

Flat Tops

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 “FLAT TOPS 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 Flat Tops 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 FLAT TOPS 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 Canyonlands 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 Canyonlands Region portion of the said UWC internet web site:

T26S R13E

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

T26S R14E

Sections 19, 30, and 31.

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

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

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

- Domestic livestock forage in the Flat Tops 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 Flat Tops Region, based on an on-the-ground and scientific analysis.
- It is Emery County's plan that animal unit months in the Flat Tops Region not be relinquished or retired in favor of conservation, wildlife and other uses.

SECTION 10. Manage the Flat Tops 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 Flat Tops 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 Flat Tops 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 Flat Tops 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 Flat Tops Region.

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Flat Tops 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 Flat Tops 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 Flat Tops 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 Flat Tops 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. Imposing Temple/Cottonwood/Dugout Area of Critical Environmental Concern (“ACEC”) Would Contradict Emery County’s Plan For Managing The Flat Tops Region.

- It is Emery County’s policy that no part of the Flat Tops 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.

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

- 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.
- However, Emery County is supportive of an Big Flat Tops ACEC in the Flat Tops area, that it is consistent with Big Flat Tops ACEC as described in Alternative D, Final Resource Management Plan. Any other ACEC alternative would be incompatible with and would therefore frustrate and defeat the foregoing plans of Emery County for managing the Flat Tops Region.

• **SECTION 13.** NA There are no river segments within the Flat Tops Region nominated for designation as Wild and Scenic Rivers.

SECTION 14. **A Visual Resource Management Class I or II Rating for Any Part of the Flat Tops Region Would Contradict the State’s Public Land Policy and Contradict Emery County’s Plan For Managing the Flat Tops 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 Flat Tops 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 Flat Tops Region.
- Emery County’s foregoing plan clarification for the Flat Tops Region is generally consistent with either Class III or Class IV, depending on the precise area.

