

June 12, 2019

VIA ELECTRONIC DELIVERY

Utah Permanent Community Impact Fund Board
1385 S. State Street
Salt Lake City, Utah 84115

Re: The Community Impact Board's Funding of the Uinta Basin Railway Project

Dear Board Members:

We are writing to object to the Utah Permanent Community Impact Fund Board's (CIB) proposed \$21.4 million grant to the Seven County Infrastructure Coalition (SCIC)—an intergovernmental entity comprised of Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah counties—to develop a railway for transporting crude oil from the Uinta Basin to eastern refineries, and to unlock crude oil production in the basin. This letter is submitted on behalf of Center for Biological Diversity, Living Rivers & Colorado Riverkeeper, Argyle Wilderness Preservation Alliance, Southern Utah Wilderness Alliance, Uplift, Oneway Boatworks, Green River Action Network, Grand Canyon Trust, Utah Tar Sands Resistance, Elders Rising, Western Wildlife Conservancy, No Coal in Oakland, Sierra Club and its Utah Chapter, Great Salt Lake Audubon, Healthy Environment Alliance of Utah, Utah Physicians for a Healthy Environment, Conserve Southwest Utah, Alliance for a Better Utah, Sevier Citizens for Clean Air and Water, Salt Lake DSA, and their members, who are deeply concerned about the misuse of CIB funds for the benefit of private parties at the expense of local communities that need these funds for schools, roads, social services, utilities, local planning, and other public services. We are also concerned about the environmental consequences of increased fossil fuel extraction and transport on public lands and in and around Utah communities, which are already severely burdened by industrial pollution.

On February 1, 2018 the SCIC applied for a \$27.9 million grant to fund the Uinta Basin Railway Project, including “pre-construction planning” for the project. Despite numerous unanswered questions regarding the legality and necessity of the funding at its November 8, 2018 meeting, the CIB approved the first funding phase, a \$6.5 million grant to fund engineering and other technical studies for the project. The CIB is scheduled to consider an additional \$21.4 million grant for “Phase II” of the project at its next meeting on June 13.¹ The SCIC's primary purpose in developing the railway is to increase crude oil production in the basin, and to drive up the price of Uinta crude. Currently, Uinta Basin crude is delivered to and processed mainly at Salt Lake City refineries. With those refineries currently operating at or near full capacity, purportedly a bottleneck in Uinta crude production exists. The SCIC has touted that a railway would remove this bottleneck by opening up access to eastern refineries, and approximately quadruple crude production in the basin, while also increasing the demand for Uinta Basin crude and its price.²

¹ CIB June 2019 Funding Meeting Agenda (June 13, 2019), <https://jobs.utah.gov/housing/community/cib/documents/061319cibagenda.pdf>.

² SCIC, Uinta Basin Rail Line Planning Addendum to Project Description (undated).

State and federal law, however, mandate that mineral lease funds allocated by the CIB must be used to alleviate the impacts of mineral development on Utah localities. The SCIC will use these funds to do exactly the opposite—to build a railway that will promote yet more mineral development, exacerbating the very impacts that the funding is supposed to alleviate. Further, the railway will primarily benefit private parties. In May 2019, the SCIC announced a public-private partnership with Drexel Hamilton Infrastructure Partners, LP—a company located in New York and Florida—which would develop, finance, and build the proposed Uinta Basin Railway.³ The company is also partnered with Texas-based Rio Grande Pacific Corporation to operate and maintain the railway.⁴ In the words of the Mineral Leasing Act, because the railway does not qualify as “planning,” “construction or maintenance of public facilities,” or “providing a public service,” it cannot be financed with mineral lease funds. Attorney General Opinion 92-0003 also concludes that the CIB cannot fund grants or loans “merely” for economic development.

