

**BENICIANS FOR A SAFE AND HEALTHY COMMUNITY RESPONSE  
TO  
REVISED DRAFT ENVIRONMENTAL IMPACT REPORT  
FOR VALERO BENICIA CRUDE BY RAIL PROJECT  
DATED AUGUST 2015  
(SCH# 2013052074, USE PERMIT APPLICATION 12PLM-00063)  
Dated: October 30, 2015**

Benicians For a Safe and Healthy Community (“**BSHC**”) respectfully submit this Response dated October 30, 2015 to the Revised Draft Environmental Impact Report For Valero Benicia Crude By Rail Project (“**Revised Response**”). Unless defined otherwise hereunder, capitalized terms and/acronyms used herein that are defined in the Draft Environmental Impact Report (“**DEIR**”) and/or the Revised Draft Environmental Impact Report (“**RDEIR**”) will have the meaning given to such terms in the DEIR or RDEIR as applicable. The Revised Response includes this written response together with all prior oral and written comments to the RDEIR and DEIR provided by BSHS to date. Follow-up consultation with BSHC and the City of Benicia’s formal response to BSHC should be directed to Marilyn J. Bardet.

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## SECTION 1: OVERVIEW

The RDEIR prepared by the City of Benicia as Lead Agency explicitly focuses on potential conditions and potential impacts of the Project on ‘uprail’ communities’ sensitive landscape, biota, wildlife and their habitats. Serious inadequacies in the DEIR were raised by citizens (Benicia residents as well as residents in the State of California), government, agencies and municipalities (California Attorney General Kamala Harris, California Public Utilities Commission, Sacramento Area Council of Governments, the City of Davis) as well as respected environmental organizations (Sierra Club, Natural Resources Defense Council, Communities for a Better Environment and Forest Ethics). Comments received on the DEIR were highly critical of the DEIR’s limited Project Description, its analyses and evaluation of local and ‘uprail’ impacts related to train operations and rail safety, and lack of specific characterization of unconventional crude oil to be accessed by the Project, and lack of discussion of specific effects of processing those oils (Bakken oil or tar sands dilbits) at the Valero Benicia Refinery, among others.

The RDEIR’s discussions and evaluations of ‘uprail’ impacts, though more amplified, continue to hinge on constrained, overly generalized or narrowly focused and/or conflicting information, unsubstantiated claims, assumptions and/or speculation. In the aggregate, these failures limit the public’s and decision makers’ ability to fairly judge the Project’s full scope and the variety of specific environmental conditions, places and resources within California and beyond that the Project puts at considerable risk of serious, even fatal harm, resulting from “significant and unavoidable” impacts.

The City’s legal conclusion that certain mitigations may not be implemented pursuant to Federal Preemption erroneously and seriously limits the disclosures, scope and analysis of the Project. The City’s errors might be explained by the difficulties confronting local decision makers when confronted with complex issues impacting the entire State of California and the nation; but the City’s errors cannot be ignored nor excused. Any mistakes and missteps made by the City as currently reflected in the inadequacies of the DEIR and RDEIR will impact not only the citizens of Benicia but also the tens of thousands of people beyond its borders who must also rely on the judgment of the City’s leaders.

The City’s unquestioning acceptance of Valero’s incorrect legal argument regarding complete federal preemption of regulations of rail shipments inevitably leads to a fatally flawed analysis of the Project. All aspects of the RDEIR are truncated by the preposterous initial conclusion that Valero’s Project is actually a railroad project. This premise leads to dishonestly and misstated objectives, a categorical rejection of any reasonable alternatives and an analysis as empty as an eggshell sucked dry by a weasel. The result is not simply a failure to fully review the significant environmental impacts of the Project; it is a failure to conduct any meaningful review at all.

Egregiously, the RDEIR ignores public comments on the inadequacies of the DEIR to sections on local impacts to the Benicia community, the Benicia Industrial Park and surrounding environs. This dismissiveness notably advantages the Applicant’s defense of the Project as proposed, e.g. “as is,” at the expense of the protection of the Benicia community’s health and safety and environmental protections and largely ignores the substantial, devastating and

significant impacts of the Project on ‘uprail’, neighboring communities and environmentally sensitive areas.

In this Revised Response, BSHC will highlight some of the significant inadequacies of the RDEIR and its failure to meet minimum CEQA requirements.

**End Section 1**

## **SECTION 2: RESPONSE TO APPENDIX G (PREEMPTION OF CEQA BY THE ICCTA) AND APPENDIX H (VALERO BENICIA REFINERY STATEMENT RE: PREEMPTION)**

2.1 It is imperative to examine the opinions and positions promulgated in Appendix G and Appendix H of the RDEIR. The conclusions drawn from the Appendices' statements drive the scope, content and analysis provided in the RDEIR. To the extent the statements are flawed, inaccurate and/or in error, the RDEIR is equally flawed, inaccurate and in error.

Valero and UPRR espouse an extreme, all-encompassing position that Interstate Commerce Termination Act ("ICCTA") preempts the City's authority to require a CEQA review of Project impacts inclusive of on-site and off-site activities. Basically, Valero's position serves to invalidate CEQA *in toto* and neuters the State of California's and its public's rights to invoke the State's primary environmental review regulations and process.

The City takes a more moderate but equally flawed position that ICCTA preempts the City's authority with respect to mitigation of impacts from rail operations. This position is in no way less egregious since the primary significant impacts related to the Project stem from rail as the new proposed transportation alternative. This unduly broad interpretation and literal application of ICCTA's jurisdiction is in error and serves to ignore the State's (and by extension the City's) rightful authority under and pursuant to its regulations.

The RDEIR concedes that Valero cannot enforce the promises it made pursuant to the DEIR regarding the manner in which it hopes the railroad will behave if it delivers toxic crude oil to Valero in car trainloads. In fact, a considerable portion of the revisions in the RDEIR are devoted to Valero's concession that it could not guarantee nor legally enforce any limitations on the hours or method of delivery under the control of UPRR. These statements are primarily correct.

**However, Valero/UPRR make the astonishing contention that the City cannot require mitigation that has any impact, tangential or otherwise, on the money collected by the railroad for crude oil deliveries and the City has erroneously concurred with this position. The City has accepted the argument that a railroad's right to profit permits no interference by any form of mitigation.**

Accordingly, the RDEIR pretends that UPRR is the *de facto* applicant. The RDEIR does this by claiming that mitigation is "legally infeasible" because any limitation on Valero's plan to order 100 car train loads of toxic crude oil would be an impermissible limitation on the railroad's business of delivering freight. The foregoing statement is in error.

In order to address the issue as it relates to CEQA, BSHC will (i) examine the cases cited by the parties as supportive of their positions and why such cases are not analogous to the Project and (ii) point to the flaws of logic in the parties', with emphasis on the City's, overall flawed analysis and conclusions.

## 2.2. Cases cited in support of preemption are not analogous fact scenarios, wrongly applied and CEQA is applicable to the Project

When the City of Benicia reviews any proposal to allow a massive increase in the size of local petro-chemical heavy industry, its first duty is to safeguard the health and safety of its residents. No one can dispute this legal duty; and no one should ignore the concomitant moral duty that extends to neighboring communities. Accordingly, the City has the legal authority under CEQA to carefully review (and ultimately to impose) the reasonable mitigation measures and conditions proposed in the public comments submitted in response to the DEIR and RDEIR. This is the primary purpose of CEQA; and it is a heavy responsibility borne by the City. The quality of life in Benicia and impacted communities is at stake.

However the City has apparently accepted Valero's misstatements and concluded that it is powerless to impose any mitigation or condition whatsoever. At best, this is failure to understand the law, at worst it is a derogation of the City's responsibility to its citizens and neighboring communities.

The City states that "The DEIR and/or the RDEIR identifies significant off-site impacts from rail operations in certain areas, including air quality, hazards, biological resources, and greenhouse gas emissions. There are various mitigation measures that might reduce and/or avoid these impacts, such as limiting the number of rail deliveries that Valero might accept per day..."<sup>1</sup>

However, the conclusion that follows is that the City has no power to impose any of the mitigating conditions that the City has identified to reduce the environmental impact of the project in order to safeguard the City's residents. The City says it can do nothing at all to lessen the undisputed impacts on health and safety because it would be "legally infeasible". The City's regrettable and awkwardly stated conclusion is simply wrong as a matter of law.

From the outset Valero pretends that its Project is actually a UPRR ("the railroad") project. It has done so to prevent scrutiny of the most dangerous aspects of the Project by hiding behind the federal preemption of rail commerce. In the DEIR, Valero claimed it could control the manner of delivery of 100 car trainloads of volatile and toxic crude oil. It was forced to admit this is not true because Valero's ability to control the railroad is limited by federal law. Thus the RDEIR concedes that Valero cannot enforce the promises it made regarding the manner in which the railroad will behave.

However Valero has not given up on its misplaced reliance on federal preemption law and now makes the astonishing new contention that the City is powerless to require any mitigation or condition that might indirectly impact the money collected by the railroad for these massive crude deliveries. Have we reached the point where local health and safety conditions cannot be imposed on the refinery located in Benicia because national railroad profits might be reduced? Valero pretends that this is a railroad project simply to avoid the mitigating conditions identified by the City: "There are various mitigation measures that might reduce and/or avoid these [health and safety] impacts."<sup>2</sup>

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<sup>1</sup> RDEIR at G-6

<sup>2</sup> RDEIR at G-6 and G-7

The RDEIR imagines that the railroad is the *de facto* applicant by asserting that mitigation is prohibited because any limitation on Valero's plan to order train loads of toxic crude oil would be a "legally infeasible" limitation on the railroad's business of delivering freight. The City has accepted Valero's pretense that any and all mitigation is "legally infeasible" because the railroad's right to deliver any amount of crude oil is protected by federal law. In other words, federal law gives the railroad the right to bring into Benicia whatever can be loaded on a train. It is ludicrous to argue that federal preemption of rail regulation gives Valero the right to ship unlimited amounts of crude oil into Benicia simply because it comes by rail.

This is not only wrong as a matter of the law but so logically flawed that it leads to the absurd conclusion that the city cannot impose any mitigating conditions on the project (*including even the alternative of refusing to permit the Project*) because Valero's Project is completely immune from oversight under the federal preemption of regulation enjoyed by the railroad. The Project being reviewed is Valero's Project, not a railroad's. Valero seeks the permit, not the railroad.

Valero also persists with the fiction that noise and traffic impacts will be mitigated by the same promises regarding railroad operation that Valero was forced to admit it cannot enforce. The City's discussion of the RDEIR's Project Alternative #2 (which would include mitigation by nighttime deliveries) accepts without question the unsupported presumption on the basis of "prior experience" that Valero can require the railroad to deliver train cars during nighttime hours. Nonsense.

According to the City's analysis, Project Alternative #1 would also immediately mitigate the "worst impacts" of the project by reducing the daily deliveries of toxic crude oil by half. Both the DEIR and the RDEIR make it clear that the railroad is willing and able to deliver trains of 50 cars, rather than 100 cars, on a daily basis. Assuming that is true, the 50-car train alternative would satisfy most of objectives of the Project while greatly reducing its dangerous aspects. However the alternative is barely discussed by the City because it accepted Valero's fiction that the refinery is part of a railroad.

Once again, the City's analysis of alternatives accepts Valero's distorted view of the law and concludes that Benicia is legally prohibited from requiring Valero to reduce the number of tank cars it orders. According to the RDEIR any condition that would reduce the number of tank cars the railroad could deliver would be an "improper limitation on the railroad". The flaw in this logic is obvious. Valero is the applicant, not the railroad.

Safety and health conditions imposed by the City upon Valero's Project, such as permitting smaller trains, would not limit the railroad. The railroad's operation would be untouched except for delivering fewer tank cars to the refinery each day. Even so, the RDEIR concludes that "limiting the number of rail deliveries that Valero could accept, for example, would effectively reduce the number of train trips that Union Pacific may operate on its lines." However, the mitigating condition of delivering a single 50-car-train per day would be a limitation imposed on Valero, not the railroad. Valero controls how much toxic crude it orders to be shipped by the railroad; and the City can condition its approval of the project to impose limits on those deliveries in order to mitigate threats to the health and safety of Benicia's residents. The City could refuse to permit the entire Project for the same reasons.

The faulty logic that the City can impose no mitigation indirectly affecting the railroad leads to the absurd conclusion that there can be *no limitation* on the number of train cars brought to the refinery. The same logic would require the City to allow deliveries of 400 tank cars per day, based only upon the fantasy that federal preemption gives the railroad the absolute right to deliver any amount of toxic materials by rail completely free of local regulation. It does not take a law degree to see that this conclusion cannot be correct.

Valero thus continues to rely on its relationship with the railroad to avoid mitigation of the most dangerous aspects of its Project. Valero acts as though the railroad is the one applying for the Project permit (see Appendix H pages H-3 to H-14). And, not surprisingly, the railroad's comment in support of Valero's Project participates in the masquerade. The railroad's attorney cites only cases carefully chosen from among those where railroads themselves – and not customers such as Valero --were directly subjected to regulation. The railroad's support of Valero does not list a single case where the impact of the customer's project was directly at issue. There they go again: the project is Valero's; and Valero is not a railroad

Accordingly, the cases cited by Valero/UPRR (and apparently not carefully read by the City) demand close examination. The facts in these cases are not analogous to the facts present by this Project. The decisions in those cases do not prevent the City from requiring mitigation of health and safety impacts caused by the Project.

All of the authorities cited in the letters from the attorneys for Valero and Union Pacific involved attempt to directly regulate railroads. See, for example, the common law, negligence, tort, nuisance and “pre-clearance” cases and the federal Surface Transportation Board (“STB”) decisions cited by Valero's attorneys in Appendix H. In those cases the railroads were named parties in the lawsuits; and the issues involved efforts to directly regulate rail operations. None of those authorities involved the sort of reasonable mitigation discussed here: where a *customer* of a railroad is required to meet conditions imposed upon the processing of toxic materials in a densely populated residential area.

For examples of citation involving railroads and not their customers see:

- *Norfolk Southern Railway v. City of Alexandria*, 608 F. 3d 150 (4<sup>th</sup> circuit 2010) [where the city could not regulate deliveries to an ethanol facility *owned and operated by the railway*];
- *Friends of the Eel River v. North Coast Railroad authority*, 230 Cal App.4<sup>th</sup> 85 (2014) [where the railroad was upgrading its *own* tracks];
- *City of Encinitas v. North San Diego County Transit Development Board* (2002) WL34681621 [where the city attempted to require the *railway* to build a new track];
- *Green Mountain Railroad Corp v. Vermont* 404 F. 3rd 638, 643 (2nd Cir. 2005) [where the railroad wanted to build a transloading facility *on its own property*];
- *City of Auburn v. U.S. Government* 154 F. 3rd 1025, 1031 (9th Circuit 1998) [where the railroad wanted to reopen an unused *rail line it owned*];

The point is that all these cases involved efforts to directly regulate the actual operation or construction of rail lines. This important distinction of the identity of the entity being regulated is directly discussed in the leading California appellate opinion published last year.

In the case of *Town of Atherton v. California High-Speed Rail Authority* (228 Cal App. 4<sup>th</sup> 314, July 24, 2014) the California Attorney General conceded, and the Court of Appeal agreed, that state or local regulation of matters directly regulated by the STB, such as "construction, operation, and abandonment of rail lines, etc." were not subject to CEQA.<sup>3</sup>

However, the *Town of Atherton* opinion reiterated that state and local agencies do have authority over activities indirectly involving railroads. The Court of Appeal stated: "Case law demonstrates that the ICCTA *does not preempt all state and local regulations*" and "the circuits appear generally, for example, to find preemption of environmental regulations, or similar exercises of police powers relating to public health or safety, only when the state regulations are either discriminatory or unduly burdensome." (citing *Fayus Enters. v. BNSF Ry.* (D.C.Cir.2010) 602 F.3d 444, 451).

