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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

U.S. BUREAU OF LAND MANAGEMENT, et al.

Defendants.

SIERRA CLUB, et al.,

Plaintiffs,

v.

RYAN ZINKE, in his official capacity as Secretary of the Interior, et al.

Defendants.

Case No. 3:17-cv-03804-EDL

Consolidated with No. 3:17-cv-03885-EDL

DEFENDANTS' MOTION TO TRANSFER THESE ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING

Date: September 19, 2017
Time: 9:00 a.m.
Judge: Hon. Elizabeth D. Laporte

Courtroom E, 15th Floor
450 Golden Gate Ave., San Francisco, CA

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NOTICE OF MOTION AND MOTION TO TRANSFER

PLEASE TAKE NOTICE THAT on September 19, 2017, at 9:00 a.m. before the Honorable Elizabeth D. Laporte, Courtroom E, 15th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Defendants, the Bureau of Land Management; Katharine S. MacGregor, in her official capacity as Acting Assistant Secretary for Land and Minerals Management, U.S. Department of the Interior; and Ryan Zinke, in his official capacity as Secretary of the Interior, will and hereby do move the Court for an order transferring these two related and consolidated actions, 3:17-cv-03885-EDL and 3:17-cv-03804-EDL, to the U.S. District Court for the District of Wyoming pursuant to 28 U.S.C. § 1404(a).

These two cases challenging the Bureau of Land Management's ("BLM") postponement of the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule's future compliance dates should be transferred to the District of Wyoming where two lawsuits challenging the Rule are already pending. A transfer is in the interests of justice as it would conserve judicial resources and prevent inconsistent judgments by ensuring that only one court is considering issues arising out of the Rule. It is also the more convenient forum, as all but one of the parties to these cases are already party to the litigation in the District of Wyoming. Where related cases are pending in another forum and another court is already familiar with the complex issues involved in these actions, Plaintiffs' choice of venue is outweighed by the strong interests favoring transfer.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

A. The Waste Prevention Rule

On November 18, 2016, BLM issued the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (hereinafter the "Waste Prevention Rule" or "Rule"). 81 Fed. Reg. 83,008-01 (Nov. 18, 2016). The Rule applies to the development of federal and Indian minerals nationwide. It prohibits the venting of natural gas by oil and gas operators except in certain limited situations and requires that operators capture a certain percentage of the gas they produce each month. *Id.* at 83,023-24; 43 C.F.R. §§ 3179.6-3179.7. The Rule also

requires that operators inspect equipment for leaks and update equipment that contributes to the loss of natural gas during oil and gas production. 81 Fed. Reg. at 83,011, 83,022; 43 C.F.R. §§ 3179.301-3179.304, 3179.201-3179.204. While the Rule went into effect on January 17, 2017, many of the Rule's requirements were to be phased in over time, and would not become operative until January 17, 2018. 81 Fed. Reg. at 83,023-24, 83,033; 43 C.F.R. §§ 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, 3179.301-3179.305.

B. The District of Wyoming Litigation Challenging the Rule

On November 15, 2016, two industry groups, Western Energy Alliance and the Independent Petroleum Association of America, filed suit in the U.S. District Court for the District of Wyoming challenging the Rule. *W. Energy All. v. Zinke*, No. 16-cv-280 (D. Wyo. filed Nov. 15, 2016). Three days later, the States of Wyoming and Montana filed a second lawsuit in the District of Wyoming challenging the Rule. *Wyoming v. U.S. Dep't of Interior*, No. 16-cv-285 (D. Wyo. filed Nov. 18, 2016). Both sets of plaintiffs immediately moved for a preliminary injunction of the Rule, arguing, among other things, that BLM lacked statutory authority to promulgate the Rule and that BLM's cost-benefit analysis for the Rule was inadequate. Mot. for Prelim. Inj. & Mem. in Supp. of Mot. for Prelim. Inj., *Wyoming*, No. 16-cv-285 (D. Wyo. filed Nov. 28, 2016), ECF Nos. 21, 22; Mot. for Prelim. Inj. & Mem. in Supp. of Mot. for Prelim. Inj., *W. Energy All.*, No. 16-cv-280 (D. Wyo. filed Nov. 23, 2016), ECF Nos. 12, 13.

