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

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

U.S. BUREAU OF LAND MANAGEMENT, et al.,

Defendants.

SIERRA CLUB, et al.,

Plaintiffs,

v.

RYAN ZINKE, in his official capacity as Secretary of the Interior, et al.,

Defendants.

Case No. 3:17-cv-07186-WHO

Consolidated with 3:17-cv-07187-WHO

PROPOSED-INTERVENORS NORTH DAKOTA AND TEXAS'S REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE

Hearing Date: February 14, 2018
Hearing Time: 2:00 p.m.
Courtroom: 4, 17th Floor

[The Hon. Judge William H. Orrick]

Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

In opposing transfer of this case to the District of Wyoming, the States of California and New Mexico ("State Plaintiffs") and Sierra Club, et al. ("Citizen Group Plaintiffs") (collectively, the "Plaintiffs") both attempt to dismiss the "inextricably intertwined" connections between these consolidated cases ("California Litigation") and the ongoing, and mature litigation in the U.S. District Court for the District of Wyoming. *See Wyoming v. U.S. Dep't of Interior*, Nos. 16-cv-285, 16-cv-280, 2017 WL 161428, ECF No. 189 at 4 (D. Wyo. Dec. 29, 2017) ("Wyoming Litigation"). The Wyoming Litigation, filed over a year ago, challenges Federal Defendants' (the Department of Interior (DOI), Bureau of Land Management (BLM)) 2016 promulgation of the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016) ("Venting and Flaring Rule"). This California Litigation involves an ancillary and interconnected BLM rule delaying certain compliance dates of the Venting and Flaring Rule, Final Rule; Waste Prevention, Production Subject to Royalties and Resource Conservation; Delay and Suspension of Certain Compliance Dates, 82 Fed. Reg. 58,050 (Dec. 8, 2017) ("Delay Rule").

This case does not involve an unrelated rule to that at issue in the Wyoming Litigation as Plaintiffs argue. This is demonstrated by the relief sought by the Plaintiffs in this case. Granting the relief they seek—invalidation of the Delay Rule and reinstatement of the Venting and Flaring Rule—will bring back into effect the full force of the Venting and Flaring Rule, the validity of which is at issue in the Wyoming Litigation, and the merits of which have already been briefed there. Further, many of the Plaintiffs' arguments against the Delay Rule are based on claims regarding the validity of the Venting and Flaring Rule, raising the possibility that the litigants could be faced with a different and potentially inconsistent judicial opinion on the same Rules which are also at issue in the Wyoming Litigation. Therefore, even based on Plaintiffs' own pleadings, the Delay Rule cannot be decided without also considering the Venting and Flaring Rule, because the latter will be either partially or fully in effect depending on the

validity of *both* Rules. In short, the Court cannot ignore the fundamental interrelation of these two rules when considering the two motions to transfer pending before it, as it is in the interests of justice for one court to address the validity of these inextricably bound rules in a single proceeding. The important interests of judicial economy and efficiency favor transferring these challenges to the District of Wyoming, where they may be consolidated with the Wyoming Litigation to avoid piecemeal and potentially conflicting litigation and prevent this Court from having to familiarize itself with the lengthy and complex intricacies of these Rules, as the U.S. District Court in Wyoming has already done.

Moreover, consolidation of these cases in the District of Wyoming would allow that court to coordinate briefing and hearing schedules, so as to avoid unnecessary travel expenses and duplicate filings. Allowing parallel and competing litigation over the same set of rules in two courts separated by one thousand miles would mean that the Plaintiffs, all but one of which is involved in the Wyoming Litigation, and the Defendants, all of whom are also parties to the Wyoming Litigation, would not only have to travel to Wyoming, but now also make additional trips to the Northern District of California. Furthermore, litigating in both courts will inevitably require briefing of overlapping issues, necessitating that all parties expend additional time and resources producing such briefs. It is clear that litigating these related matters "in a coordinated fashion" is more convenient than doing so separately. *Elecs. For Imaging, Inc. v. Tesseron, Ltd.*, No. 07-cv-05534-CRB, 2008 WL 276567, at *2 (N.D. Cal. Jan. 29, 2008).

