

P.O. Box 833
St George, UT 84771



December 16, 2024

BLM Planning Team
Environmental Assessment Comments
Red Cliffs/Warner Valley Land Exchange
Project DOI-BLM-UT-C030-2023-0008-EA

Utah Public Lands Alliance (UPLA) is writing to provide public comment on the [Red Cliffs Warner Valley Land Exchange Environmental Assessment](#), hereto forward referred to as the “Exchange”. Many of our members and supporters live near and/or recreate throughout the Exchange Area that will be impacted. This letter of comment shall not supersede the rights of other UPLA agents, representatives, or members from submitting their own comments; the Bureau of Land Management (BLM) should consider and appropriately respond to all comments received for the Exchange.

UPLA is a non-profit organization representing over 5,800 members, in addition to speaking out for 69 OHV clubs and organizations. We advocate for responsible outdoor recreation, active stewardship of public lands, and encourage members to exercise a strong conservation ethic including “leave no trace” principles. We champion scrupulous use of public lands for the benefit of the general public and all recreationists by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with public land managers, all recreationists, and other public land stakeholders. Our members participate in outdoor recreation of all forms to enjoy federally and state managed lands throughout Utah, including BLM and US Forest Service managed public lands. UPLA members visit public lands to participate in motorized and human-powered activity such as off-roading, camping, hiking, canyoneering, horseback riding, sightseeing, photography, wildlife and nature study, observing cultural resources, and other similar pursuits on a frequent and regular basis throughout every season of the year. UPLA members and supporters have concrete, definite, and immediate plans to continue such activities in the Exchange area throughout the future.

I, Loren Campbell, am a Jeep and UTV enthusiast from Virgin, Utah. I serve as the President of Utah Public Lands Alliance (UPLA). I advocate for use of public lands by all responsible users, and have a strong interest in maximizing opportunities for offroad motorized recreation. I work full time as a volunteer advocate to protect access for all users, but also organize and work as a volunteer on projects on public lands. I am also a volunteer Steward with the Utah Cultural

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Resource Stewardship program. UPLA, Rose, and I are also members of BlueRibbon Coalition. These comments are submitted on behalf of both myself and Utah Public Lands Alliance, as well as our members and followers from within and outside of Utah.

Rose Winn as cowriter of these comments, is an avid outdoor recreation enthusiast and anthropologist; hiking, backpacking, backcountry horseback riding, camping, rock climbing, off-roading, fishing, forage of wild herbs and plants for medicinal uses, and exploration of cultural and archeological sites and artifacts on public lands are among her core areas of activity and interest. She serves as the Natural Resources Consultant for Utah Public Lands Alliance (UPLA), a non-profit organization dedicated to keeping offroad trails open for all recreation users. While her profession allows her to advocate to protect public access to public lands for all stakeholders and multiple-uses, she also works as a volunteer on conservation, mitigation, and restoration projects on public lands.

The following comments are submitted with respect to the Red Cliffs/Warner Valley Land Exchange Environmental Assessment, DOI-BLM-UT-C030-2023-0008-EA

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INTRODUCTION AND ASSUMPTIONS

The lands being proposed for Exchange “are within the Sand Mountain Special Recreation Management Area (SRMA) and will be maintained in public ownership to provide long term stability to user groups such as the Off Highway Vehicle (O)HV) community, who as a result of urbanization and land use restrictions, have lost much of their traditional open-use areas.” (RC-20e)” -Excerpt from St George RMP 1999

This statement accurately states the reason behind the establishment of the SRMA, and the EA addresses further grounds for the SRMA to serve the motorized OHV community, yet the EA fails to establish any conditions or explore alternatives to offset the loss to OHV incurred as the result of the Exchange. Removal of the land from the SRMA will require a formal land use planning process which includes the Environmental Assessment of both the effects and reasonable alternatives to mitigate that withdrawal. The Federal parcel clearly meets the criteria for inclusion in the SRMA based on recreation demand, resource conditions, and many other considerations. The EA failed to address completely the impact that might be caused by a change in the intended use of the land from that as the Reservoir. Although that may be the most likely use of the land at the present time, it is certainly not the only reasonably foreseeable future use of the land for other purposes.

Further, I did not see in the EA reference to the Amendment of the RMP, which I believe would be required to remove the land for the Exchange.