The cases were consolidated by the court, and the States of California and New Mexico, as well as a coalition of environmental groups including all but one of the Plaintiffs in this action,[1] intervened in the lawsuits on the side of the government. The State of North Dakota intervened on the side of the petitioners. On January 16, 2017, the court denied the motions for preliminary injunction, finding that the petitioners had not met their burden to demonstrate a likelihood of success on the merits. *Wyoming v. U.S. Dep't of Interior*, No. 16-cv-285, No. 16-

[1] Of the environmental organization Plaintiffs, only the Fort Berthold Protectors of Water and Earth Rights has not intervened in the Wyoming litigation.

cv-280, 2017 WL 161428 (D. Wyo. Jan. 16, 2017). The court set a schedule for briefing the merits, which was extended multiple times to allow the parties to work through administrative record issues.

C. BLM's Reconsideration of the Waste Prevention Rule

On March 28, 2017, President Donald J. Trump issued an Executive Order requiring that the Secretary of the Interior "review" the Waste Prevention Rule and, "if appropriate, . . . as soon as practicable, . . . publish for notice and comment proposed rules suspending, revising, or rescinding" the Rule. Exec. Order No. 13,783, § 7(b), 82 Fed. Reg. 16,093, 16,096 (Mar. 28, 2017). On March 29, 2017, the Secretary of the Interior issued Secretary's Order 3349 requiring the Director of the BLM, within 21 days, to "review" the Rule and "report to the Assistant Secretary – Land and Minerals Management on whether the rule is fully consistent with the policy set forth in" the Executive Order. U.S. Dep't of the Interior, Sec'y Order No. 3349, § 5(c)(ii) (Mar. 29, 2017), https://elips.doi.gov/elips/0/doc/4512/Page1.aspx.

Pursuant to this direction, the Department of the Interior developed a three-step plan to propose to revise or rescind the Rule and prevent any harm from compliance with the Rule in the interim. The first step, and the action challenged in these lawsuits, is the postponement of the Rule's upcoming January 2018 compliance deadlines. On June 15, 2017, BLM published in the Federal Register a Notice of the Postponement of Certain Compliance Dates of the Rule (hereinafter "Postponement Notice"). 82 Fed. Reg. 27,430-01 (June 15, 2017). As explained in the Postponement Notice, BLM exercised its authority under 5 U.S.C. § 705 to postpone the Rule's upcoming January 2018 compliance dates, pending judicial review, due to the "substantial cost that complying with these requirements poses to operators . . . and the uncertain future these requirements face in light of the pending litigation and administrative review . . . ." *Id.* at 27,431 (internal citation omitted). "Postponing these compliance dates will help preserve the regulatory status quo while the litigation is pending and the Department reviews and reconsiders the Rule." *Id.*

The second and third steps of BLM's plan are two notice and comment rulemakings. The first rulemaking would propose to suspend certain provisions of the Rule already in effect and

extend the compliance dates of requirements not yet in effect, but currently postponed pursuant to BLM's Postponement Notice. *See* Fed. Resp'ts' Mot. to Extend Briefing Deadlines ¶ 4, *Wyoming*, No. 16-cv-285 (D. Wyo. filed June 20, 2017), ECF No. 129. This rulemaking is intended to provide relief to states and operators from the Rule's requirements while BLM reconsiders the Rule. The second rulemaking would propose to permanently rescind or revise the Rule. *Id.* ¶ 5.

Based on BLM's three-step plan, the agency sought an extension of the briefing schedule in the District of Wyoming cases. *Id.* ¶ 9. The court granted that extension. Order Granting Mot. to Extend Briefing Deadlines, *Wyoming*, No. 16-cv-285 (D. Wyo. filed June 27, 2017), ECF No. 133. Under the current schedule, BLM is to file a status report regarding the status of the suspension rulemaking on September 1, 2017, and opening merits briefs are due October 2, 2017. *Id.* at 3.

