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**IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>UNITED STATES OF AMERICA, Plaintiff, vs. TIM DeCHRISTOPHER, Defendant.</p>	<p>WRITTEN PROFFER OF CHOICE OF EVILS DEFENSE AND REQUEST FOR EVIDENTIARY HEARING Case No. 2:09 CR 183 DB Judge Dee Benson</p>
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Tim DeChristopher, by and through counsel, Ronald J. Yengich, Elizabeth Hunt and Patrick A. Shea, hereby submits this written proffer of the evidence he would submit in support of his choice of evils defense.

In the event the Court is disinclined to allow him to present his defense to a jury,

he requests an evidentiary hearing, wherein he may present his proffer through live witnesses. Allowing live witnesses to testify under oath and subject to cross-examination is the most accurate means of making a full record of the defense DeChristopher would like to present to a jury. Additionally, the Government's motion in limine seeking to block DeChristopher's presentation of his defense makes several key factual representations which are not attributed to any source. DeChristopher would like the opportunity to exercise his constitutional rights to confront and cross-examine the source(s) of the Government's assertions so that the Court has the benefit of the truth before deciding if his constitutional rights to defend will be honored.¹ Cf., e.g.,

¹For instance, the Government describes an orderly and lawful process which the Government observes in oil and gas lease auctions, and asserts that DeChristopher's conduct compromised the integrity of the auction in question. Motion in Limine at 2-4. Information provided in discovery and to be presented at trial confirms that the auction was inherently lacking in integrity, as a result of governmental violations of federal laws and regulations prior to and during the auction, discussed herein.

The Government repeatedly asserts that under BLM administrative regulations the protests and lawsuits challenging the lease sales would have delayed the sales from coming to fruition for years. E.g. Motion in Limine at 3, 18. DeChristopher would like a fair opportunity to demonstrate that the government was violating its own laws and/or regulations to push the lease sales through before the Obama administration and Congress took office, and that “[t]he lease sale represents the point at which the BLM makes an irreversible and irretrievable commitment[] of resources[.]” Southern Utah Wilderness Alliance et al. v. Stephen Allred, in his official capacity as Assistant Secretary for Lands and Minerals Management of the United States Department of the Interior, et al., United States District Court for the District of Columbia, Case Number 08-2187, Temporary Restraining Order at page 4 (finding the plaintiffs' preliminary showing to this effect justified the TRO).

The Motion in Limine makes numerous assertions about DeChristopher's motivations and intentions prior to and during the alleged offenses. Id. at 5-6. These motivations and intentions are normally the province of a jury to assess. See Sandstrom

California v. Green, 399 U.S. 149, 162 (1970) (discussing the salutary benefits of cross-examination in the context of jury assessment of witness credibility).

_____ Prior to assessing the proffer, the Court should consider the rationale for the standard of proof DeChristopher must meet at this procedural juncture. Historically, our courts have been reticent to adjudicate criminal cases before the cases are presented to juries. For instance, the Government is routinely allowed to go to trial on the basis of the words used in the indictment. See, e.g., United States v. Todd, 446 F.3d 1062, 1067-68 (10th Cir. 2006). Courts faced with pretrial motions to dismiss indictments are not to require proof of facts, or to assess the adequacy of the facts to be proved by the Government. Id. at 1068-69. The “rare exception” to this general rule permits district court judges to adjudicated motions to dismiss if the facts are undisputed, the Government stipulates to the courts’ consideration of the undisputed facts in adjudicating a pretrial motions to dismiss, and the Government cannot prevail with the undisputed facts as a matter of law. Id.

Unlike the Government, criminal defendants have numerous constitutional rights to present their defenses. See, e.g., Crane v. Kentucky, 476 U.S. 683, 690 (1985).

Accordingly, criminal defendants are entitled to have the jury adequately instructed by the court on recognized defenses, provided that the evidence, when viewed through the

v. Montana, 442 U.S. 510, 523 (1979). This Court should at least hear from Mr. DeChristopher and the other witnesses before assessing his intentions.

eyes of one reasonable juror, would support that defense. See, e.g., United States v. Apperson, 441 F.3d 1162, 1204 (10th Cir. 2006). The reasonable juror standard reflects the reality that only one juror is required in a criminal case to prevent a conviction and preserve the defendant's presumption of innocence.² Accordingly, in assessing the defendant's entitlement to present a defense to a jury, the Court is to accept all evidence which supports the defense. United States v. Butler, 485 F.3d 569, 571-72 (10th Cir. 2007).

