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To: Ronnie Levine Fax: 202-208-5902
cc: Sanjeev Bhagowalia Fax: (202) 501-2360
From: Robert S. Thompson, III Date: December 10, 2009
Client #: 6504.0013 Pages (Including Cover Page): 38
Re: Appeal of Denial of Questar IQA Request

Urgent For Review Please Reply
Original Sent by: Overnight Mail Certified Mail Hand Delivery E-Mail Original not sent

Notes/Comments:

Please see attached.

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December 10, 2009

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ronnie Levine
Assistant Director, Information Resource
Management
Bureau of Land Management
1849 C Street NW
Washington, DC 20240

Sanjeev Bhagowalia
Chief Information Officer
Department of Interior
1849 C Street NW
Washington, DC 20240

Re: **Appeal of Decision Concerning Correction of Information in the
June 11, 2009 Report to Secretary Ken Salazar Regarding the Potential
Leasing of 77 Parcels in Utah ("2009 Lease Report" or "Report")**

Dear Mr. Levine and Mr. Bhagowalia:

Questar Exploration and Production Company ("Questar") hereby appeals the November 19, 2009 decision of Ronnie Levine ("Decision"), attached under Tab 1, denying the Request for Correction of Information in the June 11, 2009 Report to Secretary Ken Salazar Regarding Potential Leasing of 77 Parcels in Utah ("Request") in accordance with the Information Quality Act, Section 515 of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554) ("IQA"), guidelines of the Department of Interior ("Department") and Bureau of Land Management ("BLM"). A copy of the Request is attached under Tab 2. By a letter of August 21, 2009, Questar requested the correction of the 2009 Lease Report pursuant to the Department's IQA Guidelines, and the BLM thereafter denied the Request for the reasons set forth in the Decision.

Department of the Interior and BLM's Decision

In the Decision, Mr. Levine indicated that, "[t]he IQA is not a mechanism for challenging policy decisions." Decision at 2. Mr. Levine stated that the Request "seek[s] to challenge agency policies and procedures...rather than the correction of information." *Id.* Mr. Levine wholly misconstrues the contents of the Request and is incorrect in his determination the Request is somehow challenging policy of the Department. In fact, the Request specifically challenges the factual basis for the conclusions advanced in the 2009 Lease Report. As explained in more detail below, the Decision is unfounded, without merit and should be reversed. The Department and BLM must respond to the merits of the Request.

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December 10, 2009

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In support of the Decision, Mr. Levine quoted the guidelines implementing the IQA, which defined what type of "information" is subject to an IQA challenge. According to the Department's own IQA Guidelines:

Information means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that the Department disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions where Departmental presentation makes it clear that what is being offered is someone's opinion rather than fact or the Department's views.

U.S. Department of the Interior, Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 at 10 (emphasis added).

The Request does not challenge either a policy decision of the Department or any procedures regarding the December 2008 Utah BLM Oil and Gas Lease Sale ("December Lease Sale"). As fully explained in the Request, Questar has specifically challenged the facts and information included, and used as a basis for, the 2009 Lease Report. These facts, data and information are inaccurate and must be corrected in accordance with applicable IQA Guidelines.

Questar is Challenging "Facts" and "Data," Not Policy

The Request meets all the legal requirements contained in the Department's and BLM's IQA Guidelines. Questar has specifically challenged information contained in the 2009 Lease Report, not any policy which the 2009 Lease Report may seek to advance or adopt. The 2009 Lease Report is an official report and document of the Department transmitted from one Departmental official to another regarding the December Lease Sale, and therein makes recommendations regarding the matter. The 2009 Lease Report was and is being disseminated to the general public on the Department's website (<http://www.doi.gov/utahreport/>), and is a narrative report. Accordingly, the 2009 Lease Report is neither a policy recommendation, adoption of Departmental policy nor a document detailing the Department's policy or procedures.

In the Requests, Questar specifically challenged the facts and data included in the 2009 Lease Report. For example, the 2009 Lease Report states that the U.S. District Court, District of Columbia issued a temporary restraining order against the "sale" of the 77 lease parcels at issue. This is a fact regarding what the U.S. District Court did, not policy. See Request Correction List at 3-4. As explained in the Request, the U.S. District Court entered a temporary restraining order against the "issuance" of the 77 leases, but did not require BLM or the Department to take any further action absent resolution of a pending motion for a preliminary injunction. The Request thus challenges a specific fact contained in the Report, not some unknown and unidentified Departmental policy.

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A further example regarding the factual correction nature of the Request deals with the Report's statement that the December Lease Sale deviated in many respects from BLM's normal leasing process. See Request Correction List at 5-6. The Request challenges the factual basis for and factual content of this statement, not whether as a policy, BLM is required to consult with the National Park Service, or whether as a policy, BLM will alter its required leasing process in the future. As explained in the Request, BLM followed all laws and its normal process in coordinating with the National Park Service with respect to the December Lease Sale. Accordingly, the 2009 Lease Report's statement on this matter is factually inaccurate, and must be corrected.

One additional example regarding the Request's factual focus is noteworthy. The 2009 Lease Report states that the Utah Resource Management Plans ("RMP") do not provide BLM officials with information on whether certain parcels of land are available for lease. See Request Correction List at 16-17. Each RMP provides specific details and maps indicating which lands are available for oil and gas leasing and which lands are closed to leasing. The 2009 Lease Report's statement is, again, factually inaccurate. The Request does not challenge BLM's RMP policy or process, but the factual statement concerning the content of RMP's and the guidance provided thereby contained in the 2009 Lease Report. The Department's statement on this issue must be corrected in accordance with the mandates of the IQA.

These three examples are merely a small sample of the many factual inaccuracies detailed in the Request. Contrary to the Decision, Questar simply does not challenge the Department's decision or policy regarding oil and gas leasing, but rather a challenges the accuracy of facts, data and information disseminated in the 2009 Lease Report.

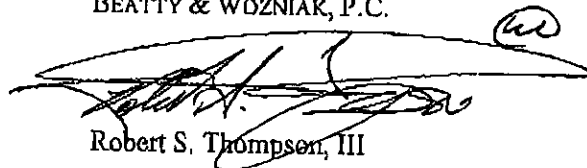
Conclusion

As required by the IQA and the IQA Guidelines of the Department and BLM, the Department and BLM must review and respond to the merits of the Request and must address and correct the factual inaccuracies contained in the 2009 Lease Report.

Questar would appreciate the Department and BLM taking swift and corrective steps to overturn the Decision and to immediately thereafter address the merits of the Request. Please do not hesitate to contact the undersigned with any questions or concerns.

Respectfully,

BEATTY & WOZNIAK, P.C.



Robert S. Thompson, III

TAB 1



United States Department of the Interior
 BUREAU OF LAND MANAGEMENT
 Washington, D.C. 20240
<http://www.blm.gov>



In Reply Refer to:
 1260 (560)

NOV 19 2009

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Beatty & Wozniak, P.C.

Mr. Robert S. Thompson
 Beatty & Wozniak, P.C.
 216 Sixteenth Street, Suite 1100
 Denver, Colorado 80202-5115

Subject: Request for Correction of Information in the June 11, 2009 Report to Secretary
Ken Salazar Regarding the Potential Leasing of 77 Parcels in Utah

Dear Mr. Thompson:

This letter is in response to your August 21, 2009, request on behalf of Questar Exploration and Production Co. ("Questar") for Correction of Information under the Information Quality Act (IQA). Questar's request was for corrections of information in Deputy Secretary David Hayes' Report to Secretary Ken Salazar Regarding the Potential Leasing of 77 Parcels in Utah, dated June 11, 2009.

The Department of the Interior (Department) and the Bureau of Land Management are committed to following guidelines published under the IQA. After careful review, it has been determined that Questar's requests for correction of information fall outside the scope of the IQA. The IQA and related regulations do not contemplate the types of requests made in your August 21, 2009, letter.

The IQA provides a mechanism for persons to seek correction of information that does not comply with OMB or agency guidelines. The Department guidelines implementing the IQA define "Information" as:

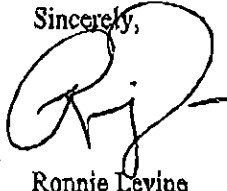
Information means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that the Department disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions where Departmental presentation makes it clear that what is being offered is someone's opinion rather than fact or the Department's views.

U.S. Dept. of the Interior, *Information Quality Guidelines*
Pursuant To Section 515 Of The Treasury And General
Government Appropriations Act For Fiscal Year 2001, Sec. VII.5.

The IQA is not a mechanism for challenging policy decisions. Questar's 19 requests and their subparts seek to challenge agency policies and procedures (or characterizations thereof), rather than the correction of information as contemplated under the IQA. As a result, the request for correction of information cannot be granted.

If you wish to appeal this decision, you can do so by sending an appeal within 21 days to Ronnie Levine, Chief Information Officer, Bureau of Land Management, 1849 C Street NW, Washington, DC, 20240.

