UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

POWDER RIVER BASIN RESOURCE COUNCIL et al., Plaintiffs, v. U.S. DEPARTMENT OF THE INTERIOR et al., Defendants.	No. 1:22-cv-02696-TSC

ANSCHUTZ EXPLORATION CORPORATION'S MOTION TO DISMISS OR TO TRANSFER VENUE

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INTRODUCTION

Plaintiffs Powder River Basin Resource Council and Western Watersheds Project challenge the Converse County Oil and Gas Project and Department of Interior and Bureau of Land Management's approvals of applications for permits to drill for oil and gas within the project area. Plaintiffs contend that in approving these applications, Defendants violated the National Environmental Policy Act ("NEPA"), the Federal Land Policy and Management Act ("FLPMA"), and the Administrative Procedure Act ("APA"). Driving those contentions is Plaintiffs' goal to shut down oil-and-gas production on public lands in the United States.

Anschutz Exploration Corporation ("AEC") holds 80 of the challenged permits. The Court should dismiss Plaintiffs' challenges to AEC's permits under Federal Rule of Civil Procedure 12(b)(7).[1] Because Plaintiffs seek to eviscerate AEC's drilling permits, AEC is a required party under Rule 19 that must be joined, if feasible, and a challenge to those permits cannot proceed without AEC. But AEC cannot be joined, both because the Court lacks personal jurisdiction over it, and because venue does not lie in the District of Columbia for Plaintiffs' challenges to AEC's permits. As for personal jurisdiction, AEC is not incorporated in D.C. Its principal place of business is in Colorado, not D.C. And Plaintiffs' challenges to AEC's permits do not arise out of any contacts between AEC and D.C.; those challenges arise out of BLM approvals for AEC's permits emanating from BLM's Casper field office in Wyoming. And as for venue, the District of Columbia is not a proper venue for Plaintiffs' challenges to AEC's permits under 28 U.S.C. § 1391(b) because (1) not all Defendants would reside in D.C.; (2) no substantial part of the events or omissions giving rise to Plaintiffs' claims arose in D.C. (in fact, almost all significant events occurred in

[1] A party may intervene to seek dismissal for failure to include a required party that cannot be joined for lack of personal jurisdiction. *See, e.g.*, *SEC v. Ross*, 504 F.3d 1130, 1150 (9th Cir. 2007).

Wyoming); and (3) Plaintiffs could have challenged AEC's permits in the District of Wyoming. In short, for lack of personal jurisdiction and improper venue, the Court cannot join AEC to this action as a required party under Rule 19, and should therefore either dismiss the case entirely or, at a minimum, dismiss Plaintiffs' challenges to AEC's permits under Rule 12(b)(7).

Alternatively, the Court should exercise its discretion under 28 U.S.C. § 1404 to transfer Plaintiffs' action to the most sensible court for resolving Plaintiffs' challenges to the Converse County project and permits within the project area: the United States District Court for the District of Wyoming.

BACKGROUND

AEC is an independent oil-and-gas exploration and development company that operates in Colorado, Utah, and Wyoming. DeDominic Decl. ¶ 2 (Ex. 1 to AEC's motion to intervene). It is a Delaware corporation with is principal place of business in Denver, Colorado. *Id.* ¶ 3. Since its founding, AEC has focused on responsible development of oil-and-gas resources in the Rocky Mountains, and its drilling-and-development program includes federal leases in the Powder River Basin of Wyoming. *Id.* ¶ 4. AEC's oil-and-gas production is just one piece of a larger effort to ensure that domestic energy production—which is subject to much higher standards than production in other parts of the world—continues to thrive in response to global demand, which has only increased due to geopolitical conflict and other factors. *Id.* ¶ 5.

Plaintiffs Powder River Basin Resource Council and Western Watersheds Project challenge the Converse County Oil and Gas Project and over 400 approvals of applications for permits to drill ("APDs") within the project area that were approved by the U.S. Department of Interior and the Bureau of Land Management. *See* Am. Compl. ¶ 1, ECF No. 44. They contend that in

approving these APDs, Defendants violated the National Environmental Policy Act, the Federal Land Policy and Management Act, and the Administrative Procedure Act. *Id.* ¶ 7.

