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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., Plaintiffs, v. U.S. BUREAU OF LAND MANAGEMENT, et al. Defendants.	Case No. 4:18-cv-00521-HSG (related) Case No. 4:18-cv-00524-HSG (related) **DEFENDANTS' MOTION TO TRANSFER THESE ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING**
SIERRA CLUB, et al., Plaintiffs, v. RYAN ZINKE, et al. Defendants.	Date: June 21, 2018 Time: 2:00 p.m. Judge: Haywood S. Gilliam, Jr. Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA 94612

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EXHIBITS

Exhibit A Declaration of Justin Abernathy

Exhibit B Declaration of Jerome E. Perez

NOTICE OF MOTION AND MOTION TO TRANSFER

PLEASE TAKE NOTICE THAT on June 21, 2018, at 2:00 p.m. before the Honorable Haywood S. Gilliam, Jr., Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA 94612, Defendants, the Bureau of Land Management; the U.S. Department of the Interior; Joseph Balash, in his official capacity as Assistant Secretary for Land and Minerals Management, U.S. Department of the Interior; and Ryan Zinke, in his official capacity as Secretary of the Interior, will move the Court for an order transferring these two related actions, 4:18-cv-00521 and 4:18-cv-00524, to the U.S. District Court for the District of Wyoming pursuant to 28 U.S.C. § 1404(a).

These two cases, which challenge the Bureau of Land Management's ("BLM") 2017 rule rescinding the 2015 rule titled "Hydraulic Fracturing on Federal and Indian Lands" ("HF Rule"), should be transferred to the District of Wyoming, which has already adjudicated the merits of the HF Rule. A transfer is in the interest of justice as it would prevent inconsistent judgments, conserve judicial economy, and place the litigation in a forum that is far more connected to the rescission of the HF Rule than the Northern District of California. The interest of justice outweighs Plaintiffs' choice of venue and transfer is warranted.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

These two cases—which challenge BLM's rescission of the HF Rule—should be transferred to the District of Wyoming. The Wyoming Court has already adjudicated the merits of the HF Rule, become familiar with its complex and technical subject matter, preliminarily enjoined BLM from enforcing the HF Rule, and issued a final judgment setting aside the HF Rule. The relief that Plaintiffs seek here—namely, reinstatement of the HF Rule—directly conflicts with the Wyoming Court's judgment.[1] Accordingly, transfer is in the interest of justice, will prevent inconsistent judgments, and will conserve judicial resources. In addition, transfer to the District of Wyoming will place this litigation in a forum that is far more connected to the rescission of the HF Rule than the Northern District of California, which has less than 0.2% of California's statewide oil and gas production and whose oil and gas production is less than 0.01% of the oil and gas production in the District of Wyoming. The interest of justice outweighs Plaintiffs' choice of venue, thus warranting transfer.

II. BACKGROUND

A. The District of Wyoming Litigation Challenging the HF Rule

On March 26, 2015, BLM published the HF Rule to complement existing oil and gas regulations related to hydraulic fracturing. 80 Fed. Reg. 16,128. The HF Rule never went into effect. As soon as BLM announced and published the HF Rule, four states (Wyoming, Colorado, North Dakota, and Utah), two industry groups (Independent Petroleum Association of America and Western Energy Alliance), and the Ute Indian Tribe filed suit in the District of Wyoming. The Wyoming District Court issued a nationwide preliminary injunction barring

[1] While the Tenth Circuit has issued an order vacating the Wyoming District Court's judgment, no mandate has issued, the district court judgment remains in effect, the Tenth Circuit is still adjudicating motions challenging its jurisdiction (but not that of the district court at the time the judgment was entered), and circumstances have continued to change, including the issuance of the rule challenged in this litigation.