In making its decision to transfer these consolidated cases to the District of Wyoming, the Court must consider the three factors enumerated in *Meijer, Inc. v. Abbott Labs*. 544 F. Supp. 2d 995, 999 (N.D. Cal. 2008). Plaintiffs and movants agree that convenience of witnesses is irrelevant to the Court's analysis, given the nature of these consolidated cases. The two other factors are the convenience to the parties and the interests of justice, both of which strongly favor transfer and consolidation of these cases. *Jones v. GNC Franchising* sets out additional factors that the Court may take into account. 211 F.3d 495, 498-99 (9th Cir. 2000). The factors germane to these motions to transfer are the state most familiar with

the governing law, plaintiff's choice of forum, and differences in the costs of litigation in the two forums.[1] The only element of the analysis weighing in favor of this Court's retention of these consolidated cases is that it is Plaintiffs' choice of forum. However, that factor is entitled to substantially less deference as Plaintiffs include (in addition to the State of California) a number of different entities with offices all over the country. The forum choice factor is made even more insignificant when balanced against the other factors, all of which favor transfer to the District of Wyoming. Accordingly, the Court should promptly transfer these "inextricably intertwined" cases to the District of Wyoming. Wyoming Litigation, ECF No. 189 at 4.

II. ARGUMENT

A. Both State Plaintiffs and Citizen Group Plaintiffs Concede the District of Wyoming Is a Proper Venue for These Consolidated Cases.

In their responses to both BLM and North Dakota and Texas's motions to transfer, both State Plaintiffs and Citizen Group Plaintiffs have conceded that these cases could have been properly filed in the District of Wyoming. State Plaintiffs' Opp'n, ECF No. 78 at 5-6; Citizen Group Plaintiffs' Opp'n, *Sierra Club, et al. v. Zinke*, No. 3:17-cv-7187-WHO, ECF No. 72 at 3 ("Citizen Groups' Challenge"). Their concession eliminates the Court's need to consider this requirement for transfer under 28 U.S.C. § 1404(a), as all parties agree that it has been met.

B. The Interests of Justice Weigh Heavily in Favor of Transfer.

The history of the challenges to these fundamentally related Rules and the realities of simultaneously litigating in two different forums demonstrate that the interests of justice weigh heavily in favor of litigating this matter in the District of Wyoming, where it may be consolidated with the Wyoming Litigation.

[1] All parties agree that both the District of Wyoming and the Northern District of California have sufficient contacts, such that these cases could have been filed in either venue. *See Jones*, 211 F.3d at 498-99.

i. These Cases Are Inextricably Intertwined and the Interests of Judicial Economy Favor Their Consolidation.

As the District of Wyoming has already made clear, because the California Litigation is "inextricably intertwined with the [Wyoming Litigation] and with the ultimate rules to be enforced . . . piecemeal analysis of the issues would likewise be an inefficient use of judicial resources." Wyoming Litigation, ECF No. 189 at 4. Plaintiffs attempt to distract the Court from this very important fact by arguing that this case, challenging the Delay Rule, involves separate agency action and is therefore unrelated to the Wyoming Litigation, which challenges the Venting and Flaring Rule. *See* State Plaintiffs' Opp'n, ECF No. 78 at 2; *see also* Citizen Groups' Opp'n, Citizen Groups' Challenge, ECF No. 72 at 1-2. That argument flies in the face of logic and should be disregarded. As noted above, judicial evaluation of these two Rules cannot practically be separated. To analyze the Delay Rule on its own, outside the context of the Venting and Flaring Rule, would not only result in an inappropriate and incomplete consideration of the Delay Rule, but would also be nearly impossible, given that Rule's numerous references to the Venting and Flaring Rule. More fundamentally, invalidating the Delay Rule as Plaintiffs request would again make the Venting and Flaring Rule fully effective, even though the validity of that Rule is being challenged in the Wyoming Litigation. Lastly, Plaintiffs' position is belied by their own pleadings in support of their motions for preliminary injunctions, where their arguments against the Delay Rule are in large measure based on their arguments regarding the validity of the Venting and Flaring Rule and their claim that BLM has very little, if any, discretion to regulate waste in any manner other than through the Venting and Flaring Rule. *See* State Plaintiffs' Mot. for Prelim. Inj., ECF No. 3; *see also* Citizen Group Plaintiffs' Mot. for Prelim. Inj., Citizen Groups' Challenge, ECF No. 4-1. Therefore, Plaintiffs are not merely seeking a ruling on the Delay Rule, but also on the validity of the underlying Venting and Flaring Rule itself, which no party contests is the subject matter of the Wyoming Litigation. The validity of these

two rules simply cannot be properly considered separately, given the "inextricably intertwined" nature of both the rules themselves and the relief sought in these two cases. Wyoming Litigation, ECF No. 189 at 4.

