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**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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| SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; EARTHWORKS; ENVIRONMENTAL DEFENSE FUND; NATURAL RESOURCES DEFENSE COUNCIL; THE WILDERNESS SOCIETY; NATIONAL WILDLIFE FEDERATION; CITIZENS FOR A HEALTHY COMMUNITY; DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT; 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,<br><br>Plaintiffs,<br><br>v.<br><br>RYAN ZINKE, in his official capacity as Secretary of the Interior; BUREAU OF LAND MANAGEMENT; and UNITED STATES DEPARTMENT OF THE INTERIOR,<br><br>Defendants. | Case No. 3:17-cv-7187-WHO<br><br>Related to Case No. 3:17-cv-7186-WHO<br><br>**CONSERVATION AND TRIBAL CITIZEN GROUPS' OPPOSITION TO MOTIONS TO TRANSFER VENUE**<br><br>Date: February 14, 2018<br>Time: 2:00 p.m.<br>Judge: Hon William H. Orrick<br>Location: Courtroom 2, 17th Floor |

**TABLE OF CONTENTS**

# TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**



**Federal Register**



**Other Authorities**

## INTRODUCTION

In this case, the State of California, the State of New Mexico, and the Conservation and Tribal Citizen Groups challenge Secretary Zinke's final action (the "Amendment") to amend the Waste Prevention Rule by removing certain waste prevention protections for one year while he reconsiders the Rule. The Amendment is the second illegal step in Secretary Zinke's "three step plan" to ensure that oil and gas companies never have to comply with the duly-promulgated Waste Prevention Rule. This Court has already struck down the first step, in which the Secretary unilaterally attempted to stay the same regulatory protections (the "Stay Notice" case). Because the Secretary took his second illegal step mere weeks before many of the regulatory protections were due to take effect, Plaintiffs filed motions for preliminary relief days after Secretary Zinke's action was finalized. Three weeks after Plaintiffs filed their motions, Secretary Zinke filed the instant motion, which seeks to transfer this challenge to the District of Wyoming—and threatens to delay adjudication of Plaintiffs' time-sensitive claims, which seek to reinstate compliance deadlines that have now passed. Secretary Zinke filed a similar motion last summer in the Stay Notice case. Noting the substantial deference due plaintiffs' choice of forum and that the Stay Notice case and the case pending in Wyoming challenged two different agency actions, this Court squarely rejected that motion. Order Denying Defs.' Mot. to Transfer, *California v. U.S. Bureau of Land Mgmt.*, Case No. 17-cv-3804-EDL (N.D. Cal. Sept. 7, 2017), ECF No. 62 ("Stay Notice Order"). For the same reasons, it should do so again here.

Plaintiffs' choice of forum is granted substantial deference especially where, as here, Plaintiffs file in their home forum. Indeed, as this Court previously recognized, the State of California has a sovereign interest in litigating in its home forum, and the Conservation and Tribal Citizen Groups have strong connections with the state. There are significant connections between this forum and Plaintiffs' claims because the Amendment removes operators' obligations to comply with the Waste Prevention Rule on hundreds of Bureau of Land Management ("BLM")-administered oil and gas leases in California. Despite these strong connections with California, Secretary Zinke and movant-intervenors the States of North Dakota and Texas ("State Intervenors") argue that this case should be transferred to the District of Wyoming because different plaintiffs challenging a

different agency action—BLM's decision to adopt the Waste Prevention Rule in the first place—chose that forum more than a year ago. But Secretary Zinke and the State Intervenors have not carried their burden to make a strong showing that the interests of justice and convenience factors relevant to the transfer inquiry outweigh the substantial deference granted to Plaintiffs' choice of forum. Numerous prior cases demonstrate that it is not at all uncommon for one court to adjudicate the validity of a regulation and a different court to adjudicate rollbacks or revisions of that regulation. A contrary rule would allow a single plaintiff challenging an agency action to choose the forum for all subsequent challenges related to that subject matter—defeating both the Administrative Procedure Act's ("APA") direction that plaintiffs may challenge any final agency action and the strong preference for allowing plaintiffs to choose an appropriate forum that is most convenient for them in any particular case.

Moreover, although some courts have transferred venue in cases where there would be substantial benefits in terms of judicial economy—such as where there are nearly identical legal claims and requests for relief pending in another forum that could benefit from consolidation of discovery and other procedures—that is not the case here. Plaintiffs' challenge to the Amendment involves an entirely distinct final agency action with a separate administrative record and presents legal issues that do not overlap with the challenge to the original rule. Moreover, because this case must be reviewed upon BLM's administrative record, there is no need to coordinate discovery or the taking of depositions, there are no witnesses to consider, and documentary evidence is as easily provided in one venue as another. Accordingly, there would be little benefit to judicial economy from a transfer of venue in this case. Nor have Secretary Zinke or the State Intervenors shown that Wyoming is a more convenient venue for *any* party. For these reasons, Plaintiffs' choice of venue should not be disturbed.

## STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 1404(a), "[f]or 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." To determine whether transfer is appropriate, this Court looks first at whether the proposed transferee

court is a proper venue and second at the convenience of parties and witnesses and the interest of justice. *Lax v. Toyota Motor Corp.*, 65 F. Supp. 3d 772, 776 (N.D. Cal. 2014). In assessing the convenience of the parties and witnesses and the interest of justice, the Court generally looks at the following factors:

> (1) plaintiff's choice of forum; (2) convenience of the parties; (3) 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.

*Id*.

A plaintiff's choice of forum is afforded "great weight." *Id.* at 777. Such deference is "especially great when the plaintiff has chosen to file the lawsuit in its home forum." *Finjan, Inc. v. Sophos Inc*., No. 14-cv-01197-WHO, 2014 WL 2854490, at *3 (N.D. Cal. June 20, 2014) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981)). The burden is on the party seeking transfer to show that when these factors are applied, the balance of convenience clearly favors transfer. *Lax*, 65 F. Supp. 3d at 776 (citing *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979)). "It is not enough for the defendant to merely show that it prefers another forum, and transfer will also not be allowed if the result is merely to shift the inconvenience from one party to another." *Id.* (citing *Van Dusen v. Barrack*, 376 U.S. 612, 645–46 (1964)). Moreover, defendants "must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum." *Finjan, Inc.*, 2014 WL 2854490, at *3 (quoting *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)). "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.'" Stay Notice Order 6 (quoting *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985)).

**ARGUMENT**

The Conservation and Tribal Citizen Groups do not contest that this case could have been brought in Wyoming, as well as many other states with substantial federal and tribal minerals that will suffer the harmful impacts of Secretary Zinke's Amendment. Accordingly, the Court's inquiry here must focus on the convenience and interest of justice factors—none of which support venue transfer in this case. As with their earlier attempt to transfer Plaintiffs' case challenging the Stay

Notice to Wyoming, the Secretary and the State Intervenors utterly fail to make the strong showing necessary to warrant upsetting Plaintiffs' choice of venue.

## I. Plaintiffs' Choice of Venue Should Not Be Disturbed Because This Case Has Strong Connections to California.

This Court gives "great weight" to a plaintiff's choice of forum, especially when plaintiffs file in their home forum. *Lax*, 65 F. Supp. 3d at 777; *Finjan, Inc.*, 2014 WL 2854490, at *3. Although the substantial deference generally owed to a plaintiff's choice of forum is lessened when the action is "filed as a class action and where there are not significant contacts between the forum and the allegations of the complaint," *Lax*, 65 F. Supp. 3d at 777, that is not the case here.

First, as this Court previously held, the Conservation and Tribal Citizen Groups have "close ties" to California. Stay Notice Order 4. Sierra Club and Center for Biological Diversity are nonprofit groups incorporated in California. Sierra Club is headquartered in Oakland; Center for Biological Diversity and Earthworks have offices in Oakland; and Environmental Defense Fund, Natural Resources Defense Council, and The Wilderness Society have offices in San Francisco. Compl. for Declaratory & Injunctive Relief ¶ 13 (Dec. 19, 2017), ECF No. 1 ("Complaint");[1] *see also Desert Survivors v. U.S. Dep't of the Interior*, No. 16-cv-01165-JCS, 2016 WL 3844332, at *9 (N.D. Cal. July 15, 2016) ("In similar cases involving issues of environmental protection, courts in this district have generally held that even a single plaintiff's residence here gives rise to a 'particular interest'"). Many of the Conservation and Tribal Citizen Groups' members also reside within California, and specifically the Northern District. In total, the Conservation and Tribal Citizen Groups have more than half a million members living in California, including more than 160,000 members in the Northern District of California. Complaint ¶ 13.

Plaintiff State of California also undoubtedly has a strong sovereign interest in litigating in its home state and protecting its taxpayers, air, and natural resources from the Amendment's harmful impacts. Stay Notice Order 4 (noting the "strong presumption" in favor of a plaintiff's choice of forum "may be especially true when the plaintiff is a sovereign state") (citing *New Jersey v. U.S.*

[1] Unless otherwise noted, all docket citations are to Case No. 3:17-cv-7187-WHO.