The *Town of Atherton* opinion also stated "It therefore appears that states and towns may exercise traditional police powers over the development of railroad property, at least to the extent that the regulations protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions. Electrical, plumbing and fire codes, *direct environmental regulations enacted for the protection of the public health and safety*, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption. [Citation.]" (citing *Green Mountain R.R. Corp. v. Vermont* (2nd Cir.2005) 404 F.3d 638, 643).

The Court of Appeal concluded that to the extent that such regulations "...can be approved or rejected without the exercise of discretion on subjective questions... *direct environmental regulations enacted for the protection of the public health and safety, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption*". (The foregoing quotations are from *Town of Atherton*, supra, 228 Cal App. 4<sup>th</sup> 314, at page 331; emphasis added).

The Court of Appeal also rejected the argument made here by Valero and distinguished the potential, indirect, economic impact upon the railroad by pointing to the identity of the permit applicant: "We need not, however, wade further into these weeds. Assuming without deciding that the ICCTA preempts CEQA as to the HST [high-speed train], at least one exception to preemption applies here. The applicability stems from the *nature* of the project at issue here. We are not faced with a private railroad company seeking to construct a rail line without having to comply with state regulations. Rather, it is the state that is constructing the rail line, financed by

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<sup>3</sup> The City's analysis of the application of CEQA in Appendix G correctly rejected Valero's argument that the ICCTA preempts even the disclosure of rail impacts under CEQA. This was a correct interpretation of the law.

bonds which were approved by the state's electorate..." (*Town of Atherton, supra* at page 334 emphasis added).

This Project is not an effort to directly regulate UPRR's operations during the transportation of commodities:

- There is no suggestion that the City might attempt to regulate the manner in which UPRR builds or maintains tracks along its right-of-way;
- The purpose of the Project is not the construction of UPRR rail but rather the construction of the refinery's crude 'off loading' rack;
- The crude oil 'off loading' rack is owned by Valero and Project construction will be built by Valero entirely on Valero's property;
- Absent the 'off loading' rack, and the construction by Valero of two additional new rail spurs on Refinery property for assembling arriving and departing trains, no rail adjustment would be needed; and neither the DEIR nor the RDEIR proposes any requirement directed at railroad's right-of-way or operations;
- Indeed, if the Project was a railroad project (which it is not), and the applicant was a railroad, the project would be subject to the National Environmental Policy Act (NEPA) – the federal equivalent to CEQA. Clearly, the Project is not subject to federal environmental review and NEPA has not been invoked.

The conclusion is clear: the city of Benicia can impose "direct environmental regulations enacted for the protection of the public health and safety," and other "non-discriminatory," conditions (such as noise abatement and traffic regulations) even though such limitations may have the indirect effect of reducing the number of trains that the railroad can deliver to a customer.

The City can deny Valero's application for a permit outright or it can impose conditions on Valero's permit to limit the number of tank cars Valero can process in a single day. The City should do so in order to preserve the safety and environment of the city without imposing any direct limitation or "pre-clearance" requirement on the railroad. Any impact on the railroad is indirect. If Valero orders fewer tank cars (or no tank cars) to be delivered because of safety and health conditions imposed by the City, the railroad may deliver fewer tank cars, but it will not because the City has placed any limitation on the railroad itself.

Accordingly, the City's analysis was utterly wrong because of its characterization of the nature of the Project. The City incorrectly assumed that Valero stands in the shoes of a railroad when it comes to preemption by federal authority. Not so.

The City's analysis ignores the legal authorities that have concluded that regulation of transloading facilities, owned and operated by private parties, have only a remote and incidental effect on rail operations. (See, *Florida East Coast Railway Co. V. City of West Palm Beach*, 266 F. 3rd 1324, 1339 (11th Cir. 2001); *Cities of Auburn and Kent*, Petition for Declaratory Order, Burlington N.R.R.Co. 2 STB 330 (1997).

Indeed, the City also fails to acknowledge that in certain circumstances, local agencies can enforce environmental laws (such as water quality regulations) against railroads directly where

they discharge earth and waste from construction projects into water bodies. See, *United States v. Saint Mary's Railway*, 989 F. Supp. 2nd 1357 (S.D. GA. 2013).

The City also misreads or ignores the leading California Court of Appeal opinion in *Town of Atherton*. There was no private party ordering toxic materials delivered by rail in that case; and CEQA was applied differently in that case because the State of California is building a railroad. The *Town of Atherton* reasoning supports "direct environmental regulations enacted for the protection of the public health and safety," and other "non-discriminatory," conditions (such as noise abatement and traffic regulations) even though such limitations may have indirect effects on a railroad.

There is no uncertainty in the law that might excuse the City's incorrect legal analysis and timid response to the acknowledged threats posed by Valero's Project to the health and safety of Benicia's residents. Federal preemption does not apply to Valero's project. To protect the health and safety of Benicia's citizens, the law permits the imposition of mitigating conditions on Valero's Project, including limitations on the daily amount of toxic crude oil that Valero can process, without impinging on the railroad's operations. Indeed the law permits Benicia to reject Valero's application entirely. The City's duty to protect its citizens and neighbors requires nothing less.

### 2.3. Logic and Common Sense Approach

Legal precedence aside, the application of logic and common sense may be applied to the issue of the authority of the City to mitigate. It may be 'legally infeasible' to mitigate a significant environmental impact by imposing a restriction directly on UPRR operations (e.g., restrict rail speed, length of trains, etc.) or any railroad's operations but it is not 'legally infeasible' to mitigate a significant environmental impact by imposing a restriction directly upon the Applicant (Valero) and the Project where the Applicant has control. It is absolutely within the authority of the Lead Agency (in addition to a No Project Alternative) to limit the amount of crude processed (ordered from the applicable vendor) that will be transported via rail (the maximum number of tank cars containing oil to be processed at the Refinery) to the Refinery. It is flawed logic and backward reasoning to imply that a railroad solely dictates and determines the quantities or type of commodities its customers order or process in a customer's business operations. In fact, it is the customer's business which dictates the need for transportation of products, via rail or any other mode.

This trend of the law is clear: federal preemption does not apply to Valero's Project; and for sound safety and environmental reasons, the City can impose mitigating conditions on Valero's Project including, but not limited to, imposing limitations on the daily amount of toxic crude oil that may be delivered to Benicia, without impinging on the railroad's operations. Additionally, the City also has the right to deny the Project in the entirety without impinging on the railroad's operations. This alternative, the No Project Alternative, can't impinge on railroad operations because the Applicant will have no relationship, contractual or otherwise with any railroad for the conveyance of any crude slated for the proposed Project. If the Project is not permitted (for any reason), there is no ability or mechanism to interfere with any rail operations. To put it in other words, the No Project Alternative does not interfere with rail operations because no

commodity is subject to rail transportation and alternatively any Project alternative that reduces or otherwise sets the Applicant's order at any specific level of crude does not interfere with rail operations because the railroad is still free to operate the transport of the materials in compliance with the regulations imposed upon it.

For purposes of illustration, assume a canning facility requests a permit to build additional manufacturing facilities for the purpose of increasing the production of its tomato canning business. If approved by the applicable city, the permit would include an additional four (4) ton daily capacity of product to be processed and such product would be transported by rail. Post CEQA review the city determined that mitigation was necessitated to address a significant impact and such mitigation resulted in limiting the processing capacity to an additional two (2) tons daily. Therefore the canning facility's subsequent contract with the railroad was tailored for the rail transport of tomatoes not to exceed the manufacturing capability of two (2) tons daily. The consequences of the decision may impact the railroad's potential (not entitlement) to increased revenues but it is proper and not subject to preemption. The mitigation's only effect on the mode of transport is the quantity of product shipped and does not impinge on the railroad's ability to perform its operations – operations in place during the transport of the tomatoes. The applicable railroad will not tell the manufacturer that it needs four (4) tons of tomatoes to process daily and therefore should order that amount or risk being in violation of the ICCTA rule prohibiting managing rail transportation. Rail transportation is driven by the needs of its customers, not vice versa. It is also reasonable that the same manufacturer may have determined during or post CEQA review that it preferred transport via truck and this too would not have been preempted by ICCTA. The choice of preferred mode of transport is retained by the manufacturer (subject to the city's approval of the permit).

The railroad does not manage or dictate the needs of the manufacturer nor the contractual arrangements between a vendor and purchaser. The railroad has no ability or responsibility to determine a company's business needs for product by type or quantity. By extension, UPRR does not have the right to dictate to the Refinery the types and amounts of crude it may process and ultimately order. UPRR may only transport the quantities "in-play" in compliance with certain federal and other regulations while the cargo is in its jurisdiction if and when it is contracted to do so. Valero is not compelled to utilize the railroad for transportation and has other modes of transport to utilize. It is an egregious error to allow UPRR or any railroad to act as determiner of economic priorities and preferences of any North American businesses. UPRR is in the rail transportation business and no other.

Additionally, if you extrapolate the City's position that the City may not mitigate because monetary denial equates to interference with rail operations, then the City must also conclude that it may not deny the Project's full, 'as-is' approval due to the monetary impact to the railroad. However, the City has failed to identify the No Project Alternative as 'legally infeasible' thereby creating another error in the RDEIR of, at minimum, an inconsistency in its own analysis. BSHC reiterates that potential economic gain and/or loss to a railroad is not a determiner in this RDEIR. Denial or reduction in any form and the secondary consequence of monetary impacts to a railroad does not interfere with rail operations. Railroads are not entitled to the benefit of the transportation of any commodity if such commodity is first not lawfully permitted. The City has every right to deny or impose mitigations on the Project. Potential monetary loss or gain to the

railroad is not an interference with its operations any more than Valero's choice of transporting crude via pipeline or shipping (and such potential loss of money to the railroad due to use of an alternate mode of transportation) is not an interference with railroad operations.

#### 2.4. Summary

While the opinions espoused by UPRR and Valero are concerning, the opinion that is most problematic to the RDEIR is the City's. The City's opinion that ICCTA preempts the City's authority to mitigate impacts from a railroad's operations, as the City defines 'operations' is in error. This error permeates throughout the RDEIR including, but not limited to, the characterization of the Project Alternatives and restraints on mitigation. The City's adoption of its *opinion* to the exclusion of all other possible outcomes on the issue, results in a RDEIR which ignores disclosures and mitigations and delivers a truncated analysis of the Project. This error creates a fatal flaw under CEQA and this RDEIR should again be revised. Absent a revision of this RDEIR, the City's decision makers may be unduly compelled to accept the opinion of its counsel "as-is" and be prohibited from imposing lawful mitigations or making decisions regarding the RDEIR and the Project generally. This is an egregious outcome for the City and the viability of the RDEIR under CEQA.

- Valero is the Applicant, not the railroad.
- The Project, which is general construction and construction of an 'off loading' rack, is on Valero property and is subject to CEQA.
- The Project is not a UPRR construction project on UPRR property and is not subject to NEPA.
- The Project (permit) is under the jurisdiction of the City in the entirety.
- Valero determines (subject to the permit) the types and quantities of crude for processing and the method of delivery (mode of transportation), not the railroad. This decision lies with Valero and is within Valero's control.
- Merely because Valero has the means of constructing a 'off loading' rack to accept up to 100 car load of crude daily, does not mean that any railroad has an immediate entitlement to transport up to 100 car loads (or any number of carloads) of crude daily for Valero.
- Preemption does not extend to the Project as long as any mitigation does not countermand or modify the railroads ability to operate in compliance with its regulation AFTER it enters into a lawful contract for such transportation. The preemption does not exist nor extend to a need not realized. The commodity may only be lawfully transported if first permitted. Absent a permit, a lawful contract for the transportation of crudes may not be raised.
- A railroad may only transport a commodity at the request of a particular business. While a railroad may have the ability to transport a commodity, that ability does not equate to the right of the railroad to transport such commodity absent a business' lawful request.
- To the extent Valero does not request (for any reason) the transportation by rail of any commodity, the railroad is not entitled to such transport arrangement and its operations are not unlawfully impacted.
- Any adopted mitigations under the control of Valero are mitigations on Valero, not the railroad.

- If the City denies the permit (the No Project Alternative), rail operations under federal jurisdiction are not impacted since the absence of the need for rail transportation does not interfere with rail operations not in play.
- If the City mitigates the quantity of crudes permissible for ‘off loading’ by Valero, rail operations under federal jurisdiction are not impacted since any rail operations in play will be managed by the railroad pursuant to applicable federal and other regulations.
- **The City’s over reliance on its *opinion*, creates a RDEIR deficit in adequate disclosures of impacts (direct and indirect), scope of Project alternatives available, and generally taints the RDEIR in support of such opinion thereby ignoring a review that should be inclusive of discussions and disclosures of legitimate alternate positions.**

**End Section 2**

## **SECTION 3: RDEIR FUNDAMENTAL FLAWS: DECEPTIONS, OMISSIONS AND FAILURES TO DISCLOSE AND ADDRESS KEY FACTORS AND ISSUES PERTAINING TO PROJECT OBJECTIVES, PROJECT ALTERNATIVES AND REFINERY PROCESSING OPERATIONS**

### **3.1 OVERVIEW: INHERENT FLAWS OF PROJECT OBJECTIVES AND ALTERNATIVES**

CEQA requires that a project description contain objectives that are clearly written and include the underlying fundamental purposes of the project (Guidelines § 15124(b)). To the extent the objectives do not meet these requirements, are unclear and do not disclose the fundamental purpose of the project, the ensuing alternatives will be fundamentally flawed.

#### **OBJECTIVES OVERVIEW**

**THE FIVE (5) PROJECT OBJECTIVES RESTATED IN THE RDEIR<sup>4</sup> ARE INHERENTLY AND FATALLY FLAWED BECAUSE THEY DO NOT REVEAL NOR ADDRESS THE TRUE FUNDAMENTAL PURPOSE OF THE PROJECT.**

As narrowly defined in the RDEIR, the Project Objectives support a “crude-by-rail” Project wherein the purpose is limited to the exclusive access of North American sourced crude oil by rail. However, this narrow interpretation obscures the true fundamental purpose which is to obtain available crude oil from U.S. domestic, Canadian and other sources for transportation, *by any means*, to the Refinery. The narrow interpretation limits the disclosure and discussion of other feasible ‘non-rail’ delivery options, obscuring the fact that any low grade, price-advantaged, domestic or foreign-sourced crude that would fit the Refinery’s processing requirements could be accessed by the Refinery by other means of transportation. Absent the objectives’ full disclosure of the true fundamental purposes of the Project – obtain price advantaged crude oil – other available modes of transporting price advantaged crude oil to the Refinery are ignored.

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<sup>4</sup> RDEIR Section 2.1.2 entitled ‘DEIR ES-2, Project Objectives’, pp. 2-2 to 2-3.

Valero's primary purpose is reflected in the key objective identified in the Valero Improvement Project ("VIP"),<sup>5</sup> which is to exercise the ability to access low grade price-advantaged crude oil, including, but not limited to, North American-sourced oil. This means that Valero would seek to have those crudes delivered to the Refinery by whatever modes of transport are available at a favorable price.

Valero could conceivably receive deliveries of North America-sourced oil from ships, marine vessels, barges, pipeline *and* rail, in any combination thereof. This reasonably foreseeable probability must be discussed in the RDEIR. In fact, Valero management has verbally revealed that the Refinery has already received deliveries of Bakken oil "by barge" and that they have processed Bakken and "proved" it safe. [Statements made at public hearings on the DEIR and at the workshop on the Project held by Valero in 2014]. If this is indeed the case, the RDEIR fails to identify such barge deliveries and avoids revealing their source, the quantities of Bakken acquired by barge, as well as the total volume of crude a barge can hold at one time.

By not disclosing and reasonably addressing *alternative* delivery means, the stated Project Objectives deceptively suggest that the Refinery considers rail transport the *only* means of accessing North American sourced oil, and also, that the Refinery would be *solely relying on rail alone to exclusively* acquire domestic and/or Canadian oil. If indeed this is the case, the RDEIR must substantiate that commitment to rail and provide findings representing the basis of such a choice.