Sincerely,



Ronnie Levine
Assistant Director, Information Resources Management

TAB 2

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August 21, 2009

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sanjeev Bhagowalia
Chief Information Officer
Department of the Interior
1849 C Street NW, Mail Stop 7438
Washington, DC 20240

Re: Request for Correction of Information in the *June 11, 2009 Report to Secretary Ken Salazar Regarding the Potential Leasing of 77 Parcels in Utah* ("2009 Lease Report" or "Report")

Dear Mr. Bhagowalia:

On behalf of our client, Questar Exploration and Production Co. ("Questar"), we submit this Request for Correction of Information ("Request") pursuant to the Information Quality Act ("IQA")¹ and IQA Guidelines issued by the United States Department of the Interior ("DOI")²

¹ Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. No. 106-554; H.R. 5658) provides in full the following:

(a) IN GENERAL.—The Director of the Office of Management and Budget shall, by not later than September 20, 2001, and with public and Federal agency involvement issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) CONTENT OF GUIDELINES.—The guidelines under subsection (a) shall (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and (2) require that each Federal agency to which the Guidelines apply (A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency by not later than 1 year after the date of issuance of the guidelines under subsection (a); (B) establish administrative mechanisms allowing affected persons to see and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and (C) report periodically to the Director (i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and (ii) how such complaints were handled.

² 67 Fed. Reg. 36642 (May 24, 2002).

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and the United States Office of Management and Budget ("OMB").³ The IQA Guidelines issued by the OMB provide the blueprint for ensuring the quality of information disseminated by agencies subject to IQA mandates, and the DOI has adopted administrative measures that are primarily procedural in nature, but incorporate OMB's substantive IQA Guideline requirements as well. Since the DOI has adopted IQA Guidelines of its own, which include OMB's substantive requirements as a whole, for the sake of clarity, all references herein are to the "OMB Guidelines."

INTEREST OF QUESTAR

Questar is an affected organization within the meaning of the OMB Guidelines. As the high bidder for three of the oil and gas leases at issue in the 2009 Lease Report (the "Leases"), Questar's energy exploration and production activities related thereto would produce 411.25 BCFE of natural gas, provide substantial revenues to state and local governments and reduce the reliance of the United States on foreign energy sources. Questar estimates its potential monetary losses relating to the Leases to exceed the threshold \$500,000,000.00 amount identified by OMB Guidelines and as such, the findings and conclusions of the 2009 Lease Report qualifies as a highly influential determination. In addition, if the monetary losses to be suffered by the State of Utah and local governments and Questar's expenditures associated with lease sale preparation, lease offer submittals and attempts to exercise its leasehold rights are included in the monetary threshold calculation, Questar believes the monetary losses to be suffered far exceed such threshold.

As a result of the Leases being withdrawn by the United States Bureau of Land Management ("BLM") and the Secretary of the Interior ("Secretary"), Questar has an immediate interest in the contents of the 2009 Lease Report; this is particularly true since such content has already been used by the Secretary to make changes to the existing federal leasing process, and will likely be used to inform future decisions regarding the federal leasing process. Accordingly, the contents of the 2009 Lease Report meet the standards established by the OMB Guidelines for highly influential information. This letter and the enclosed Requested Corrections to the 2009 Lease Report ("Requested Corrections List") (collectively, "Request") constitute Questar's request that the DOI correct information included in the 2009 Lease Report.⁴

BACKGROUND

The IQA provides that agencies should not disseminate substantive information that does not meet a basic level of quality. The more important the information, the higher the quality

³ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (republished Feb. 22, 2002).

⁴ The Report may be viewed at <http://www.doi.gov/utahreport/>, and is currently being disseminated by the DOI.

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Chief Information Officer
August 21, 2009
Page 3

standards to which it must be held. The 2009 Lease Report is highly influential information because it was written to advise the Secretary with respect to the interpretation of several federal statutes, on-going litigation, and the Secretary's eventual determination as to the final disposition of seventy-seven (77) federal leases retroactively withdrawn by the BLM, under direction from the Secretary, from the December 19, 2008 Utah BLM Oil and Gas Lease Sale ("December 2008 Lease Sale"). Questar was the high bidder on Parcels 106, 166 and 168 at the December 2008 Lease Sale, and as such, the 2009 Lease Report has a direct impact on Questar's interest in those three (3) parcels.

The standards and procedures used by the DOI must ensure that the administrative mechanisms for information resources management and administrative practices satisfy the standards and procedural requirements of the IQA Guidelines. The 2009 Lease Report fails to meet the requirements of the IQA and accordingly requires correction.⁵

REQUEST

This Request discusses the context in which the 2009 Lease Report should be evaluated as highly influential information, reviews the IQA requirements in a general context, and provides specific responses to questions posed by the DOI in its instructions for requesting correction of information.

1. **The Highly Influential Nature of the Information Included in the 2009 Lease Report is Evident When Considered in the Context of Persons Affected, the Economic Costs to Purchasers of Federal Leases, the Loss of Revenue to Local and State Treasuries and the Federal Government, the Costs to the United States Treasury Related to Subsequent Leases and Legal Actions, and the Clear and Substantial Impact on Important Public Policies and Important Private Sector Decisions.**

The highly influential nature of the information included in the 2009 Lease Report will result in costs exceeding \$500,000,000.00 and will have a clear and substantial impact on important public policies and important private sector decisions. As noted, Questar directly and indirectly, expects to lose over \$500,000,000.00, other companies who purchased leases at the December 2008 Lease Sale will lose over that amount, and the economy of the United States will be impacted in an amount equaling, if not exceeding, the monetary losses of Questar.

However, the economic losses are minor when compared with the 2009 Lease Report's contention that the Secretary was justified in retroactively withdrawing the Leases from the December 2008 Lease Sale and in directing the BLM to refund the highest qualified bidders'

⁵ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8432 (republished Feb. 22, 2002).

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Chief Information Officer
August 21, 2009
Page 4

payments for leases, which were predicated on a public process conducted under duly-adopted laws and regulations. Instead, the 2009 Lease Report: (i) substitutes a murky process governed by "practices" not required or explained elsewhere; (ii) imposes regulatory conditions designed for other federal property on BLM lands with no legal basis; (iii) abrogates existing law or processes, which included all stakeholders equally, required under the Federal Land Policy and Management Act ("FLPMA") and the Mineral Leasing Act ("MLA"); and (iv) substitutes the preferences of vocal special interest groups for the determinations that must be made in the public process under FLPMA.

The information in the 2009 Lease Report, to the extent that it supports a significant departure from these federal laws, regulations and processes in favor of purely policy-based decisions, is highly influential, as it attempts to justify actions that will have a clear and substantial impact on the well-established federal oil and gas leasing process, which is based on existing law and regulation. Further, the 2009 Lease Report is a *post-hoc* rationalization which attempts to justify BLM's February 6, 2009 withdrawal of federal leases from the December 2008 Lease Sale. If, based on the 2009 Lease Report, the DOI adopts this approach as its policy, it will create uncertainty as to all future lease sales, draw fewer bidders for federal leases, and result in decreased revenues to the United States government. Further, by abandoning a rational process which is fully articulated in statutes and regulations, and substituting a *post-hoc* process based on the current policy preferences, the DOI is exposing the federal government to endless litigation by a stream of special interests dissatisfied by the BLM's public balancing of multiple uses. Finally, to the extent that decisions supported by the 2009 Lease Report lead to decreased energy production in the United States, there will be grave economic, social and international repercussions.

2. The OMB Guidelines and Final Bulletin Refine and Add Definitions of Terms Which DOI has Adopted and to Which the DOI Must Adhere.

As refinements of the IQA, which has little detailed information, OMB's implementing bulletins contain the necessary definitions to determine what is required of the DOI when disseminating information such as that contained in the 2009 Lease Report. If the information included in the 2009 Lease Report is not corrected now, its inaccurate, incomplete, biased and unclear information will influence the DOI's determinations on federal leases in general, as well as the three withdrawn federal leases that directly affect Questar.

The formal administrative record pertaining to the Leases is voluminous and is derived from reports, public comments on the proposed leases, independent studies, and the combined FLPMA and NEPA processes, including applicable Records of Decision ("RODs"), which have also incorporated any comments on agency actions affecting air quality. The 2009 Lease Report ignores, misstates, or otherwise provides a biased recitation of a large part of the information available on regulatory requirements, informal and formal comment processes, and regulations governing consideration of air quality, among other equally important factors. This approach

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Sanjeev Bhagowalia
Chief Information Officer
August 21, 2009
Page 5

violates the requirements of the IQA as specifically detailed in the February 22, 2002 OMB Guidelines. Pertinent requirements of the OMB Guidelines are highlighted as follows:

SUMMARY: These final guidelines implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines that, "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." By October 1, 2002, agencies must issue their own implementing guidelines that include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency", which does not comply with the OMB guidelines. These guidelines apply to federal agencies subject to the Paperwork Reduction Act (44 U.S.C. §3502(1)). Federal agencies must develop information resources management procedures for reviewing and substantiating the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies must establish administrative mechanisms allowing correction of information disseminated by the agency that does not comply with the OMB or agency guidelines.

