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Subject: Comments on Phillips 66 DEIR

Dear M. Wilson et al,

Thank you for the opportunity to comment on the Draft EIR on the Phillips 66 railspur project. My focus is primarily on the issues of hazardous materials transportation, and I have come to the conclusion that these issues have not been characterized to an extent adequate for this DEIR to proceed into final form; rather it must be recirculated. This is for two principal reasons:

1. Uncertainty over ability to mitigate for hazards of shipment; mitigations are intrinsic to a project, so a project on which the ability to mitigate is uncertain does not have a complete project description.

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2. Failure to examine hazards of transportation of oil outside our county's boundaries, and evident failure to notify other jurisdictions to be affected by the hazards from passage of approximately 250 loaded 80-car oil trains per year. The DEIR examines the rail crossings in San Luis Obispo County as if the trains were to magically materialize at the Monterey County line and had no tangible existence closer to their points of origin, which could be thousands of miles away.

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Relative to the first issue, at the meeting at Mesa Middle School on December 12th, 2013, the legal authority to mitigate for these safety impacts was an open and unsettled question. It is hard for me to imagine how a project with Phillips 66 as an applicant can be mitigated by Union Pacific or any other entity that is not a project applicant, but the issue of rail safety was nonetheless largely deferred to some future examination of the extent of Federal pre-emption of local regulation, and I have seen nothing in writing, certainly not as part of this DEIR, that would shed light on this inquiry that is allegedly taking place. (In addition, questions of my own were not answered, and I was told these things would be looked into. In the interest of insuring this happens, I ask them here: 1.

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Who would OWN the tank cars entering the site? If ownerships would be multiple, is there any idea or even speculation as to the proportions among Phillips 66, the railroads, or the oil companies involved with the shipping? 2. Would it be legally possible and otherwise feasible for Phillips 66 to disallow any tank cars to enter (and thus to be brought to) their property that did not meet the up-to-date standards for DOT-111 cars that went into effect on October 1st, 2011? Given that cars that meet these standards are currently in the minority, I would have my doubts that this would be economically feasible for a corporation seeking oil on the "spot market," nor do I know how this would be monitored and enforced, but I thought it worth asking in any event, due to the MAJOR risk presented by the substandard cars, as evidenced by the five catastrophic accidents in North America in the last six months (Quebec, Alabama, Alberta, North Dakota, and New Brunswick). The recent statement of concern by the National Transportation Safety Board is only the latest, and best publicized, expression of concern.

That said, even oil tanker cars up to current standards raise a certain level of concern, as those in the know would like to see the current (and largely unmet) standards further tightened, as will be documented below.

In any event, in my own legal research, I have not found a direct way that local governments can overcome federal pre-emption of railroad safety, but I do see that the State of California does exercise a role. This raises some questions in itself.

The California Public Utilities Code, Section 7665.6, reads: "Every rail operator shall, for all facilities that handle hazardous cargo, do all of the following: a. secure all facilities that handle or store hazardous materials by providing adequate security personnel, b. Store hazardous materials only in secure facilities designed for storage which shall not include which shall not include mainline, branch, industrial, or passing tracks not so designed or identified..." etc. Since "rail operator" in this context seems to include not only those who transport, but those who handle hazardous materials off the main line, would this project make Phillips 66 an "operator" under this section? If not, why not, and if so, at what point must they show compliance with this section?

CPUC Section 7673 requires these operators to "Annually submit to the Office of Emergency Services" a report that includes, for example, "b. Handling guidelines for the surface transportation of hazardous materials." Is Phillips 66 required to do this, and if so, are they required to do it now in anticipation of future operations, at a time when the public can comment meaningfully?

CPUC Section 7711 requires the submission of a "Local Annual Railroad Safety Hazard Report" and the most recent, on the records of the California Public Utilities Commission, lists the most hazardous stretches of track in the state. I am not sure whether the 19 stretches of track are in priority order, but it is interesting that TOPPING THE LIST is our local coast line, from mileposts 235.0 to 249.0. That is the stretch roughly from Santa Margarita to San Luis Obispo. This listing would presumably be earned primarily by criterion 1: "The severity of grade and curve of the track." However, if the Phillips 66 project were approved, there would be a very considerable increase in hazardous oil shipments, further intensifying the applicability of criteria 4 and 5: "4. The types of commodities transported on or near the particular segment of railroad line; 5: The hazard posed by the release of the commodity into the environment."

