his mind.**

**After a long night working with hazardous material teams and firefighters from across the Northwest to extinguish a fire that started when a train carrying Bakken crude derailed in his town, Appleton no longer believes shipping oil by rail is safe.**

**"I hope that this becomes death knell for this mode of shipping this cargo. I think it's insane," he said. "I've been very hesitant to take a side up to now, but with this incident, and with all due respect to the wonderful people that I've met at Union Pacific, shareholder value doesn't outweigh the lives and happiness of our community."**

**Federal regulators say oil from the Bakken region is more flammable**

**(<http://www.bloomberg.com/news/articles/2014-01-02/bakken-crude-more-dangerous-to-ship-than-other-oil-u-s->) and more dangerous, than other types of crude.**

**It's been involved in a string of rail disasters, including a tragedy that killed 47 people in Lac-Mégantic, Quebec.**

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**(</news/article/vancouver-oil-terminal-opponents/>)**

**Groups Join Forces Against  
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Oil Terminal**

**(</news/article/vancouver-oil-terminal-opponents/>)**

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**Shipments through the Columbia River Gorge have dramatically increased in recent years and oil companies have proposed building the largest oil-by-rail terminal in the country 70 miles downstream from Mosier, at the the Port of Vancouver.**

**Emergency responders in communities along rail lines in the Northwest have struggled (<http://www.opb.org/news/article/survey-81-percent-of-oregon-firefighters-not-equipped-for-oil-train-accident/>) to prepare for a possible disaster. Much of the focus has been on stockpiling critical equipment needed to fight oil spills and fires, including a special type of fire suppression foam.**

**But Appleton said that foam was of relatively little use for the first 10 hours after the spill in Mosier. It couldn't be directly applied to the main rail car that was on fire.**

**“The rationale that was explained to me by the Union Pacific fire personnel is that the metal is too hot, and the foam will land on the white-hot metal and evaporate without any suppression effect,” he said. “That was kind of an eye-opener for me.”**

**Appleton said crews spent 8 to 10 hours cooling down the adjacent rail cars with water before the final burning car was cool enough to be extinguished using the firefighting foam. Fire tending trucks drew water from the Columbia River using a nearby orchard supply line, and applied roughly 1,500 gallons of water per minute to the white-hot rail cars.**

**Other first responders described a chaotic scene, and difficulty getting to the site of the accident due to a massive snarl of traffic on Interstate 84.**

**“It looked like the apocalypse,” said Elizabeth Sanchez, the Yakima Nation’s environmental manager and the head of its hazmat crew. “You get into town, and there is just exhausted firefighters everywhere you look. It was quite scary.”**



Emergency crews on Saturday, June 4, 2016, found an oil sheen on the bank of the Columbia River near the site of an oil train derailment and spill in Mosier, Ore., the day prior.

Amelia Templeton/OPB

No lives were lost in the fire, and reports so far of property damage have been minimal, but an oil slick has appeared in the Columbia River, and officials said they haven't determined for sure how oil is reaching the water. Yellow oil containment booms were stretched across the river to contain the oil.

Sanchez and several other Yakama Nation first responders were monitoring the containment effort through binoculars from a nearby overpass.

"It's unknown how much oil is in the river, but it is in containment now, and we believe it to be relatively safe," she said. "We currently have a sockeye run that is just starting, and lamprey live in the sediment, so that's definitely a concern. We have endangered species at risk."

Jim Appleton said Friday was a horrible day for his town, and he feels like he narrowly avoided a catastrophe.

"If the same derailment had happened just 24 hours earlier, there would have been 35 mph gusts blowing the length of the train," he said. "The fire very easily could have spread to some or all of the 96 cars behind, because they were in the line of the prevailing wind. That would have been the catastrophe."



Crews subdued the fire from the oil train derailment in Mosier, Ore., by the morning of Saturday, June 4, 2016. Cleanup on the oil spill and charred rail cars continued into the weekend.

In a press conference Saturday, the Union Pacific Railroad apologized for the incident.

"We apologize to the residents of Mosier, the state of Oregon, and the Pacific Northwest Region," said spokeswoman Raquel Espinoza.

Espinoza said the railroad company will pay for the cost of fighting the fire. She said it has to wait for the area to cool down before it can extract the cars that remain and remove them by flatbed truck.

The company said crude oil represents less than 1 percent of its cargo, and said it has trained more than 2,300 emergency responders across Oregon since 2010.

Union Pacific set up information and health hotlines for Mosier residents. The information hotline number is 1-877-877-2567. The health hotline number is 1-888-633-3120.

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[More From Oil Trains In The Northwest \(/news/series/oil-trains/\)](/news/series/oil-trains/)

 [\(/news/series/oil-trains/5-things-you-need-to-know-about-the-oil-train-derailment-along-the-columbia-river/\)](/news/series/oil-trains/5-things-you-need-to-know-about-the-oil-train-derailment-along-the-columbia-river/)

5 Things You Need To Know About The Oil Train Derailment Along The Columbia River (</news/series/oil-trains/5-things-you-need-to-know-about-the-oil-train-derailment-along-the-columbia-river/>)

[\(/news/series/oil-trains/yakama-nation-tribal-response-oil-train-derailment-mosier/\)](/news/series/oil-trains/yakama-nation-tribal-response-oil-train-derailment-mosier/)



Are Gorge Tribal Communities Overlooked In Oil Train Derailment?

(</news/series/oil-trains/yakama-nation-tribal-response-oil-train-derailment-mosier/>)

**More News**

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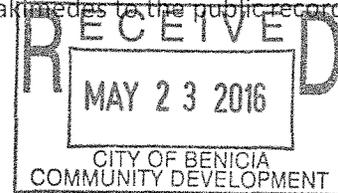
## Amy Million

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**From:** BenIndy - Roger Straw <rogrmail@beniciaindependent.com>  
**Sent:** Monday, May 23, 2016 2:20 PM  
**To:** Alan Schwartzman; Alan Schwartzman; Amy Million; Anne Cardwell; Brad Kilger; Christina Strawbridge; Christina Strawbridge; Elizabeth Patterson; Heather McLaughlin; Mark Hughes; Mark Hughes; Elizabeth Patterson; Tom Campbell; Tom Campbell  
**Subject:** FW: a sacred trust . . .

Amy – please add the following email from former City Council member Mike Ioakimedes to the public record on Valero Crude By Rail. Thank you.

Roger Straw  
Benicia



---

**From:** Mike Ioakimedes [mailto:mike@ioakimedes4solano.com]  
**Sent:** Monday, May 23, 2016 2:10 PM  
**To:** Roger Straw  
**Subject:** a sacred trust . . .



