

MussentuchitBadlands

**A RECOMMENDED PROPOSAL FOR AMENDING THE PUBLIC LANDS SECTION OF THE EMERY COUNTY GENERAL PLAN TO CLARIFY LONGSTANDING POLICIES FOR THAT GEOGRAPHIC REGION OF EMERY COUNTY DESCRIBED BELOW AND HEREINAFTER REFERRED TO AS THE “MUSSENTUCHIT BADLANDS REGION.”**

WHEREAS, Emery County has a general plan adopted pursuant to Utah Code containing policies for the appropriate use of private and public land within the county; and

WHEREAS, Emery County desires to supplement its general plan to clarify long-standing policies specific to certain geographic regions of the county as the need arises; and

WHEREAS, the Emery County Public Lands Department has recommended certain amendments associated with lands in the Mussentuchit Badlands region of the county; and

WHEREAS, the Emery County Planning Commission has reviewed and concurs with the recommendation of the Public Land Use Committee;

NOW, THEREFORE, THE EMERY COUNTY PLANNING COMMISSION PROPOSES THAT THE EMERY COUNTY GENERAL PLAN BE AMENDED BY INSERTING THE FOLLOWING AT THE END OF THE PUBLIC LANDS SECTION OF THAT PLAN:

# **CLARIFICATION OF EMERY COUNTY'S ONGOING PLAN FOR MANAGING CERTAIN LANDS IN THE MUSSENTUCHIT BADLANDS REGION OF THE COUNTY**

## **SECTION 1. Subject Lands.**

This plan clarification applies to those certain areas of land in Southwestern Emery County which the United States Bureau of Land Management ("BLM") in its so-called 1999 Wilderness Inventory Report purported to label as follows:

### **T24S R6E**

Sections 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36.

### **T24S R7E**

Sections 17, 18, 19, 20, 29, 30, 31, and 32.

### **T25S R6E**

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27.

### **T25S R7E**

Sections 5, 6, 7, 18, and 19.

This plan clarification also applies to all other areas of land located in any townships and ranges of Southwestern Emery County, which an organization by the name of the Utah Wilderness Coalition ("UWC") has purported to include in its so-called "Citizen's Proposal for Wilderness in Utah" for their so-called San Rafael Swell Region, according to the map thereof set forth in the UWC internet web site, address <http://www.protectwildutah.org/proposal/index>, as it exists on April 15, 2007, including the following areas labeled as follows in the San Rafael Swell Region portion of the said UWC internet web site:

### **T24S R6E**

Sections 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35.

### **T24S R7E**

Sections 17, 18, 19, 29, 30, and 31.

### **T25S R6E**

Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27.

### **T25S R7E**

Sections 5, 6, 7, 18, and 19.

For purposes of this plan clarification, all of the above-described lands are collectively referred to herein as the “Mussentuchit Badlands Region,” and are illustrated more fully in the official map attached hereto. Any reference hereafter to the term “Mussentuchit Badlands Region” shall refer to any and all of the above-described land areas.

**SECTION 2.**            **Clarification of Ongoing Plan.**

It is Emery County’s intent and purpose to clarify the public land use policies within the Emery County General Plan to include this supplement pertaining to the Mussentuchit Badlands Region. These policies are intended to supplement the general plan policies that apply county-wide. Emery County declares its plan for the subject region to be as follows:

**SECTION 3.**            **Achieve and Maintain A Continuing Yield of Mineral Resources In The Mussentuchit Badlands Region At The Highest Reasonably Sustainable Levels.**

