IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, et al. Plaintiffs, vs. DEBRA A. HAALAND, et al. Defendants.	No. 1:21-cv-02317-RDM Judge Randolph D. Moss

DEFENDANTS' OPPOSITION TO LOUISIANA'S MOTION TO TRANSFER

The Court should deny Louisiana's motion to transfer this case to the Western District of Louisiana because Plaintiffs could not have filed their civil action in that district in the first instance. Federal Defendants do not reside there, Plaintiffs do not reside there, and none of the acts or omissions challenged in this case occurred there. Indeed, the only plausible districts for this action are the District for the District of Columbia (where Defendants reside, where most of the events or omissions giving rise to Plaintiffs' claims occurred, and where Plaintiffs chose to file suit) or in the *Eastern* District of Louisiana (where the Bureau of Ocean Energy Management's New Orleans Field Office is located, and thus where some of the events or omissions giving rise to Plaintiffs' claims occurred). Moreover, even if the Western District of Louisiana potentially were a proper venue, there still would be no basis for transferring the case there. The Louisiana court has already recognized that this case does not involve any of the issues before it. Further, this case involves the potential leasing of national resources on the outer continental shelf (OCS), not a local issue within the geographic boundaries of Louisiana. Accordingly, Louisiana's motion should be denied.

BACKGROUND

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Lease Sale 257

Planning for Lease Sale 257 began over six years ago, when the Department of the Interior started developing the 2017-2022 Five Year Outer Continental Shelf Leasing Program (the "Five-Year Program"), pursuant to § 18 of the Outer Continental Shelf Land Act ("OCSLA"). The Five-Year Program proposed ten region-wide lease sales to occur in the Gulf of Mexico, and one to occur in the Cook Inlet offshore Alaska. The sale challenged here, Lease Sale 257, is the eighth sale proposed in the Gulf of Mexico under the Five-Year Program.

The Bureau of Ocean Energy Management ("BOEM") published three Environmental Impact Statements ("EISs") related to Lease Sale 257, each one tiering to and updating its predecessor. Those documents will be included in the administrative record lodged with the Court, and they are:

(1) The Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022 Final Programmatic EIS (the "Program EIS"),

(2) The Gulf of Mexico OCS Oil and Gas Lease Sales: 2017-2022 Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261 Final Multisale EIS (the "Multisale EIS"); and

(3) The Gulf of Mexico OCS Lease Sale Final Supplemental Environmental Impact Statement 2018 (the "2018 SEIS").

In the Multisale EIS, BOEM prepared for each of the ten region-wide lease sales tentatively scheduled for the Gulf of Mexico by analyzing the potential environmental impact of the decision to hold a single lease sale—the first being Lease Sale 249—because the analyzed sale and its reasonably foreseeable impacts would be representative of subsequent planned sales. The Multisale EIS also considered a single sale's cumulative impacts, and said that BOEM would conduct further National Environmental Policy Act ("NEPA") reviews for later sales, as

necessary. BOEM later prepared the 2018 Supplemental EIS to update information in the Multisale EIS and to inform its individual decisions on subsequent sales.

BOEM issued the Record of Decision ("ROD") for Lease Sale 257 on August 31, 2021. *See* Ex. 1. BOEM explained in the ROD that it had reviewed information that had become available since the 2018 SEIS and verified that the 2018 SEIS adequately addressed the environmental effects of Lease Sale 257. *See* Lease Sale 257 ROD at 2. It concluded, "[t]here are no new circumstances, information, or changes in the proposed action or its impacts that require supplementation of the [2018 SEIS]." *Id.*

BOEM recognized in the ROD that this was not the first time it had issued a Record of Decision for Lease Sale 257. It noted that, on January 21, 2021, after the final day of the Trump Administration, BOEM issued an initial Record of Decision for Lease Sale 257. That Record of Decision was rescinded on February 18, 2021, pending "review and reconsideration of Federal oil and gas permitting and leasing practices," consistent with Section 208 of Executive Order 14,008 and the Secretary of the Interior's broad authority to administer the offshore oil and gas leasing program under the Outer Continental Shelf Lands Act. The ROD challenged here states that "[t]he Department now has determined to move forward with the process for [Gulf of Mexico] Lease Sale 257, consistent with the Secretary's authorities and discretion under applicable law." Lease Sale 257 ROD at 1.

