Sacramento Area Council of Governments

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November 24, 2014

Murry Wilson
San Luis Obispo County
Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

Re: Phillips 66 Crude by Rail Project Draft Environment Impact Report

Dear Mr. Wilson:

On behalf of its 22 city and 6 county member jurisdictions, the Sacramento Area Council of Governments (SACOG) submits the following comments on the Draft Environmental Impact Report (DEIR) for the Phillips 66 Crude by Rail Project.[1] The Project, as described in the DEIR, proposes daily shipments of up to 52,000 barrels of crude oil per unit train to the Phillips 66 Santa Maria Refinery. The crude oil tank cars would originate at unidentified sites in North America, would be shipped to either the Union Pacific Railroad (UP) Roseville Rail Yard or the UP Colton Rail Yard, and would be assembled there into daily 80-car trains to Santa Maria. SACOG-01

Over the last several months, we have been meeting with our members to discuss this Project, to become informed about the risks associated with unstabilized crude oil transportation by rail, and to discuss measures to avoid or minimize the serious risks associated with operating crude oil trains through the communities in our region. We have discussed our concerns with representatives from Union Pacific Railroad and Phillips 66. As our Board of Directors has made clear, 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, and businesses and property throughout the region. In that regard, our Board has indicated that, at a minimum, the measures to protect our region should include the following: SACOG-02

- Advance notification to county and city emergency operations offices of all unstabilized crude oil shipments (to facilitate more rapid and appropriate public safety responses);

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

[1] 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 DEIR's compliance with the California Environmental Quality Act or of the concerns of all of its members, some of whom may also provide separate comments.

- Limitations on storage of crude oil tank cars in urbanized areas (of any size), and appropriate security for all shipments;
- Support, including full cost funding, for training and outfitting emergency response crews;
- Utilization of freight cars, with electronically controlled pneumatic brakes, rollover protection, and other features, that mitigate to extent feasible the risks associated with crude oil shipments;
- Funding for rail safety projects (e.g., replacement/upgrade of existing tracks, grade separations, Positive Train Control, etc.);
- Utilization of best available inspection equipment and protocols;
- Implementation of positive train controls to prioritize areas with crude oil shipments; and
- Prohibition on shipments of unstabilized crude oil that has not been stripped of the most volatile elements, including flammable natural gas liquids.

These measures are necessary because, as the United States Department of Transportation has concluded, crude oil shipments by rail pose an "*imminent hazard*," stating:

SACOG-02 cont

> "Upon information derived from recent railroad accidents and subsequent DOT investigations, the Secretary of Transportation (Secretary) has found that an unsafe condition or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. Specifically, a pattern of releases and fires involving petroleum crude oil shipments originating from the Bakken and being transported by rail constitute an imminent hazard under 49 U.S.C. 5121(d)."
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> ...
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> "An imminent hazard, as defined by 49 U.S.C. 5102(5), constitutes the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk that death, illness, injury or endangerment."[2]

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[2] Emergency Restriction/Prohibition Order DOT-OST-2014-0067 (May 7, 2014) (http://www.dot.gov/briefing-room/emergency-order).

Indeed, the following major accidents have heightened concern about the risks involved in shipping crude by rail.

- **Lac Mégantic, Quebec**—On July 5, 2013, a train with 72 loaded tank cars of crude oil from North Dakota moving from Montreal, Quebec, to St. John, New Brunswick, stopped at Nantes, Quebec, at 11:00 pm. The operator and sole railroad employee aboard the train secured it and departed, leaving the train on shortline track with a descending grade of about 1.2%. At about 1:00 AM, it appears the train began rolling down the descending grade toward the town of Lac-Mégantic, about 30 miles from the U.S. border. Near the center of town, 63 tank cars derailed, resulting in multiple explosions and subsequent fires. There were 47 fatalities and extensive damage to the town. 2,000 people were evacuated. The initial determination was that the braking force applied to the train was insufficient to hold it on the 1.2% grade and that the crude oil released was more volatile than expected.

- **Gainford, Alberta**—On October 19, 2013, nine tank cars of propane and four tank cars of crude oil from Canada derailed as a Canadian National train was entering a siding at 22 miles per hour. About 100 residents were evacuated. Three of the propane cars burned, but the tank cars carrying oil were pushed away and did not burn. No one was injured or killed. The cause of the derailment is under investigation.

