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Grand County Council  
c/o Ruth Dillon, Council Administrator  
125 E. Center Street  
Moab, Utah 84532

## ***Re. Questions and Comments regarding the 7 County Coalition Agreement***

Dear Grand County Council,

Thank you for holding a public forum and accepting question and comments on the 7 County Infrastructure Coalition ("7CC" or the "Coalition") and the proposed Interlocal Cooperation Agreement ("Agreement") establishing the same.

I have read the Interlocal Cooperation Agreement itself, the underlying statutes authorizing the same, Grand County Attorney's Confidential Legal Memorandum dated August 15, 2014 ("Legal Memo"), and email correspondence between Council Chair Jackson and 7CC Attorney Eric Johnson from late July 2014.

I am a local attorney specializing in contract and business law. Prior to moving to Moab, I worked for years both organizing and representing special districts in Colorado, which includes reviewing, revising, and drafting interlocal agreements. In my opinion, signing on to the Agreement, as drafted, and Coalition is NOT in the County's best interest, as more specifically explained below. There is simply no net benefit to Grand County, we can participate in the same infrastructure projects on a case-by-case basis, and the Agreement is so deficient in essential terms that it subjects our County to great liability.

I look forward to a discussion by the County of the questions and comments of the County's residents on September 17, 2014, and I hope you will include the following:

1. Using proposed projects as examples, please identify at least one and preferably three specific benefits to Grand County that it will gain only by joining the Coalition.

In thinking through the specific projects the Coalition is interested in building named in Subsection 2.2 of the Agreement (namely roads, pipelines, water storage, electrical and railroad lines, and wastewater facilities), I cannot name a specific instance whereby Grand County's binding membership would act as a benefit. Thus, I appreciate the discussion by the Council on this topic, and use of specific examples of benefit to Grand County residents.

Further, the goals identified in Article 2 of the Agreement (encouraging and promoting multiple uses of natural resources; communication, coordination, and planning; promoting resource utilization and protection; and identifying and securing funding for projects, infrastructure, facilities, and improvement) can be achieved through the existing Southeastern Utah Association of Counties or a larger advisory council. In my opinion, there is no net benefit to Grand County's formal participation in the Coalition; and, as discussed below, our County Council may cede some of its existing power and authority over regional projects by joining.

If Grand County does not join the Coalition, the 7CC membership will still seek Grand County approval and participation on a project-by-project basis. Politics – and the matrix of existing federal, state, and local agreements - require consultation with our County Council on all proposed projects in Grand County and often the region. Further, because of its strong economy and tourism, Grand County is a strong and critical player in the types of regional projects proposed in the Agreement. If and when a proposed 7CC project impacts land or resources in or surrounding our county, the Grand County Council is likely to be more effective in imposing appropriate stipulations on a project-specific agreement it signs as a non-Member.

Additionally, as a non-member, Grand County will have greater influence to review and critique projects proposed on federal lands in the region as a cooperating agency under existing Federal Agreements. If we join the Coalition, our power and authority to influence these large federal projects is diminished as one vote among seven. In addition, we cannot both endorse a federal project as a member of the Coalition and provide meaning review and critique of the same as Grand County.

2. Specifically, how will the 7CC Projects be funded? What funding opportunities has the Grand County Council explored other than CIB funding; what are the matching requirements for CIB funding and other grants, and has the Grand County Council reviewed project cost estimates? To which private organizations and foundations is the Agreement referring in Sections 2.4 and 6.4?

The Coalition can and will apply for state and federal grant funds for approved projects. The primary source of expected funding is Utah's Community Impact Fund Board grants ("CIB"). CIB Funding comes, in turn, from mineral lease royalties paid to the state by the federal government.

According to Utah Administrative Code R990 and [www.Utah.gov](http://www.Utah.gov), CIB Funding is limited to \$5,000,000 per project and requires a 50% match from the requesting governmental agency. The 2013 List of CIB Awards for infrastructure projects in Counties within the Southeastern Utah Association of Counties (SEUALG) confirms that CIB funding, per project, is limited to \$5,000,000. See <http://seualg.utah.gov/>.

There has been talk that Grand County will be less likely to obtain CIB funding for its own projects if not a member of the Coalition. That is simply untrue – CIB's structure and

funding requirements ensure that mineral lease money will be used to help fund improvements in all counties affected by natural resource development on federal land. First, the \$5,000,000 cap ensures that CIB funding reaches multiple projects in many Counties. Second, the existing Southeastern Utah Association of Counties, comprised of 4 counties, not 7, has a full-time planner that works with CIB's regional planning program to help fund projects in Grand County. And, third, SEUALG has not limited Grand County's ability to obtain CIB funding for its independent projects either.

The projects envisioned by the Coalition are large and regional in scope. What proposed projects can be built for \$5 million? \$7,500,000 (\$5 million plus a 50% match)?

For these reasons, I am interest in what other funding sources either the Grand County Council has investigated or other similar coalitions have utilized in Utah? Please discuss specific funding opportunities in addition to CIB funds, matching requirements for CIB funding and other grants, and project cost estimates. Also, to which private organizations and foundations is the Agreement referring in Sections 2.4 and 6.4?

