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IN THE THIRD DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

LIVING RIVERS and CENTER FOR BIOLOGICAL DIVERSITY, **Petitioners,** **v.** **UTAH PERMANENT COMMUNITY IMPACT FUND BOARD; UTAH DEPARTMENT OF WORKFORCE SERVICES, HOUSING AND COMMUNITY DEVELOPMENT DIVISION; and SEVEN COUNTY INFRASTRUCTURE COALITION,** **Respondents.**	**RULE 65B PETITION FOR EXTRAORDINARY RELIEF** **Case No.: _____** **Honorable: _____**

Petitioners Living Rivers and Center for Biological Diversity (collectively, "Petitioners"), by and through counsel, submit this Petition for Extraordinary Relief against Respondents Utah Permanent Community Impact Fund Board, Utah Department of Workforce Services, Division of Housing and Community Development, and Seven County Infrastructure Coalition (collectively, "Respondents"). *See* Utah R. Civ. P. 65B(d); Utah Code Ann. § 78B-6-401; Utah Const. art. 8, § 5.

INTRODUCTION

1. This lawsuit challenges as unlawful and *ultra vires* two large monetary grants made by Respondent Utah Department of Workforce Services, Division of Housing and Community Development, through Respondent Utah Permanent Community Impact Fund Board (the "CIB") to Respondent Seven County Infrastructure Coalition (the "SCIC") for the study and development of a railroad intended to transport crude oil from Utah's Uinta Basin (the "railway" or the "oil railway") to the national rail network, enabling increased transport to out-of-state processing facilities and increased national and international sales.

2. The CIB is charged with the administration and distribution of the Utah Permanent Community Impact Fund (the "Impact Fund"). *See* Utah Code Ann. § 35A-8-303(1). The primary source of monies in the Impact Fund is mineral lease payments, royalties, and bonuses paid to the State of Utah under the federal Mineral Leasing Act (the "MLA") for purposes of alleviating the burdens to local communities of oil, coal, and gas production on public lands ("MLA funds" or "MLA monies"). *See* 30 U.S.C. §§ 181-287.

3. To date, the CIB has granted nearly $28 million in MLA funds to the SCIC for the proposed oil railway.

4. Under state and federal law, however, funds paid to states under the MLA may be used only for planning, construction and maintenance of public facilities, and the provision of public services, and only to alleviate the social, economic, and public finance impacts of mineral development on local communities.

5. The SCIC's railway project does not fall within these categories or purpose. Indeed, the SCIC's purpose in developing the oil railway is not local planning or the creation or

maintenance of any public facilities or public services; its express purpose is economic development in the form of increased fossil fuel development. As the SCIC has repeatedly stated, the railway is intended to serve as a new transportation route for shipping Uinta Basin crude oil to the national rail network, in hopes of substantially ramping up the production, sales, and price of crude oil throughout the Basin. Thus, rather than alleviating the impact of fossil fuel development, the MLA funding will be used for the opposite purpose, i.e., to increase development, which necessarily will increase the social, economic, and public finance impacts on the affected areas.

6. The grants issued by the CIB to the SCIC for the proposed oil railway are in violation of state law and amount to an abuse of the CIB's authority to administer the Impact Fund, which includes substantial amounts of MLA funds. In addition, the CIB has failed to follow or enforce its own regulations and procedures in issuing the grants, depriving the public of any meaningful opportunity to offer input or otherwise participate in the process.

7. Accordingly, Petitioners are entitled to the extraordinary relief requested herein.

THE PARTIES

8. Petitioner Living Rivers is a non-profit organization based in Moab, Utah that promotes river restoration through mobilization. By articulating conservation and alternative management strategies to the public, Living Rivers seeks to revive the natural habitat and spirit of rivers by undoing the extensive damage done by dams and water-intensive energy development on the Colorado Plateau. Living Rivers has approximately 1,200 members in Utah, Colorado, and other states. Living Rivers' members and staff include residents of the counties that receive funds from the Impact Fund (including Duchesne and Grand counties), who will be

adversely affected by the diversion of the CIB's needed funds away from important public services and projects, by the construction and operation of the railway, and by the accompanying increased fossil fuel production in the Uinta Basin. Living Rivers brings this action on its own behalf and on behalf of its adversely affected members.

