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July 15, 2014

VIA CERTIFIED MAIL AND E-MAIL

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

RE: Valero Benicia Crude by Rail Project Draft Environmental Impact Report

Dear Ms. Million:

Yolo County has reviewed the City of Benicia's Draft Environmental Impact Report ("DEIR") related to the project at the Valero Oil Refinery that would result in the daily delivery of 70,000 barrels of oil by rail to the Refinery (the "Valero Project"). The Valero Project would move approximately 80% of Valero's crude deliveries from ocean tankers to railways that traverse through our local communities and sensitive environmental resources. Notwithstanding the change in where the oil is traveling, the DEIR pays little attention to the potential upstream effects of increased oil by rail shipments through Placer, Sacramento, Yolo, Solano, and Contra Costa counties.

As discussed below, the DEIR provides only a brief review of the environmental, safety, and noise effects on upstream communities. This DEIR justifies this cursory analysis because the effects are "indirect" and not in the Project's immediate vicinity.¹ Under the California Environmental Quality Act ("CEQA"), EIRs are required to discuss the area that will be directly and indirectly affected by the project.² This area must not be defined so narrowly that a significant portion of the affected environment is ignored in the analysis.³ For this reason, the relevant geographical area for CEQA purposes may be larger than the project area.

¹ See, e.g., DEIR, p. 4.0-3 ("Project impacts that are indirect and/or difficult to predict are discussed in less detail than direct impacts that can be predicted with reasonable certainty."); p. 4.10-5 ("The analysis of indirect noise impacts from trains herein considers impacts in the City of Benicia in detail. Indirect impacts outside the City are considered in general terms.")

² See CEQA Guidelines §§ 15126.2(a), 15360; *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal. 4th 155 (2011) ("CEQA review includes the impacts a project may have in areas outside the boundaries of the project itself.")

³ See *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184 (2004); *County Sanitation Dist. No. 2 v. Kern County*, 127 Cal. App. 4th 1544 (2005).

Here, the effects from the Valero Project are not difficult to predict. If the Valero Project is approved, two 50-car trains loaded with 70,000 barrels of crude would travel along a pre-determined, immutable route from Roseville to Benicia every day. Every day, two empty 50-car trains will travel the same route back. Indeed, there is no more uncertainty about the effects on upstream communities as on the areas in Benicia surrounding the Valery Refinery. All areas along the route will have the same trains traveling through them. But the significance of these effects will be different depending on the individual circumstances of each community. Given the effects of approving the Valero Project, the DEIR should consider their significance and possible mitigation on all affected communities in its analysis, as required under CEQA.⁴

For these and other reasons mentioned below, the DEIR should be substantially revised and recirculated for further public review.

A. The DEIR Dismisses Safety Concerns Related to the Transportation of Oil By Rail

The DEIR's conclusion that transportation of oil by rail poses a less than significant hazard to upstream communities is unsupported by the evidence presented in the report. Specifically, the analysis in Appendix F, upon which this finding is based, is inaccurate and irrelevant, both in terms of conclusions and methodology.

First, the conclusion derived from the methodology undermines the frequency of oil spills that can result from a train derailment. The statistical analysis states:

The results show that the expected occurrence of a crude oil train release incident exceeding 100 gallons is approximately 0.009 per year, or an average of about once per 111 years. The portion of the route traversing the Suisun wetland area has an even lower annual risk of a release incident equaling 0.00381, which corresponds to an average interval between incidents of 262 years.

While a once in a 100 year event might seem infrequent, the report's calculations also show that there is a 10% chance that there will be of a crude oil train release incident on the Roseville-Benicia route in the next decade. The County finds that such probabilities to pose significant hazard, especially considering the majority of the route is through populated areas and environmentally sensitive natural resources such as the Suisun wetlands.

Furthermore, the DEIR concluded that the risk of a spill is insignificant based solely on the frequency of a possible event, without considering its possible magnitude. To provide meaningful information, a risk analysis must consider both factors. Here, the DEIR's risk analysis concluded that a spill would statistically occur every 111 years, but whether a hundred year event is significant or insignificant depends on the magnitude of that event. A catastrophic explosion and spill in a populated area is different from a 100 gallon spill in a shipyard that is quickly cleaned up. For this reason, agencies around the country take significant steps to protect against infrequent events, even if they are not expected to occur but once a century.⁵ Additionally, any such magnitude analysis must contemplate the chemical characteristics of the oil being transported. The flammability and volatility of Bakken crude oil and the high viscosity

⁴ See *Muzzy Ranch v. Solano County Airport Comm'n*, 41 Cal. 4th 372 (2007) ("That the effects will be felt outside of the project area is one of the factors that determines the amount of detail required in any discussion.").

⁵ See, e.g., Louisiana Coastal Protection and Restoration Authority, *Louisiana's Comprehensive Master Plan for a Sustainable Coast*, p. 141 (2012), available at <http://www.lacpra.org/assets/docs/2012%20Master%20Plan/Final%20Plan/2012%20Coastal%20Master%20Plan.pdf> (describing efforts to protect against 100 year flood events)

and toxicity of Canadian bitumen -- materials likely to be transported to the Valero Refinery -- both pose significant environmental hazards in the event of a derailment or other rail accident. Without considering the second half of the risk analysis, the DEIR cannot conclude that the risk of a spill is insignificant.