The goal for the Valero Benicia Refinery is suggested in comments made by Valero Corp. spokesman, Bill Day, as reported in the San Antonio Business Journal<sup>6</sup>:

"San Antonio-based Valero Energy Corp. is expected to have its fifth refinery capable of processing nothing but North American crude by the end of the year. . . He [Bill Day] also noted that a proposed rail terminal at the company's Benicia refinery in California would enable Valero to offset foreign crude brought in by ship with North American crude brought in by rail."

Neither the RDEIR nor DEIR defines the Project's duration or "life span". By such lack of disclosure the RDEIR disguises the "flexibility" built into the Project: there is no guarantee that ship deliveries of crude oil would be supplanted at the level described by the Project Description into an indefinite future. On the contrary: in the near future, Valero could opt to have North American-sourced crude delivered by ship from the Port of Vancouver, WA, which would mean

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<sup>5</sup> VIP Project Objective 1, 2002 VIP DEIR: "Provide ability to process lower grades of raw materials." [SCH#2002042122: VIP DEIR, Section 3.2.1 Project Objectives, p. 3-3].

<sup>6</sup> Sergio Chapa, "Valero will soon have fifth refinery processing 100 percent North American Crude" Eagle Ford Shale Insight (blog), *San Antonio Business Journal*, Sep 10, 2015, <http://www.bizjournals.com/sanantonio/blog/eagle-ford-shale-insight/2015/09/valero-refineries-processing-north-american-crude.html>.

that the RDEIR's claims for significant GHG reductions would no longer hold. Additionally, absent a defined Project duration, we must assume the Project's duration is in perpetuity. This means that the RDEIR should address the reasonable and feasible possibility that, at any time in the indefinite future, under anticipated federal legislation, the Refinery could potentially export to foreign buyers crude oil acquired from domestic and Canadian sources. The export option needs to be discussed as a potential outcome of the Project over the long term and evaluated for its potential environmental impacts.

As the RDEIR admits, the longer the duration of rail transport of crude oil to the Refinery, the probability increases of rail accidents occurring that may cause harm to people, places and sensitive environments. Over time, the threat of risk increases, especially if Project rail operations are affected by changing environmental conditions ascribed to climate effects, such as predicted by the state's Bay Conservation and Development Commission ("BCDC").

BCDC's map of the Benicia shoreline, which includes the industrial park/marsh area and 100 year flood zone, is not included in the RDEIR or DEIR, yet the map shows predicted effects of sea level rise by mid-century, thus within a 25 year lifespan of the Project. The so-called "one hundred year" flood conditions on the River and Strait could occur more frequently, with maximum tides and rainfall potentially affecting not only rail operations and train safety, but maintenance of mainline tracks and spurs. An example locally would be extreme flooding events in low-lying marsh areas and in the Benicia Industrial Park during winter months with high tides on the Carquinez Strait coupled with torrential rains. UPRR tracks could be submerged with damage to track bedding and rail alignments.

Where the international price of a barrel of oil is predicted to remain at relative "lows" ranging up from \$45 per barrel, foreign and North American-sourced oils become price-competitive. Therefore, the cost of delivery will likely become a key economic consideration determining the source of crude purchases. These economic variables expand the range of possibilities and alternatives that must be considered in order for the public and decision makers to understand, by contrast, what has been disguised and limited by the RDEIR's stated Project Objectives.

The RDEIR's inflates the significance of the claim that the Project would provide significant GHG reductions owing to the elimination of ship trips. The RDEIR avoids stating whether those estimated GHG reductions that are claimed to result from up to 82% fewer ship deliveries would continue into the indefinite future. However, Project's GHG reductions are "guestimates" at best, dependent on assumptions based on dubiously averaged *longer* distances traveled by ships, such as to Latin America, compared to *shorter* distances of domestic mainline rail routes that could serve the Project.

Calculations of GHG reductions are a moving target: reductions cannot be considered real and permanent environmental benefits of the Project since North American-sourced oil could become accessible by big or small marine vessels that may travel *far shorter distances from West Coast* ports or by barge from even closer inland ports, such as the Port of Stockton. [See further discussion below in Project Alternatives] These options render any claim for current estimates for rail’s “GHG advantage” questionable and unsupported.

The RDEIR admits there would be “significant and unavoidable” impacts ‘uprail’. [see CEQA topics addressing Air Quality, Biological Resources, GHG emissions, and Hazards & Hazardous Materials] Certainly the RDEIR’s claim for a GHG reduction benefit cannot outweigh all other foreseeable, adverse, ‘significant and unavoidable’ impacts that would result from the transport of crude oil by rail from inception (California border and beyond) to the Refinery. [For a detailed examination of such impacts, see Riverkeeper article cited below]<sup>7</sup>

At Benicia planning commission hearings in 2014 and 2015 regarding the DEIR/RDEIR, Valero representatives championed their support for the Project by offering the opinion that accessing and processing domestic oil would “help get us off dependence on foreign oil.” [paraphrase]. This assertion contradicts one of Valero’s Project goals, namely, to access Canadian (foreign) crude. Thus the statement serves Valero’s political agenda, but it is a false characterization of the Project and has nothing to do with CEQA evaluations of the Project’s sum of extraordinary risks and environmental costs directly associated to rail delivery and indirectly to processing of Project-accessed oil.

The deceptions in the RDEIR continue. Through dissembling and misdirection, the RDEIR fails to identify the primary purpose of the Project which is Valero’s desire to obtain “flexibility” for Refinery operations, which is the over-arching goal inherent in the Valero Improvement Project. [VIP DEIR, FCCU Feedstock Flexibility, p. 3-28] By disguising the Project’s true purpose, the public’s and City decision makers’ ability to fully examine the Project and its environmental impacts is seriously hindered. A “narrowed goal” equates to a “narrowed CEQA examination”. A “narrowed” Project Objective(s) results in the imposition of artificial limitations on Project Alternatives, the breadth and scope of the analysis, identification of impacts, and all findings. By limiting the Project to the import and processing of unconventional, carbon-intense, domestic and Canadian oils obtained via transport by rail, the RDEIR fails to identify and evaluate the full range of options that would and must be explored when the primary purpose of the Project is examined – “to obtain maximum flexibility for the Refinery”. The concept of “flexibility” extends not only to the types and sources of crudes but to the multiple modes of available transportation options and the movement of such crudes after the initial delivery (processed or unprocessed).

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<sup>7</sup> Riverkeeper, “Crude Oil Transportation: A Timeline of Failure”, Riverkeeper, Inc. website, <http://www.riverkeeper.org/campaigns/river-ecology/crude-oil-transport/crude-oil-transportation-a-timeline-of-failure/>, accessed October 15, 2015.

For example, the Applicant’s desire to enhance Refinery’s operational “flexibility” could include a unstated, future goal to export domestic crudes. Congress is currently considering lifting the ban on the export of US-sourced crude oil. The lifting of such a ban would obviously enhance the profit-making aims of US refineries and oil suppliers and introduce increased “flexibility” in refineries’ operations. Not surprisingly, the Project is framed in such a way that it would *not* prohibit nor foreclose on the this option - to export accessed domestic crudes - despite Valero’s claim that supplying the Refinery with domestic-sourced feedstocks would serve to reduce dependence on foreign oil. The RDEIR must address this foreseeable possibility and Valero’s capacity to export North American-sourced oil. This omitted topic is crucial to understanding the unstated full *potential* scope of the Project and its impacts *over the Project’s life-span*.

The RDEIR concludes that the longer the duration of rail transport of crude oil to the Refinery, the higher the probability of the occurrence of rail accidents (an increase of accidents that cause harm to people, places and sensitive environments). What the RDEIR does not address is the long-term effects of climate changes (e.g. drought conditions which will exacerbate wildfire and flooding events) and the cumulative impacts associated with such climate changes in relationship to rail accidents over time. For example, flooding in low-lying areas where UPRR tracks run may result in increased derailments/accidents. Additionally, rail accidents which trigger a fire may result increased fire damage due to the flammability of the land caused by the drought. The RDEIR failure to specifically address the Project’s lifespan contributes to its failure to examine long term and cumulative impacts.

The RDEIR does not characterize the maximum flexibility Valero intends to achieve for accessing North American-sourced crude oil. The effect of this omission and lack of disclosure disguises the fact that at any time in the near future rail deliveries could be displaced, and Valero could increase ship deliveries that would defeat the one assumed environmental “benefit” of the Project, the reduction of GHG emissions from marine diesel engines. There is no guarantee that ship deliveries of crude oil would be supplanted at the level described by the Project Description into an indefinite future. On the contrary, if, for example, Valero opts to have North American-sourced crude delivered by ship from west coast ports, the RDEIR’s claims for significant GHG reductions would no longer hold.

The RDEIR and Valero pose crude-by-rail’s alleged ‘environmental benefits’ of reduced GHG emissions and reduced dependence on foreign oil. But these ‘benefits’ are red herrings – false claims that are not supported by evidence. The document’s claims for GHG reductions relevant to global warming must be evaluated and weighed against Valero’s request for procurement and processing of the most carbon-intensive crudes in the world: the crudes’ contribution to global warming includes their extraordinary energy and water-consuming extraction methods, intensive

processing requirements for energy and resources (hydrogen) and the resultant additional increases in GHG processing-related emissions.

**Owing to misguided opinions on the scope and breadth of Preemption, the RDEIR omits identification and discussion of numerous “significant and avoidable” impacts. Thus, and by default, the RDEIR improperly characterizes the Project as a railroad project of UPRR – a Project that reaches far beyond the Refinery to the Midwest, Northwest and Canada. As such, the proposed Project benefits UPRR’s and Valero’s corporate revenues, provides Valero with “flexibility” but subjects the public and the environment to consequences not examined in the documentation.**

## ALTERNATIVES OVERVIEW

**THE INHERENT FLAWS THAT AFFECT PROJECT OBJECTIVES SIMILARLY RENDER THE RDEIR’S PROPOSED PROJECT ALTERNATIVES<sup>8</sup> SERIOUSLY FLAWED, DEFICIENT AND DECEPTIVE.**

Due to the narrowed nature of the Project Objectives, the RDEIR does not propose Project Alternatives that analyze alternative modes of transport (e.g. by ship, marine vessel, barge, pipeline or any combination thereof) which could feasibly meet Valero’s *primary* goal of flexibility and be more protective of human life, wildlife and the environment.

For example: A Project Alternative should be developed around feasible delivery options by ship or marine vessel that may be available from West Coast port terminals as well as inland port terminals, such as the Port of Stockton CA. Alternatives should include discussion of combining delivery options, such as marine vessel and pipeline.

At the time the Valero CBR Project application was submitted to the City of Benicia in December 2012, plans were being developed for a rail terminal to be built at the Port of Vancouver, Washington<sup>9</sup> (at the mouth of the Columbia River just north of Portland Oregon). The existence of the Washington project has long been known by the public and industry (refineries, railroads, etc.) has been in the making for a considerable time and, therefore, should have been identified and discussed in the RDEIR. Additionally, it should have been proposed as

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<sup>8</sup> RDEIR 2.1.5, DEIR ES-5, Alternatives, pp. 2-8 to 2-9

<sup>9</sup> Todd Coleman, “Coleman: Partnerships, community input shape port’s Terminal 1 project,” *The Columbian*, 27 Sept. 2015, The Columbian website, <http://www.columbian.com/news/2015/sep/27/coleman-partnerships-community-input-shape-ports-terminal-1-project/>

a Project Alternative. The Port's "Terminal 1 Waterfront Project" is currently under environmental review. The purpose of that proposed new "US Rail" terminal to be served by BNSF railroad is to provide for rail delivery of domestic and Canadian oil to the port and the subsequent transfer to ships that would travel a *short distance* down the coast for deliveries to Bay Area and Southern California's refineries.

A further omission in the RDEIR is the possibility of various transfers, from ships to pipelines, for regular Project-related deliveries of crude to the Valero Benicia Refinery – deliveries that could involve other regionally-based, already existing or proposed oil terminals and other refineries' and pipeline companies' infrastructure.

Additionally, the analysis of the existing Project Alternatives in the RDEIR is irreparably flawed. By defaulting to the City of Benicia's interpretation of Preemption, the RDEIR eliminates the Project Alternatives it so casually provides by arguing their "legal infeasibility," despite whatever "preferences" are noted for them in RDEIR Table ES-1. Thus, defaulting to the City's opinion on Preemption, the RDEIR presumes that the City lacks any authority to enforce a Project Alternative it might choose as preferable to the Project "as is."

Despite obvious environmental benefits of the No Project Alternative, the RDEIR opines that the No Project Alternative could *not* reasonably be the Environmentally Superior Alternative because it would not reduce GHG. Based solely on one criterion (GHG), the RDEIR thereby leaps to citing the Project itself as the Environmentally Superior Alternative. First, the analysis supporting the conclusion that rail produces less GHG is suspect. But even if one accepts the flawed conclusion of the GHG analysis, the weighting of this one criterion as the most important criterion in that determination is logically deficit, misdirected, unscientific and unsubstantiated. Most importantly, it fatally taints the presentation and analysis of Project Alternatives in the RDEIR.

This Section 3 will examine more specifically the inherent problems in the Project Objectives and how the Project Alternatives analyzed by the RDEIR are consequently flawed. Project-related Refinery processing operations will be discussed with respect to flaws inherent in the Objectives. In the aggregate, the flaws challenge the veracity of the RDEIR and demonstrate the lack of any necessity for a "rail project" at all.

## THE PROJECT OBJECTIVES

### 3.2 PROJECT OBJECTIVE #1.

**Project Objective 1 states: “Allow for the delivery of up to 70,000 barrels per day of North American-sourced crude oil by rail.”<sup>10</sup>**

Drop the last two words – “by rail” – and the real goal, which Objective 1 does not state, is made clear: to acquire North American-sourced crude oil. The deception has profound implications for claims made throughout the DEIR and RDEIR, and thus calls into question the validity of the entire environmental review.

Rail delivery is the *means to an end* and the mode of transport is *secondary* to Valero’s primary goal which is to acquire North American-sourced crude oil. Yet, the RDEIR presents rail delivery as though it were the *primary* Project Objective, as if rail were the *only* delivery option. This is not made explicit and is not discussed, and therefore, all that follows from the deception discredits the environmental analyses.

Given the number and potential severity of adverse effects that would foreseeably result from rail delivery of crude oil, a very basic, unaddressed issue hangs over both DEIR and RDEIR Project Objectives and the Project Description: consideration and analyses of *alternative*, feasible means of delivery by ship, marine vessel, barge or pipeline (or a combination of those options). Available non-rail delivery options, now or in the future, would accommodate Valero’s unstated goal of acquiring North American-sourced crude oil, provide Valero with flexibility, and avoid the serious risks and “significant and unavoidable” impacts that the use of rail poses. By way of example, the RDEIR [see Project Alternatives 3-(7)] fails to acknowledge and address the new rail terminal proposed at the Port of Vancouver, WA<sup>11</sup> which would allow for the delivery of North American-sourced crude oils from the port’s terminal to the Refinery via marine vessel. This information was available well before the RDEIR release.

As discussed in BSHC’s Response to the DEIR, the VIP paved the way for the Refinery to import and process as much as 60% of low grade, heavy, sour (high sulfur) feedstock. [VIP DEIR 3.4.2 Feedstock Changes, pp.3-20]. The DEIR further remarks that heavy sour crudes are “the least expensive.” [DEIR 3.3.1.1., pp. 3-8] This statement supports the profit-making aim of acquiring

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<sup>10</sup> RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-2

<sup>11</sup> Port of Vancouver USA, “Ribbon Cutting Celebrates new Port Of Vancouver USA Rail Entrance”, Port of Vancouver USA website, <http://www.portvanusa.com/news-releases/port-of-vancouver-usa-cuts-ribbon-on-new-rail-entrance/>, Accessed August 13, 2015.

any number of price-advantaged low grade heavy sour crudes available around the world, including heavy, sulfur- and metals laden synthetic oils derived from Canada's tar sands bitumen. However, given the current economic outlook for the trending low price of a barrel of oil, which is predicted to stay low for the indefinite future, there is no particular price advantage attached to acquiring North American-sourced oil. To maintain competitiveness, the Refinery can meet the basic goal of processing low cost, low quality crudes without immediate urgency or specific need to access Canadian or other domestic crudes by rail.