AEC holds 80 of the challenged permits. DeDominic Decl. ¶ 6. Of those 80 permits, AEC has not yet drilled wells for 26 of them. *Id.* ¶ 7. For 18 of them, AEC has drilled or is drilling wells. *Id.* ¶ 8. And for 36 of them, AEC has already drilled and those wells are connected to gathering systems and currently producing oil and gas. *Id.* ¶ 9. AEC also has at least 5 applications for permits to drill within the project area pending BLM review and approval, and AEC intends to continue submitting new applications to BLM regularly, including at least 35 APDs within the project area in 2023. *Id.* ¶¶ 10–11. AEC has invested substantial resources, including many millions of dollars, to secure approval of its APDs, and to prepare for and conduct drilling and production operations under those APDs. *Id.* ¶ 12.

Among other things, Plaintiffs want the Court to vacate the challenged APD approvals. Am. Compl. at 36. If Plaintiffs were to win that relief, AEC's vested interests in its permitted wells would be at least threatened and most likely eliminated, and AEC's future efforts to obtain APD approvals would likewise be impaired. Plaintiffs' requested relief would significantly delay issuance of these permits and could gut AEC's development plans in total, thwarting efforts to ensure an efficiently produced, environmentally sound, domestic supply of oil and gas in response to global market demand, which has only increased in response to recent geopolitical conflicts.

ARGUMENT

1. Because AEC is a required party under Rule 19 that cannot be joined to this action for lack of personal jurisdiction and improper venue, the Court should dismiss Plaintiffs' challenges to AEC's permits under Rule 12(b)(7).

Federal Rule of Civil Procedure 12(b)(7) authorizes dismissal when, under Rule 19, a plaintiff fails to join an entity as a party required to be joined. Fed. R. Civ. P. 12(b)(7). In turn, Rule 19 states:

> A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1).

The D.C. Circuit has "summed up the Rule 19 inquiry as posing three questions: Should the absentee be joined, i.e., is it necessary to the litigation? If so, can the absentee be joined? And finally, if the absentee should but cannot be joined, may the lawsuit nonetheless proceed 'in equity and good conscience'?" *Nanko Shipping, USA. v. Alcoa, Inc.*, 850 F.3d 461, 464–65 (D.C. Cir. 2017). The risk that a required party could be left out of a case is so critical that courts have an "independent duty to raise a Rule 19(a) issue *sua sponte*." *Cook v. FDA*, 733 F.3d 1, 6 (D.C. Cir. 2013). Joinder is so critical because "in the absence of [required] parties a court of course cannot validly enter a judgment," *W. Coast Expl. Co. v. McKay*, 213 F.2d 582, 592 (D.C. Cir. 1954), and because it is a firmly established maxim that a judgment that substantially affects the rights of a party who is not joined violates due process, *Hanson v. Denckla*, 357 U.S. 235, 254–55 (1958).

1.1 AEC is a required party because, without AEC, the Court cannot award Plaintiffs all the relief they seek, and because AEC has multimillion-dollar interests at stake that would be impaired by a ruling for Plaintiffs.

An entity may be a required party in three ways: (a) without it the court cannot accord complete relief; (b) it has an interest in the lawsuit that cannot be resolved without it because doing so would impede its ability to protect that interest; or (c) it has an interest in the action and resolving the action in its absence may leave an existing party subject to inconsistent obligations. Fed. R. Civ. P. 19(a)(1). AEC is a required party in all three ways.

