

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment & Natural Resources Division

SEAN C. DUFFY (NY 4103131)
KRYSTAL-ROSE PEREZ (TX 24105931)
Trial Attorneys
U.S. Department of Justice
601 D Street, NW
Washington, D.C. 20004
Ph: (202) 305-0445 (Duffy)
Ph: (202) 305-0486 (Perez)
sean.c.duffy@usdoj.gov
krystal-rose.perez@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DAKOTA RURAL ACTION, <i>et al.</i> ,)	Case No.: 1:18-cv-02852-BAH
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE, <i>et al.</i> ,)	
)	
Federal Defendants.)	
)	

DEFENDANTS’ OBJECTION TO PLAINTIFFS’ NOTICE OF RELATED CASE

Federal Defendants hereby object to Plaintiffs’ Notice of Related Case, which asserts that the above-captioned case is related to *Food & Water Watch v. U.S. Department of Agriculture, et al.*, No. 1:17-cv-01714-BAH (D.D.C.). Notice of Related Case, ECF No. 2 (“Notice”). Plaintiffs’ Notice appears to have resulted in assignment under Local Civil Rule 40.5(c)(1) to Chief Judge Beryl A. Howell.

Plaintiffs assert that this case is related to the *Food & Water Watch* case because it purportedly involves common issues of fact. *See* Notice at 1. However, the facts and legal

claims at issue in *Food & Water Watch* are unrelated to those in the present action. The subject of that case is a single loan guarantee issued in 2015 by the Farm Services Agency (“FSA”) to support the construction and operation of a specific large-sized concentrated animal feeding operation (“Large CAFO”) under regulations that are no longer in effect, 7 C.F.R. part 1940 subpart G. By contrast, the present case involves a facial challenge to a 2016 FSA rulemaking, 7 C.F.R. part 799, which governs how environmental analyses of loans and loan guarantees to *medium-sized* concentrated animal feeding operations (“Medium CAFOs”) are handled by FSA. These two cases concern different facts (*i.e.*, types of CAFOs), causes of action, regulations, and plaintiffs; will be resolved on distinct administrative records; and are in different procedural stages. Treating these two cases as related would not promote judicial economy, nor would it prejudice Plaintiffs if this case were assigned using the default procedure established at Local Civil Rule 40.3(a). Deeming this case related simply because the defendants and one of the plaintiffs are common to both cases would defeat the legal standard in this District by suggesting that whenever two cases do not grow out of the same event or transaction but instead only tangentially involve the same issue, the random case assignment rule does not apply. As shown below, that is not the standard.

I. Background

In this case, Plaintiffs facially challenge the FSA’s 2016 rule expanding the types of proposed actions by FSA that are categorically excluded, absent extraordinary circumstances, from further environmental review in an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) under the National Environmental Policy Act (“NEPA”). In particular, Plaintiffs take issue with FSA’s determination that the issuance of loans or loan guarantees in support of Medium CAFOs, as they are defined by the Environmental Protection Agency, typically do not result in individual or cumulative significant environmental effects. *See*

Environmental Policies and Procedures, Compliance With the National Environmental Policy Act & Related Procedures (Final Rule), 81 Fed. Reg. 51,291 (Aug. 3, 2016). This challenge involves judicial review under NEPA and the Administrative Procedure Act (“APA”) of FSA’s rulemaking process and the 2016 rule itself. *See* Compl. ¶ 11.

II. Legal Standard

“The general rule governing all new cases filed in this courthouse is that they are to be randomly assigned.” *Tripp v. Exec. Office of President*, 196 F.R.D. 201, 202 (D.D.C. 2000); *see also Boyd v. Farrin*, No. 12-cv-1893-PLF, 2012 WL 6106415, at *1 (D.D.C. Dec. 10, 2012).

The “rationale behind random case assignment is that it guarantees fair and equal distribution of cases to all judges, avoids public perception or appearance of favoritism in assignments, and reduces opportunities for judge-shopping.” *Wash. All. of Tech. Workers v. U.S. Dep’t of Homeland Sec.*, No. 16-cv-1170, 2016 WL 11184186, at *2 (D.D.C. June 24, 2016) (internal quotations omitted). The “related case” rule set forth in Local Civil Rule 40.5 establishes an exception that “rests primarily on considerations of judicial economy and aims to prevent the inefficiency inherent in having two judges handling cases that are so related that they involve common factual issues or grow out of the same event or transaction.” *Boyd*, 2012 WL 6106415, at *1 (internal quotations omitted).

Among the four bases for determining that cases are sufficiently related to be assigned to the same judge, Plaintiffs allege only that this case “involves common issues of fact” with *Food & Water Watch*. Notice at 1. Because it is Plaintiffs who seek to avoid having this case assigned randomly, they bear the burden of showing that the cases are related under a provision of Local Civil Rule 40.5(a)(3). *See Dale v. Exec. Office of President*, 121 F. Supp. 2d 35, 37 (D.D.C. 2000).