BLM from enforcing the HF Rule. *Wyoming v. U.S. Dep't of the Interior*, 136 F. Supp. 3d 1317, 1354 (D. Wyo. 2015) (holding that Petitioners had shown a likelihood of success both because BLM likely lacked authority to regulate hydraulic fracturing and because several aspects of the HF Rule were likely arbitrary and capricious), vacated and remanded sub nom. *Wyoming v. Sierra Club*, Nos. 15-8126 & 15-8134, 2016 WL 3853806 (10th Cir. July 13, 2016). Several environmental groups, Conservation Colorado Education Fund, Earthworks, Sierra Club, Southern Utah Wilderness Alliance, Western Resource Advocates, and The Wilderness Society—including five Plaintiffs in this litigation—intervened in defense of the HF Rule. After reviewing hundreds of pages of briefing, the District of Wyoming concluded that BLM lacked legal authority to regulate hydraulic fracturing and issued a final decision setting aside the HF Rule. *Wyoming v. U.S. Dep't of the Interior*, Nos. 2:15-CV-041-SWS & 2:15-CV-043-SWS, 2016 WL 3509415, at *12 (D. Wyo. June 21, 2016), judgment vacated and appeal dismissed sub nom. *Wyoming v. Zinke*, 871 F.3d 1133 (10th Cir. 2017).

The environmental groups and BLM appealed the Wyoming Court's decisions to the Tenth Circuit, which held that the appeals were prudentially unripe because BLM had begun the process to propose rescission of the HF Rule under the new Administration. *Wyoming v. Zinke*, 871 F.3d 1133, 1137 (10th Cir. 2017). The Tenth Circuit "dismiss[ed] these appeals and remand[ed] with directions to vacate the district court's opinion and dismiss the action without prejudice." *Id.*

Before the Tenth Circuit issued its mandate, however, the State of North Dakota and the Ute Indian Tribe filed motions to dismiss the appeals, arguing that events post-dating the district court's decision had robbed the Tenth Circuit of Article III jurisdiction. Those motions are pending.

B. BLM's Reconsideration of the HF Rule

On March 28, 2017, President Donald J. Trump issued an Executive Order directing the Secretary of the Interior to "review" the HF Rule and "if appropriate, . . . as soon as practicable, . . . publish for notice and comment proposed rules suspending, revising, or rescinding" the Rule. Exec. Order No. 13,783, 82 Fed. Reg. 16,093, § 7(b)(i) (Mar. 28, 2017). To implement that

Executive Order, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349 entitled, "American Energy Independence," which directed BLM to proceed expeditiously in proposing to rescind the HF Rule. On July 25, 2017, BLM published a proposed rule to rescind the HF Rule. 82 Fed. Reg. 34,464. On December 29, 2017, BLM published a final rule rescinding the HF Rule ("HF Rescission Rule") because it imposed unjustified administrative and compliance costs and because the HF Rescission Rule "eliminate[d] the need for further litigation about BLM's statutory authority." 82 Fed. Reg. 61,924–25.

C. This Litigation

California and several environmental groups, Sierra Club, Center for Biological Diversity, Diné Citizens Against Ruining Our Environment, Earthworks, Fort Berthold Protectors of Water and Earth Rights, Southern Utah Wilderness Alliance, The Wilderness Society, and Western Resource Advocates, ("Environmental Plaintiffs") filed two separate Complaints in the Northern District of California challenging the HF Rescission Rule. Complaint, *California v. Bureau of Land Mgmt.*, No. 18-521 (N.D. Cal. Jan. 24, 2018), ECF No. 1 ("CA Compl."); Complaint, *Sierra Club et al. v. Zinke*, No. 18-524 (N.D. Cal., Jan. 24, 2018), ECF No. 1 ("Environmental Pls. Compl."). California seeks to vacate the HF Rescission Rule and to reinstate all of the HF Rule's provisions. CA Compl. ¶ 6, p.20 ¶ 3. The Environmental Plaintiffs also ask this Court to "order the Hydraulic Fracturing Rule reinstated in its entirety." Environmental Pls. Compl. p.29 ¶ 2.

Defendants' response to California's Complaint is due April 9, 2018. Defendants and Environmental Plaintiffs stipulated that Environmental Plaintiffs may file an amended complaint by April 6, 2018 and Defendants' response is due May 7, 2018. No. 18-524, ECF No. 35. The case management statement is due April 24, 2018, and the case management conference is scheduled for May 1, 2018.

III. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 1404 (a), "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought . . . ." This statute encompasses a two-step inquiry. The

transferor court must first determine whether venue is proper in the transferee court, and then the court must make an "individualized, case-by-case consideration of convenience and fairness." *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006) (citing *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985) and quoting *Jones v. GNC Franchising*, 211 F. 3d 495, 498 (9th Cir. 2000)). This second prong of the analysis requires the Court to consider three factors: (1) the convenience of the parties; (2) the convenience of witnesses; and (3) the interest of justice. *Meijer, Inc. v. Abbott Labs.*, 544 F. Supp. 2d 995, 999 (N.D. Cal. 2008).