*Army Corps of Eng'rs*, Civ. No. 09-5591 (JAP), 2010 WL 1704727, at *3–4 (D.N.J. Apr. 26, 2010)).[2] In fact, BLM fails to identify any case where a Court has transferred a state plaintiff out of its home court. *See id.* ("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).").[3]

Second, this forum has a substantial connection to the activities alleged in the complaint. This Court has recognized that this "forum has a significant interest" in litigation affecting the substantial federal mineral estate in California administered by BLM. Stay Notice Order 6. California has about 600 BLM-administered producing oil and gas leases, covering approximately 200,000 acres and roughly 7,900 usable oil and gas wells. Decl. of Elizabeth Scheele ¶ 9, *Cal. ex rel. Becerra v. BLM*, No. 3:17-cv-07186 (N.D. Cal. Dec. 19, 2017), ECF No. 3-1 ("Scheele Decl."); *see also* Defs.' Mot. to Transfer These Actions to the U.S. Dist. Court for the Dist. of Wyo. 15 (Jan. 9, 2018), ECF No. 55 ("BLM Mot.") (acknowledging that federal minerals in the State of California produced 11.5 million barrels of oil and 12.2 billion cubic feet of natural gas in 2016). BLM's Amendment eliminates the protections provided by the Waste Prevention Rule on these leases, such as decreased waste, increased royalties, and reduced air pollution. Given the impacts of the Amendment on California and the fact that this is the home forum for many members of the Conservation and Tribal Citizen Groups as well as for the State of California, Plaintiffs' choice of venue is entitled to substantial weight. Stay Notice Order 4; *Finjan, Inc.*, 2014 WL 2854490, at *4

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[2] BLM cites *New Jersey* for the proposition that a State's motion to transfer is subject to the section 1404(a) factors, BLM Mot. 14, but as this Court earlier recognized, Stay Notice Order 4, that case supports the conclusion that a sovereign state has a particularly strong interest in litigating matters that affect its citizens in its home forum.

[3] State Intervenors concede that greater deference is warranted where a plaintiff has chosen their home forum, but make the surprising and unsupported argument that "litigating close to home . . . is less relevant for state governments and advocacy organizations which routinely bring litigation in courts across the county." Proposed-Intervenors N.D. & Tex.'s Mot. to Transfer These Actions to the U.S. Dist. Court for the Dist. of Wyo. 11, *California*, No. 3:17-cv-7186-WHO (N.D. Cal. Jan. 9, 2018), ECF No. 52 ("N.D. Mot."). In fact, like California, both North Dakota and Texas have regularly filed litigation challenging nationally-applicable federal actions affecting their state in their home forum. *See, e.g.*, *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015); *Texas v. United States*, No. 7:16-CV-00054-O, 2016 WL 4426495 (N.D. Tex. Aug. 21, 2016); *Nat'l Fed'n of Indep. Bus. v. Perez*, No. 5:16-CV-00066-C, 2016 WL 3766121 (N.D. Tex. June 27, 2016); *North Dakota v. EPA*, 127 F. Supp. 3d 1047 (D.N.D. 2015).

("Because accused activity occurred in this District and the parties have an established presence here, this factor weighs against transfer.")

Secretary Zinke largely ignores the significant ties that the State of California and the Conservation and Tribal Citizen Groups have with this forum, as well as the deference due Plaintiffs' choice of venue as a result. In conflict with controlling case law, the Secretary claims that Plaintiffs' forum choice is entitled to "little deference." BLM Mot. 16. But the cases he relies upon follow the exception, not the rule. They recognize the "substantial weight" typically afforded plaintiff's choice of venue, but afford reduced deference to plaintiff's choice of forum in circumstances where a plaintiff "brings suit in a representative capacity, such as in the case of a class action." *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, No. C 03-3711 MHP, 2003 WL 22387598, at *3 (N.D. Cal. Oct. 14, 2003); *see also Bennett v. Bed Bath & Beyond, Inc.*, No. C 11-02220 CRB, 2011 WL 3022126, at *2 (N.D. Cal. July 22, 2011) ("[A]s a putative class representative for a state-wide class, Plaintiff's forum choice is not entitled to the same degree of deference as an individual plaintiff pursuing her own claim on her own behalf."). In this case, there is no such reason that this Court should not afford Plaintiffs' choice of forum substantial deference. Nor has the Secretary made any showing—much less the strong showing that is required—to overcome Plaintiffs' choice of venue. *See infra* parts II–III.

**II. Judicial Economy Favors Retaining Venue in This Court.**

In an effort to overcome Plaintiffs' strong connection to this forum, Secretary Zinke focuses on one among the many section 1404(a) factors: judicial economy. But the Secretary incorrectly claims that judicial economy should be elevated over all other factors, including the substantial deference due a plaintiffs' choice of venue. *See* BLM Mot. 7. In any event, judicial economy considerations in this case—which challenges an entirely different agency action than the one challenged in Wyoming—favor retaining venue in *this* court.