AEC is a required party under Rule 19(a)(1)(A) because without AEC, the Court cannot award Plaintiffs the "complete relief" they seek. Fed. R. Civ. P. 19(a)(1)(A). Part of the relief Plaintiffs seek is to cancel AEC's permits. *See* Am. Compl. at 36. The Court cannot award that relief without joining AEC as a party: "There is a general rule that where rights sued upon arise from a contract," such as the contractual rights and duties created by the permits between AEC and BLM, "all parties to it must be joined." *Ward v. Deavers*, 203 F.2d 72, 75 (D.C. Cir. 1953); *Eco Tour Adventures, Inc. v. Zinke*, 249 F. Supp. 3d 360, 390–91 (D.D.C. 2017) ("[M]any court decisions … have concluded that an absent contracting party … must be joined under Rule 19(a).")); 5C Charles Alan Wright et al., *Federal Practice and Procedure* § 1613 (3d ed. 2017) ("In cases seeking reformation, cancellation, rescission, or otherwise challenging the validity of a contract, all parties to the contract probably will have a substantial interest in the outcome of the litigation and their joinder will be required.").

AEC also is a required party under Rule 19(a)(1)(B)(i). A party to a contract is a required party under Rule 19 when the lawsuit—like this one—seeks to set aside the contract. *See, e.g.*, *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 788 (D.C. Cir. 1983) ("[P]arties who hold royalty interests, assignments, or interests in the title of federal leases, in the absence of special

circumstances not present here, are indispensable parties in an action to cancel the lease or to try title to the lease."). Indeed, in a similar case, the Ninth Circuit recently confirmed that AEC was a required party to a suit—brought by Plaintiff Western Watersheds Project—in which the plaintiffs sought to vacate federal oil-and-gas leases, including leases held by AEC. *W. Watersheds Project v. Haaland*, No. 20-35693, slip op. at 3 (9th Cir. Jan. 5, 2022) (per curiam), ECF No. 50-1. Despite challenging AEC's leases and seeking to obliterate them, Plaintiffs did not sue AEC. *See id.* at 2–3. After AEC moved to intervene, the Ninth Circuit confirmed that AEC is a required party because it held valid existing oil-and-gas leases that are contracts between the United States and AEC. *See id.* at 5 ("AEC has invested tens of millions of dollars acquiring and developing the leasehold interests imperiled by this litigation, and therefore has a 'substantial due process interest in the outcome of this litigation by virtue of its contract' with the federal government.") (citing *W. Watersheds Project v. Haaland*, 22 F.4th 828, 842 (9th Cir. 2022)). The same reasoning applies here: AEC has significantly protectable interests in its permits, and those interests would be impaired if the Court were to rule in Plaintiffs' favor and direct BLM to cancel the permits. That much renders AEC a required party under Rule 19(a)(1)(B)(i).

AEC also is a required party under Rule 19(a)(1)(B)(ii) because if the Court were to decline to join AEC as a defendant, that would "leave an existing party" (the federal government) subject to a substantial risk of facing inconsistent obligations. Fed. R. Civ. P. 19(a)(1)(B)(ii). Because AEC would not be a party to this case, nothing would bar AEC from bringing due-process claims—in the Tenth Circuit where the permits are located—against the government seeking specific performance to protect its property rights in the permitted wells. *See Robbins v. BLM*, 438 F.3d 1074, 1084 (10th Cir. 2006) (litigant can bring due-process claim against government seeking specific performance even when claim depends on a contract with the government). And if a court agreed

with AEC's contention that vacating the permits violates due process, then the government would be in the impossible position of facing inconsistent obligations: this Court's order would direct BLM to cancel the permits, while the other court's order would direct BLM to honor those permits. BLM wouldn't be able to do both. AEC is thus a required party under Rule 19(a)(1)(B)(ii) as well.

1.2 AEC cannot be joined for lack of personal jurisdiction and improper venue.

Because AEC is a required party under Rule 19, the next question is whether AEC can be joined. *See Nanko Shipping*, 850 F.3d at 464–65. Joinder is infeasible when the required party is not subject to personal jurisdiction or has a valid objection to venue. *Nat'l Coal Ass'n v. Clark*, 603 F. Supp. 668, 671–72 (D.D.C. 1984); 7 Charles Alan Wright et al., *Federal Practice and Procedure* § 1610 (3d ed. 2012) ("If the court cannot obtain personal jurisdiction … over an absentee who would be a proper Rule 19(a) party to an action, joinder cannot be allowed."); 4 James Wm. Moore et al., *Moore's Federal Practice* ¶ 21.04 (2022) ("Joinder is not considered feasible, for example, if the court cannot obtain personal jurisdiction over the absentee … or if the absentee has a valid objection to venue."). Here, the Court cannot exercise either general or specific personal jurisdiction over AEC consistent with the Fourteenth Amendment's Due Process Clause, and venue does not lie in the District of Columbia for Plaintiffs' challenges to AEC's permits.

