

APPENDIX A—EMERY COUNTY, SAN RAFAEL

BACKGROUND

In February 2004, the Emery County Public Lands Council submitted the following document to the Bureau of Land Management (BLM) Price Field Office (PFO) with the intent and request that it be included as an appendix to the PFO Resource Management Plan (RMP).

“On November 5, 1970, two lanes of Interstate 70 were opened to traffic from Green River to Fremont Junction, Utah. This section of I-70 bisected an area of the San Rafael Swell, a spectacular region of canyon country in east-central Utah. Concern for the preservation of the canyon country landscape and amenities was immediately voiced. As pressures for development of visitor facilities along I-70 intensified, it became apparent that development must be planned and controlled if the amenities were to remain.”(Royer and Dalton 1972)

Thus became the need for a different form of land management for the San Rafael Swell expressed in a publication in 1972. Note that the publication was before the Federal Land Policy and Management Act of 1976 (FLPMA) and wilderness study areas (WSA), wilderness inventory areas (WIA), wilderness reinventories, proposed national heritage areas (NHA), proposed national conservation areas (NCA), proposed national monuments, areas of critical environmental concern (ACEC), special recreation management areas (SRMA), and America’s Red Rock Wilderness Bill.

What is not conveyed in the above statement is the extent to which the area had been in use before the 1970s. There is significant evidence of Native American occupation throughout the region and is one of the resource values that current land use planning must take into consideration. About the first half of the 19th century saw consistent use of the Old Spanish Trail. Fur trappers migrated through the area probably both before and after the Old Spanish Trail period. Government surveyors and other explorers followed. Cattle and horsemen found the high desert of the Swell lush with grass for their herds and became the first to realize a direct economic benefit from the area. The first permanent Anglo-American occupation and settlement near the Swell came in the 1870s. The various settlements on each of the small streams to the west were established and Green River to the east was settled in 1879. The stability of the human population in Emery County is demonstrated in Table A-1.

Table A-1. Emery County Population, 1940–2000

1940	1950	1960	1970	1980	1990	2000
7072	6304	5546	5137	7485	10,332	10,860

Emery County Clerk.

Grazing was the dominant enterprise on the San Rafael Swell until the 1950s. Grazing district No. 7 was established under the Taylor Grazing Act in 1935 and the district headquarters was located in Price, Utah, in 1937. In 1946, the functions of the General Land Office and the Grazing Service were combined in the Department of the Interior and BLM assumed administration of the San Rafael Swell.

Mineral resource values and potential are well known in the Swell. The first of many oil wells were drilled in the early 1920s. Perhaps as many as three dozen wells had been punched by 1940. Uranium mining accounted for a surge of activity in the 1950s. Most of the roads in the San Rafael Swell were

established and put into use at this time. Exploratory drilling and seismic activity during the 1950s and 1960s created more roads in the area. The idea that the opening of I-70 in 1970 bisected a vast roadless expanse of pristine land is erroneous. Although some isolated areas that were nearly impossible to access with the equipment of that era were left undisturbed, most of the Swell had been permanently marked by simple, dozer-constructed roads by this time. The uranium mining era is the only time when there was a permanent population residing in this area.

In the roughly 100 years before FLPMA and the opening of Interstate-70, the major impacts on the San Rafael Swell and the other resources were livestock grazing and mining. By the 1970s, uranium mining had mostly played out. Cheaper and more available ore was located in other areas. Mining activity and the mills, which process the ore, quickly became idle. Grazing use had ballooned, reduced and stabilized, and has remained for the past thirty years more or less static. Historically, other traditional use of the San Rafael Swell includes wood gathering, rockhounding, camping and picnicking, (Easterin'). Some ranchers contracted with the Federal Government to provide horses that were raised in the Swell. The harsh climate and landscape provided training opportunities for National Guard units and was used for survival training.

In the 1970s, the ideas of preservation, management, and limited use developed. More people began taking an interest in more diverse resources. As we look at the current RMP being developed by the PFO, it is clear that the major challenges for land use planners today are people and vehicle management—not resource management.

There have been a number of proposals (both congressional and administrative designation) recently, which focused on the San Rafael Swell with specific management prescriptions. It is likely that there will be more proposals in the future.

Emery County maintains that any future designation or prescription of the San Rafael Swell areas should be consistent with multiple use and sustained yield principles, as stated in the Emery County General Plan, relevant portions of which are set forth as follows—

- Emery County feels that public land should be managed under the “multiple use and sustained yield” concept. Emery County’s definition of multiple use includes, but is not limited to, traditional consumptive and non-consumptive uses, such as grazing, all-season recreation, timber harvest, wilderness, mining, oil and gas exploration and development, agriculture, wildlife, hunting, fishing, camping, historic and prehistoric cultural resources, and watershed.
- Emery County industries, such as agriculture, timber, grazing, tourism, and mining depend on the continued use and availability of public land and its resources. Because decisions to alter the management and use of these resources directly affect the County’s interests, Emery County should be a partner in the decisionmaking process, and not a mere recipient of its results. To help accomplish this goal, the County requests that federal and State land management agencies notify the Public Lands Council of proposed studies, research projects, planning processes, and decisions that might affect County residents.
- All public land agency management plans and proposals will be reviewed according to the County’s multiple use definition. The County will respond in a timely and appropriate manner to these management plans or resource-use decisions.
- Because the management of public land directly affects the lives and livelihoods of local citizens, the County asserts that public land management agencies have an obligation to identify and address all environmental and economic impacts that might result from decisions to alter or

discontinue traditional resource uses. The County feels that these impacts should be more fully considered by agencies during the decisionmaking process.