The interests of justice factor "focuses primarily on the judicial system's interest in the efficient and speedy resolution of litigation disputes," including "traditional notions of judicial economy." *Cascades Projection LLC v. NEC Display Sols. of Am., Inc.*, No. 15-cv-273-SJR, 2015 WL 12698454, at *4 (C.D. Cal. June 5, 2015). Contrary to the Secretary's assertion, judicial

economy does not predominate over the other factors. Rather, "no single factor is dispositive," and the court adjudicates transfer motions on a "case-by-case basis." *Meijer, Inc. v. Abbott Labs.*, 544 F. Supp. 2d 995, 999 (N.D. Cal. 2008); *Finjan, Inc.*, 2014 WL 2854490, at *6 (rejecting argument that judicial economy factor should be "determinative" (quoting *Regents of the Univ. of Cal. v. Eli Lilly Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997))); *see also In re EMC Corp.*, 501 F. App'x 973, 976 (Fed. Cir. 2013) (holding that judicial economy should not "dominate the transfer inquiry"). As such, substantial weight is afforded Plaintiffs' choice of venue even where Defendants raise concerns regarding judicial economy. *See Finjan, Inc.*, 2014 WL 2854490, at *3–4, *7. In evaluating judicial economy, this Court looks at "whether 'efficient and expeditious administration of justice would be furthered' by transfer." *Id.* at *6 (citation omitted). In this case, transferring venue to the District of Wyoming will result in neither efficient nor expeditious administration of justice.

First, transferring this case to Wyoming would not further the expeditious administration of justice, but instead would delay resolution of Plaintiffs' time-sensitive claims against the Amendment. Plaintiffs sought preliminary relief more than a month ago in this case to prevent the irreparable harm that is now occurring in the form of air pollution and other impacts from oil and gas drilling as a result of the Amendment. The January 17, 2018 compliance deadline has now passed and every day of delay injures the Conservation and Tribal Citizen Groups and their members. This Court has set a prompt briefing schedule, which is currently in progress, and a hearing for February 7, 2018. In contrast—at Secretary Zinke's and industry's request—the litigation in Wyoming is stayed until December 2018. Order Granting Joint Mot. to Stay 2, 5, *Wyoming v. U.S. Dep't of the Interior*, No. 2:16-cv-285-SWS (D. Wyo. Dec. 29, 2017), ECF No. 189 ("WY Stay Order").[4] Transfer would significantly delay adjudication of Plaintiffs' time-sensitive preliminary injunction

[4] Just three days after the Secretary published the Amendment, he asked the Wyoming District Court to either dismiss that litigation entirely or hold it in abeyance to "allow the agency to complete its reconsideration process without interference." Fed. Resp'ts' Resp. to Pet'rs' Merits Brs., and Mot. to Dismiss, or, in the Alternative, for a Stay of Proceedings 1, *Wyoming*, No. 2:16-cv-285-SWS (D. Wyo. Dec. 11, 2017), ECF No. 176 ("BLM Stay Mot."). The court granted the Secretary's request, holding the litigation in abeyance while the Amendment is effective and until December 1, 2018. WY Stay Order 5.

motions as Plaintiffs would have to re-file their motions, and the court would need to set a briefing and hearing schedule. All the while, Plaintiffs would continue to be irreparably harmed by the Amendment. Transferring this case to Wyoming thus would not further "efficient and expeditious administration of justice," but instead would frustrate it. *Finjan, Inc.*, 2014 WL 2854490, at *6.

Second, contrary to the Secretary and the Intervenor States' claims, a transfer of venue in this case would have little benefit in terms of judicial economy. *See* BLM Mot. 7–13; N.D. Mot. 5–8. As this Court held in denying the Secretary's similar argument in its motion to transfer in the Stay Notice case, "judicial economy does not favor transfer because there is no overlap between this case and the litigation in the District of Wyoming." Stay Notice Order 4. In that case, this Court recognized there was no overlap because the Wyoming case involved a "different agency action" and distinct legal claims. *Id.* at 4–5. The same is true here and, regardless of the venue, the reviewing court will have to determine the validity of the Amendment *separately* from the validity of the Waste Prevention Rule.[5]

Specifically, this case challenges a different agency action with a different rationale taken at a different time, based upon a different administrative record than the Wyoming case. Moreover, this action and the Wyoming challenge present different legal claims for resolution by the courts and seek different relief. This case challenges the Secretary's final decision published in the Federal Register on December 8, 2017 to substantively amend the Waste Prevention Rule by removing compliance obligations for one year because he would like to consider revising or rescinding those obligations. Plaintiffs assert that the Secretary violated the APA by failing to adequately explain his decision to remove these obligations and failing to provide meaningful notice and comment. Conservation & Tribal Citizen Groups' Mem. of P. & A. in Supp. of Mot. for Prelim. Inj. 6–19 (Dec.