1.2.1 The Court cannot join AEC, because it lacks personal jurisdiction over AEC.

For personal jurisdiction to satisfy the Fourteenth Amendment, the defendant must, at a minimum, have sufficient "minimum contacts" with the forum state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Minimum contacts exist if the court has either general jurisdiction or specific jurisdiction over the defendant. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779–80 (2017). Here, the Court has neither.

The Court lacks general personal jurisdiction because AEC is not incorporated in D.C. nor otherwise "at home" in D.C. General jurisdiction allows a court to exercise jurisdiction "over a defendant in a suit not arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 n.9 (1984). For corporations such as AEC, "the place of incorporation and principal place of business are paradigm bases for general jurisdiction." *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). In an "exceptional case," general jurisdiction exists when the defendant's affiliations with the state are so extensive as to render the defendant "essentially at home in the forum State." *Id.* at 137–39 & n.19. Here, AEC is not incorporated in D.C. DeDominic Decl. ¶ 3. Nor is its principal place of business in D.C. *Id*. And its operations are solely in Colorado, Utah, and Wyoming, *id.* ¶ 2. It does not have systematic and continuous contacts in D.C.

The Court also lacks specific jurisdiction over AEC because Plaintiffs' challenges to AEC's permits do not arise out of AEC's contacts with D.C. If a plaintiff's suit does not arise out of or relate to the defendant's purposeful contacts with the forum state, then "specific jurisdiction is lacking regardless of the extent of [the] defendant's unconnected activities in the State." *Bristol-Myers*, 137 S. Ct. at 1781. Plaintiffs' challenges to AEC's permits arise out of applications for permits to drill in Wyoming that were reviewed and approved—not in D.C.—but in the Casper BLM field office in Wyoming by BLM officials in Wyoming. *See* Am Compl. ¶ 67 (alleging that the Converse County project is subject to the resource-management plan issued by BLM's Casper, Wyoming office). Plaintiffs' challenges to AEC's permits thus arise out of AEC's contacts with Wyoming, not D.C.

The D.C. Circuit's decision in *Naartex Consulting Corporation* drives that point home. There, the court held that personal jurisdiction over private defendants whose leases were

contested existed only if the private defendants transacted business in the D.C. "in connection with the operative facts" of the case. 722 F.2d at 786. There, as here, the lease was in Wyoming. And the private defendants were nonresidents of the District of Columbia whose only contact with D.C. was through BLM because BLM administered the lease. The D.C Circuit held that the leaseholder defendants were required parties, just like AEC here, but that the district court did not have personal jurisdiction over them—despite BLM's headquarters in D.C. The court affirmed the district court's decision to dismiss based in part on the lack of personal jurisdiction, *id.* at 788, employing reasoning that applies with equal force here:

> [T]o permit our local courts to assert personal jurisdiction over nonresidents whose sole contact with the District consists of dealing with a federal instrumentality not only would pose a threat to free public participation in government, but also would threaten to convert the District of Columbia into a national judicial forum.

Id. at 786.

1.2.2 The Court cannot join AEC, because venue does not lie in the District of Columbia for Plaintiffs' challenges to AEC's permits.

Venue for Plaintiffs' challenges to AEC's permits turns on the general venue provision, 28 U.S.C. § 1391(b). *See Naartex*, 722 F.2d at 789 (analyzing whether the District of Columbia was the proper venue for the plaintiff's claims against private defendants under 28 U.S.C. § 1391(b)).

