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CENTER for BIOLOGICAL DIVERSITY

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September 2, 2016

**VIA FACSIMILE**

Mary Jo Rugwell  
State Director  
BUREAU OF LAND MANAGEMENT  
Wyoming State Office  
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Cheyenne, Wyoming 82009  
Fax No.: 307-775-6203

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**Re: Supplemental Protest of BLM November 1, 2016 Wyoming High Desert Competitive Oil and Gas Lease Sale**

Dear Director Rugwell:

The Center for Biological Diversity, Great Old Broads for Wilderness and the Sierra Club hereby file this Supplemental Protest of the Bureau of Land Management's ("BLM") planned November 1, 2016 oil and gas lease sale, Environmental Assessment and Finding of No Significant Impact DOI-BLM-WY-D040-2016-0138-EA pursuant to 40 CFR §3120.1-3.

This supplemental protest relates to the inclusion of each of the 21 parcels of federal minerals for oil and gas leasing, covering 32,422.020 acres administered by the Kemmerer, Pinedale, Rawlins, and Rock Springs Field Offices. The parcels are located in the High Desert District of southern Wyoming. Parcels included in this supplemental protest are listed as follows:

**Kemmerer Field Office:**

WY-1611-016 2560.000 Acres	WY-1611-017 640.000 Acres
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**Pinedale Field Office:**

WY-1611-018 2399.000 Acres	WY-1611-019 557.560 Acres	WY-1611-020 2360.000 Acres	WY-1611-021 1960.000 Acres
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**Rawlins Field Office:**

WY-1611-001 1056.350 Acres	WY-1611-002 585.130 Acres	WY-1611-003 2549.410 Acres	WY-1611-004 1609.340 Acres	WY-1611-005 307.590 Acres
WY-1611-006 640.000 Acres	WY-1611-007 1829.060 Acres	WY-1611-008 947.000 Acres	WY-1611-009 1287.380 Acres	WY-1611-010 1930.200 Acres
WY-1611-011 2548.070 Acres	WY-1611-012 2560.000 Acres	WY-1611-013 1936.650 Acres	WY-1611-014 1679.280 Acres	

**Rock Springs Field Office:**

WY-1611-015 480.000 Acres
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**SUPPLEMENTAL PROTEST****I. Protesting Parties: Contact Information and Interests:**

This Supplemental Protest is filed on behalf of the Center for Biological Diversity, Great Old Broads for Wilderness and the Sierra Club by:

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The Center is a non-profit environmental organization with over 48,500 members, many of whom live and recreate in Wyoming. The Center uses science, policy and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to actively advocate for increased protections for species and their habitats in Wyoming. The lands that will be affected by the proposed lease sale include habitat for listed, rare, and imperiled species that the Center has worked to protect including rare, endangered and threatened species like the Greater Sage-Grouse and big game such as mule deer and pronghorn. The Center's board, staff, and members use the public lands in Wyoming, including the lands and waters that would be affected by actions under the lease sale, for quiet recreation (including hiking and camping), scientific research, aesthetic pursuits, and spiritual renewal.

Great Old Broads for Wilderness is a national organization that engages and ignites the activism of elders to preserve and protect wilderness and wild lands. Broads gives voice to the millions of older Americans who want to protect their public lands as Wilderness for this and

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future generations. We bring experience, commitment, and humor to the movement to protect the last wild places on Earth.

The Sierra Club is a national nonprofit organization of approximately 635,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Wyoming Chapter of the Sierra Club has approximately 950 members. Sierra Club members use the public lands in Wyoming, including the lands and waters that would be affected by actions under the lease sale, for quiet recreation, aesthetic pursuits, and spiritual renewal. These areas would be threatened by increased oil and gas development that could result from the proposed lease sale.

