IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 1:15-cv-2026-WJM

WILDEARTH GUARDIANS,

Plaintiff,

v.

SALLY JEWELL, in her official capacity as U.S. Secretary of the Interior,
U.S. OFFICE OF SURFACE MINING AND RECLAMATION,
U.S. DEPARTMENT OF THE INTERIOR,

Defendants,

STATE OF WYOMING,
ANTELOPE COAL, LLC,
NEW MEXICO COAL RESOURCES, LLC,
BOWIE RESOURCES, LLC,
THUNDER BASIN COAL COMPANY, LLC,

Intervenor-Defendants.

ORDER GRANTING MOTION TO SEVER AND TRANSFER

In this lawsuit, Plaintiff, WildEarth Guardians, brings claims that the Secretary of the Interior's approval of certain Mining Plans authorizing mining of federally-owned coal at mines in Colorado, New Mexico, and Wyoming violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4231 *et seq.*

Federal Respondents have moved for the Court to sever the claims as to each of the four mines and to transfer the claims regarding mines in New Mexico and Wyoming to those districts. (ECF No. 26.) Intervenors also support this Motion. (*See* ECF Nos. 27, 32, 34.) For the reasons set forth, the Court grants Respondents' motion.

I. BACKGROUND

Between November 26, 2013, and April 18, 2015, the Secretary of Interior approved the four Mining Plan modifications at issue in this lawsuit:

- On November 26, 2013, the Secretary approved a Mining Plan modification for the Antelope Mine, in Wyoming.
- On May 16, 2014, the Secretary approved a Mining Plan modification for the El Segundo Mine, in New Mexico.
- On March 16, 2015, the Secretary approved a Mining Plan modification for the Bowie No. 2 Mine, in Colorado.
- On April 18, 2015, the Secretary approved a Mining Plan modification for the Black Thunder Mine, in Wyoming.

Approval of such Mining Plans and, as necessary, modifications to the Mining Plans, is one of the legal prerequisites to mining federally-owned coal. *See* 30 U.S.C. §§ 207(c); 30 C.F.R. § 746.14. As further detailed in the parties' filings, approval of a Mining Plan is usually the last of several regulatory steps required before federally-owned coal can be mined, following approval of a federal lease (typically handled by the Bureau of Land Management ("BLM")), and approval of a mining permit (here, handled by state agencies in Colorado, New Mexico, and Wyoming). (*See* ECF No. 1 ¶¶ 13–29; ECF No. 26 at 5–10; ECF No. 42 at 2–4.) In a similar prior case, this Court summarized the relevant legal framework as follows:

> The Mineral Leasing Act governs the leasing of public lands for developing deposits of federally owned coal, petroleum, natural gas, and other minerals. The Act provides that "[p]rior to taking any action on a leasehold which might cause a significant disturbance of the environment, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified." 30 U.S.C. § 207(c).

> OSM is tasked with implementing and enforcing the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"). It is "a comprehensive statute designed to 'establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'" *See Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 268 (1981) (quoting 30 U.S.C. § 1202(a)). Under SMCRA, a state may enter into a cooperative agreement with the Secretary to provide for its own regulation of surface coal mining and reclamation operations on federal lands within the state. *See* 30 U.S.C. § 1273(c). However, the Secretary may not delegate to the state her responsibility to approve mining plans. *See id.*; 30 C.F.R. § 745.13(I). The Secretary likewise cannot delegate her duty to comply with NEPA. *See* 30 C.F.R. § 745.13(b)
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> OSM makes recommendations to the Secretary of the Interior as to whether mining plans should be approved, disapproved, or conditionally approved contingent upon modifications. 30 C.F.R. § 746.13. At a minimum, a mining plan must be compliant with the applicable requirements of federal laws, regulations, and executive orders, with the information contained therein prepared in compliance with NEPA. *Id.* The Secretary heavily relies on OSM in ensuring she is adequately informed before approving a mining plan. However, her independent judgment is still required, and no surface mining or reclamation operations may begin without her approval. *See* 30 C.F.R. § 746.11(a); *S. Utah Wilderness Alliance v. [OSM]*, 620 F.3d 1227, 1243 (10th Cir. 2010). "An approved mining plan shall remain in effect until modified, cancelled or withdrawn and shall be binding on any person conducting mining under the approved mining plan." 30 C.F.R. § 746.17(b). If a lessee seeks to extend coal mining and reclamation operations onto previously unmined federal lands, a mining plan modification is required. 30 C.F.R. § 746.18(d). The portion of the modified plan addressing new land areas is subject to the full standards applicable to new applications for mining leases under SMCRA. 30 U.S.C. § 1256(d)(2).