In addition, the CIB and SCIC have failed to give the public an adequate opportunity to weigh in on the allocation of these funds. The CIB provided no meaningful notice to the public about the requested funding—its November 2018 agenda lacked any detail as to the full \$27.9 million funding request, and its June meeting agenda is similarly deficient.⁵ Further, CIB rules require all funding applicants to have “a vigorous public participation effort” to inform the public of the proposed financing, including potential tax implications.⁶ This process must include “at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request *prior to its submission to the Board.*”⁷ But to our knowledge none of the seven counties forming the SCIC held public hearings regarding the proposed grants prior to submission to the Board. Indeed, at the November 8, 2018 hearing, the CIB suspended its rules to allow approval of the \$6.5 million grant on an expedited basis. Nothing in the record supports a determination that “bona fide public safety or health emergencies or... other compelling reasons” justified the expedited “suspend and fund” process.⁸

Instead of benefiting local communities, these funds will be used to benefit private parties, which will come at the expense of local communities and the environment. Utah’s misuse of CIB funds for fossil fuel infrastructure to facilitate crude production will worsen the problems of fossil fuel extraction that the funds are intended to mitigate, while committing Utah and society to ever greater greenhouse gas emissions and climate disruption. Increased oil extraction and transport will pollute air and waterways, harming the health of local residents,

³ Senese, Kyra, Utah coalition selects Drexel Hamilton Infrastructure Partners to build Uinta Basin Railway, RT&S (May 15, 2019), available at <https://www.rtands.com/news/utah-coalition-selects-drexel-hamilton-infrastructure-partners-to-build-uinta-basin-railway/?fbclid=IwAR1ZzRBnldeVevH43vyqlSNbZfmKa9dLDrScfR1hXWMMK6v55aweQBzaCCKQ>

⁴ *Id.*

⁵ CIB November Funding Meeting Agenda (November 8, 2018), <https://jobs.utah.gov/housing/community/cib/documents/110818cibagenda.pdf>; CIB June 2019 Funding Meeting Agenda (June 13, 2019), <https://jobs.utah.gov/housing/community/cib/documents/061319cibagenda.pdf>.

⁶ Utah Admin. Code R990-8-3 (E) (“Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan”).

⁷ *Id.* (emphasis added).

⁸ Utah Admin. Code R990-8-4(F).

including our members in Utah and Colorado. Crude production enabled by the railway will despoil our public lands that provide refuges for wildlife and recreation. In light of the CIB decision's significant repercussions, we appreciate your careful consideration of the following analysis detailing the legal defects of the SCIC's funding request for the proposed railway.

I. CIB's Grant Violates the Mineral Leasing Act's Restrictions on the Use of Federal Leasing Monies

Funding a privately-operated railway with Utah's federal mineral leasing monies violates Congress's intent to alleviate the impacts of existing federal mineral development with those funds. The plain language of the Mineral Leasing Act, the Act's legislative history, and the Utah Attorney General's own interpretation of the Act all confirm that funding private economic development is a misuse of federal mineral leasing monies.

A. Mineral Leasing Act's Legislative History Supports Funding Only Public Projects.

The Mineral Leasing Act directs leaseholders of federal land to make royalty payments to the U.S. government for the development and production of minerals, including oil and gas.⁹ One-half of all royalty, bonuses, and mineral lease sales paid to the U.S. Treasury are returned to the state where the lease lands are located to be used:

by such State and its subdivision, as the legislature of the State may direct giving priority to those subdivisions of the State socially and economically impacted by the development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities and (iii) provision of public services.¹⁰

In short, while the state legislature may choose which localities or agencies receive royalty funds, the Act strictly limits the funds' use to planning, construction and maintenance of public facilities, and the provision of public services. While the terms "planning," "public facilities," and "public services" are not defined in the Mineral Leasing Act, they plainly do not encompass the Uinta Basin Railway project, which will be developed, financed, operated, and, used by private entities, and is intended to promote economic development for the benefit of private oil and gas operators.

Legislative history affirms that private, for-profit economic development projects are not among the intended uses of Mineral Leasing Act royalty funds. In 1975, to counter the threat of another Middle East oil embargo, Secretary of Interior Thomas Kleppe announced that the U.S. would encourage federal coal leasing.¹¹ To address the burdens on local communities that would result from increased coal mining, Senator Lee Metcalf introduced the Federal Coal Leasing

⁹ 30 U.S.C. §§ 181–195 (1988) (as amended).