Dear Roger --

Today, I'd like to address a topic that's at the forefront of many voters' minds: crude oil by rail.

Lately some concerned citizens and community activists have pressed me to expand upon my position concerning Valero's crude oil by rail proposal. Here's the short answer: I can't support a proposal until I am convinced that it is safe and meets our local health and safety standards. As presented, this proposal doesn't meet those standards. That's it. If it doesn't meet our standards (and right now, this proposal doesn't), I don't believe it should be approved, and would not vote for approval myself.

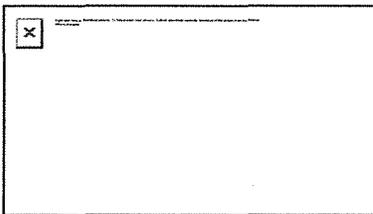
The crude oil by rail proposal is critical not only to the health and safety of our community, but also to a very basic principle of local government - the right of the community to have a say in decisions that deeply affect that community. The threat isn't from only one project: The VMT proposal in Vallejo and the coal train controversy in Oakland are two other instances where federal preemption could result in significant health risks to surrounding communities. Solano County's District 2 includes the deep water ports of both Vallejo and Benicia. If the federal government has the right to regulate commerce without any say from the local community, then both of these ports could be forced to receive dangerous cargo that may have a significant impact on our health and safety.

I believe that the most important responsibility of local government is to protect the health and safety of its residents. Nothing should ever force a local elected official to abdicate or subordinate that responsibility. In fact, I consider it more than a responsibility - **I consider it a sacred trust between government and citizens.**

Please **join me in the fight** to preserve and defend local control over local health and safety. If you believe, like I do, that Benicia, Vallejo and Fairfield should have a say in projects that affect our communities, then please **donate \$50 or \$100 today**. We're trying to raise \$5,000 to put out a mailer to get our message to voters - we're almost there and we hope you can help us reach our goal today.

This is about more than one project. We must work to protect every community along the rail corridor.

Sincerely,



Mike Ioakimedes

PS --- Please click on the [Facebook](#) link and like our page then

invite all your Facebook friends to like it too. Every "like" helps us get the word out!



<http://www.ioakimedes4solano.com/>

--==--

Ioakimedes for Solano County Supervisor · United States  
This email was sent to [rogmail@gmail.com](mailto:rogmail@gmail.com). To stop receiving emails, [click here](#).  
You can also keep up with Mike Ioakimedes on [Facebook](#).

--==--

Created with [NationBuilder](#), software for leaders.

## Amy Million

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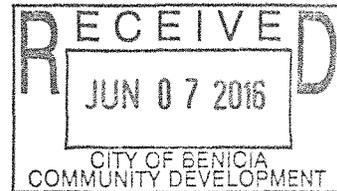
**From:** Marilyn Bardet <mjbardet@comcast.net>  
**Sent:** Friday, June 03, 2016 11:47 PM  
**To:** Amy Million; Christina Ratcliffe  
**Cc:** Elizabeth Patterson; Mark Hughes; Christina Strawbridge; Alan Schwartzman; Tom Campbell  
**Subject:** Derailment in Columbia River Gorge-- was in OREGON, not WA

Hi Amy and Christina,

I'd mistakenly thought "WA" thinking of Columbia River Gorge— the UPRR derailment occurred in Oregon. Please add this message to the record to correct my mistake. Below is what I'd written earlier today.

Thank you,  
Marilyn

\* \* \* \*



Please enter the following report on the 11-car oil train derailment and explosion in the Columbia River Gorge, OR that just happened. If this doesn't alert you to the dangers of CBR close at hand, what will? This cannot become "business as usual" for the City of Benicia, our industrial park and community!

[http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/06/oil\\_train\\_derails\\_near\\_hood\\_ri.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/06/oil_train_derails_near_hood_ri.html)

Marilyn

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# Oil train derails near Mosier in Oregon's Columbia River Gorge



By [Tony Hernandez](#) | [The Oregonian/OregonLive](#)

[Follow on Twitter](#)

on June 03, 2016 at 1:03 PM, updated June 04, 2016 at 12:14 PM

**UPDATE AT 9:30 a.m., Saturday: [A light oil sheen was spotted on the Columbia River, while Mosier residents face continued disruption.](#)**

**UPDATE AT 8:30 a.m., Saturday: [The fire is out and I-84 re-opened overnight.](#)**

An oil train derailment Friday in the Columbia River Gorge near Mosier sent up a massive plume of black smoke and stoked long-standing fears about the risks of hauling crude oil through one of the Pacific Northwest's most renowned landscapes.

Eleven cars from a 96-car Union Pacific train jumped the tracks west of the small city about 12:20 p.m., next to Rock Creek that feeds the Columbia River. Several rail cars caught on fire and at least one released oil, but it's not known how much, railroad officials said.

No oil reached the river or its tributaries, authorities said late Friday. Railroad crews placed booms across the creek to prevent contamination. Workers plan to cool off the derailed cars and then will use foam on the burning cars, but cautioned that the risk of fire and possible explosion remains.

The train originated in New Town, North Dakota, and was moving crude extracted from the Bakken formation to the U.S. Oil & Refining Co. refinery in Tacoma, said company spokeswoman Marcla Nielsen.

The accident closed a 23-mile stretch of Interstate 84 in both directions as a precaution and caused the evacuation of a community school and people in a quarter-mile radius.

The interstate reopened from Hood River to The Dalles about 11 hours later, though the ramps at Mosier will stay closed.

It's not clear what caused the derailment.

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## OIL TRAINS

[After oil train derailment: 'I'm nervous all the time now,' says evacuated neighbor](#)

[Union Pacific temporarily halting oil trains in Columbia River Gorge after fiery wreck](#)

[Days after oil train derailment, normal seems far away in scenic Mosier](#)

[Fiery Oregon oil train crash derails young couple's wedding plans -- for a weekend](#)

[Sewers shut off, water aquifers dry as Mosier deals with oil train derailment aftermath](#)

[All Stories](#)

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The cars derailed within about 20 feet from the city's sewage plant, said Arlene Burns, mayor of the city of 440 people, east of Hood River. Residents have been asked not to use bathrooms and other drains into the city's sewage lines.

"We've been saying for a long time that it's not fair for trains with toxic loads to come into our towns near our Gorge," Burns said. "We don't have the capacity to fight these fires."

The town, with the motto "Small Enough to Make a Difference," is known for its orchards and vineyards. It has no gas station and one store. The cars derailed under an overpass about 100 yards away from a mobile home park with about 50 units.

