UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, ET AL.,

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, et al.,

Defendants.

Case No.17-cv-03804-EDL

Related to Case No. 17-cv-03885-EDL

ORDER DENYING DEFENDANTS' MOTION TO TRANSFER

Re: Dkt. Nos. 14, 49, 64

Before the Court is Defendants' Motion to Transfer these related cases to the District of Wyoming. For the reasons set forth below, the Court DENIES the motion.[1]

I. BACKGROUND

Plaintiffs State of California, State of New Mexico, and seventeen environmental organizations filed this case on July 5, 2017, alleging that the decision by Defendants U.S. Bureau of Land Management, Secretary of the Interior Ryan Zinke, and Acting Assistant Secretary for Land and Minerals Management Katharine S. MacGregor to postpone certain compliance dates of the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (the "Rule") violated the Administrative Procedures Act ("APA"). On July 12, 2017, the Court granted Plaintiffs' unopposed motion to relate this case to another case pending before this Court, Sierra Club et al. v. Zinke et al., Case No. 17-cv-03885-EDL.

[1] Intervenor State of North Dakota has moved to join Defendants' motion to transfer here (Dkt. No. 64) and in the related case Sierra Club et al. v. Zinke et al., Case No. 17-cv-03885-EDL, Dkt. No. 49. Because the Court denies Defendants' motion to transfer, these motions are denied as moot. The motions are denied for the additional reason that, as with Intervenors Western Energy Alliance and Independent Petroleum Association of America's motion for administrative relief for leave to file joinder, they are untimely.

On July 26, 2017, Plaintiffs filed a motion for summary judgment in State of California et al. v. U.S. Bureau of Land Management et al., Case No. 17-cv-03804-EDL. The next day, Plaintiffs filed a motion for summary judgment in Sierra Club et al. v. Zinke et al., 17-cv-03885-EDL.

On July 27, 2017, Defendants filed a motion to transfer these cases to the United States District Court for the District of Wyoming. Case No. 17-cv-03894-EDL, Dkt. No. 14. Defendants are currently defending a challenge to the validity of the Rule before that court. See W. Energy All. v. Zinke, Case No. 16-cv-00280 (D. Wyo. filed Nov. 15, 2016). The States of California and New Mexico and, separately, the conservation and tribal groups filed opposition briefs on August 9, 2017. The parties agreed that the motion to transfer was suitable for decision without a hearing.

II. LEGAL STANDARD

Defendants seek to transfer these actions pursuant to 28 U.S.C. § 1404(a), which provides: "[f]or the convenience of the 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." 28 U.S.C. § 1404(a). Determining whether an action should be transferred pursuant to section 1404(a) is a two-step process. 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." Inherent.com v. Martindale-Hubbell, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006) (citing Hatch v. Reliance Ins. Co., 758 F. 2d 409, 414 (9th Cir. 1985); Jones v. GNC Franchising, 211 F. 3d 495, 498 (9th Cir. 2000)). The burden is on the defendant to show that transfer is appropriate. See Earth Island Inst. v. Quinn, 56 F. Supp. 3d 1110, 1115 (N.D. Cal. 2014) (citing Commodity Futures Trading Comm'n v. Savage, 611 F. 2d 270, 279 (9th Cir. 1979)).

III. DISCUSSION

A. Where Suit Could Have Been Brought

There is no dispute that the first prong of the section 1404(a) analysis is met. This action might have been brought under 28 U.S.C. § 1391(b)(1) in the District of Wyoming because Defendant resides there. See 28 U.S.C. § 1391(b) ("A civil action wherein jurisdiction is not

founded solely on diversity of citizenship may . . . be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State . . . "). The Bureau of Land Management maintains offices and manages land in both California and Wyoming, so venue is proper in both jurisdictions.

B. Convenience of Parties, Convenience of Witnesses, and Interests of Justice

As to the second prong of the 1404(a) analysis, the plain language of the statute requires the Court to consider at least three factors in deciding whether to transfer a claim to another court: (1) convenience of parties; (2) convenience of witnesses; and (3) interests of justice. In determining the convenience of the parties and witnesses and the interests of justice, the Court may consider a number of factors, including:

> (1) the plaintiff's choice of forum; (2) the convenience of the parties; (3) the convenience of the witnesses; (4) ease of access to evidence; (5) familiarity of each forum with applicable law; (6) feasibility of consolidation of other claims; (7) any local interest in the controversy; and (8) the relative court congestion and time of trial in each forum.