B. Conservation Groups' Suit for Alleged Failure to Comply with NEPA

The same day Interior issued the Record of Decision for Lease Sale 257, and before any final notice of sale issued,[1] conservation groups filed a two-count complaint alleging failure to

[1] BOEM issued a final notice of sale on October 4, 2021. *See* Final Notice of Sale, 86 Fed. Reg. 54,728 (Oct. 4, 2021). In the notice, BOEM announced that the sale will take place on November 17, 2021. *See id.*

comply with NEPA. *See* Compl., Doc. 1. Plaintiffs' first count alleges Defendants failed to take a "hard look" at the effects of Lease Sale 257 as required by NEPA. *Id.* ¶¶ 169-184. Plaintiffs' second count alleges the 2018 Supplemental EIS is outdated and that Defendants violated NEPA by failing to supplement it. *Id.* at ¶¶ 185-195. Plaintiffs requested that the Court order an expedited schedule in the case, *see* Mot. for Hearing, Doc. 11, which request Defendants opposed, Response to Mot. for Hearing, Doc. 14.

C. Louisiana's Motion to Intervene

On September 13, 2021, Louisiana moved to intervene in this case of right or, in the alternative, as a permissive intervenor. Mot. to Intervene, Doc. 13. Louisiana's motion to intervene focuses on a separate suit, *Louisiana v. Biden*, No. 2:21-cv-778, 2021 WL 2446010, (W.D. La.), in which the United States District Court for the Western District of Louisiana preliminarily enjoined Interior officials from implementing the leasing pause described in Section 208 of Executive Order 14,008. *See id.* at *22. Among other things that Defendants dispute, Louisiana's Motion to Intervene asserted that a victory for Plaintiffs in this suit would "contradict the Louisiana court's order" granting Louisiana and other State Plaintiffs' Motion for a Preliminary Injunction and would reinstate the "policy the Louisiana court already enjoined as contrary to statutory command." Mot. to Intervene at 1, Doc. 13. This Court granted Louisiana's Motion to Intervene. Doc. 24.

The same day that it moved to intervene in this case, Louisiana also moved the Western District of Louisiana to order a status conference to "sort out" Louisiana's concerns regarding this lawsuit. Mot. for Status Conf., *Louisiana* Doc. 161, Ex. 2. At the conference, Louisiana "suggested that [this suit in the District of Columbia] was filed to undermine and interfere with the [Western District of Louisiana]'s issuance of the Preliminary Injunction" and Louisiana further "outlined several options, including that the [Western District of Louisiana] enjoin the

new suit from being filed or reconsider the Motion to Intervene [*Louisiana* Doc. 73] filed by the plaintiffs [to this suit]." Minutes of Status Conf., *Louisiana* Doc. 167, Ex. 3. The Western District of Louisiana declined to take the actions Louisiana outlined, including "because the issues [presented in the two cases] are not the same." *Id.* at 2.

D. Louisiana's Motion to Transfer

Having failed to convince the Western District of Louisiana that this case deals with the same issues as the case pending there, Louisiana now moves this Court to transfer based on many of the same arguments. Mot. to Transfer, Doc. 25. Federal Defendants oppose.