The OMB Guidelines stress the importance of agencies implementing the standards in a common sense and workable manner. Agencies are required to apply the OMB Guidelines in a manner appropriate to the nature and timeliness of the information to be disseminated, and incorporate them into existing agency information resources management and administrative practices.

The IQA denotes four substantive terms regarding information disseminated by federal agencies: (i) quality; (ii) utility; (iii) objectivity; and (iv) integrity. The OMB Guidelines provide definitions that are designed to establish a clear meaning for each of these terms, so that both the agency and the public can readily judge whether a particular type of information to be disseminated meets these attributes. In the guidelines, OMB defines "quality" as the encompassing term, of which "utility," "objectivity," and "integrity" are the constituents. "Utility" refers to the usefulness of the information to the intended users. "Objectivity" focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. "Integrity" refers to security for the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. OMB

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modeled the definitions on the longstanding definitions in OMB Circular A-130 (DATE), but tailored them to fit into the context of the OMB Guidelines.

This Request addresses specific failures of the DOI to meet the quality requirements of the OMB Guidelines with respect to the accuracy, completeness, clarity, and unbiased representation of the information included in the 2009 Lease Report.

The 2009 Lease Report is highly influential information as defined in the OMB Guidelines. Its continued dissemination without correction has adversely affected Questar, will result in costs exceeding \$500,000,000.00 and will have a clear and substantial impact on important public policies and important private sector decisions. The statements presented below and the enclosed Requested Corrections List present Questar's additional specific comments with respect to this matter.

3. Specific Responses to Request for Correction Procedures.

The DOI's version of the IQA Guidelines advises specific information be provided as part of the request for correction. The following is a list of the specific information requirements and Questar's responses.

a. Specific reference to the information being challenged.

This Request challenges the information contained in the 2009 Lease Report.

b. A statement specifying why the complainant believes the information fails to satisfy the standards in the DOI or OMB guidelines.

The 2009 Lease Report contains highly influential information which is inaccurate, incomplete, biased and unclear as follows: (i) the information in the 2009 Lease Report fails to accurately characterize a court decision relied upon therein, the BLM process which led to the leasing decision, and the options available to the Secretary; (ii) the information contained in the 2009 Lease Report fails to make clear that the lands in question had been designated as available for leasing fifteen years prior to the December 2008 Lease Sale, fails to correctly describe the law governing the leasing decisions, and fails to properly set out the narrow special interests who challenged the December 2008 Lease Sale; (iii) the information in the 2009 Lease Report is incomplete, as it omits the long-term availability of the lands in question for leasing, the fact that the United States National Park Service had multiple opportunities to object to the designation of the lands in question as open to leasing and failed to do so, and the fact that there were no legal or procedural deficiencies in the federal leasing process or the Resource Management Plan development process; (iv) the contents of the 2009 Lease Report is biased, as it selectively uses information to create the impression that (a) leasing of the lands was a last-minute act of the former administration, (b) the lands were sold in violation of law and regulation, (c) there is a

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Chief Information Officer
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rationalization for the Secretary's and the BLM's failure to defend the federal government's interest, and (d) there exists a need to undermine the rational, considered, and lawful application of FLPMA by the BLM through the public Resource Management Plan process, in favor of arbitrary decisions made in favor of special interests.

A more detailed list of the foregoing general outline is set forth in the enclosed Requested Corrections List.

- c. *How a complainant is affected by the challenged information. The complainant may include suggestions for correcting the challenged information, but that is not mandatory.*

Questar will suffer immediate direct and indirect economic harm, and longer term harm, due to the replacement of the transparent public processes for federal leasing decisions with *post-hoc*, unwritten, internal agency directives.

- d. *The name and address of response of the person filing the complaint. This information is used at the complainant's request for the purpose of responding to the challenge initiated by the individual.*

All questions related to this Request may be directed to Robert S. Thompson, III. This Request is submitted on behalf of Questar by its attorneys, Beatty & Wozniak, P.C., 216 16th Street, Suite 1100, Denver, CO 80202, 303.407.4499 (phone), 303.407.4494 (fax)

- e. *An explanation of how the information does not comply with DOI, IQA or OMB guidelines and, if possible, a recommendation of corrective action.*

The 2009 Lease Report provides information which fails to meet the quality and integrity standards included in the DOI and OMB Guidelines for information quality. A detailed list of the specific failures, as well as requested corrections, is set forth in the enclosed Requested Corrections List.

The IQA requires that federal agencies ensure the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the federal agency. The guidelines promulgated as a result of the IQA by OMB and DOI define "quality" as being a combination of "utility," "objectivity," and "integrity." "Objectivity" includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.

BEATTY & WOZNIAK, PC.

Sanjeev Bhagowalla
Chief Information Officer
August 21, 2009
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Put simply, the information presented in the 2009 Lease Report is biased, inaccurate and incomplete. The conclusions and statements included in the 2009 Lease Report fail to meet the standards for highly influential information under the DOI, OMB and IQA Guidelines.

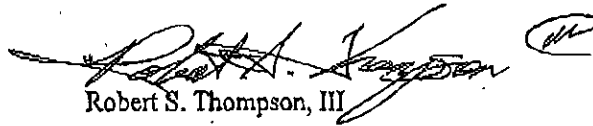
CONCLUSION

For the reasons stated above and in the attached Requested Corrections List, Questar strongly urges the DOI to adhere to the legal requirements of the IQA in evaluating this Request. As required specifically in the DOI Guidelines, please notify the undersigned within ten business days of your receipt of this Request.

Thank you for your attention to this matter.

Respectfully,

BEATTY & WOZNIAK, P.C.


Robert S. Thompson, III

Enclosure: Requested Corrections to 2009 Lease Report

- cc: Hon. Nancy Sutley, Chairman, Council on Environmental Quality
- Hon. Ken Salazar, Secretary, Department of the Interior
- Hon. Gary Locke, Secretary, Department of Commerce
- Hon. Eric Holder, U.S. Attorney General
- Hon. Cass Sunstein, Administrator (Acting), Office of Information and Regulatory Affairs
- Utah BLM Acting Director Robert Abbey
- Affected Members of Congress:
 - Senator Orrin Hatch
 - Senator Robert Bennett
 - Congressman Rob Bishop
 - Congressman Jim Matheson
 - Congressman Jason Chaffetz

00129148-4.DOC

2009 LEASE REPORT REQUESTED CORRECTIONS LIST

A. BACKGROUND

1. The Lands in Question Have Been Available for Leasing Since at Least 1994

In 1994, the United States Department of the Interior ("DOI") approved the Diamond Mountain Resource Management Plan ("Diamond RMP"), and continued with the Vernal, Moab, and Price land and resource management plans, which authorized oil and gas leasing and development. The Final 2008 Vernal, Moab and Price Utah Resource Management Plans ("2008 Utah RMPs") at issue in the June 11, 2009 Report To Secretary Ken Salazar Regarding The Potential Leasing Of 77 Parcels in Utah ("2009 Lease Report") reduced the lands available for natural gas and oil leasing below those which were available under the Diamond RMP and the other resource plans. The United States National Park Service ("NPS") participated in the previous land planning process and in the 2008 Utah RMPs process.

Beginning in 2001, the United States Bureau of Land Management ("BLM") undertook a process to revise the Utah RMPs. The process took roughly five to seven years, and culminated in the 2008 Utah RMPs. BLM's process for resource management plan revision is governed by the Federal Land Policy Management Act, 43 U.S.C. §§ 1701, *et seq.* ("FLPMA") and other laws, all of which are intended to ensure that: (i) the process is public; (ii) no particular interest is treated in a preferential manner; and (iii) BLM has collected sufficient and appropriate information to make the balancing decisions required as part of its multiple use mandate.

2. 2008 Utah RMPs are the Result of a 7 Year Public Process

The BLM spent approximately \$35,000,000.00 on the six Utah RMPs over a period of seven years, in a public process that involved all interested stakeholders. Over 185,000 public comments were received, and BLM held over one hundred meetings with coordinating agencies including tribes, counties, municipalities, and state and federal agencies. Countless hours were spent by state and local officials to achieve a balance of uses that satisfied the needs of Utah citizens. This process culminated in the review of the 2008 Utah RMPs by the Governor of Utah and with his agreement that management under the plans was consistent with Utah's policies. Clearly this was a comprehensive, open process required by the FLPMA and the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* ("NEPA").

The BLM analyzed lands for wilderness characteristics, wild and scenic river designations, special recreation management areas, units of the NPS, and areas of critical environmental concern ("ACEC"). They addressed concerns for all these unique values near National Parks and other sensitive landscapes. The NPS, as a coordinating party in this process, provided specific comments on the 2008 Utah RMPs generally, and on the BLM lands proposed to be available for federal leasing specifically. NPS attended 2008 Utah RMPs scoping and other

meetings, and did not voice any concerns that the lands that ultimately became the 77 lease parcels in question would remain "open for oil and gas leasing and development."

