

Never Sweat Wash

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 “NEVER SWEAT WASH 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 Never Sweat Wash 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 NEVER SWEAT WASH REGION OF THE COUNTY

SECTION 1. Subject Lands.

This plan clarification applies to all areas of land located in any townships and ranges of Southeastern 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:

Never Sweat Wash, located in parts of:

T17S R13E

Sections 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35.

T18S R13E

Sections 1, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35.

T18S R14E

Sections 7, 8, 15, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, and 33.

T19S R13E

Sections 1, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, and 15.

T19S R14E

Sections 5, 6, and 7.

For purposes of this plan clarification, all of the above-described lands are collectively referred to herein as the "Never Sweat Wash Region," and are illustrated more fully in the official map attached hereto. Any reference hereafter to the term "Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash Region At The Highest Reasonably Sustainable Levels.**

- Development of the solid, fluid and gaseous mineral resources in the Never Sweat Wash 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 Never Sweat Wash Region should be seriously considered for development.
- Lands shown to have reasonable mineral potential in the Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash Region should be carefully evaluated for removal.

SECTION 4. Achieve and Maintain Livestock Grazing in The Never Sweat Wash Region At The Highest Reasonably Sustainable Levels.

- Domestic livestock forage in the Never Sweat Wash 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 Never Sweat Wash Region, based on an on-the-ground and scientific analysis.
- Emery County regards the land which comprises the grazing districts and allotments in the Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash Region to Achieve and Maintain Water Resources At The Highest Reasonably Sustainable Levels.

- All water resources that derive in the Never Sweat Wash 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 Never Sweat Wash Region to restore, maintain and maximize water resources there. This includes restoration, maintenance and enhancement of the watershed in the Never Sweat Wash Region.
- Where water resources in the Lost Springs Wash 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..
- Emery County’s strategy and plan for protecting the Never Sweat Wash Region watershed is to deter unauthorized cross-country OHV use in the Never Sweat Wash Region. The best way to achieve this is to give OHV users a reasonable system of trails in the Never Sweat Wash Region on which to legitimately operate their OHVs. Closing the Never Sweat Wash Region to all OHV use will only spur increased unauthorized cross-country OHV use to the detriment of the Never Sweat Wash Region watershed.
- Accordingly, all trails in the Never Sweat Wash Region which have been designated open to OHV use in Alternative D, Final Price Resource Management Plan should remain open.

Comment: Changed to focus on invasive species

SECTION 6. Achieve and Maintain Traditional Access to Outdoor Recreational Opportunities Available in The Never Sweat Wash Region.

- Traditionally, citizens of Emery County and visitors have enjoyed many forms of outdoor recreation in the Never Sweat Wash 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 Never Sweat Wash Region should not discriminate in favor of one particular mode of recreation to the exclusion of others. Traditionally, outdoor recreational opportunities in the Never Sweat Wash 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 Never Sweat Wash Region.

- Any segment of society, for that matter, who want to recreate in the Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash Region for all such segments of the public. Emery County specifically opposes restricting outdoor recreation in the Never Sweat Wash Region to just one form - available for those who have enough time, money and athletic ability to hike into the destinations of the Never Sweat Wash Region for a so-called “solitude wilderness experience” or the like.
- Accordingly, all roads in the Never Sweat Wash 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 Never Sweat Wash Region that have been designated open to OHV use in Alternative D, Final Price Resource Management 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.

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SECTION 7. Maintain and Keep Open All Roads in the Never Sweat Wash 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 Never Sweat Wash Region is considered to be part of Emery County’s plan specifically applicable to the Never Sweat Wash Region. All such public roads are shown in the attached official map.
- Emery County plans to keep all such roads in the Never Sweat Wash 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 Never Sweat Wash Region from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the Never Sweat Wash 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 Never Sweat Wash Region to accomplish the purposes of those lands.

SECTION 8. Manage the Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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. Manage the Never Sweat Wash Region So As to Not Interfere With The Property Rights of Private Landowners Located in That Region.

- There are parcels of private fee land located in, or adjacent to, the Never Sweat Wash Region.
- Land management policies and standards on BLM land in the Never Sweat Wash Region should not interfere with the property rights of private landowners in the region to enjoy and engage in traditional uses and activities on their private property, consistent with controlling County zoning and land use laws.
- Nor should those landowners and their guests be denied the right of motorized access to

their private property consistent with past uses of those private land parcels.

SECTION 10. Manage the Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash Region.

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash 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 Never Sweat Wash

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;
- 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. ACEC Designation

- There are no ACEC designations that affect the Never Sweat Wash Region

SECTION 13. National Wild and Scenic River System

- There are no National Wild and Scenic River System proposals that affect the Never Sweat Wash Region

SECTION 14. A Visual Resource Management Class I or II Rating for Any Part of the Never Sweat Wash Region Would Contradict the State’s Public Land Policy and Contradict Emery County’s Plan For Managing the Never Sweat Wash 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 Never Sweat Wash Region.

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

- 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 Never Sweat Wash Region.
- Emery County's foregoing plan clarification for the Never Sweat Wash Region is generally consistent with either Class III or Class IV, depending on the precise area.