II. LEGAL STANDARD

"The Court has broad discretion to adjudicate motions to transfer pursuant to 28 U.S.C. § 1404(a)." *McGovern v. Burrus*, 407 F. Supp. 2d 26, 27 (D.D.C. 2005). Section 1404(a) states that, "[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 . . . ." 28 U.S.C. § 1404(a). Under this statute, courts exercise the discretion to transfer according to "an 'individualized, case-by-case consideration of convenience and fairness.'" *Otter v. Salazar*, 718 F. Supp. 2d 62, 64 (D.D.C. 2010) (citing *Stewart Org. Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964))). In exercising this discretion, the courts should consider what districts would support venue, as well as public and private interest factors. *Shawnee Tribe v. United States,* 298 F. Supp. 2d 21, 23-24 (D.D.C. 2002); *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 65 (D.D.C. 2003).

The first question in this analysis "is whether the potential transferee court is a proper venue under 28 U.S.C. § 1391." *Harris v. U.S. Dep't of Veterans Affairs*, 196 F. Supp. 3d 21, 24 (D.D.C. 2016). If venue is proper in the transferee court, "the Court then undergoes a 'factually analytical, case-by-case determination of convenience and fairness,' . . . by balancing 'case-

specific factors related to the public interest of justice and the private interests of the parties and witnesses.'" *Id*. The "[p]ublic interest factors typically include: 1) the local interest in making local decisions about local controversies, 2) the potential transferee court's familiarity with the applicable law, and 3) the congestion of the transferee court compared to that of the transferor court." *Id*. The private interest factors include: "1) the plaintiff's choice of forum, 2) the defendant's choice of forum, 3) where the claim arose, 4) the convenience of the parties, 5) the convenience of the witnesses, particularly if important witnesses may actually be unavailable to give live trial testimony in one of the districts, and 6) the ease of access to sources of proof." *Id*. The party requesting transfer has the burden "to show that the 'balance of convenience of the parties and witnesses and the interest of justice are in [its] favor.'" *Shawnee Tribe*, 298 F. Supp. 2d at 23 (citation omitted).

ARGUMENT

I. The Western District of Louisiana Is Not a Proper Venue

This case should not be transferred because the proposed transferee district, the Western District of Louisiana, is not a proper venue for the claims in this case. In cases against federal agencies or officials, venue is proper "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 the property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1). None of the three possible justifications for venue in the Western District of Louisiana exists here.

Two of these potential bases for venue are easily dismissed. Plaintiffs reside in Washington, D.C., New Orleans, Louisiana (which is in the Eastern District of Louisiana), and

the Northern District of California.[2] *See* Compl. ¶¶ 12-15. Therefore, none of the Plaintiffs reside in the Western District of Louisiana. *See* 28 U.S.C. § 1391(e)(1)(C). Likewise, the federal agencies and officials named in the case do not reside in the Western District of Louisiana. 28 U.S.C. § 1391(e)(1)(C). For purposes of venue, the residence of a federal agency is where it is headquartered. *See Garcia v. Acosta*, 393 F. Supp. 3d 93, 108 (D.D.C. 2019). The Secretary and the Assistant Secretary of the Interior reside for official purposes in the District of Columbia, and the Department of the Interior and BOEM are headquartered here as well. *See* Compl. ¶¶ 10, 18-21.

The third potential basis for venue—where a substantial part of the actions or omissions giving rise to the claims occurred or a substantial part of the real property subject to the claims is located, 28 U.S.C. § 1391(e)(1)(B)—also does not provide a basis for proper venue in the Western District of Louisiana. The actions by Interior and BOEM that gave rise to Plaintiffs' NEPA claims took place in either the District of Columbia or in New Orleans, in the Eastern District of Louisiana. The decision regarding the sale was made by the Department of the Interior's Principal Deputy Assistant Secretary for Land and Minerals Management in the District of Columbia. *See* Lease Sale 257 ROD at 13. The determination of NEPA adequacy ("DNA") was issued by BOEM's Regional Supervisor of Environment, Gulf of Mexico Regional Office in New Orleans. *See* Lease Sale 257 DNA, Ex. 4. The DNA and the 2018 Supplemental Environmental Impact Statement ("SEIS") were prepared by BOEM staff in New Orleans and the District of Columbia. *See* Lease Sale 257 DNA (cover page showing that the document was prepared by the Gulf of Mexico Regional Office); Gulf of Mexico OCS Lease Sale Final SEIS

[2] The Sierra Club is headquartered in Oakland, California, *see* www.sierraclub.org, and the Center for Biological Diversity is headquartered in Tucson, Arizona. *See* www.biologicaldiversity.org (last visited Oct. 5, 2021).