The wilderness characteristics of the lands were examined through a public process. Lands proposed by participating stakeholders for wilderness were reviewed and analyzed. The opportunity for identifying suitable lands for wilderness is a lengthy process and included the general public, environmental groups (including the litigants who precipitated the withdrawal of the leases), and local and state governments. All of the proposed wilderness characteristic areas had been studied previously and failed to meet the criteria for wilderness designation. The NPS had an opportunity to provide advice on any of the lands covered by the 2008 Utah RMPs as they were developed. Consistent with the previous resource management plans, the NPS raised no objections to the continued designation of the lands already available for leasing.

The resource management plan process is lengthy, public, and designed to achieve a balance among multiple users. The BLM has a mandate for productive use of the land, including ranching, mining, forestry, and natural gas and oil development. The 2008 Utah RMPs represent a balance of conservation and productive use of the land. Presumably, two of the primary reasons the process is public is to ensure that no particular group receives preferential treatment, and to ensure that taxpayers receive maximum benefits from the development of public lands. The process does not guarantee that every stakeholder will be satisfied, including federal agencies. In framing FLPMA, the United States Congress understood the difficulty in achieving multiple uses. As a result, while requiring a public planning process and balancing of competing interests, Congress left the final determination on whether or not to offer a parcel for lease to the Secretary of the DOI ("Secretary"), and not the states, the public, the NPS, environmental stakeholders, or any other federal agency. The process that produced the 2008 Utah RMPs was entirely consistent and fully complied with the process required by applicable statutes and regulations.

Part of the resource management plan process involved identifying other federal agencies with an interest in the BLM's leasing decisions and ensuring that the legal requirements of other agencies are satisfied during development and implementation of the 2008 Utah RMPs. In each of the 2008 Utah RMPs, the NPS was considered a coordinating agency. Under 43 C.F.R. Section 1610.3-1, this status provided the NPS particular rights during the resource management plan process, requiring the BLM to pay particular attention to NPS concerns. Although the NPS had the opportunity, it never objected to the lands at issue being open for oil and gas development. While the resource management plan development process seeks to acquire the input and involvement of other interested and impacted federal agencies, such as the NPS, it is important to remember that it is the BLM, and not the NPS, that is the federal agency charged with making multiple use decisions and balancing the competing demands of *all* stakeholders in the resource management plan process.

3. The 2008 Utah RMPs Are More Protective Than Past Plans

The 2008 Utah RMPs, which were developed out of this widely and publicly debated process, specify which lands are open to particular uses, including natural gas and oil development. The 2008 Utah RMPs identify what stipulations and restrictions apply to the lands, and the activities which are allowed on them. In developing the 2008 Utah RMPs and the allowable uses of the federal lands, the BLM took into consideration all resource values on the lands, including proximity to national parks, Wilderness Study Areas, wilderness areas, and other designations. This process is lengthy, transparent, open to all parties and conducted in public.

One of the results of this process is the imposition of restrictions, including "no surface occupancy" stipulations for oil and gas operations ("NSO Stipulations") that were contemplated on certain Utah lands, particularly those near National Parks. Under an NSO Stipulation, public lands may be developed for oil and gas provided that *none of the lease's surface is used for such purposes*. In addition to NSO Stipulations, the 2008 Utah RMPs *included no new lands for oil and gas leasing that were previously off-limits, and reduced the lands available for leasing when compared to the previous land use plans under prior administrations*. Those lands which remained available for leasing carried more restrictions than were imposed by the previous land use plans. Moreover, the fact that many of the previously available lease parcels were further restricted by inclusion of NSO Stipulations as a result of the 2008 Utah RMPs means they are now available for other recreational activities, and, therefore, further satisfy the BLM multiple-use mandate while also satisfying the productive use mandate.

4. The 2009 Lease Report Ignores the Public Process in Favor of Special Interests

The 2009 Lease Report is a cynical effort to recast a public balancing process, and replace it with a process in which particular stakeholder groups receive preferential treatment to the detriment of other stakeholders, those stakeholders being the taxpayers and the federal treasury. The information in the 2009 Lease Report is inaccurate, incomplete, unclear and biased.

B. 2009 LEASE REPORT CORRECTION REQUESTS

I. Correction Request I (2009 Lease Report, Pg.1):

The 2009 Lease Report contains the following statement:

On January 17, 2009, a federal district court enjoined the U.S. Department of the Interior from entering into oil and gas leases for 77 parcels in Utah that had been included in a December 19, 2008 auction. The court entered a temporary injunction against the sale of the parcels after concluding that plaintiffs had established "a likelihood of success on the merits" regarding their claims that the proposed lease sales violated the National Environmental Policy Act,

*the Federal Land Policy and Management Act and the National
Historic Preservation Act*

Questar requests that the foregoing statement, insofar as it states that the federal district court enjoined the sale of the leases, be removed for the following reasons:

a. The foregoing statement is inaccurate, in that the federal district court did not enjoin or even address the sale of the parcels themselves at any point.

b. The foregoing statement is unclear, in that it implies there were two injunctions, a temporary injunction against selling the parcels and a subsequent permanent injunction against entering into the leases. In fact, there was only one temporary injunction against issuing the leases, until further briefing on Plaintiffs' Motion for Preliminary Injunction.

c. The foregoing statement is incomplete, in that the 2009 Lease Report fails to acknowledge that the court neither enjoined the sale of the parcels nor authorized or required the BLM to withdraw the parcels. In fact, the court required no action whatsoever from BLM.

d. The foregoing statement is biased, because the combination of inaccuracy, failure to include complete information, and lack of clarity results in a legally and factually incorrect impression that the Secretary had no choice but to withdraw the leases.

2. **Correction Request 2 (2009 Lease Report, Pg. 1):**

The 2008 Lease Report contains the following statement:

On January 17, 2009, a federal district court enjoined the U.S. Department of the Interior from entering into oil and gas leases for 77 parcels in Utah that had been included in a December 19, 2008 auction. The court entered a temporary injunction against the sale of the parcels after concluding that plaintiffs had established "a likelihood of success on the merits" regarding their claims that the proposed lease sales violated the National Environmental Policy Act, the Federal Land Policy and Management Act and the National Historic Preservation Act.

Questar requests that the foregoing statement be corrected to state that the court temporarily enjoined the DOI from issuing the leases pending receipt of further information from the government and others in the litigation, for the following reasons:

a. The foregoing statement is inaccurate, in that the Injunction was temporary and placed no requirements for action on the part of the Secretary, the DOI or the BLM.

b. The foregoing statement is biased, in that the statement leaves the impression that the DOI permanently lost the ability to issue the leases.

c. The foregoing statement is unclear, because it leaves the impression that the Secretary had no option but to withdraw the leases.

d. The foregoing statement is incomplete, in that it fails to acknowledge that the Secretary does not have the legal authority to unilaterally withdraw the 77 leases, which include the Lease of Quostar, from the sale after the BLM accepted high bids for each parcel and associated monies had been paid.

Each of the high-bidders complied with all statutory, regulatory and payment obligations with respect to the leasing of the parcels. It is clear that the Secretary and BLM simply chose, rather than being required to do so by a court or legal statute, to withdraw the lease parcels from sale and thus breach their commitments to the high-bidders for the withdrawn parcels. The Secretary and BLM, as much as they may wish to do so, cannot provide preferential treatment to selected participants in the public process and refuse to lease lands, based on nothing more than a whim, subsequent to all monies being paid and the government's acceptance of said monies in full consideration for the leases.

3. Correction Request 3 (2009 Lease Report, Pg. 2)

The 2008 Lease Report contains the following statement:

The lease sale that DLM's Utah office conducted in the fall of 2008, which culminated in the December 19, 2008 auctioning of 116 parcels, including the 77 parcels that are the focus of this report, deviated in important respects from the normal leasing process.