- **Aliceville, Alabama**—On November 8, 2013, a train hauling 90 cars of crude oil from North Dakota to a refinery near Mobile, Alabama, derailed on a section of track through a wetland near Aliceville, Alabama. Thirty tank cars derailed and some dozen burned. No one was injured or killed. The derailment occurred on a shortline railroad's track that had been inspected a few days earlier. The train was traveling under the speed limit for this track. The cause of the derailment is under investigation.

- **Casselton, North Dakota**—On December 30, 2013, an eastbound BNSF Railway train hauling 106 tank cars of crude oil struck a westbound train carrying grain that shortly before had derailed onto the eastbound track. Some 34 cars from both trains derailed, including 20 cars carrying crude, which exploded and burned for over 24 hours. About 1,400 residents of Casselton were evacuated but no injuries were reported. The cause of the derailments and subsequent fire is under investigation.

- **Plaster Rock, New Brunswick**—On January 7, 2014, 17 cars of a mixed train hauling crude oil, propane, and other goods derailed likely due to a sudden wheel or axle failure. Five tank cars carrying crude oil caught fire and exploded. The train reportedly was delivering crude from Manitoba and Alberta to the Irving Oil refinery in Saint John, New Brunswick. About 45 homes were evacuated but no injuries were reported.

- **Philadelphia, Pennsylvania**—On January 20, 2014, 7 cars of a 101-car CSX train, including 6 carrying crude oil, derailed on a bridge over the Schuylkill River. No injuries and no leakage

SACOG-03

were reported, but press photographs showed two cars, one a tanker, leaning over the river.

- **Vandergrift, Pennsylvania**—On February 13, 2014, 21 tank cars of a 120-car train derailed outside Pittsburgh. Nineteen of the derailed cars were carrying crude oil from western Canada, and four of them released product. There was no fire or injuries.

- **Lynchburg, Virginia**—On April 30, 2014, 15 cars in a crude oil train traveling at low speed derailed in the downtown area of this city. Three cars caught fire, and some cars derailed into a river along the tracks. The immediate area surrounding the derailment was evacuated. No injuries were reported.[3]

SACOG-03 cont

We appreciate that rather than dismissing the real and substantial risks associated with projects of this nature, as has occurred elsewhere in California, the DEIR contains a risk assessment of sorts for the transportation of crude oil by rail to the Project site. Because that assessment concludes that there is a significant impact that must be mitigated, we will not address it in detail. However, we believe that the DEIR is deficient in two respects: the failure to address all potential mitigation measures; and the conclusion that the mitigation measures "may" be preempted by the Interstate Commerce Commission Termination Act (ICCTA) and, therefore, that the impacts are significant and unavoidable.

SACOG-04

Mitigation Measures

The DEIR addresses many of the potential mitigation measures of concern to our Board. (See Mitigation Measures HM.2 and PS.4.) However, it does not, and should, address the following:

- The need to provide *advance* notification to county and city emergency operations offices of all unstabilized crude oil shipments;

- Limitations on storage of crude oil tank cars in urbanized areas (of any size), and appropriate security for all shipments;

- Full cost funding for training and outfitting emergency response crews that includes the cost of backfilling personnel while in training;

SACOG-05

[3] Congressional Research Service, U.S. Rail Transportation of Crude Oil: Background and Issues for Congress (May 5, 2014). In March and April 2013, there were also two derailments of Canadian Pacific trains, one in western Minnesota and the other in Ontario, Canada; less than a tank car of oil leaked in each derailment and neither incident caused a fire. While operators may have implemented safety precautions to address the operational deficiencies exposed over the last few years, these incidents also demonstrate the unpredictability of what can happen by transporting such volatile materials by rail. Addressing safety concerns on such an ad hoc basis will not reduce the overall risks.

- An analysis of the potential rail alignments to be used for identification of rail safety projects (e.g., replacement/upgrade of existing tracks, grade separations, Positive Train Control, etc.);
- Utilization of best available inspection equipment and protocols;
- Implementation of positive train controls to prioritize areas with crude oil shipments; and
- Prohibition on shipments of unstabilized crude oil that has not been stripped of the most volatile elements, including flammable natural gas liquids.

SACOG-05 cont

These measures are of the same class and character as the measures already included in the DEIR and they should be included.

Preemption

The DEIR incorrectly assumes that because the Mitigation Measures identified to address the public safety and hazardous materials impacts of the Project "may" be preempted, the impacts are significant and unavoidable.