2018 (excerpt) (same),[3] Ex. 5. Further, the public comment process for the 2018 SEIS occurred near New Orleans and three other cities, but not in the Western District of Louisiana. *See* 2018 SEIS at 5-9. Therefore, none of the actions or omissions giving rise to Plaintiffs' NEPA claims occurred in the Western District of Louisiana.

Implicitly recognizing that the actions giving rise to the NEPA claims occurred in the District of Columbia and the Eastern District of Louisiana—not the Western District—Louisiana urges that the Court should consider other factors, such as the venue for its earlier civil action challenging the Department of the Interior's implementation of Section 208 of Executive Order 14,008 and its views on where some potential impacts of the agency's decision could be felt. *See* Mot. to Transfer at 4-9. These arguments are unavailing.

First, venue is not proper in the Western District of Louisiana merely because Louisiana has another case pending there. The existence of that other case, which challenges a separate action and involves different claims, is not a sufficient basis to establish proper venue under the plain text of 28 U.S.C. § 1391(e)(1)(B). Louisiana argues otherwise based on *Ute Indian Tribe v. U.S. Dep't of Interior*, No. 1:18-cv-00547 (CJN), 2021 WL 4189936 (D.D.C. Sept. 15, 2021), but it was not contested in that case that the proposed transferee venue was a proper venue, and the case involved a water-exchange project in the transferee district. *See id.* at *12. Similarly, the parties in *Me-Wuk Indian Cmty. of the Wilton Rancheria v. Kempthorne*, 246 F.R.D. 315 (D.D.C. 2007), did not contest that venue in the transferee district would be proper. *See id.* at 317-18, 321. And even if the existence of related litigation could theoretically satisfy 28 U.S.C. § 1391(e)(1)(B), it does not here. Louisiana's argument is predicated on its view that the claims

[3] The 2018 Final SEIS is available at: https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Assessment/NEPA/BOEM-EIS-2017-074_v1.pdf (last visited Oct. 5, 2021).

in this case "touch on" the same agency action at issue in the Western District of Louisiana. Mot. to Transfer at 4 (quoting *Ute Indian Tribe*, 2021 WL 4189936, at *12). But as discussed in section II.A.1, *infra*, the claims in the two cases are not meaningfully related—this case involves NEPA claims challenging BOEM's decision to go forward with Lease Sale 257, whereas Louisiana's case involves a challenge to an alleged leasing pause flowing from Executive Order 14,008.

Second, Louisiana argues that venue is proper in the Western District of Louisiana because some of the potential environmental and socioeconomic impacts of BOEM's leasing decisions, as described in the 2018 SEIS, would be felt in the Western District, and that studies of such impacts were conducted there. *See* Mot. to Transfer at 5-7. Louisiana conflates the potential *impacts* of BOEM's leasing decision with the *acts or omissions giving rise to the claims*, where only the latter are relevant under 28 U.S.C. § 1391(e)(1)(B). Further, to the extent Louisiana contends that merely gathering data for the SEIS from the Western District is a substantial act or omission giving rise to the NEPA claims, they are incorrect and none of the cases they cite extend the notion of "substantiality" so far.

