

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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DAKOTA RURAL ACTION, et al.,)	
)	
)	Civ. Action No. 18-2852
<i>Plaintiffs,</i>)	
)	
v.)	PLAINTIFFS’ REPLY IN SUPPORT
)	OF NOTICE OF RELATED CASE
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE, et al.,)	
)	
<i>Defendants.</i>)	
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Plaintiffs Dakota Rural Action, Institute for Agriculture and Trade Policy, Iowa Citizens for Community Improvement, Citizens Action Coalition of Indiana, Association of Irrigated Residents, White River Waterkeeper, Food & Water Watch, and Animal Legal Defense Fund submit the following response to Defendants’ Objection to Plaintiffs’ Notice of Related Case.

I. Introduction

Relating this case to *Food & Water Watch v. U.S. Department of Agriculture*, No. 1:17-cv-01714 (BAH), and maintaining its current assignment to Chief Judge Howell serves the interests of judicial economy and is, therefore, proper under Local Civil Rule 40.5. These cases meet the standard for relation as explained by this Court in *Singh v. McConville*, 187 F.Supp.3d 152 (D.D.C. 2016): *Food & Water Watch* is still pending on the merits in this Court, and the two cases involve common issues of fact regarding the Farm Service Agency’s (“FSA”) regulatory scheme, the environmental effects of Concentrated Animal Feeding Operations (“CAFOs”),

FSA's compliance with the National Environmental Policy Act ("NEPA") when approving loans and loan guarantees to CAFOs, and Plaintiffs' standing to bring their claims. In the interests of judicial economy, these cases should be related to allow a Court that is already well-versed in the factual determinations underlying Plaintiffs' claims to preside over this case.

II. Legal Standard

As this Court explained in *Singh*, cases are related under Local Civil Rule 40.5 when the earlier case is still pending on the merits in the District Court and the cases involve common issues of fact. 187 F.Supp.3d at 155 (citing L. Civ. R. 40.5(a)(3)). *Singh* explains there are common issues of fact if the Court would be required to make similar factual determinations related to a defendant's regulations and policies—including their justifications for and administration of those regulations and policies—or where plaintiffs in both cases seek the same relief. *Id.* at 156-57. Relating such cases saves judicial resources by allowing the same judge to address factual issues that will arise in both cases. *Id.* at 157 (citing *Assiniboine & Sioux Tribe of the Ft. Peck Indian Reservation v. Norton*, 211 F.Supp.2d 157, 159 (D.D.C. 2002)).

III. These Cases Are Properly Related Under Local Civil Rule 40.5

Here, as with *Singh*, "it is undisputed that the earlier-filed case is still pending on the merits and the plaintiffs rely on . . . common issues of fact as the basis for the cases' relatedness." *Id.* at 155 (internal citations omitted); *see* Defs.' Obj. at 5 (admitting *Food & Water Watch* is pending on the merits).

The instant case and *Food & Water Watch* share several common issues of fact that warrant relating. Fundamentally, in both cases, "the gravamen of the plaintiff[s'] complaint is that the FSA must comport with the NEPA" when issuing loans to CAFOs. *See Food & Water Watch*, 325 F.Supp.3d 39, 56 (D.D.C. 2018). The question for the Court here is the same as in

Food & Water Watch: whether FSA improperly departed from or disregarded the requirements of NEPA with regard to CAFO loans. In both cases, to make that determination, the Court will have to make factual findings as to whether the alleged environmental impacts of CAFOs are “individually or cumulatively significant” under NEPA. Specifically, in both cases, the Court will have to make factual findings regarding CAFOs’ individual and cumulative effects on:

- surface water pollution, *compare Food & Water Watch* Compl. ¶¶ 48-50, 52; *Food & Water Watch* Proposed First Am. Compl. ¶¶ 67-69, 104-111 *with Dakota Rural Action* Compl. ¶¶ 143-148, 153;
- groundwater quality and quantity, *compare Food & Water Watch* Compl. ¶¶ 48-50, 55; *Food & Water Watch* Proposed First Am. Compl. ¶¶ 74, 100-03 *with Dakota Rural Action* Compl. ¶¶ 143-153, 162-165;
- biological resources, including wildlife and ecosystems, *compare Food & Water Watch* Compl. ¶¶ 48-50, 52, 56; *Food & Water Watch* Proposed First Am. Compl. ¶¶ 93-99 *with Dakota Rural Action* Compl. ¶¶ 166-173;
- air quality, *compare Food & Water Watch* Compl. ¶¶ 48, 93-97; *Food & Water Watch* Proposed First Am. Compl. ¶¶ 67, 112-116 *with Dakota Rural Action* Compl. ¶¶ 110-142;
- community quality of life and environmental justice, *compare Food & Water Watch* Compl. ¶¶ 48, 57; *Food & Water Watch* Proposed First Am. Compl. ¶ 67 *with Dakota Rural Action* Compl. ¶¶ 184-190; and
- family farmers, *compare Food & Water Watch* Compl. ¶¶ 48-50, 58-59; *Food & Water Watch* Proposed First Am. Compl. ¶¶ 39-40, 77-78, 123-131 *with Dakota Rural Action* Compl. ¶¶ 191-204.

Because the Court would be required to make similar factual determinations with respect to each of these types of impacts considered under NEPA, the cases should be related. *See Singh*, 187 F.Supp.3d at 156-157; *Assiniboine*, 211 F.Supp.2d at 159 (“It would waste judicial resources and be nonsensical to have another court address these same factual issues.”).