WildEarth Guardians v. [OSM], 104 F. Supp. 3d 1208, 1215–16 (D. Colo. 2015) ("*WEG v. OSM II*").

Here, Plaintiff claims that "[a]ll of the Mining Plan approvals . . . fail to meet NEPA's public notification requirements and fail to adequately consider potentially significant direct, indirect, and cumulative environmental impacts in accordance with NEPA." (ECF No. 1 ¶ 61.) Before answering on the merits of these claims, Respondents have moved to sever the claims regarding each of the four mines and to transfer the cases related to mines in New Mexico and Wyoming to those respective District Courts. (ECF No. 26.)

II. LEGAL STANDARD

A. Severance

Federal Rule of Civil Procedure 21, provides that "[o]n motion or on its own, the court may . . . sever any claim against a party." Where two or more claims "are properly severed under Fed. R. Civ. P. 21, two separate actions result." *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1519 & n.8 (10th Cir. 1991); *see also* 9A Charles Alan Wright, *et al.*, *Federal Practice & Procedure* § 2387 (3d ed., Apr. 2016 update) ("*Wright & Miller*") ("[S]evered claims become entirely independent actions to be tried, and judgment entered thereon, independently."); Richard D. Freer, 4 *Moore's Federal Practice - Civil* § 21.06 (2016 ed.) ("*Moores Federal Practice*") ("Severance under Rule 21 results in separate actions. . . . If a severed claim is one of multiple claims asserted by a single plaintiff against a single defendant (or vice versa), neither party is severed from the original action. Rather, both parties are involved in two separate actions.").

Rule 21 provides the Court with "considerable discretion" in its decision whether to sever claims or parties. *See Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365,

1371 (10th Cir. 1998) (regarding severance of parties); *Jett v. Phillips & Associates*, 439 F.2d 987, 989 (10th Cir. 1971) (Rule 21 vests "discretionary power" in the District Court); 7 *Wright & Miller* § 1689 ("Questions of severance are addressed to the broad discretion of the district court." (collecting cases)); 4 *Moore's Federal Practice - Civil* § 21.05 (2016 ed.) (district court "has great discretion to restructure an action to promote the efficient administration of justice").

B. Transfer

If claims are severed, then "a district court may transfer one action while retaining jurisdiction over the other. When transferring a portion of a pending action to another jurisdiction, district courts first must sever the action under Rule 21 before effectuating the transfer." *Chrysler Credit Corp.*, 928 F.2d at 1519; *see also* 4 *Moore's Federal Practice* § 21.06[2] (severance creates a new case which may be transferred "[a]s with any case in federal court . . . . Indeed, the fact that a claim might be subject to transfer to a more appropriate venue is a valid reason to order severance." (citing, *inter alia*, *Chrysler Credit Corp.*, 928 F.2d at 1519)).

Motions to transfer are decided "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). Ordinarily, the party seeking transfer bears the burden of showing that transfer is justified because the existing forum is inconvenient. *Chrysler Credit Corp.* 928 F.2d at 1515. In ruling on a motion to transfer venue, district courts must assess three issues: (1) whether the case might have been brought in the proposed transferee district,(2) whether the current forum is inconvenient, and (3) whether the interests of justice are better served by transfer to the

alternate forum. *See Chrysler Credit Corp.*, 928 F.2d at 1515; *Logsdon v. BNSF Ry. Co.*, 2015 WL 3903512, at *1 (D. Colo. June 24, 2015). Here the parties do not dispute that the challenges to the Mining Plans could have been brought in the districts to which Respondents seek transfer (*i.e.*, the Districts of New Mexico and Wyoming), so the Court need only weigh the "competing equities" as to whether the current forum is inconvenient and the interests of justice favor transfer. *See Hustler Magazine, Inc. v. U.S. District Ct. for D. Wyo.*, 790 F.2d 69, 71 (10th Cir. 1986).

