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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

)	
STATE OF CALIFORNIA, et al.,)	
Plaintiffs,)	
v.)	Case No. 3:17-cv-07186-WHO
U.S. BUREAU OF LAND MANAGEMENT, et al.)	Related to No. 3:17-cv-07187-WHO
Defendants.)	DEFENDANTS' MOTION TO TRANSFER THESE ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING
)	
SIERRA CLUB, et al.,)	Date: February 14, 2018
Plaintiffs,)	Time: 2:00 pm
v.)	Judge: Hon. William H. Orrick
RYAN ZINKE, in his official capacity as Secretary of the Interior, et al.)	Courtroom 2, 17 th Floor
Defendants.)	450 Golden Gate Ave., San Francisco, CA

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EXHIBITS

- Exhibit A Declaration of James Tichenor
- Exhibit B Order Granting Joint Motion to Stay, *Wyoming v. U.S. Dep’t of Interior*, No. 16-cv-285, No. 16-cv-280 (D. Wyo. Dec. 29, 2017), ECF No. 189.
- Exhibit C Declaration of James Tichenor
- Exhibit D Admin. Mot. to Consider Whether Cases Should be Related, *California v. BLM*, No. 3:17-cv-03804-EDL (N.D. Cal. Dec. 20, 2017), ECF No. 100.
- Exhibit E Order Denying Defs.’ Mot. to Transfer, *California v. BLM*, No. 17-cv-03804-EDL (N.D. Cal. Sept. 7, 2017), ECF No. 73.
- Exhibit F Corrected Joint Mot. to Stay Case, *Wyoming v. U.S. Dep’t of Interior*, No. 16-cv-285, No. 16-cv-280 (D. Wyo. Dec. 27, 2017), ECF No. 183.

1 **NOTICE OF MOTION AND MOTION TO TRANSFER**

2 PLEASE TAKE NOTICE THAT on February 14, 2018, at 2:00 p.m. before the
3 Honorable William H. Orrick, Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San
4 Francisco, California 94102, Defendants, the Bureau of Land Management; the U.S. Department
5 of the Interior; Katharine S. MacGregor, in her official capacity as Acting Assistant Secretary for
6 Land and Minerals Management, U.S. Department of the Interior; and Ryan Zinke, in his official
7 capacity as Secretary of the Interior, will and hereby do move the Court for an order transferring
8 these two related actions, 3:17-cv-07186 and 3:17-cv-07187, to the U.S. District Court for the
9 District of Wyoming pursuant to 28 U.S.C. § 1404(a).

10 These two cases challenging the Bureau of Land Management’s (“BLM”) final rule that
11 suspends or delays many of the provisions of the Waste Prevention, Production Subject to
12 Royalties, and Resource Conservation Rule (hereinafter the “Waste Prevention Rule”) should be
13 transferred to the District of Wyoming where two lawsuits challenging the Waste Prevention
14 Rule are already pending. A transfer is in the interests of justice as it would conserve judicial
15 resources and prevent inconsistent judgments by ensuring that only one court is considering
16 issues arising out of the Waste Prevention Rule. It is also the more convenient forum, as all but
17 one of the parties to these cases are already party to the litigation in the District of Wyoming.
18 Where related cases are pending in another forum and another court is already familiar with the
19 complex issues involved in these actions, Plaintiffs’ choice of venue is outweighed by the strong
20 interests favoring transfer.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. BACKGROUND**

23 **A. The Waste Prevention Rule**

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

1 also requires that operators inspect equipment for leaks and update equipment that contributes to
2 the loss of natural gas during oil and gas production. 81 Fed. Reg. at 83,011, 83,022; 43 C.F.R.
3 §§ 3179.301-3179.304, 3179.201-3179.204. While the Waste Prevention Rule went into effect
4 on January 17, 2017, many of the Rule's requirements were to be phased in over time, and would
5 not become operative until January 17, 2018. 81 Fed. Reg. at 83,023-24, 83,033; 43 C.F.R. §§
6 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, 3179.301-3179.305.

7 **B. The District of Wyoming Litigation Challenging the Waste Prevention Rule**

8 On November 15, 2016, two industry groups, Western Energy Alliance and the
9 Independent Petroleum Association of America, filed suit in the U.S. District Court for the
10 District of Wyoming challenging the Waste Prevention Rule. *W. Energy All. v. Zinke*, No. 16-
11 cv-280 (D. Wyo. filed Nov. 15, 2016). Three days later, the States of Wyoming and Montana
12 filed a second lawsuit in the District of Wyoming challenging the Waste Prevention Rule.
13 *Wyoming v. U.S. Dep't of Interior*, No. 16-cv-285 (D. Wyo. filed Nov. 18, 2016). Both sets of
14 plaintiffs immediately moved for a preliminary injunction, arguing, among other things, that
15 BLM lacked statutory authority to promulgate the Rule and that BLM's cost-benefit analysis for
16 the Rule was inadequate. Mot. for Prelim. Inj. & Mem. in Supp. of Mot. for Prelim. Inj.,
17 *Wyoming*, No. 16-cv-285 (D. Wyo. filed Nov. 28, 2016), ECF Nos. 21, 22; Mot. for Prelim. Inj.
18 & Mem. in Supp. of Mot. for Prelim. Inj., *W. Energy All.*, No. 16-cv-280 (D. Wyo. filed Nov. 23,
19 2016), ECF Nos. 12, 13.