3. When additional funding for Coalition projects is necessary or required, how will the Coalition determine the percentage contribution by each County? How will Grand County help meet local matching requirements?

Section 6.4(C) of the Agreement sets forth how the member Counties will share revenues for projects within each county's borders: 70% of revenues divided between counties in which the project lies; 20% shared between the other member counties; and 10% returned to the Coalition's escrow/investment fund. How will project *costs* be split? Can we assume the same ratio? If these projects have regional benefit, then will the costs be split in another manner?

Section 6.4(B)'s reference to working out those details in another contract are insufficient. The County cannot and should not bind itself to terms it does not yet understand, which decision will be made by one Member of the Council. Basic contract law requires that Grand County negotiate all essential terms prior to binding itself to the Agreement. The percentage requirement for local funding is one such essential term, and Grand County should not sign any Agreement without, at a minimum, understanding the base calculation for sharing costs for Coalition projects, both within and without our County borders.

Please discuss how Grand County will fund its local matching requirements when necessary.

4. When and where will the Coalition meet? When will meeting notices, agendas, and agenda packets be available to the public?

Section 5.4 sets forth how the Coalition will be governed. But, there is very little information contained therein. It does not set forth a meeting schedule (monthly, quarterly, etc.), and it does not provide for a specified deadline by which either notice of the meeting or agendas are provided to Members of the Coalition or the public.

It does provide that Coalition Members may be paid by the Coalition, which is inappropriate in the absence of increased responsibility via an Officer position.

Please discuss how these meetings will be run, where they will be held, and when Grand County and our residents will receive notice of the same.

5. Under what terms could the Coalition convey ownership of regional projects to private or public entities? How would project assets be valued? What entities could take ownership of a Coalition project?

The Agreement contains vague language related to future ownership of Coalition assets as well as project partners. Such ambiguity is very likely to lead to litigation. For example, Article 3 of the Agreement allows conveyance or transfer of Coalition assets at, seemingly, any time. Section 6.4 allows both transfer of assets and contracting with any third party for any “purpose reasonable or desirable.” And, Section 6.4(B) punts the issue of how to value and convey project assets to each Supplemental Contract.

The process of how to transfer assets, including upon what circumstance a transfer is appropriate, the process for valuing assets, and the voting percentage required to take said actions are essential terms to any contract of this type. Standard organizational documents for any entity set forth a specific process for valuing and transferring assets of the Company or Corporation and dissolving the same.

Here, there is no information as to how the Coalition would transfer or convey a project, or how the Coalition determines suitable partners for each project, which feels like purposeful omission. These terms are too important to leave for a Supplemental Contract negotiated by only one member of our County Council. Grand County should not sign any Agreement without understanding upon what terms the Coalition would transfer assets, how the Coalition will value said assets, which public or private entities are eligible to accept or purchase said assets, and how said entities are selected.

6. How will the Coalition and the Grand County Council ensure transparency and representation in the decision-making processes of the Coalition given that 1) Board meetings will likely always occur north of the Moab area, probably in Price, Utah; 2) Grand County will only have one voice at the table, which may not represent the interests of Grand County generally; and 3) there is no mechanism for Grand County to veto a project of the Coalition that otherwise is approved by a majority of Coalition members?

The Agreement only requires 3 of the 7 Members approve a project that crosses county borders (a majority vote of a majority, per Section 5.4(F)), and it does not allow Grand County to veto projects within its boundaries. I am very surprised that the County Council would even entertain signing an Agreement that includes said succession of power over the existing political process in which the County currently wields great influence and authority, as discussed in my Paragraph 1 above.

And, while the email correspondence between our Grand County Council Chairman and Eric Johnson shows that Mr. Johnson was willing to explore an amendment that includes a “veto provision,” there is no evidence that idea gained footing. It was certainly not added to the Agreement prior to the other counties signing it.

As the Agreement is written, Grand County would be but one vote, represented by one man. Grand County could be easily out-voted on a project within its boundaries by the affirmative vote of only three other Members. The fact that Grand County does not have the ability to veto projects within its boundaries is concerning not just because of the loss of power, but also because transparency and public process will undoubtedly be compromised when Grand County is represented by only one individual with no authority.

While Grand County’s loss of power has gained a lot of attention, the language of Section 11.1, Confidentiality has not:

The Governing Board shall take such steps as they deem necessary to protect and keep confidential appropriate information received or kept by it in accordance with the Government Records Access and Management Act. The Members shall protect and keep confidential information kept or received by the Coalition during the term of this Agreement and after the termination of their membership in the Coalition pursuant to the bylaws or other policies adopted by the Board and consistent with law. Nothing in this section shall be construed to allow the Board, the Officers or employees from withholding information from any Authority Member, so long as the Member agrees to maintain the confidentiality of such information.