- Development of the solid, fluid and gaseous mineral resources in the Mussentuchit Badlands Region is an important part of the economy of Emery County.
- Emery County recognizes that it is technically feasible to access mineral and energy resources while preserving non-mineral and non-energy resources.
- All available solid, fluid and gaseous mineral resources in the Mussentuchit Badlands Region should be seriously considered for development.
- Lands shown to have reasonable mineral potential in the Mussentuchit Badlands Region should be open to oil and gas leasing with stipulations and conditions that will protect the lands against unreasonable and irreparable damage to other significant resource values. This should include reasonable and effective mitigation and reclamation measures and bonding for such where necessary.
- The waste of fluid and gaseous minerals should be prohibited.
- Any previous lease restrictions in the Mussentuchit Badlands Region that are no longer necessary or effective should be modified, waived or removed.
- Restrictions against surface occupancy should be modified, waived or if necessary removed where it is shown that directional drilling is not ecologically necessary, where

directional drilling is not feasible from an economic or engineering standpoint, or where it is shown that directional drilling will in effect sterilize the mineral and energy resources beneath the area.

- Applications for permission to drill that meet standard qualifications, including reasonable and effective mitigation and reclamation requirements, should be expeditiously processed and granted.
- Any moratorium that may exist against the issuance of additional mining patents and oil and gas leases in the Mussentuchit Badlands Region should be carefully evaluated for removal.

**SECTION 4.**                      **Achieve and Maintain Livestock Grazing in The Mussentuchit Badlands Region At The Highest Reasonably Sustainable Levels.**

- Domestic livestock forage in the Mussentuchit Badlands Region, expressed in animal unit months, for permitted active use as well as the wildlife forage included in that amount, should be no less than the maximum number of animal unit months sustainable by range conditions in grazing districts and allotments in the Mussentuchit Badlands Region, based on an on-the-ground and scientific analysis.
- It is Emery County’s plan that animal unit months in the Mussentuchit Badlands Region not be relinquished or retired in favor of conservation, wildlife and other uses.
- BLM imposed suspensions of use or other reductions in domestic livestock animal unit months in the Mussentuchit Badlands Region should be temporary and scientifically based on rangeland conditions.
- The transfer of grazing animal unit months (“AUMs”) to wildlife for supposed reasons of rangeland health is opposed by Emery County as illogical. There is already imputed in each AUM a reasonable amount of forage for the wildlife component.
- Any grazing animal unit months that may have been reduced in the Mussentuchit Badlands Region due to rangeland health concerns should be restored to livestock when rangeland conditions improve, not converted to wildlife use.

**SECTION 5.**                      **Manage the Watershed in The Mussentuchit Badlands Region to Achieve and Maintain Water Resources At The Highest Reasonably Sustainable Levels.**

- All water resources that derive in the Mussentuchit Badlands Region are the property of

the State of Utah. They are owned exclusively by the State in trust for its citizens.

- As a political subdivision of the State, Emery County has a legitimate interest in seeing that all reasonable steps are taken to preserve, maintain and where reasonable develop those water resources.
- With increased demands on water resources brought on by population increases in the Colorado River drainage area, and with recent drier precipitation trends which call into question in the minds of some whether the climate of the Colorado River drainage area is changing, it is important now more than ever that management practices be employed in the Mussentuchit Badlands Region to restore, maintain and maximize water resources there. This includes restoration, maintenance and enhancement of the watershed in the Mussentuchit Badlands Region.
- Emery County's strategy and plan for protecting the Mussentuchit Badlands Region watershed is to deter unauthorized cross-country OHV use in the Mussentuchit Badlands Region. The best way to achieve this is to give OHV users a reasonable system of trails in the Mussentuchit Badlands Region on which to legitimately operate their OHVs. Closing the Mussentuchit Badlands Region to all OHV use will only spur increased unauthorized cross-country OHV use to the detriment of the Mussentuchit Badlands Region watershed.
- Accordingly, all trails in the Mussentuchit Badlands Region which have been designated open to OHV use by the 2003 BLM San Rafael Designated Route Plan should remain open.

