

UpperMuddyCreek

**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 “UPPER MUDDY CREEK 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 Upper Muddy Creek 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 UPPER MUDDY CREEK 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:

- Upper Muddy Creek, located in:

T23S R6E

Sections 13, 14, 23, 24, 25, 26, 35, and 36.

T23S R7E

Sections 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, and 34.

T23S R8E

Sections 6 and 7.

T24S R6E

Sections 1, 2, 11, and 12.

T24S R7E

Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18.

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 Book Cliffs Region, according to the map thereof set forth in the UWC internet web site, address [http://www.protectwildutah.org/proposal /index](http://www.protectwildutah.org/proposal/index), as it exists on April 15, 2007, including the following areas labeled as follows in the Book Cliffs Region portion of the said UWC internet web site:

- Upper Muddy Creek, located in parts of:

T23S R6E

Sections 13, 14, 23, 24, 25, 26, and 35.

T23S R7E

Sections 1, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, and 34.

T23S R8E  
Sections 6 and 7.

T24S R6E  
Sections 1, 11, and 12.

For purposes of this plan clarification, all of the above-described lands are collectively referred to herein as the “Upper Muddy Creek Region,” and are illustrated more fully in the official map attached hereto. Any reference hereafter to the term “Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek Region At The Highest Reasonably Sustainable Levels.**

- Development of the solid, fluid and gaseous mineral resources in the Upper Muddy Creek 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 Upper Muddy Creek Region should be seriously considered for development.
- Lands shown to have reasonable mineral potential in the Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek Region should be carefully evaluated for removal.

**SECTION 4.**                      **Achieve and Maintain Livestock Grazing in The Upper Muddy Creek Region At The Highest Reasonably Sustainable Levels.**

- Domestic livestock forage in the Upper Muddy Creek 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 Upper Muddy Creek Region, based on an on-the-ground and scientific analysis.
- Emery County regards the land which comprises the grazing districts and allotments in the Upper Muddy Creek Region as still more valuable for grazing than for any other use which excludes livestock grazing, such as conversion of AUM's to wildlife or wilderness values. Accordingly, it is Emery County's plan that animal unit months in the Upper Muddy Creek Region not be relinquished or retired in favor of conservation, wildlife and other uses.
- Emery County recognizes that from time to time a bona fide livestock permittee in the Upper Muddy Creek Region, acting in good faith and not to circumvent the intent of the BLM's grazing regulations, may temporarily cease grazing operations without losing his

or her permitted AUM's.

- BLM imposed suspensions of use or other reductions in domestic livestock animal unit months in the Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek Region to Achieve and Maintain Water Resources At The Highest Reasonably Sustainable Levels.**

- All water resources that derive in the Upper Muddy Creek 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 Upper Muddy Creek Region to restore, maintain and maximize water resources there. This includes restoration, maintenance and enhancement of the watershed in the Upper Muddy Creek Region.
- Where water resources in the Upper Muddy Creek Region have diminished because once-existing grasses or other species have succeeded to tamarisk, Russian olive or other invasive species, a vigorous program of mechanical treatments should be applied to promptly remove this woody vegetation and biomass, stimulate the return of the grasses to historic levels, and thereby provide a watershed that maximizes water yield and water quality for livestock, wildlife, and human uses. Management of Pinion and Juniper species should use the best possible science, but as a rule, mechanical treatments are acceptable as a means of improving the watershed and grazing opportunities.
- Emery County's strategy and plan for protecting the Upper Muddy Creek Region

watershed is to deter unauthorized cross-country OHV use in the Upper Muddy Creek Region. The best way to achieve this is to give OHV users a reasonable system of trails in the Upper Muddy Creek Region on which to legitimately operate their OHVs. Closing the Upper Muddy Creek Region to all OHV use will only spur increased unauthorized cross-country OHV use to the detriment of the Upper Muddy Creek Region watershed.

- Accordingly, all trails in the Upper Muddy Creek Region which have been designated open to OHV use in the 2003 BLM San Rafael Route Designation Plan should remain open.

**SECTION 6.**                      **Achieve and Maintain Traditional Access to Outdoor Recreational Opportunities Available in The Upper Muddy Creek Region.**

- Traditionally, citizens of Emery County and visitors have enjoyed many forms of outdoor recreation in the Upper Muddy Creek Region, such as hunting, fishing, 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 Upper Muddy Creek Region should not discriminate in favor of one particular mode of recreation to the exclusion of others. Traditionally, outdoor recreational opportunities in the Upper Muddy Creek 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 money and ability to take the time off work necessary to get outfitted for a multi-day “primitive hike” to reach those destinations. All of society should not be forced to participate in a “solitude experience” or a “primitive experience” as the one and only mode of outdoor recreation in the Upper Muddy Creek Region.
- Any segment of society, for that matter, who want to recreate in the Upper Muddy Creek Region are entitled to motorized access to that recreation if they desire it, and are entitled to all traditional forms of outdoor recreation if they desire it. They should not have to hike into the outdoor recreational destinations in the Upper Muddy Creek Region if they do not want to or are physically unable or cannot afford such an activity.
- Hence Emery County’s plan calls for continued public motorized access to all traditional outdoor recreational destinations in all areas of the Upper Muddy Creek Region for all such segments of the public. Emery County specifically opposes restricting outdoor recreation in the Upper Muddy Creek Region to just one form - available for those who have enough time, money and athletic ability to hike into the destinations of the Upper

Muddy Creek Region for a so-called “solitude wilderness experience” or the like.

