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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-07186-WHO

Consolidated with 3:17-cv-07187-WHO

PROPOSED-INTERVENOR NORTH DAKOTA AND TEXAS'S MOTION TO TRANSFER THESE ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with Proposed Order]

REQUESTED Hearing Date: February 14, 2018
REQUESTED Hearing Time: 2:00 p.m.
Courtroom: 2, 17th Floor

[The Hon. Judge William H. Orrick]

Trial Date: None Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 14, 2018 at 2:00 p.m. in Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, of the above titled Court, Proposed Intervenor-Defendants the States of North Dakota ("North Dakota") and Texas ("Texas") will, and hereby do, move this Court for an order transferring these two related and consolidated actions, 3:17-cv-07186-WHO and 3:17-cv-07187-WHO, to the U.S. District Court for the District of Wyoming pursuant to 28 U.S.C. § 1404(a), and Federal Rule of Civil Procedure 24(c), which requires a responsive pleading to be filed with a Motion to Intervene.

In these consolidated cases, Plaintiffs are challenging the Department of Interior (DOI), Bureau of Land Management's (BLM) promulgation of a rule delaying certain compliance dates of the BLM's 2016 Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule, 81 Fed. Reg. 83.008 (Nov. 18, 2016) ("Venting and Flaring Rule"). Plaintiffs' cases involving the Venting and Flaring Rule should be promptly transferred to the District of Wyoming, as a lawsuit challenging the Rule is already pending in that jurisdiction. Such a transfer would prevent inconsistent outcomes between this Court and the District of Wyoming and conserve judicial resources, as the parties have already briefed these issues in Wyoming, and the court there is familiar with them. Furthermore, such a transfer would not be inconvenient for the parties to this litigation, as Plaintiffs here are (and have long been) parties to the litigation in the District of Wyoming.

North Dakota and Texas respectfully submit the following Memorandum of Points and Authorities in support of their Motion to Transfer These Actions to the U.S. District Court for the District of Wyoming and ask that this Court adopt the attached Proposed Order.

I. INTRODUCTION

The above-captioned action is very closely related to, and largely overlaps, a case brought by the States of Wyoming and Montana, challenging the Venting and Flaring Rule, that has been pending in the District of Wyoming since last November. The District of Wyoming has already received extensive briefing on the underlying factual and regulatory issues involved in this case as well as many of the scheduling and timing arguments raised by Plaintiffs here, issued a lengthy order denying a preliminary injunction, and is deeply involved in the agency actions and issues that are now being presented

piecemeal in this Court. The parties before the Court here, including Plaintiffs California, New Mexico, and Citizen Groups; and Proposed Intervenors Western Energy Alliance, Independent Petroleum Association of America, American Petroleum Institute, North Dakota, and Texas, have all appeared in the District of Wyoming from the outset of that case, demonstrating their willingness and ability to litigate in that forum. As such, the District of Wyoming is clearly the appropriate venue for this action as well.

Plaintiffs are engaging in classic forum shopping. In the Wyoming Litigation, they are defendants—defendant-intervenors—and thus found themselves in the venue selected by the petitioners. By initiating their own action in a separate court, they seek to move disputes regarding the Venting and Flaring Rule from the forum selected by the original petitioners into a forum of their own choice, imposing substantial burdens on this Court and on parties that have already invested considerable time and resources briefing these issues in the Wyoming Litigation. This is inconsistent with the federal doctrine of comity and prudential concepts of efficient use of judicial resources, and creates the risk of inconsistent rulings on similar issues involving a rule of national applicability.

II. BACKGROUND

This case deals with an ancillary rule issued by BLM delaying the effective dates of certain provisions of the Venting and Flaring Rule scheduled for January 2018 in light of the Wyoming Litigation and BLM's own regulatory reconsideration of the Venting and Flaring Rule, taken in accordance with the Executive Order 13873 dated March 28, 2017, Presidential Executive Order on Promoting Energy Independence and Economic Growth. *See* Final Rule; Waste Prevention, Production Subject to royalties, and Resource Conservation; Delay and Suspension of Certain Compliance Dates, 82 Fed. Reg. 58,050 (Dec. 8, 2017) ("Delay Rule"). This Delay Rule, as BLM explained to the District of Wyoming, is claimed by BLM to be part of a three-pronged reconsideration strategy. "This plan involves (1) postponement of the upcoming January 2018 compliance deadlines, (2) notice and comment rulemaking to propose suspension of certain provisions of the Rule already in effect and extend the compliance dates of requirements not yet in effect, and (3) publication of a separate proposed rule for notice and comment that would permanently rescind or revise the Rule." Order Granting Motion to Extend Briefing Deadlines, Wyoming Litigation, Dkt. 133 at 2 (D. Wyo. June 27, 2017). Part one of this plan resulted in the BLM's promulgation of an administrative order entitled "Waste Prevention, Production Subject to Royalties, and

