

**Written Testimony of Neal Clark
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on behalf of the Utah Wilderness Coalition**

**Before the House Committee on Natural Resources
Subcommittee on Federal Lands
Emery County Public Land Management Act of 2018
June 21, 2018**

INTRODUCTION

Mr. Chairman and members of the Committee, thank you for providing the Utah Wilderness Coalition with the opportunity to present our views on the Emery County Public Land Management Act of 2018. H.R. 5727

The Utah Wilderness Coalition (UWC) is a coalition of conservation organizations committed to protecting wilderness-quality lands in Utah as wilderness. Since 1989, the UWC has advocated for the passage of America's Red Rock Wilderness Act, legislation that would protect approximately 9.4 million acres of BLM-managed public lands in Utah as designated wilderness.¹ The UWC includes the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, and the Sierra Club.

The Southern Utah Wilderness Alliance (SUWA) is a Utah-based non-profit organization with over 16,000 members dedicated to the preservation of the outstanding wilderness at the heart of the Colorado Plateau, and the management of these lands in their natural state for the benefit of all Americans. Since 1983, SUWA has promoted local and national recognition of the region's unique character through research and public education; has supported both administrative and legislative initiatives to permanently protect the Colorado Plateau's wild places within the National Park and National Wilderness Preservation Systems, or by other protective designations where appropriate; has built support for such initiatives on both the local and national level; and has provided leadership within the conservation community through steadfast advocacy for wilderness preservation.

The Natural Resources Defense Council (NRDC) is an international non-profit environmental organization with more than 3 million members and online activists. Since 1970, NRDC's lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment.

The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 3 million members and supporters. In addition to helping people from all backgrounds explore nature and our outdoor heritage,

¹ America's Red Rock Wilderness Act, S. 948, H.R. 2044, 115th Cong. (2017-2018).

the Sierra Club works to promote clean energy, safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and legal action. The Sierra Club has 3.4 million members and supporters across the United States. Since 1892, the Sierra Club has worked to protect wilderness-quality lands across the United States.

While at first blush the Emery County bill boasts wilderness and National Conservation Area (NCA) acreages that may seem impressive, a closer analysis of the bill reveals legislation that designates less wilderness than is currently protected for wilderness character as Wilderness Study Areas (WSA) or Natural Areas; wholly fails to protect remarkable and critical intact wilderness landscapes as wilderness; makes motorized vehicle use worse by effectively enshrining an illegal travel plan and opening currently-closed motorized routes; exempts motorized travel from conservation area and wilderness management; includes unprecedented giveaways to the State of Utah in the form of cooperative management and public purpose conveyances; removes existing WSA protection to facilitate coal mining; allows the State of Utah to continue its federal court litigation seeking highway rights-of-way through newly-designated wilderness, instead of resolving Revised Statute (R.S.) 2477 issues; and authorizes a land exchange that fails to identify federal parcels for acquisition, fails to ensure protection of wilderness-quality lands and rescinded national monuments, and fails to require consultation with Native American tribes.

The UWC submits this testimony in order to address significant problems with the Emery County Public Land Management Act of 2018 (hereafter referred to as the “Emery County bill”) and to identify legislative additions and modifications that would address these issues. Only with the necessary legislative changes outlined below do we believe that the Emery County bill would become worthy of these remarkable public lands and acceptable for passage into law.

BACKGROUND

The UWC has a longstanding interest in the protection of public lands in Emery County, Utah. Home to world-renown wilderness landscapes such as the San Rafael Swell and the Green River’s iconic Labyrinth and Desolation Canyons, Emery County includes nearly 1.4 million acres of Bureau of Land Management (BLM)-managed public lands proposed for wilderness designation in America’s Red Rock Wilderness Act.²

After passage of the Public Land Management Act of 2009, P.L. 111-11 (which included wilderness and NCA designations in Washington County, Utah)—and after years of meeting with Emery County officials—SUWA, on behalf of the UWC, reached out to the Emery County Commission and agreed to split the cost of a neutral facilitator with the goal of reaching compromise on a public lands bill for the county.

² BLM’s own independent wilderness inventories have determined that *more than* 1.4 million acres of BLM-managed public lands within Emery County qualify as wilderness under the requirements of the Wilderness Act. 16 U.S.C. §§ 1131-1136.

Unfortunately, due to backlash from some constituents, the commissioners reneged on the agreement. In response, in 2010, SUWA sent a letter to the Emery County Commission informing them that our on-going participation in the County's internal development of a legislative proposal was not a productive use of our time and resources, but that we remained committed to reaching an agreement on wilderness and were looking forward to re-engaging with the County after they had developed their proposal. (See Attachment letter to Emery County Commission). The County never reached out again.