9. Petitioner Center for Biological Diversity (the "Center") is a non-profit membership corporation with its headquarters in Tucson, Arizona, and staff and offices located in a number of states, including Utah. The Center has over 74,000 active members, including many who live in and near Utah, who routinely visit and intend to continue to visit eastern Utah's public lands for recreational, scientific, educational, spiritual, and other pursuits, and who are particularly interested in protecting the many native, imperiled, and sensitive species and their habitats that may be directly or indirectly affected by the railway. The Center's members also include residents of the counties that receive funds from the Impact Fund (including Duchesne and Uintah counties), who will be adversely affected by the diversion of the CIB's needed funds away from important public services and projects, by the construction and operation of the railway, and by the accompanying increased fossil fuel production in the Uinta Basin. The Center brings this action on its own behalf and on behalf of its adversely affected members.

10. Respondent Utah Department of Workforce Services, Housing and Community Development Division (the "Division") is a state agency charged with a variety of duties related to local infrastructure projects, community services, and housing development. *See* Utah Code § 35A-8-202.

11. Respondent Utah Permanent Community Impact Fund Board (the "CIB" or the "Board") is a state board created under Utah Code § 35A-8-304. The CIB is part of the Division. The CIB is headquartered in Salt Lake City, Utah, where it holds regular meetings, administers the Impact Fund, and makes decisions regarding distributions from the Impact Fund like those at issue here.

12. Respondent Seven County Infrastructure Coalition (the "SCIC" or the "Coalition) is an interlocal entity created under Section 11-13-203 of the Utah Interlocal Cooperation Act. *See* Utah Code Ann. §§ 11-13-101 to 11-13-608. The SCIC's members are Uintah, Duchesne, Carbon, Daggett, Emery, San Juan, and Sevier counties. According to the SCIC's website, the SCIC's "mission is to plan infrastructure corridors, procure funding, permit, design, secure rights of way, and own such facilities." The SCIC states that its infrastructure projects "will produce major economic benefits for the citizens of the region." Upon information and belief, the SCIC is headquartered in Carbon County, Utah. The SCIC holds meetings at least once a year in Salt Lake City at the CIB's headquarters.

JURISDICTION AND VENUE

13. The Court has jurisdiction under Utah Code Ann. §§ 78A-5-102(1) and (2). The Court also has jurisdiction under Utah Code Ann. §§ 78B-6-401 and 78B-6-406.

14. Venue in this Court is proper under Utah Code § 78B-3-307(1) and (2).

STANDING

15. The interests of Petitioners and their members are threatened by Respondents' acts as set forth herein. *See* Utah R. Civ. P. 65B(d)(1) & (2)(A)-(B) ("A person aggrieved or whose interests are threatened" may seek extraordinary relief when an administrative agency

"has exceeded its jurisdiction or abused its discretion" or when it "has failed to perform an act required by law as a duty of office, trust, or station.").

16. Petitioners and their members' rights, status, and legal relations are impacted by the statutes and regulations discussed herein, including but not limited to the Utah Community Impact Alleviation statute (the "UCIA"), Utah Code Ann. §§ 35A-8-301 - 38A-8-309, and the regulations authorized and implemented under the UCIA (the "UCIA Regulations"). *See* Utah Admin. Code R. 990-8-1 - 990-8-8. Petitioners and their members have been and will be adversely affected by Respondents' conduct in this case. Petitioners have members who live in Duchesne and Uintah counties, in the other counties that are members of the SCIC (Carbon, Emery, San Juan, and Sevier Counties), and in other mineral-producing counties, all of which are eligible for loans or grants from the Impact Fund and receive these funds. These members' interests in the alleviation of mineral development impacts in their counties will be harmed by the illegal diversion of CIB funds. Rather than being used to reduce the burdens of federal mineral development, these funds will be used to develop an oil railway and spur oil production, which will only worsen existing burdens from fossil fuel development, such as traffic congestion, road hazards, and air pollution, in conflict with the purpose of these funds. These increased burdens from mineral development threaten Petitioners' members' and supporters' health and safety, economic, and other interests.