Canada tar sands' diluted bitumen, an unconventional, very heavy sour, toxic metals-laden synthetically manufactured crude oil, or for that matter, *any other conventional heavy, sour low grade crude extracted from anywhere else in the world*, would meet the Project's primary goal, with the caveat that crudes considered for purchase *and* delivery would be selected in large part by economic factors presumably reflecting competitive price advantages.

In addition to availability of a transport means for delivering crude to the Refinery, one of the key factors in determining a mode of transport must be the relative costs of that transport/delivery of the likely crudes to be purchased, e.g., the costs of rail versus any other means of accessing "lower grade" crude *whether that crude comes from domestic or international sources*. The RDEIR's Project Description explains the relative importance of "price" as a key factor in decision-making:

"Refiners select particular crudes based on a number of factors, including the unique configuration of each refinery, the quality of the crude and the price of each crude, the market demand for specific products, the market price of specific products, and the specifications of the product to be produced." [DEIR 3.3.1.1 *Types of Crude Oil*, pp. 3-8]

Presumably, the transportation costs of delivering Project-accessed domestic and Canadian oils could be a key factor in Valero's choice of rail. However, there is no discussion in the RDEIR or DEIR that makes explicit how the cost of rail delivery may compare to costs for other transportation means of delivery (barges, marine vessels or ships coming from inland ports or coastal ports). As a result, the public and decision makers must assume how the cost factor for transport has supported the determination that the Proposed Project would be a "rail project" exclusively over any other feasible, available transport options that would avoid the severe risks and impacts posed to communities and environs associated with rail delivery.

Thus, by avoiding a full discussion of delivery alternatives, the RDEIR deceptively suggests that rail would be the *only* means of transport to acquire North American sourced oil into the indefinite future. This hides the fact that at any time in the near future, the Refinery could elect to receive deliveries of domestic or Canadian oil by ship or marine vessel as soon as those options are available, which could be much sooner than later.[see discussion on Washington Port]

Additionally, since there is no apparent reason for the Refinery to limit the selection of heavy sour crudes to those sourced in Canada (or US), any other cost-competitive heavy sour crude available from international sources may still be acquired by ship, as is the case currently and historically.

The RDEIR's apparent support for rail hinges on its speculative claim for a single environmental benefit - the GHG reductions achieved by eliminating diesel emissions from ships traveling long distances from either the Mideast or Latin America. However, the RDEIR's calculations for GHG are based on limited evaluation of single sources of GHG and variable estimates of comparative distances traveled. The RDEIR admits that locomotive diesel emissions actually *exceed* ship engine-generated emissions calculated per mile. The only way the RDEIR can demonstrate significant reductions in GHG is to compare distances traveled by rail and ship, the latter producing comparatively more emissions because of the duration of trips and the greater distances ships are said to travel from international sources of crude. However this comparison is suspect and noted in the RDEIR's discussion of table 4.1-15 [Locomotive and Marine Vessel Emissions Factors Comparison for 1,000,000 Barrels Delivered Per 1,000 Miles Traveled] as follows:

“As Table 4.1-15 shows, locomotives generate more emissions than marine vessels per mile, per 1,000,000 barrels of crude oil delivered each year, of ROG, NO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>. The reverse is true for SO<sub>x</sub>. Even with these emission factors, there is no way to estimate with any certainty the net effect of the Project on areas outside of California because the length of locomotive or marine vessel trips cannot be predicted with reasonable accuracy.” [RDEIR 2.6.2, DEIR Section 4.1.6, Uprail Impacts and Mitigation Measures, p. 2-36]

The calculations may not be trusted because they fail to account for the annual number of ship trips traveled to each Latin American crude source. For example, Mexico, which represents a shorter distance for ship trips, is not mentioned. The RDEIR does not reveal actual volumes or types of oil that ships transport to the Refinery from a particular source and at what frequency. GHG emissions are not included among those “emission factors” cited in Table 4.1-15, yet locomotive and ship diesel emissions obviously produce GHG emissions that impact global warming. Singling out GHG emissions from the discussion of “emissions factors” related to ship transport distances is not scientifically honest especially considering the out-sized claim for the Project's GHG reductions as an environmental benefit derived from eliminating 82% of ship deliveries.

With regard to diesel emissions' effects on human health: there would be a potentially cumulative effect on public health of diesel emissions from locomotive engines passing through or near urban communities and residential areas. Contrarily, this could not be said of diesel emissions from ships' engines, whether those ships travel through open ocean or 30 miles off-shore. Local and regional air pollution resulting from train locomotives would impact human health where people live and work in the vicinity of mainline rail routes serving the Project.

In any case, although reducing Project-related GHG emissions for sake of climate protection is of paramount concern, the RDEIR does not discuss the potential *additional* GHG emissions that would be produced during the processing of Project-accessed unconventional Canadian or domestic oils. “Externalities” that must be accounted for include the carbon-intensive extraction methods that represent sky-high carbon footprints (fracking shale rock and strip mining tar sands, both consuming huge amounts of water and energy). The RDEIR fails to disclose the chemical makeup of those “low grade” Canadian and domestic-sourced oils and their carbon intensity totaled from extraction, transport and processing.

### 3.3 PROJECT OBJECTIVE #2.

**Project Objective 2 states: “Replace marine vessel delivery with rail delivery of up to 70,000 barrels per day of crude oil.”<sup>12</sup>**

Both Project Objectives 1 and 2 state the volume of oil to be delivered daily by rail. That volume is also very close to the feedstock capacity of the FCCU [VIP DEIR, 3.4.3.2., FCCU Feed Flexibility, pp.3-28]. That figure also represents one half of the amount of crude oil permitted to be processed at the Refinery daily, an amount not to exceed the annual average of 165,000 bpd, with maximum throughput allowed on any given day at 180,000 bpd.) [VIP DEIR, *Proposed Changes – Schedule*. pp 3-27].

However, neither the RDEIR nor DEIR reveal the ACTUAL total amount of crude oil processed on average on any given day, e.g., a figure for current baseline production rate or “throughput,” calculated by averaging production rates achieved over the most recently reported three year period. This omission represents a major failure to disclose pertinent baseline information essential to the Project Description and hinders the public’s and decision makers’ ability to fairly judge the Project’s full scope with regard to the actual volume of crude the Project would import daily. In 2015, BAAQMD released statistics supplied by Applied Development Economics<sup>13</sup> that account for Bay Area refineries’ earnings profiles. These included figures for Bay Area Refineries’ current baseline production rates, “Effective Barrels of Crude Per Day.” The Valero Refinery is listed as having a production rate of 114,443 bpd – a throughput that is close to 30% below their permitted daily average level of 165,000 bpd.

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<sup>12</sup> RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-2

<sup>13</sup> Bay Area Air Quality Management District, “Socio-Economic Analysis of Proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking And Regulation 12, Rule 16: Petroleum Refining Emissions Limits And Risk Thresholds”, Table 7, p.13, prepared by Applied Development Economics, released 9 Oct 2015, Bay Area Air Quality Management District website, <http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2015/100915/socioreport-pdf.pdf?la=en>

The RDEIR's omission of such production data is a serious flaw. Without providing current baseline throughput, the document's claims for "no net emissions" resulting from processing Project-related carbon-intensive, unconventional crudes cannot be fairly evaluated. This subject remains untouched by the RDEIR.

Because the RDEIR does not reveal Valero's current baseline throughput, it is impossible for the public and decision makers to ascertain if the 70,000 bpd called for by Project Objective 2 is actually an *extra* supply, e.g. an excess daily volume delivered but not required for either daily production or for maintenance of backup reserve feedstock supply for given number of weeks or months (presumably, a constant volume stored in the case of crude supply disruption). Objective 2 provides for "flexibility" in the volume of crude delivered, but the RDEIR does not characterize its purposes. Given BAAQMD's figure for Valero's throughput rate, the excess volume that the Project allows would be "up to 25,557 bpd."

With reference to crude storage capacity, only a single sentence in the RDEIR is devoted to this important topic: "two storage tanks" would be used to receive crude from the Project's rail offloading terminal. There is no description of the tanks and/or their capacity.<sup>14</sup> If more crude is imported on an annual basis than would be processed or needed to maintain a reserve supply, the RDEIR must discuss and explain (i) this possibility as it relates to crude storage capacity, and (ii) the necessity for the Project to import the quantities "up to 70,000 bpd" of domestic and/or Canadian sourced oil *relative to the life of the Project into the future*. The RDEIR does not disclose the volume capacity for varying sizes of ships and marine vessels that currently serve Refinery deliveries of crude oil hold. This is important in the event that "flexibility" is invoked by Valero and rail deliveries of Project-related crudes are suspended and replaced with ship or marine vessel deliveries. If this happens, would such volumes brought by ship, on whatever regular basis, accommodate the Project-related crude storage tanks referenced?

### 3.4 PROJECT OBJECTIVE #3.

**Project Objective 3 states: "*mitigate Project-related impacts.*"<sup>15</sup>**

There is no serious discussion of mitigations in the RDEIR because the City has wrongfully accepted Valero's and UPRR's assumption of the scope and breadth of federal Preemption. This controversy between what CEQA requires and what Preemption governs, affects not only the RDEIR's analyses of impacts but also the RDEIR's evaluation of Project Alternatives. This

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<sup>14</sup> The VIP DEIR states: "Valero proposes to install one or two additional floating roof crude tanks (with capacity of up to 900,000 barrels for one, or 650,000 barrels each for two) within the Crude Oil Field tankage area." [VIP DEIR, 3.4.3.15 Additional Crude Tankage, pp 3-51].

<sup>15</sup> RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-3

controversy is mentioned in RDEIR section 2.1.7, DEIR ES-7, “Areas of Controversy and Issues to be Resolved” but offers no path to resolution.

Project Objective 3 is, therefore, neutered, unable to be “met” since mitigations suggested are said to be “legally infeasible,” owing to lack of local enforcement authority.

The City of Benicia does have authority to mitigate a foreseeable risk and/or impact associated directly or indirectly to on-site Project rail operations that would remain under the control of Valero on Valero’s private property. As such, the RDEIR needs to be fully revised to address mitigations available for the Project. As such, the RDIER needs to be fully revised to address all areas of the document that were ignored due to the acceptance of the erroneous Preemption opinion.

For example, the RDEIR fails to provide a diagram and discuss the layout of the proposed two new rail spurs to be added to facilitate Project trains’ arrivals and departures. A feasible mitigation could be proposed that would require a different track layout – “looped” rail spurs rather than linear spurs, an option that could conceivably minimize risks during train movements and switching operations on Refinery property, especially in the case of arrival/departure delays or other operational problems on site. This mitigation may be installed on Valero property (not on UPRR right-of-way). If creating “looped” side spurs is not possible because of space limitations, the RDEIR should discuss the problem as part of the analysis.

The RDEIR assumes that there is no problem or potential impact associated with the location of the rail offloading terminal. On the contrary, the proposed site for the rail terminal, squeezed right adjacent to the Refinery’s eastern perimeter, is actually sandwiched between Sulphur Springs Creek and the tank farm for storing crude oil and other flammable products. The RDEIR does not discuss potential domino effects that could occur during a “worst case” event that could foreseeably arise owing to the proposed location of the rail terminal.

**Locating the rail offloading racks on Refinery property represents an INTENSIFICATION OF RISK TO THE REFINERY ITSELF, to the Benicia Industrial Park, the immediate environs, including roadways and vital infrastructure, and to the community at large from catastrophic rail accidents at the Refinery or in the Benicia Industrial Park involving “High Hazard Flammable Trains” carrying Bakken oil. “Worst Case” events are not characterized or evaluated. The consequences of such an event occurring at the rail terminal involving very large crude spills, fire, explosion and ignition of airborne flammable gases known as a BLEVE must be discussed.**

- The RDEIR cites the consequences of a 30,000 gallon spill of crude oil causing a Project-related pool fire on site at the Refinery to be significant, but 30,000 gallons

cannot serve as a benchmark for significance of risk and potential threat posed by a worst case event. Considering that on a daily basis, 70,000 barrels of crude oil would be delivered and this equates to approx. 2,940,000 gallons<sup>16</sup>, 30,000 gallons appears to be a *de minimis* volume for consideration. Additionally, worst case events should not be limited to “spills”, since any number of other accidents/errors may result in more severe consequences to life and the environment. Given the severity of an event such as an explosion, coupled with the Project’s proximity to other flammable materials whereby a BLEVE could occur (especially on or near the Refinery premises), a serious examination of a worst case scenario must include a scenario of ‘domino effects’.

- The RDEIR is primarily silent regarding risks associated with the off-loading processes and operations on Refinery property. This is a 7x24 operation subject to human error as well as equipment failures. The proximity of this operation to other “flammable” sources (e.g. storage tanks, above ground pipelines) is not revealed. Emissions from this equipment and operations as well as BLEVE, should be examined fully and disclosed. Additionally, records and studies available for similar operations (e.g. rate/type/frequency of equipment failure and/or human errors that result in accidents) should be made available.

- The probability of a catastrophic derailment occurring within Benicia city limits, in the industrial park or at the Refinery that could involve fiery explosions of Bakken oil as happened in the US and Canada since 2012 is dismissed as “low”.

- Figure 4.7-8 “Worst Case Facility Thermal Radiation Hazard” presents a segmented aerial view of the park, focused on the immediate area around the rail offloading terminal. The *limited area* of impacts diagrammed cannot be accurate in a “worst case” thermal radiation event or BLEVE event.

- Risk of fiery explosion is claimed by Valero to be “manageable” but the consequences for emergency responders at sites of major oil fires – such as occurred at the Chevron Richmond Refinery in 2012 and at the number of catastrophic rail derailments, fires and explosions that have occurred since the Lac Megantic Quebec disaster – point to “unmanaged” circumstances in which such gigantic oil fires are left to burn out for as long as 3 or 4 days.

One major or catastrophic rail related accident in or close to Benicia would change public perception of Benicia as a “great place to live” or “great place to locate a business.” The City’s reputation and economic base would be foreseeably affected for decades. The impacts to the Benicia Industrial Park from an accident would be enormously damaging to the viability of the

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<sup>16</sup> Conversion is 1 barrel: 42 gallons

park as Benicia’s “economic engine” unless the park be given over to Valero’s purposes, a definite case of “Local Undesirable Land Use (“LULU”) [See further discussion in BSHC DEIR Response]. In fact, the City’s economic base may be foreseeably damaged absent any accidental occurrence. If the public views the transport of crude by rail into Benicia as a threat to public safety and health (which is more than reasonable given the identified, significant environmental impacts of the Project) the mere existence of the risk is enough to cause economic impacts to the City – depressed residential and commercial property values impacting city revenues and services. By way of example, will the introduction of crude by rail into Benicia result in an additional “disclosure” required in the sale of real (commercial and residential) property (in addition to disclosure of proximity of a Refinery)?

The Project’s potential long-range *negative* impact on the economic well-being of the City of Benicia is not discussed. This is a gross oversight, related to Land Use and Planning or Urban Decay and Blight – the “LULU” effect. This is exacerbated since the Project has a life span ‘in-perpetuity’.

### 3.5 PROJECT OBJECTIVE #4.

**Project Objective 4 states: “*implement the Project without changing existing Refinery processing equipment or Refinery process operations, other than operation of Project components.*”<sup>17</sup>**

Project Objective 4 actually supports Valero’s PRIMARY goal of acquiring domestic and/or Canadian oil, and so could presumably be met *whether or not delivery were to be accomplished by rail or any other transport means*. According to Valero’s own statements supported by the DEIR and RDEIR, both highly flammable, “light, tight” Bakken oil from North Dakota shale fields and heaviest, sour, metals-laden tar sands dilbits – synthetic crudes produced from bitumen mined in Alberta, Canada – could be safely “blended” and processed at the Refinery *as currently configured*. However, this claim avoids acknowledgement of the clearly dangerous, foreseeable impact of increased emissions, including PM2.5 and other toxic gases affecting local air quality and therefore public health. The RDEIR does not identify with any specificity other risks and hazards associated with processing those particular unconventional crudes intended to be accessed by the Project. [see Phyllis Fox Report, DEIR 2014]. Despite the fact that processing tar sands dilbits in more significant quantities over time could require more hydrogen than what is currently available at the Refinery, Valero asserts that the new hydrogen unit (previously planned and permitted under VIP) is no longer necessary. The RDEIR fails to discuss the potential need for more hydrogen now or *at any time in the future* even if it is foreseeable that the daily throughput “blend” would consist of a greater percentage of tar sands feedstock. The document

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<sup>17</sup> RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-3

fails to identify the maximum percentage of tar sands feedstock the Refinery's FCCU could handle given the current hydrogen supply.