IV. ARGUMENT

Although these actions could have been brought in the District of Wyoming in the first instance, Plaintiffs chose to file suit in this Court, thereby placing Defendants at risk of having to comply with contradictory judgments, forcing a second court to embroil itself in litigation addressing the same rule, and placing the litigation in a forum with fewer ties to oil and gas production, which is at the heart of the HF Rule. This transfer motion should be granted because the interest of justice is best served by transferring these cases to the District of Wyoming, where judicial review concerning the HF Rule has already occurred, and the other factors are neutral to the analysis.

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

These cases could have been brought in the District of Wyoming in the first instance. Per 28 U.S.C. § 1391(e), a civil action against an official or agency of the United States may be brought in any judicial district in which "(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." *Id.* § 1391(e)(1). The District of Wyoming is a proper venue under both (A) and (B) because BLM resides in Wyoming and a substantial part of the property potentially affected by these actions is in Wyoming.

With regard to § 1391(e)(1)(A), officers and agencies of the United States can have more than one residence. For purposes of this litigation, BLM is a resident of both Wyoming and

California (among numerous other jurisdictions) because it has offices in both states and manages land and resources in both states. *See, e.g.*, *Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1176 n.4 (10th Cir. 2005) (noting that BLM has offices in California and Wyoming); *see also Dehaemers v. Wynne*, 522 F. Supp. 2d 240, 248 (D.D.C. 2007).

In addition to BLM's residency in Wyoming, a substantial part of the property that is potentially affected by the HF Rescission Rule is located in Wyoming, thus making venue appropriate under § 1391(e)(1)(B). Wyoming contains 41.6 million acres of federal mineral estate. *See* Abernathy Decl. ¶ 2 (Ex. A, attached), *id*. ¶ 3 ("BLM Wyoming is No. 1 in federal gas production and No. 2 in federal oil production."); *see also S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 234 (D.D.C. 2012) ("Because this action concerns real property situated in Utah, all parties conclude that this suit could have been brought in the District of Utah."). The District of Wyoming is a proper venue under § 1391(e) because BLM resides there and substantial swaths of land and federal oil and gas reserves potentially affected by the HF Rescission Rule are located there.

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

1. The Interest of Justice Is the Most Important § 1404(a) Factor

In analyzing a request for change of venue, § 1404(a) counsels that the court should give the greatest weight to the interest of justice. "The question of which forum will better serve the interest of justice is of predominant importance on the question of transfer, and factors involving convenience of parties and witnesses are in fact subordinate." *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, No. 03-cv-3711-MHP, 2003 WL 22387598, at *4 (N.D. Cal. Oct. 14, 2003) (citing *Pratt v. Rowland*, 769 F. Supp. 1128, 1133 (N.D. Cal. 1991)). *See also Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997) ("Consideration of the interest of justice, which includes judicial economy, may be determinative to a particular transfer motion, even if the convenience of the parties and witnesses might call for a different result." (internal quotations and citation omitted)); *Wiley v. Trendwest Resorts, Inc.*, No. C 04-4321 SBA, 2005 WL 1910934, at *3 (N.D. Cal. Aug. 10, 2005) ("The 'interests of justice' consideration is the most important factor a court must consider, and may be decisive in a

transfer motion even when all other factors point the other way." (quoting *London and Hull Mar. Ins. Co. v. Eagle Pac. Ins. Co.*, No. 4:96-cv-1512, 1996 WL 479013, *3 (N.D. Cal. Aug. 14, 1996).

While Plaintiffs' venue choice is an important consideration, "it is not absolute." *Fabus Corp. v. Asiana Express Corp.*, No. C-00-3172 PJH, 2001 WL 253185, at *1 (N.D. Cal. Mar. 5, 2001). The interest of justice can outweigh Plaintiffs' venue choice. It clearly does so here.