- Accordingly, all roads in the Upper Muddy Creek Region that are part of Emery County’s duly adopted transportation plan should remain open to motorized travel. None of them should be closed, and Emery County should have the continued ability to maintain and repair those roads, and where reasonably necessary make improvements thereon. All trails in the Upper Muddy Creek Region that have been designated open to OHV use in the 2003 BLM San Rafael Route Designation Plan should continue to remain open. Traditional levels of wildlife hunting and fishing should continue. Traditional levels of group camping, group day use and all other traditional forms of outdoor recreation -motorized and non-motorized - should continue.

**SECTION 7.**                                **Maintain and Keep Open All Roads in the Upper Muddy Creek Region That Appear On Emery County’s Most Recent Transportation Map, and Provide For Such Additional Roads and Trails As May Be Necessary From Time to Time.**

- Emery County’s transportation plan includes an official county-wide transportation map, available to the public for viewing and copying, showing all County B and D roads.
- That portion of Emery County’s official transportation map which shows all County B and D roads in the Upper Muddy Creek Region is considered to be part of Emery County’s plan specifically applicable to the Upper Muddy Creek Region. All such public roads are shown in the attached official map.
- Emery County plans to keep all such roads in the Upper Muddy Creek Region open 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 Upper Muddy Creek Region from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the Upper Muddy Creek 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 Upper Muddy Creek Region to accomplish the purposes of those lands.

**SECTION 8.**                                **Manage the Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek 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 There are no private lands within or adjacent to the Upper Muddy Creek Region.

**SECTION 10.** **Manage the Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek Region.**

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek 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 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 Any of The Muddy Creek Area of Critical Environmental Concern (“ACEC”) Would Contradict Emery**

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

### County's Plan For Managing The Upper Muddy Creek Region.

- It is Emery County's policy that no part of the Upper Muddy Creek 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. Including Any River Segment in the Upper Muddy Creek Region in the National Wild and Scenic River System Would Violate the National Wild and Scenic Rivers Act and Related Regulations, Contradict the State's Public Land Policy, and Contradict the Foregoing Plans of Emery County For Managing The Upper Muddy Creek Region.**

- It is Emery County’s policy that no river segment should be included in the National Wild and Scenic River System unless
  - Water is present and flowing at all times.
  - The water-related value is considered outstandingly remarkable within a region of comparison consisting of one of three physiographic provinces of the state, and that the rationale and justification for the conclusion are disclosed.
  - BLM fully disclaims in writing any interest in water rights with respect to the subject segment.
  - It is clearly demonstrated that including the segment in the NWSR system will not prevent, reduce, impair, or otherwise interfere with the state and its citizen’s enjoyment of complete and exclusive water rights in and to rivers of the state as determined by the laws of the state, nor interfere with or impair local, state, regional, or interstate water compacts to which the State or Emery County is a party.
  - The rationale and justification for the proposed addition, including a comparison with protections offered by other management tools, is clearly analyzed within the multiple-use mandate, and the results disclosed.
  - It is clearly demonstrated that BLM does not intend to use such a designation to improperly impose Class I or II Visual Resource Management prescriptions.
  - It is clearly demonstrated that the proposed addition will not adversely impact the local economy agricultural and industrial operations, outdoor recreation, water rights, water quality, water resource planning, and access to and across river corridors in both upstream and downstream directions from the proposed river segment.
- The foregoing also summarizes the wild and scenic river criteria of the State of Utah, Utah Code § 63-38d-401(8)(a), as well as the criteria of Emery County.
- There is no river segment in the Upper Muddy Creek Region that meets the above criteria. Hence, no river segment in the Upper Muddy Creek Region should be included in the National Wild and Scenic River system.

**SECTION 14.      A Visual Resource Management Class I or II Rating for Any Part of the Upper Muddy Creek Region Would Contradict the State’s Public Land Policy and Contradict Emery County’s Plan**

**For Managing the Upper Muddy Creek 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 Upper Muddy Creek 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 Upper Muddy Creek Region.
- Emery County's foregoing plan clarification for the Upper Muddy Creek Region is generally consistent with either Class III or Class IV, depending on the precise area.