Processing Bakken oil also presents particular hazards because of its flammability – its chemical character is closer to a gasoline than conventional “light sweet” crude. Its high evaporation rate could portend more fugitive emissions during offloading and processing as well as when stored in tanks. [Phyllis Fox Report, 2014 DEIR]. The RDEIR avoids or minimizes specific discussion of “crude characteristics” but rather relies on generalities about how Bakken and tar sands oils could “fit” into the daily feedstock blend with no problem, thus repeating the avoidances of the DEIR.

### 3.6 PROJECT OBJECTIVE #5.

**Project Objective 5 states: “Continue to meet requirements of existing rules and regulations pertaining to oil refining including the State of California Global Warming Solutions Act of 2006 (AB32).”<sup>18</sup>**

This Objective suggests that Valero is in the habit of breaking the law and has now made up its corporate mind to comply with the law as a positive “good.” Although this is an exaggeration, it makes the point clear: Project Objective 5 is not a true “objective”. Rather, it is a requirement of state law, which Valero must obey or be penalized. The Bay Area Air Quality Management District (“BAAQMD”) as an arm of CAL-EPA’s Air Resources Board, regulates stationary and mobile sources of toxic air emissions for the Bay Area region. Refineries must comply with BAAQMD regulations. However, the RDEIR does not discuss the changing regulatory framework governing refinery emissions (as expressed in BAAQMD’s draft Regulation 12, Rules 15 and 16, expected to be adopted in 2016) which would change “existing” requirements with “new” requirements to include more stringent local air monitoring, health impact analysis and reporting, and reductions of toxic emissions. Therefore, Project Objective 5’s inclusion of the word “existing” as it relates to regulatory compliance signals what the RDEIR fails to discuss. The RDEIR fails to discuss the ongoing and changing requirements of federal, state and regional regulations and such changes as related to a Project that extends ‘in perpetuity’.

Further, Objective 5 appears to have been included to support the RDEIR’s claim that the Project would contribute to climate protection goals of AB32 by eliminating GHG emissions resulting from ship deliveries of crude oil, thus to hinge the Project’s ‘environmental benefit’ on GHG reductions alone. But GHG emissions for Project + Refinery Processing were not calculated. The whole idea of isolating one (limited) source of GHG as a way of “proving” overall GHG reduction benefits of the Project is fallacious if meant to be scientific, thus evidence-based.

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<sup>18</sup> RDEIR 2.1.2 DEIR ES-2, Project Objectives, p. 2-3

## THE PROJECT ALTERNATIVES

### 3.7 PROJECT ALTERNATIVE #1.

#### **Project Alternative 1 – Limiting Project to One 50-car Train Delivery per Day<sup>19</sup>**

The RDEIR argues that this Alternative would be ‘legally infeasible’, relying on the City of Benicia’s opinion on Preemption, which would give UPRR control over the volume of commodities delivered by rail, such that significantly reducing the daily volume of oil proposed to be delivered to the Refinery would not be allowed. By accepting this opinion, Alternative 1 is rejected in favor of the Proposed Project, despite acknowledging Alternative 1’s environmental benefits: reduction by ½ of locomotive diesel engines’ toxic air pollutants including GHG, and potentially reducing other rail safety risks by eliminating one 50-car unit train delivery per day, with volume of crude “on board” limited to up to 35,000 barrels, with single train arriving and departing at night after peak traffic hours.

The claim that Project Alternative 1 is ‘environmentally superior’ with regard to Air Quality is fallacious since the RDEIR does not analyze the contribution of fugitive emissions and emissions produced by idling trains in its calculations and models for acute and cumulative air emissions (e.g., diesel emissions producing PM2.5 and TAC emissions).

### 3.8 PROJECT ALTERNATIVE #2.

#### **Project Alternative 2 – Two 50-car Trains Delivered During Night Time Hours<sup>20</sup>**

The RDEIR’s snapshot summary analysis of Alternative 2 in Table ES-1 basically rejects the proposal of two night-time rail deliveries on the basis of Preemption (UPRR controls train scheduling). The fact that offloading one train is estimated by the RDEIR to take approximately 8 hours (which figure assumes there would be no delays, problems or malfunctions) makes clear that Alternative 2 was inappropriately proposed in the first place because of the operational impossibility it represents.

### 3.9 PROJECT ALTERNATIVE #3.

#### **Project Alternative 3 - Offsite Unloading Terminal<sup>21</sup>**

The RDEIR’s proposal for offsite terminal assumes that there would be little preference for such a location, whether in terms of environmental impacts or other concerns. The DEIR reviewed

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<sup>19</sup> RDEIR 2.1.5.2, p. 2-8

<sup>20</sup> RDEIR 2.1.5.3, p. 2-9; Table ES-1, pp. 2-10 to 2-12

<sup>21</sup> RDEIR 2.1.5.4, p. 2-9; Table ES-1, pp. 2-10 to 2-12

other possible alternative locations within the Benicia Industrial Park, (in the vicinity of Valero’s port area and on Amports property), but those sites were determined to have too little space to accommodate rail offloading racks that could serve a 50-car train at one time, with arrival and departure rail spurs for assembling trains. That left the DEIR and RDEIR to support the Proposed Project’s location on the sliver of land on Refinery Property, sandwiched between the tank farm and Sulphur Springs Creek – hardly an “optimal” location for a 24/7 rail terminal to deliver crude oil, considering the severity of environmental risks, hazards and impacts cited in the RDEIR and those additional concerns raised within these comments and comments previously submitted by BSHC on the DEIR as well as others representing similar concerns raised by local residents.

Because no other off-site location was found that would serve Valero’s commitment to a rail project, no other Project Alternative was proposed or explored that would consider delivering Valero’s choice of crudes to the Refinery by other “off site” port terminals owned by other corporate or municipal entities, such as the Port of Stockton. Alternatives that would propose other off-site methods of bringing crude to the Refinery, such as pipeline connections were also not proposed or explored.

### 3.10 THE NO PROJECT ALTERNATIVE.

#### **The No Project Alternative and the Environmentally Superior Alternative<sup>22</sup>**

The No Project Alternative is obviously feasible, viable, and the most environmentally-friendly choice overall and would NOT prevent Valero from fulfilling its primary goal of accessing price-advantaged, low grade crude oil on the open market, whether from domestic, Canadian or “foreign” sources. For all the flaws cited herein found to discredit the Project Objectives, there is NO reason to reject the No Project Alternative. The NO Project Alternative is said to be least preferred with regard to GHG emissions. However, this statement relies upon and assumes the accuracy of reporting marine vessel emissions and ignores real-time choices made on the routing of all trains, all routes in CA and outside of CA. The RDEIR’s argument against it is based on a speculative, unsupported and isolated review of GHG emissions reductions claimed for the Project. By such shenanigans, the RDEIR concludes that the No Project Alternative should not be considered preferable.

In Table ES-1, the Project is compared to suggested Alternatives for “preference” related to CEQA Resource Areas. The only Alternative that is favorably compared to the Project itself in terms of “preferences” is the “No Project Alternative,” which lists (8) “most preferred” aspects, (2) “no preference,” and only (1) “least preferred” aspect. The RDEIR’s final recommendation,

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<sup>22</sup> RDEIR 2.1.5.1, p. 2-8; RDEIR 2.1.6, p. 2-9; RDEIR Table ES-1, pp. 2-10 to 2-12.

that the Project itself represents the “Environmentally Superior Alternative,” hinges *solely* on the Project’s alleged benefit of gaining significant reductions of Greenhouse Gas Emissions, in contrast to the “No Project Alternative,” which is described as not reducing GHG, because, as Table ES-1 states: “*Greenhouse gas emissions would be greater than the Project because there would be no reduction associated with elimination of up to 82% of marine vessel trips.*” Yet, the calculations for GHG reductions from marine diesel engines and locomotives are at best speculative: the RDEIR provides no calculation for TOTAL Project-related GHG emissions from all sources, inclusive of *increases in Refinery processing operations’ contributions to increases in GHG* that would likely be owing to processing dirtier tar sands and more volatile Bakken oil that would likely be accessed by the Project.

For those reasons and other similar reasons, the logic that Table ES-1 presents results in a mostly irrelevant evaluation of Alternatives, because by elimination, the choice of Alternatives is reduced to selecting “The Proposed Project” or “No Project.” By such methods, the RDEIR deceptively determines that “The Project” represents the Environmentally Superior Alternative, and thereby preemptively advocates that the Project must be permitted.

If more “preferences” were factored into the analysis of the various alternatives, the “No Project Alternative” would clearly be considered environmentally superior. This outcome is well disguised by the analyses’ dependence on the one, singular, alleged “benefit” of the Project: Greenhouse Gas Emissions reductions. However, GHG calculations are dependent upon speculation, assumptions, and interpretation of the scope of federal Preemption’s authority. The RDEIR concludes that the proposed Project represents the Environmentally Superior Alternative “*with respect to overall air quality*” [2.1.6, DEIR ES-6, Environmentally Superior Project, p. 2-13]. Considering that the RDEIR presents conflicting data pointing to “significant and unavoidable” emissions impacts to Air Quality ‘uprail’, and certainly, also to Air Quality in Benicia, it appears that the RDEIR recommends that the proposed Project is in the best interests of the City of Benicia and our community, (e.g. ‘good for Benicia’ – as per Planning Commission hearing presentations for the DEIR and RDEIR).

The RDEIR’s two-pronged argument against the No Project Alternative claims that (a) Project objectives cannot be met, and (b) GHG reductions would not be achieved if rail deliveries are not substituted for ship deliveries. On the contrary, as previously noted discussed:

- The RDEIR and the DEIR fail to disclose key information regarding “alternative options” for delivery of North American-sourced crude oil to the Refinery. The No Project Alternative **does not** preclude Valero from accessing North American-sourced crude oil – since Valero has stated that the Refinery has already received Bakken crude by barge, albeit, the source and volume is undisclosed.
- The RDEIR’s claim for the Project’s singular benefit of GHG reductions is highly selective and is not weighed against all other significant risks posed by rail delivery of crude oil and the

potential significant impacts that would result. Claims for GHG reductions are not contextualized: the Valero Refinery GHG emissions + Project GHG emissions from *all sources related to the Project*, (fugitive emissions, idling locomotives, represent an overall *increase* in GHG emissions contributing to global warming. (See above).

In the event that the No Project Alternative meets the criteria to be deemed the Environmentally Superior Alternative, CEQA requires that another Alternative be considered for that designation. However, since the RDEIR rejects all the other Alternatives, the proposed Project becomes the Environmentally Superior Alternative by the process of elimination. This outcome is patently absurd and a “set up” for supporting the Proposed Project’s approval. The RDEIR’s recommendation does not reflect the purpose of an independent environmental analysis, given the magnitude of the rail Project’s foreseeable consequences for Benicia and all ‘uprail’ communities and environs.

**End Section 3**

## **SECTION 4: FAILURE TO CHARACTERIZE CRUDE SLATE CHANGES AND EFFECTS OF PROCESSING UNCONVENTIONAL OIL**

The RDEIR fails to disclose and fully characterize the effects of prospective “crude slate changes,” which are cited by the RDEIR as an “Area of Controversy” that remains unresolved.

Such effects as *increased* emissions can reasonably be expected to occur, according to refinery experts who submitted comments on the DEIR (Phyllis Fox, Phd., and Communities for a Better Environment). Those comments amplify, in specific detail, why the RDEIR’s discussion of crude slate changes cannot be accepted.

The RDEIR’s claim that there would be “no net emissions” resulting from processing future feedstock blends that would contain Project-accessed unconventional crude oils is fallacious, though its deceptions are difficult to discern.

The RDEIR fails to disclose basic information necessary to evaluate whether there would potentially be net emissions *increases* that would likely result from processing Canadian tar sands’ derived synthetic oils and/or Bakken oil.

According to refinery experts’ comments submitted on the DEIR, tar sands oils and Bakken oil have specific chemical characteristics that can significantly add to risks of corrosion, fire and explosions associated to Refinery processing operations, and also, add to health risks associated to acute and chronic exposures to increases in toxic emissions resulting from processing North American-sourced oils, especially Canadian tar sands bitumen-derived synthetic oils or fracked Bakken oil from North Dakota.

The RDEIR fails to disclose:

- (1) the specific array of chemical characteristics of the various tar sands oils, and characteristics of Bakken oil; and
- (2) the actual current average baseline throughput rate, (averaged over three previous years, 2012 – 2014).

The fallacy of the “no net emissions” claim contrived by the RDEIR can be unraveled as follows:

The RDEIR echoes Valero’s word that currently existing emissions reported resulting from *current* processing of *conventional* feedstock blends would be similar to emissions levels resulting from *future* feedstock blends containing any number of types of Project-accessed Canadian synthetic tar sands oils, and/or very light Bakken oils. This is asserted as if it were true that conventional feedstock oils currently being processed are “similar” in character to existing future feedstock oils that would likely be accessed by the Project. For example, the RDEIR uses terms such as “sweet Alaska-like” to compare Bakken oil to conventional medium sweet crude from Prudhoe Bay. However, such comparisons of feedstock are based solely on two criteria for contrasting types of oil, (however extreme the contrast derived might be between heaviest crude

oil and “lightest”): the API Specific Gravity (density) of the oil, and its relative sulfur content. This comparison avoids accounting of the distinct chemical differences known to contribute to the signatures, besides density and sulfur content, of tar sands and Bakken oils.

If the additional and necessary information about “other” crude characteristics were supplied by the RDEIR, differing conclusions can be arrived at with more scientific evidence regarding Valero’s claim that “no net emissions” would result from *increasing the percentages* of tar sands or Bakken oils to be processed in future blends.

As previously commented upon [BSHC RESPONSE to DEIR, p 76], the RDEIR fails to provide a figure for *current average baseline throughput rate* (averaged over three previous years, 2011 - 2013), the other necessary fact without which it is impossible to claim “no net emissions” resulting from processing tar sands or Bakken oils.

The Refinery’s *current* average production rate must be compared to the maximum daily average production rate that was set by the construction permit granted in 2002 for VIP by the Bay Area Air Quality Management District (BAAQMD): the maximum daily average production rate, based on annually averaged figures, cannot exceed 165,000 bpd.

Regarding emissions levels permitted: the maximum permitted emissions levels for certain chemicals (gases, metals, etc.) that must be reported by law to BAAQMD are tied to the maximum permitted production level of 165,000 bpd. But if production rates have fallen, as reported by BAAQMD<sup>23</sup> the RDEIR’s projected future emissions levels would be in error.

In the case of the RDEIR’s assessment of projected estimates for future emissions that would result from processing differently constituted throughput blends, if the current rate of production is actually well below the maximum *permitted* production level, the expressed ratio of emissions emitted as related to production level would be expected to reveal that change, e.g., emissions reported should be expected to be lower proportionally in relation to the maximum emission levels permitted.

The RDEIR cleverly hides its deception: it compares projected emissions that would result from processing differently constituted throughput blends, if the current rate of production is actually well below the maximum permitted production level, the expressed ratio of emissions reported as related to production level would be expected to reveal that change, e.g., emissions reported should be expected to be lower proportionally in relation to the maximum emission levels permitted.

The RDEIR cleverly hides its deception: it compares projected future emissions levels that could result from processing future blends containing increasing amounts of tar sands and/or Bakken oils by relating those emissions estimates to the *maximum* permitted production rate of 165,000 bpd. By this devious method, assuming a continuing and trending drop in actual production rates, future increases in emissions can be hidden. Thus, measured against the *maximum* permitted emission levels, future projected emissions levels can appear to be lower.