PROFFER³

It is both possible and proper for a choice of evils defense to succeed in bringing a just result in a criminal case. As the trial brief, jury instructions, verdict, and related press coverage of the "Hercules 3" criminal trespass case in Addendum F demonstrate, justice can prevail when courts allow the presentation of such defenses in appropriate cases.⁴ The Kingsnorth 6 verdict is an international example of a similar defense

²Cf., e.g., Wiggins v. Smith, 539 U.S. 510, 537 (2003) (reversing capital sentence for ineffective assistance after concluding that if the defense case had been handled competently, there was "a reasonable probability that at least one juror would have struck a different balance.").

³A list of potential witnesses and the topics of their potential testimony for the evidentiary hearing and/or trial is attached as Addendum I. It is subject to change depending on witness availability on whatever date the Court may allow a hearing or defense at trial.

⁴During oral argument, Defense Counsel advised a surprised Court that the choice of evils defense had been successfully presented in Utah before. The case counsel was referring to is documented in Addendum F.

prevailing in a criminal trial.⁵

The “choice of evils” or necessity defense generally includes four elements:

(1) [the defendant] was faced with a choice of evils and chose the lesser evil; (2) [the defendant] acted to prevent imminent harm; (3) [the defendant] reasonably anticipated a direct causal relationship between [his] conduct and the harm to be averted; and (4) [the defendant] had no legal alternatives to violating the law.

United States v. Turner, 44 F.3d 900, 902 (10th Cir. 1995).

CHOICE OF EVILS

The Government’s motion in limine anticipated that DeChristopher would claim that his actions were a lesser evil than a law he disagreed with which the Government does not identify. Motion in Limine at 15-16. Actually, the greater evils DeChristopher was seeking to combat were the Government’s violation of its own laws and regulations and the consequential exacerbation of global warming and climate change,⁶ and

⁵See, e.g., <http://www.greenpeace.org.uk/blog/climate/kingsnorth-trial-breaking-news-verdict-20080910> (Greenpeace website article, “Breaking News: Kingsnorth 6 Found Not Guilty!”).

⁶“Global warming” is defined as “[a]n overall warming of the planet, based on average temperature over the entire surface.” E.g., <http://www.grinningplanet.com/2007/01-02/global-warming-vs-climate-change.htm>.

“Climate change” is defined as “[c]hanges in regional climate characteristics, including temperature, humidity, rainfall, wind, and severe weather events.” See *id.*

While both occur as natural phenomena, human-caused greenhouse gasses resulting primarily from the use of fossil fuels are increasing both global warming and climate change at greatly accelerated rates. This is causing several catastrophic environmental effects, which include:

destruction of irreplaceable natural and cultural resources.

The Court is requested to rule that a reasonable juror could find that the governmental actors' violations of federal law and administrative regulations prior to and during the auction were greater evils than the completely nonviolent offenses

Melting (and possible disappearance) of glaciers and mountain snow caps that feed the world's rivers and supply a large portion of the fresh water used for drinking and irrigation.

A rise in sea levels due to the melting of the land-based ice sheets in Greenland and Antarctica, with many islands and coastal areas ending up more exposed to storm damage or even underwater.

Increasingly costly "bad weather" events such as heat waves, droughts, floods, and severe storms.

Lowered agricultural productivity due to less favorable weather conditions, less available irrigation water, increased heat stress to plants, and an increase in pest activity due to warmer temperatures.

Increases in vector-borne infectious diseases like malaria and Lyme Disease.

Large numbers of extinctions of higher-level species due to their inability to adapt to rapidly changing climate and habitat conditions.

Id.

A very disturbing Youtube video powerfully captures the destruction of and risk to human life caused by global warming and climate change. See <http://www.youtube.com/watch?v=rkLq8ZODQzM>.

The "Geneva Human Impact Report, Counting the Human Cost of Climate Change" details the fallout the people of the Earth are currently experience and can anticipate experiencing in the future. It is found at <http://www.ghf-geneva.org/OurWork/RaisingAwareness/HumanImpactReport/tabid/180/Default.aspx>.

A DVD including the evidence DeChristopher might use to explain the issues of global warming and climate change to a jury is included in Addendum H.

DeChristopher is alleged to have committed.⁷ The Court is asked to rule that a reasonable juror could find that global warming and climate change, and the other environmental and cultural results of the lease sale at issue, were greater evils than the offenses with which Dechristopher stands charged. See Addendum C.