Local agencies are not preempted from imposing mitigation measures on crude by rail projects to protect public health and safety as long as those measures (1) do not unreasonably interfere with interstate commerce, (2) are generally applicable, and (3) are not unduly burdensome to the rail carrier. (See *Assn. of American Railroads v. SCAQMD* (9th Cir. 2010) 622 F.3d 1094, 1097-98; *Green Mtn. Railroad Corp. v. Vermont* (2d Cir. 2005) 404 F.3d 638, 643.) The Surface Transportation Board, too, has explicitly recognized that "state and local regulation is permissible where it does not interfere with interstate rail operations, and localities retain certain police powers to protect health and safety." (*Maumee & Western Railroad Corp. and RMW Ventures LLC—Petition for Declaratory Order* (STB Finance Docket No. 34354, served March 2, 2004).)

SACOG-06

Measures requiring the use of safer railcars, requiring the full funding of training and equipping first responders, advance notification of shipments and real-time information, funding for rail infrastructure projects, and restricting the manner in which crude is treated before it is loaded onto railcars, would mitigate impacts to public health and safety to communities along the impacted rail lines and would not be preempted. These measures are not the land use controls or environmental regulations generally preempted by the ICCTA. (See *City of Auburn v. Surface Transportation Board* (9th Cir. 1998) 154 F.3d 1025, 1031 [local jurisdiction could not impose permitting requirements on railroad project].) These measures also do not attempt to alter or restrict access to railways, do not impede construction or operation of the railroad (see *Joint Petition for Decl. Order—Boston and Maine Corp. and Town of Ayer, MA* (STB Finance Docket No. 33971, served May 1, 2001)), and would not result in unreasonable delay or burden to the carrier (see *Fayus Enters. v. BNSF* (D.C. Cir. 2010) 602 F.3d 444, 451). Thus, these measures are not of a type that is generally preempted.

Instead, these measures—valid exercises of a local agency's police powers—are directed at the shipper, not the rail carrier. As such, they are outside the reach of ICCTA. ICCTA gives the federal STB exclusive jurisdiction over "transportation by rail carriers." (49 U.S.C. § 10501(b)(1).) For example, therefore, rail operations conducted by entities other than rail carriers are not preempted. (See, e.g., *Town of Milford, MA—Petition for Declaratory Order* (Aug. 11, 2004) S.T.B. 34444 [2004 WL 1802301]; *Hi Tech Trans, LLC-- Petition for Declaratory Order* (Aug. 14, 2003) S.T.B. 34192 [2003 WL 21952136].) Because the proposed mitigation measures in the DEIR, and proposed herein, are directed to matters within the control of Phillips 66 and not the rail carrier, they are not preempted. SACOG-06 cont

Conclusion

We urge the County of San Luis Obispo to revise the DEIR for this Project so that it will fully inform the public and the Board of Supervisors of the full impacts of this Project and analyze all available mitigation to reduce those impacts to a less than significant level.

We appreciate your consideration and would be happy to answer any questions you may have about our comments. SACOG-07

Sincerely,

Steve Cohn
SACOG Board Chair

SACOG-01	This comment introduces the topic of subsequent comments and therefore does not identify a specific environmental analysis or CEQA issue relative to the EIR and compliance with CEQA. See responses below to specific items raised in the comment letter.
SACOG-02	See Response to SACOG-04 and SACOG-05.
SACOG-03	This comment does not identify a specific environmental analysis or CEQA issue relative to the EIR and compliance with CEQA. The commenter's concerns about the safety and environmental impacts of the project are included in the FEIR for the decision-makers' consideration as part of the County's deliberations on the proposed project.
SACOG-04 and SACOG-05	The RDEIR contains a detailed risk assessment in the form of a Quantitative Risk Assessment (QRA) that was developed following the recommendations of the Center for Chemical Process Safety and the Health and Safety Executive of the United Kingdom. With regard to preemption, the RDEIR found that the risk of a train accident was significant and unavoidable (Class I) with or without preemption. The RDEIR states that even with the implementation of mitigation measures, the hazards associated with the Rail Spur Project risk along the UPRR right-of-way would still be potentially *significant (Class I)* in the event of a release of crude oil that resulted in a fire or explosion. Mitigation measure PS-4a (see Section 4.11, Public Services and Utilities) has been modified to require advanced notification of emergency response agencies along the mainline rail routes that could be used for crude oil shipments. Typically unit trains with crude oil do not store cars along the mainline tracks unless there is an emergency. The trains move directly from the shipping location to the unloading location without disconnecting tank cars from the train for storage. A mitigation measure to prevent storage of tank cars from being stored in urbanized areas would be unenforceable by San Luis Obispo County since the County would have no way of verifying when cars were stored in urbanized areas or for how long and would potentially be preempted by federal law. Therefore, this mitigation measure would be considered infeasible, and has not been added to the FEIR. Mitigation measures PS-4c and PS-4d (see Section 4.11, Public Services and Utilities) address the issue of training for emergency responders. They address the need for certified offsite training for emergency responders to railcar emergencies, such as the 40 hour course offered by Security and Emergency Response Training Center Railroad Incident Coordination and Safety (RICS) meeting Department of Homeland security, NIIMS, OSHA 29CFR 1910.120 compliance, and annual emergency responses scenario/field based training including Emergency Operations Center Training activations with local emergency response agencies along the mainline rail routes. No further changes to these mitigation measures have been made based upon the comment.