**SECTION 6.**                      **Achieve and Maintain Traditional Access to Outdoor Recreational Opportunities Available in The Mussentuchit Badlands Region.**

- Traditionally, citizens of Emery County and visitors have enjoyed many forms of outdoor recreation in the Mussentuchit Badlands Region, such as hunting, hiking, family and group parties, family and group campouts and campfires, rock hounding, OHV travel, geological exploring, pioneering, parking their RV, or sightseeing in their personal vehicles.
- Public land outdoor recreational access in the Mussentuchit Badlands Region should not discriminate in favor of one particular mode of recreation to the exclusion of others. Traditionally, outdoor recreational opportunities in the Mussentuchit Badlands Region have been open and accessible to working class families, to families with small children, to the sick and persons with disabilities, to the middle aged and elderly, to persons of different cultures for whom a "primitive solitary hike" may not be the preferred form of recreating, and to the economically disadvantaged and underprivileged who lack the



and reasonably maintained and in good repair. Emery County will consult with the BLM about any required improvements to such roads, reserving the right to request court intervention and relief in the event Emery County and BLM cannot reach an agreement on such proposed improvements after reasonable efforts at consultation.

- Additional roads and trails may be needed in the Mussentuchit Badlands Region from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the Mussentuchit Badlands Region, including livestock operations and improvements, solid, fluid and gaseous mineral operations, recreational opportunities and operations, search and rescue needs, other public safety needs, access to public lands for people with disabilities and the elderly, and access to Utah school and institutional trust lands in the Mussentuchit Badlands Region to accomplish the purposes of those lands.

**SECTION 8.**                    **Manage the Mussentuchit Badlands Region So As to Protect Prehistoric Rock Art, Three Dimensional Structures and Other Artifacts and Sites Recognized as Culturally Important and Significant By the State Historic Preservation Officer.**

- Reasonable mineral development in the Mussentuchit Badlands Region can occur while at the same time protecting prehistoric rock art, three- dimensional structures and other artifacts and sites recognized as culturally important and significant by the state historic preservation officer.
- Reasonable and effective stipulations and conditions to protect against damage to the above-described cultural resources should accompany decisions to issue mineral leases, permit drilling or permit seismic activities in the Mussentuchit Badlands Region. Such drilling and seismic activities should not be disallowed merely because they are in the immediate vicinity of the above-described cultural resources if it is shown that such activities will not damage those resources.

**SECTION 9.**                    NA

**SECTION 10.**                **Manage the Mussentuchit Badlands Region So As to Not Interfere With The Fiduciary Responsibility of the State School and Institutional Trust Lands Administration (“SITLA”) With Respect to Trust Lands Located in That Region.**

- Scattered throughout the Mussentuchit Badlands Region are sections of school and institutional trust land owned by the State of Utah and administered by SITLA in trust for the benefit of public schools and other institutions (“school trust lands”), as mandated in Utah’s Enabling Act and State Constitution.

- As trustee, SITLA has a fiduciary responsibility to manage those school trust lands to generate maximum revenue therefrom, by making them available for sale and private development, and for other multiple use consumptive activities such as mineral development, grazing, recreation, timber, agriculture and the like, all for the financial benefit of Utah’s public schools and other institutional beneficiaries.
- Land management policies and standards on BLM land in the Mussentuchit Badlands Region should not interfere with SITLA’s ability to carry out its fiduciary responsibilities.
- Nor should SITLA be denied the right of motorized access to those school trust sections to enable SITLA to put those sections to use in order to carry out SITLA’s fiduciary responsibilities.