¹⁰ 30 U.S.C § 191(a).

¹¹ FLOOR STATEMENTS ON S. 391 BY SENATOR METCALF [From the Congressional Record, June 21, 1976], Federal Coal Leasing Amendments Act of 1975, published in FEDERAL COAL LEASING POLICIES AND REGULATIONS, Prepared at the Request of Henry M. Jackson, Chairman COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES, JANUARY 1978, Publication No. 95-77, available at <https://archive.org/stream/coallesi00unit#page/n0/mode/2up>.

Amendments Act of 1975 (FCLAA).¹² The bill amended the Mineral Leasing Act to increase the royalties leaseholders must pay to the federal government, and to remove the restriction of funding to just schools and roads.¹³ The Amendments also increased the percentage of revenues transferred to the states.¹⁴

In his statements on FCLAA on the Senate Floor on June 21, 1976, Senator Metcalf noted:

Western States with Federal coal reserves stand in dire need of monetary assistance *for planning and creating public facilities and services* demanded by the thousands of workers who will be attracted to jobs in the coal mines and related processing and power generating plants We must avoid burdening the coal-producing regions with the social and environmental costs associated with coal development. By increasing the royalty rate to a minimum of 12.5 percent and by insuring that the States get a 50-percent cut of the revenues from leased minerals. S. 391 would help to spread the load.¹⁵

Clarifying what it meant by “public facilities” and “public services,” Congress pointed out examples throughout 1976 in the floor discussions¹⁶ and included: schools, roads, hospitals, sewers, law enforcement; search rescue and emergency; public health; sewage disposal; libraries; recreation and other general local government services.¹⁷ These examples are all traditional local governmental services.¹⁸ Notably absent in the list of examples are investments in projects intended to facilitate economic development and benefit private parties.

Further, this legislative history makes clear that “planning” does not encompass all forms of planning, such as “pre-construction” planning for an economic development project. In explaining the pressing need to expand the use of mineral leasing funds from just schools and roads to other public services, Senator Metcalf noted the need for “local planning” to accommodate the sudden population growth that was expected with increased mining:

¹² Federal Coal Leasing Amendments Act of 1975 (FCLAA), Pub L. 94-377 (S 391), 90 Stat. 1083 (August 4, 1976).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ FLOOR STATEMENTS ON S. 391 BY SENATOR METCALF [From the Congressional Record, June 21, 1976], at 114 (emphasis added), Federal Coal Leasing Amendments Act of 1975, published in FEDERAL COAL LEASING POLICIES AND REGULATIONS, Prepared at the Request of Henry M. Jackson, Chairman COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES, JANUARY 1978, Publication No. 95-77, available at <https://archive.org/stream/coalleasi00unit#page/n0/mode/2up>.

¹⁶ *See, e.g.*, H.R. Rep. No. 681, 94th Cong., 2d Sess. 19-20 (1976).

¹⁷ *Id.*; S. Rep. No. 1262, 94th Cong., 2d Sess. 9 (1976).

¹⁸ In addition, regulations governing the Energy Impacted Area Development Assistance Program, which assists areas impacted by coal and uranium development in acquiring sites for public facilities and public services, define “public facilities” and “public services” as follows:

q. Public facilities. Installations open to the public and used for the public welfare. This includes but is not limited to: hospitals, clinics, firehouses, parks, recreation areas, sewer plants, water plants, community centers, libraries, city or town halls, jailhouses, courthouses, and schoolhouses.

r. Public services. The provision to the public of services such as: health care, fire and police protection, recreation, etc.

7 C.F.R. § 1948.53.

Under section 35 of the Mineral Leasing act of 1920, as amended, moneys returned to the States from the leasing of coal and other leasable minerals are presently available only for schools and roads. This restriction is onerous because areas newly opened to large-scale coal mining face the need for a sharp increase in all local public services, such as hospitals and sewer systems, as well as schools and roads. *Advance local planning for community development* is another pressing deficiency.

The sudden jump in population growth, the emergency of new urban centers, and the possible ‘boom-bust’ economic cycle will cause many social and cultural changes.