Both cases also include similar claims and request the same relief, further demonstrating they are properly related. *See Singh*, 187 F.Supp.3d at 157. *Food & Water Watch* alleges FSA

violated NEPA and the APA by, among other things, failing to consider impacts on biological resources, groundwater quality and quantity, surface water quality, and air quality, and the cumulative impacts of the CAFO at issue together with other, and other-sized, CAFOs in the area. *See Food & Water Watch* Compl. ¶¶ 60-121; *Food & Water Watch* Proposed First Am. Compl. ¶¶ 79-138, 143-47. *Dakota Rural Action* alleges FSA violated NEPA and the APA by failing to consider the individual and cumulative effects that loans to medium CAFOs have on these very same resources. *Dakota Rural Action* Compl. ¶¶ 205-26. *Food & Water Watch* and the present case also both allege that FSA's procedural violations of NEPA and the APA deprived the respective plaintiffs and the public of proper notice and an opportunity to comment on FSA's decision-making process. *Compare Food & Water Watch* Proposed First Am. Compl. ¶¶ 139-43 with *Dakota Rural Action* Compl. ¶¶ 233-39. Accordingly, the plaintiffs in both cases are seeking to invalidate and enjoin illegal loan approvals, a declaration that FSA violated NEPA and the APA, and costs, fees, and any other relief the Court deems just and proper. *Compare Food & Water Watch* Compl. at 35; *Food & Water Watch* Proposed First Am. Compl. at 38-39 with *Dakota Rural Action* Compl. at 55-56. Even if the Court must independently evaluate whether the respective plaintiffs are entitled to their requested relief, as is always true with distinct cases, this congruence further counsels in favor of relation. *See Singh*, 187 F.Supp.3d at 157.

The distinction that Defendants attempt to draw between the large CAFO at issue in *Food & Water Watch* and medium CAFOs at issue here, *see* Defs.' Obj. at 2, 4-5, does not remove the commonality of facts. Core to Plaintiffs' Complaint here is that FSA's new regulations violate NEPA by unjustifiably exempting medium CAFOs from the level of NEPA review that applied

to the large CAFO in *Food & Water Watch*.¹ Determining whether FSA’s new exemption for medium CAFOs is proper requires an understanding of FSA’s previous NEPA regulations—the ones at issue in *Food & Water Watch*—because it is these regulations from which Plaintiffs here argue FSA has improperly departed. Evaluating the exemption also requires an understanding of the environmental effects of large CAFOs, which are at issue in *Food & Water Watch* and from which Plaintiffs here argue FSA improperly distinguished medium CAFOs. These are precisely the “factual determinations related to the defendants’ regulations and policies, and the administration of those regulations and policies,” which should result in relation. *See Singh*, 187 F.Supp.3d at 157.

Indeed, in both cases the Court would review whether FSA properly assessed the individual *and* cumulative effects of its CAFO funding. *See* 40 C.F.R. § 1508.8. Plaintiffs in this case also allege that FSA is funding a “proliferation” of medium CAFOs “in small geographic areas near processing plants,” such that several medium CAFOs combined have the same animal numbers and environmental effects as one or many large CAFOs. *See Dakota Rural Action* Compl. ¶¶ 202-03 (noting, *e.g.*, nine FSA-funded medium CAFOs in one county within 17 months). Defendants’ fixation on the difference in labels misses the point.

The cases are also in similar procedural postures, with *Food & Water Watch* still pending on the merits and, like the instant case, poised to move into summary judgment.² Hence this

¹ Under the regulations applicable in *Food & Water Watch* FSA required Environmental Assessments for both medium CAFOs and large CAFOs like the one at issue in that case. *See Dakota Rural Action* Compl. ¶¶ 54-57. Under its current regulations FSA still requires Environmental Assessments for large CAFOs, but not medium CAFOs—which gives rise to Plaintiffs’ claims here. *See, e.g., id.* ¶¶ 58-59.

² Plaintiffs reserve their right to challenge Defendants’ characterization of the proper scope of the Administrative Record. *See* Defs.’ Obj. at 2, 4-5.

Court has already made factual determinations in evaluating the *Food & Water Watch* plaintiffs' standing—including that of Food & Water Watch, a party here—that will overlap with the determinations necessary to evaluate plaintiffs' standing in this case. *See Food & Water Watch*, 325 F.Supp.3d at 52-58; Answer at 42 (raising standing as an affirmative defense). The commonality of parties, fact, and law further counsel toward relating. *See Singh*, 187 F.Supp.3d at 157; *cf. Cottage Advisors, LLC v. KBS Bldg. Sys.*, No. 2:12-cv-226, 2012 WL 5864033, *2 (D. Maine Nov. 16, 2012) (granting motion to consolidate cases as related because “these two proceedings involve both common parties and common issues of fact and law,” including that “[t]he affirmative defenses asserted . . . largely overlap”).

IV. Conclusion

Defendants both overstate and mischaracterize the differences between *Food & Water Watch* and the present case. In fact, the cases do involve a common set of facts, causes of action, regulations, and plaintiffs, which will require this Court to make similar factual determinations in both cases. Judicial economy would thus be better served by relating the two cases.

Respectfully submitted this 25th day of March, 2019.

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