17. In addition, Petitioners have staff and members who work, live, and/or recreate near or along the proposed routes for the oil railway and on public lands in the Uinta Basin that are open to oil drilling, tar sands extraction, and oil shale mining. They regularly visit and use the public lands and waterways surrounding the proposed routes and public lands open to fossil fuel

extraction for wildlife study and observation, hiking, and other outdoor activities. They derive recreational, aesthetic, scientific, inspirational, educational, commercial, and other benefits from these activities and have an interest in preserving the possibility of such activities in the future. The grants and proposed construction and operation of the railway threaten to injure the aesthetic, commercial, conservation, scientific, recreational, education, wildlife preservation, and other interests of Petitioners and their staff and members. The unlawful approval of the railway grants without adequate opportunity for public participation has also injured Petitioners' procedural interests in participating in the SCIC's decision to pursue the grants. Petitioners' interests are threatened by the CIB's abuse of its authority and its unlawful grant of monies to the SCIC for development of the railway; the CIB's payment of expenses pursuant to its grant contracts with the SCIC; and the CIB's failure to adhere to its own rules and enabling statute.

18. There is a causal relationship between the injuries and threatened injuries to Petitioners and Respondents' conduct.

19. The requested relief is substantially likely to redress the harm to Petitioners' interests caused by Respondents' failure to comply with their duties under state law, and would resolve matters of great public interest and societal impact.

20. Additionally, Petitioners are appropriate parties to bring this action before the Court, as they have the necessary interest in ensuring that the CIB and SCIC comply with the law, and in preventing the misuse of Impact Fund monies for purposes other than to benefit the public, including for the development of the oil railway. Petitioners' interests are sufficient to ensure their ability to effectively assist the Court in developing and reviewing all relevant legal

and factual questions. Whether the Impact Fund may be used for the development of the railway is an important public issue that is unlikely to be raised by parties other than Petitioners.

GENERAL ALLEGATIONS

21. The grants issued by the CIB to the SCIC for the oil railway are in violation of state law and amount to an abuse of the CIB's authority to administer the Impact Fund, which includes substantial amounts of MLA monies. Moreover, the CIB and the SCIC failed to comply with the CIB's own rules and the UCIA Regulations in connection with the grants. The funding released to date should be returned to the Impact Fund, and the CIB and SCIC should be prohibited from allocating or using any additional monies from the Impact Fund for any aspect of the railway.

The Mineral Leasing Act

22. The MLA authorizes the Secretary of the Interior to lease minerals, including oil, gas, and coal, located on federal public lands for development. *See* 30 U.S.C. §§ 181, 226(a)(1).

23. The MLA instructs the Secretary of the Treasury to pay 50% of the revenues from mineral lease rental, royalty, and bonus payments to the states—like Utah—from which the minerals are extracted. *See id.* § 191(a).

24. While the state legislatures may select which of their localities or agencies receive federal lease funds, they are required to give "priority to those subdivisions of the State socially and economically impacted by the development of minerals." *Id.*

25. The MLA also restricts the uses to which such funds may be put, stating that the funds may be used only "for (i) planning, (ii) construction and maintenance of *public* facilities and (iii) provision of *public* services." *Id.* (emphases added).

26. Although the MLA does not define these terms, legislative history affirms that private, for-profit, economic development projects – like the proposed oil railway, which is to be constructed and operated by private entities for the benefit of private oil and gas producers – are not among the intended uses of MLA funds.

27. Through numerous amendments to the MLA, which originally was enacted in 1920, Congress has made clear that the purpose of providing MLA funding to states was to alleviate the social and economic impacts of mineral development on local communities by assisting them to plan for an influx of new workers and to develop needed public facilities and services.