Gerin v. Aegon USA, Inc., 2007 WL 1033472, at *4 (N.D. Cal. Apr. 4, 2007) (citing Jones, 2011 F. 3d at 498-99 (9th Cir. 2000)). In the usual case, unless the balance of the section 1404(a) factors weighs heavily in favor of the defendants, "the plaintiff's choice of forum should rarely be disturbed." Sec. Investor Prot. Corp. v. Vigman, 764 F. 2d 1309, 1317 (9th Cir. 1985); Decker Coal Co. v. Commonwealth Edison Co., 805 F. 2d 834, 843 (9th Cir. 1986) ("defendant must make a strong showing . . . to warrant upsetting the plaintiff's choice of forum"). However, "[i]f the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or the subject matter, the plaintiff's choice is entitled only to minimal consideration." Pacific Car & Foundry Co. v. Pence, 403 F. 2d 949, 954 (9th Cir. 1968). Transfer should be denied where it would "merely shift rather than eliminate the inconvenience." Decker Coal, 805 F. 2d at 843.

1. Plaintiffs' Choice of Forum

While this suit could have been brought in either court, Plaintiff's choice of forum is accorded substantial deference, especially where, as here, it is Plaintiff State of California's home

forum. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981) (explaining that there is a "strong presumption in favor of the plaintiff's choice of forum" and that "plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum"). This may be especially true when the plaintiff is a sovereign state. See New Jersey v. U.S. Army Corps of Eng'rs, 2010 WL 1704727, at *3-4 (D.N.J. Apr. 26, 2010). Indeed, Defendants have not cited any cases where a lawsuit filed by a state plaintiff in its home court was transferred pursuant to Section 1404(a).

Moreover, Plaintiffs' interests in having this case decided in California do not end there. The conservation and tribal citizen groups also have close ties to California. Three of the Plaintiffs, the Sierra Club, Center for Biological Diversity and Earthworks, are incorporated in California, and the Sierra Club is headquartered in Oakland while the Center for Biological Diversity and Earthworks each have offices there. The Environmental Defense Fund, Natural Resources Defense Council, and Wilderness Society all have offices in San Francisco. All together, the conservation and trial citizen groups have over half a million members who reside in California, of whom over 150,000 live in the Northern District of California.

Plaintiffs have demonstrated that the forum has a significant interest in the litigation, considering the millions of acres of public lands in California that are administered by the Bureau of Land Management. Therefore, this is not the type of case where Plaintiffs' choice of forum is given little consideration. Rather, Plaintiffs' decision to file suit in this court weighs heavily against transfer.

2. Relationship to Pending Litigation in Wyoming

Defendants' principle argument in support of transfer is that it would serve the interests of justice because litigation related to the validity of the original issuance of the Rule is already pending in the District of Wyoming. However, judicial economy does not favor transfer because there is no overlap between this case and the litigation in the District of Wyoming. This case concerns an agency action in which Defendants postponed compliance dates under Section 705 after the effective date had passed. By contrast, the District of Wyoming litigation challenges a different agency action, the BLM's promulgation of the Rule, published on November 18, 2015,

as exceeding its authority under the operative statute. Thus, this case concerns a completely distinct, purely legal question about Defendants' authority to postpone the compliance dates under Section 705. The extent of Defendants' authority under Section 705 is not at issue in the District of Wyoming case, as Section 705 was not invoked.

The mere fact that BLM invoked its Section 705 authority in this case based on pending judicial review in the District of Wyoming does not require deep analysis, if any, of the issues on the merits of that case. Notably, Plaintiffs represent, and the Defendants do not deny, that the administrative record in the District of Wyoming litigation does not even include the postponement notice at issue in this case (82 Fed. Reg. 27,430 (June 15, 2017)), but stops with the issuance of the Waste Prevention Rule in November 2016. The District of Wyoming has already denied the preliminary injunction motions brought by the challengers there. Unlike Wireless Consumers Alliance, Inc. v. T-Mobile USA, Inc., 2003 WL 22387598, at *5 (N.D. Cal. Oct. 14, 2003), which Defendants rely upon in support of their motion, this litigation and the District of Wyoming litigation are neither "intimately related" nor "identical." Thus, judicial economy would not be served by transferring this case to the District of Wyoming. Moreover, the lack of overlap between this case and the case pending in the District of Wyoming make consolidation uncertain and, therefore, that factor also weighs against transfer.

