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California coal terminal not a legitimate use of Utah millions, groups say

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Utah's proposed \$53 million investment in an Oakland, Calif., export terminal is a flagrant abuse of community-impact funds that not only violates federal and state law but will also subsidize private coal-mining corporations and out-of-state developers at the expense of Utah taxpayers and local governments.

That's according to two separate petitions submitted to Attorney General Sean Reyes, asking him to invalidate a loan to four coal-producing counties to invest in a bulk-freight-loading seaport under development at the former Oakland Army Base. The loan was authorized by the Utah Permanent Community Impact Board (CIB).

"It's taking taxpayer money that is supposed to be used for projects open to the public in Utah and sending it to a for-profit business in California," said Ted Zukowski, a lawyer for Earthjustice. "It is violating the purpose of this fund, which is to make life better for the people in counties where they are pulling a lot of fossil fuel out of the ground."

The CIB is funded by millions in federal royalties from mineral and energy development on Utah's public lands. Normally the board directs grants and loans to counties to build



Francisco Kjolseth | The Salt Lake Tribune
Coal is piled up at the Levan transfer facility along Interstate 15--south of Nephi. Utah Community Impact Board awarding a \$50 million loan to four coal-producing counties to build a deep-water port in Oakland, Calif. that would be a shipping point for Utah coal. We want to illustrate Utah's current coal industry chain and points that might have between 1 and 3 million tons of coal moving through them in the future.

and upgrade wastewater treatment, water systems, roads, public safety equipment, recreation centers and stormwater drainage.

But in recent years, it has branched into major projects whose primary purpose is to spur economic development by building infrastructure intended to promote more mineral and energy production, such as a proposed rail line and transmission line serving the Uinta Basin oil patch.

The most extreme example of this trend can be seen in the loan sought by Carbon, Emery, Sevier and Sanpete counties to purchase export capacity at the Oakland Global Trade and Logistics Center, a deep-water terminal under development at the foot of the Bay Bridge.

Local environmentalists, community activists and political leaders oppose the shipping of coal through their community. These opponents hold some leverage since the private developer behind the terminal is building on city-owned property.

The CIB approved the loan in April with virtually no public involvement and no formal application from the counties.

Email exchanges suggest the deal's proponents deliberately kept the public out of the loop and avoided mentioning coal in their April 2 presentation, even though coal is the primary export commodity the four counties produce. Proponents led by Jeff Holt, an investment banker and former CIB member who chairs the Utah Transportation Board, stressed that timing was critical and the money had to be committed promptly, lest the opportunity be lost.

Yet after seven months, the deal has yet to move forward while Reyes remains silent, citing attorney-client privilege.

"We cannot comment on this matter, but can confirm we are working with our client [the CIB] regarding their legal review of applications as they are submitted in final form," the office said in a prepared statement.

Under the leadership of Jan Graham in 1993, the attorney general's office issued a formal opinion that frowned upon CIB investing mineral royalties on projects geared "merely" toward economic development.

These funds are restricted to planning or construction of "public facilities" or projects that "provide a public service," according to a formal opinion co-written by Assistant Attorney General Thom Roberts.

Moab attorney Christina Sloan cited this opinion in her Oct. 22 letter to Reyes on behalf of Utah clients who believe CIB economic development loans are an illegitimate use of federal mineral royalties, amounting to a subsidy for private industry.

“The diversion of tens of millions of dollars to private major infrastructure, especially when such infrastructure is out of state, harms my clients by depriving them of essential public services that should otherwise be grant funded by the CIB and results in an increased tax burden on my clients (or their members) to pay for such services.” Sloan wrote. “My clients are further concerned that the CIB’s subsidization of private industry and resulting increased mineral development has harmed and threatens to harm natural resources in southeast Utah.”

She represents a handful of Utah citizens, a river-running business and the groups Living Rivers and Nine Mile Canyon Coalition.

On Monday, Earthjustice sent a second, equally forceful denunciation on behalf of a diverse consortium that includes national groups, led by the Sierra Club and the Center for Biological Diversity, along with Utah and Bay Area groups.

These letters argued that such a loan would be both illegal and a bad deal for Utah taxpayers, echoing recent criticism leveled by state Sen. Jim Dabakis, D-Salt Lake City. Dabakis warned that the deal would saddle four rural counties with a massive debt burden in a misguided effort to connect central Utah’s coal fields with overseas markets.

Critics blasted the secrecy and haste that went into the CIB’s decision, arguing that no due diligence or risk analysis was performed on a loan that no bank would approve.

“They didn’t get the application in until 3½ weeks after the loan was approved,” Zukowski said. “It looks like they are trying to pull a fast one. There was no advance warning, they sneak it though without saying anything about coal and their hair is on fire when it gets in the media.”

At the time the loan was first approved, CIB Chairman Gordon Walker, who has retired since, justified the unusual investment as a way to grow the pot of community-impact funds, which has taken a hit with the decline of oil prices.

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