> **(b) Venue in General.** —A civil action may be brought in—
>
> (1) a judicial district in which any defendant resides, if all defendants are resident of the State in which the district is located;
>
> (2) a judicial district in which 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

> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b).

Under these criteria, the District of Columbia would not be a proper venue for Plaintiffs' challenges to AEC's permits. The first does not apply, because not all defendants would be residents of the District of Columbia. AEC is a resident of Delaware and Colorado, not the District of Columbia. *See* DeDominic Decl. ¶ 3. The second also does not apply because, just as in *Naartex*, "the great weight of significant events relating to" Plaintiffs' challenges to AEC's permits occurred in Wyoming. 722 F.2d at 789 n.17. That is so because, as was true in *Naartex*, "the land is located there," and the permits and permit issuances "took place there." *Id.* Simply put, as to AEC's permits, Plaintiffs are challenging permitting decisions that issued from the Casper BLM field office in Wyoming, to approve applications for permits to drill for oil and gas in Wyoming. Given those facts, no substantial part of the events or omissions giving rise to Plaintiffs' challenges to AEC's permits occurred in the District of Columbia. The third and final criterion also is not satisfied, because there is an alternative district in which Plaintiffs could have sued to challenge AEC's permits: the District of Wyoming.

In short, the Court cannot join AEC as a party not only because it lacks personal jurisdiction over AEC but also because venue does not lie in the District of Columbia for Plaintiffs' challenges to AEC's permits.

1.3 At a minimum, the Court should dismiss Plaintiffs' challenges to AEC's permits.

Because AEC is a required party that cannot be joined for lack of personal jurisdiction and improper venue, the third and final question is whether "in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). Because

AEC—and likely many other permit holders—are required parties who cannot be joined, the Court would be within its discretion to follow the path marked out in *Naartex* and dismiss the case entirely. *See* 722 F.2d at 783.

When analyzing whether to dismiss, one factor for the Court to consider is if any prejudice to AEC could be lessened or avoided by "protective provisions in the judgment," "shaping the relief," or "other measures." Fed. R. Civ. P. 19(b)(2)(A)–(C). If the Court were disinclined to dismiss the case outright, at a minimum, it should excise Plaintiffs' challenges to AEC's permits from the litigation. Doing so would pare back any relief Plaintiffs receive. A judgment in their favor would not lead to vacatur of AEC's permits, nor would the judgment prohibit Defendants from approving AEC's pending APDs and any APDs AEC submits to BLM in the future. Shaping the relief in this way would ensure that nothing in the Court's judgment would affect AEC's permits, pending APDs, or future APDs.

2. In the alternative, the Court should transfer this action to the District of Wyoming, where it belongs.

If the Court does not dismiss the case, it nevertheless should not adjudicate it. Because the better venue for adjudicating Plaintiffs' challenges is the District of Wyoming, the Court should transfer this case to the District of Wyoming under 28 U.S.C. § 1404(a).

Under 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 or to any district or division to which all parties have consented." Transfer under section 1404(a) is proper where (1) the action could have been brought in the transferee district, and (2) convenience and the interest of justice favor transfer to that district. *M.M.M. v. Sessions*, 319 F. Supp. 3d 290, 295 (D.D.C. 2018). The Court should transfer to the District of Wyoming

because Plaintiffs' action could have been brought in the District of Wyoming, and the interests of justice favor transfer.

2.1 The action could have been brought in the District of Wyoming.

In deciding whether transfer would be proper, the Court first must consider whether the case could have been brought in the transferee district. *Id.* Plaintiffs could have brought their claims in the District of Wyoming. Venue in the District of Wyoming is proper both as to Defendants and as to any putative Defendants–Intervenors with interests in the Wyoming permits (1) because "a substantial part of the events or omissions giving rise to the [Plaintiffs'] claim[s] occurred" in the District of Wyoming, and (2) because "a substantial part of the property that is the subject of the action is situated" in the District of Wyoming. 28 U.S.C. § 1391(b)(2), (e)(1)(B). There also are no discernible personal-jurisdiction issues with the District of Wyoming as to Plaintiffs' challenges to the Wyoming permits: all Defendants are subject to personal jurisdiction there, as are all putative Defendants–Intervenors with interests in the Wyoming permits. *See Intrepid Potash-New Mexico, LLC v. U.S. Dep't of Interior*, 669 F. Supp. 2d 88, 93–94 (D.D.C. 2009) (discussing personal jurisdiction in transferee district, District of New Mexico, under similar circumstances).