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<sup>23</sup> Bay Area Air Quality Management District, *op.cit.*

Thus the RDEIR's calculations, based on very limited information and non-disclosure of the current baseline production rate, allows for deceit that would create the impression that there would be no adverse effects from processing a changed crude slate containing increasing volumes of Project-accessed tar sands and/or Bakken oils.

However, the BAAQMD's recently reported current throughput baseline for the Valero Benicia Refinery is 114,443 bpd, close to 30% lower than the Refinery's permitted level. Decision makers should be able to reason that the Refinery should be able to report an equivalent drop in future estimates for emissions levels should the trend hold for lower production rates as might be predicted.

**End Section 4**

## **SECTION 5: RDEIR FLAWS, DECEPTIONS, DEFICIENCIES, OMISSIONS AND FAILURES TO ADDRESS DISCUSS AND/OR DISCLOSE KEY FACTORS AND CONDITIONS PERTAINING TO FORESEEABLE IMPACTS OF THE PROPOSED RAIL PROJECT AND PROJECT-RELATED REFINERY PROCESSING OPERATIONS**

### 5.1 OVERVIEW

The flaws and limitations of the Project Objectives are reflected in the limitations of the Project Description and impact analysis. The primary focus of RDEIR revisions is on ‘uprail’ impacts that were not properly evaluated. Of the “significant and unavoidable” impacts described, analysis devolves into questionable rehearsals of their significance. The RDEIR charade goes on with posed mitigations that are then summarily rejected as “infeasible” *a priori* under federal Preemption.

The Project, narrowly defined by Project Objectives 1 & 2 as a “rail project,” would not, therefore, be “managed” by the Project Applicant, but by Union Pacific Railroad Co., *off-site of the Refinery* – therefore *anywhere* from the Refinery fenceline onto rail spurs crossing the Park Road intersection in the Benicia Industrial Park, and all along mainline rail routes to the crude source.

The RDEIR suggests that the City of Benicia’s decision makers are without any viable authority to mitigate foreseeably significant Project-related and risks, direct and indirect risks, that may occur within the City of Benicia and ‘uprail’. Yet, by seeming sleight-of-hand, the RDEIR conjures the Proposed Project as the “Environmentally Superior Alternative.”

On the contrary, should decision makers agree with the RDEIR’s determination, the City of Benicia would be rendered simultaneously impotent and unconscionably irresponsible. To call the Crude By Rail Project “environmentally superior” represents a breach of the purposes of CEQA to inform and enable the public and decision makers to fairly evaluate and judge the true scope of the Proposed Project and its adverse impacts.

The RDEIR fails to disclose basic information pertinent to the number and severity of risks and harm posed to people, places, businesses, vital resources, public assets, sensitive landscape/habitat and the climate. Impact analysis relies on speculation and minimizes direct and indirect, potentially domino-like “significant” consequences of running daily “High Hazard” trains of 100+ tank cars loaded with Bakken oil or tar sands that travel more than 1,500 miles to the UPRR Roseville Rail Yard and on to the Refinery.

**FATAL FLAW: THE RDEIR'S FAILURE TO IDENTIFY PROLONGED DROUGHT IN CALIFORNIA AND WESTERN STATES AS A POTENTIAL FACTOR AND ENVIRONMENTAL CONDITION POTENTIALLY AFFECTING PROJECT RAIL OPERATIONS IN BENICIA AND UPRAIL OVER TIME – PERTAINING TO IMPACT ANALYSIS**

The RDEIR fails to present information of great concern to the state on prolonged drought conditions, climatic variables, uncertainties and contingencies predicted for California and the west generally – conditions which affect water supplies (watersheds, aquifers, reservoirs, lakes, rivers and streams), and affecting snow and rainfall patterns. These changing conditions are considered by scientists to be possible evidence of global warming and climate change. An example of such effects: predicted increases in winter/spring flooding events in low-lying areas, such as marsh areas in Benicia and ‘uprail’ in Solano and ‘uprail’ counties along the Sacramento River and its floodplains.

**Examples of RDEIR failures to disclose drought as a condition affecting impact analyses:**

- Figures 1-1, 1-2, 1-3, 1-4 and ES-1, show mainline rail routes that could be used by Project-related High Hazard Flammable Trains carrying Bakken oil from North Dakota and/or tar sands dilbits from Alberta, Canada. Of the five maps, only two are topographical, but at a scale that makes detailing of landscape features in close proximity to rail routes undistinguishable if at all. The other three maps basically show rail lines, but with no landscape features shown, and few cities or smaller communities identified. (No maps provided show water resources, forested areas and grassland areas prone to fire along rail routes). Those features are only generally referenced, without specificity [see RDEIR section 2.13.1 DEIR Section 4.8.6, Uprail Impacts and Mitigation Measures, (p. 2-125)];
- Dramatic increase of fire hazards along UPRR mainline routes into California and other carriers’ routes in the Northwest and Midwest that would likely be used for Project-related High Hazard Flammable Trains.
- The impact of major oil spills involving more than 30,000 gallons on waterways (lakes, reservoirs, rivers) that are sources of drinking water supplies in California;
- The near impossibility of cleaning up sticky, viscous tar-like bitumen (primary constituent of tar sands dilbits) from river bottoms, marshes, lakes, etc.
- In Chapter 2.12, DEIR Section 4.8, Hydrology and Water Quality, and in DEIR Appendix G - Valero Emergency Procedures Manual, Sections 203 & 206 and DEIR Appendix H - UPRR Hazardous Material Response Plan, there is no account of water supply availability constraints in the era of prolonged drought for grass fire fighting and fire suppression along UPRR mainline routes nor along rail spurs in the Benicia Industrial Park.
- There is no discussion regarding the "fire water" supply stored by Valero, whether more would be needed to be stored on site with respect to potential fire hazard dangers posed by the

Project trains, offloading procedures, etc, in the vicinity of the grassland that is part of the southwestern buffer zone area within the Refinery and near the tank farm, and part of the adjacent riparian corridor of Sulphur Springs Creek. [See RDEIR Table 5-1, Potential Projects for Cumulative Effects Evaluation: requirement of recent Chevron Refinery permit to construct a new “fire water tank” to improve on site emergency response fire-fighting capability in response to the massive 2012 Chevron Refinery fire.]

- The state’s recently released (March 2015) report, *Updated Gap Analysis for Rail in California* is not included in the RDEIR Appendices, yet the detailed report discusses emergency response capabilities throughout the state and specific problem locations with regard to response performance and the manpower, equipment and materials available for fighting fire and oil spill response, which is especially problematic along rural rail routes in California.
- The RDEIR’s discussion of rail-related impacts to Biological Resources does not account for the effect of prolonged drought on biota and creatures, many of which may be “on the move” in search for food supply and water – migrations that may increase owing to climate change effects.

## 5.2 EXAMPLES OF FURTHER FAILURES

5.2.1 **Regarding potential threats to the Benicia Industrial Park:** The RDEIR does not include a detailed map of the Benicia Industrial Park in its entirety. Such a map (or maps), as requested in previous comments on the DEIR, must precisely and *clearly* show and identify: UPRR mainline tracks that run through the marsh paralleling Goodyear Rd; locations of all business properties within the park; locations of all rail spurs in the park; location of rail switching operations on Refinery property and UPRR off-site switching locations; marsh and riparian areas including the length of Sulphur Springs Creek; designated flood zones and seismic faults.

5.2.2 If an emergency evacuation plan produced by the City of Benicia exists – a plan that would be implemented in the event of a massive Refinery fire related directly or indirectly to the rail Project, that plan should have been included in the RDEIR’s Appendix. If no such plan exists, a plan must be prepared and provided to the public. Valero’s and the City of Benicia’s fire departments may coordinate responses during an emergency, as cited by the RDEIR, but if an emergency evacuation plan is not widely known or made available to the public, an actual evacuation under the conditions of a “worst case” emergency owing to a Refinery-related operation such as the CBR Project could become chaotic. An official evacuation plan must be included as part of the Final Draft EIR for public review.

5.2.3 The RDEIR provides a new map, Figure 4.7-8 “Worst Case Facility Thermal Radiation Hazards” presenting a segmented close-up aerial view focused on the immediate area around the rail-offloading terminal proposed to be located on Refinery property just west of East Channel

Rd. The RDEIR does not describe the potential consequences within a ½ to 1 mile “blast zone” area. The alleged limited area of impacts diagrammed must be re-evaluated. The map shows “worst case” radiating circles that are meant to define the limits of the effects from radiating heat from a significant oil fire at the terminal, whether from spill (“pool fire”), pipeline or tank car rupture. Brief analysis of effects of possible ignition of escaping vapor cloud from offloading procedures is offered in Appendix F. The RDEIR claims that the likelihood of a larger BLEVE event is very low, and the damage or injury in the immediate area caused by a “worst case” fire at the rail unloading terminal would be “less” compared to a scenario where the same fire occurred in a residential area. This is a false comparison that minimizes the devastating immediate primary impacts and cumulative secondary impacts of such a disaster, especially one bordering the Refinery’s crude oil tank farm and other area businesses in the immediate vicinity out to a one mile radius of the Refinery, which would include a wider swath of the community including the Arsenal Village (artists’ work/live quarters) and the Port of Benicia. The RDEIR does not evaluate the toxic emissions released by such an incident that would potentially affect many residents and people living and working within a mile or more of the Refinery and would add to the already significant emissions coming from the Refinery’s processing block. “Down wind” cumulative consequences of a BLEVE event originating at the rail terminal are not identified or discussed in relation to survival of the industrial park and surrounding community. Additionally, the cumulative consequences of an accident which produces a ‘domino effect’ (e.g. an explosion exacerbated by ignition of nearby other flammable sources such as the pipelines, crude storage tanks, BLEVE event) is not examined and no analysis of commercial or residential property damage (Industrial Park, rail and bus infrastructure) nor loss of life (human and wildlife) nor urban blight is provided. Such a domino event would have consequences for Benicia long term and potentially impact the economic viability of the City for decades.

5.2.4 RDEIR [p. 2-113/2-114] does not identify the specific, local cultural and historical resources in Benicia within the Arsenal Historic District - boundaries that may lie within a ½ radius of UPRR rail spurs that would be used by Project trains. Those assets, which may be impacted indirectly by a major rail accident involving fire and explosion, are highly valued properties of the City and could suffer extensive irreparable (expensive to repair) damage: Benicia Historical Museum; Powder Magazines; Clock Tower; Commanding Officer’s Quarters, as well as other privately owned historical mansions and homes on Jefferson Street in National Register District C dating from the Civil War era. [see Arsenal Conservation Plan]. The RDEIR concludes impacts to Cultural Resources, both ‘uprail’ and in Benicia would be significant.

5.2.5 There is no discussion of potential impacts within the Port area: people living and working in the “Arsenal Village” (the artists’ work/live buildings along Tyler and Jackson Sts. located in close proximity to the Port of Benicia and Valero’s port) and how this area could be indirectly impacted (e.g. by acute exposure to highly toxic smoke billowing from a Bakken oil fire caused by ruptured CP-1232 tank cars from an accident or derailment which occurs during a

switching operation involving a Project train “backing up” toward the Benicia Bridge - a transferring from the UPRR mainline onto the rail spur entering the Industrial Park.)

5.2.6 The RDEIR gives only briefest attention to local impacts affecting the Benicia community and the Benicia Industrial Park under what are deemed “normal” or “routine” Project rail operations. The RDEIR does not provide criteria for qualifying what is meant by “normal” and “routine” operations. The Project Description presents idealized conditions for train scheduling: no malfunctions at the rail offloading racks, no human error, no delays). However, the RDEIR admits there can be no guarantee under Preemption that an “ideal” schedule would be adhered to by UPRR *on a daily basis*. Reliance on UPRR’s claim of “on time” performance for passenger trains cannot be fairly applied to performance levels for High-Hazard Flammable Unit Trains. Unit trains carrying these substances are subject to different regulatory policies for safe operations which take precedence over time tables associated with any schedules.<sup>24</sup>

5.2.7 The traffic study has not been re-evaluated. The study supports conclusions that traffic impacts would be “less than significant” at the industrial park’s crucial rail crossing intersection of Park Road. Conditions under which Project train arrivals and departures could prevent access to businesses along Bayshore Rd. for a prolonged period are not identified. The traffic study further minimizes and normalizes extended traffic delays at Park Rd that would be owing to Project trains entering or leaving the Refinery. Conclusions drawn from suspect data collected renders traffic impacts “less than significant” at Park Rd, by citing the poor “LOS” status of that key intersection. *Improvement* of LOS should be required, not used as an excuse for minimizing effects of train movements on traffic flow.

5.2.8 The RDEIR does not discuss the possible effects of idling trains. Idling occurs en route ‘uprail’ or during switching operations in the Benicia Industrial Park and/or within the Refinery itself during train arrivals and departures. Idling could effect “on time” scheduling, calculations of diesel locomotive emissions and fuel consumption, and could effectively increase the concentration of fugitive emissions from tank cars. Things go wrong. Unexpected train delays ‘uprail’ may have adverse domino effects on Project operations from UP’s Roseville Rail Yard to Benicia. Idling trains might have to be sidelined, with foreseeable consequences, including inconvenience to local businesses. Trains idling mean more unaccounted for PM 2.5 and GHG emissions.

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<sup>24</sup> UPRR may receive monetary and/or like incentives from Amtrak and other passenger rail entities for passenger trains’ priority over freight cargos to achieve on-time service. No such monetary incentive is discussed or contemplated under the RDEIR for similar incentives to be provided by Valero to UPRR. Therefore, the comparison of passenger train schedules to Valero’s crude oil deliveries is not applicable and any comparison of UPRR’s timeliness extended to crude oil freight is falsely applied.

5.2.9 The consequences to the Industrial Park in the case of a serious derailment that results in explosion and fire are not discussed with respect to economic damage, aka the short- and long-term viability of the park. CEQA allows that “urban blight” can be considered an indirect impact caused by significant damage or destruction of an area. However, since the RDEIR claims that the likelihood of an extreme Project-related disaster happening is low, the reasonably foreseeable indirect consequences of such an event on the viability of the park as the City of Benicia’s “economic engine” is an avoided topic. Whether the possibility of such an event is “low,” the topic of blight (commercial and residential property devaluation) should be analyzed as a long-term potential consequence of Project operations.

5.2.10 The RDEIR’s discussion of effects of noise on biological resources was not supported by scientific research. As RDEIR Table 4.7-1 “Rail Incidents - Initiating and Contributing Causes” points out, there can be numbers of reasons why rail operations and train movements are anything but “ideal” with regard to noise impacts’ effects on people and wildlife. The RDEIR does not provide description of the horrendously loud and abrupt noise produced by squealing rails when trains stop and start at slow speeds during switching operations, (especially during winter when hot train wheels travel on very cold rails) and/or during coupling and uncoupling tank cars during train assembly operations. The RDEIR assumes that everyone, including wild life, would adapt to what is purported to be a “modest” daily increase in noise disturbance, (dependent on wind speed and distance from tracks) whether occurring during the day or night time. However, no research is cited to support such speculation. Further, the RDEIR does not address noise of the Project on a cumulative basis. For example, the cumulative effects of the existing train noise from Martinez coupled with the train noise for the Project.

5.2.11 The RDEIR admits that other rail companies and mainline rail routes, other than those owned and maintained by UPRR, could be involved in carrying crude to UPRR’s Roseville Rail Yard. There is no analysis of that possibility or how a different rail company could affect the RDEIR’s referenced “normal Project operations.” The document does not identify those “other” RR companies that might manage Project-related trains from the Northwest, Midwest or North Dakota, headed for California and UPRR’s Roseville Rail Yard. The RDEIR fails to characterize the quality of trackage leading from crude sources into California. These omissions – and so many others like them related to rail safety – are inexcusable, given the variability of track maintenance, the poor condition of RR-owned bridges, “at grade” rail crossings, a 5-year US-DOT delay (lobbied for by RR companies) in implementing requirements for “positive train control,” and the lack of preparedness for extreme emergencies. Dismissal of BNSF as a viable rail carrier for the Project (now or in the future) also results in no examination of those alternate routes. If such an alternate route was examined and presented as a viable Project Alternative, the public would have the opportunity to understand if such an alternative might result in less significant impacts and risks for the Project (e.g., better trackage, less train miles, less exposure to environmentally sensitive areas or populated areas).