20 The cases were consolidated, and the States of California and New Mexico, as well as a
21 coalition of environmental groups, including all but one of the Plaintiffs in this action,¹
22 intervened in the lawsuits on the side of the government. The States of North Dakota and Texas
23 intervened on the side of the petitioners. On January 16, 2017, the court denied the motions for
24 preliminary injunction, finding that the petitioners had not met their burden to demonstrate a
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28 ¹ Of the environmental organization Plaintiffs, only the Fort Berthold Protectors of Water and
Earth Rights has not intervened in the Wyoming litigation.

1 likelihood of success on the merits. *Wyoming v. U.S. Dep't of Interior*, Nos. 16-cv-285, 16-cv-
2 280, 2017 WL 161428 (D. Wyo. Jan. 16, 2017).

3 **C. BLM's Reconsideration of the Waste Prevention Rule**

4 On March 28, 2017, President Donald J. Trump issued an Executive Order requiring that
5 the Secretary of the Interior "review" the Waste Prevention Rule and "if appropriate, . . . as soon
6 as practicable, . . . publish for notice and comment proposed rules suspending, revising, or
7 rescinding" the Rule. Exec. Order No. 13,783, 82 Fed. Reg. 16,093, § 7(b) (Mar. 28, 2017). As
8 directed, BLM reviewed the Waste Prevention Rule and determined that it does not align with
9 the policy set forth in Executive Order 13,783, which states that it is "in the national interest to
10 promote the clean and safe development of our Nation's vast energy resources, while at the same
11 time avoiding regulatory burdens that unnecessarily encumber energy production, constrain
12 economic growth, and prevent job creation." 82 Fed. Reg. at 16,093; 82 Fed. Reg. 46,458,
13 46,459-60 (Oct. 5, 2017).

14 BLM has drafted a proposed Revision Rule that would rescind certain provisions of the
15 Waste Prevention Rule and substantially revise others. Pursuant to Executive Order 12,866, the
16 proposed rule is currently under review by the Office of Information and Regulatory Affairs
17 ("OIRA") within the Office of Management and Budget ("OMB") to ensure that it is consistent
18 with applicable law and the President's priorities, and does not conflict with the actions or
19 policies of other agencies. *See* 58 Fed. Reg. 51,735 (Sept. 30, 1993). BLM has also submitted to
20 OIRA a draft regulatory impact analysis and draft environmental assessment for the proposed
21 rule. Decl. of James Tichenor ¶ 6, Ex. A. OIRA has circulated the proposed rule for interagency
22 review. *Id.* Once OIRA concludes its review process, BLM will publish the proposed rule in the
23 Federal Register for public comment. *Id.* BLM anticipates publication in the Federal Register in
24 January 2018. *Id.*

25 In the interim, to "avoid imposing temporary or permanent compliance costs on operators
26 for requirements that might be rescinded or significantly revised in the near future," BLM
27 developed a rule to delay for one year the effective date of provisions of the Waste Prevention
28 Rule that had not yet become operative and suspend for one year the effectiveness of certain

1 provisions that were already in effect (“Suspension Rule”). 82 Fed. Reg. 58,050, 58,051 (Dec. 8,
2 2017). BLM published the proposed Suspension Rule on October 5, 2017, and sought public
3 comment for a thirty day period. 82 Fed. Reg. at 46,458. On December 8, 2017, after reviewing
4 the comments received, BLM published the final Suspension Rule. 82 Fed. Reg. 58,050. The
5 Suspension Rule took effect January 8, 2018. *Id.* While the Suspension Rule suspends or delays
6 many of the provisions of the Waste Prevention Rule, other provisions remain in effect including
7 certain provisions relating to royalties. *See id.* at 58,051-52.