Resource Conservation; Postponement of Certain Compliance Dates" ("Suspension Order"). 82 Fed. Reg. 27,430 (June 15, 2017). BLM fulfilled step two of this plan by promulgating the Delay Rule, and intends on revising or rescinding the Venting and Flaring Rule (step three) before the end of the Delay Rule's deferment period. This case has initially challenged only a small piece in a broader puzzle, the Delay Rule, whereas the Wyoming Litigation has already considered all three steps. However, in asking the Court to reinstate the Venting and Flaring Rule as part of their motion for preliminary injunction, Plaintiffs seek to broaden the scope of this litigation to include a consideration of the Venting and Flaring Rule on the merits. *See* ECF No. 3. The parties have already thoroughly briefed the issue of the legal status of the Venting and Flaring Rule in the Wyoming Litigation, and the court there is very familiar with these issues. There is no need for a new court to familiarize itself with the issues that the District of Wyoming has already been handling.

North Dakota, Texas, and the other parties (including Plaintiffs here), as well as the District of Wyoming, have already invested substantial judicial resources in considering issues integral to this case, including both substantive issues surrounding the Venting and Flaring Rule and questions of timing that raise many of the same issues Plaintiffs raise here. Specifically, on January 6, 2017, the District of Wyoming heard argument on several motions for preliminary injunction, devoting several hours to oral argument. *See* Minute Order, Wyoming Litigation, Dkt. 18 (Nov. 30, 2016). At that hearing, the parties presented both legal argument and testimony. State officials from North Dakota attended the hearing and testified regarding North Dakota's comprehensive venting and flaring regulations and the potential impact of the Venting and Flaring Rule on these existing programs. In addition, the briefing on those motions ran for hundreds of pages, including sworn declarations and exhibits, and dealt with highly technical questions of administrative law and oil and gas law. *See* Wyoming Litigation, Dkts. 21, 22, 39, 40, 69, 70, 84, 85, and 86. The Venting and Flaring Rule alone, along with its preamble, fills eighty-five small-print pages of the Federal Register. Both the court and the parties have invested long hours in understanding these issues and litigating them in the District of Wyoming.

The District of Wyoming denied the motions for preliminary injunction in a detailed, 29-page decision that addressed both the merits of the legal arguments presented and questions of timing. *Id.* at Dkt. 92. At the same time, the court issued an expedited merits briefing schedule. The court extended that

briefing schedule in light of the Suspension Order, which it is familiar with. Order Granting Motion to Extend Briefing Deadlines, Wyoming Litigation, Dkt. 128. The court subsequently stayed the proceedings in light of the Delay Rule (about which it has already been partially briefed), BLM's stated intention to reconsider portions of the Venting and Flaring Rule, and this litigation. *See* Order Granting Joint Motion to Stay, Wyoming Litigation, Dkt. 189. The parties have resolved disputes regarding the content of the administrative record, and have filed their merits briefs. In fact, Plaintiffs here have no additional briefs to file in the Wyoming Litigation—the only remaining briefs are any reply briefs that may be filed.

III. ARGUMENT

"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 or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). "The district court has broad discretion to consider case-specific circumstances." *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, No. C 03-3711 MHP, 2003 WL 22387598, at *1 (N.D. Cal. Oct. 14, 2003). To determine whether transfer of venue is proper, the court employs a two-step analysis: "Step one considers the threshold question of whether the case might have been brought in the forum to which the transfer is sought," and step two then "balances the plaintiff's interest to freely choose a litigation forum against the aggregate considerations of convenience of the defendants and witnesses and the interest of justice." *Id.* at *2. Both steps support transfer here.