That hazard is present both with non-explosive and explosive releases. Oil released in flowing liquid form is harmful enough; released in the form of an explosive fireball, it is an even greater disaster.

As I have delved into the nature and risk of these events, I have become increasingly concerned. I would ask that some of the documents I have reviewed by incorporated into any subsequent environmental document if this proposed project intends to proceed. Ideally, they would be printed within the document, but at the very least they should be incorporated by reference. I will begin with a relatively short and non-wordy one: a power point presentation prepared by Paul L. Stancil for the National Transportation Safety Board Office of Railroad,

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Pipeline, and Hazardous Materials Safety. The title is "DOT-111 Tank Car Design." A few random quotes: "DOT-111 housings not effective in preventing impact damage." It mentions the new standards such as increasing increasing the head and shell thickness, the use of "normalized steel" (whatever that is), the use of a 1/2 inch thick head shield, better top fitting protections. Of the 92,000 oil tanker cars now carrying explosive liquids, only 14,000 meet these current standards. Thus, the luck of the draw will probably imperil our region and other regions enroute. Intensifying the risk is the project description that specifies that the oil would be delivered in 80-car unit trains. From Mr. Stancil's presentation: "Hazmat Unit Train Shipments: Certain hazardous materials are transported by unit trains. Virtual pipeline. Risks are greater because of high concentrations of hazardous materials." The presentation goes on to discuss impediments to retrofitting or phaseout of the (majority) substandard DOT-111 tank cars. It also points out that safety benefits of the current standards are not realized if trains mix compliant and substandard cars. It hints that even with the newer standards, there are still design inadequacies.

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These concerns are further delineated in a meatier and truly alarming document: (I apologize for the assault of capital letters, but they seem to be intrinsic to the document, for whatever reason.) "BEFORE THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION: DOCKET NO. PHMSA-2012-0082: HAZARDOUS MATERIALS RAIL PETITION AND RECOMMENDATIONS TO IMPOROVE THE SAFETY OF RAILROAD TANK CAR TRANSPORTATION: COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS AND THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION." I ask that this petition be incorporated, at least by reference, in any further document relevant to the environmental review of this project. It is noteworthy here that the petitioners are not regulators, the but industry being regulated, asking the regulators to crack down on them!! Their level of concern is that great. This source goes into greater detail about the concerns outlined in the power point above, and in addition explicitly asks that standards be INCREASED well beyond the largely unmet standards now in effect. Thicker, more puncture-resistant shells, thicker head shields, added protection for top fittings, better release prevention for bottom outlets, etc.

My research into the cars used to transport the product Phillips 66 is intending to import show a state of ferment in the industry. And EIR that fails to codify standards that are still in flux imperils the public, not just in our county, but in many jurisdictions across the state and nation, perhaps even in neighboring Canada. The risks and impacts to not stop at the county line. How do citizens of Salinas, Pajaro, San Jose, Sacramento, Reno, Salt Lake City, and many other unnamed population centers know about this project that would increase the number of hazardous shipments through their jurisdictions? What voice, if any, are they able to exercise? What mitigations, if any, are they able to impose?

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Meanwhile, in our own county, the county that makes the decision over the fate of this project, the UP tracks travel through the heart of multiple communities; such places as Santa Margarita and Paso Robles cluster their downtowns along the tracks; others have dense development alongside them, such as San Luis Obispo. The steep and sinuous tracks over the Cuesta Grade are of documented concern; in addition to the conspicuous placement in the PUC report, this stretch has some

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special proclivities. The late Harold Miozzi, in commenting on the proposal to widen Highway 101 to the present 6 lanes over the Cuesta Grade, pointed out his own lifetime observation of the unstable material through which both the highway and railroad pass, noting that he had personally observed the accumulation of up to 24 feet of ballast placed under the tracks over the years as the hillside slides out from under them.

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This DEIR must not proceed to a Final document until the extent of offsite mitigation can be determined and codified (relative both to federal pre-emption and to the ability of the applicant's project to impose mitigations on non-applicants such as railroads), and until all jurisdictions affected by the long-distance hazardous shipments caused by this project can be notified and given the opportunity to express their concerns and have a meaningful impact on decisions to be made in our county that will affect their safety!

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Many thanks,  
Eric Greening