As stated, there have been a number of proposals set forth to require, in some form, a special designation for the San Rafael Swell. Earlier efforts at designation included at least two attempts for National Park status. Some of the recent efforts include—

- San Rafael Swell Natural Heritage and Conservation Act (1998) (H.R. 3625)
- The San Rafael Western Legacy District and National Conservation Act (2000), (H.R. 3605)
- The San Rafael Western Heritage Monument (2001).

Below are highlights of H.R. 3625 and H.R. 3605 concentrating on the conservation areas of the Swell.

H.R. 3625 105TH CONGRESS, 2ND SESSION (1998)

Mr. Cannon introduced the “San Rafael Swell Natural Heritage and Conservation Act.” The following is a compilation of the highlights of the proposed conservation area.

TITLE II—SAN RAFAEL SWELL NATIONAL CONSERVATION AREA

SEC. 201 DEFINITION OF PLAN

A comprehensive management plan will be developed for the national conservation area under section 203.

SEC. 202 ESTABLISHMENT OF NATIONAL CONSERVATION AREA

- (a) In order to preserve and maintain heritage, tourism, recreational, historical, scenic, archaeological, paleontological, biological, cultural, scientific, educational, and economic resources, there is hereby established the San Rafael Swell National Conservation Area.
- (b) The conservation area will be comprised of approximately 630,000 acres, represented on a map to be generated. The area will include “Proposed Wilderness”, “Proposed Bighorn Sheep Management Area”, “Scenic Visual Area of Critical Environmental Concern”, and “Semi-Primitive Non-Motorized Use Area”.
- (c) A map and legal description will be created and filed with appropriate committees, and also will be available for public inspection.
- (d) Subject to valid and existing rights, Federal lands within the conservation area are withdrawn from entry, appropriation, or disposal under the applicable Acts. Subject to valid and existing rights, lands within the conservation area are withdrawn from location under the general mining laws, mineral and geothermal leasing laws and the mineral material disposal laws.
- (e) Commercial sale of trees, portions of trees, and forest products will be prohibited.

SEC. 203 MANAGEMENT AND USE

- (a) Management Plan
 - (1) Not later than 5 years after enactment, the Secretary and the Advisory Council shall prepare and implement a management plan. Review the plan at least once every 10 years and revise as appropriate. Provide for public participation in the review process.
 - (2) Management plan will be a multiple use, sustained yield management plan that—
 - conserves resources for future generation,

- provides for the present and future enjoyment of those resources, particularly heritage and outdoor recreation use, including off-road vehicles,
- provides for protection and administration of public lands and maintenance of environmental quality,
- provides for access to and enjoyment of heritage sites.

(b) Management Guidance

The Secretary shall ensure that the plan and management include—

- protection for the heritage, scientific, cultural, and educational resources,
- public use of the area,
- interpretive and educational opportunities for the public,
- a program for continued scientific investigation and study to provide information upon which to base sound management,
- enhance vegetation and restore habitat,
- identify levels, types, timing and conditions for allowable uses of lands in the NCA,
- assess the desirability of imposing appropriate fees for public uses.

(c) VISITORS CENTER

The Secretary and Advisory Council may establish a visitor's center designed to interpret the history, geology, ecology, and other resources.

(d) VISITORS USE OF THE AREA

In addition to the Visitors Center, other provision may be made for visitor use, such as maps and other educational and interpretive materials.

(e) COOPERATIVE AGREEMENTS

The Secretary may provide technical assistance to, and enter into such cooperative agreements and contracts with, the State of Utah, local governments, and private entities as the Secretary deems necessary to carry out the purposes of this Act.

(f) AGRICULTURAL PRACTICES

Nothing in this Act shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation boundary.

SEC. 204 ADDITIONS

The Secretary may acquire lands by donation, purchase with donated or appropriated funds, exchange or transfer from another Federal agency, except that such lands or interests owned by the State of Utah may be acquired only by donation or exchange.

Any lands located within the boundaries that are acquired after the date of this Act shall become a part of the conservation area.

The Secretary shall, within 4 years of enactment, identify and initiate voluntary land exchanges which would resolve ownership-related conflicts.

SEC. 205 ADVISORY COUNCIL

- (a) There is established the San Rafael Swell National Conservation Area Advisory Council. The Advisory Council shall advise the Secretary regarding management of the conservation area, which—
- will consist of 11 members, appointed by the Secretary, representative of citizen’s interests,
 - 3 from recommendation from Governor of Utah,
 - 5 from recommendation from Emery County Commissioners, including a representative from Public Lands Council and a representative from San Rafael Regional Heritage Council,
 - 1 shall be the Director of the Bureau of Land Management in the State of Utah, or a designee,
 - remainder selected by the Secretary,
 - terms shall not exceed 4 years and shall be the same for all members. Secretary shall specify terms shorter than 4 years for the purpose of establishing staggering of terms,
 - a Chairperson shall be selected from among the members,
 - shall meet at least twice a year,
 - shall serve without pay except for travel and per diem for meetings,
 - advisory Council terminates after 10 years.