## **II. Supplemental Statement of Reasons as to Why the Proposed Lease Sale Is Unlawful:**

On September 1, 2016, BLM's Washington, D.C. office issued Instruction Memorandum 2016-143, *Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments -Oil & Gas Leasing and Development Sequential Prioritization* (September 1, 2016) ("IM 2016-143"), to the BLM's State Directors, providing "guidance on prioritizing implementation decisions for . . . BLM oil and gas leasing and development" to be consistent with the Greater Sage-Grouse plan amendments. The IM, which does not amend the plans but provides implementation guidance, is "effective immediately," IM 2016-143 at 11, and therefore applies to the Wyoming High Desert District's proposed November 2016 sale. Protestors, in our September 1, 2016 protest, incorporated by reference herein, previously raised the issue of the proposed sale's inconsistency with the RMP's direction to prioritize leasing outside of sage-grouse Priority and General Habitat Management Areas, but we now submit this supplemental protest to address the proposed sale's inconsistency with the BLM's own new prioritization guidance.<sup>1</sup>

BLM's proposed decision to lease the parcels listed above does not conform to the agency's IM 2016-143 because the leasing EA does not consider site-specific impacts to Greater Sage-Grouse and does not prioritize leasing outside of Priority and General Habitat Management Areas (PHMAs and GHMAs). IM 2016-143's purpose is to provide consistency across the agency when leasing decisions impact Greater Sage-Grouse habitat. It provides a "prioritization sequence" for BLM state offices to follow when choosing to lease areas near or in Greater Sage-Grouse habitats. The IM prioritization sequence is as follows:

1. Lands outside of GHMAs and PHMAs: BLM State Offices will first consider leasing EOIs for lands outside of PHMAs and GHMAs. These lands should be the first priority for leasing in any given lease sale.
2. Lands within GHMAs: BLM State Offices will consider EOIs for lands within the GHMAs, after considering lands outside of both GHMAs and PHMAs. When

<sup>1</sup> The Center for Biological Diversity et al., Protest on High Desert District Lease Auction: November 2016 Lease Parcels (submitted Sept 2, 2016).

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considering the GHMA lands for leasing, the BLM State Office will ensure that a decision to lease those lands would conform to the conservation objectives and provisions in the GRSG Plans (e.g., Stipulations).

3. Lands within PHMAs: BLM state offices will consider EOIs for lands within PHMAs after lands outside of GHMAs and PHMAs have been considered, and EOIs for lands within GHMA have been considered. When considering the PHMA lands for leasing, the BLM State Offices will ensure that a decision to lease those lands would conform to the conservation objectives and provisions in the GRSG Plans (e.g., Stipulations) including special consideration of any identified SFAs.

IM 2016-143 at 4.

All of the parcels in this lease sale (WY-1611-001, WY-1611-002, WY-1611-003, WY-1611-004, WY-1611-005, WY-1611-006, WY-1611-007, WY-1611-008, WY-1611-009, WY-1611-010, WY-1611-011, WY-1611-012, WY-1611-013, WY-1611-014, WY-1611-015, WY-1611-016, WY-1611-017, WY-1611-018, WY-1611-019, WY-1611-020, WY-1611-021) are located within the current range of Greater Sage-Grouse, including 7 parcels covering 7,167.40134 acres in priority habitat management areas, and 19,929.04227 acres in general habitat management areas.<sup>2</sup> Indeed, 84% of the acres in this lease sale are sage grouse habitat.<sup>3</sup> Thirteen of these parcels also fall within four miles of leks, which provide "important life-history habitat features," IM 2016-143 at 10.<sup>4</sup> Although the EA's justification for leasing these parcels names briefly two of the factors BLM is instructed to consider (proximity to existing leases and oil and gas potential); it contains no site-specific consideration or analysis of the proximity of the proposed leases to "important life-history habitat features (for example, distance from any active sage-grouse leks)." IM 2016-143 at 4.

IM 2016-143 further instructs BLM that "[a]t the time the leasing priority is determined, when leasing within GHMA or PHMA is considered, BLM should consider, first, areas determined to be non-sage-grouse habitat and then consider areas of lower value habitat." *Id.* The EA does not provide either the BLM or the public with sufficient information to permit a reasonable determination of whether the proposed leasing action could be limited to areas of either non-sage-grouse habitat or areas of lower value habitat.