8 Plaintiffs filed the instant lawsuits challenging BLM’s Suspension Rule in the U.S.
9 District Court for the Northern District of California on December 19, 2017, and immediately
10 moved for a preliminary injunction. Compl. & Mot. for Prelim. Inj., *California v. BLM*, No. 17-
11 cv-7186 (N.D. Cal. filed Dec. 19, 2017), ECF Nos. 1, 3; Compl. & Mot. for Prelim. Inj., *Sierra*
12 *Club v. Zinke*, No. 17-cv-7187 (N.D. Cal. filed Dec. 19, 2017), ECF Nos. 1, 4. Plaintiffs seek
13 vacatur of the Suspension Rule and reinstatement of the Waste Prevention Rule. Compl. 32,
14 *Sierra Club*, No. 17-cv-7187, ECF No. 1 (“Sierra Club Compl.”); Compl. 22, *California*, No. 17-
15 cv-7186, ECF No. 1 (“Cal. Compl.”).

16 On December 29, 2017, the District of Wyoming stayed the cases challenging the Waste
17 Prevention Rule in light of the Suspension Rule and the fact that BLM is in the process of
18 preparing a revision of the Waste Prevention Rule. Order Granting Joint Motion to Stay,
19 *Wyoming*, No. 16-cv-285, No. 16-cv-280 (D. Wyo. Dec. 29, 2017), ECF No. 189, attached as Ex.
20 B. In that order, the court recognized that the instant challenges to the Suspension Rule are
21 “inextricably intertwined” with the cases challenging the Waste Prevention Rule and “with the
22 ultimate rules to be enforced.” *Id.* at 4.

23 **II. STANDARD OF REVIEW**

24 Pursuant to 28 U.S.C. § 1404(a), “For the convenience of parties and witnesses, in the
25 interest of justice, a district court may transfer any civil action to any other district or division
26 where it might have been brought” Under this statute, whether an action should be
27 transferred involves a two-step inquiry. The transferor court must first determine whether the
28 action “might have been brought” in the transferee court, and then the court must make an

1 “individualized, case-by-case consideration of convenience and fairness.” *Inherent.com v.*
2 *Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006) (citing *Hatch v. Reliance Ins.*
3 *Co.*, 758 F. 2d 409, 414 (9th Cir. 1985)); *see also Jones v. GNC Franchising*, 211 F. 3d 495, 498
4 (9th Cir. 2000)).

5 Under the first prong of the Section 1404(a) analysis, the reviewing court must determine
6 whether the proposed transferee court is a proper venue for the action. The second prong of the
7 § 1404(a) analysis requires the Court to consider the three factors set forth in the statute: (1) the
8 convenience of parties; (2) the convenience of witnesses; and (3) the interests of justice. *Meijer,*
9 *Inc. v. Abbott Labs.*, 544 F. Supp. 2d 995, 999 (N.D. Cal. 2008). In weighing these factors,

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

15 *Jones*, 211 F.3d at 498-99.

16 **III. ARGUMENT**

17 The Court should transfer these cases to the District of Wyoming where litigation
18 concerning the Waste Prevention Rule is already underway. These actions could have been
19 brought in the District of Wyoming in the first instance, yet Plaintiffs chose to file suit in this
20 court, thereby forcing a second court to become familiar with the Waste Prevention Rule and
21 inconveniencing Defendants and Intervenors by making them litigate “inextricably intertwined”
22 issues in two different venues. As Plaintiffs’ complaints and preliminary injunction motions
23 make clear, the Suspension Rule cannot be reviewed without also considering the Waste
24 Prevention Rule upon which it is premised. Transfer will conserve the resources of both the
25 courts and the parties and will prevent inconsistent judgments by ensuring that all issues
26 concerning the Waste Prevention Rule are before the same court.

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

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

11 Officers and agencies of the United States can have more than one residence, and BLM
12 can properly be considered a resident of both Wyoming and California, among numerous other
13 jurisdictions, because it has offices in those states and manages land and resources in both states.
14 Order Denying Defs.' Mot. to Transfer at 3, *California v. BLM*, No. 17-cv-03804-EDL (N.D.
15 Cal. Sept. 7, 2017), ECF No. 73, attached as Ex. E ("The Bureau of Land Management maintains
16 offices and manages land in both California and Wyoming, so venue is proper in both
17 jurisdictions."); *see also Dehaemers v. Wynne*, 522 F. Supp. 2d 240, 248 (D.D.C. 2007).

18 Moreover, a substantial part of the property that is affected by the Suspension Rule is
19 located in Wyoming. Wyoming contains 40.7 million acres of federal mineral estate that is
20 subject to the Waste Prevention Rule and, thus, to the Suspension Rule. *See*
21 <https://www.blm.gov/about/what-we-manage/wyoming> ("BLM Wyoming is No. 1 in federal gas
22 production and No. 2 in federal oil production."); *see also S. Utah Wilderness All. v. Lewis*, 845
23 F. Supp. 2d 231, 234 (D.D.C. 2012) ("Because this action concerns real property situated in
24 Utah, all parties conclude that this suit could have been brought in the District of Utah.");
25 *Wildearth Guardians v. BLM*, 922 F. Supp. 2d 51, 54 (D.D.C. 2013) ("This action 'might have
26 been brought' in the District of Wyoming, *see* § 1404(a), because the tracts of land at issue are
27 located there and the contested regulatory actions took place there."). Because of the substantial
28 amount of oil and gas development on BLM-managed lands and minerals in Wyoming, a

1 substantial portion of the costs of compliance with the suspended deadlines would be realized in
2 Wyoming.