In early 2013, Rep. Rob Bishop began the Public Lands Initiative (PLI), and once again the UWC became engaged in discussions regarding Emery County and other counties involved in the process. We attended Emery County field tours, provided input on potential points of agreement and compromises, and engaged regularly with both Rep. Bishop and then-Rep. Jason Chaffetz's staff. Unfortunately, the PLI ultimately failed due to the inability to move past anti-conservation ideology and a lack of political will and leadership from the congressional delegation.

From the developmental stages of this current Emery County legislative effort, the UWC submitted a compromise proposal that would have removed significant acreages of land proposed for designation in America's Red Rock Wilderness Act, either outright or for a less-protective National Conservation Area (NCA) designation. Unfortunately, our compromise proposal was largely ignored and we were unable to meaningfully negotiate areas, boundaries, or language prior to the bill's introduction in May 2018. While we continue to engage with Rep. Curtis's office, we have yet to see any changes to the legislation that address the numerous and significant problems that we have identified. To date, the legislation has strayed little from Emery County's original proposal.

While both recent and historic efforts to develop meaningful wilderness legislation for public lands within Emery County have failed—and while we have thus far seen little willingness to make the changes necessary to address our concerns—the UWC remains committed to the goal of protecting these remarkable wilderness-quality lands in perpetuity for the benefit of all Americans.

PROBLEMS AND REQUIRED LEGISLATIVE CHANGES

In order to fix the Emery County bill and make it worthy of these deserving wilderness landscapes, we urge the committee to address the following issues and to take the following actions:

I. Motorized Travel

Problem: The Emery County 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) of the bill 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, undermining a January 2017 settlement reached by conservationists, the Trump administration, and off-road vehicle advocates that resolved nearly ten years of federal court litigation. That settlement requires BLM to produce new motorized vehicle travel plans for the San Rafael area that comply with federal regulations, minimize impacts to natural and cultural resources, and minimize conflicts between resource users;
- (2) cuts up these protected areas with “excluded” routes, undermining their very conservation purpose, 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 “cherry-stemmed” in the Emery County map include both the illegal 2008 Price BLM travel plan routes and additional, currently-closed motorized routes sought by the 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 conservation purpose as part of future travel management planning.

II. Wilderness- Labyrinth Canyon

Problems: Section 201 of the bill designates 26,226 acres of wilderness for Labyrinth Canyon (called “Horseshoe Canyon (North)” in the bill). This area encompasses only a portion of qualifying wilderness on the western side of Labyrinth Canyon in Emery County—an area that is already protected as a Wilderness Study Area (WSA). To the north of this proposed wilderness area, section 101 of the bill 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).³ The bill does not propose any designated wilderness for the eastern portion of Labyrinth Canyon in Grand

³ 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.

County, Utah, and instead utilizes arbitrary county boundaries that ignore the intactness of this remarkable wilderness landscape.

Recommendations:

- **Areas:** The Emery County bill must include an additional 138,000 acres of designated wilderness for Labyrinth Canyon, including 76,000 acres in Emery County and 62,000 acres in Grand County. In doing so, 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. Known as the “Labyrinth Canyon Wilderness Addition,” this area 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. (See Attachment —“Conservation Highlights of the San Rafael Swell and Labyrinth Canyon,” pp.12-15.)
- **Motorized 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 (*see also* footnote 3). 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.

III. Wilderness- Muddy Creek

Problems: Section 201 of the bill designates 65,652 acres of wilderness for Muddy Creek, consisting solely of lands already protected for wilderness values (*i.e.*, WSAs and Natural Areas). 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, Utah, and instead utilizes arbitrary county boundaries that ignore the intactness of this remarkable wilderness landscape.

Recommendations:

- **Areas:** The Emery County bill must include an additional 165,000 acres of designated wilderness for Muddy Creek, including 122,000 acres in Emery County and 43,000 acres in Wayne County. 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. Known as the “Muddy Creek Wilderness Addition,” this area will ensure that

the entirety of the intact Muddy Creek wilderness is protected within both Emery and Wayne Counties. (See Attachment—“Conservation Highlights of the San Rafael Swell and Labyrinth Canyon,” pp.8-11.⁴)

- **Motorized 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.

When added to the current Emery County bill, 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.