Nor has the BLM complied with the Instruction Memorandum's suggestion to consider existing density of surface disturbance prior to leasing in Wyoming PHMA. Wyoming's plans,

<sup>2</sup> See *Id.*, Exhibit B and C (Exhibit B: Center for Biological Diversity, Sage Grouse Habitat map 1 (Parcels WY-1611-001, WY-1611-002, WY-1611-003, WY-1611-004, WY-1611-005, WY-1611-006, WY-1611-007, WY-1611-008, WY-1611-009, WY-1611-010, WY-1611-011, WY-1611-012, WY-1611-013, WY-1611-014, WY-1611-015) (2016); Exhibit C: Center for Biological Diversity, Sage Grouse Habitat map 2 (Parcels WY-1611-016, WY-1611-017, WY-1611-018, WY-1611-019, WY-1611-020, WY-1611-021) (2016)).

<sup>3</sup> *Id.*

<sup>4</sup> See Rocky Mountain Wild Maps Game Map 4 (parcels 15, 16, 18); Game Map 5 (parcels 3, 4, 5, 10, 11, 13); Map 6 (parcels 20 and 21); Game Map 7 (parcels 115 and 108) (Rocky Mountain Wild, Map: Nov 2016 WY Lease Sale EA – Maps 3, 4, 5, 6, 7, 9 – Species and Places (May 3, 2015); Rocky Mountain Wild, Map: Nov 2016 WY Lease Sale EA – Maps 3, 4, 5, 6, 7, 9 – Big Game (May 3, 2016) ("Rocky Mountain Wild Maps"). Available at <http://rockymountainwild.org/rocky-mountain-oil-gas-leasing>.

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unique among the BLM sage-grouse plans, allow surface disturbance within new leases in PHMA, albeit subject to controlled surface use stipulation WL-4024. Because of the possibility for surface disturbance within Wyoming PHMA, the Instruction Memorandum suggests that "BLM may want to use SDARTT [Surface Disturbance Analysis and Reclamation Tracking Tool]" to calculate existing and approved disturbance in parcels before they are offered." IM at 5 n.5. Because, as BLM acknowledges, many of the proposed leases are proximate to existing leases and/or development, it is not only appropriate but necessary to analyze both existing disturbance and already-improved disturbance in the area of the proposed leases in order to determine whether the PHMA controlled surface use stipulation will actually be adequate to keep disturbance density within plan-recommended thresholds.

Additionally, the leasing EA tiers to and relies on RMP decisions for management of Wyoming greater sage-grouse habitat that fail to follow the best available science regarding measures necessary to ensure the survival and recovery of the species. The proposed leasing action also, moreover, violates FLPMA by failing to conform to a key management prescription of those plans – the obligation to "prioritize the leasing and development of fluid mineral resources outside GRS habitat."

The BLM is subject to clear direction in the IM 2016-143 and the RMP amendments that its sage-grouse RMP plans and conservation strategy rely not only on stipulations within designated habitats (stipulations acknowledged as insufficient, in Wyoming, to result in a net conservation gain for general habitat, *see* 2015 RMPA ROD at 1-30 to 1-31), but also on a larger strategy of prioritizing development outside of all sage-grouse habitats.<sup>5</sup> Despite its acknowledgement of the prioritization requirement by deferring over 71,800 acres, however, the BLM's proposed action would lease 21 parcels which all contain general and priority habitat.<sup>6</sup> It is simply impossible to understand how offering leases all within sage-grouse habitat is consistent with the IM 2016-143 prioritization sequence and the RMP requirement to prioritize leasing outside such habitat.

In its response to Protestors' comments on the draft EA, BLM refers to its statement in the EA that "[T]he parcels located in PHMA are proximate to existing production, do not exhibit GSG lek conflicts, are located in "checkerboard" land ownership areas, and are identified as having high or very high oil and gas reserves potential. These areas may provide nesting, wintering, and/or breeding habitat for Greater Sage-Grouse." EA at 44. The fact that the affected sage-grouse habitat is located in checkerboard, near existing production, and/or in "high potential" oil and gas areas does not, however, excuse BLM of its obligations to (a) comply with IM 2016-143 prioritization sequence, (b) comply with the RMP's direction to prioritize leasing outside of PHMA and GHMA, and (c) to assess the site-specific impacts to nesting, wintering, and/or breeding habitat prior to leasing.

<sup>5</sup> *See, e.g.*, U.S. Bureau of Land Management, Casper, Kemmerer, Newcastle, Pinedale, Rawlins and Rock Springs Field Offices, Approved RMP Amendment for Greater Sage Grouse at 19.