Section 1.1. Purpose and Need The need for the action is established in the St. George Field Office RMP Management goals, objectives, and decisions and by the BLM’s statutory and regulatory responsibilities under Title II, Section 206 of FLPMA, 43 U.S. Code 1761.

Section 3.1 the EA accurately describes that OHV off-trail (Open) motorized use as the predominant activity in the area, and that use is projected to increase in the foreseeable future, traffic counters on Sand Mountain showed 2023 to be 136% of the 2022 counts, from 525,230 to 718,277 vehicles. At an average occupancy of 2.7 persons in each OHV, annual visitors in 2023 would have been 1,939,000, almost 10 times the population of Washington County. Although this section does a good job at describing the negative impacts against OHV of this and preceding actions, the EA fails in that it does not prescribe any alternatives to offset the losses in anticipated land uses of the Federal Parcel or to mitigate user conflicts as a result of the Exchange.

Section 3.3.1.4 also recognizes that OHV recreation’s economic value is at an average ratio of 1:184, meaning that for every dollar invested in OHV recreation, \$184 is generated in income.

The report acknowledges the substantial source of economic income for Washington County, it does not provide any specific effects on the value decline as a result of the Exchange, especially if the anticipated land use changed from that of being built as a Reservoir.

Section 3.5.3.1 describes the Affected Environment of 40,275 acres of Sand Mountain SRMA, a very small 6% of the 630,000 acres managed by BLM's St. George Field Office. The Sand Mountain SRMA was designated in 1999 to provide one of the few areas in Utah, and the Nation, that allows Open Travel. **With the well documented growth in users, expansion of the area should be the focus of serving the public, not taking actions to limit OHV recreation.**

Although the EA mentions that dispersed camping exists currently in Long Valley, it fails to address the number of campers affected by elimination of this camping area, where these campers that come to recreate for extended periods to recreate would be relocated, or associated law enforcement issues related to campers seeking unauthorized sites. Additionally, one reason this area is so popular for OHV users is that it affords them the ability to easily access the trail system without the need to drive unregistered vehicles on public roads. It is estimated that at times there can be as many as 200-300 camper rigs (or 540-810 individuals) located in the Valley, and many of these campers stay for an extended period of time. RV camping at

commercial or state sites in the area are extremely expensive and puts visiting financially out of reach for many visitors. The impact on visitors will be extreme, and the EA failed to address any alternatives for this displacement. The photo shown here displays a portion of the many campers at the Long Valley dispersed camping area during the recent 2024 Thanksgiving weekend.



We are aware and appreciate that BLM is working on a proposal to add dispersed camping near Waddy's Corral, but an **analysis of the actual impact and determination of the needs of alternate campsites should have been done prior to release of the Exchange EA. Further, a portion of the cost of NEPA analysis and construction of any identified alternate location campsites should be calculated in the Exchange valuations as a necessary cost.**

The proposed Exchange will remove 417 acres from the Open OHV area, and 926 acres from the SRMA. It would also eliminate:

- The dispersed camping currently allowed in the Federal Parcel, on busy periods this can exceed 200-300 camp sites.
- All of the OHV trails in Long Valley where the future reservoir is planned
- Access via trails to and on the West Rim of Sand Mountain.
- Dispersed campsites along Pipeline Road
- Staging Area at Long Valley

The elimination of the limited amount of Open OHV Travel allowed in the Sand Mountain SRMA, and in our State is opposed without modifications in the Final Decision to mitigate these losses.

UPLA'S SCOPING COMMENTS

Please reference UPLA's Scoping comments (Exhibit B, Page 10-11) as previously submitted:

There have been many issues in the past associated with BLM Land Exchanges, [as documented in the Congressional Research Services review of 2016](#). This Exchange is further complicated by the lack of an intended use of the BLM parcel. The presumed purpose of the WCWCD is to build a reservoir, which UPLA acknowledges has a legitimate need and purpose. Our Position is thus dependent on the intended uses being clearly stated in the agreement as follows:

If the Reservoir is built, UPLA is agreeable to the Exchange with the following considerations and binding legal documentation:

- 1) Preserve Open OHV Access for all the land above the 2980' elevation level on the Eastern side to the BLM border*
- 2) Maintain OHV access from the Washington Dam area to the trail system above, either via the current Ridgeline Trail or another trail that Washington County Water Conservancy would construct*
- 3) Prohibit Building and Development or any zoning changes allowing it on top of the ridge, except for necessary infrastructure for the reservoir or OHV recreation.*
- 4) Allow construction of a minimum 3 acre staging area in the Washington Dam Area, including installation of a restroom*
- 5) Maintain or relocate the current restroom on Pipeline Road*
- 6) Maintain access to the above facilities without any fees*
- 7) Dispersed camping in Warner Valley often attracts up to 300 campers that have enjoyed camping there for years without any charges. Develop a plan that would allow camping and Open OHV use to continue in the Valley until Dam*

construction begins, and when construction begins, offer reasonable alternatives for campers displaced by the Land Exchange.