Further, this Court is already familiar with the legal issues in this lawsuit because it recently decided another case involving a federal agency's authority under Section 705 to postpone compliance dates after the effective date has passed. See People of the State of California, et al. v. U.S. Dep't of the Interior et al., Case No. 17-cv-02376-EDL. Accordingly, this factor weighs in favor of maintaining the action in this forum.

3. Convenience of Witnesses and Ease of Access to Evidence

As the parties recognize, the convenience of witnesses and the ease of access to evidence are neutral factors because this case is limited to resolving legal issues. Therefore, neither forum is better situated with respect to witnesses or other evidence.

4. Convenience of the Parties

Convenience of the parties also favors this forum. Litigating this case in California is

more convenient for the Plaintiffs, many of whom are located in California including the State of California and most of the conservation and tribal groups. This remains true even though the State of California is going to the extra expense of making an appearance as an intervenor in the District of Wyoming litigation. Although the State of California and some of the conservation group Plaintiffs intervened in the District of Wyoming litigation after it was initiated by those seeking to invalidate the Rule, Plaintiffs did not choose to file the litigation in that forum. Thus, their decision to intervene does not mean their choice of forum in this case should be disturbed to require them to make additional trips to Wyoming. On the other hand, Wyoming and California are equally convenient for Defendants, as they are primarily based in Washington, D.C.

Moreover, it is reasonable to look at the relative burden to the parties' counsel when assessing this factor, given that the issues raised in this case are predominantly issues of law. None of the attorneys representing Plaintiffs or Defendants are located in Wyoming, and, further reducing their burden, Defendants' counsel is exempt from both jurisdictions' local counsel requirements. See District of Wyoming, Civil Local Rule 84.2(d); Northern District of California, Civil Local Rule 11-2.

5. Local Interest in the Controversy

This forum's local interest in the controversy is a neutral factor, as both California and Wyoming have substantial federally-managed mineral estate and oil and gas production. While Wyoming produces more oil and gas, California has more acres of federal mineral estate administered by BLM than Wyoming. Cf. Mot. at 11, Ex. A ¶ 4 (in 2016 "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") with Mot. at 6 ("Wyoming contains 40.7 million acres of federal mineral estate") and Compl. ¶ 12 ("In California, the Bureau administers 15.2 million acres of public lands, nearly 15 percent of the State's land area, as well as 47 million acres of subsurface mineral estate and 592,000 acres of Native American tribal land").

As Defendants' accurately summarized, "Wyoming has ties to and an interest in these cases that is at least equal to that of California." Mot. at 11. But the fact that another forum also

has an interest in the outcome of this dispute does not override Plaintiff's choice to litigate in this forum. See Ctr. for Biological Diversity v. Kempthorne, 2008 WL 4543043, at *3 (N.D. Cal. Oct. 10, 2008) (concluding that transfer was not proper where the litigation could have impacts "in all fifty states" and therefore "Alaska [was] not the only state with an interest in the litigation").

6. Relative Court Congestion and Time to Disposition

The relative time to disposition slightly favors this forum. See Ctr. for Biological Diversity v. McCarthy, 2015 WL 1535594, at *5 (N.D. Cal. Apr. 6, 2015) ("Courts may use the average time between filing and disposition or trial as a measure for court congestion."). The average time from filing to disposition is 7.4 months in the Northern District of California compared to 9.6 months in the District of Wyoming. See United States District Courts—National Judicial Caseload Profile (Mar. 31, 2017), available at http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2017.pdf. As Plaintiffs point out, this slight difference in average time to disposition could make a difference in this case because the compliance dates at issue are in January 2018. See Ctr. for Biological Diversity v. Lubchenco, 2009 WL 4545169, at *3 (N.D. Cal. Nov. 30, 2009) ("a modest difference in the congestion of the courts' calendars . . . weighs slightly against transfer").

IV. CONCLUSION

The balance of factors relating to transfer under section 1404(a) weigh against transfer. Therefore, Defendants' motion to transfer is DENIED.

IT IS SO ORDERED.

Dated: September 7, 2017

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge