

1986

Controlling Boomtown Development: Lessons from the Intermountain Power Project, Part Two

Donald Zillman

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Zillman, Donald (1986) "Controlling Boomtown Development: Lessons from the Intermountain Power Project, Part Two," *Land & Water Law Review*: Vol. 21 : Iss. 2 , pp. 325 - 355.

Available at: https://scholarship.law.uwyo.edu/land_water/vol21/iss2/4

This Article is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

University of Wyoming

College of Law

LAND AND WATER LAW REVIEW

VOLUME XXI

1986

NUMBER 2

Controlling Boomtown Development: Lessons From the Intermountain Power Project, Part Two

Donald Zillman*

In 1986, the Intermountain Power Project neared completion of a fifteen hundred megawatt electric generating plant near the town of Lynndyl, Utah. Seventeen entities of Utah state and local government had entered into some fifty alleviation contracts with the project. These contracts were designed to relieve the impact of plant construction on the sparsely populated community. In the second part of this two part article, the author chronicals and evaluates the success of the impact mitigation process as it was applied to such crucial concerns as housing, public safety, education, water systems, streets and the general quality of life. The author concludes that early professional planning and coordination between government and project officials, combined with the revision of land use and other laws, helped make this major development a success.

The first part of this article examined the process by which the Intermountain Power Project (IPP) was located in Millard County Utah. A crucial part of the legal approval for the IPP involved agreement between the Project and Millard County about mitigating the substantial impacts that a several billion dollar project would have on a lightly populated agricultural community. This portion of the article examines the workings of these impact mitigation agreements.

IMPACT ALLEVIATION IN ACTION

Project Construction

As of January 5, 1986, the fifth anniversary of the grant of the conditional use permit, the IPP was well on its way to completion as a two unit,

*Professor of Law and Director, Energy Law Center, University of Utah. The author served as a consultant to Millard County during 1980-81. Mr. Rob Keller, University of Utah College of Law, class of 1986, provided valuable research assistance. Part one of this two-part article appeared in 21 LAND & WATER L. REV. 1 (1986).

1500 megawatt electric generating plant. Project officials believe the plant is on schedule and under budget, a rare accomplishment for an energy facility in the 1980's. Any project will encounter difficulties as it moves from the planning stage to completion. However, at this relatively advanced stage of construction, it appears that the hard part came prior to breaking ground, not in the actual construction.

The grant of the conditional use permit authorized construction activity to begin.¹ The first offering of 300 million dollars in revenue bonds for the Project sold in two day.² The successful sale provided an immediate source of construction start up money and a longer term assurance that the Project was sound. A portion of the proceeds paid off the water sales contracts.³ Millard County rejoiced.

Actual Project groundbreaking took place in October of 1981. The ceremonies were forced indoors to the high school gymnasium in Delta by wet grounds at the plant site.⁴ Significant construction activity began in the Spring of 1982, comfortably in advance of the deadline in the conditional use permit.

A handful of legal and political issues other than impact alleviation caused brief discomfort for the Project but did not result in any serious delay in construction or major increase in cost. A sensitive issue involved the selection of the managing contractor for the Project. For a few months in the summer of 1981 the selection became embroiled in state politics.⁵ Utah public officials claimed the selection had been influenced by pressure from California Governor Jerry Brown. The Utah officials expressed concern that the chosen manager would exhibit a pro-union bias that would undermine Utah law prohibiting discrimination in the selection of employees.⁶ Eventually a construction manager was selected and the Project proceeded with a force of union and nonunion workers. In spite of, or perhaps because of this, the Project has had good labor relations and no significant work delays.

A second issue was the supply of coal to fuel the completed plant. As noted, the Utah legislature had refused to compel the purchase of coal mined in Utah for the Project.⁷ Governor Matheson and the Project,

1. Millard County Chronicle, Jan. 8, 1981, at 1, col. 4; *Id.* Feb. 12, 1981, at 1, col. 7. See MILLARD COUNTY PLANNING COMM'N, INTERMOUNTAIN POWER PROJECT, CONDITIONAL USE PERMIT, (1981). For a discussion of the conditional use permit, see Zillman, *Controlling Boomtown Development: Lessons From the Intermountain Power Project, Part One*, 21 LAND & WATER L. REV. 1, 17-19 (1986).

2. Salt Lake Tribune, Feb. 3, 1981, at B-6, col. 5; Millard County Chronicle, Feb. 19, 1981, at 1, col. 3.

3. Millard County Chronicle, March 12, 1981, at 1, col. 4. The Chronicle noted: "The dawn finally broke for many ecstatic farmers. . . ." The article reported a number of new luxury cars were purchased and one woman tore up her mortgage. The IPA Chairman reported the Project had paid off 681 separate contracts. See also, Salt Lake Tribune, Feb. 22, 1981, at 4Z, col. 4.

4. Millard County Chronicle, Oct. 15, 1981, at 1, col. 4.

5. Salt Lake Tribune, Aug. 12, 1981, at D-1, col. 1; *Id.* Aug. 13, 1981, at G-8, col. 5.

6. See generally UTAH CODE ANN. §§ 34-34-1 to -17 (1969).

7. Salt Lake Tribune, Jan. 23, 1980, at 4, col. 1.

however, entered into a "gentlemen's agreement" that the plant would use Utah coal. Contracts with Utah coal companies put the informal agreement in more binding form⁸ and provided a further assurance of the benefits of the Project to the economy of Utah.

A third issue, dating from early in the history of the Project, involved the lawsuits by parties objecting to the water sales to the Project.⁹ The cases eventually reached the Utah Supreme Court where the plaintiffs gained a procedural victory when the court refused to grant summary judgment for defendants.¹⁰ The cases were remanded to the trial court. They were settled out-of-court in a manner which did not upset the basic agreement providing water for the Project.¹¹

A fourth controversy involved the efforts of the state to exercise public utility regulation over the Project. According to Utah law municipal utilities are not subject to the jurisdiction of the Public Service Commission.¹² In 1982, the Chairman of the Commission asserted that the IPP, with its connection to out-of-state utilities and Utah's major investor owned utility, should not be exempt from regulation by the Commission. A Utah Attorney General's opinion, however, endorsed the exempt status of the Project.¹³ The Utah legislature has not changed the public utility law's jurisdictional section.

A fifth issue involved the grant of a building permit for the Project by the county. The precise details of the county's right to subject the Project to its normal inspection had been left uncertain in the ordinances and conditional use permit.¹⁴ Early in 1982, the dispute flared up again. The Project claimed that it was immune because it was a political subdivision of the state, and claimed that county inspectors would only duplicate work done by more sophisticated Project inspectors. The county was worried about ceding power to the Project and opening itself to legal liability for failure to inspect.¹⁵ Eventually, a compromise was reached. The county charged a permit fee and inspected some of the plant site buildings. However, inspection of the power plant itself was left to the Project.¹⁶

8. Millard County Chronicle, Oct. 8, 1982, at 1, col. 1.

9. *Id.* March 12, 1981, at 1, col. 4. The opponents' suit stated 122 causes of action against the IPP.

10. *Crafts v. Hansen*, 667 P.2d 1068 (Utah 1983). The five consolidated suits contested the State Engineer's approval of applications for changes in use for the water. The challengers disputed the conclusion of the IPP and State Engineer that the change in use would not have a significant impact on existing vested rights. The Supreme Court held that the conflicting affidavits of the parties' experts presented genuine issues of material fact for resolution at trial.

11. Millard County Chronicle, Feb. 23, 1984, at 1, col. 1.

12. See UTAH CODE ANN. § 54-2-1(3) and (30) (1953 & Supp. 1985). Section (3), defining a "corporation" subject to regulations, to exclude "towns, cities, counties . . . or other governmental units created or organized under any general or special law of this state."

13. Wall S. J., Sept 15, 1982, p. 29, col. 3.

14. MILLARD COUNTY, UTAH, ZONING ORDINANCE, No. 78, ch. 1-5, definition 50, ch. 16 (1980).

15. Millard County Chronicle, March 25, 1982, at 1, col. 1.

16. *Id.* May 26, 1983, at 14, col. 6.

The sixth issue, and one closely connected to the impact alleviation contracts, was the ongoing battle over taxation of the Project. In 1982, Utah voters approved a variation of the constitutional amendment that had been defeated two years earlier. The new amendment authorized the application of the ad valorem property tax to the property of "political subdivision[s] of the state located outside of its geographic boundaries as defined by law. . . ."¹⁷ Even though the amendment resolved doubts about the constitutionality of property taxation, county officials continued to be frustrated over the inability to get clear answers from the State Tax Commission about the specifics of taxing the plant.

The final legal and political matter involved the decision to reduce the size of the Project by half. By late fall of 1982, revised projections on power use in the western United States indicated that the Project's four units and three thousand megawatt capacity would be more than needed in the decades to come. Utah Power and Light, once eager to assure itself of a significant share of the electricity generated,¹⁸ now sought to relieve itself of as much of the load as possible.¹⁹ The downscaling decision again called attention to the curious nature of the Project. Unanimous approval was needed from all of the municipal and cooperative participants.²⁰ This requirement provided an opportunity for the City of Bountiful, one of the small municipal participants, to secure concessions from Utah Power and Light, its longtime adversary in other electric power disputes.²¹ Eventually, the decision to cut the Project to two units and fifteen hundred megawatts was made in the spring of 1983.