[5] For the same reasons, State Intervenors' contention that the doctrine of comity requires transfer to Wyoming is incorrect because there is no risk of conflicting or duplicative judgments. *See Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982) (describing the doctrine of comity as allowing transfer where "a complaint involving the *same parties and issues* has already been filed in another district [because] sound judicial administration would indicate that when two *identical actions* are filed in courts of concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit" (emphasis added and citations omitted)).

19, 2017), ECF No. 4-1 ("Citizen Groups' P.I. Mot."). In contrast, the Wyoming litigation challenges BLM's original decision, published in the Federal Register on November 18, 2016, to promulgate the Waste Prevention Rule pursuant to its statutory mandate to prevent waste, and is premised upon a record documenting a pervasive problem of wasted public and tribal resources. In the Wyoming case, industry groups and several states assert that BLM did not have statutory authority to promulgate the Waste Prevention Rule under its enabling statutes. *Wyoming v. U.S. Dep't of the Interior*, Nos. 2:16-cv-280-SWS & 2:16-cv-285-SWS, 2017 WL 161428, at *3 (D. Wyo. Jan. 16, 2017). But the validity of the Waste Prevention Rule is not before this Court; and the validity of the Amendment is not before the Wyoming court. Therefore, judicial economy does not favor transfer. Stay Notice Order 4–5.[6]

Indeed, it is not at all uncommon for one court to adjudicate the validity of a regulation and a different court to adjudicate the validity of a rollback or revision of that regulation, even at the same time. *See, e.g.*, *Bd. of Cty. Comm'rs v. U.S. Dep't of the Interior*, Nos. 09-cv-262J & 09-cv-272J, 2010 WL 6429153, at *1–2, *7–8 (D. Wyo. Sept. 17, 2010) (detailing lengthy history of litigation over National Park Service regulation in both Wyoming and District of Columbia district courts; denying motion to transfer to the District of Columbia despite earlier litigation there), *vacated in*

[6] Secretary Zinke's attempt to distinguish this Court's earlier order in the Stay Notice case fails. BLM Mot. 12–13. The Secretary *now* argues that the Stay Notice case is different because it presented a "segregable question of pure law." *Id.* at 13; *but see* Defs.' Mot. to Transfer These Actions to the U.S. Dist. Court for the Dist. of Wyo. 7–8, *California v. BLM*, No. 3:17-cv-03804-EDL (N.D. Cal. July 26, 2017), ECF No. 14 ("BLM Stay Notice Transfer Mot.") (asserting that adjudicating the validity of the Stay Notice also "necessarily implicates the substance of the Waste Prevention Rule"). But this Court's decision not to transfer was based on the fact that the Stay Notice case involved a "different agency action" and different legal claims than the Wyoming litigation, which is equally true in this case. Stay Notice Order 4–5. In fact, the claims in this case—the second step of Secretary Zinke's self-professed three-step plan to revise the Waste Prevention Rule—are similar to those in the Stay Notice case—the first step of that three-step plan. For example, both cases involve the adequacy under the APA of BLM's procedures and explanation for removing obligations to comply with the Waste Prevention Rule. *Compare* Conservation & Tribal Citizen Groups' Notice of Mot. for Summ. J, & Mem. of P. & A. in Supp. 8–19, *Sierra Club v. Zinke*, No. 3:17-cv-3885-EDL (N.D. Cal. July 27, 2017), ECF No. 37 (arguing that Secretary Zinke acted unlawfully in violation of the APA in promulgating the Stay Notice), *with* Citizen Groups' P.I. Mot. 6–19 (arguing that Secretary Zinke acted unlawfully in violation of the APA in promulgating the Amendment).

*part sub nom. Wyoming v. U.S. Dep't of the Interior*, 674 F.3d 1220 (10th Cir. 2012); *Cal. Dep't of Health Servs. v. Babbitt*, 46 F. Supp. 2d 13, 15–16, 18–20 (D.D.C. 1999) (adjudicating summary judgment motions regarding Secretary of the Interior's rescission of previous Secretary's decision to approve federal land sale and discussing history of challenges to initial decision in different federal district court). That is simply a product of the APA, which allows parties to challenge any discrete final agency action but does not specify a particular venue, 5 U.S.C. § 704, and that a plaintiff's choice of forum is granted substantial deference, *Finjan, Inc.*, 2014 WL 2854490, at *3. A contrary view would allow a single plaintiff challenging an agency action to choose the forum for all subsequent challenges related to that subject matter—defeating both the APA and the strong preference for allowing plaintiffs to choose an appropriate forum that is most convenient for them in any particular case.