2.2. Convenience and the interests of justice favor transferring Plaintiffs' challenges to the District of Wyoming.

To determine whether convenience and the interests of justice favor transfer to another district, courts consider several private- and public-interest factors. The private-interest factors include: "(1) the plaintiff's choice of forum; (2) the defendant's preferred forum; (3) the location where the claim arose; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) ease of access to sources of proof." *Blackhawk Consulting, LLC v. Fannie Mae*, 975 F. Supp. 2d 57, 60 (D.D.C. 2013). The public-interest factors include: "(1) the transferee's familiarity

with the governing law; (2) the relative congestion of the courts of the transferor and potential transferee; and (3) the local interest in deciding local controversies at home." *Id.* In weighing these factors, a court's analysis "must guard against the danger that a plaintiff might manufacture venue in the District of Columbia by naming high government officials as defendants." *Roh v. Schultz*, No. 21-2560 (BAH), 2022 U.S. Dist. LEXIS 105505, at *11 (D.D.C. June 14, 2022). Here, both the private and public interests favor transfer.

2.2.1 The private-interest factors favor transfer.

All the private-interest factors, except for the first, favor transfer, and the first factor is neutral at best. Although the first factor—the plaintiffs' choice of forum—"is generally afforded deference," *id.* at *12, there are two reasons why no deference is warranted here.

First, the District of Columbia is neither Plaintiff's home forum: the Powder River Basin Resource Council is headquartered in Wyoming; Western Watersheds Project is headquartered in Idaho. Am. Compl. ¶¶ 13–14; *see Defenders of Wildlife v. Jewel*, 74 F. Supp. 3d 77, 84 (D.D.C. 2014) (noting D.C. is not the home forum of the plaintiffs because the "Center for Biological Diversity is headquartered in Tucson, Arizona and Wildearth Guardians is headquartered in Santa Fe, New Mexico," and transferring case to the Northern District of Oklahoma); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 24 (D.D.C. 2002) (stating rule that plaintiff's choice of forum "is conferred less deference by the court when [the chosen] forum is not the plaintiff's home forum").

Second, deference to Plaintiffs' chosen forum also is not warranted because the District of Columbia has no meaningful connection to the controversy, while the District of Wyoming has a substantial connection. *See Roh*, 2022 U.S. Dist. LEXIS 105505, at *13 ("Deference to plaintiff's choice of forum is further diminished [where] the District of Columbia has no meaningful ties to

the controversy."); *Blackhawk Consulting*, 975 F. Supp. 2d at 61 ("[D]eference to the plaintiff's chosen forum is further mitigated here as the forum has little factual nexus to the case, and the subject matter of the lawsuit is connected to the proposed transferee forum."). The decisions to approve the APDs, and the decision-making processes behind those decisions, were made in Wyoming by local BLM officials based in Wyoming. Plaintiffs have not alleged any direct involvement in the challenged APD-approval processes by any of the Washington, D.C.-based Defendants, let alone the "substantial personalized involvement" necessary to establish meaningful ties to the District of Columbia. *W. Watershed Project v. Pool*, 942 F. Supp. 2d 93, 98 (D.D.C. 2013) ("A plaintiff seeking to sue federal defendants in Washington, D.C. must demonstrate some substantial personalized involvement by a member of the Washington, D.C. agency before the court can conclude that there are meaningful ties to the District of Columbia."). This Court has repeatedly rejected the notion that general oversight and policymaking favors venue in the District of Columbia, especially when, as here, the actual agency actions at issue occurred in another district. *See, e.g.*, *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 67 (D.D.C. 2003) ("Here, the parties' presence in the District of Columbia is overshadowed by the lack of evidence that federal officials in this forum played *an active or significant role* in the decision to issue the permits." (emphasis added)).[2] As in those cases, Plaintiffs' choice of forum here should be given little, if any, weight.