The Impact Alleviation Contracts

To date, the parties have negotiated and agreed to approximately fifty alleviation contracts.²² By subject matter, most of the agreements can be classified as planning studies to determine whether impact mitigation is needed, personnel expenses to fund impact mitigation work, or capital funds for construction of needed public facilities. Planning studies considered the feasibility of various water projects²³ from engineering and legal standpoints. The operation and maintenance grants funded a wide variety of public services. Some grants, such as those made for police services, expanded existing departments. Others, particularly in the social services field, provided the first significant community services in such areas as mental health and drug and alcohol treatment. Most of the funds

17. UTAH CONST. art. XIII, § 2.

18. See Zillman, *supra* note 1, at 7 n.35-36 and accompanying text.

19. Millard County Chronicle, Aug. 13, 1982, at 1, col. 1.

20. *Id.* Sept. 2, 1982, at 1, col. 4.

21. *Id.* Jan. 27, 1983, at 7, col. 4.

22. A list of all contracts appears as Appendix A.

23. See APPENDIX A, IMPACT ALLEVIATION AGREEMENTS [hereinafter IAA] No. 8 (water and sewer study for Delta City), No. 13 (water services study for Fillmore), No. 33 (study of impact of IPA water purchase on activities of Central Utah Water Conservancy District), No. 34 (research on transfer of water rights to Lynndyl), No. 35 (sewer and water study for Oak City).

were spent on salaries and employee fringe benefits, with lesser amounts on travel costs and office supplies.

Major capital projects received a considerable portion of the total impact alleviation payments. Alleviation dollars helped build new and expanded schools in the Millard and Juab County School Districts,²⁴ a new county jail and public safety complex in Fillmore,²⁵ a new Delta City municipal building,²⁶ and several culinary water and sewage treatment facilities in Delta and smaller cities.²⁷ The Project also agreed to fund a portion of hospital construction costs but the facility was not approved by Delta.²⁸ Lastly, comprehensive settlements²⁹ with Millard County and Delta in the Fall of 1983³⁰ included capital funds for park improvements, streets and drains, a golf course, and a road to the plant site.

Altogether seventeen entities of government entered into alleviation agreements with the Project. Four of the entities were not part of Millard County. Neighboring Juab County received money for school building construction. Nephi City received support for expanded sewage treatment facilities. The Central Utah Water Conservancy District received funding for a study of water use. The only Utah state agency to receive funds was the Department of Social Services which entered into five contracts to provide planning and social services within the impacted area.³¹ The largest number of contracts were with Millard County government entities. The most frequent parties were the county, which entered six contracts, and Delta City, which entered nine. The small towns of Hinckley, Lyndyl, Leamington and Oak City each received money for operation and maintenance as well as for capital expenditures. Fillmore City, at the opposite end of the county, entered only one contract. That contract provided for a study of Fillmore's water needs. The remaining agreements were with the West Millard Recreation District and the West Millard Mosquito Abatement District for operation and maintenance funds. As mentioned, the West Millard Hospital District was granted land by the Project for a hospital facility and funds for hospital construction. The contract lapsed when construction was turned down by the citizens. Finally, two of the early alleviation contracts provided planning money for county coordinating bodies.³²

24. *Id.* No. 16 (\$7,987,490 for two new schools and two additions), No. 45 (total sum undetermined and subject to later negotiation).

25. *Id.* No. 10 (\$525,000 of an estimated \$1.3 million).

26. *Id.* No. 37 (IPA to pay fifty percent not to exceed \$350,000).

27. *Id.* No. 9 (Hinckley sewage lines and treatment lagoon, IPA pays \$212,500 of \$718,383), No. 14 (Delta wastewater system improvements, IPA pays sixty-seven percent of cost up to \$1.5 million), No. 15 (Delta culinary water facilities, IPA pays 52.42% of estimated \$1.24 million), No. 26 (Hinckley culinary water system work, IPA to pay \$40,000), No. 40 (Leamington general capital projects); IAA No. 44 (Oak City general capital projects), No. 46 (Nephi City, Juab County sewage treatment facility, IPA to pay \$100,000).

28. *Id.* No. 38 (IPA to pay up to \$1.1 million).

29. *See infra* text accompanying notes 48-60.

30. IAA, *supra* note 23, No. 41 (Millard County), No. 47 (Delta).

31. *Id.* No. 17 (maximum amount of \$187,725), No. 36 (up to \$249,000 plus overhead), No. 48 (maximum of \$113,367), No. 49 (up to \$487,581), No. 49A (up to \$168,707).

32. *Id.* No. 1 (to Millard Community Council), No. 3 (to Millard Inter-Governmental Cooperative Alliance).

Despite the work that had gone into the drafting of Senate Bill 67³³ (the Utah statute that required Project payment of impact mitigation) and Impact Alleviation Agreement Number 6 (the agreement between the Project and the County setting out guidelines for negotiating individual mitigation contracts) the negotiation of individual impact agreements was difficult and at times contentious. Parties recall that in the first two years, negotiations were often time-consuming and frustrating. Viewed in retrospect, the process generally accomplished its objective of providing upfront money for necessary public expenditures. Agreements were reached, promises were kept, and impact funds arrived in the communities when they were needed. Despite periodic quarrels between the Project and the local officials, an underlying trust remained.

Week by week the process was not as smooth as the parties had originally envisioned. The major concern involved the meaning of "direct impacts." The issue, which had not been addressed by the legislation or the conditional use permit, had to be faced when a specific request for dollars was presented by a candidate for alleviation payments. The Project tried to secure approval of rather precise formulas for determining the appropriate level of social services and for measuring to what extent the growing Project work force had increased demand for the service. Local officials were doubtful that accurate formulas could be prepared. They also feared that the formulas masked an attempt by the Project to limit its responsibility for impact payments.

In most individual negotiations, alleviation shares were set by rough compromise rather than reliance on a precise formula. As one official described the cost-sharing arrangement for one of the major building projects, "someone threw out a figure" and the parties accepted it. The figure was backed by considerable documentation and was subject to review once approved by the negotiators, but the actual percentage of Project contribution was the product of reasoned hunch rather than precise quantification.

The Project's review of specific expenditures was a regular source of discontent.³⁴ In the Project's view, audits were necessary to prevent unwise expenditures and to be certain that the expenditures would be approved by the IPA Board. The Project negotiators also feared a local perception that the alleviation agreement contracts were a "pot of gold" to be exploited by any entity of government with a plausible claim of Project related impact. Government officials viewed the hard negotiating posture and the demand for thorough audits as evidence of improper domination by the Project. One county official voiced the objection that Millard County had become "an annex of the Los Angeles Department of Water and Power." Another recalled the frustration over an audit for a disputed five dollar expenditure.

33. Amendments to the Interlocal Cooperation Act, ch. 10, 1980 Utah Laws, §§ 1-12 (codified in scattered sections of UTAH CODE ANN. §§ 11-13-1 to -35 (Supp. 1983). See Zillman, *supra* note 1, at 23-27.

34. Salt Lake Tribune, Sept. 4, 1981, at D-11, col. 1 (noting the reaction of Delta City officials to IPA letter questioning Delta's budget).

For a time, in the summer of 1981, negotiations were broken off altogether amidst claims that the Project was acting unreasonably.³⁵ County officials complained of Project domination of local affairs and a slowness in making payments. The Project responded that the governments were not advising it of their problems. Utah Governor Scott Matheson joined the government entities in complaining about the lack of payment.³⁶ Talks resumed in less than a month³⁷ and shortly afterwards the first major contracts were signed.³⁸ This ended the worst impasse in the negotiations. On several later occasions, however, even when an agreement had been reached, the money was painfully slow in reaching entities of government facing unpaid bills.

One reason for the disputes was the continuing uncertainty as to how the alleviation payments were to be viewed. The Project felt that the alleviation process existed because of Project willingness to endorse the concept. Project officials felt they had gone far beyond the performance of other developers in sparsely populated areas. The Project was doing the county a large favor and it was reasonable to expect the government entities to satisfy Project needs for verification. Millard County officials, by contrast, were inclined to treat the Project as a taxpayer obligated to pay for the considerable burdens it imposed on the county and entitled to no greater or lesser privileges than any other resident.

These philosophical differences were worsened by the organization of both the Project and Millard County government entities. The Project impact negotiation team was led by the Los Angeles based Project Director for Community Impact. He was joined by the Project attorney and another Los Angeles official. While they had broad negotiating authority, their decisions were subject to approval by the IPA Board, whose president was often the signatory on the contract. The board, composed of representatives of the small Utah communities who made up the IPA, exercised a real and theoretical check on the Project negotiating team. Individual board members were quite attentive to benefits given to Millard County through the impact alleviation process. While a request for a fire truck or a recreation supervisor might not trouble a representative of a giant municipal utility, it could distress the mayor of a community of 500 people who felt that a Millard County entity was asking for too much. Alternatively, on some requests the small community perspective helped sell the entity's case. As an example, the Millard County School District's request for capital funds was measurably benefitted by a meeting with IPA Board officials.