...

S. 391, as amended by the House, would act to alleviate these problems by increasing from 37.5 to 50 percent the proportion of revenues going to the States from mineral leasing, and reducing from 52.5 to 40 percent the portion deposited in the reclamation fund. The additional 12.5 percent returned to the States would be available for use in planning, construction, and maintenance of public facilities, with priority to be given to those areas impacted by development of the coal resource.¹⁹

In their June 24, 1976 letter urging President Ford to sign S. 391, Senator Metcalf and Representative Patsy Mink echoed this intended purpose of federal mineral revenues:

The western coal-producing States must deal with the problems of population influx triggered by Federal coal development. For these States, new financial resources provided by S. 391 could spell the difference between a chaotic disintegration of traditional rural lifestyles, and the orderly transition to urban and semi-urban living patterns.²⁰

The legislative history shows that the intent of the Mineral Leasing Act and its subsequent amendments is to assist with the public facilities and services and local community planning needed in mining communities as result of increased demand for housing, local transportation, and public services, not to promote increased mining activities in these communities.

B. Utah Attorney General Opinion 92-003 Also Affirms that Mineral Royalties Must Be Used Only for Public Projects in Mine-Impacted Areas

In accord with the MLA’s legislative history, the Utah Attorney General (AG) concluded in 1992 that royalty payments and other revenues from federal leases are for the purpose of alleviating the burden that increased mineral extraction will have on local and rural communities.²¹ Pertinent to the instant railway project, Utah AG Opinion 92-003 Use of Mineral Lease Monies for Economic Development (Opinion 92-003) specifically addressed whether the

¹⁹ *Id.* at 111-12 (emphasis added).

²⁰ *Id.* at 122.

²¹ UT Atty. Gen. 92-003 (February 24, 1993), available at http://le.utah.gov/audit/08_13rpt.pdf, pp. 49-55.

CIB could make grants or loans for economic development projects.²² The AG concluded that it could not.²³

In reaching this conclusion, Opinion 92-003 examined four statutes passed in 1976 amending or clarifying the Mineral Leasing Act of 1920. First, FCLAA, as discussed above, in addition to increasing the amount of revenues from leased minerals and percentage transferred to the states, also expanded eligible uses for funds beyond the construction of public roads and support of public schools.²⁴ The House Report accompanying FCLAA noted:

The current restrictions on the manner in which monies return to the States from the sale of Federal leases within their borders [sic] are onerous. When an area is newly opened to large scale mining, local governmental entities must assume the responsibility of providing *public services* needed for new communities *including schools, roads, hospitals, sewers, police protection, and other public facilities as well as adequate local planning for the development of the community*. Since Section 35 of the Mineral Lease Act of 1920 ... currently provides the monies returned to the states available only for schools and roads, it is difficult for affected areas to meet the needs of their new inhabitants ...

The additional 12 ½ percent that will go to the states is not earmarked for schools and roads, and may be spent by the state for planning, public facilities and public services, giving priority to those communities impacted by the mineral development.²⁵

Congress rejected the U.S. Department of Interior's request that all restrictions on state use of the monies be deleted in their entirety, and as a result FCLAA earmarked 12 ½ percent of mineral lease revenues to planning, construction and maintenance of public facilities, and provision of public services.²⁶

Second, AG Opinion 92-003 examined the "operative" section returning mineral lease monies to the state, found in the Land and Water Conservation Fund Act of 1965 (LWCFA).²⁷ LWCFA amended the Mineral Leasing Act to allow the entire 50 percent of mineral lease monies to be returned to the state for the expanded uses.²⁸ While increasing the percentage returned, the LWCFA explicitly required that monies be used only for "planning, construction and maintenance of public facilities" and "provision of public services."²⁹

Third, AG Opinion 92-003 reviewed the Public Lands and Local Government Funds Act (PL & LGFA),³⁰ which provided local governments with federal funds proportionate to federal acreage within their boundaries, less the amount received under the Mineral Leasing Act and

²² *Id.*

²³ *Id.*

²⁴ See FCLAA, Pub. L. 94-377, 90 Stat. 1083, 1089, § 9(a) (1976).