	As discussed in Impact HM.2 (see Section 4.7, Hazards and Hazardous Materials) UPRR has a track inspection program for their rail lines in California that exceed the current Federal requirements. The UPRR inspection program includes the following: Tracks in California are visually inspected twice a week with “hi-rail" pickup trucks to identify any broken rails or issues with track surface condition. Special inspections are performed during and after storm events and earthquakes. UPRR conducted track geometry tests of their mainline tracks at least twice per year. These tests provide information on the condition of the track, track alignment, curve wear, clearance in tunnels and bridges, track profile, etc. These inspections also include collecting video of the track, which can be used to further assess track conditions. UPRR also tests their main line rails in California every three to six months using a rail detector system, which uses ultrasonic sound waves to search the tracks for any internal issues. This is a key technology that helps to prevent broken rail derailments. UPRR also has a capital track maintenance project in California that covers the replacement and upgrading of track. In the last five years UPRR has replaced over two million railroad ties and 452 miles of rail line in California (UPRR, 2014b). UPRR also has a bridge inspection program that complies with 49 CFR Part 237-Bridge Safety Standards. This program is used to ensure the structural integrity of bridges, culverts, and tunnels. All bridges are inspected between one and three times per year. In the last five years, UPRR has upgraded 70 bridges in California (UPRR, 2014b). As required by Federal law, UPRR has been installing Positive Train Control (PTC) on their main rail lines in California. The main line routes between Roseville/Colton and the SMR that would be used for the proposed project have been upgraded to include PTC. PTC is used to prevent train to train collisions, over-speed derailments, switch misalignment, and unauthorized entry into work zones (UPRR, 2014b). These programs were deemed to adequately address the issues of rail alignments and use of best available inspection equipment and protocols. Mitigation measure HM-2c (see Section 4.7, hazards and Hazardous Materials) requires that positive train control be in place for all mainline rail routes in California that could be used for transporting crude oil to the SMR, though it is unclear whether federal law would preempt the County from imposing this measure as disclosed in the RDEIR.

	Most crude oils contain some level of flammable natural gas liquids (NGLs). NGLs are typically composed of hydrocarbons from ethane (C2) to pentane (C5) The issue of unstabilized crude has been an issue for light crude such as Bakken. The FEIR has a mitigation measure that would limit crude delivered to the SMR to heavy crudes only. Bakken crude can contain about 23 % pentane and lighter natural gas liquids, were as the crudes evaluated in the RDEIR for use at the SMR would contain about eight to nine percent pentane and lighter natural gas liquids. The mitigation measure that eliminates the delivery of light crude to the SMR would serve to limit the amount of NGLs in the crude.
SACOG-06	The RDEIR identified a number of impacts that would be significant with or without preemption since even with the implementation of the identified mitigation measures the impacts would remain significant and unavoidable (Class I). It is unclear whether the County is preempted from imposing mitigation measures to reduce the potential for significant impacts along UPRR's mainline. The RDEIR takes a conservative approach to the evaluation of impacts by recognizing that Federal law may preempt the County from imposing conditions of approval that would mitigate these impacts, potentially resulting in unmitigated significant impacts. This satisfies the information disclosure requirements of CEQA and will allow the County decision makers to evaluate the full spectrum of potential environmental impacts as well as potential mitigation measures.
SACOG-07	The commenter expresses a general opinion that the RDEIR is inadequate. It does not address any concern or issue specifically related to the adequacy of the RDEIR or the proposed Project. With regard to the mitigation suggested in the letter see Response to SACOG-04 and SACOG-05.