A. The District of Wyoming is a proper venue for this case.

When considering a motion for transfer, the court must first assure itself that the case could have been brought in the transferee district. *Wireless Consumers All., Inc*. at *2. That inquiry is very straightforward here, because the United States is the Defendant, and Wyoming is a major producer of federal oil and gas, the subject of the regulation at issue. "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, 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

1 action." 28 U.S.C.A. § 1391(e)(1). The BLM is definitely present in the District of Wyoming, and
2 Wyoming is one of the leading states for the production of federal oil and gas—which is not true of the
3 Northern District of California. *See* https://www.blm.gov/programs/energy-and-minerals/oil-and-
4 gas/leasing/regional-lease-sales/Wyoming.

5 **B. Transfer is appropriate to avoid wasteful and duplicative litigation.**

6 One of the primary purposes of the venue transfer provision is to avoid situations where parties
7 must litigate closely related matters in different courts. As the Supreme Court "has made quite clear,"
8 "[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending
9 in different District Courts leads to the wastefulness of time, energy, and money that § 1404(a) was
10 designed to prevent." *Ferens v. John Deere Co.*, 494 U.S. 516, 531 (1990) (quoting *Continental Grain*
11 *Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960)); *see also*, *Brown v. New York*, 947 F. Supp. 2d 317, 325
12 (E.D.N.Y. 2013) (collecting cases); *DataTreasury Corp. v. First Data Corp.*, 243 F. Supp. 2d 591, 594
13 (N.D. Tex. 2003) ("Transfer is particularly appropriate where related cases involving the same issues are
14 pending in another court"); *Liggett Grp. Inc. v. R.J. Reynolds Tobacco Co.*, 102 F. Supp. 2d 518, 537
15 (D.N.J. 2000) (collecting cases); *Hill's Pet Prod., a Div. of Colgate-Palmolive Co. v. A.S.U., Inc.*, 808 F.
16 Supp. 774, 777 (D. Kan. 1992) ("The pendency of related litigation in another forum is a proper factor to
17 consider in resolving choice of venue questions").

18 Transfer is appropriate when the litigation pending in another district "involves essentially the
19 same issues and includes more of the relevant parties" and has "advanced farther." *Spherion Corp. v.*
20 *Cincinnati Fin. Corp.*, 183 F. Supp. 2d 1052, 1059 (N.D. Ill. 2002). "Transfer in such a circumstance has
21 numerous benefits." *Ricoh Co. v. Honeywell, Inc.*, 817 F. Supp. 473, 487 (D.N.J. 1993). "Cases can be
22 consolidated before one judge thereby promoting judicial efficiency; pretrial discovery can be conducted
23 in a more orderly manner; witnesses can be saved the time and expense of appearing at trial in more than
24 one court; and duplicative litigation involving the filing of records in both courts is avoided, thereby
25 eliminating unnecessary expense and the possibility of inconsistent results." *Id*. "Where the action would
26 likely be consolidated with the related action in the transferee district, transfer serves the interests of
27 justice because it avoids potential inconsistent results." *Synthes Inc. v. Knapp*, 978 F. Supp. 2d 450, 459
28 (E.D. Pa. 2013).