Instead, in each of the cases they cite, either the actions or events giving rise to the claims actually occurred in the transferee district or there was a separate basis for venue. *See Villa v. Salazar*, 933 F. Supp. 2d 50, 55 (D.D.C. 2013) (venue was proper in the transferee district because the parcels of land at issue were located in that district); *Aland v. Kempthorne*, No. 07-CV-4358, 2007 WL 4365340, at *3 (N.D. Ill. Dec. 11, 2007) (the grizzly bear population subject to the rule at issue was partially within the transferee district); *Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 4 (D.D.C. 2013) (venue was proper in the District of Massachusetts because "federal officials in Gloucester, Massachusetts, were involved in writing and promulgating [the] rules"

and because "[m]any of the fishermen affected by the challenged regulations . . . are located in Massachusetts, and the fish themselves populate the waters off the Bay State's coast"); *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 16 (D.D.C. 1996) (venue was proper in the District of Colorado because the property at issue was located there); *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 128 (D.D.C. 2001) (several plaintiffs and defendants resided in the transferee district and the challenged decision was made by officials in there, as well as in the District of Columbia). In contrast to all of these cases, neither the actions taken by federal officials nor the subject of the dispute, *i.e.*, the potential lease parcels, are located in the proposed transferee district.

Third, Louisiana argues that venue is proper in the Western District based on BOEM's consultation with affected states in compliance with OCSLA. *See* Mot. to Transfer at 8. But Louisiana has not demonstrated that such consultation occurred in the Western District. *See id.* (alleging only that Louisiana had a role in the consultation process). Although the Governor of Louisiana had the opportunity to consult in the scheduling of the Lease Sale, the Governor did not do so. Even if the Governor had submitted comments, the Governor officially resides in Baton Rouge, which is in the Middle District of Louisiana, not the Western District. And finally, even if Louisiana could demonstrate that OCSLA consultation occurred in the Western District, it is of no legal significance because there are no OCSLA claims in this lawsuit. A case that Louisiana cites, *Cottman Transportation Systems, Inc. v. Martino*, 36 F.3d 291 (3d Cir. 1994), demonstrates this point. In that case, the court ruled that transfer was appropriate because the particular omissions giving rise to the claims occurred in the transferee district. *See id.* at 295. In contrast, the consultation that is conducted as part of the OCSLA process is not challenged by the Plaintiffs in this lawsuit.

Finally, Louisiana is incorrect that a substantial part of the property subject to this suit is located in the Western District. *See* Mot. to Transfer at 8-9. This argument merely rehashes their argument that the impacts of BOEM's leasing decision may be felt in the Western District and is not sufficient to establish venue for the reasons discussed above.

In short, the problem for Louisiana is that, while the Eastern District of Louisiana may be a proper venue for this case, the Western District is not. Because Louisiana is requesting transfer to an improper venue, its motion should be denied and the Court need not weigh the public and private interests in ruling on the motion.

II. Even if the Western District of Louisiana Were a Proper Venue, the Case Should Not Be Transferred

Even if the Court weighs the public and private interest factors applicable to a motion to transfer under 28 U.S.C. § 1404(a), those factors do not support transfer.

A. Public Interest Factors

In evaluating the public interest, the Court should consider: (1) the local interest in having local controversies decided in their home district, (2) the transferee district's familiarity with the governing law and the pendency of related cases in that forum, and (3) congestion of the transferor and transferee districts. *Bader v. Air Line Pilots Ass'n*, 63 F. Supp. 3d 29, 36 (D.D.C. 2014). These factors do not support transfer.