III. The *Food & Water Watch* case Does Not Contain Sufficient Common Issues of Fact to be Related to This Case under Local Civil Rule 40.5(a)(3).

In the present case, Plaintiffs challenge the FSA’s promulgation of a rule in 2016, which categorically excludes Medium CAFOs from preparation of an EA or EIS when no extraordinary circumstances are present. *See* Compl. ¶ 1. The *Food & Water Watch* case involves a challenge to FSA’s compliance with NEPA in issuing a loan guarantee in support of a single Large CAFO. While both cases generally involve the subject of CAFOs, they do not share enough common issues of fact sufficient to outweigh the presumption of random assignment.

In *Food & Water Watch*, the Plaintiff challenges FSA’s compliance with NEPA in issuing a loan guarantee to support construction of a single large poultry CAFO in Maryland. *See* Compl. ¶¶ 1–3, *Food & Water Watch v. U.S. Dep’t of Agric.*, No. 1:17- cv-01714-BAH (D.D.C. Aug. 23, 2017). The allegations in the complaint challenge the adequacy of the EA prepared by the FSA and the FSA’s issuance of a “finding of no significant impact” (“FONSI”) in 2015. *See id.* ¶¶ 42–47. In *Food & Water Watch*, the plaintiff alleges FSA failed to consider a variety of potential impacts unique to the particular Large CAFO at issue in that case. The loan guarantee at issue in *Food & Water Watch* was not issued under the 2016 Rule challenged in this case, which was promulgated later. Indeed, the complaint in *Food & Water Watch* makes only passing reference in a single paragraph to FSA’s “new regulations” promulgated in 2016. *See id.* ¶ 22 (explaining that FSA “issued new regulations,” which do “not have retroactive effect” and are thus inapplicable in the loan guarantee matter). The administrative record in the *Food & Water Watch* case focuses on those documents considered by the FSA in its determination to issue the specific loan guarantee in question.

This case, in contrast, brings a facial challenge to the 2016 rule allowing FSA to analyze the environmental effects of Medium CAFOs using categorical exclusions. The Complaint

advances three claims under NEPA and one under the APA challenging FSA's decision to include Medium CAFOs on the categorical exclusion list. Compl. ¶¶ 209–217, 225, 229–231, 237–238. The focus of the Complaint in this case will be the administrative record for the 2016 Rule, and whether it is sufficient to “substantiate” the FSA's determination that medium CAFOs typically do not have significant environmental effects. Compl. ¶¶ 211, 230. The record will provide the documents that were before FSA when it promulgated the 2016 rule and will not contain information related to the guarantee to a large-sized CAFO in 2015 that is at issue in *Food & Water Watch*. See 81 Fed. Reg. at 51,274. The administrative record in this case will therefore be distinct from and rely on different facts than the record already lodged in the *Food & Water Watch*.

In short, the decision to guarantee a loan to support a single large CAFO in *Food & Water Watch* and the later promulgation of a Rule pertaining to Medium CAFOs at issue in this case do not “involve common factual issues or grow out of the same event or transaction.” *Boyd*, 2012 WL 6106415, at *1. Therefore, the cases should not be treated as related under Local Civil Rule 40.5.

The interests of judicial economy further counsel against carving out an exception to the random assignment rule here. Of the eight plaintiffs in this case, only one is common to the *Food & Water Watch* case. In addition, the *Food & Water Watch* case is further advanced, with record disputes resolved and briefing for summary judgment to be scheduled soon. See Minute Order, *Food & Water Watch v. U.S. Dep't of Agric.*, No. 1:17- cv-01714-BAH (D.D.C. Dec. 4, 2018). Plaintiffs here are no more prejudiced by a random assignment of their case than the typical plaintiff who files a case in this District. To allow Plaintiffs to bypass the random case assignment rule would allow any case that tangentially involves a CAFO to be deemed “related,” thereby allowing the exception to eclipse the general rule.

IV. Conclusion

The *Food & Water Watch* case and the present case are not “so related” that significant judicial efficiencies would be achieved by departing from this Court’s presumptive rule of random assignment. *See Boyd*, 2012 WL 6106415, at *1. Therefore, the Court should transfer the case to the Court’s Calendar Committee for random reassignment.

DATED: March 15, 2019.

Respectfully submitted,

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment & Natural Resources Division

Sean C. Duffy
SEAN C. DUFFY (NY 4103131)
KRYSTAL-ROSE PEREZ (TX 24105931)
Trial Attorneys
U.S. Department of Justice
601 D Street, NW
Washington, D.C. 20004
Ph: (202) 305-0445 (Duffy)
Ph: (202) 305-0486 (Perez)
sean.c.duffy@usdoj.gov
krystal-rose.perez@usdoj.gov

OF COUNSEL

LEIGHA GORDILLO
Office of General Counsel
U.S. Department of Agriculture

Attorneys for Federal Defendants