All the remaining factors support transfer. AEC's preferred forum is the District of Wyoming, because that forum is more convenient and is where the actions at issue occurred and the property at issue is located. The third factor supports transfer because the claims arose in the District of Wyoming, where the decision-making processes took place. *Pool*, 942 F. Supp. 2d at 99–100; *see*

[2] *See also, e.g.*, *Pool*, F. Supp. 2d at 97–99; *S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 237–38 (D.D.C. 2012); *Intrepid Potash*, 669 F. Supp. 2d at 95–98; *S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 87 (D.D.C. 2004); *Shawnee Tribe*, 298 F. Supp. 2d at 25–26.

also Lewis, 845 F. Supp. 2d at 235 ("Transfer is … proper when the material events that constitute the factual predicate for the plaintiff's claims occurred in the transferee district.").

The fourth through sixth factors also favor the District of Wyoming. If local BLM officials and other participants in the APD process are needed as witnesses, the witnesses are in Wyoming. Even though this is an APA record-review case, if Plaintiffs pursue injunctive relief, as they assert they might, Am. Compl. at 36, or if exceptional circumstances arise, the possible witnesses are in Wyoming. *See W. Org. of Res. Councils v. BLM*, 591 F. Supp. 2d 1206, 1234–35 (D. Wyo. 2008). For example, fact witnesses who would testify to the economic impacts of the requested relief; employees and contractors whose jobs are directly linked to the BLM granting the APDs; community and state-government stakeholders who are invested in the oil-and-gas production resulting from BLM granting the APDs; and so many people who could testify to the public and other benefits of oil-and-gas production: all are in Wyoming. DeDominic Decl. ¶ 13. Plus, the on-site inspection process required for each APD review involves not only officials from the relevant BLM field office, but also local Forest Service officials (if construction would occur on National Forest Service land), the lessee or its representative, and the drilling and construction contractors. *Id.* ¶ 14. Still more, each administrative record for each APD approval is based on Wyoming facts and the lands covered by the APD are in Wyoming, thus supporting transfer. *See Jewel*, 74 F. Supp. 3d at 85. And these records include NEPA-related and other analyses and conclusions and, generally, are hundreds of pages long—per APD—and consist of site-specific details. Finally, the District of Wyoming would be no less convenient for Plaintiffs, both of which are headquartered in states closer to Wyoming than to Washington, D.C., and it would be more convenient for AEC and other putative Defendants–Intervenors with interests in Wyoming. Plus, given that Plaintiffs rest their standing to bring these claims on their members' use of Wyoming public lands, *see* Am. Compl.

¶¶ 13–18, they hardly can be heard to complain that traveling to Wyoming is meaningfully less convenient than traveling across the country to Washington, D.C.

For all these reasons, the private-interest factors favor transfer.

2.2.2 The public-interest factors favor transfer.

The public-interest factors favor transfer, too. The first factor—the transferee district's familiarity with the governing law—is neutral because federal district courts are presumed to be equally familiar with and capable of deciding issues arising under federal laws, and this case involves only federal laws, not state laws. *Pool*, 942 F. Supp. 2d at 101; *see also Ctr. for Env't Sci., Accuracy & Reliability v. Nat'l Park Serv.*, 75 F. Supp. 3d 353, 358 (D.D.C. 2014) (stating that this factor generally is applied only "in cases that implicate state law, with which federal courts are not equally familiar"). The second factor—the relative congestion of the courts of the transferor and potential transferee—favors transfer to the less busy District of Wyoming. According to the judiciary's latest report, for the period ending June 30, 2022, the District of Columbia has 401 pending cases per judgeship, while the District of Wyoming has 300 pending cases per judgeship.[3]