²⁵ H.R. Rep. No. 681, 94th Cong., 2d Sess. 19-20 (1976) (emphasis added).

²⁶ See 90 Stat. at 1089, § 9(a).

²⁷ Pub. L. No. 94-422, 90 Stat. 1313, 1323 (1976).

²⁸ 90 Stat. at 1323, § 301 (amending Section 35 of the MLA to allow "all monies paid to any State... may be used...for planning, construction, and maintenance of public facilities, and provision of public services ...").

²⁹ *Id.*

³⁰ P.L. 94-565, 90 Stat. 2662 (1976).

other statutes.³¹ This funding scheme again points to a common purpose for these federal funds—offsetting the toll that federal-land activities exact on local government services:

[T]oo many of the revenue sharing provisions restrict the use of funds to only a few governmental services—most often the construction and maintenance of roads and schools. Yet, local governments are called upon to provide many other services to the federal lands or as a direct or indirect result of activities on the Federal lands. *These services include law enforcement; search rescue and emergency; public health; sewage disposal; library; hospital; recreation and other general local government services.*³²

Finally, AG Opinion 92-003 examined the legislative history of the Federal Land Policy and Management Act of 1976 (FLPMA).³³ The legislative report similarly affirmed the FCLAA’s intent to expand the use of mineral lease monies for the alleviation of the social and economic impacts of mineral development on local governments.³⁴

AG Opinion 92-003 concluded that the federal legislative history shows Congress’s intent to restrict mineral lease monies to projects benefitting local communities:

Congress recognized that local communities need the funds to assist them in building governmental infrastructure and *providing local government services* during the boom and bust cycles that accompany natural resources development. By *restricting* the use of the funds to planning, construction [sic] and maintenance of public facilities, and to the provision of public services, Congress provided a source of funding for *traditional local government services that are impacted*, such as law enforcement, public health, and governmental facilities.³⁵

As the Attorney General’s opinion correctly notes, had Congress adopted the Interior Department’s suggestion to remove all restrictions on use of the funds, then economic development would be an appropriate program to fund.³⁶ Congress chose instead to restrict the use of the funds to assist local communities in providing traditional local governmental services and facilities that may be impacted by resource development.³⁷ The Attorney General concluded that grants and loans “merely” for economic development are not authorized under the state and federal acts.³⁸

Here, the prior \$6.5 million funding and any additional grants for the Uinta Basin Railway project defies these authorities by directing money to prohibited uses. CIB funds will support building a railway that would be operated and maintained by a private entity, for the benefit of privately held oil and gas companies. While proponents may argue that a byproduct of the funds will be more royalties for the CIB to dole out, along with jobs and revenue for the

³¹ *Id.*

³² S. Rep. No. 1262, 94th Cong., 2d Sess. 9 (1976) (emphasis added).

³³ Pub. L. No. 94-579 317, 90 Stat. 2743, 2770-71 (1976); *see also* 30 U.S.C. § 191(a).

³⁴ *See* S. Rep. No. 1262, 94th Cong., 2d Sess. 9.

³⁵ UT Atty. Gen. 92-003 at 55.

³⁶ *Id.* at 54.

³⁷ *Id.*

³⁸ *Id.* at 55.

counties forming the SCIC, the core of the \$27.9 million in grants will benefit private businesses. This is expressly forbidden by the Mineral Leasing Act, as the AG concluded.

Further, this case is not unlike that of the Oakland Bulk Export Terminal, another economic development project that failed to meet the threshold criteria of constituting either planning, construction and maintenance of public facilities, or provision of public services to be eligible for CIB funds. In 2015, the CIB approved a \$53 million loan to several Utah counties for development of the Oakland Bulk Export Terminal in Oakland, California—intended to promote coal development and economic growth in the region—on condition that the AG declare the funding lawful. But, tellingly, the AG never provided its blessing. The project proponents were forced to seek funding through legislative means instead.³⁹