"We need the ability to fight an oil fire which water does not fight nor does sewage," Burns said.

Thankfully, she said, "It's not a windy day and it's not August and the ground is not brittle and dry."

The fire burned at least a quarter of an acre of nearby land, said state Forestry Department spokesman Ken Armstrong. He wasn't sure who owns the land.

The Oregon Department of Transportation shut down Interstate 84 westbound in The Dalles by milepost 87 and eastbound by milepost 64. Cars and trucks faced gridlock as they detoured around the area on routes that included a toll bridge over the river between Oregon and Washington state.

Residents reported seeing flames near the K-8 Mosier Community School. Its 160 students were quickly evacuated. Homes in the immediate area were evacuated within about a half-hour, authorities said. A shelter was opened at a grade school in The Dalles.

Union Pacific has hauled two types of oil through the gorge -- a thick, waxy crude from Utah and Bakken crude from North Dakota. In late 2015, the company began moving one mile-long train of Bakken oil each week on the Oregon side of the gorge to the Tacoma refinery.

The oil came from the heart of a massive boom that's pushed an unprecedented amount of crude into the country's rail system, turning the Columbia River Gorge into one of the United States' most heavily traveled oil train routes.

#### **Detour information**

The Oregon Department of Transportation says:

**Motorists traveling eastbound** should depart I-84 at Hood River, via OR35 to US26 (Mt. Hood) to OR216 eastbound to US197 northbound to return to eastbound I-84.

**Westbound motorists** should depart I-84 at US197 southbound to OR 216, westbound to US26 (Mt. Hood) to Portland.

This is to relieve traffic on Washington State Route 14.

#### **Shelter opens**

The American Red Cross Cascades Region has opened a shelter in The

Crude oil wasn't thought to be especially explosive before trains began derailing and erupting in sky-high fireballs in 2013. Those explosions have been driven by the unique characteristics of the crude from North Dakota's Bakken formation and the expansive volumes in which it has moved.

Dalles for people affected by the train derailment and evacuation. The shelter is Dry Hollow Elementary School, 1314 E. 19th St.

Though Bakken oil is laden with greater concentrations of flammable gases than comparable types of crude, the North Dakota Industrial Commission has begun requiring oil producers to condition the most volatile batches. Its limits have been criticized as far too loose.

Alison Ritter, a commission spokeswoman, said the oil in the derailment would have been subject to those conditioning rules. But its exact volatility isn't yet known, she said.

Federal regulators have moved to improve oil train safety by requiring upgrades to tank cars. But it will take years for the public to reap the benefits.

The cars on the train that derailed were all coiled, insulated CPC-1232 models, said Nielsen, the U.S. Oil spokeswoman. Those are a second-generation standard that are being phased out.

"The cars are safer, absolutely," said Michael Eyer, a retired state rail safety inspector. "But they're still not designed for an emergency situation such as this."

Oil spill response crews from the U.S. Environmental Protection Agency, state Department of Environmental Quality and National Response Corp., a contractor that works with Union Pacific, were all en route to the scene, said Jennifer Flynt, spokeswoman for the Oregon environmental agency.

Gov. Kate Brown said in a statement she is "closely monitoring the derailment and ready to make every state resource available as needed."

Local health officials put out an air quality advisory for people with asthma, respiratory infections, lung or heart disease and diabetes, recommending that they stay inside and limit physical activity.



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Portland Airport Fire & Rescue was sending a specialized fire truck that carries about 1,300 gallons of fire-suppression foam and a five-person crew to assist in Mosier, said Steve Johnson, a Port of Portland spokesman.

Mosier volunteer fire department workers responded to the derailment, helped by Mid-Columbia Fire and Rescue, Hood River County's Westside Rural Fire Protection District and Wy'East Fire District and the Dallesport Fire Department across the river.

The Federal Railroad Administration said it is aware of the incident and is sending investigators.

An Oregon Department of Transportation rail safety inspector last examined the track in late April, **finding 30 defects between Cascade Locks and The Dalles**. He didn't recommend any penalties.

Deficiencies included loose bolts and braces and a tree brushing the side of rolling train cars. Eyer, the former rail inspector, reviewed the report at The Oregonian/OregonLive's request. He said the issues were routine and not serious.

"They could fix them today and come back next week and have the same thing, just because of the dynamics of having a zillion tons of product going over on a weekly basis," Eyer said.

Hours after the derailment, traffic still jammed surrounding highways as cars diverted from the interstate, said Judy Dutcher, general manager of Copper West Properties in nearby Hood River.

"It's all backed up as far as you can see," she said. "It's bumper to bumper."

Interstate traffic was routed across the Hood River Bridge.

Pat Joseph, who lives in Mosier and works at a mill in Washington, said he planned to take back roads to return home. "I'm going where there is no traffic," he said.

Lisa McNabb of Pocatello, Idaho, was driving west to Portland with her mother, grandmother and two children. She said the group stopped for lunch at a McDonald's in The Dalles, went to get back on the freeway and found it blocked. She estimated it took about two and a half hours to get to the Oregon side of the Hood River Bridge.

"It's been a little much," she said, but everyone seemed to be in good spirits.

Derek Hiser, a Mosier City Council member, lives about a quarter-mile from the derailment site and said he and his colleagues have recently seen increased concerns from residents about oil trains passing through the town.

"People were afraid of something like this happening," Hiser said. "I think this could lead to a lot of people who weren't necessarily listened to before being listened to now."

Hiser said he picked up his 11-year-old daughter from the community school soon after seeing the thick, dark smoke billowing into the air.

"It's a real tragedy," he said. "You live in the Gorge for the way of life and when something like this happens, it takes the joy out of it."

*-- Reporters Rob Davis, Everton Bailey Jr., Maxine Bernstein and Jim Ryan contributed to this report.*

— Tony Hernandez

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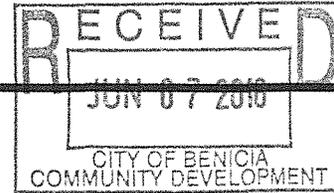
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## Amy Million

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**From:** Judith Sullivan <jass1013@aol.com>  
**Sent:** Monday, June 06, 2016 4:53 PM  
**To:** Amy Million; c.ratcliffe@ci.benici.ca.us; Tom Campbell; alan.schwartzman@ci.benicia.us; Mark Hughes; christina.strawbridege@ci.benicia.ca.us; elopato@comcast.net  
**Subject:** Track failure likely cause of oil train derailment, fire in Mosier | KATU Mon., 4:53 p.m.

