



## EMERY COUNTY PUBLIC LAND MANAGEMENT ACT OF 2018—S. 2809/H.R. 5727

June 6, 2018

### OVERVIEW

The Emery County Public Land Management Act of 2018 is a significant step backwards for wilderness and conservation in the San Rafael Swell and Labyrinth Canyon. As introduced, the bill:

- Fails to protect nearly two-thirds of the wilderness proposed by America’s Redrock Wilderness Act: nearly 900,000 acres of proposed Bureau of Land Management (BLM) wilderness is omitted from designation.
- Designates less BLM land as wilderness than is currently protected as Wilderness Study Areas or Natural Areas.
- Undermines a settlement reached by conservationists, the Trump administration, and off-road vehicle advocates that resolved nearly ten years of federal court litigation by requiring new travel plans for the San Rafael area, based on conservation values. Instead, the bill takes the highly-unprecedented approach of excluding (*i.e.*, cherry-stemming) all motorized routes and trails—and exempting management of those routes and trails—from the National Conservation Area and wilderness areas.
- Allows the State of Utah to continue its federal court litigation seeking highway rights-of-way through newly-designated wilderness, instead of resolving the RS 2477 issues.
- Removes existing Wilderness Study Area protection to facilitate coal mining.
- Furthers the State of Utah’s land grab by conveying control over federal public land with high-quality, high-value recreational opportunities to the state for development and fee generation.
- Fails to identify federal public lands available for acquisition as part of a federal-state land exchange, and omits safeguards that would ensure the protection of wilderness-quality public lands and national monuments, and consultation with Native American tribes.

### NECESSARY LEGISLATIVE CHANGES

#### Motorized Travel

- **Problems:** The bill takes the highly unprecedented approach of excluding (*i.e.*, cherry-stemming) *all* motorized routes and trails from the National Conservation Area (NCA) and wilderness areas. This is done through listing all motorized routes and trails as “Cherry Stemmed Routes” on the legislative map. As section 101(c)(2) grants the map the “same force and effect” as the legislative language, cherry-stemming routes on the map results in all shown motorized routes and trails being exempted from the NCA and wilderness. This approach: (1) effectively ensures that the routes will remain open in perpetuity (which is precisely why Emery County has included this language in the map), undermining the settlement agreement; (2) cuts up these protected areas with “excluded” routes; and (3) creates a bizarre and difficult management situation for BLM, as motorized travel would be managed without consideration of, or consistency with, the NCA and wilderness designations. Excluded routes include the

illegal 2008 Price BLM travel plan routes plus additional, currently-closed motorized routes sought by Emery County.

- **Recommendations:** Remove “Cherry Stemmed Routes” from map legend and all route types listed below the heading. Consistent with prior legislation, the map should only show highways and primary high-grade dirt roads (*i.e.*, Class B roads) for the purpose of orientation, not for making any legal determination about motorized travel. The legislative language and map should remain silent on motorized routes/trails and travel planning so that the existing settlement agreement will remain unaffected. Strike section 102(k)(2) as it is unnecessary and exempts consideration of the conservation area’s purposes as part of travel management planning.