The third factor—the local interest in deciding local controversies at home—is "the most important of the public interest factors," *Lewis*, 845 F. Supp 2d at 237, and it strongly favors transfer. "Considerations affecting whether a controversy is local in nature include where the challenged decision was made; whether the decision directly affected the citizens of the transferee state; the location of the controversy; and whether there was personal involvement by a District of Columbia official." *Intrepid Potash*, 669 F. Supp. 2d at 98 (alteration omitted). All these considerations show

[3] The report is available at: https://www.uscourts.gov/sites/default/files/fcms_na_distprofile0630.2022_0.pdf (last visited Dec. 21, 2022). The statistics for the District of Columbia are at page 2; the statistics for the District of Wyoming are at page 86.

that the controversy here is local to Wyoming. Each of the challenged APD approval decisions was made in Wyoming; each of the Wyoming APDs concerns property located in Wyoming; any witnesses that might be required generally are in Wyoming; and Plaintiffs have alleged no personal involvement by District of Columbia-based officials in any of the APD-approval decisions.

What's more, the Wyoming APD-approval decisions, and Plaintiffs' effort to nullify those decisions, most affect the citizens of Wyoming. First, the "controversy is centered on property located in [Wyoming], and land commonly has been considered a local interest." *Id.* at 99; *see also S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) ("The controversy is localized in the sense that it involves [Wyoming] lands, hence there is a strong local interest in having this case heard in [Wyoming]."). Second, whether the permits are upheld or vacated will have a significant economic impact in Wyoming, both in terms of the local economic activity generated by construction and drilling operations, and in terms of the substantial oil-and-gas royalties that would flow to Wyoming from the authorized wells. *See Intrepid Potash*, 669 F. Supp. 2d at 99. Finally, the potential environmental impacts, land-use impacts, environmental-justice-community impacts, and species impacts also will be felt most acutely in Wyoming, where the drilling and related development authorized by the APD approvals will take place. *See Madan, Hidatsa & Arikara Nation v. U.S. Dep't of Interior*, 358 F. Supp. 3d 1, 11 (D.D.C. 2019) ("To the extent there is harm, the economic and environmental impacts of the BLM's approval of the drilling permits will be felt most acutely where the [producer] plans to drill."). In short, "the District of [Wyoming] possesses a significant and predominant interest in this suit given the impact its resolution will have upon the affected lands, wildlife, and people of that district." *Pool*, 942 F. Supp. 2d at 102.

That the case arguably may *also* concern issues of national importance does not outweigh the substantial local interests of Wyoming and its citizens, or justify declining to transfer the case,

because federal judges outside of Washington, D.C. are no less capable of understanding and deciding national issues. *See Madan, Hidatsa & Arikara Nation*, 358 F. Supp. 3d at 9; *see also Pool*, 942 F. Supp. 2d at 103 ("The implications of a decision resolving this dispute will be felt most acutely in Utah where local citizens are directly affected and therefore the local interest in this case outweighs the national interest [for transfer-of-venue purposes]."). Even if national interests are implicated, "because this case focuses on land in [Wyoming] and … administrative decisions[s] made in [Wyoming], and because federal courts in [Wyoming] are more than capable of handling cases involving national issues," *Madan, Hidatsa & Arikara Nation*, 358 F. Supp. 3d at 9, this factor favors transfer.

CONCLUSION

Because AEC is a required party who cannot be joined for lack of personal jurisdiction and improper venue, the Court should either dismiss the case outright under Rule 12(b)(7) or, at a minimum, excise Plaintiffs' challenges to AEC's permits from the litigation and dismiss those specific challenges. Alternatively, the Court should transfer Plaintiffs' challenges to permits issued by Wyoming BLM officials, from a Wyoming BLM field office, to drill for oil and gas on land in Wyoming, to the most-sensible district for resolving those challenges: the United States District Court for the District of Wyoming.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 28, 2022, I filed this document with the Clerk of Court for the United States District Court for the District of Columbia using the CM/ECF system, which will serve this document on all counsel of record.

/s/ Mark D. Gibson
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