Dear Amy, Christina, Mayor and City Council Members,

This is an update based on information from the CBR accident that recently occurred in Mosier, Oregon. This forwarded newscast was done on Sunday, June 5, 2016. This is being sent in for your consideration and for the Official Public Record on the CBR Project.

According to this news report, the reason stated for the Mosier CBR derailment on Friday, June 3, 2016 was said to be caused by a fault in UPRR track, undetected by an examination a week ago.

NO water/sewer facilities are available for those still in town who were not evacuated by this CBR accident. One quarter of this small town was evacuated for an as of yet undetermined amount of time. NO water is available from faucets for drinking or any other use. There IS no water. Portable toilets are being brought in until the sewer situation can be resolved.

16 instead of the initially reported 10 or 11 tank cars derailed, with four of them exploding. Once again, there has been NO way to put out the fire, as has been experienced by ALL previous CBR fireball explosions. Foam can ONLY be used only as defensive deterrent to attempt to keep the fire from spreading to unaffected railcars and other areas. Once a fireball explosion occurs, which happens instantaneously during the type of rupture that happened, it has to be allowed to burn itself out. If still in doubt about this, it is recommended that independent research be done on this accident and several prior "CBR incidents" that have been occurring across the country by checking in with the fire departments of those locales. Independently doing this kind of investigative research has been suggested in previous written public comments as a way of becoming more aware/educated through the experiences of others who have already dealt with the issues that repeatedly arise from these kinds of CBR accident scenarios. We have had plenty of "wake-up calls." Are more needed?

The oil spill did get into the Columbia River, a condition that wasn't determined in the first day or two. This is one of the most beautiful areas of our country. A place of recreation and a water source. Water, an element of which there is a limited supply during times of drought and increasing fires from just natural causes. According to this report, normal winds in the area were not blowing at the time of the accident, which was a blessing. The fire chief stated it could have been much worse if the wind factor was typical. A comment frequently offered in other CBR incidents was again repeat in this one: "We dodged another bullet. It could have been much worse." No deaths or injuries. . . Even so, it can not be denied that the small town of Mosier has been traumatized. And it could happen again. . . That is a heavy burden for all who live in a place where this type of disaster has happened, knowing that it can repeat, for the same reasons, and they have no control over that possibility. In addition to other lines of work through the years, I have been a counselor working with people suffering the aftereffects of many types of disasters. The long-term fallout experienced by those in recovery of such unexpected, so-called disasters has less to do with how much it cost someone financially to re establish themselves, which can be considerable and certainly problematic, but more to do with the PTSS that follows. This factor is not satisfied by financial compensation. The cost of a catastrophe is not all about who pays for what in the after- math. The damage goes deeper than the surface restoration required. This factor has not

been touched upon in discussions of the probability of a CBR accident here or anywhere else up and down rail from us.

Having responded to this Mosier CBR accident, the fire chief interviewed, who had been reluctant to weigh in on CBR; is no longer on the sidelines. Please keep following up on this story as it unfolds. National news has moved on to other daily disasters during their limited air time, which means to stay aware of the consequences this accident presents and the accumulation of the other ones that have occurred is up to each one of us. Delving into the facts of the situation(s) through personal investigation once there is no longer press coverage about it is important in order to better understand all of the ramifications involved. The way these accidents have happened and how they are dealt with can reveal and teach us a great deal.

When considering derailments, it would be wise to pay attention to UPRR's actual commitment to repair known dysfunctional tracks. According to the RDEIR statistics on this subject, "58 or 17% of the derailments on the UPRR tracks occurred on or near an LSHS" (local safety hazard site), on which prior accidents had already occurred, without any repairs being made in-between accidents during the 2009-013 time period, the last of which had reported data available at the time the DEIR was written. Have you taken into consideration of these statistics within your deliberation of the CBR scenario?

As a reminder to all of you city council members who have not yet formally announced a decision about your vote, we DO have serious ON-SITE ISSUES not related to the rail portion of transport that have not been openly explored by the council with the public. These issues have been repeatedly brought to your attention through well researched public comments from refinery experts as well as by concerned citizens who have taken it upon themselves to research these concerns. I was among those who were very disappointed that the unsafe features of the location available for the unloading ramp were not deliberated upon by city council during the recent Public Hearings. The factual findings by others appeared to be dismissed/discounted, not considered worthy of your evaluation or discussion. Investigating these and then addressing them could have preempted the need for any further discussion of railroad preemption. Even both of the city's chosen outside legal consultants for the CBR Proposal confirmed this truth.

During the extra time the city council has allowed itself by delaying the vote on Valero's proposal, I am hoping each of you who has not already undertaken a thorough, comprehensive review of materials/public comments already presented on this subject, will be willing to expand your knowledge base by doing whatever extensive independent research you feel is necessary to make the best informed decision possible that is placed before you. The complexity of doing this kind of in-depth study is understood. A great deal of time and energy is required. Unfortunately, it is part of the due diligence required. Many of us as citizens are have done and are continuing to do this as well, so understand what is being asked of you. We are not expecting of you anything above what we have been willing to do. In that respect, you do not stand alone in the process of separating fact from fiction concerning the CBR Proposal before our city.

You, as our governing body, have the vote. Along with that comes the sacred responsibility to keep an open mind, to carefully scrutinize all details presented, ask pertinent questions, and then be willing to go beyond what is given at "face value" to discover whatever truth lies beneath the surface. We are not asking for your opinions, but for due diligence based on the search for the truth, wherever it may lead.

Respectfully submitted,

Judith S. Sullivan  
Benicia resident

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# **Track failure likely cause of oil train derailment, fire in Mosier**

By DONNA GORDON BLANKINSHIP, Associated Press Sunday, June 5th 2016



Mosier tracks being replaced on Sunday, June 5 (KATU News photo)



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MOSIER, Ore. -- Officials now say a track failure was likely the cause of the oil train derailment and explosion in the Columbia River Gorge Friday.

A failure of the fastener between the railroad tie and the line was likely the problem, but more investigation will be required before railroad officials know for sure, Raquel Espinoza with Union Pacific said Sunday.

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Union Pacific inspects the tracks that run through Mosier twice a week, and the most recent inspection took place on May 31, Espinoza said. Union Pacific had completed a more detailed and technical inspection of this section of track at the end of April and found no problems.

The railroad is focused on removing the crude oil from the damaged cars as safely and quickly as possible, Espinoza said. Its priority is to bring people home safe to Mosier, [where 16 of 96 tank cars train derailed Friday and started a fire in four of the cars.](#)

"We're doing everything we can to get you back home, but we're not going to risk your safety," Espinoza said at a news conference. When asked if she knew how much the cleanup was going to cost the company, Espinoza said, "I don't know and it doesn't matter."