35. *Id.* Aug. 14, 1981, at B-3, col. 1; Millard County Chronicle, Aug. 20, 1981, at 1, col. 4.

36. Salt Lake Tribune, Aug. 20, 1981, at B-1, col. 4.

The Governor warned that if IPP continued to keep "a tight hold on the moneybags" it would undercut Project relations with state government.

37. Millard County Chronicle, Sept. 10, 1981, at 1, col. 4; *Id.* Sept. 17, 1981, at 1, col. 5.

38. IAA, *supra* note 23, No. 10 (Millard County Public Safety Complex, IPA pays \$525,000, Oct. 20, 1981), No. 11 (Millard County operations and maintenance budget for 1981; IPA pays \$440,086, Oct. 20, 1981), No. 12 (Delta 1981-82 operations and maintenance budget, IPA pays \$390,010, Sept. 18, 1981), No. 14 (Delta wastewater system improvement, IPA to pay up to \$1.5 million, Nov. 13, 1981).

A more significant problem was the lack of coordination on the part of Millard County entities. Project and state officials had urged coordination among the entities of county government from the earliest dealings with the county. Ideally, the Project would have favored a single negotiating body to represent all entities in the county. Short of this, collaboration among the county governments could have allowed negotiations with the individual entities to proceed with greater ease. Both Project alleviation money³⁹ and money from the state Community Impact Board paid for new and existing entities to plan and coordinate impact mitigation. At various times, and for various purposes, the Millard Community Council, the Millard Intergovernmental Coordinating Alliance, and a Blue Ribbon Task Force existed for the purpose of coordinating the response of the various governments.

In practice, none came close to achieving their objectives. The Project and the new governmental bodies had to live with existing differences of opinion in the county and with the differences in personality of the elected officials. Long standing differences between the east county (Fillmore) and the west county (Delta) were of relatively minor significance in the impact alleviation process. A sharper split existed between the county officials and Delta City and between both bodies and some of the smaller towns. The coordinating bodies were evaluated according to which group felt it was adequately represented and which group felt it was providing leadership. Too selective a membership ran the risk of offending entities and individual officials. Too large a membership could provide an "unwieldy monstrosity" more given to debate than to action. By the fall of 1981, both the school district and Delta City had decided to go their own way in the alleviation negotiations. While Impact Alleviation Agreement Number 6 remained in force, it served as a guideline "more honored in the breach than the observance" by the city. The de facto secession of two of the major impacted entities doomed efforts for a unified negotiating position. From then on, it was each entity for itself. While government officials later grieved over a "lack of leadership," the real problem was that there were too many willing leaders and not enough followers.

Both Project and government officials now lament the failure of coordination. The Project was forced into more negotiations than they anticipated. Understandings reached with one government body might not hold for another body. Opinions differ on whether the lack of coordination saved or cost the Project money in the total impact mitigation picture. Some government officials felt the lack of coordination allowed the powerful Project to play off the small entities against each other, thus reducing the total impact payment to the area. By contrast, some Project officials feel that the need to satisfy so many independent entities led to unnecessary duplication of expenses. Both sides concede that the fragmentation did encourage or force the Project to play a larger role in the operations of local government than they would have with a unified county. In several cases, the Project initiated impact discussions with the

39. IAA, *supra* note 23, No. 1, No. 3.

smaller communities. In other cases, the fragmented county encouraged the Project to insist on harder negotiation and a more precise auditing of funds.

By the language of Senate Bill 67, mitigation disputes were to be resolved by the state Community Impact Board (CIB).⁴⁰ In practice, the parties chose to settle their disputes themselves. The unpredictability of the CIB review and subsequent court appeal discouraged parties from using the statutory method of resolving disputes.

The entities feared the cost and expertise needed to put together a case for the CIB. Local officials reported that state officials advised them that they might face a hard job in proving their case for impact funds. Project officials also had reason to worry about the statutory procedure. Any appeal to the CIB would undercut the Project's claim that it was handling Project impacts. Further, the Project recognized that the CIB could give an expansive interpretation to "direct impacts" that might stand as precedent in future cases. As a consequence, a shared interest developed to avoid recourse to the state and to settle disputes at home.

The one exception proved the hazards of the formal appeal process. In the summer of 1983, Lynndyl and the Project were unable to agree on a lump sum award for capital projects. The dispute reflected Lynndyl's perception that it was seeing far less community development than had been promised.⁴¹ Lynndyl residents had viewed the designation of the Project site as the "Lynndyl site" as a promise that a major portion of the development would center on their town rather than fifteen miles down the road in Delta. A sign by the side of the main highway, which promoted the sale of sites in the Lynndyl Industrial Park showed the extent of the dreams of the community of one hundred residents. By mid-1983 it was clear that most of the development was not going to Lynndyl. Lynndyl residents felt the Project decisions to encourage housing at the plant site and in Delta were a betrayal of promises made. Accordingly, when Project officials tried to reach settlement of the capital expenditures for the small towns, they found the Lynndyl officials ready for a confrontation. The Project offered Lynndyl \$50,000 as a once-and-for-all settlement of capital improvement needs, primarily for a water system. Lynndyl responded that the amount was inadequate and filed an appeal with the Community Impact Board.

The Director of the Department of Community and Economic Development (the parent agency of the CIB) appointed a former Department official to serve as hearing examiner. The CIB members chose to remove themselves from the hearing and await a record of the proceedings for their review. The hearing quickly took on the trappings of a formal administrative proceeding. The hearing examiner drafted, and the parties approved, rules of procedure. At the hearing itself, the burden of proof

40. See Zillman, *supra* note 1, at 24.

41. Salt Lake Tribune, Sept. 5, 1983, at B-1, col. 1; Millard County Chronicle, Aug. 4, 1983, at 1, col. 1.

was on Lynndyl to prove that it was entitled to more alleviation money than was offered. Lynndyl was unprepared to make its case. The result was victory for the Project⁴² even to the extent of an award to the Project for its costs in the action. The Project waived this relief and eventually entered into a contract with Lynndyl for \$40,000.⁴³

Since the Lynndyl proceeding, no other impact alleviation dispute has been taken to the CIB. Probably the Lynndyl experience persuaded other government entities that disputes would be better resolved informally.

The Department of Community and Economic Development and the Community Impact Board played a far more significant role in Millard County as impact mitigator than as arbiter of disputes over Senate Bill 67. From its first discussions with local officials, the Project had stressed that impact alleviation was to be funded by the Project only when other grants and loans could not be obtained. Senate Bill 67 reflected the "funder of the last resort" approach.⁴⁴ Planning studies had emphasized other sources of dollars for the up-front mitigation of impacts.⁴⁵ In 1980, the Project appointed an officer to assist the localities in getting grants from the variety of funding sources.

In the late 1970's the federal government was considered a major funder of impact costs. A wide variety of federal grant programs were available to fund such specific community needs as sewer and water projects and public safety facilities. These programs were available regardless of any showing of boomtown impact. A separate set of existing statutes and proposed bills focused directly on the problems of boomtown communities. For a time, in the early planning stages of the IPP, there was hope that the federal government would arrange to pay impact mitigation costs as a part of a promise to treat community impacts as a nationwide responsibility.

In the actual event, the federal performance was considerably less than its early promise. Federal dollars from the specific grant programs did contribute to several of the major capital expenditures, most notably the public safety complex. However, the first Reagan Administration budget in 1981 sent the message that new federal grant programs would not be forthcoming and old ones would receive limited funding. By the summer of 1981 both the Project and Millard County officials recognized that significant federal funding for impact mitigation would not be forthcoming.

The significant alternative or complement to Project funding thus became state funds, primarily those distributed from the Community Impact Account.⁴⁶ Such dollars already had hired the first Millard County

42. Millard County Chronicle, Aug. 18, 1983, at 1, col. 4.

43. IAA, *supra* note 23, No. 39.

44. UTAH CODE ANN. § 11-13-34 (1980) (Project to receive credit for mitigation assistance received from any "federal or state governmental authority").

45. See Zillman, *supra* note 1, at 21-22.

46. *Id.*

planner. CIB funds became a significant factor in most of the proposed capital improvement projects. The typical approach was to divide the funding of capital projects among traditional local borrowing, grants or low interest loans from the CIB or other state agency (most often, the Department of Water Resources program for funding water projects⁴⁷), and an impact alleviation contract under the terms of Senate Bill 67. Often the Project helped direct the local officials to the other funding sources. Project officials felt that the mixture of financing, including possible increases in local property tax rates and service charges, helped to remind the local officials and citizens that impact money was not free and local citizens should make some contribution for what would be an enhanced level of local services.

As noted, much of the division of costs between the Project and governments for the capital projects were rough guesses as to "fair shares" rather than precise apportionments of local, state and Project responsibilities. While both the Project and the Community Impact Board would have preferred to give less rather than more, both bodies had funds to be used on impact mitigation and wanted to prevent undesirable boomtown consequences in Millard County. Both bodies recognized that their burden might well have been worse without the other funding source. In this spirit of generous compromise, arrangements were reached that provided the necessary dollars.