If the Reservoir is not built, UPLA is strongly opposed to the Exchange, as a large, but unknown number of consequences would emerge that would result from future division of lands, sales, annexation, and development.

GOOD FAITH ACTIONS BY OHV COMMUNITY AND WCWCD

The OHV community was alarmed of these losses to an already dwindling land mass open for OHV recreation. BLM has been closing access for OHV at a ferocious pace with dramatic cuts in Moab, the San Rafael Swell, and Bears Ears National Monument. We are fearfully awaiting decisions on the Henry Mountains, Ashley National Forest, Dolores River, and Trail Canyon.

Two consistent results have been apparent in each plan introduced:

- 1) They eliminate 25-50% of the OHV routes in the area. This result, combined with the soaring popularity of motorized recreation in Utah, is a recipe for disaster with reduction in one of the most popular OHV destinations in the nation.
- 2) There have been 0 net gains for OHV recreation in any of the plans, only losses.

Nevertheless, OHV users have always been strong supporters in our community, and we recognized the value of the Exchange for future water resource needs in Washington County, the new opportunity for recreation related to the Reservoir, and BLM's directive to reduce inholdings in the Non Federal Parcel. At one of our first meetings, BLM District Field Manager Jason West encouraged the OHV community and the WCWCD to work together to arrive at an agreement, and committed that our agreement would be reflected in the Final Decision.

In good faith, UPLA and other representatives from the OHV community (Desert Roads and Trails Society, Trail Hero, Tri State ATV Club, BlueRibbon Coalition, and Casey Lofthouse) began meeting to discuss the Exchange with BLM, City of Washington, City of Hurricane, and Washington County Water Control District

Over the course of several months, the OHV community and WCWCD agreed on objectives that OHV would not oppose the Land Exchange with certain conditions, but all of these agreements were based on the premise that the reservoir would be built and would continue to afford recreation opportunity for visitors.

The WCWCD Board of Trustees formally adopted a Resolution on May 23, 2023 marked as Exhibit A that addressed most of our concerns. Further discussions are ongoing between the WCWCD and OHV community to further define some of that agreement. The following

represents the **Resolution already approved by WCWCD, along with proposed modifications being recommended to their Board in January**

A. Warner Ridge Solution A is the Federal Parcel boundary for the Red Cliffs/Warner Valley Land Exchange.

C. If the Land Exchange is approved, the District will coordinate with OHV groups to convey legal instruments consisting of an easement and deed restriction on the eastern portion of the Federal Parcel not impacted by water infrastructure, to maintain the area as open OHV and restrict development except for improvements related to water operations and recreation activities. Residential development shall also be prohibited within a ½ mile radius of the staging area to prevent future user conflicts. If these legal instruments are not recorded when the Exchange is closed, WCWCD agrees to file the agreed upon legal instruments within 60 days of the closing.

D. If the Land Exchange is approved and existing access to the West Rim is impacted by the District, the District will work to develop another access point and coordinate with OHV groups on the construction of a minimum 3 acre staging area and restroom. It is also agreed that the staging area and access will be usable without any user fees.

E. If the Land Exchange is approved, the Federal Parcel will remain open for public recreation until the District commences construction of future water infrastructure. I must reiterate emphatically that these negotiations were primarily focused on the most likely future use of the land as a reservoir, and that it would afford an alternative source of recreation. We expected that the EA would examine the possibilities of other uses and/or transfers that could eliminate recreation. The EA is incomplete in its analysis because it did not include analysis of other reasonably foreseeable uses of the Federal Parcel.

WCWCD has been straightforward that a reservoir is the most likely use of the land, but also agreed that it is also possible that no reservoir will ever be built on the Federal Parcel. If the decision were made that they would not build the reservoir, WCWCD would more than likely seek to dispose of the land in ways where it would not be used for recreation purposes.