2. Transfer of Venue Will Avoid Inconsistent Judgments

Transfer to the Wyoming court avoids the possibility of inconsistent conclusions. Plaintiffs seek relief that, if granted, would directly contradict the District of Wyoming's judgment in the HF Rule case. California seeks an injunction vacating the HF Rescission Rule and *reinstating all of the HF Rule's provisions*. CA Compl. ¶ 6, p.20 ¶ 3. The Environmental Plaintiffs also ask this Court to "order the Hydraulic Fracturing Rule *reinstated in its entirety*." Environmental Pls. Compl. p.29 ¶ 2 (emphasis added). The judgment of the District of Wyoming set aside the HF Rule because it concluded that BLM lacked legal authority to regulate hydraulic fracturing. *Wyoming v. U.S. Dep't of the Interior*, No. 2:15-CV-041-SWS, 2016 WL 3509415, at *12 (D. Wyo. June 21, 2016). It would be impossible for Defendants to comply with both the District of Wyoming's judgment (if it remains in place) and any order from this Court granting Plaintiffs the relief they seek.[2]

Principles of judicial comity require transfer to the District of Wyoming to avoid the possibility of inconsistent judgments. "It is difficult to comprehend the problems that might arise for the federal and state regulators, the industry, and potentially the citizenry and the markets, if different rules are deemed to apply in different circuits. . . . [T]ransfer eliminates that problem." *Huffman v. U.S. E.P.A.*, Civ. No. 2:10-01189, 2011 WL 322661, at *7 (S.D. W. Va. Jan. 31, 2011). In *Huffman*, West Virginia filed suit in the Southern District of West Virginia

[2] To be sure, the Tenth Circuit ordered that the judgment be vacated and the suit dismissed without prejudice. But to date, the judgment of the District of Wyoming, vacating the HF Rule and enjoining its implementation, remains in full force and effect. The Tenth Circuit has not yet issued its mandate to vacate the judgment.

challenging the Clean Water Act Section 404 permit application process for coal mining. The *Huffman* court transferred the suit over West Virginia's objection to the District of Columbia—which already had a similar suit regarding Section 404 permits for coal mining—because transfer "offers the best chance for uniformity, certainty, and finality (with dispatch) for these weighty issues impacting the nation's energy supply." *Id.* That reasoning applies here, and this Court should similarly transfer these suits to the District of Wyoming.

Similarly, the Central District of California has ruled that the importance of avoiding inconsistent judgments outweighs a plaintiff's choice of forum even when the plaintiff is the State of California. In *Federal Trade Commission v. Watson Pharmaceuticals, Inc.*, 611 F. Supp. 2d 1081, 1085 (C.D. Cal. 2009), the court transferred a suit filed by the Federal Trade Commission ("FTC") and the State of California to the Northern District of Georgia. The State of California and the FTC had alleged that settlement agreements resolving previous patent litigation in the Northern District of Georgia violated antitrust laws. The court properly granted the defendants' transfer motions—over California's objection—because, inter alia, "an adverse judgment from this Court in this antitrust case could subject [defendants] to conflicting district court judgments . . . ." *Id.* at 1088–89; *see also Gatdula v. CRST Int'l, Inc.*, No. CIV. 2:10-58 WBS CMK, 2011 WL 445798, at *3 (E.D. Cal. Feb. 8, 2011) ("[P]reventing inconsistent rulings by two district courts considering the same issues weighs heavily in favor of transfer."); *cf. MP Vista, Inc. v. Motiva Enterprises LLC*, No. CIV.A. 07-099-GMS, 2008 WL 5411104, at *2 (D. Del. Dec. 29, 2008) ("Section 1404(a) is designed to prevent . . . 'forum shopping' by plaintiffs who seek to avoid prior rulings or governing precedents in other jurisdictions." (quoting *Yang v. Odom*, 409 F. Supp. 2d 599, 605 (D.N.J. 2006))).

Here the importance of avoiding wholly opposite judgments likewise warrants transfer to the District of Wyoming.

3. Judicial Economy Favors Transfer

As this Court has previously held, "the interest in judicial economy is enough to support transfer regardless of the other [Section 1404(a)] factors." *Bennett v. Bed Bath & Beyond, Inc.*, No. 11-cv-02220-CRB, 2011 WL 3022126, at *2 (N.D. Cal. July 22, 2011) (citation omitted).

Because the District of Wyoming is quite familiar with the HF Rule, and because the HF Rescission Rule is inextricably intertwined with the HF Rule, it is in the interest of judicial economy for that court to hear these related actions. The HF Rescission Rule is better understood in the context of the HF Rule, as its purpose is to provide relief from the burdens of the HF Rule. 82 Fed. Reg. 61,924, 61,925. Although the HF Rescission Rule is a separate final agency action, a reviewing court is aided by an existing understanding of the intricacies of the HF Rule, especially in light of Plaintiffs' requests for the HF Rescission Rule to be vacated and the HF Rule to be reinstated. Given that the District of Wyoming has already reviewed hundreds of pages of briefing regarding the HF Rule, judicial economy favors transfer.