3 In short, the District of Wyoming is a proper venue under Section 1391 because BLM
4 resides there and lands and minerals that are directly affected by the Suspension Rule are located
5 there.

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

7 These actions also satisfy the second prong of the Section 1404(a) transfer analysis
8 because the strong interest in having a single court review issues arising out of the same
9 rulemaking outweighs Plaintiffs' choice of forum. "The question of which forum will better
10 serve the interest of justice is of predominant importance on the question of transfer, and factors
11 involving convenience of parties and witnesses are in fact subordinate." *Wireless Consumers*
12 *All., Inc. v. T-Mobile USA, Inc.*, No. 03-cv-3711-MHP, 2003 WL 22387598, at *4 (N.D. Cal.
13 Oct. 14, 2003) (citing *Pratt v. Rowland*, 769 F. Supp. 1128, 1133 (N.D. Cal. 1991)); *see also*
14 *Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997)
15 ("Consideration of the interest of justice, which includes judicial economy, may be determinative
16 to a particular transfer motion, even if the convenience of the parties and witnesses might call for
17 a different result." (internal quotations and citation omitted)). In fact, "the interest in judicial
18 economy is enough to support transfer regardless of the other [Section 1404(a)] factors."
19 *Bennett v. Bed Bath & Beyond, Inc.*, No. 11-cv-02220-CRB, 2011 WL 3022126, at *2 (N.D. Cal.
20 July 22, 2011) (citation omitted).

21 "One frequently mentioned element of the 'interest of justice' is the desire to avoid
22 multiple litigations based on a single transaction." *Wireless Consumers*, 2003 WL 22387598, at
23 *4. "To permit a situation in which two cases involving precisely the same issues are
24 simultaneously pending in different District Courts leads to the wastefulness of time, energy and
25 money that § 1404(a) was designed to prevent." *Elecs. for Imaging, Inc. v. Tesson, Ltd.*, No.
26 07-cv-05534-CRB, 2008 WL 276567, at *1 (N.D. Cal. Jan. 29, 2008) (quoting *Cont'l Grain Co.*
27 *v. Barge FBL-585*, 364 U.S. 19, 26 (1960)); *see also Mussetter Distrib., Inc. v. DBI Beverage*
28 *Inc.*, No. 09-cv-1442, 2009 WL 1992356, at *5 (E.D. Cal. July 8, 2009) ("[C]entralizing the

1 adjudication of similar cases will also avoid the possibility of inconsistent judgments.” (internal
2 quotations and citation omitted)); *Argonaut Ins. Co. v. Mac Arthur Co.*, No. 12-cv-3878-WHA,
3 2002 WL 145400, at *4 (N.D. Cal. Jan. 18, 2002) (“The best way to ensure such consistency is
4 to prevent related issues from being litigated in two separate venues.”).

5 Because the District of Wyoming is intimately familiar with the Waste Prevention Rule,
6 and because the Suspension Rule is “inextricably intertwined” with the Waste Prevention Rule, it
7 is in the interest of judicial economy for that court to hear these related actions.² Ex. B at 4.
8 The Suspension Rule cannot be understood outside of the Waste Prevention Rule, as its purpose
9 is to provide relief from the Waste Prevention Rule pending BLM’s reconsideration and revision
10 of that Rule by suspending or delaying specific provisions of the Rule. 82 Fed. Reg. at 58,050-
11 52, 58,063. Although the Suspension Rule is a separate final agency action, a reviewing court
12 will have to understand the intricacies of the Waste Prevention Rule in order to address
13 Plaintiffs’ allegations, as these allegations turn on the relationship between the Suspension Rule
14 and Waste Prevention Rule. Simply put, a court cannot determine if the suspension of a rule is
15 reasonable without examining the rule being suspended.