While conceding that the Amendment is a "separate final agency action," BLM Mot. 8, the Secretary inappositely relies on cases "based on a single transaction," or that "involv[ed] precisely the same issues," BLM Mot. 7 (citing *Wireless Consumers*, 2003 WL 22387598, at *4; *Elecs. for Imaging, Inc. v. Tesseron, Ltd.*, No. 07-cv-05534-CRB, 2008 WL 276567, at *1 (N.D. Cal. Jan. 29, 2008)); *see also* N.D. Mot. 5 (referencing an instance regarding two cases that raised "precisely the same issues"). And he vastly overstates his case when he claims that this case and the Wyoming case "arise out of the same rulemaking." *See* BLM Mot. 7; N.D. Mot. 8 (claiming that this case and the Wyoming litigation present "the exact same issues"). Indeed, the cases BLM cites for the proposition that judicial economy favors transfer involve two suits challenging the same action and raising the same legal questions, or plaintiffs who were blatantly forum shopping to avoid an unfavorable precedent. For example, in *Wireless Consumers*, cited repeatedly by BLM, BLM Mot. 7, the court rejected an attempt by attorneys who received an adverse ruling in the Central District of California

to then bring the exact same case in the Northern District, a forum that had no ties to the subject matter of the case. 2003 WL 22387598, at *1–2, *4–6.[7]

Secretary Zinke also relies heavily on the Wyoming District Court's assertion that these cases are "inextricably intertwined." BLM Mot. 4, 5, 8, 12, 16 (citing WY Stay Order 4); *see also* N.D. Mot. 7 (same). But the Wyoming court's statement is not based on a conclusion that the legal claims in the two cases are intertwined. Indeed, as discussed above, *supra* pp. 8–10, they are not. *See also* Stay Notice Order 5 (holding that litigation challenging the suspension of a regulation and litigation challenging the original regulation are "neither intimately related nor identical" (quotation omitted)). Rather, the Wyoming court's statement is based on its determination that it should not rule on the merits of the Waste Prevention Rule until it knows "which 'rules' are in effect" and a recognition that this case may impact whether the Waste Prevention Rule is in effect. WY Stay Order 4. Should this Court invalidate the Amendment, then the Wyoming court may change its view of the appropriateness of proceeding to a merits decision on the almost-fully-briefed petitions challenging the Waste Prevention Rule, challenges that Plaintiffs here have never sought to delay.[8] But whether or when the Wyoming court decides to reach the merits does not change the fact that the

[7] Likewise, in *Madani v. Shell Oil Co.*, No. C07-04296-MJJ, 2008 WL 268986, at *3 (N.D. Cal. Jan. 30, 2008), the court transferred plaintiffs' action to another district when "[t]he same counsel, seeking to represent a nearly identical class, filed a[n] earlier lawsuit premised on the same allegedly unlawful activity in the [transferee district]," that was ultimately unsuccessful. *Bay.org v. Zinke*, Nos. 17-cv-3739-YGR & 17-cv-3742-YGR, 2017 WL 3727467, at *4–5 (N.D. Cal. Aug. 30 2017), also presented a very different situation. There, the court transferred plaintiffs' challenge to a different federal district because "the majority of the operative facts, as well as the administrative record, [were] centered in" the other district, the other district had cases that had been pending for 12 years "seeking similar relief, namely a declaration that the biological opinions were arbitrary and capricious and an order" requiring consultation, and there was a legitimate concern over "inconsistent rulings," *id.* at *4–5, a concern that does not apply here, *supra* pp. 9–10.

[8] Secretary Zinke, by contrast, has repeatedly sought to delay adjudication of the validity of the Waste Prevention Rule in Wyoming, which should have been decided long ago. Fed. Resp'ts' Mot. for an Extension of the Merits Briefing Deadlines, *Wyoming*, No. 2:16-cv-285-SWS (D. Wyo. Oct. 20, 2017), ECF No. 155; Fed. Resp'ts' Mot. to Extend the Briefing Deadlines, *Wyoming*, No. 2:16-cv-285-SWS (D. Wyo. June 20, 2017), ECF No. 129. BLM recently moved to dismiss the suit altogether. BLM Stay Mot. 5–6. Yet the Secretary now seeks to use the fact that that action is "underway," BLM Mot. 5, to support its attempt to dislodge Plaintiffs' chosen forum.

challenged actions are different and based upon different administrative records, and they are being challenged based on distinct legal claims that do not overlap.