Plaintiffs acknowledge the interconnectedness of the two rules in their Complaints, which repeatedly compare and contrast the HF Rule to the HF Rescission Rule. For example, the Complaints allege that:

- BLM "failed to consider how the [HF Rescission Rule] would fulfill the important statutory mandates that the [HF Rule] was designed to address" and "failed to explain why it reversed course based on the same information that it considered when it formulated and promulgated the [HF Rule] just two years earlier." CA Compl. ¶ 5.
- With the HF Rescission Rule, BLM "failed to provide a reasoned explanation as to why [its] pre-existing regulations and authorities, which were in existence at the time that it promulgated the [HF Rule], are now sufficient to address the risks posed by hydraulic fracturing." CA Compl. ¶ 49.
- Defendants' assertions in the HF Rescission Rule "that the potential impacts of hydraulic fracturing will be addressed by state or tribal regulations is contradicted by their own superficial analysis of such regulations, which shows that the [HF Rule] remains more comprehensive than the regulations in many states." CA Compl. ¶ 63.
- "BLM does not explain the change from the position it previously took that the potential benefits of the [HF Rule] are significant and that the [HF Rule] would

significantly reduce the risks associated with hydraulic fracturing operations on Federal and Indian lands, particularly risks to surface waters and usable groundwater." Environmental Pls. Compl. ¶ 80.

- The environmental protection "benefits of the [HF Rule] will be significant" and "BLM fails to explain its conclusion that those benefits no longer justify the modest compliance costs of the [HF Rule]." Environmental Pls. Compl. ¶ 81.

For a reviewing court to evaluate these and other allegations to determine the adequacy of BLM's rationale for its change in position in promulgating the HF Rescission Rule, the court will be called upon to review the substance of both rules.

The District of Wyoming is best situated to address these issues given its familiarity with the HF Rule. BLM's reasons for rescinding the HF Rule—"to relieve operators of duplicative, unnecessary, costly and unproductive regulatory burdens," 82 Fed. Reg. 61,924, 61,925—necessarily implicate the substance of the HF Rule. That is, in order to determine whether the HF Rescission Rule was arbitrary and capricious under the Administrative Procedure Act ("APA"), the reviewing court will have to evaluate BLM's concerns regarding the regulatory burdens imposed by the HF Rule. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (describing APA standard of review).

This level of familiarity is no small matter. Even a brief perusal of the HF Rule makes clear that it is complex, with numerous subparts and interconnected provisions, 80 Fed. Reg. 16,128, and courts often transfer cases to courts that are more familiar with the underlying subject matter. *See, e.g., Bay.org v. Zinke*, Nos. 17-cv-3739-YGR, 17-cv-3742-YGR, 2017 WL 3727467, at *5 (N.D. Cal. Aug. 30, 2017) (transferring case to judge that had presided over actions involving "distinct" but related water projects for years and thereby "gained not only factual and technical knowledge regarding the water systems at issue and the different water projects but also knowledge of the" federal processes at issue in the case); *Madani v. Shell Oil Co.*, No. 07-cv-4296-MJJ, 2008 WL 268986, at *2 (N.D. Cal. Jan. 30, 2008) (transferring case when transferee court had decided related cases because transferee court would be "in the best position to determine substantive issues raised in the present litigation" whereas, in contrast, the

transferor court "would have to invest significant time and resources to reach a similar level of familiarity").

Courts have repeatedly recognized the significance of familiarity with the subject matter—even when transferring cases initiated by states in their home forum. In *Eli Lilly*, the Federal Circuit upheld the district court's decision to transfer a case from the Northern District of California to the Southern District of Indiana for trial over California's objection because the complexity of the subject matter—standing alone—justified transfer. *Eli Lilly*, 119 F.3d 1559 at 1565 ("[I]n a case such as this in which several highly technical factual issues are presented and the other relevant factors are in equipoise, the interest of judicial economy may favor transfer to a court that has become familiar with the issues."). In *Watson Pharmaceuticals*, the Central District of California transferred a suit filed by the FTC and the State of California to the Northern District of Georgia because, in addition to the importance of avoiding inconsistent judgments discussed above, the Georgia judge was "familiar with the underlying facts of the patent suits, having reviewed motions for partial summary judgment, claim construction briefs, and other motions and papers during the suits' pendency." 611 F. Supp. 2d at 1088–89. Judicial economy supports transfer of these cases to the District of Wyoming.