SEC. 206 RELATIONSHIP TO OTHER LAWS AND ADMINISTRATIVE PROVISIONS

- (a) Nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including the National Historic Preservation Act, the Archeological Resources Protection Act or the Native American Graves Protection and Repatriation Act.
- (b) Status of lands not administered by the BLM will not be altered.
- (c) Propagation of plants (including seeds) and vegetative enhancement within the NCA shall not be inhibited.

Subtitle B—Wilderness Areas Within Conservation Area

SEC. 221 DESIGNATION OF WILDERNESS

- (a) The following lands represented on Map 3-28, are hereby designated as wilderness.
- Crack Canyon Wilderness Area, 19,676 acres
 - Mexican Mountain Wilderness Area, 27, 953 acres.
 - Muddy Creek Wilderness Area, 37,010 acres.
 - San Rafael Reef Wilderness Area, 46, 079 acres.

A map will be generated and given to the appropriate committees. The map will be available for public inspection.

SEC. 222 ADMINISTRATION OF WILDERNESS AREAS

Subject to valid and existing rights, each area designated by this title shall be administered in accordance with this Act and the Wilderness Act.

Any lands within the boundaries of an area designated as wilderness that is acquired by the United States after the date of enactment shall be added to and administered as part of the wilderness area.

The Secretary and the Advisory Council will prepare plans in accordance with section 202, Federal Land Policy and Management Act, to manage the areas designated as wilderness.

Subtitle C—Other Special Management Areas

SEC. 231 SAN RAFAEL SWELL DESERT BIGHORN SHEEP MANAGEMENT AREA

There is hereby established in the conservation area the San Rafael Swell Desert Bighorn Sheep Management Area (Management Area). The purposes of the management area are the following—

- to provide for the prudent management of Desert Bighorn Sheep and their habitat,
- to provide opportunities for watchable wildlife, hunting, and scientific study of Desert Bighorn Sheep and their habitat,
- to provide a seed source and a gene pool to protect genetic diversity within the species,
- to provide educational opportunities to the public.

The management area shall consist of approximately 66,071 acres in the Sids Mountain area within the NCA.

Mechanized travel shall not be allowed in the management area except—

- mechanized travel on designated roads and trails,
- mechanized travel by personnel of the Utah Division of Wildlife Resources and the Bureau of Land Management, including overflights of aircraft and landings of helicopters, may be allowed as needed to manage the Desert Bighorn Sheep and their habitat.

A management plan for Desert Bighorn Sheep will be included in the management plan of the conservation area under section 203. The plan will establish goals and management steps to achieve the purposes of the management area.

The Secretary will cooperate with the Utah Division of Wildlife Resources and the Advisory Council in developing the management plan for the management area. Facilities may be established, operated and maintained within the management area for the purpose of properly and safely managing the area.

SEMI-PRIMITIVE NON-MOTORIZED USE AREAS

The purposes of the semi-primitive non-motorized areas are—

- to provide opportunities for isolation from the sights and sounds of man,
- to provide opportunities to have a high degree of interaction with the natural environment,
- to provide opportunities for recreational users to practice outdoor skills in settings that present moderate challenge and risk.

The semi-primitive areas shall consist of approximately 109,487 acres of federally owned land within the conservation area. A management plan will be developed for the semi-primitive areas under section 203. It will establish goals and management steps to achieve the purposes established above.

SEC. 233 SCENIC VISUAL AREA OF CRITICAL ENVIRONMENTAL CONCERN

The Secretary shall designate a scenic visual area of critical environmental concern (scenic ACEC). The purpose of the scenic ACEC is to preserve the scenic value of the Interstate Route 70 corridor within the conservation area.

The area of the scenic ACEC is the area generally bordering I-70 and depicted on the map.

TITLE III—ADDITIONAL WILDERNESS AREAS OUTSIDE OF CONSERVATION AREA; WILDERNESS ADMINISTRATION PROVISIONS

SEC. 301 DESIGNATION OF WILDERNESS

The following lands located outside the conservation area, depicted on the map, are hereby designated as wilderness:

- Desolation Canyon Wilderness Area, (Carbon County), 109,050 acres.
- Desolation Canyon Wilderness Area, (Emery County), 119,650 acres.
- Turtle Canyon Wilderness Area, 31,450 acres.
- Horseshoe Canyon Wilderness Area, 16,600 acres.

SEC. 302 ADMINISTRATION OF WILDERNESS AREAS

Subject to valid and existing rights, each area designated as wilderness by this title shall be administered by the Secretary in accordance with this title and the Wilderness Act.

SEC. 303 LIVESTOCK

Grazing of livestock in areas designated as wilderness by this Act, where such grazing is established before the date of the enactment of this Act, shall—

- continue and wilderness values shall not be used as a factor to reduce or withdraw grazing in designated areas or in the management of wilderness,
- be administered in accordance with section 4(d) (4) of the Wilderness Act and the guidelines set forth in House Report 96-1126.

SEC. 304 WILDERNESS RELEASE

The Congress finds and directs that public lands in the counties of Emery and Carbon in the State of Utah administered by the Bureau of Land Management have been adequately studied for wilderness designation pursuant to section 603 of FLPMA.

Any public lands administered by the BLM in Carbon and Emery counties not designated as wilderness by this title are no longer subject to section 603(c) of FLPMA. Such lands shall be managed for public uses as required in section 103(c) of FLPMA.

TITLE IV—GENERAL MANAGEMENT PROVISIONS

SEC. 401 LIVESTOCK GRAZING

The Secretary shall permit domestic livestock grazing in areas of the conservation area, and in areas of semi-primitive areas outside of the conservation area, where grazing was established before this Act.