28. For example, he Federal Coal Leasing Amendments Act of 1975 ("FCLAA") increased the amount of mineral lease revenues provided to states by 12.5 percent, from 37.5 to 50 percent. *See* FLCAA, Pub L. 94-377 (S. 391), 90 Stat. 1083, § 9(a) (August 4, 1976).

29. Explaining the need for the increase, Senator Lee Metcalf, who introduced the bill, said:

> 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.[1]

[1] Floor Statements on S. 391 by Senator Metcalf (From the Congressional Record, June 21, 1976) ("S. 391 Floor Statements"), at 114 (emphasis added), Published in Federal Coal Leasing Policies and Regulations, Prepared at the Request of Henry M. Jackson, Chairman Committee on

(continued...)

30. The FCLAA also expanded the purposes for which the newly-allocated 12.5 percent in MLA funding could be used by states. Up until that time, the MLA had mandated that all such funds be used only for "the construction and use of public roads or for the support of public schools or other public educational institutions," 30 U.S.C. § 191 (1976). But Congress recognized that the rapid expansion of mining operations would cause "a sharp increase in *all* local public services, such as hospitals and sewer systems, as well as schools and roads." S. 391 Floor Statements at 112 (emphasis added).

31. Thus, under the FCLAA, states were allowed to use the additional 12.5 percent in MLA funding for "(1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services. *See* Pub L. 94-377 (S. 391), 90 Stat. 1083, § 9(a) (August 4, 1976).

32. Shortly after the enactment of the FCLAA, the Federal Land Policy and Management Act of 1976 ("FLPMA"), amended the MLA again, extending the eased restrictions to the states' entire 50 percent share of lease revenues. *See* FLPMA, 94 Pub. L. No. 579, 90 Stat. 2743, § 317 (1976).

33. Significantly, Congress declined invitations from both the Department of Interior and a small group of representatives who argued that the restrictions on states' use of MLA Funds should be removed altogether, *see* H.R. Rep. No. 94-681 at 42, 59 (1976) ("[W]e do support repealing the present roads and schools restriction in order to give the states complete discretion in the expenditure of mineral leasing revenues."), opting instead for the language that remains in the statute to date.

Energy and Natural Resources United States, January 1978, Publication No. 95-77, available at https://archive.org/stream/coalleasi00unit#mode/2up.

34. As reflected in the legislative history, the "traditional" public facilities and services intended for capture in the FLCAA include facilities and services like schools, roads, hospitals, sewer systems, and police protection. *See, e.g.*, H.R. Rep. No. 94-681 at 19 ("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 planning for the development of the community."); S. 391 Floor Statements at 112 (referencing schools, roads, hospitals, and sewer systems).

35. Notably absent from examples of public services and facilities discussed by the legislators is any reference to projects designed to facilitate economic development for the benefit of private parties.

36. Senator Metcalf's comments regarding the FCLAA likewise make clear that the term "planning," as used in Section 35(a) the MLA, is not just a general term that might encompass something like "pre-construction" planning for an economic development project. Instead, the term references the planning needed to address the social and economic changes precipitated by mineral development: "Advance local planning for community development is another pressing deficiency. The sudden jump in population growth, the emergency [sic] of new urban centers, and the possible 'boom-bust' economic cycle will cause many social and cultural changes." S. 391 Floor Statements at 111-12.

Applicable Utah Statutes and Regulations

37. Like the MLA, Utah law requires that MLA funds be used for the planning and construction of public facilities and public services, with priority given to the areas most impacted by mineral development.

38. Both the CIB and the Impact Fund are products of the Utah Impact Alleviation statute (the "UCIA"). *See* Utah Code Ann. §§ 35A-8-301 to 38A-8-309.

39. The UCIA mandates that the CIB manage and distribute the Impact Fund in accordance with the purposes and limitations of the MLA, specifying that the funds must be used to alleviate the impacts of natural resource development on public lands in the state:

> It is the intent of the Legislature to make available funds received by the state from federal mineral lease revenues . . . and all other bonus payments on federal mineral leases to be used for the *alleviation of social, economic, and public finance impacts* resulting from the development of natural resources in this state, *subject to the limitations provided for in Section 35 of the [MLA]*.