Quostar requests that the foregoing statement be corrected to acknowledge that the lease sale process was consistent with all existing laws and regulations, and that any deviation from unrequired practice was a matter of trivial internal interagency disagreement, not law, for the following reasons:

a. The foregoing statement is inaccurate, in that the sale did *not* deviate from the requirements of NEPA, FLPMA, the public process requirements of adoption of a resource management plan, from the conditions included in the affected 2008 Utah RMPs, or from the process governing lease offerings by the BLM. The 2008 Utah RMPs were the result of a seven-year process, which included the public, the state and counties, as well as several federal agencies. Further, the underlying property for the 77 leases offered in the lease sale had been

identified as open for leasing by at least two prior administrations for well over fifteen years.¹ The leasing process was consistent with the law and regulations governing such activities.

b. The foregoing statement is unclear, in that it fails to provide the reader sufficient information to understand BLM's leasing activities and its larger multiple-use mission, the latter of which requires a balancing of various interests. That balancing is played out in the public involvement and review process, which resulted in the 2008 Utah RMPs, a public process which was underway for seven years. All activities under BLM's multiple use mandate are governed by laws and regulations, and those laws and regulations are embodied in the 2008 Utah RMPs. The NPS had a coordinating role in decisions concerning the 2008 Utah RMPs, and exercised that right. The NPS was included as required by law and regulation, and had ample opportunity to comment, assert its authority, and help to shape the BLM's decisions in a manner similar to, but far surpassing, any other stakeholder in the process.

c. The foregoing statement is incomplete, in that it fails to disclose the fact that the NPS was a coordinating agency in the development of the 2008 Utah RMPs.² This status provided for additional NPS review and input on the 2008 Utah RMPs, and ensured concurrence with NPS objectives, resources and plans. The NPS submitted comments on each of the 2008 Utah RMPs in which it managed an NPS unit. In its comments, the NPS never suggested or recommended that any of the lands underlying the 77 leases be withdrawn from oil and gas leasing, contain an NSO Stipulation, or be otherwise restricted from oil and gas leasing and development.³

d. The foregoing statement is biased, in that it leaves the impression of malfeasance by the BLM, implying that there were irregularities in the leasing process and that BLM deliberately failed to provide information to the NPS, instead of acknowledging the thoughtful and measured deliberations by many parties, including the NPS, which resulted in the 2008 Utah RMPs that govern the BLM's leasing decisions and resulted in the sale of the 77 leases⁴

¹ Different administrations first designated these parcels for leasing in the 1980s and 1990s, and the Bush Administration made no change to those designations. The 2008 Utah RMPs were consistent with the prior resource management plans that had identified the same parcels as available for oil and gas leasing since the enactment of PLPMA.

² The 77 leases which have been withdrawn are all located in the State of Utah.

³ See MOAB RESPONSE TO COMMENTS ON DRAFT RMP/BIS, at 102-103. Specifically, the NPS at no time objected to any of the lands comprising the 77 leases being open for oil and gas leasing and development. *Id.*

⁴ *Id.*

4. **Correction Request 4 (2009 Lease Report, Pgs. 2-3):**

The 2008 Lease Report contains the following explanatory points:

After soliciting input on the proposed lease sale from the National Park Service, BLM decided to expand the lease sale and delay the public announcement of parcels that were being offered for leasing from October 3, 2008 to November 4, 2008. BLM did not provide the National Park Service its customary opportunity to provide input on the lease sale, even though BLM had decided to greatly expand the lease sale from the 79 parcels that had been suggested in the August 1, 2008 pre-notification to 241 parcels that were announced on November 4, 2008. Among the new parcels added without prior notice to NPS were a number of parcels in the immediate vicinity of three National Park units (Arches National Park; Canyonlands National Park; and Dinosaur National Monument).

Because it had not received prior notice and an opportunity to discuss the appropriateness of auctioning parcels next to units of the National Park system, NPS requested that BLM defer the late-added parcels from the lease sale until the next quarterly sale so that NPS could have a full opportunity to review and comment on the proposed lease sales. BLM refused to do so.

After strong public concern was expressed regarding the proposed sale of many parcels near National Park units for oil and gas development, BLM provided NPS with a belated opportunity to request that parcels be removed from the auction that already had been publicly announced for sale.

BLM agreed to remove parcels that were most objectionable to NPS due to their immediate proximity to Park boundaries.... NPS acquiesced with the BLM auction.

Questar requests that the foregoing explanatory points be corrected to disclose the process behind the leasing decisions, and to acknowledge and explain the extent of the NPS's

Involvement in identification of parcels available for leasing and the trivial nature of the "important deviations" identified in the 2009 Lease Report, for the following reasons:

a. The foregoing explanatory points are inaccurate, in that they: (i) characterize as important a trivial deviation from an internal custom, unsupported by law or regulation; (ii) lead the reader to believe that the December 2008 Lease Sale was conceived and rushed through in the waning months of the Bush Administration, when in fact the parcels offered for lease had been available for exploration for at least fifteen years under separate sets of land use plans developed under multiple administrations; and (iii) reference "strong public concern" over the sale of the 77 parcels, thereby implying that there was a general, overarching concern of the general public, when in fact, instead of the general public, the concerns relate only to an identifiable group of special interest stakeholders having strong views against oil and gas exploration and development on any federal lands under any set of development restrictions.

b. The foregoing explanatory points are unclear, in that they: (i) fail to acknowledge that the BLM has no legal duty to consult with the NPS prior to posting the list of parcels to be offered the December 2008 Lease Sale, because while this may have been an internal, informal custom, any BLM failure to consult with the NPS would violate no federal law or regulation; (ii) lead the reader (and presumably the Secretary) to the conclusion that the interagency dispute between BLM and NPS provides a legal basis to retroactively withdraw the 77 leases after their sale; and (iii) fail to acknowledge that the objections raised by the special interests groups were resolved between the NPS and BLM *prior to* publication of the final list of lands available for leasing. In fact, BLM provided the NPS with all notice required by law, and more. The trivial interagency squabble, which is described by as a deficiency, provides no legal basis for the retroactive withdrawal of the leases.

c. The foregoing explanatory points are incomplete, in that they: (i) fail to acknowledge the fact that NPS failed to object to the inclusion of the 77 lease parcels during multiple prior administrations and a period of fifteen years or more, even though it had multiple opportunities to do so – for example, during the seven years that the 2008 Utah RMPs were developed, the NPS submitted comments on each of the 2008 Utah RMPs in which it managed a NPS unit, never suggesting or recommending that any of the lands underlying the 77 leases be withdrawn from oil and gas leasing, contain a NSO Stipulation, or be otherwise restricted from oil and gas leasing and development; (ii) fail to disclose that the parcels added and announced on November 4, 2008 to the list of those available for leasing had been available for leasing for at least fifteen years through multiple prior administrations; (iii) fail to recognize the detailed input from the affected local public, local governments, state government, and federal agencies (other than the NPS), and the "other" members of the public not represented by special interest groups; and (iv) fail to disclose that the BLM affirmatively completed all the consultation required under FLPMA and all applicable laws in coordinating with the NPS on the 2008 Utah RMPs – specifically, with respect to the 77 leases which have been withdrawn due to the issues raised in the 2009 Lease Report: (a) NPS was a coordinating party to all of the 2008 Utah RMPs; (b) NPS

never objected to the lands at issue being open for oil and gas development either, for the 2008 Utah RMPs or the prior land use plans completed in the 1980s and 1990s; (c) NPS did offer specific comments on the 2008 Utah RMPs; (d) NPS attended meetings, was a coordinating party, and never objected to the 77 leases being "open for oil and gas leasing and development"; and (e) the NPS was provided the opportunity to comment and object to all of the specific parcels.⁵

d. The foregoing explanatory points are biased, in that they: (i) deliberately fail to disclose the extent of the public process which identified and included the lands available for leasing, thus leading the reader to believe that BLM unilaterally identified and moved forward with offering the 77 leases for sale; (ii) fail to disclose the NPS's numerous opportunities to object to the lands being available for leasing over the past fifteen years, creating a false impression that NPS was not involved in the process, and that its comments were not sought and accepted by BLM prior to the November 4, 2009 announcement of proposed lease lands; (iii) characterize a trivial interagency dispute as important, despite the fact that it is unsupported by law or regulation, thus creating the false impression that there was a calculated disregard for law and process by BLM, when in fact all legal requirements were met in developing both the 2008 Utah RMPs and the previous resource management plans, both of which identified the withdrawn lease lands as available for energy development; (iv) repeatedly refer to a discretionary consultation with the NPS as "historic" and "long-standing," in an attempt to establish a basis for objecting to a legally proper lease sale when such supposed, "historic" and "long-standing" practice is not required by law or regulation; (v) imply that the NPS has some authority with respect to non-NPS lands, by stating that NPS "acquiesced" to certain parcels being included in the sale, when in fact, NPS has no authority over non-park lands, nor does it have veto power or any other authority in the BLM's leasing process; (vi) reference "strong public concern," thus leading the reader to believe that there was general dissatisfaction with the outcome of the 2008 Utah RMP December Lease Sale, when in fact, the concern was from an identifiable group of stakeholders with a particular and singular interest -- preclusion of oil and gas development on public lands, resulting in the Secretary providing preferential treatment to a particular group of stakeholders.

5. Correction Request 5 (2009 Lease Report, Pgs. 2-3):

The 2008 Lease Report contains the following explanatory point following:

After soliciting input on the proposed lease sale from the National Park Service, BLM decided to expand the lease sale and delay the public announcement of parcels that were being offered for leasing from October 3, 2008 to November 4, 2008. BLM did not provide

⁵ The NPS did in fact object to the leasing of several parcels, which were subsequently removed from sale, prior to the remaining leases being offered for sale to the public.

the National Park Service its customary opportunity to provide input on the lease sale, even though BLM had decided to greatly expand the lease sale from the 79 parcels that had been suggested in the August 1, 2008 pre-notification to 241 parcels that were announced on November 4, 2008. Among the new parcels added without prior notice to NPS were a number of parcels in the immediate vicinity of three National Park units (Arches National Park; Canyonlands National Park; and Dinosaur National Monument).

