

Coalition requests federal investigation of Utah funding for Oakland port

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A coalition of nine groups, including law firms and organizations throughout Utah and the West, has formally requested a federal investigation into Utah's allocation of \$53 million to buy throughput capacity at an Oakland, California, deep-water shipping terminal. In a June 20 letter, the coalition asked U.S. Attorney General Loretta Lynch, Office of Natural Resource Revenue Director Gregory Gould and Deputy Inspector General Mary Kendall to investigate possible legal and ethical violations behind the state's months-long effort to purchase throughput capacity — which would allow Utah to export bulk goods such as coal overseas. The coalition especially takes issue with Senate Bill 246, passed this spring by the Utah Legislature, which provides the means through which the \$53 million will be allocated and administered by the Utah Permanent Community Impact Fund Board (CIB).

In the letter, representatives from Moab-based Living Rivers and the Sloan Law Firm, joined Alliance for a Better Utah, the Center for Biological Diversity, Earthjustice, Grand Canyon Trust, HEAL Utah, the Institute for Energy Economics and Financial Analysis and the Sierra Club to argue that the federal Mineral Leasing Act “was not meant to subsidize private projects that promote yet more mineral leasing.”

By exchanging federal mineral lease payments for state money and establishing two new financial accounts, the coalition argues, SB 246 creates a questionable workaround that allows public money to fund an out-of-state, private export terminal.

“Senate Bill 246 was intended to circumvent the [Mineral Leasing Act's] funding restrictions, and will help facilitate a coal export project that poses risks to human health and the environment,” the coalition's letter stated. “In addition, the proponents of the Oakland terminal and SB 246 have engaged in activities that raise ethical concerns — particularly involving conflicts of interest — that undermine the integrity of the public process.”

In April 2015, the CIB committed \$53 million in federal mineral lease money to four counties to purchase throughput capacity at the Oakland port, setting off a firestorm of criticism by organizations and individuals who said that by making the loan, the board directly violated the federal Mineral Leasing Act.

Under the Mineral Leasing Act, mineral lease funds — royalties collected by the U.S. government for mineral extraction on federal lands and then passed on to the state — must be used for “planning,” “construction and maintenance of public facilities,” or the “provision of public services.” Further, under state law, the CIB must provide grants and loans to state agencies — cities, counties and county coalitions — which may be socially or economically impacted by mineral

development on federal lands.

In Oct. 2015, Moab-based attorney Christina Sloan, who is representing the nonprofit advocacy group Living Rivers in the June 20 request for federal investigation, criticized the CIB loan and asked the Utah Attorney General to issue a formal opinion on the matter.

Although Assistant Utah Attorney General Thom Roberts publically voiced concerns to the CIB regarding the legality of that loan, in Dec. 2015 the Utah Attorney General's Office told The Times-Independent that formal opinions are only given and published at the request of a state entity, like the Governor's office.

At that time, the Oakland deep-water export terminal project enjoyed full support from Utah Gov. Gary Herbert.

"Gov. Herbert supports the Utah Permanent Community Impact Fund Board project and believes it will bring meaningful economic development to rural Utah," Herbert's spokesman, Jon Cox, told The Times-Independent in December.

Coalition representatives said once it became clear the Utah Attorney General's Office would not issue an opinion, and that the Utah Legislature had found an alternative way to fund the project, it became necessary to involve the federal government.

"It's my understanding [the Utah AG's office] ha[s] a policy of not taking a position on these sorts of matters absent direction from the Governor's Office," said Aaron Paul, staff attorney for the Grand Canyon Trust. "It's not a surprise to me that we haven't heard from them. We have the impression that behind the scenes, the Utah AG told the CIB that they can't spend the money in the way they wanted ... In the last few days of the Legislative session, they found a way to get around what the AG's Office likely told them they couldn't do."

Under SB 246, which takes effect July 1, the CIB's \$53 million will be deposited into a new account under the state's general transportation fund — the "Impacted Communities Transportation Development Restricted Account" — earmarked for transportation projects and subject to Mineral Leasing Act regulations. Then, \$53 million in sales tax revenue from the state's general transportation fund will move into an account administered by the CIB called the "Throughput Infrastructure Fund," meant for large-scale infrastructure projects, including the Oakland port.

"We are simply trading federal money for state money," said bill sponsor Sen. Stuart Adams (R-Layton) during the March 7 legislative hearings. Adams explained that this process is necessary, "because federal money has strings attached to it that we're trying to alleviate."

The coalition argues the actions of the CIB, the Utah Legislature, and the Governor "are a matter of public controversy," noting that Bowie Industries — a coal company that they argue stands to benefit the most from the throughput capacity project — made campaign contributions to Gov. Herbert and other

legislators that voted SB 246 into law.

Their letter also questions the role of former Utah Transportation Commission chairman Jeffrey Holt, who served as the “Strategic Infrastructure Advisor” for the four counties in their CIB application in April 2015. The group argues that Holt stood to make \$3 million in “advisory fees” from the original CIB loan.

“The counties would use the additional \$3 million from the [Mineral Leasing Act] loan to pay ‘project expenses,’ including ‘strategic advisory fees,’” the letter states. “Mr. Holt was listed as the ‘Strategic Infrastructure Advisor’ to the Counties at the time.”

The coalition poses the question: “Did Mr. Holt or others have conflicts of interest in pressing the CIB and State of Utah to fund the Oakland terminal? Did the proponents of the Oakland terminal investment breach federal or state law? Does the legislation itself violate the law? These questions deserve to be answered through an outside, independent review of Utah’s investment in the Oakland terminal.”

Chris Eaton, associate attorney at Earthjustice, said the coalition will wait for a response from the U.S. Attorney’s Office and will follow up with meetings in the coming weeks.