The decision to transfer lies in the sole discretion of the district court. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). The Tenth Circuit has identified nine non-exclusive factors which inform the Court's exercise of this discretion and its ultimate decision, based on an "individualized, case-by-case consideration of convenience and fairness." *Chrysler Credit Corp.*, 928 F.2d at 1516. These factors include: "[1] the plaintiff's choice of forum; [2] the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; [3] the cost of making the necessary proof; [4] questions as to the enforceability of a judgment if one is obtained; [5] relative advantages and obstacles to a fair trial; [6] difficulties that may arise from congested dockets; [7] the possibility of the existence of questions arising in the area of conflict of laws; [8] the advantage of having a local court determine questions of local law; and, [9] all other considerations of a practical nature that make a trial easy, expeditious and economical." *Id.* (quoting *Tex. Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 147 (10th Cir. 1967)).

III. ANALYSIS

A. Severance

Prior decisions in this Court have stated that claims may be severed under Rule 21 "when the claims asserted do not arise out of the same transaction or do not present some common question of law or fact." *Preacher v. Wiley*, 2009 WL 6409350, at *2 (D. Colo. Nov. 20, 2009); *see also Sparks v. Foster*, 2006 WL 446081 (D. Colo. Feb. 21, 2006) (Rule 21 "authorizes a court . . . to drop parties when the claims asserted . . . do not arise out of the same transaction or occurrence or do not present some common question of law or fact" (citing 7 *Wright & Miller* § 1683 (3d ed. 2001) (discussing joinder))).

In a similar prior case brought by Plaintiff, raising very similar claims against Respondents' approval of other Mining Plans, the Court granted a similar motion to sever and transfer. As explained there by Senior United States District Judge John L. Kane, Plaintiff's challenges will require the Court to "review a separate and distinct administrative record" for each approval of a Mining Plan, and each claim will succeed or fail based on the administrative record regarding each approval:

> Despite Petitioner's characterization of the suit as protesting a 'practice or pattern' . . . the petition does not present a facial challenge to the Federal Respondents['] practice and procedures but rather is an 'as applied' challenge to seven separate decisions covering seven separate mines, each of which will require the merits judge to review a separate and distinct administrative record. Furthermore, the challenged mining plan approvals involve different types of NEPA documents (*e.g.*, Environmental Impact Statements (EISs), Environmental Assessments (EAs), Findings of No Significant Impacts (FONSIs), Statements of NEPA Compliance), each of which is subject to different public

> participation requirements. Thus a failure to involve the public for one type of NEPA documentation does not necessarily shed any light on whether the public was properly involved for a different type of NEPA documentation.
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> Because Respondents are correct as a matter of law that each mining plan will be reviewed upon its own customized administrative record, I disagree with Petitioner that the claims 'arise out of the same transaction or occurrence' or 'present some common question of law or fact' such that severance would be improper, or, by extension, that there is a risk of inconsistent judgment or a judicial economy to be gained by litigating all alleged claims in one suit. If some claims succeed and some claims fail, then that does not necessarily mean that the judgments are inconsistent; rather that scenario may very well mean that some mining plans were approved legally and others illegally.

WildEarth Guardians v. [OSM], 2014 WL 503635, at *2 (D. Colo. Feb. 7, 2014) ("*WEG v. OSM I*"). Here, while the decision falls to the Court's discretion, the Court is mindful of the general maxim to "treat like cases alike." *See, e.g.*, H.L.A. Hart, *The Concept of Law* 160 (2d ed. 1994). Moreover, the Court concurs with the reasoning of the order cited above and reaches the same result.

The four Mining Plan approvals are each distinct agency actions. The Court's review of those actions, including alleged NEPA violations, is pursuant to the Administrative Procedure Act ("APA"). *See* 5. U.S.C. § 702*; Davis v. Mineta*, 302 F.3d 1104, 1111 (10th Cir. 2002). Such challenges in federal court may be brought regarding specific final agency actions, and judicial review proceeds on the basis of the administrative record for each challenged action. 5 U.S.C. § 704 (only "final agency action" is subject to judicial review); *Ron Peterson Firearms, LLC v. Jones,* 760 F.3d 1147, 1164 (10th Cir. 2014) (review is limited to administrative record that was before

the agency decision maker). Plaintiffs may not use court challenges to individual agency actions to seek "programmatic" administrative change. *See Lujan v. Nat'l Wildlife Federation*, 497 U.S. 871, 891 (1990) (plaintiff "cannot seek wholesale improvement . . . by court decree, rather than in the offices of the Department or the halls of Congress, where programmatic improvements are normally made. Under the terms of the APA, [plaintiff] must direct its attack against some particular 'agency action[s]' that cause[d] it harm").