**BLM'S RECORD OF DECISION
SHOULD REFLECT CONSIDERATION OF THE FOLLOWING**

The EA failed to consider the reasonably foreseeable Land Use that the Reservoir will never be constructed

The EA's description of the Affected Environment in Section 3.2 states:

If the Land Exchange is approved and the Federal Parcel is transferred to non-federal ownership, it is assumed that some or all of the 929.14 acres would be developed at some point in the future. A reservoir (hereafter known as the Reservoir) located in Warner Valley is a component of the WCWCD's planned Regional Reuse Purification System. While the WCWCD has considered many reservoir designs over more than 50 years, the EA analysis assumes a reservoir would be designed and constructed in this location based upon a 2015 Preliminary Plan of Development for Warner Valley Reservoir (WCWCD 2015). There are several technical and engineering challenges to be overcome before a reservoir could move forward. As a result of these challenges, the WCWCD does not have immediate plans for the Warner Valley area. However, with the County's dramatic growth and the possibility that the land would become unavailable due to development, the WCWCD wishes to acquire the land to protect its option for future generations. Whereas the EA analysis is based on the reasonably foreseeable development of a reservoir in Warner Valley (in alignment with WCWCD's 2015 Preliminary Plan of Development for Warner Valley Reservoir (Figure 3.1) [WCWCD 2015], as previously indicated), impacts of the Reservoir and other Regional Reuse Purification System facility construction would continue to be evaluated in future permitting processes, as needed, based on WCWCD's specific plans at that time. Between the time that WCWCD would acquire the Federal Parcel and development plans for the parcel would reach maturity, it is possible that the reasonably foreseeable land use of the Parcel could change in ways that the BLM cannot currently predict. As a result, reasonably foreseeable development of a reservoir is the only future land use of the Federal Parcel considered in this analysis.

Failure to address anticipated land use

The EA considered development of a reservoir as the only reasonably foreseeable land use, and failed to explore the possibility it might be sold or transferred for commercial or housing development, which is also a reasonably foreseeable use. The prospect of development for other purposes is also supported by the fact that much of the Federal Parcel is included in the Washington City Annexation Plan as depicted on their map.

<https://www.arcgis.com/apps/View/index.html?webmap=dcf52b4bac0e4ece92ada46ce216ea16>

BLM Handbook 2200-1 Page 2-6 states that one of the requirements for an exchange is to evaluate the Anticipated Land Use.

Anticipated Land Use.

- a. *Federal Land: Summarize the non-Federal party's intended future use of the Federal land. For some properties, it may be necessary to obtain development plan information*

or local zoning information for NEPA compliance and valuation of the property. Refer to Chapter 7 section on valuation analysis for additional information.

Appraisal Requirements

CFR Title 43 §2201.3-2 states that the appraisal must be based on the market value, and establishes the following requirements:

- 1) The appraiser must determine the highest and best use of the property to be appraised
- 2) The appraiser must estimate the value of the lands and interest as if in private ownership and available in the open market.

This requires that the Federal land be valued in the same highest and best use as the non-Federal parcel, most likely both would be residential/commercial development. The Federal parcel has huge level spaces between beautiful Red Rock cliffs, and West Rim Ridge would have some of the most scenic views in Washington County if developed.

§2201.1.3-3 also specifies additional requirements for the appraisal. If the basis of the appraisal only addressed the assumption for the intended land use in the EA, we are concerned that the valuation of the appraisal is likely based on this sole land use for the Reservoir, and likely will not value the land for its highest and best use as required.

UPLA requests to see the entire appraisal document file for review, as this is the only way to determine if it is in compliance with CFRs. At a minimum, we request to see the instructions to the appraiser. We will submit a FOIA request for this information separately.

Public Interest Requirement

A requirement for land exchanges is that they must be in the public interest. The EA addresses the public interest of acquiring the inholdings on the non-Federal parcel, but it fails to adequately consider and address solutions for impacts suffered by the OHV community. It also fails to consider alternatives for the replacement of the land lost for OHV recreation. The EA falls far short of ensuring the OHV public interest will be well served. Further, BLM will struggle with the finding required by 43 CFR 2200.0-6 (b)(2) that “the intended use of the conveyed Federal land will not significantly conflict with established objectives on adjacent Federal land.”