1 This principle applies even when "two cases share similar, if not related, issues." *Liggett Grp. Inc.*,
2 102 F. Supp. 2d at 539 ("While it appears these cases are not candidates for consolidation, it appears
3 transferring this litigation to the proposed forum may well prevent the needless loss of time, expense and
4 resources of the parties. In addition, because this litigation and the RJR North Carolina Case involve
5 arguably similar issues . . . [and], the interests of justice are further enhanced by allowing both cases to
6 proceed before one tribunal rather than simultaneously proceeding before two"). "The interests of justice
7 require that the cases be related, not identical." *Columbia Pictures Indus., Inc. v. Fung*, 447 F. Supp. 2d
8 306, 309 (S.D.N.Y. 2006) (quotation omitted). So, for example, the court denied transfer when "the
9 Defendant claims that TJX commonly owns Marshalls and T.J. Maxx, and that TJX, to some undefined
10 extent, is involved in the operation of both stores, [and] the Defendant does not claim that Marshalls and
11 T.J. Maxx are subject to the same policies or operated by the same entities," *Ahmed v. T.J. Maxx Corp.*,
12 777 F. Supp. 2d 445, 453 (E.D.N.Y. 2011), but the court did grant transfer when "this litigation and the
13 RJR North Carolina Case involve arguably similar issues concerning alleged violative pricing schemes
14 and discount cigarettes," *Liggett Grp. Inc.*, 102 F. Supp. 2d at 539, and when there were different
15 defendants but "the theories of liability and . . . the technical operations of the respective websites are
16 substantially similar," *Columbia Pictures Indus., Inc. v. Fung*, 447 F. Supp. 2d 306, 310 (S.D.N.Y. 2006).
17 This action shares many important issues with the Wyoming Litigation. While Plaintiffs here are
18 primarily challenging the Delay Rule, this case is very much intertwined with the subject of the challenge
19 in the Wyoming Litigation—the Venting and Flaring Rule. Indeed plaintiffs here, by challenging the
20 Delay Rule, seek to affirm the legal validity of the Venting and Flaring Rule's original compliance dates.
21 Both cases share the common factual background of the long and complex Venting and Flaring Rule. It
22 would be nearly impossible to determine the validity of the Delay Rule without considering the full
23 history of the Venting and Flaring Rule. The Delay Rule was promulgated by BLM to delay certain
24 deadlines contained in the Venting and Flaring Rule, and the text of the Delay Rule often refers to the text
25 of the Venting and Flaring Rule. *See* 82 Fed. Reg. 58,050. The Delay Rule is merely a small piece in a
26 larger history, and should be evaluated within the full context of the Venting and Flaring Rule. As the
27 court in the Wyoming Litigation has already taken a "deep dive" into the Venting and Flaring Rule,
28 Wyoming Litigation, Dkt. 92, and has also already considered the Delay Rule, whereas this Court has

1 only just begun to consider the Delay Rule, these similar issues should be consolidated in the District
2 Court of Wyoming.
3 Second, the question of the validity of the Delay Rule directly influences the District of Wyoming
4 in the management of the Wyoming Litigation. The District of Wyoming has already stayed the
5 proceedings in light of the Delay Rule and in consideration of this litigation. *See* Order Granting Joint
6 Motion to Stay, Wyoming Litigation, Dkt. 189. The District Court of Wyoming stated that the parties may
7 "seek lifting of the stay should circumstances change warranting such relief." Wyoming Litigation, Dkt.
8 189. One of the circumstances the court cites in justifying the stay is the existence of the Delay Rule. If
9 this Court decides to grant Plaintiffs' requested relief, by invalidating the Delay Rule and reinstating the
10 Venting and Flaring Rule, it would most certainly qualify as a "change in circumstances" for plaintiffs in
11 the Wyoming Litigation. It is likely that the stay would then be lifted in the Wyoming Litigation, and the
12 court there would proceed with litigating the challenge to the Venting and Flaring Rule. This could result
13 in duplicative results, as the Wyoming court would then have to consider the validity of a rule this Court
14 had essentially upheld when it reinstated the Venting and Flaring Rule. If the Wyoming Litigation then
15 invalidates the Venting and Flaring Rule, it would result in the inconsistent application of the Rule
16 nationwide. Considering both cases involve many of the same parties, this could lead to significant
17 regulatory uncertainty. As the court in the Wyoming Litigation held, the actions in these consolidated
18 cases "are inextricably intertwined with the cases before this Court and with the ultimate rules to be
19 enforced . . . piecemeal analysis of the issues would likewise be an inefficient use of judicial resources."
20 To avoid the waste of judicial resources and the possibility of inconsistent outcomes, these cases should
21 be consolidated in the District of Wyoming, the court that has already been thoroughly briefed on the
22 issues.
23 Third, both cases engage BLM's duty to regulate waste and its authority to promulgate rules to
24 fulfill that duty, albeit from different perspectives. Plaintiffs here argue for the reinstatement of the
25 Venting and Flaring Rule, *see* ECF No. 3, while plaintiffs in the Wyoming Litigation, including North
26 Dakota and Texas, argue that the promulgation of the Venting and Flaring Rule exceeded BLM's
27 authority by infringing upon state sovereignty, unlawfully expanding their jurisdiction into state and
28 private lands, and by usurping the regulatory authority of the states and the U.S. Environmental Protection

1 Agency. *See* Wyoming Litigation, Dkt. 144-1. Additionally, Plaintiffs in this case make the argument
2 that, in promulgating the Delay Rule, BLM has "violated" its "statutory mandates to prevent waste and
3 regulate royalties from oil and gas operations on federal and Indian lands," ECF No. 1 at 3, but for
4 plaintiffs in the Wyoming litigation, the Delay Rule is seen as a proper remedy to some of the harms
5 caused by the Venting and Flaring Rule while BLM conducts rulemaking for their proposed revision rule.
6 *See* Wyoming Litigation, Dkt. No. 188. The issue of BLM's duties and authorities within the context of
7 the Venting and Flaring and Delay Rules should be litigated together.
8 Finally, even though Plaintiffs insist this litigation has nothing to do with the Venting and Flaring
9 Rule, *See* ECF No. 52 at note 1, they themselves broaden the scope of this litigation to include the
10 Venting and Flaring Rule by asking this Court to reinstate the Rule in its entirety, making this litigation
11 even more duplicative. In doing so, they are essentially asking this Court to make a ruling on the merits of
12 the Venting and Flaring Rule, as well as the Delay Rule. Both state Plaintiffs California and New Mexico,
13 and Citizen Group Plaintiffs argue that the Venting and Flaring Rule was promulgated in fulfilment of
14 BLM's duty to prevent waste and that, in promulgating the Delay Rule, BLM has disregarded that duty.
15 *See* ECF No. 1 ¶¶ 5, 49, 58, 68; ECF No. 3 at 9, 17–18; *see also Sierra Club, et al. v. Ryan Zinke, et al.*,
16 3:17-cv-07187-WHO (N.D. Cal), Dkt. 1 ¶¶ 100, 117-22, 125, Dkt. 4-1 at 7, 9-11; *see also* Exhibits 2 and
17 3. In response, they ask the Court to invalidate the Delay Rule and reinstate the Venting and Flaring Rule,
18 which would require the Court to accept Plaintiffs' implication that BLM can only fulfill its duty to
19 prevent waste through the Venting and Flaring Rule. Thus, this case becomes as much a consideration of
20 the validity of the Venting and Flaring Rule as of the Delay Rule. If the Court chose to grant Plaintiffs'
21 requested relief, it would prejudice North Dakota and Texas's interests and claims against the Venting and
22 Flaring Rule in the Wyoming Litigation. Moreover, a case considering this same topic already exists in
23 the District of Wyoming, and, because of these similar issues, this litigation should be consolidated there.
24 "It is beyond dispute, then, that the existence of a related action in the transferee district weighs
25 heavily in favor of transfer when considering judicial economy and the interests of justice." *Brown*, 947 F.
26 Supp. 2d at 326 (quotation omitted). These two cases are not only related, but ask this Court and the
27 District Court of Wyoming to resolve the exact same issues involving almost exactly the same parties.
28 This factor weighs strongly in favor of transfer here.

1 **C. The doctrine of federal comity favors transfer.**

2 As this Court previously held, the doctrine of federal comity, or the "first-to-file" rule "supports
3 staying, dismissing, or transferring a second-filed action . . . 'on an issue which is properly before another
4 district.'" *Alioto v. Hoiles*, 2004 U.S. Dist. LEXIS 21398, *12–*13 (N.D. Cal. 2004) (quoting *Church of*
5 *Scientology of Calif. v. United States Dep't of Army*, 611 F.2d 738, 749 (9th Cir. 1979)); *see also Wheat v.*
6 *California*, 2013 U.S. Dist. LEXIS 15634, *19–*20 (N.D. Cal. 2013). This important doctrine "is
7 designed to avoid placing unnecessary burden on the federal judiciary, and to avoid the embarrassment of
8 conflicting judgments. . . . The first to file rule normally serves the purpose of promoting efficiency well
9 and should not be disregarded lightly." *Church of Scientology of Calif.*, 611 F.2d at 749–50 (citations
10 omitted). Furthermore, "'increasing calendar congestion in the federal courts makes it imperative to avoid
11 concurrent litigation in more than one forum whenever consistent with the rights of the parties.'" *Alioto*,
12 2004 U.S. Dist. LEXIS 21398 at *17–*18 (quoting *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979)).