Thus, despite Plaintiff's claim that it challenges a "pattern and practice" of NEPA violations, it is still true that "each mining plan will be reviewed upon its own . . . administrative record," and each challenge to a Mining Plan approval will succeed or fail on that basis. *WEG v. OSM I,* 2014 WL 503635, at *2. Plaintiff argues that this case differs from *WEG v. OSM I* because the Petition "does not include any mine-specific claims," instead alleging "NEPA violations common to all four of the challenged Mining Plans." (ECF No. 42 at 10–11.) But the more accurate way to describe Plaintiffs' claims is that *each* of the four Mining Plan approvals violated NEPA in the same or similar ways, not that *all* of the approvals together violated the law. The fact that the Petition here was drafted to present six claims,[1] each pled as applicable to all four mines (*see* ECF No. 1 at 31–37), rather than more candidly presenting twenty-four separate claims, does not change the underlying nature of these claims, or of the

[1] Plaintiff pleads a total of seven claims for relief (ECF No. 1 ¶¶ 96–123), but the Fourth Claim applies only to two of the four mines, given their distinct histories of NEPA procedure and review (*id.* ¶¶ 110–113). Thus even Plaintiff's own claim—that "[a]ll Petition claims allege NEPA violations common to all four of the challenged Mining Plans" (ECF No. 42 at 10–11)—is incorrect.

available and necessary form of judicial review for these claims under the APA. Artful pleading cannot change the nature of the case.

Further, the Court notes at least three significant differences among the four mines at issue that undermine Plaintiff's argument against severance. These differences exemplify why Plaintiff's claims cannot be analyzed as a unified set of claims equally applicable to all four Mining Plans, but must be analyzed as to each mine and each agency decision.

First, the mines differ greatly in size and geography, ranging from the production of up to 7.8 million tons of coal per year at the El Segundo Mine (ECF No. 1 ¶ 71), and 8 million tons per year at the Bowie No. 2 mine, to the far larger production of up to 37 million tons per year at the Antelope Mine, but all others are dwarfed by production at the Black Thunder Mine (the country's second largest), of up to 190 million tons of coal per year. (*Id.* ¶¶ 63, 71, 78, 85, 90.) These differences inevitably affect Plaintiff's challenges to the adequacy of NEPA review for each mine, particularly for Plaintiff's claims that OSM failed to take the required "hard look" at cumulative impacts on air quality and climate change. Whether or not OSM adequately evaluated such impacts presents very different questions as to the 9.2 million tons of total coal production at the El Segundo Mine, versus over 100 million tons of coal at the Black Thunder Mine. (*See* ECF No. 1 ¶¶ 71, 85.)

Further, the coal from the different mines goes to different places. According to the Petition, coal from the El Segundo Mine is burned at power plants in Eastern Arizona, while coal from the Antelope and Black Thunder Mines fuels unspecified "dozens" of power plants around the United States, and at least some of the coal from

the Bowie No. 2 Mine is exported. (ECF No. 1 ¶¶ 68, 75, 82, 90.) Thus the analysis of Plaintiff's claims, particularly of the more localized impacts of ozone precursors, fine particles ("$PM_{2.5}$"), and NO_2, will be very different as to each mine, based on where the coal is combusted.

Second, the four challenged Mining Plans were subject to very different NEPA review processes. For the Antelope and Black Thunder Mines, the Petition challenges OSM's October 28, 2013 adoption of a 2008 Environmental Impact Statement (EIS) prepared by the Bureau of Land Management for the Antelope Mine, and the March 5, 2015 adoption of 2010 EIS for the Black Thunder Mine. (ECF No. 1 ¶¶ 64, 86.) Plaintiff argues, among other claims, that OSM violated NEPA by adopting these earlier EISs without preparing formal Records of Decision (RODs) (*id.* ¶¶ 65, 87), and because the 2008 and 2010 EISs did not (and could not) address later changes to air quality standards under the Clean Air Act, adopted in 2010 and 2012.[2]

But Plaintiff can not make any similar claims for the El Segundo and Bowie No. 2 Mines. There, Plaintiff brings NEPA challenges to OSM's Environmental Assessments ("EAs") and Findings of No Significant Impact ("FONSIs") in 2014. (*Id.* ¶¶ 72, 79.) These decisions are not subject to challenge for failure to prepare RODs, and they were taken *after* adoption of the Clean Air Act standards (NAAQS) that were not considered by the 2008 and 2010 EISs for the two mines in Wyoming. More generally,

[2] Specifically, Plaintiff argues that the 2008 and 2010 EISs pre-dated EPA's adoption of new National Ambient Air Quality Standards ("NAAQS") for NO_2 issued in 2010, and the strengthening of NAAQS for $PM_{2.5}$ in 2012. (*See* ECF No. 1 ¶ 67, 89.) Plaintiff also notes that these approvals pre-date and therefore did not consider the "social cost of carbon" protocol since developed by the Environmental Protection Agency. (*Id.* ¶¶ 51, 67, 89.)

while an EIS is the most substantial form of NEPA review (required where the agency concludes a proposed action will significantly affect the environment) an EA resulting in a FONSI represents a less rigorous analysis and a determination that an EIS is not needed.[3] Thus, the questions of how much analysis was required and whether OSM complied with NEPA in each instance vary significantly depending on the type of NEPA document prepared for each of the four mines.

Third, the prior litigation history differs among the different mines. As to the Antelope and Black Thunder mines, Plaintiff has already challenged the underlying EISs from 2008 and 2010, including litigating NEPA challenges similar to those raised here. *See WildEarth Guardians v. U.S. Forest Serv.*, 120 F. Supp. 3d 1237 (D. Wyo. 2015) (rejecting NEPA challenges to BLM's 2010 EIS for Wright Area Coal Lease Applications, including for the Black Thunder Mine) (appeal filed) ("*WEG v. USES*"); *WildEarth Guardians v. Salazar*, 880 F. Supp. 2d 77 (D.D.C. 2012) (rejecting NEPA challenges to 2008 EIS for Antelope Mine leasing), *aff'd sub nom*. *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013). Given this history, Plaintiff's challenges as to the Antelope and Black Thunder Mines may present preclusion issues not relevant to the other two mines.

In light of these differences and because Plaintiff's claims as to each of the four mines must be analyzed separately in any event, the Court concludes that the Plaintiff's claims do arise from not "same transaction" or present a "common question of law or

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[3] *See generally, e.g.*, Environmental Protection Agency, National Environmental Policy Act Review Process, https://www.epa.gov/nepa/national-environmental-policy-act-review-process (last visited June 17, 2016).

fact," and determines that severance of the claims is appropriate.

B. Transfer

Having already determined that the Court will sever the claims, the decision to then transfer the claims related to mines in Wyoming and New Mexico is easier. There would be little advantage to severing the claims but keeping all four in this district.

Respondents cite numerous prior decisions in which this Court and other District Courts have granted motions to transfer in similar circumstances.[4] Plaintiff cites no contrary cases in which similar motions to transfer have been denied. Thus, while the decision to transfer remains within the Court's discretion, all prior analogous decisions cited to the Court have granted transfer in similar circumstances. This case is no exception, and Plaintiff has not presented any principled distinction between this case and these prior decisions. The Court therefore agrees with the conclusion reached in

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[4] *See WildEarth Guardians v. Jewell*, 2016 WL 796189 (D. Colo. Mar. 1, 2016) (transferring challenge related to federal coal lease in Utah to the District of Utah); *WEG v. OSM I*, 2014 WL 503565 (severing claims and transferring challenge to Mining Plan approvals to respective districts in which mines are located); *WildEarth Guardians v. U.S. Forest Serv.*, 2012 WL 1415378 (D. Colo. Apr. 24, 2012) (transferring claims challenging federal coal leasing in Wyoming to the District of Wyoming, including challenge to 2010 EIS noted above).

See also Defenders of Wildlife v. Jewell, 2013 WL 6179953 (M.D. Tenn. Nov. 26, 2013) (transferring challenge to coal mine permitting decisions to district in which mine was located); *Sierra Club v. Flowers*, 276 F. Supp. 2d 62 (D.D.C. Aug. 23, 2013) (transferring environmental challenge to issuance of mining permits in the Everglades to Southern District of Florida); *WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 2013 WL 36204 (D. Colo. Jan. 9, 2013) (transferring challenge to removal of Endangered Species Act protection for gray wolves in Wyoming to the District of Wyoming); *Friends of the Norbeck v. U.S. Forest Serv.*, 2010 WL 4137500 (D. Colo. Oct. 18, 2010) (transferring environmental claims related to federal wildlife preserve in South Dakota to the District of South Dakota); *Sierra Club v. U.S. Dep't of State*, 2009 WL 3112102 (N.D. Cal. Sept. 23, 2009) (transferring environmental challenge regarding pipeline crossing Minnesota to District of Minnesota); *S. Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82 (D.D.C. 2004) (transferring NEPA challenge to permitting of oil and gas leases in Utah to the District of Utah); *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13 (D.D.C. 1996) (transferring challenge to Forest Service issuance of easement in Colorado to District of Colorado).

prior cases that have given controlling weight to the "local interest in having localized controversies decided at home." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947).[5]

Plaintiff's other arguments against transfer are unpersuasive. Plaintiff argues that the Court should give preference to its choice of forum. (ECF No. 42 at 15–16.) "However, the forum selection of the plaintiff receives less deference if the plaintiff does not reside in the district. In addition, the forum chosen by the plaintiff is given little weight when the facts giving rise to the litigation have no material relation or significant connection to the forum chosen by the plaintiff." *WildEarth Guardians v. Jewell*, 2016 WL 796189, at *2 (D. Colo. Mar. 1, 2016) (citing *Employers Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1168 (10th Cir. 2010)). Here, Plaintiff is headquartered in New Mexico, has staff attorneys in Denver, and offices in Wyoming and several other states.[6] Moreover, Plaintiff has advanced very similar litigation in other districts in the past, including in Wyoming.[7] *See, e.g., WEG v. USES*, 120 F. Supp. 3d 1237.

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[5] *See also, e.g.*, *Wildearth Guardians v. Jewell*, 2016 WL 796189, at *3 ("the local interest factor is broader than just questions of local law. This factor encompasses the important interest in having local controversies decided where the controversy exists . . . . The local interest in having localized controversies decided at home remains a relevant factor in the [§ 1404(a)] analysis"); *WEG v. OSM I*, 2014 WL 503635, at * 1 (recognizing "the value in having environmental claims litigated where their impacts resonate most deeply"); *WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 2013 WL 136204, at *3 ("local interests in a dispute can be the most influential factor supporting transfer" (internal quotation marks omitted)); *WEG v. U.S. Forest Serv.*, 2012 WL 1415378, at *4 (concluding "the magnitude of these local interests weigh heavily in favor of transfer" where "challenged project would have substantial impacts on the local economy and it is particularly relevant to the State of Wyoming"); *Friends of the Norbeck*, 2010 WL 4137500, at *4 ("extent of local interests . . . weigh heavily in favor of transfer[]").

[6] *See* http://www.wildearthguardians.org/site/PageServer ("Offices also in . . . Wyoming"); http://www.wildearthguardians.org/site/PageServer?pagename=about_staff (last visited June 17, 2016).

[7] Plaintiff can readily seek *pro hac vice* status in the District of Wyoming. *See* D. Wyo. L.Civ.R. 84.2(b). While Plaintiff argues that the travel and other expenses of associating with

Moreover, the facts giving rise to this litigation have little inherent connection to Colorado (other than claims relating to the Bowie No. 2 mine, which will remain here). The only real connection to Colorado is that OSM's regional office is in Denver, but even that connection is tenuous, since the ultimate approval of Mining Plans rests with the Secretary of Interior in Washington, D.C. *See WEG v. OSM II*, 104 F. Supp. 3d at 1216; 30 C.F.R. § 746.11(a).

Plaintiff also argues that these cases will be decided on the basis of administrative records "that can be reviewed just about anywhere." (ECF No. 42 at 16.) But that only confirms that the challenge to each Mining Plan will proceed separately on its own administrative record. *See supra* at 8–9. Plaintiff presents no reason the interests of justice would be served by having this Court review four separate records rather than transferring the Wyoming and New Mexico claims for separate review. The Court is also skeptical of attempts at "forum shopping," *cf. Home Loan Inv. Co. v. St. Paul Mercury Ins. Co.*, 78 F. Supp. 3d, 1307, 1320 (D. Colo. 2014) (recognizing federal policy of "discouragement of forum-shopping and avoidance of inequitable administration of the laws"), and is not inclined to allow Plaintiff, in the most recent of its several challenges to federal coal decisions, to prosecute its challenges regarding mines in New Mexico and Wyoming here in Colorado.

IV. CONCLUSION

Wyoming counsel and litigating in Wyoming argue against transfer (ECF No. 42 at 18–19), the Court does not consider the convenience of counsel a relevant factor under § 1404(a), *see, e.g., Bailey v. Union Pac. Ry. Co.*, 364 F. Supp. 2d 1227, 1230 (D. Colo. 2007), and the other practical differences for Plaintiff to litigate in Wyoming rather than Colorado are relatively minor, especially in a case like this that will be reviewed and decided on the paper record and may not require any travel or in person court appearances.

Considering the relevant factors, the Court concludes that the interests of justice and convenience of the parties are best served by severing the claims related to each of the four mines at issue in this lawsuit and transferring the claims related to the mines in New Mexico and Wyoming to those respective districts, pursuant to Federal Rule of Civil Procedure 21 and 28 U.S.C. 1404(a).

Accordingly, for the reasons set forth above, the Court ORDERS as follows:

1. Respondents' Motion to Sever and Transfer (ECF No. 26) is GRANTED;
2. The claims brought in this case will be SEVERED to create four separate cases including:

   (A) the claims as related to the El Segundo Mine in New Mexico;

   (B) the claims as related to the Bowie No. 2 Mine in Colorado;

   (C) the claims as related to the Antelope Mine in Wyoming; and

   (D) the claims as related to the Black Thunder Mine in Wyoming;

2. The Clerk is DIRECTED open three new cases, each duplicating the docket of this case, to be captioned and transferred as follows:

   (A) *WildEarth Guardians, Plaintiff, v. Jewell, et al., Defendants, and State of Wyoming and Antelope Coal, LLC, Intervenor-Defendants*; this case shall be TRANSFERRED to the U.S. District Court for the District of Wyoming;

   (B) *WildEarth Guardians, Plaintiff, v. Jewell, et al., Defendants; and State of Wyoming and Thunder Basin Coal Company, LLC, Intervenor-Defendants*; this case shall be TRANSFERRED to the U.S. District Court for the District of Wyoming;

(C) *WildEarth Guardians, Plaintiff, v. Jewell, et al., Defendants, and New Mexico Coal Resources, LLC, Intervenor-Defendant;* this case shall be TRANSFERRED to the U.S. District Court for the District of New Mexico;

4. For the two cases transferred to the United States District Court for the District of Wyoming, these claims will be transferred as two separate cases but the Clerk will enter a notice of case association between these two cases, and severance is without prejudice as to whether the District of Wyoming may decide to consolidate some or all of the claims in these cases following transfer;
5. The claims related to the Bowie No. 2 Mine shall remain pending in this case; the Clerk and the respective parties are directed to caption this case as *WildEarth Guardians, Plaintiff, v. Jewell, et al., Defendants, and Bowie Resources, LLC, Intervenor-Defendant;*
6. With regard to the claims related to the Bowie No. 2 Mine, which shall remain before the undersigned, the previously-entered Stay is hereby LIFTED. No later than **June 27, 2016** the remaining parties to this dispute shall file a joint proposed scheduling order encompassing all matters remaining for resolution in this case, which may, without limitation, address any necessary updates to issues covered in the previously-entered Joint Case Management Plan (ECF No. 8).
7. Only those Intervenor-Defendants noted in the case captions listed above shall remain parties in each of the four severed cases;
8. The Clerk shall transmit the respective files to the Districts of New Mexico and Wyoming, as stated above.

Dated this 17th day of June, 2016.

BY THE COURT:

William J. Martínez
United States District Judge