Reasonably Foreseeable Developments

The OHV community has had excellent and earnest conversations with WCWCD, but all have focused on development of the land’s intended use as a reservoir. OHV had a reasonable

expectation that the EA would analyze in detail potential impacts if the Reservoir was not constructed. This question was thoroughly raised in Scoping by UPLA in many sections, including on Page 4, which stated:

10. Describe what the impacts and visual resources will be if the Land Exchange is approved and:

- 1. The Dam and Reservoir are built*
- 2. If the Dam and Reservoir are not built*

What provisions can BLM build into the Exchange Agreement that acceptable uses of the exchanged lands will be as indicated?

WCWCD has been very straightforward **that a future WCWCD Board could elect to pursue an alternate course, including selling the land for other uses. They also confirmed that any future WCWCD Board could adopt a new resolution that could completely change the current Resolution.**

BLM must consider that this is a reasonably foreseeable development in the EA. Attempting to dismiss this reasonably foreseeable outcome by disclaiming it with a single sentence seems inadequate for a comprehensive and meaningful analysis, and fails to examine potential effects if the Reservoir is not built.

EA failed to address UPLA’s Scoping Comment Regarding Need for a Reversion Clause

BLM failed to consider or include UPLA’s Scoping comment about the need for a Reversion Clause in the event the intended use changes. At minimum, the Decision should reflect Terms and Conditions as part of the Exchange Agreement to protect recreation in the event the intended use changes.

Terms and Conditions are allowed in Exchange Agreements as per the following:

43 CFR §2201.7-2 clearly states that the terms of an exchange agreement may include specific conditions deemed necessary to ensure the exchange serves the public interest.

In addition, 43 U.S.C. §1716 similarly provides BLM with the authority to establish terms and conditions for land exchanges that meet public interest objectives. FLPMA establishes the framework in which “public interest” is determined by balancing land use objectives and values, guided by principles of multiple use, sustained yield, and public policy. §1716 also states that land exchanges should address the public’s need for recreation.

43 CFR §2200.0-6(b) also establishes that decisions must protect and promote the interests of the public, and that they must address resource management goals such as Access for recreation or other public uses.

As per the regulations, and supported by the SRMA and reinforced in the EA, the OHV community should clearly be included as a public interest.

The CFRs clearly support the ability for BLM to establish terms and conditions for land exchanges to ensure that public interest objectives are met. UPLA asks that the Proposed WCWCD Resolution to protect OHV and recreation be included in the Decision language as evidence of the intent by WCWCD to continue the specified recreation in the area.

Requirements of an Environmental Assessment for a Land Exchange

A Bureau of Land Management (BLM) Environmental Assessment (EA) for a land exchange must provide a thorough examination of anticipated land uses as part of its compliance with the National Environmental Policy Act (NEPA). The level of detail required depends on the complexity and potential impacts of the proposed exchange. Key considerations should include the following (deficiencies noted by bold type):

Under NEPA, the EA must:

- **Identify and evaluate the reasonably foreseeable uses of the land to be exchanged.**
- **Determine whether the impacts of the exchange warrant further analysis ...**

The BLM follows detailed NEPA and land exchange guidance, requiring the EA to:

- **Evaluate the potential future uses based on applicable zoning, land use plans, or the known intentions of the acquiring party.**
- **Consider the potential for indirect or cumulative impacts, especially if the exchange facilitates development, resource extraction, or other activities with broader environmental consequences.**

The EA must:

- **Include foreseeable future uses: This involves examining the land's potential use after the exchange, whether it will remain in its current state or undergo development or conservation changes.**
- **Compare impacts on public resources: Such as water, wildlife habitat, recreation access, cultural resources, or scenic values.**
- **Address compliance with local and federal regulations: Including land use plans and environmental protections.**

Courts and oversight bodies expect the EA to:

- **Avoid speculation but provide sufficient detail for a reasonable assessment of impacts.**
- **Analyze indirect effects: For instance, a land exchange that facilitates commercial development must evaluate the environmental consequences of that development, even if it occurs after the exchange.**
- **Include cumulative impacts:** The EA should consider how the exchange, combined with other actions, might affect the environment over time.