SEC. 402 CULTURAL AND PALEONTOLOGICAL RESOURCES

Shall allow for the discovery of, shall protect, and may interpret, cultural or paleontological resources located within areas designated as part of the conservation area or as a wilderness or semi-primitive area under this Act. The means of discovery authorized shall be those means conventional to the science of archeology.

SEC. 403 NATIVE AMERICAN CULTURAL AND RELIGIOUS USES

In recognition of the past use by Native Americans for traditional cultural and religious purposes of sites within areas designated as part of the conservation area or as a wilderness or semi-primitive area under this Act, the Secretary shall assure nonexclusive access from time to time to those sites by Native Americans for such purposes, including (but not limited to) wood gathering for personal use or collecting plants or herbs for religious or medicinal purposes.

SEC. 404 AIRCRAFT

Low level over flights not precluded.

BLM and UDWR may use helicopters in management of Bighorn Sheep within the management area.

SEC. 406 LAND EXCHANGES RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS

Not later than 1 year after enactment, the Governor may identify and notify the Secretary of any school and institutional trust lands the value or economic potential of which is diminished by establishment of the conservation area or designation of any wilderness or semi-primitive area under this Act.

Not later than 2 years after the date of receipt of notification under subsection (a) regarding lands, the Secretary shall acquire all right, title, and interest in the lands identified in the notice, by exchange with the State of Utah for Federal Lands that are of approximately equal value to the identified lands and that are located in the State.

SEC. 407 WATER RIGHTS

- (a) Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising from the designation of areas as part of the conservation area or as a wilderness or semi-primitive area under this Act.
- (b) The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities on any lands designated as part of the conservation area or as a wilderness or semi-primitive area under this Act pursuant to the substantive and procedural requirements of the State of Utah. No eminent domain. All rights to water granted by State of Utah may be exercised in accordance with the requirements of the State of Utah.

- (c) Nothing in this Act shall be construed to limit the exercise of water rights as provided under the laws of the State of Utah.
- (d) Nothing in this Act shall affect the maintenance, repair, modification, replacement, or improvement of, or ingress to or egress from, irrigation, pumping, storage, and transmission facilities associated with municipal, industrial, agricultural, livestock, or wildlife purposes in existence before enactment, whether located within or outside of the boundaries of areas designated as part of the conservation area or as a wilderness or semi-primitive area under this Act.
- (e) This Act shall not affect the operation of any facility on the Colorado River or its tributaries. Nor will it affect any pact or agreement pertaining to the waters of the Colorado River or its tributaries.

SEC. 408 MISCELLANEOUS

State of Utah will retain jurisdiction and responsibilities with respect to fish and wildlife management activities.

Congress does not intend any creation or designation of protective perimeters or buffer zones around the area.

Where roads form the boundaries of a designated area, the boundary of the area shall be set back from the centerline of the road as follows:

- 300 feet for paved highways.
- 200 feet for high standard roads classified as County Class B roads.
- 100 feet for roads equivalent to County Class D roads.

Subject to valid existing rights, reasonable access shall be allowed to existing improvements, structures, and facilities, including those related to water and grazing resources, which are within the conservation area or a wilderness or semi-primitive area designated under this Act, whether located on Federal or non-Federal lands, in order that they may be operated, maintained, repaired, modified, or replaced as necessary.

“Reasonable Access” means right of entry and includes access by motorized transport when necessarily, customarily, or historically employed on routes in existence as of the date of the enactment of this Act.

The Secretary shall offer to acquire from non-governmental entities lands and interests in lands located within or adjacent to the conservation area or a wilderness or semi-primitive area designated under this Act. Lands may be acquired under this subsection only by exchange or purchase from willing sellers.

H.R. 3605 106TH CONGRESS, 2ND SESSION (2000)

Mr. Cannon introduced the “San Rafael Western Legacy District and National Conservation Act. Following is a compilation of the highlights of the proposed conservation area.

TITLE II—SAN RAFAEL NATIONAL CONSERVATION AREA

SEC. 201 DESIGNATION OF THE SAN RAFAEL NATIONAL CONSERVATION AREA

- (a) In order to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important values of the Western Legacy District and the public lands described in subsection (b), including historical, cultural, natural, recreational, scientific, archeological, paleontological, environmental, biological, wilderness, wildlife, educational, and scenic resources, there is hereby established the San Rafael National Conservation Area.
- (b) The NCA shall consist of approximately 947,000 acres of public land. The boundary of the NCA shall be set back 300 feet from the edge of I-70 right-of-way and from the edge of the State Route 24 right-of-way.
- (c) The Secretary will submit to Congress a map and legal description. Copies of the map and legal description shall be on file and available for public inspection.