1. As Recognized by the Western District of Louisiana, the Issues in This Case Are Not the Same as the Issues Being Litigated in *Louisiana v. Biden*

This case and *Louisiana v. Biden* concern different issues with different claims, such that relief in one will not contradict any relief in the other. Plaintiffs' claims here concern only whether the August 31, 2021 Record of Decision for Lease Sale 257 complies with NEPA. *See* Compl. ¶¶ 169-95. The case pending in the Western District of Louisiana concerns the legality

of the oil and gas leasing pause directive of Executive Order 14,008 and administrative actions allegedly taken in furtherance of that directive, in alleged violation of OCSLA and the Mineral Leasing Act; it does not present any claims under NEPA. *See generally* Compl., *Louisiana*, No. 2:21-cv-778 (W.D. La.), Doc. 1, Ex. 6. The June 15 Order entered in that case enjoined defendants from implementing the pause as directed in the Executive Order, but did not purport to exempt the Department of the Interior from complying with NEPA in future lease sales; nor could it have done so. *See* Order, *Louisiana*, No. 2:21-cv-778 (W.D. La.), Doc. 140, Ex 7. Louisiana already presented the same arguments it makes here to the Western District of Louisiana, which rejected those arguments and took "no action with regard to the new suit as it is in another judge's court and because the issues are not the same." Minutes of Status Conf., *Louisiana*, No. 2:21-cv-778 (W.D. La.), Doc. 167 at 2, Ex. 3.

Louisiana's fundamental premise, that this case and *Louisiana* involve "the same underlying Record of Decision," Mot. to Transfer at 1, is also wrong. Federal Defendants reported the anticipated contents of the administrative record for this case in their Status Report to this Court on September 17, 2021. Defs.' Status Report, Doc. 19 at 1-2. They explained that "[t]he bulk of the materials that will become part of the administrative record in this case have been compiled for a record in a separate case." *Id.* (citing *Gulf Restoration Network v. Zinke*, No. 1:18-cv-1674-RBW (D.D.C.) (filed July 16, 2018)). Federal Defendants explained how *Gulf Restoration Network v. Zinke* involved separate lease sales, but the record from that case contained the bulk of the NEPA documents challenged in this case. *Id.* Federal Defendants needed only to delete certain documents that were specific to the prior lease sales, and add documents unique to the Lease Sale 257 Record of Decision dated August 31, 2021. *Id.* In *Louisiana*, on the other hand, the offshore record of decision deals with the interim decisions

rescinding the prior Lease Sale 257 Record of Decision—not challenged in this case—and the cancellation of the Lease Sale 258 comment period. *See* Notice of Filing Certified Administrative Record, *Louisiana*, No. 2:21-cv-778 (W.D. La.), Doc. 172-2, Ex 8. Federal Defendants filed that record last week, and anticipates that none of the documents in that record will overlap with the record to be lodged in this case. *Id.* It contained no NEPA documents. *Id.*

Moreover, Louisiana's assertions here contradict the positions it took in *Louisiana*. First, in opposing transfer of *Louisiana* to the District of Wyoming under the first to file rule, Louisiana took the position that the claims in *Louisiana* do not include NEPA challenges. *See* Opp. to Mot. to Transfer, *Louisiana*, No. 2:21-cv-778 (W.D. La.), Doc. 95 at 10 (stating Wyoming's NEPA challenges raised "distinct issues not involved in [*Louisiana*]"), Ex. 9. Second, in that same opposition, Louisiana maintained there was "minimal" likelihood of a conflict between proceedings "given the federal judiciary's demonstrated ability to simultaneously try challenges to rules with far more overlap" even though Louisiana conceded overlap for several claims in those two cases. *Id.* at 10, 13. Third, Louisiana characterized the claims in *Louisiana* as "hav[ing] nothing to do with" Conservation Groups' NEPA claims that challenge BOEM's decisions to proceed with lease sales in the Gulf of Mexico. *See* Opposition to Intervention, *Louisiana*, No. 2:21-cv-778 (W.D. La.), Doc. 96 at 12-13 (referring to *Gulf Restoration Network* when stating Conservation Groups' mention of "pending [NEPA] litigation with BOEM about recent leasing decisions in the Gulf" had "nothing to do with this case"), Ex. 10. Louisiana's attempt to flip its position and "try to turn [the *Louisiana*] lawsuit into something that it's not," *id.*, should be rejected.