13 The doctrine of comity requires the Court to consider the following three factors: "(1) the
14 chronology of the two actions; (2) the similarity of the parties, and (3) the similarity of the issues." *Alioto*,
15 2004 U.S. Dist. LEXIS 21398 at *13–*14 (citing *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622,
16 625–26 (9th Cir. 1991); *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982)). All
17 three factors favor transferring this case to the District of Wyoming. As discussed above, these two cases
18 involve many of the same parties and substantially similar issues. Therefore, these freshly-filed
19 consolidated cases should be transferred to the District of Wyoming, where the more mature Wyoming
20 Litigation has been pending for over a year.

21 **D. The balance of factors favors transfer.**

22 Because this action is so closely related to the action in the District of Wyoming, the public
23 interest favors transfer. The remaining factors are largely irrelevant or support transfer. "Courts consider
24 the following private interest factors: (1) the residence of the parties and the witnesses; (2) the forum's
25 convenience to the litigants; (3) access to physical evidence and other sources of proof; (4) whether
26 unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the
27 enforceability of the judgment; and (7) all other practical problems that make trial of a case easy,
28 expeditious and inexpensive." *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1145 (9th Cir. 2001) (quotation

omitted). Because this case will be decided largely, or entirely, on an administrative record, factors involving witnesses and evidence are irrelevant. BLM is located in both jurisdictions. Plaintiffs have demonstrated their willingness to litigate in the District of Wyoming by intervening in the Wyoming Litigation and retaining local counsel to participate in that action. Wyoming has a greater interest in this case than California, and particularly than Northern California, because it has a larger volume of federal oil and gas production subject to the Venting and Flaring Rule and federal oil and gas and other uses of federal land make up a much higher percentage of Wyoming's economic activity and employment, but not for Plaintiffs here.

The only factor that favors retaining the case here is that this is the Plaintiffs' chosen venue. This carries less weight here because of the existence of a related case in a forum chosen by the plaintiffs in that action and because it is not the home forum for the majority of the Plaintiffs in this action. Furthermore, a "plaintiff's choice in forum is given considerably less weight," "if the transactions giving rise to the action lack a significant connection to the plaintiff's chosen forum." *Hawkins v. Gerber Prod. Co.*, 924 F. Supp.2d 1208, 1214 (S.D. Cal. 2013) (citing *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968) (stating that a plaintiff's choice of forum is given less consideration when the forum has no particular interest in the parties or subject matter)). Northern California simply does not have the same connection to or interest in BLM's Venting and Flaring Rule as Wyoming because it is not a large producer of oil or natural gas. Wyoming, on the other hand, is one of the country's largest oil and gas producers and will be greatly affected by the requirements of the Venting and Flaring Rule. *See* https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/Wyoming.

"The plaintiff's choice of forum is . . . entitled to less deference where a related action is pending in a different forum . . . where the action in the prospective transferee court was filed first and the subject matters of the two suits are very closely related." *Buckeye Pennsauken Terminal LLC v. Dominique Trading Corp.*, 150 F. Supp. 3d 501, 509 (E.D. Pa. 2015). The Wyoming Litigation was filed more than a year before the above-captioned action, and Plaintiffs, by filing here, are trying to move the litigation regarding the Venting and Flaring Rule out of a forum that was first selected by other parties. Plaintiffs are engaging in classic forum shopping to avoid a decision on the merits in the District of Wyoming,

1 where the original plaintiffs filed the case regarding the Venting and Flaring Rule, and their original
2 choice of forum should therefore be given little weight in the Court's consideration of this Motion.
3 "[A] plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the
4 home forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 25 (1981). The only Plaintiff here that is
5 unmistakably in its home forum is the State of California. The only Plaintiff organization headquartered
6 in California is the Sierra Club, and it also has a Wyoming chapter. *See*
7 https://www.sierraclub.org/wyoming. In any event, while litigating close to home can be enormously
8 valuable to individuals, particularly individuals with limited financial resources, it is less relevant for state
9 governments and advocacy organizations which routinely bring litigation in courts across the country and
10 have already intervened in the District of Wyoming. No harm would come to Plaintiffs, as they have long
11 been parties in the Wyoming Litigation.
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CONCLUSION

For the reasons stated above, North Dakota and Texas urge this court to transfer the above-captioned litigation to the District of Wyoming, where it can be consolidated with a related matter that is already significantly advanced.

Respectfully submitted this 9th day of January, 2018.

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* Motion for admission *pro hac vice* forthcoming