SEC. 202 MANAGEMENT OF THE SAN RAFAEL NCA

- (a) The Secretary shall manage the NCA in a manner that conserves, protects, and enhances its resources and values, including those resources and values specified in section 201(A) and pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA).
- (b) The Secretary shall allow such uses of the Conservation Area as the Secretary finds will further the purposes for which the NCA is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles shall be permitted as part of the management plan prepared pursuant to subsection (E).
- (c) Withdrawals. Subject to valid and existing rights, all lands within the NCA are hereby withdrawn from all forms of entry, appropriation, or disposal and from location, entry, and patent under the mining laws, and from operation of the mineral leasing and geothermal leasing laws. The Secretary may authorize the installation of communication facilities within the NCA, but only to the extent that they are necessary for public safety purposes.
- (d) The Secretary shall permit hunting, trapping, and fishing within the NCA in accordance with applicable laws. After consultation with the Utah Division of Wildlife Resources, regulations may be issued designating zones where and establishing periods when no hunting, trapping, or fishing shall be permitted for reasons of public safety, administration, or public use and enjoyment.
- (e) Within 4 years after the enactment, the Secretary shall develop a comprehensive plan for the long-range protection and management of the NCA. The plan may incorporate appropriate decisions contained in any current management or activity plan for the area and may use information developed in previous studies of the lands within or adjacent to the area.
- (f) The State of Utah and the Secretary may agree to exchange Federal lands, Federal mineral interests, or payment of money for lands and mineral interests of approximately equal value that are managed by the Utah School and Institutional Trust Lands Administration and inheld within the boundaries of the NCA.
- (g) The Bureau of Land Management (BLM) the State of Utah and Emery County may agree to resolve section 2477 of the Revised Statutes and other access issues within the NCA.
- (h) Nothing in this Act shall be deemed to diminish the responsibility and authority of the State of Utah for management of fish and wildlife within the Conservation Area.
- (i) There the Secretary of the Interior currently permits grazing; such grazing shall be allowed subject to all applicable laws, regulation, and executive orders.
- (j) The Congress does not intend for the establishment of the Conservation Area to lead to the

creation of protective perimeters or buffer zones.

- (k) Establishment of the NCA shall not be construed to give rise to either an implied or express reservation of any water or water rights pertaining to either surface or ground water. Nothing in this title shall affect any valid existing surface water or ground water right in effect on the date of the enactment of this Act or any water right hereafter approved pursuant to the laws or the State of Utah or any other State.
- (l) Nothing in this Act alters the provisions of the Wilderness Act of 1964, or the Federal Land Policy and Management Act of 1976 as they pertain to wilderness resources within the NCA. Recognizing that the designation of wilderness areas requires an Act of Congress, the BLM, the State of Utah, Emery County, and affected stakeholders may work toward resolving various wilderness issues within the conservation area.

COMMENTS AND COMPARISON OF H.R. 3605 (2000), H.R. 3625 (1998)

H.R. 3625 is smaller in area (630,000 acres) than H.R. 3605 (947,000 acres). It encompasses the boundary of the prominent geology of the San Rafael Swell. The eastern boundary generally follows Sids Mountain WSA, close to the Devil's Canyon rim south of I-70, and the canyon rim above Muddy Creek on the east. It then follows the southern boundary of the Reef north and east back to I-70, continuing north along the Reef, including the Mexican Mountain WSA, then westerly to the Wedge and Buckhorn Draw area. H.R. 3625 is a well defined area and is inclusive of the WSAs in the San Rafael Swell.

H.R. 3605 is more focused on the Western Legacy District (a Heritage area) than on land use planning. An advisory council is created under the Legacy District, not specifically for the Conservation Area. Funding is also under the umbrella of the Legacy District. H.R. 3625 is much more specific in the definition of a land use plan. H.R. 3625 provides for "Proposed Wilderness," "Proposed Bighorn Sheep Management Area," "Scenic Visual Area of Critical Environmental Concern," and "Semi-Primitive Non-Motorized Use Area." H.R. 3605 does not specifically address designation of areas under these titles.

Both bills effectively eliminate any new mining, drilling, or sand and gravel development, except where "valid and existing rights" are currently in place.

Responsibility for management of fish and wildlife is retained by UDWR in both bills.

Both bills allow for the exchange of land by SITLA and BLM.

Grazing would continue to be subject to applicable laws and guidelines in both proposals.

Water rights would be recognized as approved by the State of Utah in each proposal.

H.R. 3605 establishes NCA boundaries that are set back from I-70 and SR-24 by 300 feet. H.R. 3625 establishes all boundaries as—

- 300 feet from the centerline of paved roads
- 200 feet from the centerline of high standard roads classified as County Class B roads
- 100 feet from the centerline of roads equivalent to County Class D roads.

Both bills provide for motorized access for administrative purposes and emergency (search and rescue) situations.

H.R. 3625 proposes a possible visitors' center. It also provides for the establishment of an 11-member advisory council for the NCA.

NATIONAL MONUMENT PROPOSAL

In 2001, Emery County Public Lands Council entered into some discussion and input from county residents and interest groups regarding the possibility of designating a national monument on the San Rafael Swell. Following are some issues of concern that at the time were developed as "Local Parameters and Requirements for Support of a National Monument Designation."

The Emery County Public Lands Council has concluded that national monument designation, as framed in this document, offers the best model currently available for achieving local, State, and national objectives for the management of these lands.

This document proposes the establishment of a San Rafael Swell Heritage National Monument.

The following are important considerations that must be documented in either the proclamation itself or in supporting documents and internal memoranda from the Secretary of the Interior and/or the BLM Director. These elements are essential to obtaining Emery County's support for a national monument designation and if they are not addressed to the satisfaction of Emery County, local support for a monument designation will be withdrawn.

Monument Emphasis

Primary management emphasis and purpose will be for the proper care and management of the historical and cultural objects and resources. It is important that this monument has as its primary emphasis the protection and showcasing of the "historic" resources rather than the "scientific" resources, as was the case with the Grand Staircase-Escalante National Monument.

The distinguishing characteristic that sets the San Rafael Swell apart from the other slick rock areas of the West is found in tracing the footprints of history on its landscape. Nearly all of the historical forces and movements that shaped the destiny and romance of the old West have touched the San Rafael Swell in one way or another.

The development of these historic themes, along with the hope of creating heritage tourism opportunities, have been vital components of local planning efforts from the beginning. The original San Rafael legislation presented to Congress in 1998 called for the creation of a national heritage area in the region. The subsequent San Rafael proposal that Congress considered in 2000 sought to establish a National Western Legacy District.

This management emphasis on the historic resources of the monument is not intended to diminish in any way the tremendous importance of protecting and conserving the public lands and natural resources. Protection of these public lands treasures and the natural environment is also central to the purposes for which monument designation is being sought.

Multiple Use/Visitor Friendliness

Emery County envisions a visitor-friendly monument that accommodates a wide variety of uses and activities. Our intent with this designation is to create a visitor attraction, not a science museum. While there are many areas within the proposed monument which are rugged, remote, and suitable only for

backcountry experiences, much of the San Rafael Swell is very accessible by existing roads and readily lends itself to visitation by recreationists and by the casual tourist.

As much as possible, we intend to draw visitors into the surrounding communities and to existing community-based facilities and amenities, such as museums and visitor information centers. Doing so will minimize the impacts on the lands themselves, while at the same time increasing the economic returns to the communities. Though our strategy is to establish the communities as the tourism hubs and staging areas, there will undoubtedly continue to be large numbers of visitors traveling to the interior of the monument to experience its magnificent historic and scenic attractions.

Boundaries

Our monument proposal includes approximately 620,000 acres and is similar in size to the original 1998 NCA proposal. It also includes the Cleveland-Lloyd Dinosaur Quarry—even though this area will not be contiguous to the principal land area of the monument, the boundary will follow discernable topographic features rather than arbitrarily determined boundaries. The San Rafael Swell is a circular geologic uplift that has visible and discernible topographic features. The sandstone cliffs and reefs rise impressively up from the surrounding lands. The terrain within this uplift is uniquely and spectacularly scenic and attractive. These lands clearly merit inclusion in a national monument and rival the scenic qualities of many of our national parks. The lands outside the boundaries of this proposal clearly do not.

These proposed boundaries deliberately seek to avoid the large gypsum deposits on the western edge of the proposed monument, which include operating open-pit gypsum mining operations and numerous additional mining claims. The Antiquities Act states that the President “...may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected.” The smallest area compatible with the proper care and management of the objects to be protected, as well as the area that is the most logical and practical in terms of manageability and consistency, is that which is presented in this proposal.

Monument Access

Access is one of the most critical aspects of the monument proposal because it affects all of the other uses associated with these lands. Appropriate access to heritage sites to facilitate recreation and valid uses is essential.

(At this point, the text of this document discusses the San Rafael Route Designation Plan which was being developed at the same time. The argument is made that it would be wise and acceptable to allow the Route Designation Plan to be the management plan for the proposed monument because the NEPA process would have been completed.)

There will also be language ensuring that Emery County’s claims to its RS2477 rights-of-way will not be invalidated by monument designation.

Language Provisions

The proclamation creating the new monument must include clauses that protect the vital interests of the State of Utah, Emery County, and the rights and safety of the citizens of the State. These clauses would address such issues as—

- No federal reservation of water or water rights

- Continuance of valid existing rights (VER)
- No infringement on the jurisdiction of the State of Utah with respect to fish and wildlife management
- Grazing will continue to be administered under existing laws and regulations
- No adverse effect on existing communications sites and facilities, and the ability to appropriately install additional communications equipment if needed for public safety purposes
- No adverse effects on the scientific study of, access to, or professional removal of paleontological and archaeological resources because of the establishment of the monument; access will be addressed in the San Rafael Route Designation Plan.

Monument Advisory Council

Emery County and the Emery County Public Lands Council have been very effective in communicating and collaborating with federal land management agencies, the environmental community, and other stakeholders in addressing land management issues. Emery County sees great value in formalizing these activities with respect to the monument through the establishment of a monument advisory council, which would include local and State representation, as well as representation from other appropriate sectors and disciplines. Emery County views the opportunity for ongoing State and local input into planning and management decisions affecting the monument through a FACA chartered advisory council as an essential element of this proposal. Emery County seeks solid assurances that a monument advisory council will be established with representatives to advise the monument manager on areas such as history, recreation, grazing, tourism, wildlife, local government, and local economic and social issues related to the achievement of management plan objectives.

Ranching as a Historical Use/Resource

In addition to language that ensures that grazing will continue to be administered under existing laws and regulations, Emery County will also have language that will recognize livestock ranching activities as part of the historic and cultural landscape, and therefore among the historic resources the County intends to protect with monument designation. Ranching and grazing are part of the history we are protecting, and are an inseparable part of the Swell's historic landscape, therefore, these activities are part of what the County intends to preserve as part of the monument.

The County does not want to see any reductions in AUM levels on the San Rafael Swell. If, however, there is a move to reduce AUMs in the future because of pressures from increased tourism and recreation use, it is the County's position that ranchers should be compensated for those AUMs. We will work with BLM and all other appropriate entities to find the means to compensate ranchers for any such losses.

Local Involvement in the Development of the Monument Plan

Emery County has cooperating agency status, and therefore expects to be included as a full partner on the monument planning team and as a full partner in the planning process.