By the fall of 1983, the Project negotiators decided that the process of individual negotiations had become unnecessary and costly. Their suggestion of an overall agreement to settle any further mitigation claims was favorably received by Millard County and Delta City, the two major beneficiaries of mitigation funds. A contract for "Alleviation of Direct Impacts 1983 Through Completion of Construction" was signed with the county on October 25, 1983.⁴⁸

The agreement, which was fifteen pages plus appendices, was the longest alleviation contract. An introductory "Recitals" section discussed the Project and impact alleviation. It noted that "sales and use taxes" paid by IPP contractors "should be the primary economic resource to be used in the alleviation of Direct Impacts." The IPA would supply alleviation funds to the extent sales and use taxes were not available. Section 2 of the contract began by requiring Project payment of 1983 administrative, program and capital costs.⁴⁹ For subsequent years the parties would examine population growth figures, the county budget, and estimated tax receipts and attempt to determine the "amount of Project Financial Responsibility for the next year."⁵⁰ Direct impacts were divided among administrative costs, program costs, capital projects, and un-

47. See generally UTAH CODE ANN. § 73-10b-1 to -22 (Supp. 1985).

48. IAA, *supra* note 23, No. 41.

49. The administrative and program costs were \$633,041 less \$19,000 already paid to the County.

50. IAA, *supra* note 23, No. 41, § 3.

determined costs.⁵¹ Tax revenues would be the first source of funding such impact costs. If taxes were inadequate, bond proceeds would cover the rest of the cost.⁵²

In case of disagreement about an impact item, the parties would engage in arbitration. Each side would appoint one representative who would, in turn, agree on a third arbitrator. The three arbitrators would try to reach a unanimous agreement on the issue.⁵³ If they failed or if the parties rejected the arbitrators' conclusions, the dispute would be resolved by the statutory procedure.⁵⁴ The process thus left the CIB and the courts a further step removed from the impact alleviation process. The new contract terminated Impact Alleviation Agreement No. 6⁵⁵ although it retained familiar provisions from prior alleviation contracts and the state statute.⁵⁶

The new contract terminates with the earliest date of the end of construction prior to completion, the start of operation of the last generating unit or the imposition of an ad valorem tax on the Project.⁵⁷ The final paragraph estimated contract expenditures of \$6,630,000.⁵⁸

A similar contract with Delta City settled their impact mitigation claims.⁵⁹ Estimated expenditures were \$4,600,000.⁶⁰

THE MITIGATION OF SPECIFIC IMPACTS

The prior section has focused on the overall workings of the contractual impact mitigation process. With some disagreements and delays, the process worked roughly as planned. The Project paid and the government entities received approximately twenty-seven million dollars for a variety of services and buildings that touched many of the areas of possible impact specified in Senate Bill 67. The Project contributed an additional twenty-seven million dollars for housing and community development and six million dollars for staffing consultants and monitoring.⁶¹ It remains

51. *Id.* Schedule A (administrative costs included salary, benefits, and supply money for such officials as the commission members, administrator, recorder, treasurer, attorney, assessor, jailers, sheriff's deputies, road crews, alcohol and drug officers, and aging services staff. Schedule B (program costs) covered such matters as poor and indigent care, the detention house, ambulance services, services at the public safety building, law enforcement and civil defense programs. Schedule C (5-year capital projects) included computer purchase or lease, fire trucks, recreation improvements and a \$2.8 million road project to improve access to the plant site. Schedule D (project related needs) included two items—a solid waste landfill and a new ambulance.

52. *Id.* § 10.

53. *Id.* § 11.

54. *Id.* §§ 11-12.

55. *Id.* § 14.

56. *See, e.g., Id.* §§ 15 (accounting and auditing), 16B (no injunction to stop construction), § 22 (force majeure excusing default), § 24 (credit for in lieu taxes).

57. *Id.* § 2B.

58. *Id.* § 25.

59. IAA, *supra* note 23, No. 47.

60. *Id.* § 24.

61. Project officials have summarized the Project's mitigation strategy:

The Project's plan from the beginning involved four major steps:

1. The identification of potential adverse and positive socioeconomic impacts;

to consider what the money bought, what impacts actually occurred and what non-monetary actions of the parties helped to control or worsen impacts. Here, the conclusions are preliminary and often imprecise. The Project remains in construction. Further boom may be expected. Also, the standards for measuring impact control cannot be resolved to everyone's satisfaction. Even with precise statistics, one person's "crime wave" may be another's "minor increases in public disorders."

Six areas—housing, public safety, education, water systems, streets and general quality of life give a flavor of the impact mitigation steps taken and the perceptions of how successful mitigation efforts have been. While this by no means covers all impact issues, it does provide a look at the major impact matters.

Housing

One of the critical issues for the Project planners was housing. Early estimates indicated that at least three thousand workers would be employed at the peak of construction.⁶² Added to the workers were their families and project related newcomers, who were not employed by the Project but had come to Millard County in search of employment in the growing community. The 1979 version of the Project Environmental Impact Statement estimated 2,210 housing units would be needed.⁶³ Even without Project or county efforts to channel the housing, it was expected that several worker housing options would be present depending on worker permanence, salary, and lifestyle preference.⁶⁴ A portion of the work force would be daily commuters from outside Millard County. Most of these workers would live in the southern part of the Wasatch Front population area (Ogden—Salt Lake City—Provo). While Provo was over eighty miles from the IPP site, other small cities were closer and the roads were good.

2. The development, with local officials and residents, of impact mitigation plans;

3. The implementation of those plans, and;

4. The use of a comprehensive monitoring program to track the projections and mitigation efforts and to identify areas where adjustment or correction may be needed.

Impact studies, housing and monitoring were always discussed and considered key elements of the Project's overall mitigation plan necessary to mitigate impacts in addition to providing facilities and services. The Project retained a staff of up to seven people including a full time community relations person and a full time Impact Coordinator, Housing Coordinator and Monitoring Coordinator, located in Delta area as well as three people in Los Angeles devoting full time to impact alleviation. Also, two Project consultants with expertise in planning and demographics worked closely with the local entities since very early in the planning stages. Much of this staffing was involved with monitoring in order to modify any incorrect assumptions and make adjustment to minimize negative impacts. Any changes in local perceptions in the Project's housing strategy were direct results of the Project's monitoring program.

Letter from Carl Haase and Al Pitzer to George Young (May 17, 1985) at 4 [hereinafter Haase Letter].

62. IV IPP FINAL EIS, 9-19 (1979) [hereinafter FINAL EIS].

63. *Id.* at 9-21.

64. LOS ANGELES DEP'T OF WATER & POWER, IPP PRELIMINARY ENGINEERING AND FEASIBILITY STUDY 7-1 (April 1979).

These daily commuters would impose minimal impacts on Millard County. They would put in their work days and live their lives away from the impact area. Their numbers were not large enough to pose any impacts for the Utah County (Provo) area.

A second category of workers was made up of the weekly commuters. These workers chose to maintain their home (and often family) away from the impact area but to take up temporary living quarters in Millard County. They commuted to their permanent home for weekends, lay off periods, or other breaks. They did not see themselves as Millard County residents, but they contributed more to the positive and negative impacts of the Project than the daily commuters. They posed problems for police and social service workers.

The third worker category was the permanent residents. These workers chose to move themselves and family to Millard County for the duration of their employment with the Project. Their situations varied from trailer park living to ownership of new single family houses. They were laborers and professional managers. Some were Millard County natives returning home. Others were newcomers to Utah. Some were certain their stay would be brief. Others either had jobs on the Project in the plant's operational stage or hoped to find permanent work in the area. These "permanent" employees posed the greatest impacts on the county. They would require housing, schools for their children, utility services, and the full range of other government services.

Both the Project and the local governments could have allowed the new population to settle into whatever housing they chose or could afford, letting the free market resolve difficulties. The Project and, to a lesser extent the government entities rejected this policy. The Project regarded adequate housing opportunities as an essential aspect of worker recruitment and productivity. Good housing made for contented workers and workers' families. It also avoided the sprawl and tent cities of other boomtowns—factors that soured relations with the local communities. Local governments were less certain of what they wanted. On the one hand, worker slums were undesirable, and too small a supply of housing could drive local rental costs beyond the reach of many longtime residents on permanent or fixed incomes. So too, there was benefit in isolating and controlling some of the young, single construction workers who were thought to be potential police and lifestyle problems in conservative and religious Millard County. These factors encouraged housing planning. On the other hand, planning could undercut local businessmen hoping to profit from housing and other needs of the work force. Project built homes or apartments could kill local housing construction. Quartering the workers at a man camp or encouraging them to do their shopping elsewhere would harm local sellers of goods and services. The government entities also recognized that the Project could influence which communities would benefit from the population growth and which would not.

The Project's greater certainty about what it wanted and its money allowed it to make most housing decisions. As early as the Project im-

pact statement in mid-1979, planners saw the need for some new permanent housing and considerably more temporary housing.⁶⁵ By the time of the Project approval in January 1981, both Project and government entities were persuaded of the value of bachelor quarters at the plant site to handle much of the housing demands of single workers, both weekly commuters and some who had no other home. Accordingly, construction of a "man camp," officially designated as the Construction Worker Housing Complex, was required in the conditional use permit.

