

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 “WILD HORSE MESA 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 Wild Horse Mesa 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 WILD HORSE MESA 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:

T26S R9E

Sections 23, 24, 25, 26, 34, 35, and 36.

T26S R10E

Sections 1, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36.

T26S R11E

Sections 5, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34.

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:

T26S R11E

Sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 34, and 35.

T26S R12E

Sections 7, 8, 17, 18, 19, 20, 29, 30, and 31.

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

SECTION 2. Clarification of Ongoing Plan.

and gas leases in the Wild Horse Mesa Region should be carefully evaluated for removal.

SECTION 4. **Achieve and Maintain Livestock Grazing in The Wild Horse Mesa Region At The Highest Reasonably Sustainable Levels.**

- Domestic livestock forage in the Wild Horse Mesa 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 Wild Horse Mesa Region, based on an on-the-ground and scientific analysis.
- It is Emery County’s plan that animal unit months in the Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa Region to Achieve and Maintain Water Resources At The Highest Reasonably Sustainable Levels.**

- All water resources that derive in the Wild Horse Mesa 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 Wild Horse Mesa Region to restore, maintain and maximize water resources there. This includes restoration, maintenance and enhancement of the watershed in the Wild Horse Mesa Region.

- Where water resources in the Wild Horse Mesa Region have diminished because once-existing grasses have succeeded to pinion, juniper and other woody vegetation and associated biomass, 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.
- Emery County's strategy and plan for protecting the Wild Horse Mesa Region watershed is to deter unauthorized cross-country OHV use in the Wild Horse Mesa Region. The best way to achieve this is to give OHV users a reasonable system of trails in the Wild Horse Mesa Region on which to legitimately operate their OHVs. Closing the Wild Horse Mesa Region to all OHV use will only spur increased unauthorized cross-country OHV use to the detriment of the Wild Horse Mesa Region watershed.
- Accordingly, all trails in the Wild Horse Mesa Region which have been designated open to OHV use in Alternative D, Final Price Resource Management Plan should remain open.

SECTION 6. **Achieve and Maintain Traditional Access to Outdoor Recreational Opportunities Available in The Wild Horse Mesa Region.**

- Traditionally, citizens of Emery County and visitors have enjoyed many forms of outdoor recreation in the Wild Horse Mesa 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 Wild Horse Mesa Region should not discriminate in favor of one particular mode of recreation to the exclusion of others. Traditionally, outdoor recreational opportunities in the Wild Horse Mesa 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

on such proposed improvements after reasonable efforts at consultation.

- Additional roads and trails may be needed in the Wild Horse Mesa Region from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the Wild Horse Mesa 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 Wild Horse Mesa Region to accomplish the purposes of those lands.

SECTION 8. **Manage the Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa 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 is no private land within or adjacent to the Wild Horse Mesa Region.

SECTION 10. **Manage the Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa Region.

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa Region also violates FLPMA and the 2003 Settlement Agreement between Utah and Department of Interior.
- Managing Post-603 Lands¹ 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;

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

- 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 Lower Muddy Creek Area of Critical Environmental Concern (“ACEC”) Would Contradict Emery County’s Plan For Managing The Wild Horse Mesa Region.

- It is Emery County’s policy that no part of the Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa Region that meets the above criteria. Hence, no river segment in the Wild Horse Mesa 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 Wild Horse Mesa Region Would Contradict the State’s Public Land Policy and Contradict Emery County’s Plan For Managing the Wild Horse Mesa 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 Wild Horse Mesa 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 Wild Horse Mesa Region.
- Emery County’s foregoing plan clarification for the Wild Horse Mesa Region is generally consistent with either Class III or Class IV, depending on the precise area.