If permitted to exercise his constitutional rights to defend against the criminal charges, DeChristopher will likely testify as to the evils he perceived which prompted his actions, and to explain why he felt that his actions were lesser evils than those he was trying to combat. Additionally, he would call qualified experts on governmental malfeasance prior to and during the lease sale. The BLM conducted the auction on December 19, 2008, without first obtaining proper air pollution and ozone level statistics which were required in Environmental Impact Statements required by National Environmental Policy Act. See 42 U.S.C. § 4332 (2)(C). The BLM failed to properly consider the “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas[] [and] [t]he degree to which the proposed action affects public health or safety.” See 40 C.F.R. § 1508.27(b)(3), (2). The BLM also

⁷See, e.g., “A Report on the Bush Administration Assaults on Our National Parks, Forests, and Public Lands,” in Addendum A; September 2009 report from the United States Government Accountability Office, “Energy Policy Act of 2005; Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act,” in Addendum B. See also BLM Final Review of 77 Oil and Gas Lease Parcels Offered in BLM-Utah’s December 2008 Lease Sale, in Addendum C.

violated the National Historic Preservation Act because it failed to account for the adverse effects of the lease sales on effects to historic properties. See 36 C.F.R. § 800.3(a). The BLM also violated the Federal Land Management Policy Act because it failed to observe its duty to protect the “quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” of these public lands. See 43 U.S.C. §1701(a)(8).

Additionally, fact and expert witnesses could document how the Bush Administration was hiring gas and oil company employees as volunteers to process lease permits expeditiously, rushing lease sales through without adequate time for proper review of environmental impact, and restricting the public means of protesting the lease sales (i.e. by failing to number the parcels on maps which people were to use in bringing challenges to the individual leases). See also, e.g., Washington Post article, “Report Says Oil Agency Ran Amok,” September 11, 2008 (detailing the official reports on the scandalous behavior of Minerals Management Services (“MMS”) federal employees, who “steered contracts to favored clients,” and shared gifts, drugs and sex with energy firm representatives).

He would also call qualified experts on global warming and climate change, and on the other environmental and cultural consequences of the governmental malfeasance at issue.

IMMINENT HARM

_____The Tenth Circuit has recognized that the requirement to show imminence might be relaxed in cases wherein the crimes at issue are victimless. United States v. Patton, 451 F.3d 615, 637 (10th Cir. 2006). The Patton court observed that the Model Penal Code recognizes a modified necessity defense in such cases, which has also been recognized by other authorities.⁸ The Patton court declined to relax the imminence requirement, given its general reluctance to modify common law defenses, and because the crime at issue there, felon in possession of body armor, was likely to invite such a defense in most cases (as many convicted felons might feel the need for protection) and if accepted, might permit the defense to “swallow up the crime.” Id.

DeChristopher asks this Court to consider whether relaxation of the imminence requirement would be appropriate here. His alleged offenses had no lasting harmful impact, but only delayed the lease of the land in the illegal auction until the Obama

⁸The opinion states:

Mr. Patton, then, is asking us to restructure the requirements of the necessity defense for purportedly “victimless” crimes. Others have made the same suggestion. *See, e.g.*, Model Penal Code § 3.02(1)(a) (offering a “choice of evils” defense that does not require imminence but does require that “the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged”); Lawrence P. Tiffany & Carl A. Anderson, *Legislating the Necessity Defense in Criminal Law*, 52 Denv. L.J. 839, 854 (1975) (“No matter how improbable or temporally remote the threatened harm, should not the scales be tipped in favor of a defendant who sought to avoid that threatened harm by an act that posed no threat to anyone?”); *Aldrich v. Wright*, 53 N.H. 398, 1873 WL 4187, at *5 (1873).

administration was able to review the illegalities involved in the auction, and revoke from future auctions the parcels which should not have been sold. Far from harming our society, DeChristopher's actions succeeded in forcing the government to begin observing and following its own laws which are crucial to the protection of our environment.

Relaxation of the imminence requirement would not portend to promote ongoing violence or dangers which concerned the Patton court, as DeChristopher is not charged with violent or dangerous offenses which are inherently likely to spawn similar defenses that might nullify all such prosecutions or "swallow up the crimes."⁹ Compare Patten, supra. For purposes of the proffer, however, DeChristopher assumes that no such relaxation of the imminence requirement will be permitted.