Despite the ongoing litigation surrounding the Rule in the District of Wyoming, and despite their participation in that litigation as intervenors, Plaintiffs filed the instant lawsuits challenging BLM's Postponement Notice in the U.S. District Court for the Northern District of California on July 5 and July 10, 2017. Compl., *Sierra Club v. Zinke*, No. 17-cv-3885 (N.D. Cal. filed July 10, 2017), ECF No. 1; Compl., *California v. BLM*, No. 17-cv-3804 (N.D. Cal. filed July 5, 2017), ECF No. 1.

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 1404(a), "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought . . . ." "Under this statute, whether an action should be transferred involves a two-step inquiry. The transferor court must first determine whether the action 'might have been brought' in the transferee court and then the court must make an 'individualized, case-by-case consideration of convenience and fairness.'" *Ctr. for Biological Diversity v. Lubchenco*, No. 09-cv-4087, 2009 WL 4545169, at *2 (N.D. Cal. Nov. 30, 2009) (quoting *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006)).

Under the first prong of the Section 1404(a) analysis, the reviewing court must determine whether the proposed transferee court is a proper venue for the action. "The second prong of the § 1404(a) analysis requires the Court to consider the three factors set forth in the statute: (1) the convenience of parties; (2) the convenience of witnesses; and (3) the interests of justice." *Lubchenco*, 2009 WL 4545169, at *3. In weighing these factors,

> the court may consider: (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000).

III. ARGUMENT

The Court should transfer these cases to the District of Wyoming where litigation concerning the Waste Prevention Rule is already underway. These actions could have been brought in the District of Wyoming in the first instance, yet Plaintiffs chose to file suit in this court, thereby forcing a second court to become familiar with the Rule and inconveniencing Defendants by making them litigate related issues in two different venues. Transfer will conserve the resources of both the courts and the parties and will prevent inconsistent judgments by ensuring that all issues concerning the Rule are before the same court.

A. These Cases Could Have Been Brought in the District of Wyoming

These actions satisfy the first prong of Section 1404(a)'s requirements for transfer because they could have been brought in the District of Wyoming in the first instance. Per 28 U.S.C. § 1391(e), a civil action against an official or agency of the United States may be brought in any judicial district in which "(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1). The District of Wyoming is a proper venue because BLM

resides in Wyoming,[2] the litigation giving rise to the claims at issue in these cases is occurring in Wyoming, and a substantial part of the property potentially affected by these actions is in Wyoming.

The events underlying Plaintiffs' claims—that is, the litigation in the District of Wyoming—occurred in Wyoming. BLM's authority for the Postponement Notice, 5 U.S.C. § 705, allows an agency to postpone a future compliance date "pending judicial review." As BLM explained in the Postponement Notice, the judicial review upon which the agency's postponement is premised is the Wyoming litigation challenging the Rule. 82 Fed. Reg. at 27,430-31 (explaining that BLM postponed the upcoming 2018 compliance dates due to the "substantial cost that complying with these requirements poses to operators . . . and the uncertain future these requirements face in light of the pending litigation and administrative review"). Indeed, if not for the ongoing litigation in the District of Wyoming, BLM could not have invoked Section 705.

Moreover, a substantial part of the property that is subject to the Postponement Notice is located in Wyoming. Wyoming contains 40.7 million acres of federal mineral estate that is subject to the Rule and, thus, to the Postponement Notice. *See* https://www.blm.gov/about/what-we-manage/wyoming ("BLM Wyoming is No. 1 in federal gas production and No. 2 in federal oil production."); *see also S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 234 (D.D.C. 2012) ("Because this action concerns real property situated in Utah, all parties conclude that this suit could have been brought in the District of Utah."); *Wildearth Guardians v. BLM*, 922 F. Supp. 2d 51, 54 (D.D.C. 2013) ("This action 'might have been brought' in the District of Wyoming, *see* § 1404(a), because the tracts of land at issue are located there and the contested regulatory actions took place there."). In 2016, federal and Indian minerals in Wyoming produced 38,795,792 barrels of oil and 1,447,859,133 Mcf of natural gas. Tichenor Aff. ¶ 4(a),