5.2.12 The RDEIR fails to discuss the State’s response to the risks posed by “High Hazard Flammable Trains” traveling rail routes into and within California. The “Updated Gap Analysis for Rail in California,” published in March, 2015, identifies the gaps for emergency preparedness for handling catastrophic rail accidents involving flammable liquids. The RDEIR only references the Report, but there is no indication that it was actually used to analyze and evaluate the potential severity of rail accidents in the absence of adequate emergency response.

5.2.13 Emergency Response capability is no substitute for preventive measures to avoid accidents. Explosive Bakken fires cannot be “put out,” regardless of the best intentions and expert training of fire/emergency response teams. Over the last three years, fifteen catastrophic rail accidents have occurred since the fatal disaster at Lac Megantic Quebec, when a Bakken-loaded train derailed and exploded, destroying the town center and environs – leaving 38 buildings destroyed, 47 people dead, 1.6 million gallons of crude oil spilled into the ground and Chaudière River. The derailment at Lynchburg, VA in April 2014, provides a case in point: a unit train traveling on tracks by the James River derailed causing CP-1232 tank cars to collide, puncture and rupture resulting in a massive spill and fiery explosion of Bakken oil with tank cars on fire falling into the river. The fire was reported to have taken four days to burn out and 1,000+ people were forced to evacuate the area.

- The RDEIR attempts to suggest that Union Pacific’s established emergency response protocols would be adequate to deal with any ‘uprail’ train accident—whether a catastrophic derailment involving explosion and fire in rural or urban environments, and/or crude oil spill in a city neighborhood, a river or marsh. Since 2013, disastrous accidents involving ruptured tank cars carrying Bakken oil have caused enormous fires that emergency responders have had to let burn out over many hours, even days, calling for evacuations. In Casselton, North Dakota, one mile from a catastrophic derailment and conflagration on Dec 30<sup>th</sup>, 2013, when ruptured tank cars full of Bakken oil ignited in fiery explosions, spilling 400,000 gallons of oil, plumes of toxic smoke could be seen for miles. The RDEIR does not discuss the environmental impacts of letting such fires burn out, nor identify the types and quantities of emissions that would potentially be released during such a catastrophic event that would affect people living within 1/2 to 1 mile from such a fire.

These catastrophic accidents are reminders that “worst case rail accidents *will continue to happen.*”

- The RDEIR re-considered the likelihood of the frequency of such disastrous events, but concluded the probability of an occurrence to be very low. For example: Table 4.7-6 [RDEIR p. 2-93] “Probability of Crude Oil Release from Project Trains” says that the rate of occurrence of a 30,000 gallon release of crude oil into the environment would be “One release every 38 to 80 years.” It only takes ONE TRAIN ACCIDENT to have disastrous

primary and secondary effects. Such accidents could happen any time, at the rail offloading racks on Valero property or ‘uprail’ all the way to the crude source.

- From the RDEIR’s statistical analysis of the “low” probability of such events occurring within 38 years, it cannot be concluded that a “worst case” rail accident couldn’t happen tomorrow involving much more than 30,000 gallons of oil spilled (the amount used in RDEIR probability calculations for major spill event.) A “worst case” event could not be represented by 30,000 gallons, when 1.6 million gallons of Bakken oil were reported in 2012 to have spilled and caught fire that resulted in the near total fatal destruction of the town center and environs of Lac Megantic, Quebec.

5.2.14 The National Transportation Safety Board (“NTSB”) released results of their year-long forensic investigation of the Lynchburg VA derailment. The NTSB investigation revealed the culprit to be broken trackage<sup>25</sup> – broken rails. The RDEIR does not mention the NTSB investigation nor its conclusion.

5.2.15 The RDEIR does not disclose the causes or provide the current status of the investigations and preliminary reports of the other 15 catastrophic rail derailments involving Bakken or tar sands that have occurred since the Lac Megantic disaster in 2012.

5.2.16 Human error is often the cause of accidents (e.g. Lac Megantic derailment). However the RDEIR provides no discussion of aspects of the Project that are most vulnerable to human error and consequences. For example, the crude off-loading procedures at the Refinery require significant human effort. This labor intensive operation lends itself to accidents and errors caused by human (non-machinery) errors. The operation involves a small crew of four (4) Refinery employees to safely hook up valve couplings according to stringent procedures outlined in Federal Railroad Administration’s Reference Manual, Pamphlet 34 – Recommended Methods for the Safe Loading and Unloading of Non-Pressure (General Service) and Pressure Tank Cars. The valves under the 50 tank car carriages must be connected to piping that moves the oil uphill to storage tanks. The RDEIR does not identify the valve safety check procedures as a requirement for the Project offloading operations. Leaks of fugitive emissions and actual crude spills from these transfer operations are foreseeable consequences of a dangerous and repetitious operation with men working full eight hour shifts. Additional statistics and information on the variables and risk of this operation are needed.

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<sup>25</sup> National Transportation Safety Board, “NTSB Accident ID DCA14FR008” public release date August 20, 2015, NTSB Docket Management System website, <http://dms.nts.gov/pubdms/search/hitlist.cfm?docketID=57646&CurrentPage=1&EndRow=15&StartRow=1&order=1&sort=0&TXTSEARCHT=>

5.2.17 In March 2015, US DOT released its newly minted rail safety regulations. The RDEIR's discussion of the new requirements avoids discussion of controversy surrounding the new regulation's perceived inadequacies. For example, most recently, railroad companies' lobbying efforts may delay implementation by five years of a new requirement for "positive train control." This information is essential for evaluating the risks and impacts of the Project.

5.2.18 The alleged safety of the CP-1232 tank cars pledged by Valero to be purchased and/or leased for the Project cannot be guaranteed safe. CP-1232s were proven vulnerable to puncture even when tank cars are moving at relatively slow speeds through urban areas, as occurred at Lynchburg VA. Improved tank cars, "DOT-117s" are not expected to be available for years. The RDEIR must characterize the risk inherent in Valero's commitment to use CP-1232s for the life of the Project.

5.2.19 The RDEIR's Table 4.7-3, "Local Safety Hazard Sites in California," lists all the mainline rail routes in California, the track lengths in miles and the number of derailments that have occurred on each route between the years 2009 and 2013. The 3 UPRR-owned northern routes that the RDEIR says Valero's High Hazard Flammable Trains would most likely take to get from the California border to UP's Roseville Rail Yard have had a total of 9 derailments from 2009 to 2013. The RDEIR admits that UPRR's "southern route" might also be used. That route from Nevada, through Bakersfield to Roseville, has had 10 derailments in the same period. There is no record mentioned about what happened on these four (4) UPRR routes in 2014 and 2015. Other accidents besides derailments may have occurred that have not been reported. The RDEIR does not say. This means the public is not adequately informed of the scope of potential risks that these rail routes pose, considering that an increased number of High Hazard Flammable Trains will be traveling on them.

5.2.20 UPRR's mainline routes into California are only generally and vaguely described by a few place names. Figure 1-3, Uprail Routes, [p. 1-4] offers a very faint topographical map showing UPRR mainline routes and other BNSF and UPRR routes. The map is schematic, without showing landscape features, special places, etc. Minimizing description and characterization of potential hazards and risks, the RDEIR fails to provide basic information that affects the public's ability to fairly assess claims regarding potential impacts and the severity of threat posed by High Hazard Flammable Trains passing through vast stretches of rural, scenic California and urban centers. One of the three UPRR mainline routes follows I-5 from the California border, past Shasta and Dunsmuir; the second threads through the Feather River Canyon, following State Route 70, and the third follows I-80, from Reno to Truckee then over Donner Pass to Auburn, thus following I-80 into Roseville. (The names "Donner Summit" or "Donner Pass," which are so well known as landmark sites, are not used in the document, but should be. Not doing so is a deceptive means of avoiding reminders of the precious and beloved alpine surroundings of Donner Lake, of the Donner Party historical site, the Truckee River and South Fork of the Yuba River. The RDEIR fails to show and identify particular landscape

features and urban and rural population centers the trains would pass through, nor describe the specific hazards – such as 100-yr old bridges, snow tunnels, sharp curves – along each route, where those hazards are located, and the severity of risk posed by those conditions. Left unidentified: local and regional sensitive ecologies along northern and southern rail routes including watersheds and waterways, forests, rivers, lakes, marshes, streams and creeks – all habitat for wildlife.. The map shows UPRR’s southern route into California through Bakersfield to Roseville, but provides no description of that route, no landscape features that would be put at risk or conditions, etc., that would possibly affect rail safety.

5.2.21 The RDEIR does not provide maps that would show environmental features and conditions existing along rail routes owned by UPRR or other rail companies that may be used to serve Valero Project-related trains, outside California, e.g. US and international mainline rail routes that run respectively from various Midwestern sources of fracked oil, and from Alberta, Canada’s tar sands – those that connect to UPRR rail routes in California. This topic is subject of much concern and controversy particularly concerning the high risk for fire and spills along treacherous rail routes into California.

5.2.22 Limited discussion of potential severity of hazards along all possible mainline rail routes into California: Table 4.7-9 lists 100 school sites located within ¼ of three UPRR mainline rail routes. However, no school sites are listed for the “southern route. There is no table listing either state parks or regional parks or historical resources along UPRR routes or along the southern route. NRDC and Forest Ethics have cited a 1/2 mile radial distance as being a danger “blast zone” requiring evacuation in the case of a foreseeable “worst case” explosion and fire of a “High Hazard Flammable Train” that could occur within ½ mile of residential neighborhoods, businesses, school sites, parks, recreation areas or cultural or historical assets. The direct and indirect consequences of such an event are not assessed, for example impacts to air quality in the immediate vicinity from toxic, drifting plumes of smoke from a devastating oil fire resulting from a Valero Project train accident or derailment.

5.2.23 The RDEIR only mentions the “southern route” from Nevada into Bakersfield as a possible route for Project trains, but does not characterize features of that route, nor the specifics about communities from Bakersfield to Roseville and whether they would possibly be considered “High Threat Urban Areas.” With a nod to the southern route, the RDEIR references the SLO County Revised DEIR on the Phillips 66 Rail Spur Extension Project but doesn’t include the pertinent text in the RDEIR Appendix.

5.2.24 RDEIR [page 2-113/114] fails to mention local cultural resources in Benicia within the Arsenal Historic District boundaries that are highly valued properties of the City, and could be damaged (Benicia Historical Museum; Powder Magazines; Clock Tower; Commandant’s Residence or Commanding Officer’s Quarters) Also, other historical mansions and homes on

Jefferson Street in National Register District C dating from the Civil War era. [Arsenal Conservation Plan].

5.2.25 Germane to evaluation of regional emergency preparedness is the “*Updated Gap Analysis for Rail in California*,” a report released by the state in March 2015. The RDEIR references but does not discuss the Gap Analysis findings regarding the risks posed by high “Hazard Hazard Flammable Trains” traveling mainline rail routes in California. The report is only referenced in the RDEIR<sup>26</sup> but should have been included in the RDEIR’s Appendices. The Gap Analysis report includes a map of all rail routes and evaluates the response times and capabilities of local, regional and state fire/rescue agencies. The RDEIR’s discussions that reference the Gap Analysis are not adequate, since the danger zones of four actual rail routes that are likely to be used are not described, nor are the particular hazards each route poses. On the contrary, the RDEIR seems to suggest that emergency response would be able to handle a major rail disaster involving High Hazard Flammable Trains in High Hazard areas, such as the City of Sacramento. The City of Davis, with the University of California campus is similarly threatened.

Quote From Gap Analysis, page 3:

“An existing gap that is of particular concern to this Analysis is the lack of qualified Haz-Mat Teams where trains travel through rural California. It is in these areas that the State must focus on enhancing its emergency hazardous materials response capabilities, including: response times, response equipment, responder training (both new and refresher), and the commitment of additional resources. Adding to this challenge, of the State’s approximately 56,000 firefighters, roughly 32%, or nearly 14,000 are volunteers, many of whom are based in these rural areas of the State. Equipping, training, and sustaining these resources are critical to a comprehensive hazardous materials response and recovery capability.”

Quote from Gap Analysis Report, Risk Assessment, page 4:

“High-hazard areas for derailments are primarily located in the mountains, with at least one such site along every rail route into and/or through California. Some high-hazard areas are also located in more urban areas, such as in the San Bernardino-Riverside and San Luis Obispo regions. Overall, these high-hazard areas represent only an estimated 2% of track, yet these areas are where 18% of the derailments have occurred. The high-hazard areas do not reflect the locations of other types of rail accidents (e.g., collisions). Therefore, while the highlighted areas are important, they are not the only sites where

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<sup>26</sup> Governor’s Office of Emergency Services, State of California, “Updated Gap Analysis for Rail in California”, March 13, 2015, Cal OES website, [http://www.caloes.ca.gov/FireRescueSite/Documents/Updated\\_Gap\\_Analysis\\_for\\_Rail\\_in\\_California-20150313](http://www.caloes.ca.gov/FireRescueSite/Documents/Updated_Gap_Analysis_for_Rail_in_California-20150313).

accidents may occur. In fact, 82% of derailments occurred in a wide range of other locations.”

After so many crude train derailments involving catastrophic explosive oil fires, it is well documented that such fires while fulminating cannot be suppressed by foam or other chemical agent. They are left to burn out over as many as three to four days, with black plumes of toxic smoke full of carbon PM2.5, VOCs, heavy metals and other contaminants, persisting, drifting and spreading across the immediate environs and over a region for as many days. The RDEIR does not discuss these consequences, and others that fly in the face of claims that such oil fires can be “managed”—a euphemistic dodge of bald facts that Valero’s and the City of Benicia’s fire departments can’t seem to publicly admit.

5.2.26 Example of unresolved and conflicting information involving “safe routing” of High Hazard Flammable Trains [HHFTs] (required under the new US-DOT rule of May 2015) and claims for GHG reductions, calculations of diesel fuel consumption and emissions for all rail routes potentially involved:

- Of the 3 UPRR mainline routes from the CA border to Roseville’s UP rail hub, the Donner Pass route is the shortest distance – approx. half the distance of the Shasta/Dunsmuir route from Oregon, or the Feather River Canyon route from Nevada.
- Trains taking the Donner Pass route would burn less diesel, emit less GHG and other toxic emissions.
- However, the new DOT rule on Safe Routing requires that the safest route be chosen based on a minimum of 27 criteria—criteria that the RDEIR does not fully disclose.
- The RDEIR states that the Donner Pass route only has 3.5% of Class 4 or 5 trackage, compared with 80% for Feather River route and 100% for Shasta/Dunsmuir route.
- The RDEIR reveals a conflict: to reduce GHG and limit diesel fuel consumption and emissions, trains would take the shortest route, which is Donner Pass. But the safest route can’t be the shortest, given the lack of Class 4 & 5 trackage on the Donner Summit route. The “trade off” situation posed is not evaluated.
- It has to be presumed that economic considerations would also be a factor in determining UPRR’s routing choice for HHFTs. There is no discussion of “railroad company economics” in relation to US DOT rail safety policy.
- Only general statements are made about the severity of potential risks. There is no discussion of the reasonably foreseeable *secondary* effects from spills, fires, etc. that could impact particular landscapes along the three UPRR mainline routes cited. (As previously mentioned, the southern route from Bakersfield up to Roseville is not characterized.)