16 Plaintiffs acknowledge the interconnectedness of the two rules in their complaints and
17 preliminary injunction motions, which repeatedly compare and contrast the Suspension Rule to
18 the Waste Prevention Rule. For example, they argue that:

19 _____
20
21 ² In seeking to relate these cases to Plaintiffs’ prior challenge to BLM’s postponement of certain
22 deadlines of the Waste Prevention Rule under 5 U.S.C. § 705, Plaintiffs have conceded that a
23 court’s familiarity with “the factual background relevant to [the] case” justifies reassignment.
24 Admin. Mot. to Consider Whether Cases Should be Related at 2, *California v. BLM*, No. 3:17-
25 cv-03804-EDL (N.D. Cal. Dec. 20, 2017), ECF No. 100, attached as Ex. D. As Plaintiffs have
26 noted, “it is likely that there would be an unduly burdensome duplication of labor, and/or
27 conflicting results, if the cases were conducted before different judges because both cases deal
28 with the same facts surrounding the [Waste Prevention] Rule.” *Id.* While Plaintiffs made these
statements in support of reassignment to Magistrate Judge Laporte—who never considered the
merits of the Waste Prevention Rule but instead decided a limited legal question regarding a
statute not at issue in this case—they apply with greater force here given that the District of
Wyoming has presided over two cases challenging the Waste Prevention Rule since the Rule was
first promulgated in November 2016, and has evaluated the substance of the Rule and BLM’s
efforts to reconsider it over the course of many rounds of briefing.

- 1 • “[U]nexplained inconsistencies between the Waste Prevention Rule and the
2 Suspension” render the Suspension Rule arbitrary and capricious. Mot. for
3 Prelim. Inj. 14-15, *California v. BLM*, No. 17-cv-7186 (N.D. Cal. filed Dec. 19,
4 2017), ECF No. 3 (“Cal. Prelim. Inj. Mot.”).
- 5 • BLM’s new methodology for calculating the social cost of methane in the
6 Suspension Rule is arbitrary and capricious as compared to the methodology used
7 for the Waste Prevention Rule. *Id.* at 20-21; *see also* Sierra Club Compl. ¶¶ 101-
8 102.
- 9 • BLM’s rationale for the Suspension Rule is a “180-degree change in BLM’s
10 position” in the Waste Prevention Rule. Mem. in Supp. of Mot. for Prelim. Inj.
11 12, *Sierra Club v. Zinke*, No. 17-cv-7187 (N.D. Cal. filed Dec. 19, 2017), ECF
12 No. 4-1 (“Sierra Club Prelim. Inj. Mot.”); Cal. Prelim. Inj. Mot. 14-15; *see also*
13 Sierra Club Compl. ¶¶ 97, 99-100, 126.

14 In order for a reviewing court to evaluate these claims and determine whether BLM’s position
15 has changed and, if so, whether its rationale is adequate when compared to its prior position, the
16 court will necessarily have to review the substance of both rules.

17 In addition, resolution of many of Plaintiffs’ specific allegations will require
18 consideration of the Waste Prevention Rule and the Wyoming litigation. For example, they
19 allege that:

- 20 • The Suspension Rule is a “substantive revision” of the Waste Prevention Rule.
21 Sierra Club Prelim. Inj. Mot. 7.
- 22 • BLM’s administrative record for the Waste Prevention Rule—which is already
23 before the District of Wyoming—undermines the Suspension Rule. Cal. Compl.
24 ¶ 58; Sierra Club Prelim. Inj. Mot. 12-13; Cal. Prelim. Inj. Mot. 14-15.
- 25 • A one year suspension of certain provisions of the Waste Prevention Rule will
26 have a significant impact on the environment. Cal. Compl. ¶ 73; Sierra Club
27 Compl. ¶ 149.

- 1 • Statements made by BLM in advance of the publication of the Suspension Rule,
2 including statements made in the District of Wyoming litigation, “indicate that
3 BLM had already made up its mind to finalize the Suspension [Rule] prior to
4 considering public comments.” Cal. Compl. ¶ 76; Sierra Club Compl. ¶ 137;
5 Sierra Club Prelim. Inj. Mot. 16.
- 6 • The provisions of the Waste Prevention Rule that remain in effect during the
7 suspension do not satisfy BLM’s obligations under the Mineral Leasing Act.
8 Sierra Club Compl. ¶¶ 121, 125; Cal. Prelim. Inj. Mot. 18.
- 9 • BLM has not adequately explained its change in position on certain issues
10 underlying the Waste Prevention Rule, such as the compliance costs of that Rule
11 and the agency’s estimate of the social cost of methane. Cal. Compl. ¶ 59-61;
12 Sierra Club Compl. ¶¶ 126-27; Cal. Prelim. Inj. Mot. 21.
- 13 • The implementation of the Waste Prevention Rule during the one year suspension
14 period would prevent alleged irreparable harms. Sierra Club Prelim. Inj. Mot. 19-
15 23; Cal. Prelim. Inj. Mot. 21-24.