Additionally, the County contests the assumptions employed in the methodology and its failure to contemplate other factors which could increase the likelihood of a catastrophic accident:

- 1) The methodology assumes the exclusive use of the modern CPC-1232 tank cars. Current rail regulations mandate that the tank cars used to transport oil only adhere to the DOT-111 standards issued several decades ago. Those standards have proven to be insufficient, and are currently being revised. At numerous points, the DEIR describes Valero's "commitment" to use tank cars designed to the industry's CPC-1232 standards, rather than legacy DOT-111 tank cars.⁶ The DEIR does not describe how such a "commitment" would be binding on Valero and, consequently, it should not be considered in assessing the significance of related impacts. The DEIR does not consider the possibility that Valero might not have access to sufficient cars within the timeframe of the proposed project, a probable scenario in light of potential production capacity limitations and strong demand for modernized tank cars.⁷ Indeed, the DEIR acknowledges that as of April 2013, two thirds of all tank cars transporting crude oil in the United States are still the legacy DOT-111 tank cars.⁸ Without an explicit, binding guarantee from Valero that it will not ship oil in DOT-111 tank cars along the Roseville-Benicia route, any statistical analysis that ignores the risks associated with DOT-111 tank cars is insufficient and cannot be considered in evaluating potential environmental effects.
- 2) The DEIR ignores possible changes in safety regulations concerning oil tank cars. The DEIR also does not consider whether the industry CPC-1232 standards are sufficient to mitigate the risk of an oil spill. The Association of American Railroads ("AAR") recently indicated that federal regulations may impose new standards for crude oil tank cars that supersede the current specifications of the CPC-1232.⁹ The potential for regulatory uncertainty invalidates the DEIR's assumption of Valero's use of CPC-1232 cars in two ways. First, the federal government's implementation of more stringent guidelines suggests that the AAR-endorsed CPC-1232 standards may have not be adequate to safely transport crude oil. And second, regulatory uncertainty could delay Valero in acquiring a modern tank fleet and instead result in Valero using the only Federal Railroad Administration approved tank car, the antiquated DOT-111.¹⁰ Without certainty that

⁶ See DEIR, p. S-3 ("Valero has committed that, when the PHMSA regulations call for use of a DOT-111 car, Valero would use 1232 Tank cars rather than legacy DOT-111 cars."); *id.* p. 3-19 ("In one respect, however, Valero would exceed legal requirements. Valero has committed that, when the PHMSA regulations call for use of a DOT-111 car, Valero would use 1232 Tank cars rather than legacy DOT-111 cars."); *id.* p. 4.7-17 ("It was assumed that the refinery would use 1232 Tank Cars for all shipments, based on Valero's commitment to do so."); *id.* p. 4.7-19 ("If the Project were approved, Valero here would use only 1232 Tank Cars to transport oil from Roseville to Benicia.").

⁷ See Bloomberg BNA, Tank Car Design Debate Split Over Safety of Voluntary Industry Standard. 3/18/14

⁸ See DEIR, p. 4.7-6.

⁹ See http://www.nytimes.com/2014/06/25/business/new-rail-car-standards-anticipated-for-autumn.html?ref=energy-environment&_r=0

¹⁰ See <http://www.railwayage.com/index.php/mechanical/freight-cars/tank-car-of-the-future-among-greenbrier-railcar-contracts.html>

Valero will only use a certain tank car, the DEIR must analyze the safety risks for the kinds of cars that Valero will likely use. Absent this analysis, the DEIR is legally inadequate.

- 3) The methodology fails to consider accidents that occur in yard or on track sidings. By only considering derailments along FRA Class I track and not derailments in train yards or off of mainline track on sidings, the methodology understates the risk profile of crude by rail transportation. An accident in a rail yard could also pose additional risks, especially in event of a large oil release, given the proximity of other toxic and volatile material and cargo present in the yard.
- 4) The methodology assumes a “just-in-time” supply chain (receiving oil shipments only as they are needed in the production process) with supply equal to refinery capacity/demand. As such, the methodology fails to consider risks associated with increased sidings due to refinery shut down due to accident or maintenance. In such an event, would oil shipments be held at the fields? Would they be held at the Roseville yard or other rail yard between Benicia and point of origin? Would they be sided along the Roseville-Benicia route? Increased storage of hazardous materials at sidings along the Roseville-Benicia route could pose an additional risk, especially the siding locations in urban areas and near the Sacramento River and Yolo Bypass.
- 5) The methodology may underestimate the risk posed by the various track class segments. Although a small portion of the overall route, FRA Track Class 1 segment mentioned in the DEIR needs to be specifically identified given the Track Class 1 train derailment rate per million train-miles is 15.5 times higher than that of the FRA Track Class 5.¹¹ Is this segment a curve, switch, or at grade crossing? Is it in or near an urban area? Furthermore, the geography of the Roseville-Benicia route is largely urban with trains passing through numerous at grade crossings in densely populated urban areas. Such geography may in fact pose a higher derailment given the increase risk factors (at grade crossings, curves, etc.) associated with urban areas, as opposed to the national average, which is a mixture of both rural and urban. Rather than ignoring the actual conditions along the route in question, the report should fully consider conditions along anticipated rail routes in characterizing the risks associated with the Valero Project.