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[2] Officers and agencies of the United States can have more than one residence, and BLM can properly be considered a resident of both Wyoming and California, among numerous other jurisdictions, because it has offices in those states and manages land and resources in both states. *See Dehaemers v. Wynne*, 522 F. Supp. 2d 240, 248 (D.D.C. 2007); https://www.blm.gov/locations.

attached as Ex. A. Because of the substantial amount of oil and gas development on BLM-managed lands and minerals in Wyoming, a substantial portion of the costs of compliance with the postponed deadlines would be realized in Wyoming.

In short, the District of Wyoming is a proper venue under Section 1391 because the litigation that led to the Postponement Notice is underway there, lands and minerals that are directly affected by the Postponement Notice are located there, and BLM resides there.

B. Transfer to the District of Wyoming is in the Interest of Justice

These actions also satisfy the second prong of the Section 1404(a) transfer analysis because the strong interest in having a single court review issues arising out of the same rulemaking outweighs Plaintiffs' choice of forum. "The question of which forum will better serve the interest of justice is of predominant importance on the question of transfer, and factors involving convenience of parties and witnesses are in fact subordinate." *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, No. C 03-3711 MHP, 2003 WL 22387598, at *4 (N.D. Cal. Oct. 14, 2003) (citing *Pratt v. Rowland*, 769 F. Supp. 1128, 1133 (N.D. Cal. 1991)); *see also Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997) ("Consideration of the interest of justice, which includes judicial economy, may be determinative to a particular transfer motion, even if the convenience of the parties and witnesses might call for a different result." (internal quotations and citation omitted)). "One frequently mentioned element of the 'interest of justice' is the desire to avoid multiple litigations based on a single transaction." *Wireless Consumers*, 2003 WL 22387598, at *4. Transferring a case to a forum where a related case is already pending conserves judicial resources and avoids duplicative litigation and potentially inconsistent results. *See, e.g., id.* at *4-5; *Cadenasso v. Metro. Life Ins. Co.*, No. 13-cv-5491, 2014 WL 1510853, at *7 (N.D. Cal. Apr. 15, 2014); *Mussetter Distrib., Inc. v. DBI Beverages Inc.*, No. 09-cv-1442, 2009 WL 1992356, at *5 (E.D. Cal. July 8, 2009).

Because the District of Wyoming is intimately familiar with the Waste Prevention Rule, it is in the interest of judicial economy for that court to hear these related actions. The District of Wyoming has heard multiple preliminary injunction motions seeking to enjoin the Rule, and decided those motions in large part on petitioners' likelihood of success on the merits. Mot. for

Prelim. Inj. & Mem. in Supp. of Mot. for Prelim. Inj., *W. Energy All.*, No. 16-cv-280 (D. Wyo.), ECF Nos. 12, 13; Pls.' Mot. for Prelim. Inj. & Mem. in Supp. of Mot. for Prelim. Inj., *Wyoming*, No. 16-cv-285 (D. Wyo.), ECF Nos. 21, 22; *Wyoming*, 2017 WL 161428, at *4-10. It is particularly familiar with the postponed provisions of the Rule—the capture requirements and flaring, pneumatic equipment, storage tank, and leak detection provisions—and the issue of compliance costs because those same provisions and that same issue were also raised in the Wyoming litigation. *Id*. This familiarity will aid in review of the Postponement Notice as BLM's reason for postponing the Rule's upcoming compliance deadlines—the substantial cost of compliance when weighed against the uncertain future of the Rule—necessarily implicates the substance of the Rule's provisions. That is, reviewing the Postponement Notice under the Administrative Procedure Act ("APA") to determine whether it is arbitrary and capricious will require consideration of the postponed provisions to determine whether the agency's evaluation of compliance costs, and its weighing of those costs against other factors, constitutes a rational connection between the facts found and the conclusion made. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (describing standard of review under the APA).