IV. National Conservation Area (NCA)

Problems:

- **Areas:** Section 101 of the bill 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. In doing so, section 101 fails to protect the San Rafael Badlands, a wild and 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:** The Emery County bill must designate the 158,000-acre San Rafael Badlands as an 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 PLI), and the Mussentuchit Badlands (pronounced “mustn’t touch it”), the 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 even though it possesses a low-potential resource.

⁴ 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.

- **Language:** Strike section 101 establishing the advisory council, or modify it to ensure balanced representation, including one representative from a conservation/wilderness advocacy organization.

V. Temple Mountain Co-Management Area

Problems: Section 401 of the bill authorizes a cooperative management agreement between BLM and the State of Utah that would convey recreation management control over 7,800 acres of high-value public lands within the NCA to the State. 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 federal 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. § 1732.

VI. Goblin Valley State Park Expansion

Problems: Section 402 of the bill 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 federal 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.

VII. Wilderness Study Area (WSA) Release

Problem: Section 204 of the bill 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-managed public 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.

VIII. 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 legislation 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 and transparent 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, and allows SITLA to choose when and where it exchanges state lands.

Recommendations: Strike section 406 and replace with standard land exchange language and a map that identifies parcels to be traded out and acquired. Alternatively, replace section 406 with language that is consistent with the ACE Act (H.R. 4257/S. 2078), ensures protection of the lands within the original boundaries of Grand Staircase-Escalante and Bears Ears National Monuments, and requires SITLA to exchange all state lands located within protected areas in one transaction.

IX. 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 in Washington County, Utah as part of the Omnibus Public Land Management Act of 2009. 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.

BENEFITS TO EMERY COUNTY

Even with the aforementioned legislative recommendations, Emery County has much to gain from the legislation, including important economic benefits from increased development as well as recreation and tourism opportunities. These benefits include:

I. Significantly increased revenue.

Section 406 of the bill authorizes the School and Institutional Trust Lands Administration (SITLA) to exchange its inholdings within designated wilderness and conservation areas in Emery County for BLM-managed public land elsewhere in the state. This will allow SITLA to exchange holdings with high conservation value for lands with greater economic development potential. Pursuant to state law, when those lands are developed by SITLA, 12.5% of the revenue is returned to Emery County.⁵

⁵ Utah State Code Annotated, §§ 52C-3-202 & 203.

The proposed conservation designations contain well over 100,000 acres of SITLA lands. When these lands are exchanged for lands with economic development potential, Emery County stands to gain tens or hundreds of thousands of dollars of new revenue each year.

II. Federal land for economic development, recreational activities, and other uses.

Section 404 of the bill authorizes BLM to sell federal parcels that the agency has identified for disposal in the existing resource management plan. BLM has identified hundreds of parcels for potential disposal because of management difficulty and their potential to benefit communities. Important benefits to Emery County include providing land for infrastructure and large-scale development, facilitating operation of the Huntington and Hunter power plants, and lands for hunting and fishing.

III. Federal land for County use.

Section 405 of the bill conveys over 2,700 acres of BLM-managed public land to Emery County for various purposes including a recreation area, sheriff's substation, airport, and information center. These conveyances will serve the people of Emery County by allowing the continued use and expansion of these important public resources.

IV. Economic benefits of increased tourism and recreation.

The legislation establishes wilderness, conservation areas, and a national monument, which will provide outstanding opportunities for Emery County to expand its economic base. Abundant research has demonstrated that counties with protected public lands vastly outperform their peers in terms of job growth, personal income, per capita income, and employment.⁶

V. Increased certainty on public land management.

By protecting deserving areas as wilderness and conservation areas, the legislation will end years of uncertainty regarding public land management and wilderness designation in Emery County.

Further, the legislation will have no adverse effects on public access or economic opportunities in the county. Under the bill, not a single motorized route would be closed, and lands withdrawn from mining and energy development currently have very low potential. Instead, the bill will help preserve iconic American public lands, including scenic red rock landscapes, important ecological and cultural sites, and pre-historic fossils for the benefit and enjoyment of future generations.

⁶ See, e.g., Protected Lands and Economics: A Summary of Research and Careful Analysis on the Economic Impact of Protected Federal Lands, Headwaters Economics, Spring 2017.

CONCLUSION

Thank you for the opportunity to submit testimony on the Emery County Public Land Management Act of 2018. We encourage the Committee to take a hard look at the details of this proposal and to make the required amendments to ensure that the legislative language is consistent with conservation values and intentions, and that the magnificent landscapes of Muddy Creek, Labyrinth Canyon, and the San Rafael Badlands are protected in perpetuity.

Sincerely,



Neal Clark
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Southern Utah Wilderness Alliance
On behalf of the Utah Wilderness Coalition