Questar requests that the foregoing explanatory point be corrected to fully disclose the differing legislative mandates and authorities for BLM and the NPS, and the nature of BLM's balancing requirements under its "multiple use" mandate, for the following reasons:

a. The foregoing explanatory point is incomplete, in that it: (i) fails to fully disclose the limitations of the NPS's authority with respect to resource management plans and leasing decisions of the BLM under its productive and multiple use mandates; (ii) fails to disclose, reference or cite to the Joint Letter from the BLM Utah State Director to the NPS Intermountain Regional Director providing an explanation of the leasing decisions; and (iii) fails to disclose that NPS and BLM issued a joint statement that leasing could proceed based on information pertaining to the planning process and the restrictions placed on the parcels provided by the BLM to the NPS.

b. The foregoing explanatory point is unclear, because in order to justify the Secretary's decision to retroactively withdraw the leases, the explanatory point appears to imbue NPS with authority and influence over the 2008 Utah RMPs where no such authority or influence legally or practically exists.

c. The foregoing explanatory point is biased, in that it: (i) deliberately fails to disclose the limitations of the NPS and the charge of BLM to balance multiple uses, thus unfairly characterizing the BLM's actions as a type of oil and gas development frenzy, which characterization is unsupported by the facts underlying development of the 2008 Utah RMPs and the decision to offer the 77 lease parcels for sale and (ii) fails to acknowledge that BLM may not focus purely on conservation, as the NPS does, as that is not its charge, but must instead provide for productive and competing uses in such a manner as to maximize the total benefit to both the government and taxpayers.

6. **Correction Request 6 (2009 Lease Report, Pgs. 2-3):**

The 2008 Lease Report contains the following explanatory point:

After strong public concern was expressed regarding the proposed sale of many parcels near National Park units for oil and gas

development, BLM provided NPS with a belated opportunity to request that parcels be removed from the auction that already had been publicly announced for sale.

Questar requests that the foregoing explanatory point be corrected to state that the strong concern was voiced publicly by special interest groups who oppose most oil and gas leases, only some of which are in any proximity to national park lands. The strong concern was voiced through lease protests and press releases of special interest organizations, and subsequently by the environmental litigants, as they sought to achieve through litigation and political influence what they could not achieve in the public process. By unilaterally and retroactively withdrawing the Leases, the Secretary undermined the operation of the laws and regulations that govern resource management plans and federal leases, and which ensure a fair playing field for all affected parties. In addition, Questar request correction of the foregoing explanatory point for the following reasons:

a. . The foregoing explanatory point is unclear, in that it: (i) fails to disclose that one stakeholder group in particular was responsible for the "public concern," and that it was not the public at large; and (ii) neglects any reference to or explanation of the support for the 2008 Utah RMPs and December 2008 Lease Sale expressed by the State of Utah, county and city governments, and members of the public unrelated to the special interest groups who seek to prohibit all oil and gas development on public lands.

b. The foregoing explanatory point is biased, in that it: (i) incorrectly states the extent of concern, by claiming that the public at large was concerned with the Utah RMPs and December 2008 Lease Sale, when in fact, only one special interest group voiced concern publicly; and (ii) improperly seeks to support litigation filed against the federal government relative to the 2008 Utah RMPs, by failing to accurately, completely and clearly lay out the process, the access, the laws and regulations governing the 2008 Utah RMPs and leasing activities carried out by BLM. While such bias may result in policy outcomes favored by the Secretary, it is achieved not through the open process envisioned by the United States Congress and embodied in law and regulation, but through friendly lawsuits, unilateral activity by the Secretary, and the Secretary's adoption of the position of litigation adversary, to the DOI's uncertain but clear detriment.

7. Correction Request 7 (2009 Lease Report, Pg. 4):

The 2008 Lease Report contains the following finding:

...Because NPS's jurisdiction is tied to its National Park units, NPS did not address parcels that were proposed for sale and were not in the vicinity of one of its parks. Some of the 77 parcels that were subject to the court's injunction are near other unique and sensitive landscapes, including Nine Mile Canyon, an area that is

world renown for its sophisticated, extensive, and potentially fragile rock art, and Desolation Canyon, a deep river canyon that is upstream of the Grand Canyon and one that rivals its beauty...'

Questar requests that the foregoing finding be corrected to include a clarification as to the meaning of the finding. As noted above, the NPS has failed to object to designation of these lands as available for oil and gas leasing for fifteen years. Questar, therefore, requests correction of the foregoing finding for the following reasons:

a. The foregoing finding is unclear in that it does not explain its meaning as to: (i) whether the Deputy Secretary subscribes to a legal theory that lack of jurisdictional authority is a real impediment to a federal agency providing comments on an issue; (ii) whether the NPS was prevented from raising any concerns during the planning process while it was a coordinating agency, but that once the planning process was complete, it was free to raise objections regardless of jurisdiction; and (iii) whether the Deputy Secretary, as a result of his review of the administrative record for the 2008 Utah RMPs and the Leases, is making a determination that inclusion of these parcels is no longer legal, in direct contravention of his earlier actions as Deputy Secretary in the early 1990s.

b. The foregoing finding is incomplete, in that it fails to disclose: (i) that natural gas and oil development has been ongoing in the vicinity of Nine Mile Canyon since 1951, a period of nearly 60 years; (ii) that all parcels withdrawn by the Secretary are near existing, active leases, and many are near active natural gas wells; (iii) that the protections for the unique rock art are specified in the 2008 Utah RMPs, and stipulations were attached to the parcels which ensured their protection; and (iv) that the Utah State Historic Preservation Officer concurred with leasing the subject parcels.

8. Correction Request 8 (2009 Lease Report, Pg. 4):

The 2008 Lease Report contains the following paragraph:

As a general matter, the Utah RMPs exclude a relatively small proportion of potentially available BLM lands from oil and gas drilling. By way of example, the Utah RMPs provide BLM with the discretion to lease the large majority of lands that it identified as having "wilderness characteristics" for oil and gas development. Likewise, the Utah RMPs provide BLM with the discretion to allow oil and gas development on parcels in the immediate proximity of National Park units and a number of other sensitive landscapes, including lands that have wilderness characteristics, and lands that have other values that may not be consistent with oil and gas development (e.g., hiking, biking, river rafting and other recreational activity that is prevalent in the region). The RMPs

identify a menu of potential stipulations that BLM can append to leases to mitigate the environmental impacts associated with oil and gas development of the land.

Questar requests that the foregoing paragraph be corrected to recognize that the 2008 Utah RMPs reduced the amount of lands available to oil and gas drilling from the previous land use plans, and that the 2008 Utah RMPs reflect the multiple use mandate governing BLM decisions, for the following reasons:

a. The foregoing paragraph is incomplete, in that it: (i) fails to disclose that all the lands designated as available for oil and gas leasing were already available under prior land use plans; (ii) fails to disclose that fewer lands are available for oil and gas leasing under the 2008 Utah RMPs than were previously available under prior administrations, and that no new lands have been opened to oil and gas leasing by the 2008 Utah RMPs; (iii) fails to acknowledge that those lands which remained available for leasing, including the 77 withdrawn parcels, are subject to far more stringent environmental, wildlife and air quality protections under the 2008 Utah RMPs than prior land use plans; and (iv) fails to acknowledge that the 2008 Utah RMPs provide more conservation protections than were in place prior to their adoption.

b. The foregoing paragraph is biased, in that it: (i) fails to disclose or consider the public process that is mandated to include all stakeholders, and instead provides selected information to advance the position of special stakeholders preferentially; (ii) fails to disclose or consider that the BLM has a statutory mandate to use lands productively and for multiple uses; and (iii) fails to disclose or consider that, as defined by FLPMA, minerals are a "major use" of public lands, while "wilderness characteristics" are not even defined as a use.

9. **Correction Request 9 (2009 Lease Report, Pg. 4):**

The 2008 Lease Report contains the following statement:

The lands associated with the 77 leases in question are covered by three Resource Management Plans ("RMPs") that BLM signed on October 31, 2008, only 4 days before the lease sale was noticed to the public.