<sup>6</sup> EA at 42-44.

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BLM also appears not to have considered the use of mitigation to avoid net loss of sage-grouse habitat function (including requesting relinquishment of existing leases) as required both the amended RMPs and IM 2016-143. The implementation memorandum explains:

To encourage leasing and development in the areas with the least GRSG conflicts, and in consideration of the DOI's and the BLM's policies regarding landscape-scale mitigation, the Authorized Officer should consider whether the mitigation (avoidance, minimization, rectify, reduce, and compensate) will be sufficient to achieve the net conservation gain mitigation standard for any adverse impacts to GRSG habitat, as identified in the GRSG Plans.<sup>7</sup>

The EA contains no information sufficient to support a reasoned determination whether mitigation, if any, will be sufficient to achieve the "net conservation gain" standard. Without analysis of (a) the population-specific impacts to affected GRSG populations, (b) the mitigation measures, if any, in place to address those impacts, and (c) the efficacy of those mitigation measures, it is impossible to understand how the Authorized Officer can have sufficient information to determine whether the net conservation gain standard will be met.

Wyoming contains the largest U.S. sage-grouse population and is an important source of sage-grouse in neighboring states, preservation of populations inhabiting the areas for lease is crucial to the sage-grouse's viability range-wide. A 2015 study modeling population trends shows that "most populations have continued to decline over the last 6 years reaching a low in 2013 below 50,000 males attending leks range-wide, an 8 fold decline from the late 1960s."<sup>8</sup> Some of the largest declines occurred in the Wyoming Basin.<sup>9</sup> "Overall persistence of the species into the far distant future is not assured or even likely without maintenance of the essential connectivity amongst populations and without substantial changes in the current trajectories of the populations occupying this broad region."<sup>10</sup> The study confirms that existing management policies have not been effective in protecting sage-grouse.<sup>11</sup> The new policies established in the recent sage-grouse amendments also fall short.<sup>12</sup>

Stabilizing the Wyoming Basin population could be a major step forward for preserving "essential connectivity amongst populations" and reversing declining trends. Wyoming Basin populations perhaps have the best chance of recovery due to their larger size.<sup>13</sup> These populations may also be more resilient against the threats of drought and wildfire, which will only increase with climate change.<sup>14</sup> Recovering Wyoming Basin populations will maintain connectivity with Great Plains sage-grouse, helping to restore Great Plains populations and

<sup>7</sup> IM 2016-13 at 8 (citations omitted).

<sup>8</sup> Garton, E. et al., Greater Sage-Grouse Population Dynamics and Probability of Persistence, Final Report to Pew Charitable Trusts, 18 March 2015, p. 23.

<sup>9</sup> *Id.*, pp.23-24, 27.

<sup>10</sup> *Id.*, p. 28.

<sup>11</sup> *Id.*, p. 27.

<sup>12</sup> *Id.*, pg. 27.

<sup>13</sup> *Id.*, p. 23, 28,

<sup>14</sup> *See id.*, p. 24, 26 (noting role of wildfire and drought in precipitous population declines).

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others. Failing to protect these populations risks far-reaching repercussions on the sage-grouse's survival throughout the west.

IM 2016-143 further stipulates that the inclusion of the sage-grouse prioritization violation in this protest triggers an additional review and briefing memo that must be provided to BLM headquarters 15 days prior to leasing. IM 2016-143 at 8. Protestors request that this briefing memo be made available for meaningful public review prior to the leasing sale. The briefing memo should also be added to the final lease sale notice and Environmental Assessment as a matter of record for this leasing decision.

For the reasons set forth herein, in addition to the reasons set forth in our September 1, 2016 protest, the 21 above-enumerated parcels should be deferred from sale until such time as BLM can adequately review proposed leases within sage-grouse habitat for compliance with the Sage-Grouse Resource Plan Amendments and the "prioritization sequence" implementing those plans set forth in Instruction Memorandum 2016-143.

Thank you for your consideration of this supplemental protest.

Sincerely,



Diana Dascalu-Joffe  
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Center for Biological Diversity



Shelley Silbert  
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Great Old Broads for Wilderness



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