Utah Code Ann. § 35A-8-301(1) (emphases added).

40. In accordance with the Utah Legislature's declared intent to use MLA funds to alleviate the impacts of oil, gas, and coal development and to comply with the limitations imposed by the MLA, the UCIA directs that MLA revenues deposited into the Impact Fund "shall" be utilized "in a manner consistent with" the MLA and the UCIA itself. *Id.* § 35A-8-303(5)(a).

41. The UCIA likewise provides that the CIB "shall make grants and loans . . . out of the impact fund to state agencies, subdivisions, and interlocal agencies that are or may be socially or economically impacted, directly or indirectly, by mineral resource development," and that such loans and grants shall be made only for purposes of "(i) planning; (ii) construction and

maintenance of public facilities; and (iii) provision of public services." Utah Code Ann. § 35A-8-305(1)(a).

42. Although the UCIA authorizes the CIB to "establish criteria for determining eligibility for assistance," the statute specifically reiterates that the criteria for awarding loans and grants of MLA funds "shall be consistent with the requirements of Subsection 35A-8-303(5)," which—as noted above—requires compliance with the MLA and the UCIA itself. *See* Utah Code Ann. § 35A-8-307(b)(i).

43. The UCIA Regulations reflect the CIB's understanding of the limitations applicable to the Impact Fund. *See* Utah Admin. Code R. 990-8-1 - 990-8-8.

44. The UCIA Regulations describe the CIB's purpose as providing loans or grants to agencies or subdivisions "which are or may be socially or economically impacted, directly or indirectly, by mineral resource development." *See* Utah Admin. Code R. 990-8-1.

45. The rules further specify that projects eligible for Impact Fund loans or grants include only "a) planning; b) construction and maintenance of public facilities; and c) the provision of public services." *See* Utah Admin. Code R. 990-8-2.

46. "Public Facilities and Services" are defined as "public infrastructure or services *traditionally* provided by local government entities," and "eligible applicants" are defined as agencies, subdivisions, and interlocal agencies "which are or may be socially or economically impacted, directly or indirectly, by mineral resource development." *See* Utah Admin. Code R. 990-8-2. (emphasis added).

47. To ensure compliance with the CIB's statutory mandates, the UCIA Regulations also impose the following requirements on all applicants:

(a) "*All* applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for *planning, the construction and maintenance of public facilities or the provision of public services*." Utah Admin. Code R. 990-8-3(I) (emphases added).

(b) "*All* applicants to the fund 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." Utah Admin. Code R. 990-8-3(J) (emphasis added).

(c) "All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received." Utah Admin. Code R. R990-8-3(K).

48. The UCIA Regulations incorporate strict requirements for soliciting and considering public input about applicants' projects:

> The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold 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. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.
>
> 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. The Board may require additional public hearings if it determines the applicant did not adequately disclose to the public

> the impact of the financial assistance during the initial public hearing.
>
> When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.
>
> A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

Utah Admin. Code R. 990-8-3(E) (emphases added).

The Utah Attorney General's Opinion

49. Interpreting the MLA, its legislative history, and Utah law, the Utah Office of the Attorney General (the "Utah AG") in 1993 issued an opinion concluding that MLA funds could not be used for economic development projects. *See* Utah Op. Att'y Gen. 92-003 at 1. More specifically, although economic development could be an incidental or intended benefit of a project, any project funded with MLA funds must nevertheless "qualify as 'planning' construction and maintenance of public facilities,' or 'providing a public service.'" *Id.*

50. The Utah AG further explained that its interpretation was consistent with the treatment of the Impact Fund by the Utah Legislature and the CIB, which, "in its rules and regulations and its grants and loan had avoided projects that only provide economic development as an appropriate grant project. . . . [and] has always required the construction and maintenance of a public facility or the provision of a traditional governmental service in order to fund a project." *Id.* at 6.

51. The Utah AG's review of the legislative history surrounding the MLA and its various amendments led to the conclusion that Congress purposefully "chose to limit the use of

the funds to assist local communities in providing those *traditional local government services and facilities that may be impacted by resource development*," including services and facilities "such as law enforcement, public health, and governmental facilities." *Id.* at 6 (emphasis added).