Nor does the fact that this case may affect the Wyoming court's decision about whether to reach the merits mean that there is a risk of "inconsistent judgments" as Secretary Zinke suggests, but does not explain. *See* BLM Mot. 8. State Intervenors repeatedly claim that were this Court to set aside the Amendment and reinstate the Waste Prevention Rule, it would necessarily have to conclude that that Rule is valid, which could lead to an inconsistent result with the Wyoming court. *E.g.* N.D. Mot. 6–8. That assertion is wrong. The Waste Prevention Rule is a final agency action that is valid unless and until a Court overturns it or BLM properly revises or rescinds it. If this Court sets aside the Amendment, which revised the Waste Prevention Rule, the proper remedy is to reinstate the Rule. *E.g.*, *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 555 (9th Cir. 2006) ("[T]he effect of invalidating an agency rule is to reinstate the rule previously in force." (quoting *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005))). But that does not mean that this Court must resolve the legality of the Waste Prevention Rule, just as, if the Wyoming court invalidated the Waste Prevention Rule, it would not need to address the validity of BLM's preexisting regulations. This is no different from the situation faced by this Court in the Stay Notice case. There, the Court set aside the Stay Notice and reinstated the Waste Prevention Rule without passing on the validity of the Waste Prevention Rule. *California v. BLM*, Nos. 17-cv-03804-EDL & 17-cv-03885-EDL, 2017 WL 4416409, at *13–14 (N.D. Cal. Oct. 4, 2017) (determining vacatur of Stay Notice and reinstatement of Waste Prevention Rule to be appropriate remedy).

Moreover, the Secretary is wrong to contend that in order to decide Plaintiffs' arguments that the Amendment is arbitrary and capricious, the reviewing court will "necessarily have to review the substance of both" the Amendment and the Waste Prevention Rule "to determine whether BLM's position has changed and, if so, whether its rationale is adequate." BLM Mot. 9. First, it is clear from the face of the Amendment itself, its stated purpose, and the underlying Executive Order it seeks to implement that BLM's position has changed. 82 Fed. Reg. 58,050, 58,050–51 (Dec. 8, 2017); *see also* Citizen Groups' P.I. Mot. 12–13. Second, the adequacy of BLM's "rationale" for promulgating the Amendment must be evaluated solely based on the reasoning articulated in the Amendment and

supported by the Amendment's administrative record, or lack thereof, as discussed in Plaintiffs' motions for preliminary relief. *See* Citizen Groups' P.I. Mot. 11–15; Pls.' Notice of Mot. & Mot. for Prelim. Inj.; Mem. of P. & A. 14–17, *California*, No. 3:17-cv-07186-WHO (N.D. Cal. Dec. 19, 2017), ECF No. 3. It is in the Amendment and its record where the Secretary must show that the Amendment is permissible under the statute and that he had good reasons for his changed position.

Indeed, all of Plaintiffs' allegations that Secretary Zinke highlights, BLM Mot. 9–10, arise from the promulgation of the *Amendment*, not the promulgation of the Waste Prevention Rule at issue in the Wyoming litigation. For example, he points to the Conservation and Tribal Citizen Groups' claim that the Amendment is a "substantive revision" to the Waste Prevention Rule and therefore subject to the APA's requirements for revising a Rule. *Id.* at 9. To resolve this claim, this Court need only consider the relevant law and the Amendment's own statements that removing the compliance obligations will result in waste of 9 billion cubic feet of natural gas, increase emissions of methane by 175,000 tons and volatile organic compounds by 250,000 tons, and lead to the loss of $2.6 million in royalties. Citizen Groups' P.I. Mot. 7. The Secretary also points to a statement made in the District of Wyoming showing that he had already made up his mind to finalize the Amendment prior to providing notice and accepting public comment. BLM Mot. 10. But where those statements were made is not relevant to the legal question they raise—whether the statements indicate that the Secretary had already made up his mind with respect to the outcome of the Amendment rulemaking prior to accepting public comment. Citizen Groups' P.I. Mot. 15–18.

The Secretary and State Intervenors also argue that both cases raise questions about BLM's duty to regulate waste under the Mineral Leasing Act. *See* BLM Mot. 10; N.D. Mot. 7–8. But Plaintiffs' motions for a preliminary injunction present the question of whether the Secretary adequately *explained* how the Amendment (which leaves no significant BLM regulation in place) is permissible under the statute when he did not even mention his statutory obligation to prevent waste. That legal question is entirely different from the question presented in the Wyoming case—whether BLM exceeded its statutory authority in promulgating the specific requirements of the Waste Prevention Rule. A brief perusal of Plaintiffs' motions for a preliminary injunction makes plain that deep knowledge of the "intricacies of the Waste Prevention Rule" is not necessary for the Court to

resolve this case. *Contra* BLM Mot. 11. That there may be "some overlapping elements" does not compel transfer. *AT&T v. Teliax*, No. 16-cv-01914-WHO, 2016 WL 4241910, at *3 (N.D. Cal. Aug. 11, 2016).