"Our priority here is bringing people home. Nothing else matters," she added. Repairs to a water treatment system, which runs under the tracks, would need to be completed before people could return to their homes, the railroad said.

About a hundred people - a quarter of the town's population - have been evacuated from their homes since Friday in an area about a quarter mile around the train.

Mosier's mayor and fire chief said Sunday the derailment and fire in their town could have been a lot worse.

Fire Chief Jim Appleton says the usual amount of wind in Mosier - about 25 mph - could have turned this incident into a major disaster, destroying the town and sending flames across state lines.

"My attention was focused on the incident that didn't happen," Appleton said. "It probably would have burned its way close to Omaha, Nebraska. That's how big it would have been."

Mayor Arlene Burns said the people of Mosier were "incredibly lucky."

"I count myself lucky that we dodged a bullet," Burns said, after noting that her own child was at school within a few blocks of the derailment. "We hope that this is a wake-up call."

The fire and derailment damaged essential city services in the small Oregon town, authorities said Sunday.

The Mosier waste water treatment plant and sewer system were not operational Sunday. Residents were told not to flush their toilets and advised to boil any water before they drank it or cooked with it. Mosier exhausted its water reserves fighting the fire and cooling the trains. Burns said the aquifers were completely depleted.

Officials have been conducting continuous water and air monitoring since plumes of black smoke filled the sky near the scenic Columbia River Gorge.

"Today's priority is focused on safely restoring essential services to the community of Mosier as soon as possible," incident spokeswoman Judy Smith of the U.S. Environmental Protection Agency said in a statement.

[Authorities were working to clean up an oil sheen in the Columbia River](#) near the scene of the derailment, while the oil inside the remaining tank cars was being moved to trucks.

No injuries have been reported. But Oregon health officials are asking people with questions or concerns to call a hotline to talk to a health expert at 888-623-3120.

Including Friday's incident, at least 26 oil trains have been involved in major fires or derailments during the past decade in the U.S. and Canada, according to an Associated Press analysis of accident records from the two countries. The worst was a 2013 derailment that killed 47 people in Lac-Megantic, Quebec. Damage from that accident has been estimated at \$1.2 billion or higher.

Evacuated residents needing assistance should contact the Union Pacific Claim Center located across from the Mosier Market or call the claim center at 877-877-2567, option 6.

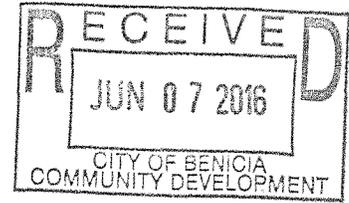
**A health hotline has been set up at 888-623-3120.** A boil water order remains in effect for the Mosier community.

component-story-more\_media\_horiz-v1-01

**more to explore**

-

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Tom Campbell <[Tom.Campbell@ci.benicia.ca.us](mailto:Tom.Campbell@ci.benicia.ca.us)>

Re: Comments on Portions of Valero's May 31, 2016 Petition to STB

Hello Amy and Christina,

Please include my following comments in the Valero's CBR Project file. Referenced Page refers to Valero submittal page, with appropriate portions highlighted and inserted here for ease of referencing.

- [Reference Page 1] Is this a verifiable fact or just an unsubstantiated argument? There is not enough data provided to verify that crude by rail shipment are a necessity rather than a preference.
- [Reference Page 1] Is this a fact? Even if it may be true now, it will not be true when crude loading ship terminals like the one under construction in Washington or other States start operating.

1

any crude oil shipments for refinery operations. Valero has determined that in order for the Benicia refinery to remain competitive over the long term, it must have access to North American crude oil feedstock. In California, North American crude oil is available only by rail.

2

1

- [Reference Page 2] This statement is not the whole truth and is not even the most important part of the truth either. The most important part is that Valero is in effect proposing multiple new track extensions over long distances, almost the whole length of the refinery, on their site which is located wholly within the City of Benicia. Construction of Off-loading racks and some piping to transfer the crude on the site was never a major bone of contention (except that the constructed in a flood plain on unstable soil, and too close to a creek). Valero is thus transforming the character of the site from a refinery to an oil terminal loading / unloading / storage facility.

3

Accordingly, Valero has proposed to construct a crude oil off-loading facility to allow the refinery to efficiently receive North American crude oil deliveries by rail. Union Pacific

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4. [Reference Page 2] You see here how conveniently construction of extensive track extension, the **sine qua non** of the train access and the most important part of the project allowing the train access to the site is not even mentioned.

**4** Railroad Company (“UPRR”) will transport crude oil in unit train service to the refinery once the crude oil off-loading facility is built.

5. [Reference Page 2] Here Valero is being disdainful and sarcastic, mocking the City and its Citizens for being human and having basic empathy with their neighbors and caring about people and environment outside the City limits. It is worth noting that compared to the **72** miles from Benicia to Roseville (Benicia's extravagant and unjustified claim to an interest), Valero finds it justified and even natural to have interests in Benicia (about **1,770** miles from San Antonio Texas Valero Headquarters or to import oil from Bakken Fields, again about **1,770** miles from Benicia)

**5** Quality Act. The EIR disclosed the potential environmental impact of UPRR rail operations between the Benicia refinery and California’s borders with Oregon and Nevada, including in UPRR’s Roseville, CA yard, seventy-two miles from Benicia.

6. [Reference Page 2] Valero is putting their own spin on the arguments by rewriting the rationale behind the Planning Commission's Resolution 16-1 decisions. Resolution 16-1 refers to many substantive negatives for the project and rail related ones are just one of the many.

**6** EIR/Permit Denials were substantially based on findings of adverse rail transportation impacts and the absence of rail transportation mitigation.

7. [Reference Page 2] See how conveniently here Valero is passing over the fact that Valero had all the time and opportunity to petition STB in the preceding 3 years and they did not do it. And how Valero appeals Planning Commission's decision to the City Council, and while the City Council is considering Valero's appeal, suddenly and surprisingly, and even rudely, Valero interrupts this normal agreed upon process initiated by Valero itself, to Petition STB.

**7** The City Council has granted Valero’s request to defer a decision on Valero’s appeal until September 20, 2016. The City Council’s decision allows time for Valero to seek this declaratory

8. [Reference Page 3] At present there are no rail tracks at the site and so Valero cannot receive and UPRR cannot deliver crude by rail, directly to the refinery site because of the objective reality. Valero proposes to change this reality to suit its goals, however, Valero's proposal changes the facts on the ground in many ways that do not correspond favorably to City's interest, plans, and objectives and are in fact detrimental to them. This is the rational for the Planning Commission's decision and not some alleged wish to "indirectly regulating rail transportation" or "unreasonably burdening interstate commerce". All the Planning Commission’s objections are discussed in Resolution No 16-1

8

transportation, denying Valero the right to receive rail common carrier service and preventing UPRR from providing such service and unreasonably burdening interstate commerce.