The Project built an attractive, well-landscaped development next to the Project site. The facility looks like a lowrise dormitory complex or a planned mobile home community. It has received praise from community leaders and outside observers. A community building offers food services and recreational opportunities ranging from basketball and weightlifting to movies and video games. In theory, a worker can live for months at the camp without ever visiting Delta. The attractiveness of the camp has kept it filled or near capacity since it opened. For the bachelor or weekly commuter, it is clearly the housing of choice.

The Construction Worker Housing Complex is open to single workers of both sexes. A number of women have been residents. Their presence has provided a moderating influence on the male residents. While there have been occasional police problems, most have been handled by the private security force at the camp.

While the camp has been an unqualified success, the Project's role in providing family housing has been a continuing source of controversy that promises to continue after the completion of construction. While the man camp was a part of the negotiations between the Project and the county in Fall 1980, the Project did not present plans for permanent housing as part of their negotiating package. Instead, the Project unilaterally announced plans to seek options on four hundred acres of Millard County land to ensure affordable housing for workers. Despite assurance that it was "not the intention of IPA to construct the actual housing or do any development work that private interests are willing to undertake,"⁶⁶ the announcement disturbed many county residents. County officials, then in the midst of negotiations over the zoning ordinance and conditional use permit, felt betrayed by the lack of consultation. Local developers felt that despite the IPP assurances their plans to build housing were undercut. Officials of some Millard County towns felt that IPP's decision on the housing site would determine where much of the permanent growth would take place. IPP's suggestion that proximity to existing population centers and community facilities would influence the selection of acreage⁶⁷

65. IV FINAL EIS, *supra* note 62, at 9-21. The EIS anticipated that at construction peak 2210 housing units would be needed, 460 of which would be permanent and 1750 temporary.

66. Millard County Chronicle, Oct. 2, 1980, at 1, col. 7 (statement of IPA Executive Officer Joseph Fackrell).

67. *Id.*

sent a clear message that development would concentrate in Delta rather than Lynndyl or another outlying community.⁶⁸

By January 1981, the IPA had taken options on property near Delta.⁶⁹ In July, the Project approved exercise of the option on 288 acres near Delta.⁷⁰ The area was called White Sage and was located on the east side of Delta with easy access from the main highway to the plant site. While Project officials again claimed they did not want to interfere with the private housing market, they had concluded that the private market would not do the job.⁷¹ High interest rates were thought to be a major factor in discouraging housing ventures. Many local officials and businessmen still disagree with the Project's preemption of much of the housing

68. Haase Letter, *supra* note 61, at 5-6. The letter states Project intentions about community development:

When the Project finally decided to exercise the options for the Delta property the decision was indeed a deliberate decision by the Project to focus the Project's temporary housing in one area. It should be noted that the Project also optioned land in Hinckley but the options were not exercised in part due to Hinckley reluctance to accept the amount of growth projected. Other communities were also reluctant to have significant growth, although all were desirous of some growth, because of the possible negative affects to the quality of life. The Project's reasoning for focusing the growth to Delta was based on the following considerations. First, Delta was the only community on the west side of the county that contained the infrastructure from which to build on. Second, by focusing the growth the overall cost to the Project would be much less than if the growth was spread out. Third, it was felt that by focusing the growth the associated problems would be much more manageable. Fourth, by focusing the growth to an entity with a complete infrastructure and substantial baseline population the down size impacts (the costs of maintaining the increased services and facilities without future Project impact assistance) would be easier for that entity to manage. Also it should be noted that the focusing of growth did not deprive the other entities the opportunities of receiving Project impact assistance. The project has provided financial assistance to six water systems, three sewer systems, six administrative budgets and two school districts.

69. Millard County Chronicle, Jan. 22, 1981, at 1, col. 7. The options were on 315 acres near Hinckley, approximately five miles west of Delta and 400 acres near Delta.

70. *Id.* July 2, 1981, at 1, col. 4.

71. According to the letter from Carl Haase and Al Pitzer, a total of 467 units of temporary housing and recreational vehicle pads were constructed offsite. It was generally acknowledged by the banking institutions and the local developers that the private sector could not amortize the cost of temporary housing in the relative short time period, (especially after the Project had been reduced from four units to two and the construction period cut by two years) nor were these units needed in the long range. In addition, only the Project would make the commitment to the communities to remove them. With regard to permanent housing, the Project developed a seventy lot subdivision to stabilize escalating land cost in the wake of spiraling land speculation. A new IPP worker's average salary is less than \$22,000 per year and land cost alone had escalated to \$15,000 for a single lot. It should be noted that while some speculators did not make the profit they had hoped for, permanent Project workers are finding houses throughout Millard County at reasonable prices. There has also not been an overbuilding of homes as was the case in several boomtown areas where developers went bankrupt with partially completed developments. With IPP's housing strategy, local builders have continued to build housing on an as-needed basis for new workers. To date, about 360 new single family houses have been built in the west Millard County area since 1981, only 110 of which have been built in Delta. Also, only thirty-six of the Project's seventy lots have been sold and these sales were to the general public, as well as to Project workers. Haase Letter, *supra* note 61, at 4-5.

development. While several small apartment units and several trailer parks were financed by private developers, the White Sage project became the focal point of Project family housing.

Faced with a fait accompli, Delta annexed the White Sage land in July 1982.⁷² The annexation increased the city size by fifty percent. What the city had acquired was a combination of permanent single family homes (though none were built by the Project) and temporary apartment and trailer spaces. The houses were to pass to private ownership upon sale. In theory, they would house a considerable portion of the permanent, professional staff which would remain to operate the Project after its completion. These properties would be taxable by the city. The temporary quarters would remain in Project ownership and would benefit from the Project's tax exemption. At some time near the completion of the construction, they would be removed from the site. The Project also dedicated a portion of the area for a recreational park.

Today, White Sage looks like many other developments carved out of a piece of desert land. The permanent and temporary sections are slightly separated but do not clash with each other. Landscaping is in its early stages. The recreational area receives heavy summer use but suffers from the low quality soil which makes it difficult to grow grass. Significantly, White Sage is isolated from the rest of Delta. As a consequence, it has encouraged a perception of two communities in Delta or, as one official put it, an "us against them" mentality. A possible consequence of White Sage has been the relocation of activities in Delta. The West Main Street area, traditional focal point of government offices and businesses, is a depressed area. Several businesses have changed hands and empty store windows are common. The east end of Main Street (closer to White Sage, the major trailer park, and the Project site) has received most of the new construction including a shopping mall, recreational area, and the city's most attractive motel. The overall result is not physically unattractive but does reflect a degree of sprawl and lack of planning.

While IPP dictated much of the housing development, the county and local governments were successful in discouraging unwanted growth. The county put high priority on avoiding development outside the existing urban areas. The goal was both to continue the objective of the Millard County Master Plan to keep development close to existing population⁷³ and to avoid the worst aspects of boomtown sprawl. A revision of county ordinances and a vigorous enforcement program stopped the first attempts to live out of trailers and trucks on unoccupied county property. As a result, there were no tent cities and only minimal squatting on open land.

Small towns like Oak City and Hinkley also controlled growth by enforcing zoning ordinances and exacting development fees. Both communities expanded without being overwhelmed by new development.

72. Millard County Chronicle, July 8, 1982, at 1, col. 5.

73. MILLARD COUNTY, UTAH, MASTER PLAN FOR LAND USE FOR MILLARD COUNTY, UTAH 41-42 (1970).

While the project has claimed expenditures on the man camp and White Sage as part of its impact mitigation costs, housing costs themselves (as contrasted to sewer, culinary water and other services to housing areas) were not the subject of an Impact Alleviation Agreement. In retrospect, housing disputes may not have been amenable to resolution through the alleviation contract mechanism. The housing issue raised concerns that the Project was dictating policy to local government and the private sector. It also forced decisions about which communities would benefit from the new housing. Given a divided county negotiating position, the Project may have been required to force decisions once it determined that it needed to play some role to assure adequate housing for its construction force and permanent staff.

On balance, the Project's actions served to mitigate the worst aspects of a housing shortage in the county. While rents increased sharply, doubling in some cases, there was no widespread displacement of existing residents by better paid Project workers. A satisfactory variety of housing allowed workers to choose the lifestyle they favored. No boomtown slums developed. The housing units themselves were, for the most part, an attractive addition to the county.

The shortcomings of the housing programs are more difficult to assess. County residents offer different development scenarios to reflect what might have happened if the Project had limited its housing activity to the man camp. Their conclusions are, of course, speculative. The actual results can be faulted if one dislikes the pattern of development. The large recreation and park complex at White Sage also may leave Delta with a considerable maintenance expense once IPP removes its support.⁷⁴

Public Safety

A typical aspect of any boomtown is a lack of law enforcement. Millard County residents' concerns over authorizing the IPP often focused on the risks of crime and disorder in a boomtown. Reports from the Wyoming boomtowns of violent crime, thefts, alcohol and drug abuse were mentioned at the formal public hearings on the IPP and informally in conversations among residents of the county.

Law enforcement in the Project impact area was divided between the County Sheriff's office and the Delta City police. Before IPP, both forces were small and trained to deal with minor criminal and public disorder matters. A particular concern was the county jail in Fillmore, the county seat. In 1977, a fire had badly damaged the building and left it substandard for prisoner confinement. Millard County officials had been forced to take prisoners to neighboring Juab County.⁷⁵ The solution was a stopgap measure until a new facility could be built in Millard County suf-

74. The Project has continued to work with Delta and the county on ways to handle the long term financing of the Park.
Haase Letter, *supra* note 61, at 6.

75. IV FINAL EIS, *supra* note 62, at 8.2-69, 9-37.

ficient to meet constitutional standards. Even without IPP, the county was under court pressure to improve its correctional facility.

The County Sheriff and Delta City officials both pressed hard for impact funds to upgrade public safety programs. The centerpiece of the effort was the new Public Safety building and jail in Fillmore. One of the first major alleviation agreements signed on October 20, 1981 provided \$525,000 (later amended to \$650,000) for the complex. The contract followed the electorate's approval of a \$1.3 million general obligation bond issue. IPA's \$525,000 was placed in an escrow account. The county could withdraw \$400,000 "to partially finance the capital construction costs of such Complex."⁷⁶ The remaining \$125,000 would be withdrawn in three annual installments to partially pay the "County's obligation on the first three debt service payments on the bonds. . . ."⁷⁷

The Project worked closely with county officials in planning the new complex. At times, county officials felt the Project went beyond friendly assistance to trying to run county business. Nonetheless, the friction was brief and the result was an impressive facility which opened in March 1983.⁷⁸ The complex provided office space for an expanded County Sheriff's force and supporting personnel. The new jail provided sufficient space for housing all county prisoners as well as allowing the county to enter contracts to house prisoners from other jurisdictions. The jail cured court concern over inadequate confinement arrangements and allowed Millard County lawmen to jail troublemakers for an evening or a weekend. The complex was a most visible sign of impact alleviation at work. The county appreciated that without IPP support the facility would have been far smaller. The Project regarded the facility as an excellent illustration of the benefits of the Project to the county and the values of cooperation.

Other impact alleviation agreements with Millard County and Delta City helped to buy police cars and hardware⁷⁹ and to fund the salaries and training of additional police officers and support personnel.⁸⁰

The financial support for new officers, police cars and jail cells was important in handling law enforcement problems in the boom area. Of equal importance were Project efforts to make law enforcement the Project's business. Project officers and county law enforcement personnel met monthly to discuss growth projections and law enforcement problems and kept in touch as needed. The Project soon spread the word to its workers that they were expected to stay out of serious trouble. One knife-wielding employee was fired on the spot. County officials felt that if they had they had requested, the Project would have fired any other chronic trouble-

76. IAA, *supra* note 23, No. 10.

77. This condition was later removed. Haase Letter, *supra* note 61, at 7.

78. Millard County Chronicle, March 17, 1983, at 9, col. 1.

79. IAA, *supra* note 23, No. 24 (County—2 patrol cars and juvenile detention center), No. 25 (Delta—2 patrol cars), No. 47 (Delta—computer and video equipment, firing range, van, radar guns).

80. *Id.* No. 2 (County), No. 5 (Delta), No. 11 (County), No. 12 (Delta), No. 24 (County), No. 25 (Delta), No. 41 (County), No. 47 (Delta).

makers. In a depressed economy, the message that the county and the Project were not tolerating serious criminal conduct had its impact on the work force. The Project also kept its promise to handle security at the man camp. Sheriff's deputies were available if the private security guards needed help, but the county was freed from constant attention to every petty offense or brawl at the plant site.

Criminal activity did increase in the county. Violent crimes and drug offenses are no longer unknown in Millard County. However, the fact that they are front page news suggests that Delta has hardly become New York City, Los Angeles or even suburban Salt Lake City. Increases in criminal activity do not appear to be out of proportion with the population increase. They may also reflect a more formal attitude toward criminal conduct. Technical violations of the law which previously were handled short of a formal arrest or prosecution now often appear on crime reports. Delta may be the rare boomtown where both old and new residents complain of too much law enforcement. Newcomers have expressed discontent over discrimination against Project workers by a local government that objects to alcohol and the relaxed lifestyle of the bachelor construction worker. Natives have been upset by random stops by police officers who have taken on a big city formality toward minor matters and who sometimes do not know long time residents.

Police officials admit to adopting an initial policy of vigorous law enforcement. They felt this would set the tone. In considerable part, the approach has succeeded. By boomtown standards, crime has not been a serious problem. The few extreme cases have been dealt with and the citizens of the county, old or new, feel safe on the streets and in their living quarters.

Education

Unlike other government services in Millard County, one entity handles public education. The Millard County School District operates the primary, middle and high schools throughout the county. The school district, run by an elected board and administered by a full-time professional superintendent was one of the first government bodies to approach the Project with an impact mitigation program. Project studies reached the obvious conclusion that the population increase would require more schools and teachers.⁸¹ The exact numbers were harder to predict. Many workers would not bring their families to the county under any circumstances. Others might assess school quality before deciding where families should be located. It would be hard to predict what grades would be most impacted and for how long. One wave of new workers might have seven year olds; another teenagers. One certainty was that school population would decline after the peak construction period. The district was forced to estimate how much permanent construction and teacher hiring it should do.

81. IV FINAL EIS, *supra* note 62, at 9-19 (anticipating that fifty-six new teachers would be needed to handle the Project impact).

School district officials opened negotiations with the Project even before the county approved the conditional use permit. While school officials gave some encouragement to the concept of a county-wide negotiating body, they were quick to go their own way when coordination did not develop. The district, aided by consultants and the State Department of Education, presented a detailed statement of construction needs to the Project. The district persuaded an initially reluctant IPA Board that there was a need for the funds. As with other capital construction projects, Project impact alleviation funds were augmented by local bonding and funds from the Community Impact Board. The district resisted Project encouragement of a forty year bonding period and eventually settled on a fifteen-year term.

The result of eighteen months of negotiation was Impact Alleviation Agreement Number 16, signed February 17, 1982. The contract provided for IPA to pay the district \$7,987,490 as the Project's proportional share of the capital construction costs. Addendum B specified construction of a new Delta elementary school and a Fillmore middle school both of approximately 55,000 square feet. It also provided for a 15,000 square feet addition to Delta Middle School and a 25,000 square feet vocational wing of Delta High School. A further provision recognized IPA responsibility for a part of any "temporary facilities" to the extent such facilities were needed as "a result of increased student population attributable to IPA."⁸² IPA also recognized it might have additional liability for impact payments if the formula for projecting "IPA related students" underestimated their number.⁸³

Even with a signed alleviation contract, matters moved deliberately. For several months, school district officials prodded the Project for actual payment as they were forced to commit to construction obligations without a crucial part of the funds in hand. Eventually all payments were made and what seemed major concerns over lack of Project responsibility at the time faded into minor glitches in a successful eight million dollar transaction.

The one-time agreement had gotten the school district a handsome construction program that replaced inadequate old facilities and promised to provide attractive school buildings. What was omitted were significant Project funds for salaries and maintenance costs. Here, Utah law influenced the district's negotiating posture. The Utah educational funding program provides state dollars to equalize spending from district to district. In 1981, district officials estimated that taking Project impact funds for operations and maintenance would simply result in a dollar for dollar reduction in state equalization money. To compound the problem, the demands of increased enrollment were greater than anticipated by district officials. From 1981 to 1984, student enrollment jumped from 2,596 to 3,735 students.⁸⁴ In addition, a time lag in the payment of

82. IAA, *supra* note 23, No. 16.

83. *Id.*

84. Salt Lake Tribune, Nov. 12, 1984, at B-3, col. 5.

equalization money put the district in the usual position of boomtowns—the impact arriving before the tax money. As a result, budgets have been tight. Teacher salaries have been low, teacher training often ignored and necessary services cut back. A two hundred thousand dollar IPP grant for textbooks has helped, but hardly solved the problem.

The operation and maintenance shortfalls have come as the district is adjusting to some unusual student problems not seen in prior years. Growth has been random with large increases in some grades and very little in others. The transience of some IPP students has caused academic and discipline problems. Teachers have experienced fluctuating class enrollment throughout the year with some students staying no longer than a month. The Project influenced the teaching staff both positively and negatively. Project employment, often at pay one third above that offered in the schools, has taken some teachers and staff members out of the system. Their replacements have often been spouses of Project workers including a number of experienced teachers. These teachers and IPP parents with experience in larger urban districts have provided a healthy challenge to existing district practices with their demands for special programs for gifted students and more frequent report cards for all students.

Overall, the district has remained cautiously optimistic that it is handling the boom. The negotiations over new physical facilities remain the envy of other units of government. The new and improved buildings have handled most of the growth. Only a few temporary trailer units have supplemented the classroom needs. District officials remain optimistic that normal population growth in the county following completion of the Project's construction will keep the buildings filled. Operation and maintenance remain the major concern but district officials believe they are managing. Nevertheless, with the benefit of hindsight, district officials would have asked for upfront money for these needs.