## Wilderness<sup>1</sup>

- **Labyrinth Canyon**
  - **Problems:** Section 201 designates 26,226 acres of wilderness for Labyrinth Canyon (*i.e.*, Horseshoe Canyon (North)). This area encompasses only a portion of qualifying wilderness on the western side of Labyrinth Canyon in Emery County, and is already protected as a Wilderness Study Area (WSA). To the north of this proposed wilderness area, section 101 designates an NCA in lieu of wilderness for the purpose of validating two *illegal and unauthorized* mountain bike trails (known as June’s Bottom and Bull Bottom).<sup>2</sup> The bill does not propose any designated wilderness for the eastern portion of Labyrinth Canyon in Grand County, and instead utilizes arbitrary county boundaries that ignore the intactness of this remarkable wilderness landscape.
  - **Recommendations:**
    - **Areas:** The Labyrinth Canyon Wilderness Addition will ensure that the entirety of Labyrinth Canyon and its side canyons are protected within both Emery and Grand Counties—from Red Wash down to Canyonlands National Park. The bill must protect the eastern side of Labyrinth Canyon and its side canyons (Ten Mile, Spring, Hell Roaring, Hey Joe, and Mineral) as designated wilderness. In addition, the bill must designate the western portion that is currently proposed as an NCA by Emery County as wilderness. The Labyrinth Canyon Wilderness Addition would add approximately 138,000 acres of designated wilderness to the bill, including 76,000 acres in Emery County and 62,000 acres in Grand County.
    - **Routes:** The bill must not open any currently-closed motorized routes, including June’s Bottom which runs from the western rim of Labyrinth Canyon to the Green River. The bill must also permanently close all motorized routes along the Green River in Labyrinth Canyon located within designated wilderness. This includes the Hey Joe, Ten Mile Wash, and Hell Roaring Canyon motorized routes, and the motorcycle routes known as The Tubes and Dead Cow Wash. There are hundreds of motorized trails located elsewhere in the region available for such use; however, there is no alternative to Labyrinth Canyon for quiet, wilderness river recreation.
- **Muddy Creek**
  - **Problems:** Section 201 designates 65,652 acres of wilderness for Muddy Creek, consisting solely of lands already protected for wilderness values (*i.e.*, WSAs and Natural Areas).

---

<sup>1</sup> The Labyrinth Canyon and Muddy Creek Wilderness Additions would result in a total of 51% of the Emery County portion of America’s Red Rock Wilderness Act being protected as designated wilderness.

<sup>2</sup> Note that there is a closed motorized route known as June’s Bottom in this region as well. While the June’s Bottom route, which goes from the rim of Labyrinth Canyon to the Green River, is closed to motorized vehicles, it does remain open to mechanized use. The illegal mountain bike trail referenced above as “June’s Bottom” is not the same as the legal mechanized trail to the river.

Emery County’s proposal designates only a portion of the vast and undeveloped Muddy Creek proposed wilderness unit as wilderness, and designates other portions as an NCA in lieu of wilderness. The bill does not propose any designated wilderness for the southern portion of Muddy Creek in Wayne County, and instead utilizes arbitrary county boundaries that ignore the intactness of this remarkable wilderness landscape.

- **Recommendations:**

- **Areas:** The Muddy Creek Wilderness Addition ensures that the entirety of the Muddy Creek wilderness is protected within both Emery and Wayne Counties. This includes designating additional wilderness to the west and south of the currently proposed wilderness boundaries and, in addition, designating the Muddy Creek Natural Area that is currently proposed as an NCA by Emery County as wilderness. All of the lands within the Muddy Creek Wilderness Addition have been determined by BLM as qualifying as wilderness under the requirements of the Wilderness Act. The Muddy Creek Wilderness Addition would add approximately 165,000 acres of designated wilderness to the bill, including 122,000 acres in Emery County and 43,000 acres in Wayne County.
- **Routes:** The bill must permanently close the Behind the Reef route at the end of the Class B/maintained road (approximately 6.5 miles from the Temple Mountain Rd. turnoff) and must close any Class D spur routes off of the Behind the Reef route. The bill must not open any currently-closed motorized routes, including Muddy Creek.<sup>3</sup>

### **National Conservation Area (NCA)**

- **Problems:**

- **Areas:** Section 101 designates the San Rafael Swell Western Heritage and Historic Mining National NCA, comprised primarily of lands within the San Rafael Swell but which also includes a portion of Labyrinth Canyon. Section 101 also fails to protect the San Rafael Badlands, an abundant cultural landscape that the BLM has determined possesses wilderness characteristics.
- **Language:** Section 101 establishes an unbalanced advisory council to oversee preparation and implementation of the NCA management plan.