Accordingly, at the November 2018 hearing to approve the initial \$6.5 million grant for the railway project, the AG’s Office raised concerns about whether the railway is “an eligible public project under the Mineral Leasing Act and State law,” as it is “not necessarily consistent with the examples that exist in Utah Statute, or with past practices of this Board.”⁴⁰ The AG’s Office also raised concerns as to whether the project qualifies as planning “as defined by statute or by CIB’s general practices,” noting “items like engineering and design; right of way planning; grant procurement; legal services; [and] administrative services...are not generally things this Board funds as part of a planning application.”⁴¹ The AG also emphasized the grant should “be used for the Mineral Leasing Act’s intended purpose, which is to alleviate impacts and burdens to communities from mineral development.”⁴²

None of the CIB grants will be used for this purpose. None of it will be used to construct public facilities or provide public services or community development planning for the residents of the Uinta Basin. Instead of alleviating the burdens of mineral development on residents in the most impacted communities, these funds will be used to create *new* burdens that come with increased oil production. It would be the complete antithesis of Congress’s intent, and inconsistent with the Utah Attorney General’s prior determination, to provide these funds to the Uinta Basin Railway project.

II. Utah’s Community Impact Alleviation Statute Similarly Forbids Financing of Private Development with CIB Funds.

CIB’s grant to finance the railway project similarly violates Utah’s Community Impact Alleviation (CIA) statute, which directs the use and allocation of monies Utah receives under the federal Mineral Leasing Act.⁴³ Under this statute, the Utah legislature created the Permanent Community Impact Fund (Impact Fund), which allocates 32.5 percent of all mineral lease

³⁹ Davidson, Lee, Utah Legislature OKs \$53 million cash swap to fund Oakland coal port, Salt Lake Tribune (March 10, 2016), available at <https://archive.sltrib.com/article.php?id=3641085&itype=CMSID>.

⁴⁰ November 8, 2018 CIB Meeting Minutes at 24, available at <https://jobs.utah.gov/housing/community/cib/documents/110818cibminutes.pdf>.

⁴¹ *Id.* Even if these activities qualified as “planning,” neither the CIB nor SCIC have adequately addressed why this project deserves an exception to the CIB rule that “[p]lanning grants and studies normally require a fifty percent cash contribution by the applicant,” Utah Admin. Code R990-8-3(D), or why SCIC’s private partners should not fund the studies.

⁴² *Id.*

⁴³ Utah Code § 35A-8-301, *et seq.*

revenues annually, including royalty and bonus payments that it receives from the federal government.⁴⁴ These revenue payments are administered by CIB.⁴⁵

The Legislature mandated that the use of CIB funds be strictly limited to projects consistent with the purposes and limitations of the Mineral Leasing Act. The CIA statute declares:

It is the intent of the Legislature to make available funds received by the state from federal mineral lease revenues ... *to be used for the alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state....*⁴⁶

The CIA refers to the Mineral Leasing Act's mandate that revenue allocated to the Impact Fund "shall be used in a manner consistent with ... the Leasing Act," "for loans, grants, or both to state agencies or subdivisions that are socially or economically impacted by the leasing of minerals under the Leasing Act."⁴⁷ Grants and loans from leasing revenue funds may only be used for "(i) planning; (ii) construction and maintenance of public facilities; and (iii) provision of public services."⁴⁸

CIB's administrative rules define "Public Facilities and Services" to mean "public infrastructure or services traditionally provided by local governmental entities."⁴⁹ The Rules provide that "all applicants must demonstrate that the facilities or services provided will be available and *open to the general public* and that the proposed funding assistance is *not merely a device to pass along low interest government financing to the private sector.*"⁵⁰ AG Opinion 92-003 has interpreted "public facilities" to be "publicly owned and operated,"⁵¹ or one that "the public has a right to use that cannot be denied at the pleasure of the owner, based on Utah Supreme Court precedent."⁵² The CIB's rules do not define "planning," but given the CIA's mandate that CIB funds "shall be used in a manner consistent with...the [Mineral] Leasing Act," "planning" should be limited to local planning for community development to manage population growth and boom and bust cycles precipitated by mineral development, in accord with the Act's legislative intent.