Citizen Group Plaintiffs cite two cases they say are analogous, in which separate courts addressed a rule and the rollback or revision of that rule, *see* Citizen Group Plaintiffs' Opp'n, Citizen Groups' Challenge, ECF No. 72 at 9-10 (citing *Bd. of Cty. Comm'rs of Cty. of Park v. U.S. Dep't of Interior*, Nos. 09-cv-262J, 2010 WL 6429153 (D.Wyo. Sept. 17, 2010) and *Cal. Dep't of Health Servs. v. Babbitt*, 46 F. Supp. 2d 13 (D.D.C. 1999)), but those cases were entirely different. In one, the litigation in the other court had already been completed and the party opposing transfer—the State of Wyoming—was not a party to the litigation in the other court. *See Bd. of Cty. Comm'rs of Cty. of Park*, 2010 WL 6429153. The other supposed precedent did not even involve a transfer motion, and again the previous litigation in the other court had already concluded. *See Cal. Dep't of Health Servs.*, 46 F. Supp. 2d 13. Here, unlike in those cases, the Wyoming Litigation is pending and virtually all parties in the California Litigation are also parties in the District of Wyoming. Denying transfer would require two "inextricably intertwined" and currently pending cases with substantially similar parties to proceed separately and concurrently, with potentially different or inconsistent results. Wyoming Litigation, ECF No. 189 at 4.

The District of Wyoming has already been thoroughly briefed on the challenges to and defenses of the Venting and Flaring Rule, and has also received extensive briefing regarding the Delay Rule. In contrast, this Court has only just begun to engage the issue of the validity of the Delay Rule—Plaintiffs have filed their complaints and simultaneous motions for preliminary injunction, but no answers have been filed, and the Court has ordered no other substantive briefings. Just as important, this Court has not received a complete briefing regarding the Venting and Flaring Rule (though Plaintiffs rely heavily on their views of that Rule to support their motions for preliminary injunctions), leaving the Court with incomplete information as to this important subject matter necessary for considering the validity of the Delay Rule. Rather than maintaining separate litigation in two different districts, regarding overlapping

and closely related issues and all but one of the same parties, the tenets of judicial economy weigh heavily in favor of transferring these cases to the District of Wyoming, where these "inextricably intertwined" issues may be litigated together. Wyoming Litigation, ECF No. 189 at 4.

Moreover, litigating these issues separately could result in conflicting rulings, which is certainly not in the interests of justice. Plaintiffs dismiss this important point by attempting to deny the possibility of such a result. This argument is completely inconsistent with the Plaintiffs' pleadings in support of their motions for preliminary injunctions, which in large measure are based on arguments about the validity of the underlying Venting and Flaring Rule and BLM's alleged lack of flexibility to deviate from it. Indeed, Plaintiffs have structured their arguments against the Delay Rule and requested relief such that a decision in their favor arguably compels a ruling on the validity of the Venting and Flaring Rule. *See* State Plaintiffs' Mot. for Prelim. Inj., ECF No. 3; *see also* Citizen Group Plaintiffs' Mot. for Prelim. Inj., Citizen Groups' Challenge, ECF No. 4-1. It is hardly credible for Plaintiffs to now argue that the merits of the Delay Rule are unrelated to those of the Venting and Flaring Rule. In any event, a ruling in favor of the Plaintiffs here would not only set aside the Delay Rule, increasing the harms to North Dakota and Texas that are somewhat mitigated by the Delay Rule, but also reinstate the delayed compliance deadlines of the Venting and Flaring Rule. *See* State Plaintiffs' Proposed Order Granting Plaintiffs' Mot. for Prelim. Inj., ECF No 3-3 at 2 (asking the Court to "immediately reinstate all requirements and compliance deadlines of the [Venting and Flaring Rule]"). This would be, de facto, a ruling on the validity of the Venting and Flaring Rule, which is already subject to an active challenge in the Wyoming Litigation. Reinstatement in full of the Venting and Flaring Rule here would certainly lead to the lifting of the stay in Wyoming so that the fully briefed litigation on the merits of the Venting and Flaring Rule may conclude, and could also result in that court striking down the Venting and Flaring Rule, in direct conflict with this Court's ruling reinstating the same Rule (by granting Plaintiffs' requested relief and invalidating the Delay Rule). The interests of justice and judicial economy heavily favor considering these cases together

