BLM Utah
Response to Mr. Peter Winn's FOIA Summary
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1. The most recent document that clearly states the number of user days or people trips that are allocated for commercial use.

1a. For Westwater Canyon, the commercial allocation is not clearly stated. From the annual use data, it appears to be about 7275 passenger days per year, and over the past 20 years the average use has been 92% of this allocation. From the 2008 Approved Resource Management Plan, it appears to be at least 11475 passenger days per year (May 1 - September 30, max 75 passengers per day (no mention of use limit considering 2 day trips). If approximately 7275 passenger days is the limit, on average there are about 582 passenger days per year that are not utilized by commercial outfitters, or about 291 overnight passenger trips. For the maximum trip size of 25 passengers, this is equivalent to over 11 trips that could be run without exceeding existing limits.

BLM Utah Response to 1a: The 2008 *Approved Moab Resource Management Plan* reaffirmed the decades-old limits of 18 total commercial Special Recreation Permits and 75 daily commercial passengers on the Westwater Canyon of the Colorado River. The *Approved Moab Resource Management Plan*, decision #REC-43, page 95, (http://www.blm.gov/style/medialib/blm/ut/moab_fo/rmp/rod_approved_rmp.Par.24543.File.dat/Moab%20Final%20Plan.pdf), reads as follows:

> **Boating Management -- Westwater Canyon:** Manage to provide an opportunity for whitewater boating in a primitive and remote setting. Permits required for private and commercial use. Distribute potential use levels equally from May 1 to September 30 (allocation season) between private and commercial sectors (including guides). Establish maximum private group size of 25 people and a daily launch limit of 75 people. For commercial use, establish a maximum trip size of 25 passengers, plus one crew member per passenger carrying craft, plus two additional crew. Establish a commercial daily launch limit of 75 passengers. Permit 18 commercial outfitters.

A consideration of the average commercial sector use of Westwater Canyon over the past 20 years does not reflect current demand. The commercial Westwater commercial sector has been on an upward trend and is effectively operating at full capacity. Over the last five years the permitted outfitters utilized 94% of the allocation. In the last two years the outfitters used 97% of the allocation. Three percent of the allocation is 217 user days. Dividing this number by 18 companies leaves 12 user days or 6 overnight passengers per company per year. Given the limited availability of Westwater launches, the outfitters cannot readily rebook when guests cancel or reduce bookings.

1b. For the San Juan River, the commercial allocation is 16,000 passenger days per year. The annual use data indicates that average commercial use is about 11787 passenger days per year, or about 74% of the allocation. Thus 4160 passenger days are not utilized by commercial outfitters, or for an average 6 day trip, there are over 27 trips of 25 passengers that could be run without exceeding existing limits. There are about 29 educational trips per year, but there is no mention of this category in the Approved Resource Management Plan for the Monticello Field Office.

> *BLM Utah Response to 1b:* Unlike Westwater Canyon, the San Juan River permit system allows private boaters to book and utilize unused commercial launches. Consequently, the overall use of the San Juan River is greater than calculated when just considering the use by commercial permit holders.
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> The FOIA response incorrectly referred to 29 *educational* trips that are authorized on the San Juan River per year. As clarified by Utah State Office staff to Mr. Winn at a meeting on 08/014/2009, the term *educational* was actually referring to administratively-approved scientific research trips by government agencies, universities, and other qualified entities for the monitoring of endangered species, vegetation, water quality, and other resources included in the BLM's multiple-use mission.

1c. For the Green River in Desolation Canyon, the commercial allocation is 19,875 passenger days per year. The annual use data indicates that average commercial use is about 13,087 passenger days per year, or about 66% of this allocation. Thus 6788 passenger days are not utilized by commercial outfitters, or over 64 trips of 25 passengers with an average trip of 4.2 days that could be run without exceeding existing limits.

> *BLM Utah response to 1c:* The *Approved Price Resource Management Plan* reaffirmed existing river use limitations established in the 1979 *Desolation and Gray Canyons of the Green River Management Plan* (as amended). The approved Resource Management Plan also identifies the need to revise the river management plan, and we encourage you to participate in this planning process when opportunities for public input are provided.

1d. For the Moab Daily (Dewey Bridge to Castle Creek), there are no commercial use limits, so any number of trips of 25 people could be run.

> *BLM Utah Response to 1d:* For the Moab Daily, BLM has allocated the number of outfitters authorized to utilize the river segment. Outfitters do not have a limit on the number of passengers they may carry or the number of passengers per trip. Decision REC-43 on page 95 of the Approved Moab Resource Management Plan reads as follows:
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>> **Boating Management -- Cisco Landing to Dewey Bridge:** Manage to provide an opportunity for scenic flat water boating or as an extension of Westwater Canyon trips. For private use, no restrictions on amount of use will be

> established. Permit 22 unallocated commercial permits. No further restrictions on amount of commercial use will be established…

2. The most recent document that includes the justification for this allocation.

Provided, See 1a - 1d, above.