The word "imminent" is frequently used to describe an event which is proximate in time, or about to happen immediately.¹⁰ DeChristopher can demonstrate that his actions

⁹ The first count alleges that DeChristopher organized and participated in a scheme, arrangement, plan or agreement to defeat the Federal Oil and Gas Lease Reform Act described in 16 U.S.C.A. § 3148, by representing himself to be a *bona fide* bidder when he was not, by completing a bidder registration form certifying his good faith intention to acquire an oil and gas lease on the lands, and by bidding on and purchasing oil and gas leases which he could not and did not intend to purchase. The second count alleges that in a matter within the jurisdiction of the BLM, DeChristopher knowingly and willfully made a false and fraudulent material misrepresentation by completing and signing a bidder registration form which certified that he had a good faith intention to acquire an oil and gas lease on lands offered by auction, when he had no true intent to do so.

¹⁰ See, e.g., Burlington Northern and Santa Fe Ry. Co. v. Grant, 505 F.3d 1013, 1020 (10th Cir. 2007) (citing, *inter alia*, Meghrig v. KFC Western, Inc., 416 U.S. 479, 485 (1996)).

Burlington and Meghrig are both cases decided in the context of environmental

responded to an immediate harm, because they succeeded in thwarting the immediate harm – the Bush Administration’s rush to push the lease sales through in this specific auction, contrary to the governing law, before the Obama administration and the newly elected Congress took over.¹¹

However, the word “imminent” more accurately describes the nature of a threat (genuine, as opposed to hypothetical), rather than the temporal proximity of the threat, and hence also describes a present threat of a harm, which may come to fruition in the future. Burlington at 1020-21, citing Meghrig, 516 U.S. at 485. To meet the latter definition of imminence, it suffices to show one point in a chain of events which may cause the harm. See id.

If given the opportunity to do so at an evidentiary hearing and/or trial, DeChristopher will show that he acted to stop the immediate harm the Bush Administration was causing when it was breaking federal regulations and laws and rushing the leases through in an effort to get the land in the hands of the oil and gas

law, and interpret the RCRA, a hazardous waste statute which does not define imminence.

¹¹See, e.g., New York Times Article, October 9, 2009, “Legal Cost for Throwing a Monkey Wrench” (quoting Interior Secretary Ken Salazar’s assessment of the auction: “There was a headlong rush to leasing in the prior administration that led to the kinds of shortcuts we have demonstrated [in the report about the auction DeChristopher was involved in].”). The article is included in Addendum D.

companies before the new administration and Congress took control.¹² In addition to his own testimony, he would call expert witnesses to explain the government's violation of its own laws, regulations and/or policies.

He would also attest to and call expert witnesses to explain the harms posed by the government's actions, which were not limited to the harms inherent in government corruption, but also, constituted present threats of very significant environmental harms to our planet, the ecosystem, and the natural and cultural resources at stake in the auction.

_____The environmental havoc caused by climate change and global warming is presently occurring and poses catastrophic threats to our present and future that are fairly characterized as imminent. See, e.g., Connecticut v. American Elec. Power Co. Inc., ___ F.3d _____, 2009 WL 2996729 at *25-*28 (reversing lower court's dismissal of nuisance suits brought by several states, cities, and land trusts against six major fossil-fuel burning power plants to enjoin their contribution to global warming; find that global warming and climate change are sufficiently imminent (certain to occur in the future) to satisfy Article III standing requirements).¹³

¹²See, e.g., New York Times, November 7, 2008 article, "U.S. to Open Parks Near Public Land for Drilling," attached as Addendum E.

¹³It is elementary that a federal court's subject matter jurisdiction over a case is contingent on the plaintiff's standing to bring the suit. See, e.g., DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341-42 (2006). The plaintiff bears the burden of proving standing. See, e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). The elements of standing are 1) the violation of a concrete, particularized, actual and imminent legal interest, 2) causation of the injury by the claimed violation, and 3) likelihood that the relief sought will redress the injury. See, e.g., id.

CAUSAL RELATIONSHIP BETWEEN DECHRISTOPHER'S CONDUCT AND HARMS TO BE AVERTED

The Government correctly notes that DeChristopher must establish that he reasonably anticipated a direct causal relationship between his actions and the aversion of the identified harms. See Motion in Limine at 17-18. See, also, e.g., United States v. Turner, 44 F.3d 900, 902 (10th Cir. 1995). This element of causation is essential to the rationale of the necessity defense, which protects the defendant's beneficial breaking of the law, provided that it was committed to avert a greater harm to society. Conversely, if there was no hope that the individual's act of lawbreaking would actually serve the higher good, there was no benefit from or necessity for breaking the law. E.g., United States v. Schoon, 971 F.2d 193, 197 (9th Cir. 1991).