- **Recommendations:**

- **Areas:** Designate the San Rafael Badlands NCA, in a stand-alone legislative section, “to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the cultural, ecological, wildlife, natural, scenic, educational, and scientific resources” of the NCA. Consisting of Molen Reef, Eagle Canyon, Rock Canyon, Cedar Mountain (an area previously proposed by the county for wilderness designation in Rep. Bishop’s Public Lands Initiative), and the Mussentuchit Badlands (pronounced “mustn’t touch it”), the 158,000-acre NCA utilizes manageable boundaries—following human impacts or topographic features—and is drawn to ensure that the irreplaceable cultural and natural resources of this region are protected. A mineral withdrawal must be included as part of the NCA and will ensure that this remote, culturally-rich landscape is protected from future oil and gas leasing, an ongoing issue within this region.
- **Language:** Strike section 101 establishing the advisory council, or modify it to ensure balanced representation, including one representative from a conservation/wilderness advocacy organization.

---

<sup>3</sup> Note that Muddy Creek is not currently proposed for motorized or mechanized use under the bill.

### Temple Mountain Co-Management Area

- **Problems:** Section 401 authorizes a cooperative management agreement that would convey recreation management control over 7,800 acres of high-value public lands within the NCA to the State of Utah. The cooperative management area has a different purpose than the NCA and contains management provisions—including those pertaining to motorized vehicle use—that conflict with the NCA established in section 101. It also authorizes fee collection for access to public lands and revenue sharing with the State of Utah.
- **Recommendation:** Strike section 401 entirely as it is inconsistent with the NCA and is unnecessary as cooperative management agreements are already permitted by section 307 of the Federal Land Policy and Management Act of 1976. 43 U.S.C. §§ 1701-1785.

### Goblin Valley State Park Expansion

- **Problems:** Section 402 conveys 10,000 acres of high-value public lands within the NCA to the State of Utah for management as a state park in accordance with state law. It also authorizes fee collection for access to public lands.
- **Recommendation:** Strike section 402 entirely as it is inconsistent with the NCA and it is inappropriate to hand control of thousands of acres of federal public land to the State of Utah for amenities development, fee generation, and management pursuant to state law.

### Wilderness Study Area (WSA) Release

- **Problem:** Section 204 releases all WSAs not designated as wilderness under the bill, rolling back existing protections and precluding future WSA designation for nearly 15,000 acres of BLM land. Importantly, this includes portions of the Turtle Canyon WSA, which is being released in order to facilitate new coal mining.
- **Recommendation:** Designate all WSAs as wilderness under section 201.

### Land Exchange

- **Problems:** Section 406 authorizes the State of Utah to transfer School Institutional Trust Land Administration (SITLA) inholdings within the NCA and designated wilderness in exchange for federal lands elsewhere. The bill's language is modeled after the "Advancing Conservation and Education (ACE) Act" (H.R. 4257/S. 2078), bi-partisan language that allows for similar land exchanges, yet it fails to include important safeguards included in the ACE Act that ensure protection of tribal lands and lands identified by BLM as possessing wilderness characteristics; an open public process; and consultation with Native American tribes. Additionally, the bill contains no prohibition on state acquisition of federal lands within the original, legitimate boundaries of Grand Staircase-Escalante and Bears Ears National Monuments.
- **Recommendations:** Strike section 406 and replace with standard land exchange language that identifies parcels to be traded out and acquired. Alternatively, replace section 406 with language consistent with the ACE Act (H.R. 4257/S. 2078) and that ensures protection of the lands within the original boundaries of Grand Staircase-Escalante and Bears Ears National Monuments.

### Revised Statute 2477

- **Problem:** The bill fails to resolve the State of Utah's litigation over Revised Statute (R.S.) 2477 routes located within designated wilderness and NCAs, removing conservation certainty and leaving these areas at risk for future motorized route maintenance, improvement, and development that is inconsistent with the Wilderness Act and other conservation designations. The uncertainty and risk associated with failing to resolve R.S. 2477 issues was demonstrated when the State of Utah filed road claims within wilderness areas and NCAs that were

designated as part of the 2009 Washington County legislation. These claims, filed after passage of the legislation, have yet to be adjudicated.

- **Recommendation:** Include language that relinquishes the State of Utah's R.S. 2477 claims within wilderness and NCAs designated in the bill. Alternatively, facilitate a non-legislative agreement between the State of Utah and the federal government relinquishing the State of Utah's claims in designated wilderness and NCAs.