9. [Reference Page 3] Valero, the caring and responsible corporation, is showing its true color here. Valero is throwing down the gauntlet to show the Natives the limits of accepted behavior in a polite society and the limits of local control and citizen democracy. It looks like the good old “gunboat diplomacy” to try to open up new markets whether the natives want it or not (as represented by the democratic decisions of their elected local representatives), with the difference that gunboat diplomacy was reserved for foreign nations but the new policy is reserved domestic audience.

9

The Benicia project is not the only rail facility project affected by local regulation of rail transportation. Localities have denied or materially delayed the construction, expansion or continued use of several other crude oil and ethanol rail projects based on rail transportation impacts. In each instance, the localities are indirectly regulating rail transportation in the guise of regulating refinery or fuel storage facilities. A Declaratory Order in this case could provide clarity and curb this unfortunate trend.

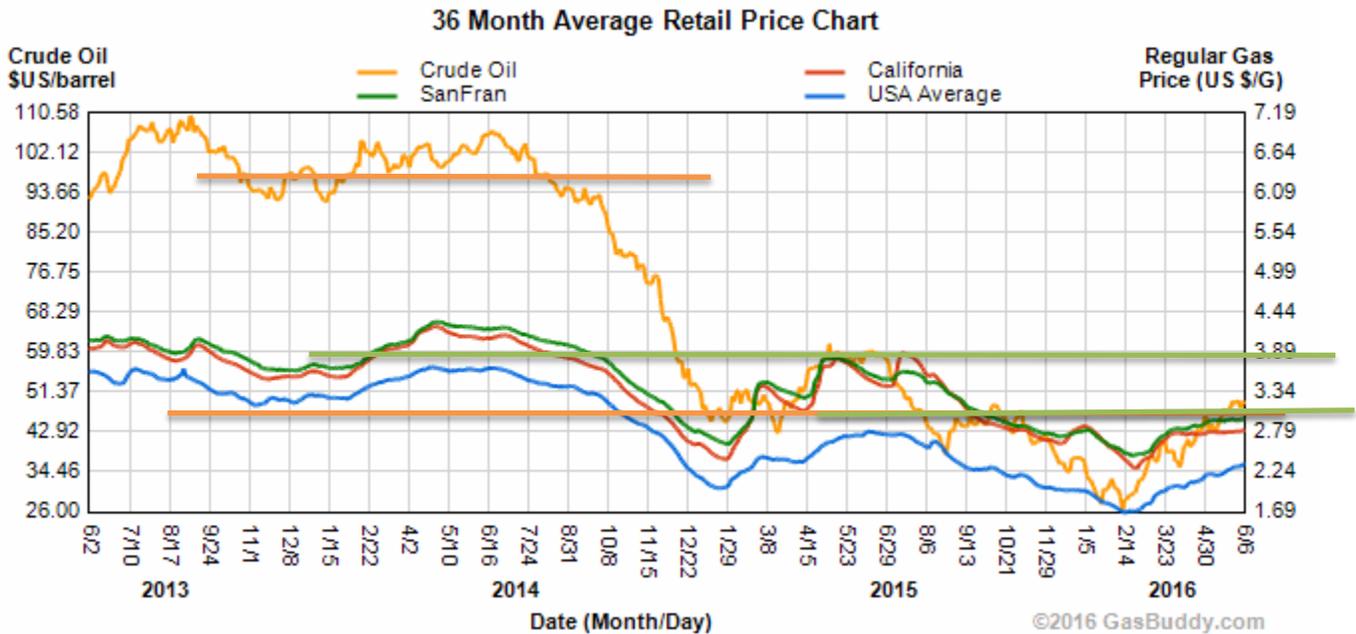
10. [Reference Page 8] To be truthful, this title should be changed to **STATEMENT OF a few selective FACTS** used to hide or camouflage **opinions** and **unverifiable statements** representing Valero's **points of view**, all packaged **as if they are facts and the only facts that matter**. See instances of dubious or "non-facts" below.

#### 10 **STATEMENT OF FACTS**

11. [Reference Page 8] These are a selection of facts chosen by one interested party to emphasize importance of Valero refinery and somehow **imply** that if the project is denied, smooth day to day business operations in the Bay area or even whole of California will be in jeopardy or there will be dramatic increases in the price of gasoline or other petroleum products. Whereas, based on the **explicit** information provided by Valero itself, at worst case scenario, the cost of gasoline **may** go up somehow in the **future**. I have also attached a graph showing the relationship of price of gasoline to the cost of crude oil.
- As evident from the graph below (and also our common experience as consumers of gasoline in the last few years), cheaper crude for refineries does not translate directly or somehow proportionally into cheaper gasoline for the US, California, or San Francisco Bay area. For example the graph below show that when the crude price comes down from an average of around **96 \$/barrel** to **45 \$/barrel**, the price of gasoline in the bay area has come down from around **3.9 \$/gallon** to about **3.1**

\$/gallon (California and US prices show very similar pattern). (If the gasoline prices had come down proportionally, the expected price would have been **1.85** \$/gallon.) The reasons are due to other costs such as refining and transportation or perhaps greed, but that is another discussion and we do not want to get distracted here. What matters is the FACT that Valero argument that CBR will result in cheaper crude and that is a very important in terms of economy of California or bay is just not verifiable by the history and available data.

**11** 165,000 barrels of crude oil per day. From this crude oil the refinery produces gasoline, diesel, jet fuel, and asphalt.<sup>21</sup> Ten percent of gasoline consumed in California – the most populous state in the Union,<sup>22</sup> which has approximately 28,686,000<sup>23</sup> motorized vehicles – is from the Benicia refinery.<sup>24</sup> California is the third largest consumer of gasoline in the world. Valero currently



<http://charts.gasbuddy.com/ch.gaschart?Country=USA&Crude=t&Period=36&Areas=USA%20Average%20California%20SanFran&Unit=US%20%24%2FG>

- [Reference Page 8] Valero in its application should have made full and unambiguous disclosure to the public and to the City Officials as to the **full extent and legal ramifications of allowing new track extension project in the City**. According to Valero’s claim the impact is mind boggling, since it means total and complete loss of local or even state level control to regulate what happens locally in our City, and letting some distant unelected bureaucrat in Washington to take care of local problems such as traffic jams, noise and air and water pollution, other hazards, etc. Valero's request should have been denied just for being woefully deficient since it did not make a full and honest disclosure of this fact, and just mentions them in passing as if they are like any other construction, whereas they are in effect a special class of construction that allow complete loss of local control after they are built.