Water Projects

The most popular subjects for impact mitigation agreements have been culinary water and sewer projects. Almost one quarter of the fifty alleviation agreements dealt with some aspect of water.⁸⁵ Typically, IPP money would first help fund a feasibility study to determine what hardware was needed and what legal concerns might exist. After the engineers and lawyers finished their studies, a further grant would help pay for the actual treatment facilities.

Water projects reached more governments than any other alleviation matter. Almost all of the small towns received some form of water assistance. Several factors combined to make this a popular impact alleviation program. First, the federal and state environmental laws made it clear

85. IAA, *supra* note 23, No. 9 (Hinckley sewage project), No. 13 (Fillmore water study), No. 14 (Delta wastewater system improvements), No. 15 (Delta culinary water system), No. 33 (Central Utah Water Conservancy District study), No. 34 (Lynndyl transfer of water rights study), No. 35 (Oak City sewer and water study), No. 39 (Lynndyl water system), No. 46 (Nephi sewage treatment project).

that many facilities were inadequate even if no population expansion had been expected. Communities were not in compliance with safe drinking water and sewage treatment standards. While enforcement was slow, there was a perception that somewhere down the line old ways would have to change. A second factor was that Project officials were generally sympathetic to water projects because they enhanced community attractiveness. Neither permanent nor temporary Project residents were excited about setting up house in areas with possibly harmful drinking water or inadequate sewage disposal. Finally, new or improved facilities were necessary to provide service for new housing connected with the project.

These factors also explained why funds other than Project impact money were available to finance planning and construction. The Community Impact Board and the Water Resources Board were contributors to all of the Millard County water projects. The third leg of the financial support came from the local taxpayers and water utility customers. On most water plans, the Project and state officials pushed for a larger local contribution. Local officials and residents resisted the increase. Compromises usually did raise water service charges, though not as much as the state or Project would have wished.

The end result was a much improved water system in the county. The Project gave priority to this aspect of impact alleviation often to the extent of recommending water system improvements to government officials, encouraging the hiring of consultants, and helping to make contact with state water funding sources. In the case of a few small towns, the water projects may have been unnecessary or too elaborate. Local officials were forced to deal with the sophisticated world of consultants and government grant applications that is part of the world of their large city counterparts. Nevertheless, the results have allowed new development to be handled and have considerably improved the previous water systems.

Streets and Highways

While water projects were a favorite Project impact program, the same could not be said about streets and highways. The major Project alleviation grant for roads was a \$2.8 million road from Delta to the plant site negotiated as part of the Comprehensive Agreement with the county.⁸⁶ A few lesser construction projects were funded by other alleviation agreements,⁸⁷ and various specified⁸⁸ and unspecified operations and maintenance dollars went for roads and their upkeep. However, the Project took the view that it had no intention of supporting a major roads program for the county. Project officials gave the impression that the poor condition of local roads was a problem created by local citizens before the

86. *Id.* No. 41.

87. *Id.* No. 11 (\$6,000 for drainage to prepare road south of plant site), No. 24 (\$15,000 for railroad crossing near plant site), No. 25 (\$7205 for street equipment), No. 47 (\$500,000 for street and drain improvements in Delta).

88. *Id.* No. 12 (new street employees in Delta), No. 24 (\$100,000 for operation and maintenance of county roads), No. 25 (\$10,000 for Delta operation and maintenance), No. 41 (\$85,000 for the county's 1983 road maintenance); No. 47 (\$20,000 for street maintenance).

coming of the Project and that local government should not escape its responsibilities.⁸⁹

The poor state of the road system was one of the complaints of Delta residents for much of the early construction period. Potholes and the lengthy wait to cross Main Street during rush hour were visible signs that impact mitigation was not working. The condition of the roads is cited as a factor in the 1982 defeat of the incumbent Delta mayor. The Project related traffic did not significantly harm the road system, but the Project did little to improve any roads other than the ones leading directly to the plant site.

Quality of Life

Local officials and most county residents believe that the worst scenarios of boomtown development have been avoided and that Millard County remains a good place to live and raise a family. The Project has proceeded on schedule albeit with a growth in the construction force that was more rapid than predicted. Project relations with local governments have remained good despite minor friction. The impact alleviation process worked to handle the most visible threats to community stability. The termination of the MX project in the western desert and the scaling down of the IPP from four units to two helped prevent a development overload and dampened some of the early speculation in land. Local residents took great pleasure in watching visiting speculators lose heavily when inflated land values declined.

The Project helped the county survive the nationwide economic slump of the early 1980's almost untouched. As one county official observed, "You wouldn't have known there was a depression on." Local residents and some returning county natives found work with the Project which may have kept them off welfare. While some residents felt the Project fell short of its "local hiring" promises, no one denies that the Project measurably assisted the local employment picture.

Beyond jobs on the Project itself, the boom has been less than expected. A few local residents have profitted from new shops and housing areas, but predictions of a county-wide prosperity fueled by the Project have not materialized. The major beneficiaries of the boomtown bonanza were, for the most part, the major water sellers. One long-time resident has characterized Delta as the "poorest little boomtown you'll ever see." Recently, the Chamber of Commerce has formed a group to study "post-boom" plans and to consider what to do when the construction phase ends sometime in the late 1980's. So far, no firm relocation commitments from business or industry have been received.

89. Haase Letter, *supra* note 61, at 7. The letter elaborates on the Project's position with respect to financial assistance for road repairs. Regardless of whether the request was for water, sewer, roads or any other capital item, the Project felt that existing problems were the responsibility of the entity and that the Project was responsible for its own direct impact. Mr. Haase felt that this was clearly the intent of SB67.

Though some citizens are disappointed that a once-in-a-lifetime opportunity to plan and develop the county has been missed, almost no one regrets the decision to go ahead with the Project. Further, most officials are pleased that the impact on the character of the community has been limited. To be sure, virtually all of the predicted boomtown problems have shown up in the county. A few more residents lock their doors at night, the schools have been crowded and new disciplinary problems are present, oldtime residents visit the stores and discover they do not know the other customers, and traffic on Delta Main Street is a problem at times. But overall, the impacts have been minor and manageable. Local government has continued to function and the lifestyle of the community has been preserved.

As expected, a gap between old and new residents has developed. Housing decisions have tended to cluster the newcomers. Both natives and newcomers concede that more could have been done to integrate the two communities. Nevertheless, some integration has taken place as permanent Project staff has settled into most of the surrounding communities. The 1983 flood helped bring the community together by forcing all citizens into flood control work. One county official recalled the scenes of "bearded construction workers smelling of alcohol working alongside LDS church bishops" as a valuable mutual appreciation experience. Doubtless some short-term Project workers will leave Delta, viewing it as the "worst place in the world." However, the personal feelings have not damaged the Project's construction schedule or the social fabric of the county.

Change has certainly come to Millard County. The bad aspects appear under control and likely to recede as the construction period ends. The infusion of new money, talent and ideas, is viewed positively by many long-time residents.

CONCLUSIONS AND RECOMMENDATIONS

With completion of the first unit of the IPP on schedule for 1986, it is appropriate to assess the successes and failures of the Project impact mitigation program. On balance, the successes far outweigh the failures. While the IPP experience may not be an example of perfect impact mitigation, it certainly provides a useful guide to other developers and communities.

Three fundamental questions are appropriate. Did the developer get what it wanted? Did the local communities control undesirable aspect of the construction period? Do the communities benefit from the completed project?

Project representatives have been pleased with success of the Project and the workings of the impact mitigation process. It bears repeating that it is unusual to construct a major energy facility on time and on budget. It appears that the Project will meet those goals. The Project also regards the impact mitigation process as a success. The undesirable impacts on

the communities have been limited. The promises to local governments have for the most part, been kept. The relations between the government entities and the Project have remained good. This promises a healthy relationship during the operating phase of the Project. From a Project point of view, impact mitigation has helped to provide a comfortable working environment for both temporary and long-term Project workers.

Community leaders in Millard County almost unanimously endorse the Project's assessment of the success of impact mitigation. The parade of horrors discussed in 1980 has not materialized. Living through the "boom" has been tolerable. The county lifestyle has changed but the old virtues have not been destroyed. Planning and good fortune have both played a part. Impact mitigation planning alerted all parties of potential problems and allowed them to take steps to avoid them. At the same time, luck played a part. The boom was controlled by the cancellation of plans for the MX and the downscaling of the project from four units to two units. Worker relations with the IPP and the Millard County communities were helped by the economic downturn. The Project could attract good workers and insist on good citizenship when not at work.

It is too early to determine whether the completed Project will be a long-term benefit to Millard County and the state. Most signs, however, are favorable. The Project promises to be a significant employer and the most important taxpayer in a county needing both employment opportunities and tax revenues. To date, only a modest boom in other development has accompanied the Project. Whether more can be done remains to be seen.

While Millard County is the focal point of community impact concerns, the State of Utah has also benefitted from the Project and the manner of handling mitigation concerns. Alleviation dollars have helped governments outside of Millard County. The alleviation arrangements lessened the expenses that would have been handled by the Community Impact Board or other state agencies. The construction employment and the sales of coal also benefitted the entire state. Lastly, the IPP experience was a boost to Utah's reputation as a state which encourages sound development.