The duty of confidentiality is a fundamental obligation of any Board Member. However, it is uncommon for organizational documents to dedicate an entire paragraph, especially with such vague language, to confidentiality. The issue is already addressed in Section 5.4(J), which provision is sufficient since those Acts control. This Section 11.1 causes me concern, quite frankly - especially in the context of Grand County’s diminished voice and out-of-area meetings.

Given the information above, please address how Grand County will ensure transparency for its residents regarding Coalition projects and funding sources.

7. What is the precise process to withdraw from the Coalition, including the method for amending the Infrastructure Coalition Boundary Map to remove Grand County from the Coalition’s boundaries?

The Coalition, if successful, will be effective for a very long time, as discussed below. If Grand County participates, it needs to be very clear on the precise procedure for withdrawal. Article 3 of the Agreement states that the Coalition will be effective upon mutual execution by the Member Counties until the LAST of 1) fifty years; 2) five years after the Coalition has paid off all indebtedness; 3) five years after the Coalition has abandoned, decommissioned, transferred, or conveyed all of its projects; and 4) five years after the Coalition’s projects are no longer useful.

These timeframes are all problematic. First, fifty years is simply too long for a binding term. For fifty years, Grand County residents will be losing their voice; for fifty years, the Grand County Council will cede power to regional governmental authority; for fifty years, Grand County will not be able to veto a Coalition project within its own boundaries. The Council should not sign any Agreement with an automatic binding 50-year term.

Second, the five-year timeframe for all other triggers is troubling. At a minimum, the Coalition should terminate simultaneously upon the last of said triggers (payment of debt, conveyance of the project, etc.).

Third, though, the triggers themselves are problematic. The language anticipates and allows the Coalition to convey ownership of its projects to another entity, the vagueness of which is problematic, as more particularly discussed under my Paragraph 5 above.

And, fourth, this section allows the Coalition to terminate upon a finding that projects are no longer useful. What does this even mean? Who makes said determination, and under what factors? Each provision of the Agreement must have meaning and force. This provision should either be expanded to identify the process and factors for determining non-benefit or be deleted from the final version.

Regardless, we can assume the Coalition will be in existence for a long, long time. Section 5.2 of the Agreement makes the withdrawal process seem simple: Grand County must only provide 6-months' notice to the Coalition of its intent to withdraw. Of course, Grand County's withdrawal would be subject to any continuing financial obligations it has pledged to a specific project.

The Agreement makes no reference to the filings required to be submitted to the Governor's office, or the Infrastructure Coalition Boundary Map. While Grand County can technically unilaterally withdraw from the Coalition as a binding Member, the Agreement is unclear how that withdrawal affects the Coalition's boundaries going forward. Utah law requires that all entities affected by a Final Plat sign an amendment affecting its boundaries. Thus, it follows that Grand County will need the approval of all the other Members to amend the Coalition Map recorded in each County to remove land within Grand County from the future reach of the Coalition.

Please clarify the entire and precise withdrawal process, including Plat amendment.

8. Now that the 6CC Coalition has been formed, to amend the Agreement at this stage, what documents must be filed with the Governor's office?

The Six County Infrastructure Coalition has already been formed as an interlocal entity through the Lieutenant Governor's office on August 28, 2014. The Agreement, at Section 5.3, requires a 5/7ths vote of the Membership to amend. But, what documents must then be filed with the Governor's office to revise the 6CC to 7CC?

While I am opposed to joining the Coalition because no benefit has been proven, revising key components of the Agreement may help assuage my concerns. To summarize, in my opinion, the Grand County Council should not sign on to the Agreement or join the Coalition as a Member until at least the following essential provisions have been modified:

1. Article 3 must be amended to remove the blanket 50-year Coalition term;
2. Article 3, subsections (c) and (d) must be made subject to a new Article which sets forth the process for conveying assets of the Coalition – under what circumstances, to which eligible entities, and for what value;
3. Section 5.2 must be amended to clarify the entire and exact withdrawal process and require all Members to cooperate with a withdrawing Member to amend the Infrastructure Coalition Boundary Map and file appropriate documents with the Governor's office upon withdrawal;
4. Article 6 must specify how project costs will be attributed to each County;
5. Section 5.4(F) must be amended to require at least a majority vote of the Members;
6. Section 5.4(F) must be amended to allow the Grand County Council to veto any Project affecting land within its boundaries;
7. Section 5.4(G) must be amended to allow compensation only for Members of the Governing Board acting as an Officer and providing additional professional services to the Coalition;
8. Section 5.4(K) must be amended to establish specific provisions and deadlines regarding meeting location, notice, and agendas;
9. Section 11.1 must be amended to include specifically to what confidential information this language applies, or this Section should be deleted altogether in favor of Section 5.4(J).

I look forward to discussing these questions and others from the community at the public forum on September 17, 2014.

Sincerely,

THE SLOAN LAW FIRM, PLLC

A handwritten signature in dark ink, appearing to read 'Christina R. Sloan', written in a cursive style.

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Christina R. Sloan

CRS/  
cc: Andrew Fitzgerald, Grand County Attorney