4. The District of Wyoming Is More Connected to the HF Rescission Rule than the Northern District of California

Wyoming has a strong interest in this litigation and is far more connected to the HF Rule and the HF Rescission Rule than California. This contrast is particularly stark when comparing the interests of the Northern District of California to the District of Wyoming. The fact that Plaintiffs' chosen forum has a relatively modest connection to oil and gas extraction on federal land weighs in favor of transfer to the District of Wyoming. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981) (noting interest in "having localized controversies decided at home" weighs in favor of transfer).

Oil and gas production on federal lands in Wyoming far exceeds that in California. For example, at the end of fiscal year 2016, Wyoming had 13,598 oil and gas leases in effect on federal lands and California had only 530 statewide. Abernathy Decl. ¶ 4. These leases covered

8,794,158 acres of federal land in Wyoming and 198,820 acres in California. *Id.* ¶ 5. California's acreage of federal lands leased for oil and gas production is only 2.3% of Wyoming's acreage. *Id.* ¶ 5. Wyoming has the highest number of producing oil and gas leases on federal lands of any state, with 7,498 leases in production during fiscal year 2016, compared to California's 324. *Id.* ¶ 6. These leases translate to 4,020,073 acres of federal land under production in Wyoming, or 31% of the national total, and 83,434 acres of federal land under production in California, or 0.7% of the national total. *Id.* ¶ 7. In other words, Wyoming has forty-eight times more federal land under oil and gas production than California. *Id.* ¶ 7.

In addition, far more new oil and gas activity occurs each year in Wyoming than California. Over the past ten years, drilling has commenced on an average of 1,155 wells on federal land in Wyoming every year. *Id.* ¶ 9. By comparison California averaged 198 wells per year on federal land. *Id.* In 2016, BLM issued 214 new oil and gas leases in Wyoming and none in California. *Id.* ¶ 10.

Plaintiffs' choice of forum is even less compelling when considering that only a small portion of the oil and gas activity in California takes place in this District. Only 11% of the acres under active lease in California for oil and gas development are located in this District. Decl. of Jerome E. Perez ¶¶ 2–3 (Ex. B attached). In comparison, 80% of the acres under active lease in California are located in the Eastern District. *Id.* ¶¶ 2, 5. And *less than 0.2%* of the total volume of oil and gas production in the State of California comes from the Northern District of California. Abernathy Decl. ¶ 11. Production in the Northern District of California is particularly minimal compared to the District of Wyoming: In 2016, the Northern District of California produced 0.0001% of the volume of gas produced in the District of Wyoming and 0.0413% of the volume of oil produced in the District of Wyoming. *Id.* ¶ 8. Plaintiffs elected to bring suit in a forum with quite modest connections to the HF Rescission Rule; they cannot now credibly claim that their choice of forum should control.

C. The Convenience Factors Are Neutral

The convenience factors considered by courts when determining whether to transfer a case are neutral here. Both this Court and the District of Wyoming are familiar with federal law.

Furthermore, as these cases are brought under the APA and will be decided on the basis of an administrative record, neither court is located nearer to sources of proof or witnesses. *See, e.g.*, *Huffman*, 2011 WL 322661, at *5 (granting transfer motion and noting that the "time and expense devoted to the discovery and trial processes . . . are neutral inasmuch as the judicial inquiry in these cases will be based exclusively on the administrative record"); *Defs. of Wildlife v. Jewel*, 74 F. Supp. 3d 77, 85 (D.D.C. 2014) (granting transfer motion because, inter alia, "[t]his case will be decided on the basis of the administrative record with no witnesses likely to be called").