A number of lessons can be drawn from the IPP impact mitigation experience. A crucial factor is the participants' attitudes towards the concept of impact mitigation. A strength of the IPP experience was that all parties saw the need for planning to handle the problems of development. They recognized that the traditional reliance on taxes would not be adequate to alleviate impacts as they occurred. Without this shared attitude, mitigation is unlikely to be successful. An approach that leaves "up-front" alleviation to the discretion of the parties will probably be ignored by the developer. If the obligation is solely legal, the prospect exists for continued objection to every mitigation expenditure and a series of legal battles to determine "direct impacts" or proper contributions.

In Millard County the combination of good will toward mitigation and a legal framework worked well. The laws (Senate Bill 67 and the general and specific impact alleviation agreements) gave security to both the Project and the government entities. The Project needed the statutory mandate to deal with its own members and to get the state's assurance that there were limits to the mitigation obligation. The local governments received assurance from the state that it could insist upon some impact mitigation from the Project and that it could draw on state agencies for mitigation assistance.

Senate Bill 67 has remained a statute specific to the IPP. The state legislature's subsequent venture into statewide impact mitigation legislation left mitigation to the discretion of the developer rather than mandating expenditures for it.⁹⁰ At least four possibilities exist for requiring an impact mitigation program as part of a major development. IPP illustrates the use of a state statute to require mitigation. A second choice might require mitigation by an ordinance of the jurisdiction with control over the project. A third choice would be to include mitigation terms as conditions of a conditional use permit or similar zoning device. The last choice would involve a contract between the government and developer not specifically tied to a grant of permission to use land.

This article will not examine the virtues or drawbacks of each approach. Parties considering mitigation will need to weigh political acceptability, flexibility, legality and relative bargaining strengths before choosing one or more approaches.

Several specific aspects of the IPP provide valuable lessons for future community impact planners. First, there is a need for the impacted communities to start professional planning as early as possible. This was a problem in Millard County where the county was initially at risk for the cost of professionals needed to begin impact planning. If the Project had suddenly decided to relocate or fold, the county would have been stuck with large bills for consultant services. The best solution is for the developer to provide a grant (which may be credited against subsequent taxes or fees) to allow the government to hire the necessary professionals to assess the development impact.

Second, prompt attention should be given to the revision of land use and other laws. In Millard County, the parties were slow to think through all legal aspects of the IPP. As a result, revision of master plans and zoning ordinances were delayed unnecessarily. This cost the Project time and money, and needlessly raised suspicions of local citizens. An early comprehensive review of legal concerns is essential and should involve both the local governments and the developer.

Third, the developer should establish a presence in the community as soon as possible. A project office staffed with people sensitive to local concerns can help to sell the development to the community and report community concerns to the developer. The local representative should be

90. UTAH CODE. ANN. §§ 63-51-1 to -10 (1981).

given sufficient power to get action on matters that involve local concerns. This need not be final authority in all cases, but the local citizens must perceive the representative as more than just a public relations figure. For the most part, the Project handled this aspect of community relations well.

Fourth, efforts should be made to coordinate the units of government which are in the Project impact area. This was one of the major disappointments of the Millard County experience. Ideally, the governments may see the need for coordinated response and may be able to overcome local jealousies and personality conflicts among local officials. If they cannot, state agencies may be effective mediators.

Fifth, parties should recognize that even the best planning will not provide a clear view of how the development will proceed and the community impact will occur. Planners in Millard County in 1980 could not have been certain that the MX Project would be abandoned, that the IPP would be reduced by half, or that the construction force would be far larger than predicted. Alleviation agreements should appreciate the imprecision of all projections and recognize the need to stay flexible. Contingency provisions in specific alleviation contracts are useful. All parties should recognize that a ten year project is more dependent upon the continuing good relations of the parties than on the precision of an initial "once and for all" agreement.

Sixth, the developer must refrain from intruding on the prerogatives of local government. Some of the breakdowns in relations between the parties in the IPP negotiations resulted from such symbolic issues. Quite likely, developers who deal in hundreds of millions of dollars and the small unit of government which deals in tens of thousands of dollars will have very different world views. The developer must appreciate local concerns and be sensitive to intrusions on local autonomy.

Attention to these matters can improve a development for the developer and the local population. As the Millard County-IPP experience shows, the results will benefit everyone.

APPENDIX A

IMPACT ALLEVIATION AGREEMENTS

No. 1. Millard Community Council, March 25, 1980, up to \$45,000 for preparation of Master Plans.

No. 2. Millard County, undated, \$111,202 for 1980 impact costs.

No. 3. Millard Inter-governmental Cooperative Alliance, January 20, 1981, up to \$40,000 for preparation of comprehensive plans.

No. 4. Delta City, May 8, 1981, \$30,109 for July, 1979-June 30, 1980 impact costs.

No. 5. Delta City, May 8, 1981, \$46,054 for July 1, 1980-June 30, 1981 impact costs.

No. 6. Millard County and Political Subdivisions, January 8, 1981 procedures for determining impact alleviation costs.

No. 7. Delta City, May 13, 1981, \$20,100 for city administration costs.

No. 8. Delta City, Sept. 9, 1981, \$48,200 for sewer and water study.

No. 9. Hinckley, March 15, 1982, \$212,500 for design and construction of wastewater collection system improvements.

No. 10. Millard County, Oct. 20, 1981, \$525,000 for design and construction of public safety complex.

No. 11. Millard County, Oct. 20, 1981, \$440,086 for 1981 operation and maintenance expenses.

No. 12. Delta City Sept. 18, 1981, \$390,010 for July 1, 1981-June 30, 1982 operation and maintenance expenses.

No. 13. Fillmore City, Nov. 10, 1981, \$13,763 for engineering study of water system.

No. 14. Delta City, April 12, 1982, up to \$1.5 million for central wastewater collection system improvements.

No. 15. Delta City, May 26, 1982, approximately \$650,000 for culinary water system improvements.

No. 16. Millard County School District, Feb. 17, 1982, \$7,987,490 for new and expanded school buildings.

No. 17. Utah Department of Social Services, undated, up to \$187,725 for human services expenses Jan. 1, 1982-Sept. 30, 1982.

No. 18. Hinckley, April 12, 1982, \$10,412 for 1981 operation and maintenance budget.

No. 19. Leamington, April 12, 1982, \$3,062 for 1981 operation and maintenance budget.

No. 20. Lynndyl, April 12, 1982, \$3,675 for 1981 operation and maintenance budget.

No. 21. Oak City, April 12, 1982, \$6,737 for 1981 operation and maintenance budget.

No. 22. No Contract Written.

No. 23. Hinckley, Sept. 1, 1982, \$5,250 for 1982 administration budget.

No. 24. Millard County, August 10, 1982, \$560,025 for 1982 operation and maintenance and \$69,750 for 1982 capital costs.

No. 25. Delta City, August 12, 1982, \$380,727 for 1982-83 operation and maintenance and \$48,105 for 1982-83 capital costs.

No. 26. Hinckley, August 16, 1982, approximately \$150,000 for central water system improvements.

No. 27. West Millard Recreation District, July 29, 1982, \$22,794 for 1982 operation and maintenance.

No. 28. Leamington, Sept. 17, 1982, \$2,625 for 1982 administration budget.

No. 29. Lynndyl, Oct. 12, 1982, \$5,250 for 1982 administration budget.

No. 30. Oak City, Sept. 1, 1982, \$8,750 for 1982 administration budget.

No. 31. West Millard Mosquito Abatement District, July 28, 1982, \$8,000 for 1982 operation and maintenance.

No. 32. West Millard Hospital District, August 12, 1982, conveyance of real estate for new hospital site.

No. 33. Central Utah Water Conservancy District, August 12, 1982, \$5,000 for study of the effect of water rights purchase on the district.

No. 34. Lynndyl, August 16, 1982, up to \$5,000 for study of water rights.

No. 35. Oak City, March 17, 1983, \$11,250 for engineering study for water and sewer systems.

No. 36. Utah Department of Social Services, Oct. 6, 1982, up to \$249,000 for human services, Oct. 1, 1982-Sept. 30, 1983.

No. 37. Delta City, April 19, 1983, up to \$350,000 for construction of new Delta Municipal Building.

No. 38. West Millard Hospital District, Jan. 17, 1983, up to \$1.1 million for hospital construction—not implemented.

No. 39. Lynndyl, Feb. 9, 1984, \$40,000 for water system improvements.

No. 40. Leamington, March 17, 1983 \$30,000 for unspecified capital projects.

No. 41. Millard County, Oct. 25, 1983, operation, maintenance and capital projects from 1983 through completion of construction.

No. 42. West Millard Recreation District, July 29, 1983, up to \$115,000 for swimming pool operation and maintenance.

No. 43. West Millard Mosquito Abatement District, July 29, 1983, undetermined total amount for mosquito control services.

No. 44. Oak City, July 29, 1983, \$158,800 for unspecified capital facilities.

No. 45. Juab School District, August 23, 1983, \$395,430 for new classroom construction.