The Uinta Basin Railway project fails each of these provisions and definitions. First, a railway is not "public infrastructure" of the type traditionally provided by local governmental

⁴⁴ Utah Code § 35A-8-303(2); *see also* Utah Code § 59-21-2(2)(d).

⁴⁵ Utah Code §§ 35A-8-303, 59-21-2(2)(d).

⁴⁶ *Id.* § 35A-8-301(1) (emphasis added); *see also id.* § 35A-8-307(5)(a) (impact board "may condition its approval on whatever assurances [it] considers necessary to ensure that proceeds of the loan or grant will be used in accordance with the Leasing Act and this part" [emphasis added]).

⁴⁷ Utah Code § 35A-8-303(5); *see also* § 35A-8-307(1)(b)(i) (criteria for awarding loans or grants made from federal mineral lease revenue must be consistent with foregoing section's requirements).

⁴⁸ Utah Code § 35A-8-305(1)(a).

⁴⁹ Utah Admin. Code R990-8.

⁵⁰ *Id.* at (J) (emphasis added).

⁵¹ *See* UT Atty. Gen. 92-003 at 54.

⁵² *Id.*; *Union Pac. R.R. v. Public Serv. Comm'n.*, 116 Utah 526, 533 [211 P.2d 851, 855]; *see also Garkane Power Co. Inc. v. Public Service Commission of Utah*, 98 Utah 466, 100 P.2d 571, 573, 132 A.L.R. 1490.

entities in Utah.⁵³ The Utah Code reveals no indication of a local government’s authority to own and develop railways that do not serve the public, or to provide for railways outside its boundaries. Second, the railway would not be “publicly operated,” nor would it be available or open to the general public. A private company would operate the railway to serve private shippers of bulk goods. Oil and gas operators will gain cheap access to eastern crude markets without any investment on their part. Indeed, this whole arrangement seems to be nothing more than a “device to pass along low interest government financing to the private sector.”⁵⁴ The SCIC and CIB will have assumed substantial financial risk that would otherwise fall on private companies.

Most egregiously, the funds would not be “used for the alleviation of social, economic, and public finance impacts resulting from the development of natural resources,” as required by the CIA.⁵⁵ The development of a railway to ship crude oil would not and could not mitigate mineral development impacts, but would instead exacerbate existing burdens of mineral development on local communities.⁵⁶ For these reasons, “pre-construction planning” for the railway does not fit into the type of community development planning that the Mineral Leasing Act intended these funds for.

The CIB’s provision for a “Major Infrastructure Set Aside Fund” using CIB monies to “fund major transportation and other significant infrastructure studies and projects,” including “rail lines” is not to the contrary.⁵⁷ The CIB’s rules cannot circumvent state and federal requirements, and must be narrowly interpreted so as to be consistent with those authorities. To the extent the CIB interprets this provision to allow funding of rail lines without regard to the CIA and Mineral Leasing Act’s restrictions on how mineral lease funds may be spent, the rule is invalid.

CIB’s funding of the SCIC’s proposal to develop the Uinta Basin Railway project violates Utah’s Community Impact Alleviation statute and its own rules by financing a private enterprise for the use and benefit of oil and gas companies.

III. The CIB Should Follow Its Public and Agency Review Procedures for Approving Additional Grants for the Project

SCIC has already received a \$6.5 million grant from the CIB without having complied with key public participation requirements mandated by CIB rules. None of the SCIC member counties appear to have held “at least one formal public hearing to solicit comment concerning the size, scope and nature of [the Uinta Basin Railway] funding request prior to its submission to

⁵³ *Ramirez v. Ogden City*, 3 Utah 2d 102, 279 P.2d 463, 47 A.L.R.2d 539 (furnishing a project for the general public good, and in governmental capacity, includes maintenance and operation of public schools, hospitals, public charities, public parks or recreational facilities).

⁵⁴ Utah Admin. Code R990-8(J).

⁵⁵ Utah Code § 35A-8-301(1).