This level of familiarity is no small matter. Even a brief perusal of the Rule makes clear that it is complex, with numerous subparts and interconnected provisions. 43 C.F.R. subpart 3179; *see also Madani v. Shell Oil Co.*, No. 07-cv-4296, 2008 WL 268986, at *2 (N.D. Cal. Jan. 30, 2008) (transferring case when transferee court had decided related cases because transferee court would be "in the best position to determine substantive issues raised in the present litigation" whereas, in contrast, the transferor court "would have to invest significant time and resources to reach a similar level of familiarity"). Transfer will aid in judicial economy by capitalizing on the District of Wyoming's familiarity and preventing another court from expending resources learning the intricacies of the Rule.

Plaintiffs' argument that the four-part preliminary injunction test applies to an agency's decision to postpone future compliance dates reinforces the relevance of the District of Wyoming's familiarity with the Rule. *See* Compl. ¶¶ 5, 72, *Sierra Club*, No. 17-cv-3885;

Compl. ¶¶ 50-52, *California*, No. 17-cv-3804. While Defendants do not concede that the preliminary injunction test is relevant to an agency's postponement of future compliance dates under Section 705, if a reviewing court applied the test, it would have to consider the likelihood of success on the merits of the litigation pending before the District of Wyoming, as that litigation is the basis for BLM's Postponement Notice. It would also require the court to consider the harms alleged by states and oil and gas operators, as those harms are also part of the basis for the postponement. 82 Fed. Reg. at 27,431. Because the District of Wyoming has already evaluated these issues in the context of the preliminary injunction motions challenging the Rule, it would be most efficient for that same court to consider the issues in the context of the Postponement Notice. Indeed, if this Court were to evaluate those same preliminary injunction factors in these cases, it would risk reaching conclusions inconsistent with the District of Wyoming.

Transferring these actions would also aid judicial efficiency by allowing a single court to coordinate the schedules of all cases concerning the Waste Prevention Rule. Because the outcome of this litigation has the potential to impact the litigation pending in the District of Wyoming, it is more efficient for all of the cases to be before the same court, allowing that single court to decide how best to schedule the deadlines of each case given their interconnectedness. *See Ellison v. Autozone Inc.*, No. 11-cv-7686, 2013 WL 12141323, at *3 (C.D. Cal. Mar. 11, 2013) (transferring related case in part because "a court presiding over a single action is often better able to manage all discovery and alternative dispute resolution, issue rulings which establish law of the case, and coordinate pretrial schedules" (citation and internal quotation marks omitted)). In addition, the District of Wyoming is in the best position to consider Plaintiffs' claim that the postponement of future compliance dates was not intended to preserve the status quo "pending judicial review." Compl. ¶ 71, *Sierra Club*, No. 17-cv-3885; Compl. ¶¶ 53-56, *California*, No. 17-cv-3804. That claim turns on the status of the Wyoming litigation and, thus, the District of Wyoming is best situated to evaluate it.

A transfer would also potentially allow the District of Wyoming to consolidate these cases with the litigation already pending in that court. "[T]he 'feasibility of consolidation,'. . .

weighs heavily in favor of transfer and" can "outweigh[] the deference due plaintiffs' choice of forum." *Papaleo v. Cingular Wireless Corp.*, No. 07-cv-1234, 2007 WL 1238713, at *1 (N.D. Cal. Apr. 26, 2007) (citing *A.J. Indus. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 503 F.2d 384, 389 (9th Cir. 1974)). Consolidation is appropriate if actions involve "a common question of law or fact." Fed. R. Civ. P. 42(a). Here, the challenges to the Postponement Notice and the challenges to the Rule involve overlapping questions of fact regarding the compliance costs of the Rule and the BLM's reasons for developing and postponing the Rule.