If permitted, DeChristopher would attest to his reasonable belief that he anticipated his actions would thwart the Government's unlawful auction, and also avert its consequential exacerbation of global warming and climate change, and its destruction of irreplaceable natural and cultural resources. Expert witnesses would also detail this element of the defense, by explaining how the Government was violating the law (the primary immediate harm DeChristopher anticipated to thwart with his conduct). These witnesses would also explain how the Government's malfeasance threatened to harm the earth and ecosystem by exacerbating climate change, and threatened to destroy irreplaceable environmental and cultural resources (the more life and quality of life threatening harm he anticipated to thwart by his conduct). Finally, these witnesses would

explain how DeChristopher's actions were reasonably anticipated to avert the harms. With this evidence, DeChristopher will be able to establish the requisite causation element -- anticipation of aversion of the harms through his conduct. See, e.g., Connecticut v. American Elec. Power Co. Inc., ___ F.3d ____, 2009 WL 2996729 at *28-32 (reversing lower court's dismissal of nuisance suits brought by several states, cities, and land trusts against six major fossil-fuel burning power plants to enjoin their contribution to global warming; in addressing causation and redressability elements of Article III standing, the court recognized that causation was sufficient if the defendants contributed to global warming, regardless of other contributing factors, and that the courts are properly viewed as able to redress the harm, if the result of the suit would be to provide "some measure of relief").

This case does not involve mere indirect civil disobedience, wherein someone breaks a law to protest a different government law or policy. There is a clear nexus between DeChristopher's actions and the harms he was averting. His conduct was much like that of a person "demolish[ing] a home to create a firebreak and prevent[ing] conflagration of an entire community."¹⁴ He thwarted the auction in order to stop ongoing government corruption and to protect the Utah and world communities and ecosystems. Compare United States v. Schoon, 971 F.2d 193, at 195 and 198 (9th Cir.

¹⁴See Schoon, 971 F.2d at 198 (citing this example of an adequate causal nexus to justify a necessity defense in a traditional case not involving indirect civil disobedience).

1991) (defendant protested U.S. policy in El Salvador by splashing IRS offices with fake blood and refused to disperse upon the command of a federal officer; court found no possibility that this indirect civil disobedience would stop the killings in El Salvador); United States v. Maxwell, 254 F.3d 21, 28 (1st Cir. 2001) (defendant, who trespassed on military base with the intent to disrupt naval exercises there, showed no reasonable anticipation that this conduct would cause Trident missiles to leave an area where he had no proof they had been in three years); United States v. Montgomery, 772 F.2d 733, 376 (11th Cir. 1986) (trespassers splashing blood around a weapons plant did not show a reasonable anticipation that their conduct would cause nuclear disarmament); and United States v. Dorrell, 758 F.2d 427, 433 (9th Cir. 1985) (defendants' illegal entry into government property and spraypainting property not reasonably anticipated to stop MX missile program, nuclear war or world starvation).

ABSENCE OF LEGAL ALTERNATIVES

The final element DeChristopher must prove to the satisfaction of at least one reasonable juror is that the harms he sought to aver could not have been similarly prevented by other legal options. See, e.g., Dorrell, 758 F.2d 427, 431 (9th Cir. 1985). DeChristopher was immediately stopping the Government malfeasance which preceded and was operant in the auction. As the Secretary of the Interior Ken Salazar has recently acknowledged, the prior Bush administration engaged in a “headlong rush to leasing” and

took “shortcuts” which violated the environmental laws, in the very auction DeChristopher thwarted.¹⁵ Sitting in that room in the middle of that auction, which was rife with the Government’s blatant violation of its own laws, DeChristopher was compelled to take immediate action. “[T]he lease sale represents the point at which the BLM makes an irreversible and irretrievable commitment[] of resources[.]” Southern Utah Wilderness Alliance et al. v. Stephen Allred, in his official capacity as Assistant Secretary for Lands and Minerals Management of the United States Department of the Interior, et al., United States District Court for the District of Columbia, Case Number 08-2187, Temporary Restraining Order at page 4 (finding that the plaintiff’s preliminary showing to this effect justified a TRO).¹⁶

If permitted to defend against the serious criminal charges, DeChristopher and the aforementioned witnesses will provide testimony sufficient to convince at least one reasonable juror that at the moment of truth in the auction, DeChristopher had no legal alternative available to stop the immediate harm of governmental malfeasance. Particularly in the face of the Bush Administration’s rush to push the leases through the auction and into the hands of the gas and oil companies through unlawful means, DeChristopher had no time or means to hold a parade, gather celebrities, call a legislative representative, hold a press conference, file a protest, or file a lawsuit. At the time of the

¹⁵The article is included in Addendum D.