to avoid the possibility of such inconsistent rulings and the resulting patchwork of the Venting and Flaring Rule's applicability and enforcement.

ii. The Court in Wyoming Is Most Familiar with the Governing Law and the Intricacies of these Complicated and Lengthy Rules.

Just as the interests of justice and judicial economy favor transfer to the District of Wyoming so that these related cases may be consolidated, so too does judicial efficiency. One of the *Jones* factors this Court should consider is "the state that is most familiar with the governing law." 211 F.3d at 498. While both the District of Wyoming and this Court are familiar with, and have heard challenges under, the Administrative Procedure Act, these cases also require a familiarity with both the Venting and Flaring Rule and the Delay Rule. The District of Wyoming has already spent more than a year of its time and considerable resources learning about both Rules. Coming up to speed is not an easy task, as the Venting and Flaring Rule alone, along with its Preamble, fills eighty-five small-print pages of the Federal Register. *See* Venting and Flaring Rule. Transfer is necessary to avoid this Court from having to reproduce the work of the District of Wyoming and familiarize itself with the lengthy and complex intricacies of these Rules. Requiring this Court to do so would be inefficient and a waste of the Court's valuable time and resources. This problem would only be exacerbated if the Court rules in favor of the Plaintiffs' preliminary injunction motion, since the District Court in Wyoming would then be re-engaged to rule on the merits of the challenge to the Venting and Flaring Rule. It would also require duplicative effort by the parties, thereby wasting their time and resources as well.

Plaintiffs also mention Federal Defendants' motion to transfer a previous case filed in this Court, challenging BLM's issuance of an order postponing the Venting and Flaring Rule's deadlines that was denied by Magistrate Laporte. *See* Citizen Group Plaintiffs' Opp'n, Citizen Groups' Challenge, ECF No. 72 at 1. However, contrary to Plaintiffs' suggestion, this denial is irrelevant, as that case involved a discrete issue under Section 705 of the Administrative Procedure Act, and did not require detailed

consideration of the intertwined rulemaking histories, and impact, of the Delay and Venting and Flaring Rules. *See* Order Denying Defs.' Mot. to Transfer, *California v. U.S. Bureau of Land Mgmt.*, Case No. 17-cv-3804-EDL, ECF No. 73 at 5 (N.D. Cal. Sept. 7, 2017) (stating "this case concerns a completely distinct, purely legal question about Defendants' authority to postpone the compliance dates under Section 705"). It is clear that, in the interests of judicial economy and efficiency, these consolidated cases should be transferred to the District of Wyoming, where litigation surrounding these issues has been pending for more than a year, to avoid piecemeal litigation and to prevent this Court from having to familiarize itself with issues the District of Wyoming has already thoroughly engaged.

C. The Northern District of California Is a Less Convenient Forum Than the District of Wyoming.

Transfer and then consolidation of these cases is not only in the interests of justice, but also substantially more convenient for the parties, another important factor under *Meijer, Inc.*, 544 F. Supp. 2d at 999. Doing so would allow the District of Wyoming to coordinate briefing and hearing schedules, thus avoiding unnecessary travel expenses and saving the parties from spending time and resources preparing filings on what are sure to be overlapping issues. This is especially important and compelling when, as in this case, all but one of the parties is already engaged in the same litigation in another forum. If this Court retained this case, it would require all but one of the parties, who are already traveling to Wyoming for litigation of these issues, to make additional trips to the Northern District of California. Additionally, as these cases are "inextricably intertwined," it is inevitable that this Court will require briefing on issues that the parties have already spent significant time and resources briefing in the District of Wyoming. Wyoming Litigation, ECF No. 189 at 4.