Other factors also weigh in favor of transfer. First, the District of Wyoming is a more convenient forum for these lawsuits because all but one of the same parties are already litigating related cases there. Of the Plaintiffs to these two consolidated actions, only one—Fort Berthold Protectors of Water and Earth Rights—has not intervened in the Wyoming litigation, and that organization is located in North Dakota. Compl. ¶ 21, *Sierra Club*, No. 17-cv-3885. Of the 16 other Plaintiff environmental organizations, only the Sierra Club is headquartered in California, though that organization also has a Wyoming chapter. *Id.* ¶ 11; https://sierraclub.org/chapters. The majority of the Plaintiff environmental organizations have no offices in California,[3] and, of the environmental organizations' attorneys who have thus far noticed an appearance, only one of fifteen is located in California. Even the State of California cannot claim that Wyoming is any less convenient a forum than this district, as California is already party to the Wyoming litigation. In comparison, this district is significantly less convenient for Defendants, who must now litigate related issues in two different venues and two different circuits. Any arguments that Plaintiffs may make in regard to their own convenience must be viewed with skepticism when

[3] Dine Citizens Against Ruining Our Environment, Citizens for a Healthy Community, Environmental Law and Policy Center, Fort Berthold Protectors of Water and Earth Rights, Montana Environmental Information Center, San Juan Citizens Alliance, Western Organization of Resource Councils, Wilderness Workshop, Wildearth Guardians, and Wyoming Outdoor Council have no offices in California. The Center for Biological Diversity, Environmental Defense Fund, National Wildlife Federation, National Resource Defense Fund, and the Wilderness Society have field offices in California but appear to be headquartered elsewhere.

they have already demonstrated their ability and willingness to litigate in the District of Wyoming by voluntarily intervening in that action.

Second, Wyoming has ties to and an interest in these cases that is at least equal to that of California. *See Lubchenco*, 2009 WL 4545169, at *3 ("As in most environmental cases, however, the issue of which federal district should adjudicate the dispute is determined primarily by weighing a plaintiff's choice of forum against the competing interest in 'having localized controversies decided at home.'" (quoting *Piper Aircraft v. Reyno*, 454 U.S. 235, 241 n.6 (1981))). Both California and Wyoming contain mineral estates managed by BLM, but Wyoming has far more federal and Indian oil and gas development impacted by the Rule and the Postponement Notice than California, let alone just the Northern District of California. In 2016, federal and Indian minerals in Wyoming produced 38,795,792 barrels of oil and 1,447,859,133 Mcf of natural gas, whereas the federal minerals in the entire State of California produced 11,495,815 barrels of oil and 12,173,184 Mcf of natural gas. Ex. A ¶ 4. Moreover, to the extent Plaintiffs claim to have an interest in the Postponement Notice's impact on climate change, *see* Compl. ¶ 38, *Sierra Club*, No. 17-cv-3885; Compl. ¶¶ 16-17, *California*, No. 17-cv-3804, climate change, "by its nature, is not a local phenomenon, but crosses state and international borders." *Lubchenco*, 2009 WL 4545169, at *7. Thus, California has no more of an interest in that issue than Wyoming. *Id.* (denying transfer to Alaska based on argument that Alaska has greater interest in climate change).

Other factors considered by courts when determining whether to transfer a case are neutral here. Both this Court and District of Wyoming are familiar with federal law. As these cases are brought under the APA and will be decided on an administrative record, Compl. ¶¶ 1, 5, 68-79, *Sierra Club*, No. 17-cv-3885; Compl. ¶¶ 3-4, 38-60, *California*, No. 17-cv-3804, neither court is located nearer sources of proof or witnesses. And while the District of Wyoming has fewer cases pending before each judge than this district (109 civil cases in the District of Wyoming versus 523 in the Northern District of California), it takes slightly longer for a case in that court to reach disposition (9.7 months in the District of Wyoming versus 7.3 months in the Northern District of California). Fed. Court Mgmt. Statistics for Dec. 2016,

http://www.uscourts.gov/statistics-reports/federal-court-management-statistics-december-2016; *see also Cung Le v. Zuffa, LLC*, 108 F. Supp. 3d 768, 779 (N.D. Cal. 2015) ("[E]ven assuming Plaintiffs are correct that the legal process in Nevada generally takes longer than it does in this district, that is simply not enough to overcome those other factors showing why this specific litigation is appropriately venued there.").