In addition, while it takes slightly longer on average for a case in the District of Wyoming to reach disposition (10.2 months in the District of Wyoming versus 7.2 months in the Northern District of California),[3] such modest differences in time to disposition are insufficient to overcome the many other factors weighing in favor of transfer. *Bay.org*, 2017 WL 3727467, at *5 n.5 ("While the Court recognizes that the Northern District's docket may be less congested than the Eastern District's docket, the Court finds that consideration does not outweigh the interests of judicial efficiency here."); *Cung Le v. Zuffa, LLC*, 108 F. Supp. 3d 768, 779 (N.D. Cal. 2015) ("[E]ven assuming Plaintiffs are correct that the legal process in Nevada generally takes longer than it does in this district, that is simply not enough to overcome those other factors showing why this specific litigation is appropriately venued there."); *Ctr. for Biological Diversity v. McCarthy*, No. 14-cv-05138-WHO, 2015 WL 1535594, at *5 (N.D. Cal. Apr. 6, 2015) (finding differences between 6.4, 6.7, 6.8, and 8.1 month disposition times "modest at best and insufficient to make the congestion factor" weigh against transfer). These average disposition times likely have only limited relevance here, where the District of Wyoming's familiarity and experience with the HF Rule may contribute to a swifter resolution.

[3] These statistics are the average time from filing to disposition for civil cases from September 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.

V. CONCLUSION

Defendants respectfully request that the Court transfer these two actions to the U.S. District Court for the District of Wyoming. The interest of justice weighs heavily in favor of transfer to avoid inconsistent judgments, preserve judicial economy, and ensure that the district far more connected to the HF Rescission Rule is the district that adjudicates its validity.

Respectfully submitted this March 21, 2018.

JEFFREY H. WOOD
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., Plaintiffs, v. U.S. BUREAU OF LAND MANAGEMENT, et al. Defendants.	Case No. 4:18-cv-00521-HSG (related) Case No. 4:18-cv-00524-HSG (related) **[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO TRANSFER THESE ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF WYOMING**
SIERRA CLUB, et al., Plaintiffs, v. RYAN ZINKE, et al. Defendants.	

Having considered Defendants' Motion to Transfer these two related actions to the U.S. District Court for the District of Wyoming pursuant to 28 U.S.C. §1404(a) and any opposition, reply, and oral argument presented, the Court finds that transfer of these actions is in the interest of justice. Therefore, the Court GRANTS Defendants' motion.

IT IS HEREBY ORDERED that actions 4:18-cv-00521-HSG and 4:18-cv-00524-HSG are transferred to the U.S. District Court for the District of Wyoming.

IT IS SO ORDERED.

Dated: _____

_____
HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT JUDGE

Exhibit A

Declaration of Justin Abernathy

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., Plaintiffs, v. U.S. BUREAU OF LAND MANAGEMENT, et al. Defendants.	Case No. 4:18-cv-00521-HSG Related to No. 4:18-cv-00524-HSG
SIERRA CLUB, et al., Plaintiffs, v. RYAN ZINKE, et al. Defendants.	

DECLARATION OF JUSTIN ABERNATHY

I, Justin Abernathy, declare as follows:

1. I have been employed as a Senior Policy Analyst in the Energy, Minerals and Realty Management Directorate in the Bureau of Land Management's (BLM) Washington Office (WO-300), within the U.S. Department of the Interior (Department) since April 2017. I earned a Bachelor's Degree in Political Science from Indiana University and a Juris Doctor Degree from Michigan State University College of Law.

2. The BLM manages approximately 41.6 million acres of federal mineral estate in the State of Wyoming.

3. Of the states with federal onshore oil and gas production, Wyoming is No. 1 in federal onshore gas production, and No. 2 in federal onshore oil production.

4. At the end of the 2016 federal fiscal year, Wyoming had 13,598 federal onshore oil and gas leases in effect and California had 530 federal onshore oil and gas leases in effect.

5. These federal oil and gas leases covered approximately 8,794,158 acres in Wyoming and approximately 198,820 acres in California. California's acreage of federal lands leased for oil and gas production is 2.3 percent of the acreage under federal lease for oil and gas in Wyoming.

6. At the end of the 2016 fiscal year, Wyoming had the highest number of federal onshore oil and gas leases in a producing status of any state, with 7,498 leases in production, compared to California's 324 federal onshore oil and gas leases in a producing status.

7. These leases translate to approximately 4,020,073 lease acres being in a producing status in Wyoming at the end of fiscal year 2016, or 31 percent of the national total federal onshore oil and gas lease acres in a producing status; and approximately 83,434 federal onshore oil and gas lease acres in a producing status in California at the end of fiscal year 2016, or 0.7 percent of the national total. At the end of fiscal year 2016, Wyoming had approximately forty-eight times more federal land in an oil and gas producing status than California.