An EA for a land exchange might:

- **Describe anticipated zoning or land use designations for the exchanged land.**
- **Evaluate impacts on natural resources, such as water quality, wildlife, and vegetation.**
- **Consider access issues, such as whether the exchange enhances or diminishes public access to recreational areas.**
- **Address socio-economic factors, such as changes in local economies or community infrastructure.**

In accord with Congressional mandates for BLM protocol, the Draft EA is subject to the requirements of the [National Environmental Policy Act](#) (NEPA). **NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to proposed actions or preferred alternatives analyzed during a NEPA process (40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9). The reasonable range of alternatives must include a true “recreation alternative” that serves to maximize public access to outdoor recreation as a core value of the plan. The recreation interest in the lands implicated in this Exchange justifies the inclusion of analysis of impact on public access to outdoor recreation as a component of this project.**

We assert the requirement per NEPA that the Draft EA documents for the Exchange clearly identify and itemize all OHV routes, open riding areas, staging areas, and dispersed campsites that are at risk of closure as a result of the Exchange. All other forms of outdoor recreation sites must also be cited with specific notation regarding which OHV routes provide access to each site. All OHV routes, staging areas, dispersed campsites, and other outdoor recreation sites must also be shown within maps for the project; and cited as critical infrastructure within the Exchange definitions and protocol.

NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to proposed actions or preferred alternatives analyzed during a NEPA process. 40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9. “[A]gencies shall rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. The alternatives section is considered

the “heart” of the NEPA document. 40 C.F.R. § 1502-14 (discussing requirement in [D]EIS context).

The legal duty to consider a reasonable range of alternatives applies to both EIS and EA processes. *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998) (citing *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988) (“Alternatives analysis is both independent of, and broader than, the EIS requirement.”).

A NEPA analysis must “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14 (EIS); *Id.* at § 1508.9 (EA); *Bob Marshall Alliance*, 852 F.2d at 1225 (applying reasonable range of alternatives requirement to EA). A NEPA analysis is invalidated by “[t]he existence of a viable but unexamined alternative.” *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993).

The reasonableness of the agency’s choices in defining its range of alternatives is determined by the “underlying purpose and need” for the agency’s action. *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-816 (9th Cir. 1987), reviewed on other grounds, 490 U.S. 332 (1989). The entire range of alternatives presented to the public must “encompass those to be considered by the ultimate agency decisionmaker.” 40 C.F.R. § 1502.2(e).

The agency is entitled to “identify some parameters and criteria—related to Plan standards—for generating alternatives....” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1522 (9th Cir. 1992). However, in defining the project limits the agency must evaluate “alternative means to accomplish the general goal of an action” and cannot “rig” “the purpose and need section” of a NEPA process to limit the range of alternatives. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (emphasis added).

An agency must perform a reasonably thorough analysis of the alternatives before it. “The ‘rule of reason’ guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative.” *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998) (citing *City of Carmel-by-the-Sea v. United States Dept of Transportation*, 123 F.3d 1142, 1154-55 (9th Cir. 1997)). The “rule of reason” is essentially a reasonableness test which is comparable to the arbitrary and capricious standard. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 n. 23 (1989)). “The discussion of alternatives ‘must go beyond mere assertions if it is to fulfill its vital role of ‘exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government.’” *State of Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978), vacated in part on other grounds, *Western Oil & Gas Association*, 439 U.S. 922 (1978) (quoting *NRDC v. Callaway*, 524 F.2d 79, 93-94 (2nd Cir. 1975)).

Elimination of a Recreation Emphasis alternative constitutes an explicit violation of the requirements of NEPA analysis in multiple ways:

- Agencies shall rigorously explore and objectively evaluate all reasonable alternatives
- Alternatives analysis is both independent of, and broader than, the EIS requirement
- The entire range of alternatives presented to the public must encompass those to be considered by the ultimate agency decision maker
- In defining the project limits the agency must evaluate alternative means to accomplish the general goal of an action and cannot “rig” “the purpose and need section of a NEPA process to limit the range of alternatives
- An agency must perform a reasonably thorough analysis of the alternatives before it; the “rule of reason” guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative
- The discussion of alternatives must go beyond mere assertions if it is to fulfill its vital role of exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government

UPLA contests the absence of a Recreation alternative based on the legal precedent that a NEPA analysis is invalidated by the existence of a viable but unexamined alternative. A true Recreation alternative would thoroughly contemplate the possibility that following approval of the Exchange, a decision could be made to "not" construct a reservoir, and a subsequent decision would be necessary to return the land to current recreational uses should it be determined that a reservoir will not be constructed.