16 The District of Wyoming is best situated to address these issues given its familiarity with
17 the Waste Prevention Rule, the Wyoming litigation, and BLM’s ongoing reconsideration of the
18 Waste Prevention Rule. That court has heard multiple preliminary injunction motions seeking to
19 enjoin the Waste Prevention Rule, including holding a lengthy hearing in which Plaintiffs
20 participated. Mot. for Prelim. Inj. & Mem. in Supp. of Mot. for Prelim. Inj., *W. Energy All.*, No.
21 16-cv-280 (D. Wyo.), ECF Nos. 12, 13; Pls.’ Mot. for Prelim. Inj. & Mem. in Supp. of Mot. for
22 Prelim. Inj., *Wyoming*, No. 16-cv-285 (D. Wyo.), ECF Nos. 21, 22. The court decided those
23 motions in large part on petitioners’ likelihood of success on the merits. *Wyoming*, 2017 WL
24 161428, at *4-10. The District of Wyoming is also familiar with BLM’s ongoing reconsideration
25 of the Waste Prevention Rule, including its promulgation of the Suspension Rule, due to recent
26 briefing, including motions to stay the cases in light of the Suspension Rule and the proposed
27 revision of the Waste Prevention Rule. *See, e.g.*, Corrected Joint Mot. to Stay Case, *Wyoming*,
28 No. 16-cv-285 (D. Wyo. Dec. 27, 2017), ECF No. 188, attached as Ex. F.

1 The District of Wyoming is particularly familiar with the provisions of the Waste
2 Prevention Rule that have been suspended by the Suspension Rule and would therefore be at
3 issue in this case, such as the capture percentage, pneumatic equipment, storage tank, and leak
4 detection and repair provisions, as these provisions were specifically challenged in the Wyoming
5 litigation. *See Wyoming*, 2017 WL 161428, at *1-10. Likewise, the District of Wyoming has
6 already considered the compliance costs of the Waste Prevention Rule and the agency’s use of
7 the social cost of methane to estimate costs and benefits, including reviewing the lengthy
8 Regulatory Impact Analysis for that Rule. *Id.* at *9-10.

9 The District of Wyoming’s familiarity will aid in review of the Suspension Rule as
10 BLM’s reasons for suspending many of the Waste Prevention Rule’s provisions—“concerns
11 regarding the statutory authority, cost, complexity, feasibility, and other implications” of the
12 Waste Prevention Rule, 82 Fed. Reg. at 58,051—necessarily implicate the substance of the
13 Waste Prevention Rule. That is, in order to determine whether the suspension was arbitrary and
14 capricious under the Administrative Procedure Act (“APA”), the reviewing court will have to
15 evaluate BLM’s concerns regarding regulatory burdens imposed by the Waste Prevention Rule,
16 including whether those burdens are reasonable in light of the Rule’s costs and benefits. *See id.*
17 at 58,050-51; *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.
18 29, 43 (1983) (describing standard of review under the APA).

19 This level of familiarity is no small matter. Even a brief perusal of the Waste Prevention
20 Rule makes clear that it is complex, with numerous subparts and interconnected provisions. 43
21 C.F.R. subpart 3179; *see also Madani v. Shell Oil Co.*, No. 07-cv-4296-MJJ, 2008 WL 268986,
22 at *2 (N.D. Cal. Jan. 30, 2008) (transferring case when transferee court had decided related cases
23 because transferee court would be “in the best position to determine substantive issues raised in
24 the present litigation” whereas, in contrast, the transferor court “would have to invest significant
25 time and resources to reach a similar level of familiarity”). Transfer will aid in judicial economy
26 by capitalizing on the District of Wyoming’s familiarity and preventing another court from
27 expending resources learning the intricacies of the Waste Prevention Rule. *See Bay.org v. Zinke*,
28 Nos. 17-cv-3739-YGR, 17-cv-3742-YGR, 2017 WL 3727467, at *5 (N.D. Cal. Aug. 30, 2017)

1 (transferring case to judge that had presided over actions involving “distinct” but related water
2 projects for years and thereby “gained not only factual and technical knowledge regarding the
3 water systems at issue and the different water projects but also knowledge of the” federal
4 processes at issue in the case). Transfer to the Wyoming court also avoids any possibility of
5 inconsistent conclusions regarding issues that are before both courts, such as, for example, the
6 reasonableness of BLM’s methodology for calculating the costs and benefits of the Waste
7 Prevention Rule.

8 Transferring these actions would also aid judicial efficiency by allowing a single court to
9 coordinate the schedules of all cases concerning the Waste Prevention Rule. Because the
10 outcome of this litigation has the potential to impact the litigation pending in the District of
11 Wyoming, it is more efficient for all of the cases to be before the same court, allowing that single
12 court to decide how best to schedule the deadlines of each case given their interconnectedness.
13 *See Ellison v. Autozone Inc.*, No. 11-cv-7686, 2013 WL 12141323, at *3 (C.D. Cal. Mar. 11,
14 2013) (transferring related case in part because “a court presiding over a single action is often
15 better able to manage all discovery and alternative dispute resolution, issue rulings which
16 establish law of the case, and coordinate pretrial schedules” (internal quotations and citation
17 omitted)). Indeed, in a recent order staying the litigation before it in light of the Suspension Rule
18 and the fact that BLM is in the process of preparing a revision of the Waste Prevention Rule, the
19 District of Wyoming noted that Plaintiffs’ actions challenging the Suspension Rule could affect
20 the outcome of that litigation. As the court explained:

21 An analysis of the merits of the present challenges to the Waste Prevention Rule
22 is dependent upon which “rules” are in effect. [B]ecause the Intervenor-
23 Respondents’ lawsuits in the Northern District of California raise substantive
24 challenges to the Suspension Rule and seek to reinstate the Waste Prevention Rule
in its entirety, it is fair to say those actions are inextricably intertwined with the
cases before this Court and with the ultimate rules to be enforced.

