

Utah considers future options after Oakland says no to coal

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The Times-Independent

07.28.16 - 10:00 am

Now that the Oakland City Council has voted unanimously to ban the handling and storage of coal at the city's terminals and bulk material facilities, Utah supporters of a throughput capacity project say they are in "wait and see" mode. Utah legislation that became effective July 1 established the funding mechanism to purchase the right to export goods such as coal overseas through an Oakland, California, deepwater export terminal. However, whether Oakland's vote has killed the Utah project remains unclear at this point.

Utah Permanent Community Impact Fund Board (CIB) member and Carbon County Commissioner Jae Potter told *The Times-Independent* that the project's original applicants — Carbon, Emery, Sanpete, and Sevier counties — are now waiting on the developer and the terminal operator to work out logistics in California.

"The project is fully permitted and now we have to wait for the developer and the operator to work with Oakland city," Potter said. "In the meantime, we'll just have to work on our side of it and keep mining coal."

Regardless, the CIB is moving forward with a preliminary "due diligence" checklist, in preparation for an applicant who might want to complete a throughput capacity project, he said.

The checklist contains three categories — "return on investment," "legal" and "timeline" — and asks several questions of the unknown applicant, including the project's proposed loan structure, financial viability and outstanding legal issues.

Throughout their July 7 discussion, CIB chairman Keith Heaton repeated that the due diligence checklist is "preliminary."

"This is just to put out to the public that these are things that we will be looking at when and if we receive such an application," Heaton said.

The CIB originally received an application for the Oakland throughput capacity project in April 2015 from the four rural counties. At that meeting, the board members suspended their normal rules and granted the applicants \$53 million in federal mineral lease money from a newly created "major infrastructure set-aside" account, created for large-scale infrastructure projects.

That move set off a firestorm of criticism from organizations and attorneys across the country, 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.

At the time, at least two CIB members questioned funding the project with mineral lease monies. Those two members — Uintah County Commissioner Mike McKee and Duchesne County Commissioner Ron Winterton — voted against the project.

“The mineral lease law itself says the priority of funding is for infrastructure, planning and community services, with priority of those funds going back to the area of impact,” McKee told The Times-Independent in September 2015. “[O]ne of the concerns that I had is I don’t think that Oakland, California, is really returning [funding] to the area of impact.”

But in SB 246 — which took effect July 1 — the Utah Legislature found a way to exchange that federal money, with its Mineral Leasing Act restrictions, for state money.

Under the new legislation, \$53 million in mineral lease money over the next two years 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, like the Oakland port.

According to Utah Housing and Community Development Division Director Jonathan Hardy, because of the legislation, the four counties’ original application will likely be withdrawn from the CIB’s major infrastructure set-aside account. New applicants interested in a throughput capacity project would apply to the CIB’s throughput infrastructure fund instead.

“It is expected that the same applicant or some variation of the applicant counties will submit an application for the same type of project to the throughput infrastructure fund,” Hardy said.

However, Potter noted that SB 246 does allow the throughput infrastructure fund to finance other projects and is not limited to the Oakland throughput capacity project. The account can also fund pipelines, electric transmission lines and freight rail, he said.

“There’s obviously lots of opportunities,” Potter said.

Although McKee initially voted against the throughput capacity project last year, he now says he feels more comfortable with the current means of funding through the SB 246 legislation.

“I think it made it cleaner,” McKee said. “At the end of the day, the net result is still the same. It’s a different way of doing it, but net result is the same. Sometimes it’s not what you do it's how you do it.”

But some are still questioning the “how” of that legislation. On June 20, a coalition of lawyers and nonprofit organizations requested that the U.S. Attorney General investigate Utah’s appropriation of money through SB 246, arguing that the legislation creates a questionable workaround that still allows public money to fund out-of-state projects.

“Even if they’re not funneling the money to be used for the [Oakland] coal terminal, they’ve talked about other ways to use the mineral lease money to prop up their coal industry,” said Chris Eaton, an attorney with Earthjustice. “The legislation listed projects other than the export terminal, [and] that said to us that they will use this kind of funding mechanism in the future.”

Potter confirmed to The Times-Independent that entities across the state are “absolutely” looking for other means to export Utah coal overseas.

“It’s the best coal in the world, and there’s always a demand for it,” Potter said. “It’s a great deal, why wouldn’t the State of Utah look to export coal?”

Almost all of Carbon County’s economy, Potter said, is related to mining and power generation. And once California leaves the Intermountain Power Project, which purchases coal-fired energy from Utah, Potter said rural Utah will be “devastated.”

“I think California is walking away from their social contract. In the 1980s, they came to the Utah Legislature to get the Intermountain Power Project together. They would build a plant and take our power,” Potter said. “They’re walking away from that in 2027 and it’s absolutely devastating to rural Utah.”

Potter said that without a means to export coal products, the future looks bleak for rural Utah.

“Ours is a county that has been mining coal for 100 years, 70 to 80 percent of our economic base in mining and power generation,” Potter said. “ ... You can imagine what that will do here.”