Furthermore, UPLA contests the validity of the Draft EA based on the BLM’s rigging of the purpose and need section of a NEPA process to limit the range of alternatives.

The EA fails to meet all of the above cited requirements which makes it deficient and incomplete in its analysis. Because of these omissions and it’s substantial effect on the remainder of the analysis, the EA should be updated and reissued for public comment.

Failure to Respond to Scoping Comment on Connected Action

In UPLA’s Scoping comments (Pages 8-9) UPLA raised the concern that this Exchange be evaluated as a “Connected Action” and we do not see any response to this concern in the EA.

ADDITIONAL COMMENTS AND CONCERN

The following represents further comments on the Draft EA:

Section 3.5.10.2 erroneously states that access to the Federal Parcel's recreational opportunities would likely cease to exist. While some areas may be eliminated, it is the intent of the WCWCD Resolution that recreation will continue to be accessible for OHV without fees for access to West Rim and the areas on the East side of the Federal Parcel above 2980' both before, during and after construction of the Reservoir. **The Final Decision should be corrected to reflect this intent that maintains recreational opportunities in the Federal Parcel.**

Socioeconomics and Executive Order Compliance

Table 3.15 indicates that the only population segment showing significant growth from 2010 to 2022 was in the age group 65 and over with 5% growth. As our population becomes older, it becomes even more important to make more resources available by motorized vehicles.

BLM should consider seeking other areas of the remaining 590,000 acres of land managed by BLM in the St. George Field Office to mitigate this loss of Open OHV areas. One potential alternate location would be the (2) 20-acre private parcels just South of Sand Hollow State Park and the adjacent SITLA land. Both of these provide primary access to Sand Mountain OHV.

Section 3.5.10.3 describes Executive Order 14096 and it's requirement that Federal agencies address populations impacted by Federal actions, but it fails to consider the impacts on underserved or marginalized populations that should be protected under Executive Orders 13085 and 14035. Thus it should not only evaluate the impact on populations with disabilities, but also includes other populations that are negatively impacted by Federal Actions, including race or national origin. There are many studies that show that Limited English Proficiency (LEP) adversely impacts populations. The U.S. Census Bureau provides data on language use through the [American Community Survey \(ACS\)](#) In 2019, their report indicated that approximately 42 million Americans spoke primarily Spanish at home, making it clearly the dominant language second only to English. Executive Order 13166 specifically addresses that Federal Actions must take steps to ensure access for LEP individuals to participate in Federally conducted programs and activities.

The population and socioeconomic tables included in the EA (pages 66-68) or the EJ Outreach plan in Appendix H do not reflect any data for LEP populations, and with the Hispanic population approaching 12% in Washington County. BLM should at minimum analyze data to determine if NEPA documents should be provided in Spanish to give them the opportunity to participate.

Section 3.5.16.1 The Visual Resource Inventory appears to only reflect the current condition, and does not address changes in the VRM as a result of the Exchange. The EA should address changes in the VRM from the remaining SMRA as a result of anticipated land uses in the Federal Parcel, including both use as a Reservoir and also for other reasonably anticipated land uses such as residential or commercial development.

**REQUEST FOR ADDITIONAL ANALYSIS
BEFORE ISSUING A RECORD OF DECISION**

Because of the numerous substantial deficiencies and questions addressed above and also during Scoping, BLM should analyze, consider and address each of these before issuing a Record of Decision. Alternatively, BLM should also consider whether the EA Draft should be withdrawn and made available once again for Public Comment. UPLA would like to reinforce that we believe the Exchange can serve a balanced multiple use and public interest if the land use is for a needed Reservoir, but would not serve either if the land were used for other development. Further we believe other land uses would be a devastating blow to recreation and visual appeal of the area. Although we may need more housing to support population growth, the incredible resources that public lands offer all of us can never be replaced, and should be of critical importance in this decision.

Respectfully submitted,

Loren Campbell

[Loren Campbell](#)

President

Utah Public Lands Alliance

909-499-3295

[Rose Winn](#)

Natural Resource Consultant

Utah Public Lands Alliance

Cal4Wheel

[Jeff Bieber](#)

President

Desert Roads and Trails Society

Winter 4x4 Jamboree

[Ben Burr](#)

Executive Director

Blue Ribbon Coalition

[Rich Klein](#)

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Casey's Offroad

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