The CIB Improperly Issued the Grants and Ignored Its Own Regulations

52. In February 2018, the SCIC submitted an application for a grant in the amount of $30 million grant to develop a railway for transporting Uinta Basin crude oil from Duchesne and Uintah counties to the national rail network. The application requested the money "to complete pre-construction design and permitting" for the oil railway. Because the application was incomplete, however, the CIB required the SCIC to resubmit its application.

53. In September 2018, the SCIC submitted a new application for a grant in the amount of $27.9 million for the railway, including "pre-construction planning design, regulatory approval process, and grant and loan procurement for such a rail line." According to the SCIC funding application, "[c]ompletion of these important steps are [sic] required in order for the Coalition to quali[f]y for the available construction grants."

54. The SCIC's stated purpose in developing the railway is to increase production and drive up the price of crude oil in the Uinta Basin.

55. Currently, Uinta Basin crude is delivered to and processed mainly at Salt Lake City refineries with those refineries normally operating at or near full capacity. The SCIC has asserted that a railway would remove this bottleneck by opening access to Gulf Coast or other refineries, and approximately quadruple crude production in the basin, while also increasing the demand for and price of Uinta Basin crude.

56. At a November 8, 2018 meeting held by the CIB's Board to determine whether to approve the grant, the Utah AG's office expressed concern about whether the project was eligible for MLA funding, and whether the railway would further the MLA's purpose of alleviating the impacts of mineral development.

57. 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 pay for engineering and other technical studies for the project ("Phase I").

58. In May of 2019, the SCIC announced a public-private partnership with Drexel Hamilton Infrastructure Partners, LP ("Drexel Hamilton"), a Delaware infrastructure investment fund with locations in New York and Florida. Drexel Hamilton has agreed to develop, finance, and build the proposed railway.

59. The SCIC and Drexel Hamilton apparently have also partnered with Texas-based Rio Grande Pacific Corporation to operate and maintain the railway.

60. The SCIC and Drexel Hamilton have agreed that SCIC will own the right-of-way for the railway, while Drexel Hamilton and/or Rio Grande will own the railway and its associated facilities, or arrange for their ownership.

61. Following the announcement of its partnership with Drexel Hamilton, the SCIC submitted an Addendum to its initial application for the railway. The Addendum informed the CIB that the public-private partnership with Drexel Hamilton would minimize risks associated with the project due to Drexel Hamilton's wide industry experience and connections and its possession of the capital necessary "to complete the final design, acquire right-of-way, construct, operate, and maintain" the oil railway.

62. On June 13, 2019, even though the SCIC had indicated it would be receiving substantial financial support for the project from Drexel Hamilton, the CIB voted to approve another $21,400,000 grant for Phase II of the railway project, for "engineering, environmental issues including [National Environmental Policy Act] compliance, mapping, operation and maintenance planning, right-of-way planning and negotiation, communication, [Surface Transportation Board] regulatory and legal support, commercialization planning, program management, federal agency cost recovery including federal staff review of the [environmental impact statement] and right-of-way permitting process, financial advisory services and administrative travel expenses."

63. In approving the grants, the CIB did not comply with or require the SCIC to comply with the UCIA and the UCIA Regulations, as required by Utah Code Admin. Code R. 990-8-3-(A). Under this rule, "Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the *required* information by the applicant." *Id*. (emphasis added).

64. For example, other than making a brief assertion in the Addendum that its proposed oil railway is a "public facility" because it is "open to use by the public," the SCIC provided no evidence or argument to support its claim that the grants qualify for the purposes enumerated in the MLA, the UCIA, and the UCIA Regulations or that a railway designed to haul "up to approximately 500,000 barrels per day of crude oil or other bulk commodity product" is "available and open to the general public." *See* R. 990-8-3(I)-(J).

65. Further, the SCIC failed to provide any evidence to the CIB that the project would alleviate the impacts of mineral development on local communities.