25 Ex. B at 4 (internal citations omitted).

26 Finally, this case is different from *California v. BLM*, in which Magistrate Judge Laporte
27 denied BLM’s motion to transfer to the District of Wyoming two cases brought by the same
28 plaintiffs in the instant cases. *See Ex. E*. There, the plaintiffs challenged BLM’s postponement

1 of certain provisions of the Waste Prevention Rule under 5 U.S.C. § 705. BLM moved to
2 transfer to Wyoming, but the court denied the motion finding that the cases involved “a
3 completely distinct, purely legal question” about BLM’s authority under Section 705. *Id.* at 5.
4 Unlike the Section 705 cases, the instant cases do not involve a segregable question of pure law.
5 Rather, the reviewing court will have to review the administrative record for the Suspension Rule
6 to determine if the agency’s decision to suspend certain provisions of the Waste Prevention Rule
7 was reasonable. In order to determine if suspension was reasonable, the court will necessarily
8 have to examine BLM’s reasons for promulgating the Waste Prevention Rule in the first place,
9 and evaluate the agency’s explanations for why a suspension was needed. Thus, in contrast to
10 the Section 705 cases—and as Plaintiffs’ own briefs make abundantly clear—there is simply no
11 way to separate out the Suspension Rule from the Waste Prevention Rule.

12 **C. The District of Wyoming is a More Convenient Forum and Wyoming Has a**
13 **Strong Interest in These Cases**

14 Convenience and Wyoming’s strong interest in these cases also weigh in favor of
15 transfer. When a related case is pending in another forum, “the pertinent question is not simply
16 whether *this* action would be more conveniently litigated in [Wyoming] than California, but
17 whether it would be more convenient to litigate the California and [Wyoming] actions separately
18 or in a coordinated fashion.” *Elec. for Imaging, Inc.*, 2008 WL 276567, at *2. Here, all but one
19 of the nineteen plaintiffs in these cases is a party to the Wyoming litigation and these actions
20 have the potential to impact the schedule and content of the cases in Wyoming. *See* Ex. B at 4.
21 Thus, it would be far more convenient to litigate these actions “in a coordinated fashion” in the
22 District of Wyoming.

23 Though Plaintiffs are likely to point to their connections to California as a reason the
24 cases should remain in this forum, those connections are more limited than they might first
25 appear and are significantly tempered by their voluntary participation in the pre-existing and
26 ongoing litigation in Wyoming. Of the Plaintiffs to these two consolidated actions, only one—
27 Fort Berthold Protectors of Water and Earth Rights—has not intervened in the Wyoming
28 litigation, and that organization is located in North Dakota. *Sierra Club Compl.* ¶ 25. Of the

1 sixteen other Plaintiff environmental organizations, only the Sierra Club is headquartered in
2 California, though that organization also has a Wyoming chapter. *Id.* ¶ 15;
3 <https://sierraclub.org/chapters>. The majority of the Plaintiff environmental organizations have no
4 offices in California,³ and, of the environmental organizations’ attorneys who have thus far
5 noticed an appearance, only one of sixteen is located in California. *See Bay.org*, 2017 WL
6 3727467, at *4 (finding plaintiff state-wide and national environmental organizations, including
7 Natural Resources Defense Council, cannot demonstrate that litigating in alternative forum
8 would cause “substantial inconvenience”). Even the State of California cannot claim that
9 Wyoming is a significantly less convenient forum than this district, as California is already party
10 to the Wyoming litigation. *See New Jersey v. U.S. Army Corps of Eng’rs*, Nos. 09-cv-5591-JAP,
11 09-cv-5889-JAP, 2010 WL 1704727, at *2-4 (D.N.J. Apr. 26, 2010) (applying same Section
12 1404(a) transfer factors to action brought by state).

13 In comparison, this district is significantly less convenient for Defendants, who must
14 otherwise litigate related issues in two different venues and two different circuits. And because
15 of the high costs of litigating a second set of cases in San Francisco, other parties to the
16 Wyoming litigation are necessarily forced to evaluate whether they can afford to intervene in
17 these cases. Unlike this court, the Wyoming court could coordinate these cases with the two
18 pending cases challenging the Waste Prevention Rule to limit travel expenses and streamline
19 litigation for all parties.

