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

1. Correction Request 1 (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 Questar, 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 BLM'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.*

Questar 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 leases[4]

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[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 FLPMA.

[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/EIS, 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).*
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> *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.*
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> *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.*
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> * * *
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> *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) and 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*
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> * * *
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> *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.*

Questar 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.

11. Correction Request 11 (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 leasing[6]; 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.*

Questar 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(a), 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.*

Questar 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.