Questar requests that the foregoing statement be corrected to acknowledge that the 2008 Utah RMPs were the result of a multi-year public process, and that BLM is required by law to conduct lease sales quarterly, for the following reasons:

a. The foregoing statement is incomplete, in that it: (i) fails to acknowledge that BLM is required by law to offer gas and oil leases quarterly; (ii) fails to acknowledge that the withdrawn leases were available for oil and gas leasing after a public process that cost approximately \$35,000,000.00, involving all interested stakeholders, lasting over seven years, during which time over 185,000 public comments were received, the BLM held 100 meetings

with several agencies, including tribes, counties, municipalities, and state and federal agencies, and the Governor of Utah confirmed the consistency of the 2008 Utah RMPs with the policies of the State of Utah, such that countless hours were spent by state and local officials to achieve a balance of uses that satisfies the needs of the United States and Utah's citizens; (ii) fails to acknowledge that the lands in question have been available for lease for at least fifteen years; and (iii) fails to acknowledge that the lands in question have more extensive environmental, wildlife and air quality protections than ever before.

b. The foregoing statement is biased, in that it: (i) leads the reader to believe that the December 2008 Lease Sale was conceived and rushed through in the waning months of the Bush Administration, when in fact the parcels offered for lease had been available for lease for at least fifteen years prior, through two different administrations, and under separate sets of land use plans developed under many different prior administrations; and (ii) implies that the Leases were offered illegally, without sufficient public comment or review, and that the offering was in some manner inconsistent with law or regulation, when in fact, the Leases complied with all applicable laws and were the result of over fifteen years of public notice.

10. **Correction Request 10 (2009 Lease Report, Pg. 4):**

The 2008 Lease Report contains the following statements:

These RMPs are general planning documents that cover several million acres of public lands in BLM's Moab, Vernal and Price districts

The Utah RMPs are high level planning documents; they do not provide BLM officials with guidance on whether individual parcels should be made available for oil and gas development when such parcels are near National Park units and other sensitive landscapes or when such parcels have wilderness characteristics or other values that may not be consistent with oil and gas development.

Quostar requests that the foregoing statements be corrected to acknowledge that the 2008 Utah RMPs provide explicit guidance as to the appropriate uses for the lands they cover, for the following reasons:

a. The foregoing statements are inaccurate, incomplete and/or biased, in that they: (i) mischaracterize the level of specificity included in the 2008 Utah RMPs, which identify those lands open to natural gas and oil development, what restrictions and stipulations apply to that development, and take into consideration all other resource values on the lands, including

the proximity to National Parks, Wilderness Study Areas, wilderness areas, and other land designations, such that restrictions, including NSO Stipulations, were employed for many of the December 2008 Lease Sale parcels near the parks, specifically because the resource management plan process provides guidance on how the lands should be managed for multiple use, and how resource values are to be balanced; (ii) fail to acknowledge that the level of specificity is a direct result of the multi-year planning process that culminates in a resource management plan – the BLM has been making leasing decisions based on the resource management plan process since the enactment of FLPMA in 1976; (iii) fails to disclose that no other law or case requires BLM to conduct more site-specific analysis prior to leasing than that employed regarding the 2008 Utah RMPs – federal leasing under resource management plans has been specifically upheld by the federal court system; (iv) fails to acknowledge that the specific details of the conditions and permissions included in the 2008 Utah RMPs were all part of the public process and subject to public comment and review; (v) fails to note that prior to the December 2008 Lease Sale, BLM prepared a Documentation of NEPA Adequacy, in which BLM reviewed each specific parcel's location and proximity to "sensitive resources," lease stipulations, and other resources as determined the 2008 Utah RMPs, and after this specific and case-by-case review, BLM determined whether to offer a parcel for lease; (vi) are improperly designed to lead the reader to believe that the 2008 Utah RMPs failed to consider site-specific issues related to the land use designations included in the RMPs themselves; and (vii) mischaracterize the 2008 Utah RMPs as "high level planning documents," thus implying that the designation of allowable uses on lands governed by the 2008 Utah RMPs is somehow preliminary.

II. Correction Request II (2009 Lease Report, Pg. 4):

The 2008 Lease Report contains the following statement:

...the [2008] Utah RMPs provide BLM with the discretion to lease the large majority of lands that it identified as having "wilderness characteristics" for oil and gas development.

Questar requests that the foregoing statement be corrected to acknowledge that the term "wilderness characteristics" has no meaning under FLPMA, the Wilderness Act or federal regulations, and was not a term created by the United States Congress and to recognize that as part of the resource management plan process, some areas with "wilderness characteristics" are managed to protect those resources, including closing these areas to oil and gas leasing, for the following reasons:

a. The foregoing statement is inaccurate, incomplete, unclear and/or biased, in that it: (i) fails to disclose that "wilderness characteristics" are not a defined resource under FLPMA or the Wilderness Act; (ii) fails to disclose that the term "wilderness characteristics" is sufficiently similar to legally defined terms used to identify and protect parklands, wild and scenic rivers, and bona fide wilderness areas as to be misleading, because while the term is used

by BLM to provide enhanced protection to some lands, wilderness is not a priority under FLPMA, and BLM protects these characteristics based only on its authority as the land management agency; (iii) fails to make a distinction between *bona fide* Wilderness Study Areas, as defined in the Wilderness Act, and the administratively defined and implemented "wilderness characteristics"; (iv) fails to indicate that the 2008 Utah RMPs set forth specific justifications for not protecting the "wilderness characteristics" of certain areas, *i.e.* the DOI has already agreed not to manage these areas under the non-impairment standard and removing these lands from oil and gas development would be a violation of that policy and a creation of *de facto* Wilderness Study Areas; (v) fails to acknowledge that under FLPMA, the BLM determines which lands are available for lease under a resource management plan - if the lands have not been withdrawn by the United States Congress or have a separate reason to be unavailable for lease, the lands are open for leasing⁶; and (vi) is written so as to leave the impression that BLM is allowing rampant development of pristine lands which should be protected under the Wilderness Act, when in fact, the lands do not meet the criteria for protection as wilderness. BLM is providing more protection for these lands than is required, and under FLPMA, the BLM must make lands available for leasing in the absence of a reason to remove them.

12. Correction Request 12 (2009 Lease Report, Pg. 4):

The 2008 Lease Report contains the following statement:

The [2008] Utah RMPs ...do not provide BLM officials with guidance on whether individual parcels should be made available for oil and gas development when such parcels are near National Park units and other sensitive landscapes or when such parcels have wilderness characteristics or other values that may not be consistent with oil and gas development.

Qwestar requests that the foregoing statement be corrected to acknowledge that: (i) resource management plans provide BLM officials explicit guidance that must be applied to individual parcels; (ii) this guidance takes into consideration National Park units and other sensitive landscapes; (iii) this guidance recognizes when parcels have values that may not be consistent with oil and gas development; (iv) the resource management plans provide minimum standards and that there are additional considerations applied by BLM when making determinations as to which individual parcels will be offered for lease; and (v) that BLM's processes were used in the determinations to place the 77 withdrawn leases for sale, for the following reasons:

⁶ Under the Mineral Leasing Act, 30 U.S.C. § 226(n), unless withdrawn or otherwise declared unavailable for leasing, all lands may be leased by the Secretary.

a. The foregoing statement is inaccurate, because: (i) the 2008 Utah RMPs do indeed provide explicit permissions for particular parcels to be made available for lease, and also provide explicit prohibitions against such offerings and (ii) the 2008 Utah RMPs do consider National Park units and other sensitive landscapes or other values that may not be consistent with oil and gas development when designations are being made.

b. The foregoing statement is unclear, because by failing to reference the subsequent BLM process governing final leasing decisions, the statement does not place the 2008 Utah RMPs controls properly in context.

c. The foregoing statement is incomplete, because it fails to acknowledge the existing BLM leasing decision process, which includes law, policies, instruction manuals, and other guidance on evaluating parcels before placing them on the lease sale list.

d. The foregoing statement is biased, because it fails to provide proper context, and thus portrays the lease sale determinations as exclusive and arbitrary, when in fact, the opposite is true.

13. Correction Request 13 (2009 Lease Report, Pg. 4):

The 2008 Lease Report contains the following statement:

Guidance from BLM is necessary, given the strong competing values that BLM officials must take into account when making leasing decisions for individual parcels in eastern and southern Utah.

Questar requests that the foregoing statement be removed or rewritten to acknowledge the existing guidance in place for leasing decisions, for the following reasons:

a. The foregoing statement is inaccurate, because BLM decisions on offering parcels for leasing are already made on a case-by-case basis - many of the parcels which were finally offered in the lease sale had been nominated several years prior thereto, and had been waiting for the deliberative resource management plan process to be completed before sale of those parcels could proceed.

b. The foregoing statement is inaccurate, in that it fails to provide the readily available information on the case-by-case lease determination process.

c. The foregoing statement is inaccurate, in that it leaves the impression that BLM officials make leasing decisions arbitrarily, with no context or process, when in fact, there is an entire, lengthy process governed by law and regulation associated with leasing specific parcels.

14. Correction Request 14 (2009 Lease Report, Pgs. 5-6):

The 2008 Lease Report contains the following statement:

Likewise, BLM should seek better communication and cooperation with other stakeholders who have concerns regarding decisions to allow oil and gas development on other sensitive landscapes that have unique values, but which are not near a National Park or Monument, such as Nine Mile Canyon and Desolation Canyon.