66. Additionally, neither the CIB nor the SCIC made adequate efforts to involve the public in the process, despite the requirements in the regulations regarding "vigorous" public participation.

67. For instance, despite the requirement that "all applicants [must] have a vigorous public participation effort," including "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," the SCIC held a hearing at its regularly scheduled meeting on February 9, 2018, *after* the SCIC's initial application had already been submitted and far outside the Uinta Basin, in Salt Lake City.

68. At the CIB's direction, the SCIC conducted a second hearing in Vernal on October 11, 2018, but, again, it did so only *after* having already submitted its September 2018 grant application to the CIB.

69. The SCIC also made no efforts to publicize the February 2018 and October 2018 hearings other than posting notice of the hearings on its website and/or the state's public notice website shortly before each hearing. As a result, no public comment was received at the February 2018 hearing, and only one member of the public spoke at the October 2018 hearing.

70. The SCIC's February 2018 and October 2018 meetings were the public's only opportunities to comment on the grant proposals in a public hearing. None of the SCIC's member counties held hearings or solicited public comment on the grant proposals.

71. The CIB did not solicit public comment on the grant proposal but relied exclusively on the SCIC to involve the public. At its November 2018 and June 2019 meetings approving the grants, the CIB did not allow public comment on the grant proposals.

72. The SCIC and the CIB entered into separate grant contracts related to the $6.5 million and $21.4 million grants (the "Grant Contracts").

73. Under the Grant Contracts, the CIB certified that its allocation of the grants to the SCIC is in compliance with the UCIA and the MLA and "meets all the criteria of the rules and statutes involved."

74. The Grant Contracts require the CIB to recapture any funds that the SCIC has used for unlawful purposes.

75. No part of the funds provided to the SCIC will be used to conduct planning or construct or provide public facilities or public services for the benefit of the residents of the Uinta Basin. Instead, these funds will support the construction of an oil railway that would be operated and maintained by a private entity, for the benefit of privately held oil and gas companies and the rail developer and operator.

Lack of Any Other Plain, Speedy, or Adequate Remedy

76. The MLA does not provide an express or implied private right of action. *See Cuba Soil & Water Conservation Dist. v. Lewis*, 527 F.3d 1061, 1064 (10th Cir. 2008).

77. Neither the UCIA nor the UCIA Regulations adopted under its authority provides for a private cause of action to enforce its provisions or challenge a violation.

78. The challenged action is not subject to review under the Utah Administrative Procedure Act ("UAPA"). UAPA does not provide for judicial review of "state agency action relating to management of state funds." Utah Code Ann. § 63G-4-102(2)(g). Nor does it provide for judicial review of "state agency action relating to the distribution or award of a monetary

grant to or between governmental units." *Id*. § 63G-4-102(2)(j). UAPA also does not allow intervention in informal proceedings. *Id.* § 63G-4-203(g).

FIRST CAUSE OF ACTION
(Extraordinary Relief)

79. Petitioners hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.

80. The Court has the authority to "issue all extraordinary writs and other writs necessary to carry into effect [its] orders, judgments, and decrees." Utah Code Ann. § 78A-5-102(2); *see also* Utah Const. art. VIII, § 5 ("The district court shall have . . . power to issue all extraordinary writs.").

81. Petitioners, their members, and their staff are persons aggrieved by and whose interests are threatened by Respondents' acts enumerated herein.

82. Petitioners have no other available plain, speedy or adequate remedy.

83. By seeking, approving, and/or accepting funding for the SCIC's proposed oil railway in violation of the law, and by failing to comply with applicable statutes and regulations, Respondents have exceeded their authority and abused their discretion.

84. Numerous relevant factors weigh in favor of granting extraordinary relief to petitioners, including but not limited to the egregiousness of Respondents' conduct, the significance of the legal issues presented, and the severity of the consequences occasioned by Respondents' improper use of millions of dollars from the Impact Fund.