2. Contrary to Louisiana's Assertion, the Western District of Louisiana Does Not Have "Specialized Knowledge"; this District Does

Louisiana asserts that the record developed in *Louisiana v. Biden* will provide "specialized knowledge" that would aid that court in efficiently reaching a resolution. Doc. 25 at 14. As explained above, however, it is the record developed by previous cases challenging the same underlying NEPA documentation that have aided and will continue to aid in the resolution of this matter. Indeed, five of the last six Gulf of Mexico Lease Sales were challenged by conservation groups, and all of those cases were filed in this district. *See Gulf Restoration Network*, No. 1:18-cv-1674-RBW (challenging Gulf of Mexico Lease Sale 250 and 251 on NEPA grounds); *Healthy Gulf v. Bernhardt*, No. 1:19-cv-707-RBW (D.D.C. filed March 13, 2019) (challenging Gulf of Mexico Lease Sales 252, 253, and 254 on NEPA grounds). The first case proceeded to judgment and is currently on appeal to the D.C. Circuit. *Gulf Restoration Network*, D.C. Circuit Case No. 20-5179. The others are stayed pending the result of that first case. *See* Order, *Healthy Gulf*, No. 1:19-cv-707 (D.D.C.), Doc. 36. Louisiana did not intervene in those cases, although industry representatives did. No party requested transfer.

3. Louisiana's Interest Does Not Override the National Interest in the Lease Sale

Although Louisiana has an interest in Lease Sale 257, the lease sale is not a localized controversy. Oil and gas exploration and development is a national issue, and therefore claims involving this issue appropriately can be heard in any district satisfying the requirements of 28 U.S.C. § 1391(e)(1). This very issue was addressed in *Oceana v. Bureau of Ocean Energy Management*, 962 F. Supp. 2d 70 (D.D.C. 2013). In that case, environmental groups challenged BOEM's decision to authorize two lease sales involving parcels in the Gulf of Mexico. *Id.* at 72-73. The government moved to transfer the case to the Southern District of Alabama, but the court denied the motion. *Id.* at 79. The court rejected the argument that the case involved a local

controversy, noting that the case involved national resources and that "activity will take place on the outer continental shelf, beyond the bounds of any state." *Id.* at 77. Therefore, the court concluded that could not "fairly say that this is a 'localized controversy' that should fairly be heard in Alabama and nowhere else, nor that the connections between the plaintiffs, this case, and this forum are so weak as to deprive the plaintiffs of their prerogative to choose where they will sue." *Id.* at 78. The same is true in this case.

Louisiana's efforts to distinguish *Oceana* are unavailing. Most of its arguments hinge on Louisiana's pending case in the Western District of Louisiana. *See* Mot. to Transfer at 19. But the two cases are not related in any relevant sense; nor are they similar. As already demonstrated, Louisiana's case involves an alleged leasing pause undertaken pursuant to Executive Order 14,008, whereas this case is a challenge brought under NEPA to BOEM's decision to authorize Lease Sale 257. In addition, Louisiana argues that it has a "substantial financial interest" in the sale, *id.*, but that does not distinguish this case from *Oceana* because the court expressly recognized the interest of the citizens of affected states in the lease sales. *See Oceana*, 962 F. Supp. 2d at 78 ("The court does not doubt that many Alabamans are acutely interested in the outcome of this case, as are many citizens of Texas, Louisiana, Mississippi, and Florida.").

The remaining cases that Louisiana cites have no bearing on whether Plaintiffs' claim should be transferred because they do not involve challenges to an oil and gas lease sale on the OCS. *Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303 (D.D.C. 2015), did not involve a lease sale, but instead involved a challenge to a restoration plan following the 2010 Deepwater Horizon oil spill. *See id.* at 305-06. The restoration project was located partially in the transferee district, and therefore whether venue was proper was not at issue. *Id.* at 311. As far as

the national and local interests, the court distinguished *Oceana* on the grounds that it involved a dispute over national resources on the OCS, whereas *Jewell* involved a project on state land. *Id.* at 316-17. This case, which concerns a potential leases on the OCS, is more similar to *Oceana* and therefore distinguishable from *Jewell* for the same reason.