In sum, the Section 1404(a) factors weigh heavily in favor of transfer to the District of Wyoming where related litigation is pending. Plaintiffs' choice of forum is owed little deference when that choice wastes judicial resources and inconveniences other parties, and when Plaintiffs are already actively involved in related litigation in Wyoming.

IV. CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court transfer these two actions to the U.S. District Court for the District of Wyoming where two related cases are already pending.

Respectfully submitted this 26 day of July, 2017.

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Exhibit A

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, by and through XAVIER BECERRA, ATTORNEY GENERAL; and STATE OF NEW MEXICO, by and through HECTOR BALDERAS, ATTORNEY GENERAL, Plaintiffs, v. U.S. BUREAU OF LAND MANAGEMENT; KATHARINE S. MACGREGOR, Acting Assistant Secretary for Land and Minerals Management, U.S. Department of the Interior; and RYAN ZINKE, Secretary of the Interior, Defendants.	Case No. 3:17-cv-03804-EDL **AFFIDAVIT OF JAMES TICEHNOR IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER THIS ACTION TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING** Hearing date: Time: Courtroom: Judge: Hon. Elizabeth D. Laporte

AFFIDAVIT OF JAMES TICHENOR

I, James Tichenor, declare as follows:

1. I am employed as an economist by the Energy, Minerals, and Realty Management Directorate of the Bureau of Land Management (BLM), within the U.S. Department of the Interior (Department). I have held that position since December 2010. The directorate provides policy development and oversight to the BLM's minerals programs and its realty programs. Prior to that date, I worked as an economist for the Office of Surface Mining Reclamation and Enforcement with the Department. I earned a Bachelor of Arts degree in Economics from Emory University in 2001. I earned a Masters in Public Policy from Georgetown University in 2012.
2. I was actively involved in the development of the BLM's Waste Prevention, Production Subject to Royalties, and Resource Conservation rule (81 Fed. Reg. 83008 (Nov. 18, 2016)). I was one of the principal authors of the Regulatory Impact Analysis for that rule.
3. Using production data from the Office of Natural Resource Revenue (ONRR), I have generated estimates of the Federal and Indian oil and gas production in the states of Wyoming and California for Fiscal Year 2016 (FY2016).
4. My analysis of the ONRR data indicates the following for FY2016:
    a. The state of Wyoming produced 38,795,792 barrels (bbl) of Federal and Indian oil and 1,447,859,133 thousand cubic feet (Mcf) of Federal and Indian gas. Additionally, 1,170,706 Mcf of Federal and Indian gas was flared in Wyoming.
    b. The state of California produced 11,495,815 bbl of Federal oil and 12,173,184 Mcf of Federal gas. Additionally, 403,094 Mcf of Federal gas was flared in

California. The ONRR data do not indicate any federally-managed Indian oil or gas production in California in FY2016.

5. I declare that the foregoing is true and correct.

Executed on July 17, 2017.

James Tichenor

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, et al.,

Plaintiffs,

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Defendants.

Case No. 3:17-cv-03804-EDL

Consolidated with No. 3:17-cv-03885-EDL

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO TRANSFER THESE ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING

Having considered Defendants' Motion to Transfer these two consolidated actions to the U.S. District Court for the District of Wyoming pursuant to 28 U.S.C. §1404(a) and any opposition, reply, and oral argument presented, the Court finds that transfer of these actions is in the interests of justice. Therefore, the Court GRANTS Defendants' motion.

IT IS HEREBY ORDERED that actions 3:17-cv-03804-EDL and 3:17-cv-03885-EDL are transferred to the U.S. District Court for the District of Wyoming.

IT IS SO ORDERED.

Dated: _____

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ELIZABETH D. LAPORTE
UNITED STATES MAGISTRATE JUDGE