85. Petitioners are therefore entitled to extraordinary relief and respectfully ask the Court to rule as follows:

(a) Declare that the CIB's grants to the SCIC for the oil train railway are in violation of Utah Code Ann. §§ 35A-8-303(5) and 35A-8-305(a) and Utah Admin. Code R. 990-8-2 because the grant monies are not being used and will not be used for planning, construction and maintenance of public facilities, or the provision of public services;

(b) Declare that the CIB's grants to the SCIC for the oil train railway are in violation of the Utah Code Ann. §§ 35A-8-301(1) because the grant monies are not being used and will not be used to alleviate the social, economic, and public finance impacts resulting from the development of natural resources in this state;

(c) Declare that the CIB and the Division abused their discretion by issuing the railway grants to the SCIC;

(d) Declare that the SCIC failed to comply with the Utah Admin. Code R. 990-8-3(E) in connection with the railway grants, including by failing to

(i) have "a vigorous public participation effort;"

(ii) "hold 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 [CIB];"

(iii) give to the public "[c]omplete and detailed information . . . regarding the proposed project and its financing;"

(e) Declare that the SCIC failed to comply with the Utah Admin. Code R. 990-8-3(I) by failing to provide to the CIB "evidence and arguments . . . as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services;"

(f) Declare that the SCIC failed to comply with the Utah Admin. Code R. 990-8-3(J) by failing to "demonstrate that the facilities or services will be available and open to the general public;"

(g) Declare that the Division and CIB failed to comply with Utah Admin. Code R. 990-8-3(A) by failing to require that the SCIC demonstrate its compliance with the UCIA Regulations before approving and issuing the grants;

(h) Require Respondents to return to the Impact Fund all monies issued to date by the Division and CIB for the railway;

(i) Prohibit the reimbursement of any further expenses related to the railway;

(j) Prohibit the issuance of additional grants or loans to the SCIC related to the railway.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request the following relief:

1. Declaratory relief that the CIB's grants to the SCIC for the oil railway are in violation of Utah Code Ann. §§ 35A-8-303(5) and 35A-8-305(a) and Utah Admin. Code R. 990-8-2 because the grant monies are not being used and will not be used for planning, construction and maintenance of public facilities, or the provision of public services;

2. Declaratory relief that the CIB's grants to the SCIC for the oil railway are in violation of the Utah Code Ann. §§ 35A-8-301(1) because the grant monies are not being used and will not be used to alleviate the social, economic, and public finance impacts resulting from the development of natural resources in this state;

3. Declaratory relief that the CIB and the Division abused their discretion by issuing the railway grants to the SCIC;

4. Declaratory relief that the SCIC failed to comply with the Utah Admin. Code R. 990-8-3(E) in connection with the railway grants, including by failing to

(a) have "a vigorous public participation effort;"

(b) "hold 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 [CIB];" and

(c) give to the public "[c]omplete and detailed information . . . regarding the proposed project and its financing;"

5. Declaratory relief that the SCIC failed to comply with the Utah Admin. Code R. 990-8-3(I) by failing to provide to the CIB "evidence and arguments . . . as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services;"

6. Declaratory relief that the SCIC failed to comply with the Utah Admin. Code R. 990-8-3(J) by failing to "demonstrate that the facilities or services will be available and open to the general public;"

7. Declaratory relief that the Division and CIB failed to comply with Utah Admin. Code R. 990-8-3(A) by failing to require that the SCIC demonstrate its compliance with the UCIA Regulations before approving and issuing the grants;

8. Compel Respondents to return to the Impact Fund all monies issued to date by the Division and CIB for the railway;

9. Prohibit the reimbursement of any further expenses related to the railway;

10. Prohibit the issuance of additional grants or loans to the SCIC related to the railway;

11. Petitioners' reasonable costs of suit and attorneys' fees as allowed by law or in equity; and

12. Such other and further relief as this Court may deem just and proper.

DATED this 4th day of August, 2020.

NONPROFIT LEGAL SERVICES OF UTAH

/s/ Aaron C. Garrett
Aaron C. Garrett

CENTER FOR BIOLOGICAL DIVERSITY

/s/ Wendy Park
Wendy Park

Attorneys for Petitioners