Louisiana also asserts that the harm to its revenue and economy justify transfer. Mot. to Transfer at 17-18. Such harm was considered by the court in *Intrepid Potash-New Mexico, LLC v. U.S. Department of the Interior*, 669 F. Supp. 2d 88 (D.D.C. 2009), but the circumstances in that case were different because the leasing decision was made by agency officials in New Mexico, not the District of Columbia. *See id.* at 98-99. The other cases cited by Louisiana also involved different circumstances. *See Alabama v. U.S. Army Corps of Eng'rs*, 304 F. Supp. 3d 56, 67 (D.D.C. 2018) (transferring case involving Lake Lanier in Georgia because "the project [was] local"); *Wildearth Guardians v. U.S. Bureau of Land Mgmt.*, 922 F. Supp. 2d 51, 55-56 (D.D.C. 2013) (transferring claims involving coal leases in the transferee district); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26-27 (D.D.C. 2002) (transferring claims involving a property within the transferee district). Accordingly, the mere fact that Louisiana has a financial interest in the lease sale does not demonstrate that transfer is appropriate.

B. Private Interest Factors

In evaluating the private interests, the Court should consider: (1) the plaintiff's choice of forum; (2) the defendant's choice of forum; (3) where the claims arose; (4) convenience of the parties; (5) convenience of the witnesses; and (6) ease of access to sources of proof. *Trout Unlimited*, 944 F. Supp. at 16. A balancing of these factors does not support transport.

Some of these factors, such as the ease of access to evidence and convenience of the parties and witnesses are irrelevant because this case will be resolved on summary judgment based on the administrative record. *See Otay Mesa Prop. L.P. v. U.S. Dep't of the Interior*, 584

F. Supp. 2d 122, 125 (D.D.C. 2008). Louisiana asserts that the "Western District would provide a central location to collect information." Mot. to Transfer at 10. Leaving aside that Louisiana specifies no information that needs to be collected, any such information would be collected from BOEM's regional office in the *Eastern District*, not the Western District. Further, Louisiana is incorrect that transferring the case would be more efficient due to overlap in the administrative record with its pending case challenging Executive Order 14,008. *See* Mot. to Transfer at 15-16. As discussed above, *see* section II.A.1, *supra*, the two cases raise separate claims and the administrative records in the two cases are entirely separate and contain no overlap. Therefore, Louisiana's arguments about convenience have no basis.

Plaintiffs chose to bring the lawsuit in the District of Columbia and their choice of venue is generally entitled to deference. *See Bader*, 63 F. Supp. 3d at 34. Although such deference is diminished when the challenged action bears no connection to the chosen forum, *see id.*, that is not the case here. In contrast, Louisiana seeks to transfer this case to a forum with no connection to the claims in this case—neither the Plaintiffs nor the Defendant agencies reside there, and the actions that gave rise to Plaintiffs' claims did not occur there. Under these circumstances, the Plaintiffs' choice of forum is entitled to substantial weight. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 265-66 (1982).

CONCLUSION

In sum, the Western District of Louisiana, is not a proper venue for the claims in this case because neither the Plaintiffs nor the Defendants reside there, and the actions or omissions giving rise to Plaintiffs' claims did not occur there. Thus, the motion should be denied on that basis alone. If the Court, nevertheless, moves on to evaluating the public and private interests, a balancing of those factors does not support transfer. Therefore, Louisiana's motion to transfer should be denied.

Respectfully submitted this 6th day of October, 2021,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2021, I filed the above pleading with the Court's CM/ECF system, which provided notice of this filing by e-mail to all counsel of record.

/s/ *Luther L. Hajek*
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