"[T]he differences in the costs of litigation in the two forums," is also one of the factors the Court may consider when deciding to transfer these cases to the District of Wyoming. *Jones,* 211 F.3d at 499. It is a foregone conclusion that maintaining litigation in two separate district courts absolutely will increase

the cost of litigation. These additional expenses cannot be ignored in the Court's analysis, and weigh heavily in favor of transfer.

Plaintiffs focus on case law that involves denying a transfer that only shifts inconvenience, *see* State Plaintiffs' Opp'n, ECF No. 78 at 9; *see also* Citizen Group Plantiffs' Opp'n, Citizen Groups' Challenge, ECF No. 72 at 14, while ignoring this Court's own precedent holding that "the pertinent question is not simply whether *this* action would be more conveniently litigated in [Wyoming] than California, but whether it would be more convenient to litigate the California and [Wyoming] actions separately or in a coordinated fashion." *Elecs. For Imaging, Inc.*, 2008 WL 276567, at *2. It is clear that litigating these related matters "in a coordinated fashion," by transferring these cases to the District of Wyoming so that briefing and hearing schedules can be consolidated and coordinated, is more convenient than doing so separately. *Id*. Transfer would avoid the unnecessary duplication of effort and added expense of simultaneously litigating these "inextricably intertwined" matters in different districts. Wyoming Litigation, ECF No. 189 at 4.

D. Deference to the Plaintiffs' Choice of Forum Is Heavily Outweighed by the Other Factors.

In contrast to the many factors outlined above that strongly favor transfer, Plaintiffs focus on one factor they insist is overriding—Plaintiffs' choice of forum. Plaintiffs argue that this factor should be given vast deference, only to be overturned by a herculean effort on the part of those in favor of transfer. *See* Citizen Group Plaintiffs' Opp'n, Citizen Groups' Challenge, ECF No. 72; *see also* State Plaintiffs' Opp'n, ECF No. 78. However, Plaintiffs simultaneously scold BLM for arguing that judicial economy should "predominate over the other factors," quoting *Meijer, Inc.*: "no single factor is dispositive." Citizen Group Plaintiffs' Opp'n, Citizen Groups' Challenge, ECF No. 72 at 6-7 (quoting 544 F. Supp. 2d at 999).

Plaintiffs cannot have it both ways. *Meijer, Inc.* was correct; "no single factor is dispositive," *id.,* and a consideration of *all* of the factors favors transfer. Moreover, the forum choice factor is entitled to

substantially less deference in these consolidated cases, as Plaintiffs include numerous different parties with offices all over the country who have already consented to jurisdiction in the District of Wyoming by intervening in the Wyoming Litigation. The Plaintiffs' choice of forum is made even more insignificant when balanced against the other factors, all of which favor transfer to the District of Wyoming. Plaintiffs' forum choice should be discounted even further because they are clearly forum shopping to avoid the far more advanced, and convenient, Wyoming Litigation. State Plaintiffs weakly deny their forum shopping motive, claiming this suit was simply filed in California's home district. *See* State Plaintiffs' Opp'n, ECF No. 78 at 7-8. But the case law they cite involves a single plaintiff class representative filing suit in its home district. *See id*. (citing *Cardoza v. T-Mobile USA, Inc.*, 2009 U.S. Dist. LEXIS 25895 (N.D. Cal. Mar. 18, 2009)). The multiple plaintiffs here, with offices and home domiciles across the country, belie the "filing in home district" excuse for the forum shopping.

In sum, when all of the factors are weighed against one another, the elements in favor of transfer (interests of justice, judicial economy and efficiency, convenience to the parties, the costs of litigation, and the inescapable fact that these cases are "inextricably intertwined" with the Wyoming Litigation and cannot be properly litigated separately) far outweigh any consideration owed to the Plaintiffs' choice of forum, the sole factor that favors remaining in this Court—whether it is given substantial deference or not.

In light of the arguments set forth above, the Court should promptly transfer these "inextricably intertwined" cases to the District of Wyoming so that they may be consolidated with the more mature litigation there in the interests of justice and the convenience of the parties. Wyoming Litigation, ECF No. 189 at 4.

CONCLUSION

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

Respectfully submitted this 30th day of January, 2018.

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