Wilderness

National monument designation is widely recognized and accepted as providing a very high level of protection for natural environments. The County is pleased that those same levels of protection will apply to the lands of the San Rafael Western Heritage Monument. This designation will be a significant and perpetual commitment to the conservation and protection of these lands.

Respecting concerns regarding the status and management of WSAs, and other lands that are viewed by some as having wilderness characteristics, the County proposes that WSAs within the monument boundaries continue to be managed under the FLPMA non-impairment standard.

Withdrawals

It is understood that lands within the monument would be withdrawn from all types of entry, location, selection, sale, or leasing, and that activities such as mining, drilling, and timbering would be prohibited, except where a valid existing right has been established.

GUIDING PRINCIPLES FOR POSSIBLE FUTURE SPECIAL DESIGNATION IN THE SAN RAFAEL SWELL AREA

Summary

From the brief history of proposed special designation for the San Rafael Swell area, it should be obvious that the citizens of Emery County have attempted to actively participate in all efforts to develop a realistic plan that provides adequate and acceptable measures to ensure that future generations may benefit from the abundant resources of our public land. It should also be obvious that the best land use planning will not be found at the extreme ends of possible land planning. Emery County does not want to turn the San Rafael Swell into an OHV playground with no limits, nor do we advocate irresponsible overgrazing. On the other hand, Emery County strongly opposes efforts to eliminate or substantially curtail these uses as well as potential future mineral uses, and wish to preserve the use of those resources to benefit the local population economically and socially. Interaction of the people and the public land continues to be of special significance to the United States, and should be considered in itself to be a resource. Extreme proposals that eliminate all use other than what can be “experienced” in the realm of non-motorized recreation is in fact non-management. The mentality of “locking away our national heritage,” so much in vogue with some today, is nothing more than the mentality of placing what is valuable to us in a glass museum case; look but don’t touch, don’t experience it or enjoy it and by all means don’t allow anyone else to benefit from it. At first glance this mentality seems innocent enough, a mere profession of concern for “Mother Earth”. But on closer inspection it is merely a pretext to mask a more serious and sinister purpose so prevalent among those who do not live in and therefore do not understand the rural west—the conscious oppression of human activity and civilization in Emery County.

Thus, Emery County believes that should special designation for the San Rafael Swell (congressional or administrative) be chosen as a management alternative in the future, the most responsible alternative is a conservation, multiple use friendly management prescription somewhere between the two extreme positions, which upholds and preserves the landscape, but upholds and preserves time-honored traditional uses of that landscape, from grazing, to OHV use, to mineral development. We feel that previous proposals have been legitimate attempts at resolving the land management issue, and would prefer that any designation closely reflect the elements set forth in those proposals. Valid and existing rights must be recognized. Consistency with Emery County’s General Plan is expected and mandated by FLPMA and NEPA. Designation of any kind should not inhibit local communities from further development and utilization of available water. The following are some recommendations.

Emphasis

The emphasis of any designation should be toward user friendly, multiple use and sustained yield principles with proper care and management of historical and cultural resources. A management plan should be written that would—

- provide for the sustained yield of multiple resources through future generations.
- provide for the present and future enjoyment of those resources, particularly grazing use, heritage and outdoor recreation use, including OHVs.
- provide for protection and administration of public lands and maintenance of environmental quality.
- provide for access to and enjoyment of heritage sites.

Any designation needs to ensure that the plan and management include—

- protection for the heritage, scientific, cultural, wildlife and educational resources.
- public use of the area.
- interpretive and educational opportunities for the public.
- a program for continued scientific investigation and study to provide information upon which to base sound management.
- Enhance vegetation and restore habitat for both livestock and wildlife.
- identify levels, types, timing, and conditions for allowable uses of lands in the designated area.
- assess the desirability of imposing appropriate fees for public uses.
- incorporate adaptive management practices to allow future changes in land use to be addressed in a timely manner.
- retention of Emery County's cooperating agency status.

An adequate number of visitor centers should be designed to interpret the history, geology, ecology, and other resources. We intend to create a visitor attraction, not a science museum. While there are many areas within the San Rafael Swell which are remote, difficult to access, and can provide backcountry recreation, most of the area is very accessible by existing roads. Any designation should emphasize that it is a visitor-oriented area.

Advisory Council

We suggest that an advisory council be appointed to act in developing the management plan and implement that plan. The advisory council—

- will be subject to the Federal Advisory Council Act (FACA)
- will consist of 11 members, appointed by the Secretary, representative of citizen's interests
 - 3 from recommendation from Governor of Utah
 - 5 from recommendation from Emery County Commissioners, including a representative from Public Lands Council
 - 1 shall be the Director of the Bureau of Land Management in the State of Utah, or a designee
 - Remainder selected by the Secretary
- Terms shall not exceed 4 years and shall be the same for all members. Secretary shall specify terms shorter than 4 years for the purpose of establishing staggering of terms.
- a Chairperson shall be selected from among the members.
- shall meet at least twice a year.
- shall serve without pay except for travel and per diem for meetings.
- shall comply with FACA and FLPMA

Boundary

We propose the boundary for any designated area be that represented on Map 2-24, which includes within its boundaries, 602,000 acres, realizing that it may be wise to realign said boundary to conform to on-the-ground manageability.

Agricultural Practices

Any designation shall permit domestic livestock grazing within the designated area to the AUM usage allowed by forage conditions as originally contemplated under the Taylor Grazing Act and other applicable regulations.