B. The DEIR Ignores Impacts on Traffic and Emergency Response in Communities Outside of Benicia

The DEIR devotes several pages to traffic and emergency response impacts in Benicia directly around the Valero facilities. This analysis included detailed crossing data, review of existing traffic flows, and consideration of mitigation measures. In comparison, for communities outside of Benicia, the analysis consists of using Google Earth to count the number of rail crossings along the route.¹²

The Valero Project will result in four additional fifty-car trains traveling through the upstream communities along the route every day -- two loaded trains to Benicia, and two empty trains back. The DEIR recognizes that the trains will travel across 33 at-grade crossings, but presumes that the traffic volumes at all but the six crossings in urban areas “most likely are low.”¹³ For the

¹¹ See DEIR, Appendix F p. 6

¹² See DEIR, p. 4.11-10.

¹³ See DEIR, p. 4.11-11.

crossings in urban areas, the DEIR simply states, “the duration of the crossings would be short because Project trains would be travelling at a speeds [sic] faster than the 5 mph at Park Road” *Id.*

The DEIR’s assumptions about the Valero Project’s effects on traffic in communities outside of Benicia are unsupported by any evidence. Rather than simply concluding, without any support, that traffic at rural crossings “would be low” and that delays in urban crossings “would be short,” the DEIR should consider the actual traffic conditions at the crossings affected by the project. The DEIR should consider data and other evidence before dismissing the impacts the project will have on Benicia’s sister communities, just as it did for crossings near the project site in Benicia.

Similarly, the DEIR also does not consider the cumulative impacts the additional trains will have on upstream communities. In contrast, the DEIR devotes several paragraphs to the cumulative impacts in Benicia.¹⁴ Many of these impacts are minimized by the timing of the trains, which are to be scheduled to travel through Benicia at times when there is less traffic. The DEIR does not specify whether the same conditions will be true in the other communities along the trains’ route and whether the trains’ cumulative impact will be significant. All of this information should be included in the DEIR; there is no legal or practical basis for treating upstream communities differently than those near the refinery.

Finally, the DEIR describes mitigation measures to be implemented to minimize the Valero Project’s effect on public safety response times, but limits the measures to crossings in Benicia.¹⁵ According to the DEIR, “[t]he probability of an emergency incident occurring at the same time as a Project train crossing [near the Valero Refinery] is low” because there are only two incidents a month in the industrial areas near the Valero Refinery. The DEIR provides certain mitigation measures in order to reduce the effects to less than significant, without considering whether similar measures are necessary to mitigate effects elsewhere. Indeed, certain areas along the route will have more emergency incidents than the industrial areas near the Valero Refinery, making additional mitigation measures necessary there as well. These issues require further discussion and analysis in the DEIR.

C. Noise Effects Outside of Benicia Area Should be Analyzed

The DEIR analyzes the indirect noise impacts from trains in the City of Benicia, but impacts outside Benicia are only considered in general terms.¹⁶ The geographic distinction is not explained nor does it make sense. Noise impacts in Benicia are insignificant in large part because the rail lines in Benicia travel through industrial areas, with the closest residence thousands of feet away.¹⁷ In comparison, many upstream residential communities and other noise-sensitive areas are immediately adjacent to the rail line and crossings.

CEQA declares, “it is the policy of the state to . . . take all action necessary to provide the people of this state with . . . freedom from excessive noise.”¹⁸ Further, the DEIR must “consider

¹⁴ See DEIR, pp. 4.11-10 and 5-20

¹⁵ See DEIR, p. 4.11-20

¹⁶ See DEIR, p. 4.10-5 (“The analysis of indirect noise impacts from trains herein considers impacts in the City of Benicia in detail. Indirect impacts outside the City are considered in general terms.”).

¹⁷ See DEIR, p. 4.10-11.

¹⁸ See Cal. Public Resources Code § 21001(b).

qualitative factors as well as economic and technical factors.”¹⁹ The DEIR cannot eschew these requirements simply because the effects will occur beyond the political boundaries of the lead agency.²⁰

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In conclusion, Yolo County finds that the current analysis of the impact of the transportation of oil by rail on upstream communities is insufficient. The County requests that the DEIR be revised and recirculated for additional public review for all of the reasons stated herein.

Sincerely,

Don Saylor
Chair, Yolo County Board of Supervisors

¹⁹ See Cal. Public Resources Code § 21001(g).

²⁰ See *Berkeley Keep Jets Over the Bay Committee v. Bd. Of Port Comm'ns of the City of Oakland*, 91 Cal. App. 4th 1344 (2001) (“Despite this outcry, the Port, in its draft EIR, does not even mention, much less analyze, Berkeley noise impacts because that city falls significantly outside the 65 CNEL corridor.”).