The Secretary also incorrectly asserts that the Wyoming court has an advantage due to its familiarly with the Amendment itself as a result of recent motions to stay the proceedings. BLM Mot. 10; *see also* N.D. Mot. 4. Although these motions notified the Wyoming court that BLM had finalized the Amendment, the court has had no opportunity to evaluate the substance of the Amendment or its rationale. Accordingly, at the very least, this Court is on equal footing in evaluating the legality of the Amendment, and either way the reviewing court will have to separately adjudicate the validity of the Amendment, upon its record, and the validity of the Waste Prevention Rule, upon its record.

Retaining this case in this Court is the best way to further the interest in expeditious administration of justice and even if there were a marginal gain in judicial economy from transfer it would not outweigh the substantial deference due Plaintiffs' choice of venue.

**III. Other Convenience Factors Also Favor Retaining Venue in This Court.**

Secretary Zinke has failed to show that any of the remaining convenience factors weighs in favor of transfer, let alone made the "strong showing" necessary "to warrant upsetting the plaintiff's choice of forum." *Decker*, 805 F.2d at 843.

First, convenience of the parties weighs in favor of California. Transfer should be denied where it would "merely shift rather than eliminate the inconvenience." *Id.* In this case, the Secretary and the State Intervenors have failed to show that Wyoming is a more convenient venue for *any* party. BLM, and many of the Plaintiffs in this action, including the State of California and several of the Conservation and Tribal Citizen Groups, have offices in California. The State of California's and one of the Conservation and Tribal Citizen Groups' attorneys are located in the Northern District. Meanwhile, *none* of the attorneys involved in this litigation are based in Wyoming. Secretary Zinke and State Intervenors point to the fact that many of the Plaintiffs here intervened in the Wyoming case, but that was based on the Wyoming plaintiffs' choice of forum, and not any convenience. In fact, traveling to Casper, Wyoming is inconvenient for Plaintiffs' attorneys. As this Court previously

recognized, Plaintiffs' "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." Stay Notice Order 6. Meanwhile, the Secretary admits that BLM resides in both California and Wyoming, and points to no difficulties litigating the Stay Notice case in this district. Moreover, because this case must be reviewed upon BLM's administrative record, there is no need to coordinate discovery or the taking of depositions, there are no witnesses to consider, and documentary evidence is as easily provided in one venue as another. *Ctr. for Biological Diversity v. McCarthy*, No. 14-cv-05138-WHO, 2015 WL 1535594, at *4 (N.D. Cal. Apr. 6, 2015).

Second, Secretary Zinke has failed to show that Wyoming has a local interest in the Amendment—which applies nationwide—sufficient to override Plaintiffs' choice of forum and California's significant interest in the Amendment. *See* Stay Notice Order 6–7 ("But the fact that another forum also has an interest in the outcome of this dispute does not override Plaintiffs' choice to litigate in this forum."); *McCarthy*, 2015 WL 1535594, at *1 ("[T]he number of other districts that are affected dilutes the interest of any one of them to have the case transferred to it."); *Ctr. for Biological Diversity v. Kempthorne*, No. C 08-1339 CW, 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"). As this Court has recognized, "both California and Wyoming have substantial federally-managed mineral estate and oil and gas production." Stay Notice Order 6; *see also* Conservation and Tribal Citizen Groups' App'x to Mot. for Prelim. Injunction 543 (Dec. 19, 2017), ECF No. 4-3 (map of federal oil and gas wells managed by BLM in California). BLM manages over 7,900 oil and gas wells in California, which produce approximately 15 million barrels of oil and 7 billion cubic feet of natural gas annually. Scheele Decl. ¶ 9. As a result, the Amendment will have a significant impact on public health and climate in California and nationwide. *See id.* ¶¶ 20–25. Because the Amendment does not involve impacts that are localized to Wyoming, and this forum has a significant connection to the Amendment, Plaintiffs' choice to litigate in this district should not be disturbed.

Finally, the speed with which this district resolves cases favors retaining venue here. Civil cases in this district are resolved in an average of 7.2 months, compared to an average of 10.2

months to resolve cases in the District of Wyoming. *See* U.S. District Courts, *National Judicial Caseload Profile* (Sept. 30, 2017), http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2017.pdf. Here, because Plaintiffs seek expedited relief from the Amendment, which changed compliance obligations that were due to be enforced this month, time is of the essence, and this factor thus weighs against transfer. *See* Stay Notice Order 7 ("[T]his slight difference in average time to disposition could make a difference in this case because the compliance dates at issue are in [four months]".).

**CONCLUSION**

The Secretary and State Intervenors give no compelling reason to upset the substantial deference due Plaintiffs' choice of forum. This Court should deny the venue transfer motions.

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