⁵⁶ Ironically, the CIB raised all of the above legal concerns in a 2015 reconsideration of an in-state power line project’s request for \$1.8 million that it had previously approved in a “suspend and fund” expedited process. As a result, construction may not begin unless questions concerning the project’s eligibility for CIB funding are resolved in the applicant’s favor. See CIB September 3, 2015 meeting minutes.

⁵⁷ Utah Admin. Code R990-8-8(C)(1).

the Board,” much less conducted a “vigorous public participation effort” to inform the public of the expected financial impact of the CIB funds request.⁵⁸

Suspension of these rules to expedite funding is not justified for the Uinta Basin Railway project. Nothing in the record supports a determination that “bona fide public safety or health emergencies or... other compelling reasons” justify expedited treatment.⁵⁹ The SCIC’s request for expedited funding fails to identify any compelling reason that would differentiate it from all other requests for funding, merely noting:

[T]he project needs to be approved and built as soon as possible to capitalize on current positive momentum and support. Several of the elements that will be addressed by the planning project are on the ‘critical path’ schedule, including the environmental approvals, [Surface Transportation Board] permitting, right-of-way planning, and funding procurement. The sooner the project is started, the sooner the significant benefits will be realized.⁶⁰

In addition, oil producers are already shipping Uinta Basin crude via rail to out-of-state markets, undermining SCIC’s claim that no other economically viable means exist for the shipment of this product and that a new railway is critical to exporting it to other markets.⁶¹ Several new transloading facilities for the transfer of oil from trucks to oil trains have cropped up in Utah in recent years.⁶² Even if quicker purported economic benefits to oil and gas producers could justify expedited processing (which it does not, as it does not comport with the CIB’s public purpose), the burden is on SCIC to demonstrate these facilities are at full capacity or that some other emergency exists to expedite funding. SCIC has entirely failed to do so.

If the CIB proceeds with reviewing SCIC’s additional funding requests, it should require SCIC to conduct formal public hearings for its full funding request in each of the SCIC’s member counties before giving further consideration to the grant application. The CIB should also adhere to all other requirements for reviewing the SCIC’s funding requests. No circumstances here support expedited processing.

⁵⁸ Utah Admin. Code R990-8-3(E) (“Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan”).

⁵⁹ Utah Admin. Code R990-8-4(F).

⁶⁰ SCIC Addendum to Project Description at 10.

⁶¹ Tabet, David, Energy News: Development of New Markets for Uinta Basin Crude Via Rail, Utah Geological Survey, Survey Notes, v. 47 no. 1, (Jan. 2015), available at <https://geology.utah.gov/map-pub/survey-notes/energy-news/energy-news-crude-oil-via-rail/>.

⁶² *Id.* (six new oil transloading facilities as of 2015); Price River Terminal, available at <http://priceriverterminal.com/phone/index.html> (terminal in Wellington, Utah with 45,000 barrel per day transloading capacity); Maffly, Brian, New 4,000-well drilling project proposed for Uinta Basin, Salt Lake Tribune (April 11, 2016), available at <https://www.sltrib.com/news/environment/2016/04/11/new-4000-well-drilling-project-proposed-for-uinta-basin/> (Uinta Basin oil and gas well project plans to use Wellington transloading facilities); Savage Transload Network, https://www.savageservices.com/wp-content/uploads/2017/09/Savage_Transload_Terminals_10-5-2018.pdf (three transload facilities operated by Savage in Utah).

For the foregoing reasons, the CIB's approval of the \$6.5 million grant to the SCIC violates the Mineral Leasing Act, the Utah Community Impact Alleviation statute, and the CIB's own rules, and the CIB should not grant any other funds requested for the Uinta Basin Railway project, including the \$21.4 million request scheduled to be considered at the June, 2019 CIB meeting.⁶³ Further, CIB may not suspend the rules for processing and reviewing the SCIC's application, and should require formal public hearings regarding the funding requests in the SCIC member counties before giving SCIC's funding request further consideration.

Thank you for your attention to this matter.

Sincerely,

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⁶³ CIB June 2019 Funding Meeting Agenda (June 13, 2019),
<https://jobs.utah.gov/housing/community/cib/documents/061319cibagenda.pdf>.

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