*The Planned Off-Loading Facility.* Valero submitted its application to the City <sup>12</sup> requesting a permit to install the off-loading rack, track on both sides of the rack and track connecting the rack to UPRR. The crude oil off-loading facility will have the capacity to receive

13. [Reference Page 8] This is an opinion expressed by an interested party to support his contention and not a fact, and even if it were true, it does not prove that the same results could not have been achieved by other means.

*The Need For North American Crude Oil Feedstock.* Valero has determined that the <sup>13</sup> refinery needs access to North American crude oil feedstock in order to remain viable and competitive over the long term. <sup>14</sup> North American crude oil is economically and competitively

14. [Reference Page 8 &9] This statement is incorrect. At this time, North American Crude is **not** accessible to Benicia refinery by rail delivery at all, since there are no rail extension and unloading racks at Benicia refinery. The statement is formulated as if physically and objectively there is no obstacle to Valero's use of Crude by Rail, except the subjective and irrational decisions of the Planning Commission. It should be noted that the same way that Valero has some long term interests and goals to serve its corporate objectives, Benicia and its Citizens have their own long term interests and goals, as expressed in the decisions of the Planning Commission. In this case the goals of the two parties did not match.

<sup>14</sup> competitive over the long term. North American crude oil is economically and competitively

<sup>14</sup> accessible to the Benicia refinery only by rail delivery. The crude oil off-loading facility (with <sup>15</sup>

15. [Reference Page 9] The word "**needed**" is used here not as an objective fact, but more like an emotional crutch.

UPRR common carrier service) will provide the refinery with this <sup>15</sup> needed source of crude oil. In

16. [Reference Page 9] Here when the fact that the present price of oil does not support Valero's original stated goal of saving money, they change their goal to be less in contradiction with the fact. If Valero can claim a **Right** for "long-term viability and competitiveness", then, it should accept that Benicia also has **at least as much Right**, and to exercise it through City's strategic goals and planning commission's decisions to diversify the businesses in Benicia and set what kind of business they want to encourage in Benicia.

shipped by marine vessel. The price of crude oil has declined, but oil prices fluctuate by source **16** and Valero must diversify its sources of crude oil for the sake of long-term viability and competitiveness.<sup>26</sup>

17. [Reference Page 9&10] It is worth noting that Valero is here taking advantage of difference of opinion (and perhaps interest) within the City staff/consultants/lawyers/planning commission/ and City Council. Whereas, Valero's side in its application or presentations did not show any difference of opinion between management, consultants, lawyers, and staff. The difference of opinion can be explained by the more democratic nature of the City's organization allowing and protecting difference of opinion and its expression, whereas, the corporate culture of Valero does not encourage it or at least does not allow its outward public expression. There could be other reasons such as hope of future business gains, but obviously those are more difficult to document.

The EIR did not include proposed mitigation for potential environmental impacts of UPRR railroad operations, **17** because City staff, advised by Special Counsel, determined that such mitigation would be preempted by the ICCTA.<sup>31</sup> In staff's presentation to the Planning Commission, the Special Counsel advised the Planning Commission that although state law did apply to the unloading rack itself, the Planning Commission did not have the **17** "authority to attempt to condition Valero's permit on any mitigation of impacts that are caused by rail operations" nor does the City of Benicia "have the authority to deny the permit based on rail impacts."<sup>32</sup>

18. [Reference Page 12] The dates show that Valero had all the time and opportunity to petition STB in the preceding 3 years and they did not do it. Then Valero appeals Planning Commission's decision to the City Council, and while the City Council is considering Valero's appeal, it takes Valero **50 days** to inform the City that they **now** want to interrupt the process and file a Petition with STB. This shows that either Valero does not know what it wants and how to get it or Valero is acting like a spoiled narcissistic kid, only caring about his own need and ignoring needs and requirements of all others. It is even worse, since Valero is not a kid, and with its heft and size, it can do real damage to all impacted by it.

**18** On February 29, 2016, Valero appealed the Planning Commission’s decision to the Benicia City Council.<sup>35</sup> On April 19, 2016, Valero requested that the Benicia City Council defer a decision on Valero’s appeal so that Valero could seek this declaratory relief.<sup>36</sup> The City Council voted to defer a decision until September 20, 2016.<sup>37</sup>

- 19. [Reference Page 12] **Very large part** characterization is an opinion of Valero only. (see insert below item 21)
- 20. [Reference Page 12] The argument that ICCTA gives certain rights to shippers and rail carries does not mean these parties are exempt from other rules, regulations, and laws. For example drug dealers cannot ship illegal drugs by rail and claim some sort of immunity from local law enforcement. Also if somebody has a right to buy/sell something does not obligate others to sell/buy it to/from him, if they do not agree on the price and other conditions. In this case Valero is trying to do a project within the City, and it is arguing that all the negative impacts to the City need not be addressed because Valero has a right to use trains. Are we as a society conferring boundless privileges and immunities to a special class of people or businesses that use trains? (see insert below item 21)
- 21. [Reference Page 12&13] Here Valero is asking for special consideration as how the law should be applied to it, since it produces 10% of gasoline consumed in California. Does the argument sound familiar? It smacks of "too big to fail" type of reasoning. Asking for exemptions just because you are big and threatening of dire consequences if you are not accorded, does not help the argument itself.

**ARGUMENT**

The ICCTA preempts states or localities from indirectly regulating rail transportation by imposing requirements that could deny a shipper the right to receive rail carrier service or deny a railroad’s ability to conduct rail operations. In this case,<sup>19</sup> the EIR/Permit Denials were based in very large part on findings of unacceptable rail transportation impacts, and the absence of rail transportation mitigation.<sup>20</sup> The EIR/Permit Denials prevent efficient rail transportation of crude oil to the refinery, thereby denying Valero its right to receive rail service, preventing UPRR from providing such rail service,<sup>21</sup> interfering with interstate rail transportation essential to the long-

**21** term viability of a refinery that produces ten percent of the gasoline consumed in the most populous state in the Union, which is the third largest consumer of gasoline in the world, and impinging on the Board's exclusive jurisdiction over transportation by rail carriers.