20 In addition, Wyoming has ties to and an interest in these cases that is at least equal to that
21 of California. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981) (noting interest in
22 “having localized controversies decided at home” weighs in favor of transfer). Both California
23

24
25 ³ Dine Citizens Against Ruining Our Environment, Citizens for a Healthy Community,
26 Environmental Law and Policy Center, Fort Berthold Protectors of Water and Earth Rights,
27 Montana Environmental Information Center, San Juan Citizens Alliance, Western Organization
28 of Resource Councils, Wilderness Workshop, WildEarth Guardians, and Wyoming Outdoor
Council have no offices in California. The Center for Biological Diversity, Environmental
Defense Fund, National Wildlife Federation, National Resource Defense Council, and the
Wilderness Society have field offices in California but appear to be headquartered elsewhere.

1 and Wyoming contain mineral estates managed by BLM, but Wyoming has far more federal and
 2 Indian oil and gas development impacted by the Waste Prevention Rule and Suspension Rule
 3 than California, let alone just the Northern District of California. In 2016, federal minerals in
 4 Wyoming produced 38.4 million barrels of oil and 1.45 trillion cubic feet (Tcf) of natural gas,
 5 whereas the federal minerals in the entire State of California produced 11.5 million barrels of oil
 6 and 12.2 billion cubic feet (Bcf) of natural gas. Decl. of James Tichenor ¶ 4, Ex. C. Moreover,
 7 to the extent Plaintiffs claim to have an interest in the Suspension Rule's impact on climate
 8 change, *see* Sierra Club Compl. ¶¶ 102-03; Cal. Compl. ¶¶ 18-20, 73, climate change, "by its
 9 nature, is not a local phenomenon, but crosses state and international borders." *Ctr. for*
 10 *Biological Diversity v. Lubchenco*, No. 09-cv-4087-EDL, 2009 WL 4545169, at *7 (N.D. Cal.
 11 Nov. 3, 2009). Thus, California has no more of an interest in that issue than Wyoming. *Id.* at *8
 12 (denying transfer to Alaska based on argument that Alaska has greater interest in climate
 13 change).

14 Other factors considered by courts when determining whether to transfer a case are
 15 neutral here. Both this Court and the District of Wyoming are familiar with federal law. As
 16 these cases are brought under the APA and will be decided on an administrative record, neither
 17 court is located nearer to sources of proof or witnesses. And while it takes slightly longer on
 18 average for a case in the District of Wyoming to reach disposition (10.2 months in the District of
 19 Wyoming versus 7.2 months in the Northern District of California),⁴ such minor differences in
 20 time to disposition are insufficient to overcome the many other factors weighing in favor of
 21 transfer. *Bay.org*, 2017 WL 3727467, at *5 n.5 ("While the Court recognizes that the Northern
 22 District's docket may be less congested than the Eastern District's docket, the Court finds that
 23 consideration does not outweigh the interests of judicial efficiency here."); *Cung Le v. Zuffa,*
 24 *LLC*, 108 F. Supp. 3d 768, 779 (N.D. Cal. 2015) ("[E]ven assuming Plaintiffs are correct that the
 25
 26

27 ⁴ These statistics are the average time from filing to disposition for civil cases from September
 28 30, 2016 to September 30, 2017. U.S. Dist. Courts – Combined Civil & Criminal Fed. Court
 Mgmt. Statistics, Sept. 30, 2012 through Sept. 30, 2017,
<http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2017/09/30-1>.

1 legal process in Nevada generally takes longer than it does in this district, that is simply not
 2 enough to overcome those other factors showing why this specific litigation is appropriately
 3 venued there.”); *Ctr. for Biological Diversity v. McCarthy*, No. 14-cv-05138-WHO, 2015 WL
 4 1535594, at *5 (N.D. Cal. Apr. 6, 2015) (finding differences between 6.4, 6.7, 6.8, and 8.1
 5 month disposition times “modest at best and insufficient to make the congestion factor” weigh
 6 against transfer). These average disposition times are particularly unreliable here, where the
 7 District of Wyoming’s substantial familiarity and experience with these issues may well
 8 contribute to a swifter resolution.

9 **IV. CONCLUSION**

10 Defendants respectfully request that the Court transfer these two actions to the U.S.
 11 District Court for the District of Wyoming. The Section 1404(a) factors weigh heavily in favor
 12 of transfer to the District of Wyoming where “inextricably intertwined” litigation is currently
 13 pending. Plaintiffs’ choice of forum is owed little deference when that choice would waste
 14 judicial resources and inconvenience other parties, and when Plaintiffs are already actively
 15 involved in related litigation in Wyoming.

16 Respectfully submitted this 9th day of January, 2018.

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