



February 4, 2016

**Via Certified Mail and Email**

Amy Million, Principal Planner  
City of Benicia  
Community Development Department  
250 East L Street  
Benicia, California 94510

**Re: Valero Benicia Crude by Rail Project Final Environmental Impact Report**

Dear Ms. Million:

On behalf of its 22 city and 6 county member jurisdictions, the Sacramento Area Council of Governments (SACOG) submits the following comments on the Final Environmental Impact Report (FEIR) for the Valero Benicia Crude by Rail Project, which proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery.<sup>1</sup>

To date, SACOG has submitted two letters expressing concerns regarding this project. In August 2014, we submitted a comment letter in response to the original DEIR for the Project. As our Board of Directors made clear at that time, SACOG's interest is to ensure that all appropriate measures, based upon a full investigation of the risks, are taken to protect the safety of our residents and their communities, businesses, and property throughout the region. As a consequence, we expressed grave concern that the DEIR concluded that crude oil shipments by rail pose no "significant hazard" to our communities, and we urged the City of Benicia to revise the DEIR to fully inform decision makers and the public of the potential risks of the Project. We also urged the City to "address adequate mitigation measures to ensure the safety of our communities."

In August 2015, the DEIR was revised, conceding that rail shipments of crude oil through our region pose a substantial risk and that the shipments will result in crude oil spills, fires, and explosions. However, the Revised DEIR adopted not a single mitigation measure to address the very significant impacts of the Project.

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

Auburn  
Citrus Heights  
Colfax  
Davis  
El Dorado County  
Elk Grove  
Folsom  
Galt  
Isleton  
Lincoln  
Live Oak  
Loomis  
Marysville  
Placer County  
Placerville  
Rancho Cordova  
Rocklin  
Roseville  
Sacramento  
Sacramento County  
Sutter County  
West Sacramento  
Wheatland  
Winters  
Woodland  
Yolo County  
Yuba City  
Yuba County

In response to the Revised DEIR, in October 2015, we submitted a second comment letter citing the mandate in the California Environmental Quality Act (CEQA) to describe all mitigation measures that could, if implemented, minimize significant environmental effects. (CEQA Guidelines, §§15126(c), 15126.1(a).) We urged the City to adopt all feasible mitigation measures that will protect our communities before the catastrophic events forecast by the RDEIR occur. We noted that *nearly one quarter* of our region's population lives within one-half mile of the crude oil shipments.

As we noted in our letter, we appreciate that the City finally acknowledges the substantial risk to our region resulting from the crude oil shipments. However, the FEIR still fails to adopt a single mitigation measure to address the impacts of the Project and the FEIR fails to adequately respond to our letters.

CEQA requires a lead agency to review, evaluate, and prepare written responses to comments on environmental issues received on an EIR. (CEQA Guidelines, §15088.) The final EIR should describe the disposition of significant environmental issues raised by comments. When a lead agency disagrees with a comment, the response must address the comment in detail. The lead agency must provide a good-faith, reasoned analysis; conclusory statements without facts are not adequate. The FEIR fails to meet this standard. The following are just some of the inadequacies and misstatements in the Responses to our comment letters.

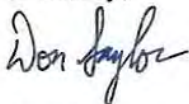
- The Responses inaccurately state that “many” of the recommendations in SACOG’s comment letters were included in U.S. Department of Transportation regulations issued in May 2015. The regulations address operational rules relating to speed, braking systems, and routing, and address safety improvements in tank car design standards, a sampling and classification program, and notification. However, the regulations do not address the majority of the recommendations in our comment letters.
- While the Responses assert that the DEIR and the Revised DEIR evaluated all feasible mitigation measures to reduce potential significant impacts to a less-than-significant level, there is no evidence in either document of such analysis or evaluation. Rather, the environmental documents, largely in reliance on the applicant’s and rail carrier’s assertions, simply conclude that any measures that would mitigate the significant impacts of crude oil shipments through our region would be preempted. Anticipating this assertion, SACOG submitted substantial analyses, including one by the Attorney General of the State of California, rebutting these assertions in the Revised DEIR and establishing the lead agency’s authority to impose appropriate measures under these circumstances. The FEIR provides no additional or new information, and essentially is a non-response to SACOG. The FEIR provides no substantial evidence to support the assertion that measures to mitigate these impacts are not feasible.



- The risk analysis in the Revised DEIR relies on national derailment rates correlated to track class, method of operation, and traffic density. As we have noted, however, the analysis does not consider the location of classes of track more prone to derailment, including their proximity to highly populated areas, schools, hospitals, dangerous facilities, or sensitive lands or habitat. The FEIR fails to provide any additional analysis and does not respond to this comment.
- SACOG commented in its first letter that the DEIR describes what purport to be elements of the Project intended to reduce, avoid, or mitigate the potential environmental impacts of the Project—e.g., a “commitment” to use CPC-1232 tank cars and follow Union Pacific Railroad’s “General Railroad Safety” measures—but fails to present them as mitigation measures in response to the identification of significant environmental effects. In response, the FEIR states that the City does not rely on the choice of tank cars or the implementation of any specific Union Pacific Railroad measures to reduce the significance of potential Project impacts below established thresholds. This response typifies a fundamental flaw in the FEIR: the City presumes that it can adopt no mitigation measures based on the broadest possible interpretation of federal preemption and thus it never analyzes or evaluates any of the multitude of potential measures and whether they are specifically preempted. The approach is flawed. It has failed to identify for the public all potential mitigation measures, how each measure could mitigate the significant impacts of the Project, and how each measure is, or is not, preempted. Moreover, by assuming the use of CPC-1232 tank cars and Union Pacific’s “General Railroad Safety” measures, the FEIR misrepresents the impacts of the Project and fails to secure appropriate mitigation monitoring under CEQA.
- The FEIR misleadingly suggests that the North Dakota Industrial Commission’s approval of Order No. 25417 responds to SACOG’s comment on the need for mitigation measures to stabilize crude oil products by stripping them of the most volatile elements, including flammable natural gas liquids, prior to transport. In fact, the North Dakota Industrial Commission Order only requires “conditioning,” a process to separate production fluids into gas and liquid, including temperature and pressure parameters, to make sure the light hydrocarbons are taken out before the oil is shipped. Stabilization is a more rigorous process that removes more of the dissolved explosive gases from the crude oil.

For the foregoing reasons, we urge the City to provide full and adequate responses to our comment letters but, more importantly, we urge the City to fully evaluate all measures to mitigate the significant environmental impacts that this Project will inevitably have on our communities and our residents.

Sincerely,



Don Saylor  
SACOG Immediate Past Chair