22. [Reference Page 14] This is getting ridiculous. I am a Person. If I had as much money and could afford it, could I build rail track extension to my house and ask the rail carrier to provide service up to my front door? Obviously not. Because it bothers neighbors and it affects businesses around, because the trains blocks traffic, because of more pollution, because of property values in my neighborhood will go down, because of increased risk to the environment in my neighborhood and inability of the local emergency responders to deal with it. Most importantly, because it is not a matter of life and death for the trains to come to my front door since I have been using automobiles for my transportation so far and I am not under the gun to choose new transportation method. Stating that I want to have my future options open and increase my flexibility is just not good enough.

**22** The ICCTA provides any person with the right to request common carrier rail service and obligates rail carriers to provide such service upon reasonable request. 49 U.S.C. § 11101. The

23. [Reference Page 14] Again Valero is claiming **SUPER USER** privileges and rights exempting it from accounting for all the negative impacts of the project, just because they want to use rail transportation. As if all local jurisdictions up to the state level are supposed to drop down and play dead, the moment a train comes to town. Does STB really **want** and more importantly is STB **qualified and able** to review and address all the issues raised in the EIR and local discussions? Is STB able to send representative all over the nation to organize, and run all these local meetings? My guess is that STB is neither qualified nor able to shoulder all these important responsibilities that are essential to proper functioning of a democratic society. So it might as well do the right thing and recuse itself of this burden.

**23**  
2. **The EIR/Permit Denials Were Based To A Great Degree On Rail Transportation Impacts And The Absence Of Rail Transportation Mitigation; Deny Valero The Right To Receive Rail Common Carrier Service; And Prevent UPRR From Providing Such Service.**

The EIR/Permit Denials were substantially based on findings with respect to rail transportation impacts and objections to the absence of rail transportation mitigation. The need to regulate rail transportation impacts is the thread that runs through the entire Planning Commission Resolution. For example: the project would result in “train backups which would negatively affect access to businesses in the Benicia Industrial Park;”<sup>38</sup> the project could “have negative biological impacts on Sulphur Springs Creek and the marsh area between the Benicia Industrial Park and the Carquinez Strait; the EIR “traffic, air quality, and greenhouse gas emissions analyses are insufficient;”<sup>39</sup> the EIR inadequately responded to the assertion of

24. [Reference Page 16] Commissioner Grossman is a woman and I am sure Valero is aware of that. Therefore, all instance of pronoun **he** should be changed to **she**.

**24**  
Perhaps Planning Commissioner Grossman’s comments sum it up best. Even though the EIR/Permit Denial would have adverse economic impact, **he** concluded “the environmental impacts and the consideration for the world, for our brethren, sistren, upstate, up rail” required denial and **he** did not want to say “‘screw you’ to the up rail cities.” Transcript of Record at 167-

25. [Reference Page 16] Again unsubstantiated assertions presented as facts. Also, the unfortunate phrase construction of “**is so full of**” used by Valero leaves a lot to be desired. I hope they did not mean to imply what this phrase construction typically implies.

**25**  
68, Benicia Special Planning Commission Meeting (Feb. 11, 2016), Exhibit 3. The Planning Commission Resolution is so full of managing, governing and regulating rail transportation that it is not possible to determine with any degree of certainty what action the Planning Commission would have taken on the EIR or the permit if it had acted within the bounds of its authority.

26. [Reference Page 16] In plain English Valero wants the ruling to state that:

Valero has the right to lay tracks wherever and how long it may be and transport over it whatever it wants whenever it wants, as frequently as it wants, as dangerously as it wants and let the rest of the local jurisdictions be damned.

Valero does not seek by this Petition an order declaring that the City of Benicia's permitting authority over the construction and operation of the unloading rack itself is subject to ICCTA preemption. **26** However, the EIR/Permit Denials impinge on Board jurisdiction, regulate rail transportation and unreasonably burden interstate commerce.

In conclusion, I hope that the City Council will continue to uphold and defend the decisions of the Planning Commission and not confuse Valero's whims and wish list with best interest of Benicia and **ALL** its citizens.

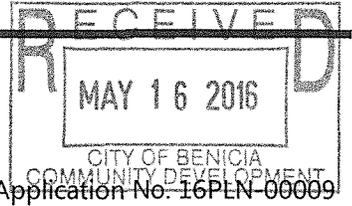
Thank you for your time,

Amir Firouz

Benicia Resident

**Amy Million**

**From:** KnowWho Services <noreply@knowwho.services>  
**Sent:** Monday, May 16, 2016 11:38 AM  
**To:** Amy Million  
**Subject:** Public Comment re Valero Crude by Rail Project - Appeal Application No. 16PEN-00009



Dear Benicia City Council,

I'm writing to urge the Benicia City Council to back the Planning Commission's unanimous decision to reject Valero's proposal to transport explosive crude oil by rail through California communities to its refinery in Benicia, and to reject Valero's attempts to delay a final decision on this project.

The Planning Commission rightfully rejected this dangerous project because it "would be detrimental to the public health, safety, or welfare" of Benicians and communities along the oil train routes. The project's impacts include increased air pollution from refinery emissions (which could disproportionately affect low-income communities and communities of color) and oil spills during the offloading process (which could harm the Sulphur Springs Creek riparian corridor).

Furthermore, increases in the transportation of crude by rail has corresponded with an alarming increase in the number of derailments, spills, and explosions. More than five million Californians live in the blast zones of oil train routes, and this project would significantly increase the number of unsafe oil trains rolling through our communities.

As Attorney General Kamala Harris pointed out, the U.S. Department of Transportation found that rail shipments of highly volatile crude oil represent an "imminent hazard," such that a "substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur." I agree with regulators, elected officials, local residents, nurses, and the the many thousands of Californians who have sounded the alarm about the unacceptable risks posed by this project.

For these reasons, I again urge the City Council to reject Valero's oil train project, as well as its attempts to delay resolution of this issue.

Thank you for your consideration.

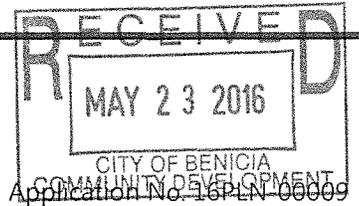
Sincerely,

Michael D'adamo  
365 Coventry Road  
Michael, CA 94707-  
mvdadamo12@gmail.com  
(609) 902-0934

**Amy Million**

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**From:** KnowWho Services <noreply@knowwho.services>  
**Sent:** Saturday, May 21, 2016 3:14 PM  
**To:** Amy Million  
**Subject:** Public Comment re Valero Crude by Rail Project - Appeal Application No. 16-PLN-00009



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Thank you for your consideration.

Sincerely,

Katie Zukoski  
1884 Humboldt Rd  
Chico, CA 95928-  
katiezukoski@sbcglobal.net  
(530) 343-5165