¹⁶Judge Urbina’s ruling is in Addendum G.

alleged offenses, these legal alternatives proposed by the Government, see Motion in Limine at 20, would have been completely ineffective in stopping the Government's illegal conduct, assuming *arguendo* that DeChristopher had the means to resort to those options. Because the governmental misconduct preceding and during the auction created a real emergency, which could not have been similarly averted by any lawful option, DeChristopher's choice to act as he did satisfies the fourth element of the choice of evils defense. See Schoon, supra.

CONCLUSION

As the foregoing proffer demonstrates, the Government's concern that DeChristopher should not be allowed to defend himself because global warming is a political question exclusively reserved to the legislative branch of government is not well-founded. The issues to be decided by the jury are guided by settled principles of federal law governing the choice of evils or necessity defense, and any federal court would be fully competent to preside over the trial and instruct the jury on the relevant law. In presiding over this criminal case, the Court is not called upon to make any policy decisions which are outside the realm of the judiciary, or to take any actions which conflict with such policy decisions made by or reserved to Congress. Accordingly, there are no legitimate concerns about the justiciability of the issues which would require this Court to withhold from DeChristopher his day in court. See, Connecticut v. American

Elec. Power Co. Inc., ___ F.3d ____, 2009 WL 2996729 at *8-*15 (reversing lower court's dismissal of nuisance suits brought by several states, cities, and land trusts against six major fossil-fuel burning power plants to enjoin their contribution to global warming; rejecting the lower court's reasoning that global warming presents a non-justiciable political question).

The Government's fear that the jury will nullify the law if DeChristopher is allowed to defend against its charges, Motion in Limine at 2, 22-27, provides no excuse for nullifying DeChristopher's constitutional rights to defend against these serious federal charges. Moreover, the Government's fear fundamentally misunderstands the nature of the jury's historic function in our criminal justice system.

The jury system is premised on the idea that rationality and careful regard for the court's instructions will confine and exclude jurors' raw emotions. Jurors routinely serve as impartial factfinders in cases that involve sensitive, even life-and-death matters. In those cases, as in all cases, juries are presumed to follow the court's instructions.

CSX Transp. Inc. v. Hensley, 129 S.Ct. 2139, 2141 (2009) (citation omitted).

As officers of the Court, counsel for DeChristopher will honor the law, present the evidence, and argue for DeChristopher within the jury instructions given by the Court.

Respectfully submitted this _____ day of October, 2009.

YENGICH, RICH & XAIZ
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By: /s/ Elizabeth Hunt
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was efiled and served by
electronic notice to all parties listed below on this _____ day of October, 2009:

BRETT L. TOLMAN, UNITED STATES ATTORNEY
JOHN W. HUBER, ASSISTANT UNITED STATES ATTORNEY
SCOTT B. ROMNEY, ASSISTANT UNITED STATES ATTORNEY

/s/ Myrleen Wright

ADDENDUM A

A Report on the Bush Administration Assaults on Our National Parks, Forests and Public
Lands

ADDENDUM B

September 2009 report from the United States Government Accountability Office,
“Energy Policy Act of 2005; Greater Clarity Needed to Address Concerns with
Categorical Exclusions for Oil and Gas Development under Section 390 of the Act”

ADDENDUM C

BLM Final Review of 77 Oil and Gas Lease Parcels Offered in
BLM-Utah's December 2008 Lease Sale

ADDENDUM D

New York Times Article, October 9, 2009,
“Legal Cost for Throwing a Monkey Wrench”

ADDENDUM E

New York Times article, November 7, 2008,
“U.S. to Open Parks Near Public Land for Drilling”

ADDENDUM F

Trial Brief, Jury Instructions, Verdict and Press

ADDENDUM G

Judge Urbina's Ruling in SUWA Suit Pertaining to Auction

ADDENDUM H

DVD on Climate Change and Global Warming



ADDENDUM I

Tentative Witness List