**SECTION 11. Managing Part or All of The Mussentuchit Badlands Region For So-Called Wilderness Characteristics Would Violate FLPMA, Contradict The State’s Public Land Policy and Contradict The Foregoing Plans of Emery County For Managing The Mussentuchit Badlands Region.**

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Mussentuchit Badlands Region under a “wilderness characteristics” management standard is not the State of Utah’s policy for multiple use-sustained yield management on public lands that are not wilderness or wilderness study areas. Nor is it Emery County’s. A so-called “wilderness characteristics” management standard for the Mussentuchit Badlands Region is de facto wilderness management by another name. It is incompatible with and would therefore frustrate and defeat the foregoing plans of Emery County for managing the Mussentuchit Badlands Region. The Public Lands Section of Emery County General Plan, as well as written communications by Emery County to BLM, specify that additional wilderness designation shall be opposed.
- A so-called “wilderness characteristics” management standard for the Mussentuchit Badlands Region also violates FLPMA and the 2003 Settlement Agreement between Utah and Department of Interior.
- Managing Post-603 Lands<sup>1</sup> pursuant to the Interim Management Policy of 1979 (“IMP”) is inconsistent with BLM authority. Agreement p. 6 & 13.a;
- Managing Post-603 Lands to preserve their alleged wilderness character strays from the multiple use mandate in a manner inconsistent with FLPMA § Section 603 limited

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<sup>1</sup> As that term is defined in the *Utah v. Norton* settlement agreement of April 11, 2003.



delegation of authority. Agreement p. 9 & 17;

- The 1999 Utah Wilderness Reinventory shall not be used to manage public lands “as if” they are or may become WSAs. Agreement p. 13 & 4;
- DOI/BLM will not establish, manage “*or otherwise treat*” Post-603 Lands as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization. Agreement p. 14 & 7;
- DOI/BLM will remove from the proposed revised resource management plans in the Vernal, Price, Richfield, Monticello and Moab Districts any and all references or plans to classify or manage Post-603 BLM lands “*as if*” they are or may become WSAs. Agreement p. 14 & 7.

**SECTION 12. Imposing Mussentuchit Badlands Area of Critical Environmental Concern (“ACEC”) Designation Would Contradict Emery County’s Plan For Managing The Mussentuchit Badlands Region.**

- It is Emery County’s policy that no part of the Mussentuchit Badlands Region should be designated an (“ACEC”) unless it is clearly demonstrated to the satisfaction of the Emery County Commission that:
  - The proposed ACEC satisfies all the definitional requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a).
  - The proposed ACEC is limited in geographic size and that the proposed management prescriptions are limited in scope to the minimum necessary to specifically protect and prevent *irreparable* damage to values that are objectively shown to be relevant and important or to protect human life or ensure safety from natural hazards.
  - The proposed ACEC is limited only to areas that are already developed or used or to areas where no development is required.
  - The proposed ACEC designation and protection is necessary to protect not just a change in ground conditions or visual resources that can be reclaimed or reversed eventually (like reclaiming a natural gas well site after pumping operations are complete). Rather, the damage must be shown in all respects to be truly *irreparable* and justified on short term and longterm horizons.
  - The proposed ACEC designation and protection will not be applied redundantly over existing protections available under FLPMA multiple use sustained yield

management.

- The proposed ACEC designation is not a substitute for a wilderness suitability determination, nor is it offered as a means to manage a non WSA for so-called wilderness characteristics.
- The foregoing summarizes the ACEC criteria of the State of Utah as well as Emery County. See Utah Code § 63-38d-401(8)(c). And the foregoing summarizes the criteria of FLPMA.

**SECTION 13.** NA

**SECTION 14.** **A Visual Resource Management Class I or II Rating for Any Part of the Mussentuchit Badlands Region Would Contradict the State's Public Land Policy and Contradict Emery County's Plan For Managing the Mussentuchit Badlands Region.**

- The objective of BLM Class I Visual Resource Management is not compatible with, and would therefore frustrate and interfere with, Emery County's foregoing plan clarification for the Mussentuchit Badlands Region.
- The objective of BLM Class II Visual Resource Management is generally not compatible with, and would therefore frustrate and interfere with, Emery County's foregoing plan clarification for the Mussentuchit Badlands Region.
- Emery County's foregoing plan clarification for the Mussentuchit Badlands Region is generally consistent with either Class III or Class IV, depending on the precise area.