5.2.27 Regarding claims for GHG reductions and estimates of diesel fuel saved and also ‘uprail’ risks: Further compromising or confounding any sense made in the analyses of ‘Uprail’ impacts,

an Important *qualifying* Statement is made in RDEIR [page 2-95] regarding Quantitative Risk Assessment Results: “As discussed in Revised DEIR Section 1, it is possible that Project-related crude could be transported to the Refinery by any of the North American freight’s railroad tracks shown in Figure 1-1. Therefore, the routes used by UPRR to transport crude from source locations to the California border cannot be determined with certainty. . .” Given the number of unknowns implicitly floated by this statement, increasing numbers of variables vis a vis the distances of RR miles possible to be traveled, the number of tank cars (e.g. whether a 100+ car unit train carrying crude or a manifest freight train with 20 crude-loaded tank cars) all calculations for locomotive GHG reductions and diesel fuel “savings” are speculative at best. Further, given the statement, the extent of potential risk to people and the environment, sensitive receptors, institutions, etc.is gravely underestimated and over generalized.

5.2.28 Responsible decision makers must be informed of the full scope of consequences to regional environments and the climate caused unconventional means of extracting domestic and Canadian oils: fracking shale in North Dakota, Texas and other Midwestern states, and strip-mining by the mega-industrial network of mining operations spread over 125,000 square miles of tar sands deposits. The “tar sands” underlie what had been pristine boreal forest—a forest now virtually gone, replaced with vast toxic waste ponds of highly contaminated slurry water from the water- and energy-intensive extraction of bitumen. The cumulative effects of these mining operations can no longer be termed “externalities” in evaluating impacts related to climate change and global warming. The RDEIR would have the reader believe in the apparent benefit of accessing domestic crude sources, as Valero claims, that would eliminate dependence on foreign oil. The unprecedented environmental disaster that arises from the rush to exploit North Dakota’s Bakken fields or Alberta Canada’s tar sands, is the impact on climate of the accelerating rise of Greenhouse Gases in the upper atmosphere from the combustion of fossil fuels. The decimation of boreal forest in Alberta represents a loss of carbon-sequestering potential. The RDEIR’s claims for GHG reductions do not factor the enormous energy consumption required to extract one barrel of either Bakken or tar sands, nor the enormous environmental destruction contributing to global warming effects. GHGs should be accounted from the crude source to crude processing. The RDEIR fails to characterize the continuing horrendously destructive environmental conditions that are encouraged and supported by the Valero Crude By Rail Project.

**End Section 5**

## **SECTION 6: THE LEAD AGENCY ERRED IN ITS INSTRUCTIONS REGARDING REVIEWERS' LIMITATIONS OF COMMENTS TO THE RDEIR.**

It is proper for the Lead Agency to request that reviewers limit the scope of their comments to the revised portion(s) of the RDEIR (Guidelines §§ 15088.5(f)(2)). However, in this instance, the Lead Agency's wording of such an instruction in the RDIER is flawed and may be reasonably interpreted by the public to be more restrictive than allowed or intended. The text at issue from the RDEIR<sup>27</sup> is as follows:

*Pursuant to CEQA Guidelines Section 15088.5(f)(2), anyone wishing to submit written comments on the Revised DEIR should limit those comments to the revised portions shown in Chapter 2 of this Revised DEIR. New text that has been added is shown as underlined text. Text that has been deleted is shown as ~~strikethrough~~ text.*

The first sentence is the instruction of limitation of comments to revised portions of the RDEIR only. The immediately following two sentences define the revised portions (the subject of the instruction) as the underlined/stricken text. It is reasonable to assume, therefore, that the instruction means that comments to the RDIER are restricted to the underlined/stricken text only.

To express in another manner:

If reviewers' comments are limited to the revised portions of the RDEIR, and  
If the revised portions of the RDEIR are underlined text and strikethrough text, then  
Reviewers' comments are limited to the underlined text and strikethrough text.

The unfortunate proximity of the sentences misleads the public into believing that they are prohibited from commenting on the changes (revised portions) as related to the totality of the whole. In fact, the revised portions must be analyzed in the context of the text in the entirety. To provide an instruction limiting the public's comments to the underlined/stricken portions of the RDEIR is in error.

**End Section 6**

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<sup>27</sup> RDEIR Section 1.2 entitled 'Recirculation and Public Comment', page 1-15.

## SECTION 7: REQUEST FOR INFORMATION AND QUESTIONS

### General

1. Statistics and other information are not included in the RDEIR (or, DEIR) regarding human error and/or other factors (e.g. mechanical failures) contributing to accidents or near accidents related to off-loading racks and their operations that have occurred at refineries or in other industries that utilize off-loading racks. Additionally, the RDEIR (and, DEIR) does not provide a specific, detailed description of the operations, the operational risks, and preventative/safety measures to be implemented by the Refinery to reduce such risks. Please provide the following for the off-loading racks:

- a) Detailed description of the operational components of the process inclusive of a the identification of critical 'points' in the process where risks are highest for mechanical or human failures,
- b) Identification and descriptions of operational risks in the process and the possible outcomes (results) of failures for each risk identified. For such results, please indicate the outcomes as they impact Refinery personnel and property as well as humans, wildlife and property outside Refinery property,
- c) Safety and other preventative measures and protocol to be implemented to reduce identified risks,
- d) Safety and other measures available to respond to any risks and their effects,
- e) Historical/statistical information on past mechanical, human or other factors that have resulted in or contributed to accidents and/or near accidents and the ensuing impacts and results of those events, and
- f) Minimum occupational experience, education and other criteria that will be required for individuals hired to work in the off-loading rack area by job description.

2. Please describe how the Refinery (or other applicable emergency responders) would respond to a fire ball explosion or BLEVE event (as applicable to the location) in the following places and explain the similar and different ways each location would be handled. For each location, please identify the primary responsible responding party.

- a) At the Refinery,
- b) On UPRR mainline within Benicia but outside the Refinery's perimeters,
- c) On UPRR trackage within populated areas of California,
- d) On UPRR trackage in rural areas,
- e) On UPRR trackage in environmentally sensitive areas, and
- f) For all events (a thru e above), please identify the party primarily liable for damages incurred.

3. For an area within a one (1) mile radius (foreseeable Blast Zone Radius) of the Refinery as well as UPRR trackage proposed for the delivery of crudes, please provide the following:

- a) A list of all public and private schools, and
- b) A list of all facilities housing or serving minors, such as: day care centers, dance/music/karate studios, etc.

4. Provide a comprehensive list of:
  - a) ALL businesses in the Benicia Industrial Park within a one (1) mile Blast Zone Radius of the UPRR mainline and the Benicia Valero Refinery, and
  - b) The population (number of people) in the Industrial Park on a normal, business day/night. Please include in this estimate the number of users of the Bus Hub as well as other non-employee persons (visitors/clients) for the period.
  
5. Considering the unpredictable timing of train delivery of the applicable tank cars coupled with the limitations on the number of tank cars that may be off-loaded in any period:
  - a) Where will UPRR side the surplus tank cars until they may be accommodated by the off-loading racks? Please be specific and provide maps.
  - b) What potential effects will the tank cars retained in these siding areas (inclusive of the additional time and movement to again move such sided cars to the off-loading rack area) have on the traffic patterns in the Industrial Park and/or any other area within Benicia?
  - c) What is the proximity of such sided tank cars to pipelines, storage tanks, and business? Please provide approximate distances.
  
6. The Benicia Industrial Park Bus Hub is slated to commence construction in January of 2016. With relationship to construction related to the Project and proposed UPRR tank car deliveries, please address the following:
  - a) Please describe any 'issues' such as delays, interference, traffic complications, etc. if the Bus Hub construction and Project construction and/or tank car deliveries overlap in timing,
  - b) Post construction, if the Project creates traffic delays, derailments or accidents in or around the Benicia Industrial Park which interferes with or blocks ingress/egress to the Bus Hub or Bus Hub routes, what alternate plans or routes are contemplated?
  - c) Is the Benicia Bus Hub within a one (1) mile radius (Blast Zone Radius) of the Refinery and/or UPRR trackage utilized for tank car deliveries?
  - d) What emergency plans are in place for the evacuation and general safety of the Benicia Bus Hub in the event of an accident or other impacts related to the Project?
  
7. Describe the concussive force of a BLEVE and worst case scenarios for such an event. In particular, please include a description of a BLEVE event's impact on other potentially flammable or hazardous sources such as above ground pipelines, tanks on Refinery property, rail tank cars in and around the perimeters of the BLEVE source (e.g. sided cars with crude or other flammable or hazardous contents) which may create a domino effect. Describe the ensuing potential damage to commercial and residential properties (inclusive of Industrial Park and Bus Hub infrastructures) public roads, bridges and highways.
  
8. Are there any imminent plans for installing domes on storage tanks to limit fugitive emission gases from storage tank lids? *If yes*, what is the timeline for installation, what is the number and type of tanks effected, what dependencies are in play that would need to be addressed prior to commencement of the domes' installation? *If no*, please explain?
  
9. Other than the installation of domes, what mitigations are available for fugitive fumes produced from storage tanks that provide equal or better emission's protection?

10. Provide a comparison and analysis of crude delivery by rail vs. barge transport. The analysis should address GHG emissions' differentials with mileage required for each port option, fugitive emissions, foreseeable environmental and biological impacts, and safety considerations for each method of delivery.

11. The RDEIR was deficit in providing maps and adequate descriptions of various areas of the Project and/or adjacent areas. Please provide the following to remedy and include in the Final DEIR:

- a) A map of the whole Industrial Park,
- b) A topographical map of the off-loading rack area,
- c) A detailed location map and description of the tank farm, off-loading rack and other refinery areas with distances accurately described between each area,

12. A list of all businesses (including work/live interests) within a one (1) mile radius of the off-loading rack and/or UPRR trackage in the Industrial Park. For business identified, have these businesses been individually notified (e.g. provided written notice) of their proximity to a potential blast zone radius and/or new hazardous exposures? If yes, how were they notified? In no, when and how will the City be notifying them?

### **Regarding local Air Quality impacts and Health Risks posed by the CBR Project + Refinery:**

13. Do Health Risk Assessments cover greenhouse gases, particulate matter or any of the pollutants that are not "Toxic Air Contaminants" (TACs)? What key pollutants are not covered by HRAs?

14. What are the risks reported for Bay Area refineries through HRAs? (We understand that the Air District has the data, but has not provided it.)

15. Have HRAs triggered any mitigations imposed by BAAQMD on the Valero Benicia Refinery?

16. If current risk levels were adjusted by a factor of 3 (as may be expected with updated BAAQMD guidelines) would any mitigation be triggered? Based on current information, is it unlikely that mitigation would be required even if the threshold was lowered from the current 100 per million cancer risk to 20 million?

17. If mitigation requirements are triggered, how long would Valero Refinery have to implement them, and could emission credits be used? Could mitigation take years to implement? If so how many, and could off-site improvements or the use of credits count as required mitigation's "implementation"?

18. Do HRAs cover PM2.5 emissions risks to the local community – risks that would be expected to increase, adding Project-related emissions impacts + Refinery processing emissions impacts?

19. Is there an updated risk threshold for lead that would account for the many serious health impacts known to occur at much lower blood lead levels? (Lead is one of the metals cited as a constituent of tar sands, although the RDEIR and DEIR do not identify the full chemical signatures of tar sands oils, nor characterize their health effects.)

20. How will incremental changes in crude slates owing to Project-imported unconventional crude oil (e.g. changing and likely increasing percentages of feedstocks such as tar sands or Bakken oil) affect emissions accounting and reporting from a public health standpoint?

21. Please provide a “multi-exposure pathway” risk assessment that would account for Project + Refinery incremental increases in chronic health risks of exposures to toxic air emissions + particulates associated to dust, (including petcoke dust), black carbon soot, etc., VOCs, TACs, and other Refinery processing emissions (PAHs, PM2.5), and accounting for indirect impacts, via contamination of locally grown food and Lake Herman backup water supply.

22. Please provide health data on Benicia residents’ hospitalizations for cancer and non-cancer illnesses (including asthma and other respiratory diseases, neurological conditions, etc.) over last decade since the Valero Improvement Project was permitted in 2002. To our knowledge, this data, available from Solano County Health Dept.—the data to be retrieved being identified by a single zip code for Benicia, has never been collated and delivered as a Community Health Study Report for the City of Benicia. This should be a requirement of the RDEIR, considering the intensification of risk posed to public health represented by the CBR Project + Refinery impacts.

### **Regarding concerns for rail safety:**

23. The RDEIR does not provide a CBR routing risk assessment pursuant to 40CFR Section 172.280 as directed by the new DOT final rule on High Hazard Flammable Trains. <https://www.law.cornell.edu/cfr/text/49/172.820>. Twenty-seven (27) criteria were cited in the RDEIR for determining “safest route,” but only one criterion was actually mentioned. Please provide routing risk assessment and list all 27 criteria that DOT’s new rule requires be used to determine “safest routes” for HHFTs.

24. Please provide characterization of all mainline rail routes that could be used within or beyond California by Valero crude trains. Please characterize class of track, maintenance, number of rail accidents occurring since 2012 along each mainline route listed.

25. What are the other railroad companies that UPRR may elect to contract to operate Valero trains? What is each company’s performance record vis a vis rail accidents, derailments, operation of crude unit trains, etc.? What policies or contracts govern such use of “other” RR companies that could serve the Valero CBR Project?

26. Please provide UPRR’s Hazardous Materials Emergency Response Plan.

27. There is no discussion in the RDEIR regarding security measures that may be required for permitting the CBR Project under federal law. Please identify those measures that would presumably reflect requirements or recommendations of Homeland Security, and generally characterize the immediate local vulnerabilities the CBR Project exposes to terrorism. If this information is considered confidential, please explain by what agency and law.

28. The RDEIR does not provide characterization of effects of “worst case” rail disasters involving crude oil that go beyond generalities. Please provide account of primary, secondary and indirect effects of massive oil fires, explosions, BLEVE events that are reasonably foreseeable if such events occur at the rail offloading terminal on-site of the Refinery, or in the vicinity along UPRR mainline tracks or side spurs within Benicia city limits.

29. Please provide findings from official investigations of causes of the 16 reported catastrophic rail accidents (derailments or other) that have involved spills, fires and explosions of Bakken oil or tar sands that have occurred since 2012, inclusive of Lac Megantic disaster.

30. Please provide analysis and evaluation of DOT's new rail safety Rule – what it requires now and in the future. Please identify “gaps”: e.g., what the Rule does not do, what delays are expected for implementing new requirements, etc.

31. Regarding rail offloading procedures and operations at the proposed rail terminal on Refinery property: Please provide the Federal Railroad Administration's reference manual Pamphlet 34 – Recommended Methods for the Safe Loading and Unloading of Non-Pressure (General Service) and Pressure Tank Cars and describe in detail the safe practices the manual calls for with respect to the RDEIR's description of offloading procedures as related to control of valve pressure and valve checks that must occur before opening up flows of oil into pipes to be attached. Please provide information about any and all type failures during the procedure. Also, please account for any accidents that have occurred at existing CBR terminals in the US involving valve checks and other malfunctions that have been investigated with findings of human error and/or equipment malfunction. Provide account of the effects of such operational accidents and their extent: spills, fires, explosions, etc.

32. Please provide evidence that school districts whose school sites are listed in the RDEIR [Table 4.7-9] as being located with ¼ mile of UPRR mainline rail routes were notified of the proposed Valero CBR Project.

33. Please provide updated information regarding consideration of the impact zone of ½ - 1 mile for catastrophic rail accidents (such as Lynchburg VA derailment, fire and explosion, and requiring evacuation, as well as Casselton ND evacuation following rail collision, derailment and catastrophic fireball); include discussion of re-evaluations of school evacuation plans to increase the radius of impact zone out to 1 mile along UPRR mainline rail routes. Also please provide the names and locations of schools not listed in Table 4.7-9 that are sited within ¼ mile of the “southern” rail route from Bakersfield that could be used by Project trains.

34. What is the possibility that Bakken-loaded tank cars destined for the Valero Benicia Refinery could be part of a manifest freight train assembled that would travel to the Roseville Rail Yard? If this is an operational possibility, please provide information about possible risks associated to this transport scenario, whereby freight trains stop to pick up other products, etc. Would there be possibility that a manifest train that included LPG tank cars could also include Bakken-loaded tank cars into its assembly?

## **End Section 7**