Grazing of livestock in areas designated as Wilderness or WSAs, where such grazing is established before the date of any designation shall—

- continue and wilderness values shall not be used as a factor to reduce or withdraw grazing in designated areas or in the management of wilderness.
- be administered in accordance with section 4(d) (4) of the Wilderness Act and the guidelines set forth in House Report 96-1126.

Livestock ranching activities, including water improvement projects and structures, should be recognized as being part of the historic and cultural landscape, and therefore among the historic resources intended to be protected by designation.

Fish and Wildlife

Any designation shall permit hunting, trapping, and fishing in accordance with applicable laws. After consultation with the Utah Division of Wildlife Resources, regulations may be issued designating zones where and establishing periods when no hunting, trapping, or fishing shall be permitted for reasons of public safety, administration, or public use and enjoyment.

No designation shall diminish the responsibility and authority of the State of Utah for management of fish and wildlife within the conservation area.

Overflights by fixed wing and helicopter, including the use of landing zones and staging areas, will continue to be practicable for the purpose of wildlife management.

Water

- Nothing in any special designation shall constitute or be construed to constitute either an express or implied federal reservation of water or water rights for any purpose arising from the designation of areas as part of the designated area or as a wilderness area under any such designation.
- The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities on any lands designated as part of the area or as a wilderness area under any designation pursuant to the substantive and procedural requirements of the State of Utah. No eminent domain. All rights to water granted by State of Utah may be exercised in accordance with the requirements of the State of Utah.
- No designation shall be construed to limit the exercise of water rights as provided under the laws of the State of Utah.

- No designation shall affect the maintenance, repair, modification, replacement, or improvement of, or ingress to or egress from, irrigation, pumping, storage, and transmission facilities associated with municipal, industrial, agricultural, livestock, or wildlife purposes in existence before enactment, whether located within or outside of the boundaries of areas designated.
- Any designation shall not affect the operation of any facility on the Colorado River or its tributaries. Nor will it affect any pact or agreement pertaining to the waters of the Colorado River or its tributaries.

Areas of Critical Environmental Concern (ACECs)

Any ACECs incorporated in any way into any designation should be managed in no greater than the smallest area required, and the least restrictive means necessary to protect irreparable damage to important and relevant values recognized in the FLPMA definition of an ACEC, and only where adequate science has shown that irreparable damage will result otherwise.

Wilderness

The following existing WSAs receive congressional approval for inclusion in the National Wilderness Preservation System:

- Crack Canyon WSA (25,335 acres)
- Devil's Canyon WSA (9,610 acres)
- Muddy Creek WSA (31,400 acres)
- San Rafael Reef WSA (59,170 acres)
- Sids Mountain WSA (80,970 acres)
- Mexican Mountain (59,600 acres)

Cultural and Paleontological Resources

Designation shall allow for the discovery of, shall protect, and may interpret, cultural or paleontological resources located within areas designated as part of the conservation area or as a wilderness or semi-primitive area under this Act. The means of discovery authorized shall be those means conventional to the science of archeology.

RS 2477 Rights of Way

Any special designation in the San Rafael Swell must expressly recognize the State and the County's RS 2477 rights-of-way to all roads for which such rights apply. Any legislation that affects this special designation should be specific to Emery County's satisfaction, the precise length, GPS centerline location, width of disturbance and other relevant indications of location and size of road, for all such roads in the Swell to which the State and the County has a valid right-of-way under RS 2477. Such legislation should also mandate that the State and the County's use and enjoyment of such right-of-way, and shall be upheld by BLM consistent with any relevant State or county transportation plan. As part of the congressional designation process, the legislative language should include the proper congressional confirmation of the State and the County's RS 2477 existing easement rights in such roads, and the proper congressional disclaimer by the United States of the dominant estate interest to such roads. Any special designation and the resulting plan should expressly provide that it shall not be construed to adversely affect or hinder in any way the State and Emery County's continuous undisturbed right of enjoyment of those rights-of-way conferred under RS 2477 on roads across public lands in the San Rafael Swell.

Access

Access is one of the most critical aspects of any proposed designation because it affects all of the other uses associated with these lands. Appropriate access to heritage sites to facilitate recreation and other valid uses is essential. The Route Designation Plan for the San Rafael Resource Management Area has been completed. The PFO is in the process of developing the Price River Resource Area Route Designation Plan. The two plans will be combined to serve as the travel plan for the PFO. This should be adopted as the travel plan for any specially designated area, with the following caveats:

Where roads form the boundaries of a designated area, the boundary of the area shall be set back from the centerline of the road as follows:

- 300 feet for paved highways
- 200 feet for high standard roads classified as County Class B roads
- 100 feet for roads equivalent to County Class D roads

Subject to valid existing rights, reasonable access shall be allowed to existing improvements, structures, and facilities, including those related to water and grazing resources, and improvements for wildlife, which are within the boundaries of any designated area, whether located on federal or non-federal lands, in order that they may be operated, maintained, repaired, modified, or replaced as necessary.

“Reasonable access” means right of entry and includes access by motorized transport when necessarily, customarily, or historically employed on routes in existence as of the date of the enactment of any designation.

Emergency access into a designated area, including WSAs, will not be hindered by the designation. Emergency access may include OHVs, full-sized passenger vehicles, and aircraft.

REFERENCES

Lawrence Royer and Michael J. Dalton, 1972. Land Use in the Utah Canyon Country: Tourism, Interstate 70, and the San Rafael Swell, Phase II Final Report, Utah State University, 1972.

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