8. In 2016, the Northern District of California produced 1,943 mcf (1,000 cubic feet) of gas, or 0.00014% of the gas produced on federal lands in Wyoming in 2016 (1,420,211,722 mcf), and 15,162 barrels of oil, or 0.04125% of the oil produced on federal lands in Wyoming in 2016 (36,756,541 barrels).

9. In recent years, far more new oil and gas activity has occurred on federal lands in

Wyoming than California. From fiscal years 2007 to 2016 (10 year period), Wyoming has averaged 1,155 well bores "spudded," or started, per year, on federal lands and California averaged 198. "Spudding in," or to "spud" a well bore, means to begin drilling operations, so a spudded well bore is one where drilling operations have begun.

10. In fiscal year 2016, BLM issued 214 new leases in Wyoming and none in California.

11. The percentage of statewide gas production in the State of California that comes from the Northern District of California is .016%. The percentage of oil production in the State of California that comes from the Northern District of California is 0.14%.

12. The data provided in this declaration was collected from the following sources:

    i. BLM's 2016 Public Land Statistics publication;

    ii. BLM Wyoming's webpage[1];

    iii. BLM's Oil and Gas Statistics webpage[2]; and

    iv. U.S. Department of the Interior's Natural Resources Revenue Data website[3].

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 20, 2018.

Justin Abernathy

Justin Abernathy

[1] BLM Wyoming's webpage – Accessed online on March 20, 2018 at: https://www.blm.gov/about/what-we-manage/wyoming.

[2] BLM Oil and Gas Statistics webpage - Accessed online on March 20, 2018 at: https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics.

[3] U.S. Department of the Interior's Natural Resources Revenue Data website - California production data accessed online on March 20, 2018 at: https://revenuedata.doi.gov/explore/CA/#production. Wyoming production data accessed online on March 20, 2018 at: https://revenuedata.doi.gov/explore/WY/.

Exhibit B

Declaration of Jerome E. Perez

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

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., Plaintiffs, v. U.S. BUREAU OF LAND MANAGEMENT, et al. Defendants. SIERRA CLUB, et al., Plaintiffs, v. RYAN ZINKE, et al. Defendants.	Case No. 4:18-cv-00521-HSG Related to No. 4:18-cv-00524-HSG

DECLARATION OF JEROME E. PEREZ

I, Jerome E. Perez, declare as follows:

1. I have been employed as a State Director for the Bureau of Land Management's (BLM) California State Office, within the U.S. Department of the Interior (Department) since January 11, 2016. I earned a Bachelor's Degree in Forestry from West Virginia University and a Law Degree from Columbus School of Law, Catholic University of America, Washington, D.C.

2. As of October 5, 2017, 10,512,600 acres of public lands in California are available for oil and gas leasing and 198,400 acres of public lands in California have active Federal oil and gas leases.
3. As of October 5, 2017, 822,400 acres of public lands within the U.S. District Court for the Northern District of California's jurisdictional boundary are available for Federal oil and gas leasing and 22,300 acres, or 11% of the public lands that are under lease statewide, have active Federal oil and gas leases.
4. As of October 5, 2017, 2,657,300 acres of public lands within the U.S. District Court for the Central District of California's jurisdictional boundary are available for Federal oil and gas leasing and 17,300 acres have active Federal oil and gas leases.
5. As of October 5, 2017, 5,863,500 acres of public lands within the U.S. District Court for the Eastern District of California's jurisdictional boundary are available for Federal oil and gas leasing and 158,800 acres have active Federal oiland gas leases.
6. As of October 5, 2017, 1,169,300 acres of public lands within the U.S. District Court for the Southern District of California's jurisdictional boundary are available for Federal oil and gas leasing and there are no active Federal oil and gas leases.
7. BLM collected this data through our semi-automated California system, the California Geographic Record and Land System, and the LR2000 database. Layers from split-estate and surface management data sets were combined to calculate availability of oil and gas lease potential across each county. Layers from Wilderness, WSA, National Monuments, and Wild and Scenic River Corridor data sets were also used. Calculated acres for potentially available lands do not include actual outcome-determinative land use analysis such as environmental impact assessments or biological opinions.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 19, 2018.

Jerome E. Perez