Questar requests that the foregoing statement be removed or rewritten to acknowledge the extensive public comment process in place for the 2008 Utah RMPs, which identified lands available for oil and gas development, and to acknowledge that oil and gas development already occurs in the areas identified as available for leasing and offered for lease in the lease sale, for the following reasons:

a. The foregoing statement is inaccurate, in that it: (i) fails to acknowledge over 100 meetings with coordinating agencies, including tribes, counties, municipalities, and state and federal agencies, occurring as a result of the extensive public outreach process BLM undertook in its development of the 2008 Utah RMPs and (ii) fails to acknowledge that the referenced parcels are not in Nine Mile Canyon or the Desolation Canyon Wilderness Study Areas, but in existing gas fields with over 130 producing wells.

b. The foregoing statement is incomplete, in that it fails to acknowledge that natural gas and oil development is not the result of leases near Nine Mile Canyon, that there has been development in the area for nearly 60 years, and ignores that the lease parcels are near existing gas wells or existing leases.

c. The foregoing statement is biased, in that without the requested correction, the implication of the language is that BLM is improperly allowing rampant oil and gas development in National Parks.

15. Correction Request 15 (2009 Lease Report, Pg. 6):

The 2008 Lease Report contains the following statement:

The Utah RMPs illustrate this point. They adopted a broad planning level presumption that the large majority of available BLM lands should potentially be made available for oil and gas development, including lands with wilderness characteristics and lands immediately adjacent to the National Parks.

Questar requests that the foregoing statement be corrected to acknowledge that under FLPMA, if lands have not been withdrawn by the United States Congress or otherwise have a

separate reason to for leasing unavailability, the lands are open for leasing, for the following reasons:

a. The foregoing statement is inaccurate, in that by stating, "the [2008] Utah RMPs assumed that the lands should be available for lease," the 2009 Lease Report fails to acknowledge that FLPMA governs that determination and BLM is merely following the law.⁷

b. The foregoing statement is unclear, in that it does not clarify that FLPMA governs the determination that, barring any specific congressional withdrawal or other specific legal reason for withdrawal, lands *are* available for lease, and that BLM is merely following the requirements of controlling law.

c. The foregoing statement is incomplete, in that it fails to acknowledge that FLPMA, not BLM, governs the determination that barring any specific congressional withdrawal or other specific legal reason for withdrawal, lands *are* available for lease, and that BLM is merely following the law -- the BLM has based oil and gas leasing decisions on resource management plans since the enactment of FLPMA, and BLM did not deviate from this process for the December 2008 Lease Sale.

d. The foregoing statement is biased, in that by failing to acknowledge that applicable law, not BLM, determined which lands could be considered for leasing under the resource management plan process, the statement implies BLM is exceeding its authority and failing to affect its stewardship responsibilities when it is merely following the law.

16. Correction Request 17 (2009 Lease Report, Pg. 7):

The 2008 Lease Report contains the following statement:

The BLM team also should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

Questar requests that the foregoing statement be corrected to acknowledge that virtually all oil and gas leases are challenged, and that as a matter of law, protests must be considered in any BLM determinations based on the laws and regulations which govern BLM's leasing program and FLPMA, for the following reasons:

a. The foregoing statement is inaccurate, in that it implies that protests would not ordinarily be considered.

b. The foregoing statement is unclear, in that it implies that protests would not ordinarily be considered.

⁷ Again, under the Mineral Leasing Act, 30 U.S.C. § 226(a), unless withdrawn or otherwise declared unavailable for lease, all lands may be leased by the Secretary.

c. The foregoing statement is incomplete, in that it: (i) fails to disclose that protests are an administrative process subject to strict rules based on law and regulation, and that the decisions regarding protests must be based on that same law; (ii) fails to disclose that the BLM has a process that requires it to adjudicate lease protests prior to lease issuance; and (iii) fails to disclose that instead of requiring that those objecting to the leases follow the normal protest procedures, the Secretary deviated from the normal process and unlawfully removed the 77 parcels after the conclusion of the December 2008 Lease Sale.

d. The foregoing statement is biased, in that it inaccurately implies BLM has ignored protests in the past, and will ignore protests in the future, and is thus designed to undermine BLM's decision-making process.

17. Correction Request 18 (2009 Lease Report, Pg. 9-10):

The 2008 Lease Report contains the following statement:

... given the special nature of the White River Canyon area, a careful, site-specific examination by the multi-disciplinary BLM team is appropriate, with special attention given to the stipulations proposed for each parcel

Questar requests that the foregoing statement be corrected to acknowledge that the White River Canyon is not a Wilderness Study Area and has many existing wells and other impacts that call into question whether the area has "wilderness characteristics," for the following reasons:

a. The foregoing statement is inaccurate, in that specific site review was undertaken as a part of the 2008 Utah RMPs process and the leasing designation - the result of that review and analysis was that some portions of the White River Canyon are not available for oil and gas leasing and have additional protections.

b. The foregoing statement is unclear, in that it fails to accurately identify that some portions of the White River Canyon are fully developed, with multiple oil and gas leases operating, and others portions are protected under the 2008 Utah RMPs.

c. The foregoing statement is incomplete, in that it: (i) fails to identify that the current land management plans protect those areas of land that BLM has identified as containing "wilderness characteristics," and (ii) fails to disclose that none of the parcels offered for lease in the December 2008 Lease Sale are in the areas where BLM is protecting "wilderness characteristics."

d. The foregoing statement is biased, in that by excluding any explanation of the existing development in the White River Canyon, and the targeted protection identified and imposed by the current land management plans, the statement leads the reader to a conclusion

that there was no specific analysis of the environmental attributes of the White River Canyon by BLM or in the 2008 Utah RMPs.

18. Correction Request 19 (2009 Lease Report, Pg. 11):

The 2008 Lease Report contains the following statement:

The court acted in the context of BLM's unwillingness to make any commitment to undertake quantitative air quality analyses for any leasing activity.

Quostar requests that the foregoing statement be corrected to acknowledge that the court imposed only a temporary injunction against lease issuance, and that the Secretary's withdrawal of the Leases made a factual discussion of the statements in the preliminary injunction impossible, by unilaterally withdrawing the leases even though no such action was required by the court, for the following reasons:

a. The foregoing statement is inaccurate, in that the court merely imposed a temporary restraining order against lease issuance pending a further review of the motion for preliminary injunction; the court never had the opportunity to make a final determination on the merits of the legal challenge to the December 2008 Lease Sale, because of the Secretary's decision to retroactively withdraw the 77 leases.

b. The foregoing statement is incomplete and unclear, in that it fails to disclose that the Secretary could have defended the government's leases, but instead demonstrated an abrogation of his fiduciary duty in unilaterally abandoning the government's, and in particular DOI's, contractual obligations.

c. The foregoing statement is biased, in that: (i) by deliberately mischaracterizing the nature of the court's action, the statement provides support for the Secretary's action, which resulted in elevating the claims of one set of special interests above those of the myriad other interests who participated in the 2008 Utah RMP process; (ii) it fails to identify that administrative remedies are available to those concerned with lease sales, and that the Secretary could have provided those remedies; (iii) it fails to disclose that the Secretary abrogated his duty to the United States by failing to uphold the December 2008 Lease Sale and directing those special interests who disagreed with the lease sales to the appropriate administrative remedies; and (iv) it fails to disclose that the Secretary undermined the process for planning and implementing public lands management and lease sales and, instead, unilaterally substituted the judgment of special interests where he had no authority to do so.

19. **Correction Request 20 (2009 Lease Report, Pg. 10):**

The 2008 Lease Report contains the following statement:

While some analyses of air quality issues have been undertaken in the areas covered by the [2008] Utah RMPs and others are underway, attention to the issue remains both limited and fragmented.

Questar requests that the foregoing statement be corrected to acknowledge that the State of Utah maintains the sole authority to regulate air quality and impose air quality conditions on projects, and, as such, has approved the BLM's plans, for the following reasons:

a. The foregoing statement is inaccurate, in that it implies BLM has responsibility and authority to regulate air quality, when the sole authority for imposing and enforcing any air quality standards on projects rests with the State of Utah.

b. The foregoing statement is unclear, in that it fails to acknowledge that the actual projects that will flow from the leases are unknown, and that as a result, it is impossible to conduct any meaningful air modeling, as project size and configuration are unknown.

c. The foregoing statement is unclear, in that it: (i) fails to acknowledge that the State of Utah concurred with BLM's decision to lease the parcels in question; (ii) fails to recognize that the State of Utah has the full authority under the Clean Air Act in permitting activities that may affect air quality in Utah, and can impose those conditions which are necessary to meet the state's clean air standards; and (iii) fails to recognize that case law supports waiting to perform quantitative air modeling at the project stage, not at the leasing stage, when not enough is known about the number and type of facilities that may be constructed.

d. The foregoing statement is biased, in that it fails to present an accurate and clear description of the authority of the State of Utah, and the lack of authority on the part of BLM or the NPS, and instead presents a narrative that implies no consideration of air effects, when in fact, ample consideration was given where information was available and the permitting authority, the State of Utah, was in agreement with the leasing decisions of BLM.