3. The most recent document that states the allocation for or limits on the number of commercial guides or other non-paying participants on commercial river trips.

Provided.

4. The per year actual commercial passenger use for the calendar years 1999 through 2008.

Provided, See 1a -1d, above.

5. The per year actual non-paying passenger use (i.e. guides, guides in training, assistants or guests that are not included #4) for 1999 through 2008.

Provided.

6. The most recent document regarding the requirement that commercial companies have been notified that they cannot discriminate against people with disabilities.

Provided.

7. The most recent documentation that your agency is aware of the percentage of the American population that is disabled under the 1990 Americans With Disabilities Act and/or the 1973 Rehabilitation Act and your agency's estimate of the percentage of disabled people who might be able to participate in a commercial river trip (including their ability to pay).

Not provided. Only Moab BLM responded, stating "No Documents. BLM is not required to keep this documentation under Section 504 of the Rehabilitation Act of 1973." I presume the other two offices, if they had responded, would make the same statement.

> *BLM Utah response to 7:* You are correct that none of the BLM offices are required to collect or keep the requested information. The BLM has a limited capacity to survey public land visitors, and must work through the Office of Management and Budget for surveying efforts. In addition, both the Privacy Act and Paperwork Reduction Act prevent/limit the BLM's ability to collect the personal information such as race, religion, physical abilities, income, etc. Accessibility for the disabled is monitored and measured by the U.S. Department of the Interior as percentages of accessible facilities and/or infrastructure.

8. All documentation for the period 1999 to 2008 regarding the number of people with disabilities who participated in commercial river trips on the Green River from Sand Island to Swaseys campground and the percentage of these people compared with your agency's estimate of the percentage of disabled people who might be able to participate in a commercial river trip (including their ability to pay).

Not provided. Only Moab BLM responded, stating "No Documents. BLM is not required to keep this documentation under Section 504 of the Rehabilitation Act of 1973." I presume the other two offices, if they had responded, would make the same statement.

> *BLM Utah response to 8:* Please see response to comment 7.

9. All documentation for 1999 through 2008 that your agency insures that all permitted commercial river companies 1) have equipment suitable to make their river trips accessible to people with disabilities, as defined by the 1990 Americans With Disabilities Act and/or the 1973 Rehabilitation Act, 2) have guides trained to provide specialized services to people with disabilities, and 3) have made price concessions for people with disabilities (who generally live at a poverty level).

Not provided. Only Moab BLM responded, stating "No Documents. BLM is not required to keep this documentation under Section 504 of the Rehabilitation Act of 1973." I presume the other two offices, if they had responded, would make the same statement.

> *BLM Utah response to 9:* Please see response to comment 7.

10. A record of your inspections for the period 1999 to 2008 to determine compliance with permitted river companies' ability to provide the services needed for people with disabilities.
Not provided. Only Moab BLM responded, stating "No Documents. BLM is not required to keep this documentation under Section 504 of the Rehabilitation Act of 1973." I presume the other two offices, if they had responded, would make the same statement.

> *BLM Utah response to 10:* Please see response to comment 7.

Final comment:

a. All of the river segments with use limited by BLM have the capacity for additional use without exceeding current limits.

> *BLM Utah Response to Final comment a:* Incorrect. The established “limits” in this situation *only* refer to the number of permitted commercial outfitters for each river segment, as established in each field office’s Approved Resource Management Plan.

b. The BLM does not know if it is providing fair access for disabled Americans to rivers managed by it.

> *BLM Utah Response to Final comment b:* Please refer to response to comment 7.

c. Currently the only means of access to these rivers is via commercial or non-commercial trips, except for a limited number of "educational" trips on the San Juan. Under BLM regulations, non-profit organizations which provide educational and therapeutic river programs are considered "commercial," regardless of their tax status or whether or not there is paid staff.

> *BLM Utah Response to Final comment c:* Please refer to response to comment 1b. You are correct that BLM regulations and policies, established under Title 43, Part 2930, of the Code of Federal Regulations and the BLM *Recreation Permit Administration Handbook* (H-2930-1), typically classify non-profit organizations as commercial entities. These policies have been provided to Mr. Winn.

d. With the possible exception of the San Juan River's undefined "educational" allocation, non-profit organizations which provide educational and therapeutic river trips for the disabled, included military veterans injured in the course of duty (often called "Wounded Warriors"), must apply for an SRP.

> *BLM Utah Response to Final comment d:* Please refer to responses to comments 1b and Final comment c.

e. Given the fact that the BLM does not know whether or not it is providing fair access to disabled Americans to river segments managed by it, and the fact that the limits to commercial use have not been reached in at least ten years of management, the BLM could, if it chose to do so, issue SRPs to non-profit organizations that provide fair access to disabled Americans to these river segments without violating any of its own regulations, up to the existing commercial limits.
Pete Winn

> *BLM Utah Response to Final comment e:* Incorrect. Please refer to responses to comments 7, Final comment a, and Final comment c.