

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

National Wildlife Refuge Association,
National Parks Conservation Association,
Defenders of Wildlife, and Center for
Biological Diversity,

Plaintiffs,

v.

United States Army Corps of Engineers, and
Michael Connor, in his official capacity as
Assistant Secretary of the Army (Civil
Works),

Defendants,

Twin Pines Minerals, LLC,

Intervenor-Defendant.

Case No. 1:22-cv-03498-JDB

DEFENDANTS' RESPONSE TO MOTION TO TRANSFER

Defendants, the United States Army Corps of Engineers and Michael Connor, in his official capacity as Assistant Secretary of the Army (Civil Works), take no position with respect to the relief requested by Intervenor-Defendant, Twin Pines Minerals, LLC (“Twin Pines”), in its motion to transfer (ECF No. 25). Defendants—while reserving all jurisdictional and other defenses to the claims alleged in the Complaint for Declaratory and Injunctive Relief (“Complaint”) (ECF No. 1) filed by Plaintiffs, National Wildlife Refuge Association, National Parks Conservation Association, Defenders of Wildlife, and Center for Biological Diversity—are satisfied that venue would be proper in either this Court or the United States District Court for the Southern District of Georgia. Defendants defer to the informed discretion of this Court with respect to the question of transfer under 28 U.S.C. § 1404(a).

Defendants clarify three points, however. *First*, with respect to “where the decisionmaking process occurred,” *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 119 (D.D.C. 2015) (citation omitted), “the conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General.” 28 U.S.C. § 516. Central to Plaintiffs’ claims here is the Settlement Agreement dated August 22, 2022, between the parties to *Twin Pines Minerals, LLC v. U.S. Army Corps of Engineers*, Civil Action No. 5:22-cv-36 (S.D. Ga.) (“the *Twin Pines* case”). *See* Settlement Agreement, Administrative Record (“AR”) 2-11. To enter into the Settlement Agreement on behalf of the federal defendants in the *Twin Pines* case, undersigned counsel obtained approval and authorization from the Assistant Attorney General for the Environment and Natural Resources Division (“ENRD”) of the Department of Justice (“DOJ”). *See* 28 C.F.R. § 0.160(a)(4); AR 11. The Assistant Attorney General for ENRD is located in Washington, DC. *See* DOJ, Contact the Division, <https://www.justice.gov/enrd/contact-division> (last visited May 18, 2023).

Second, with respect to *Twin Pines*’ characterization of the United States District Court for the Southern District of Georgia as “the judicial district and court that oversaw the litigation resulting in the Settlement Agreement” (ECF No. 25-1 at 13 of 25), at no time did the court issue any substantive ruling in the *Twin Pines* case. In fact, the Settlement Agreement materialized (as it states) “before Defendants filed any response to [Twin Pines’] complaint or motion for a preliminary injunction, and before any adjudication by the [Southern District of Georgia] of the complaint or motion.” AR 4. Further, the parties to the *Twin Pines* case agreed “not to submit [the] Settlement Agreement to the [Southern District of Georgia] for its approval, and *Twin Pines* agree[d] not to attach the Settlement Agreement to its notice of voluntary dismissal.” AR 8.

Third, it is not necessarily correct that “were this Court to grant relief, Twin Pines’ original case in the Southern District of Georgia would be reinstated.” ECF No. 25-1 at 24 of 25. Even if (for argument’s sake) Plaintiffs prevail to some degree, this Court could elect to award relief that leaves the Settlement Agreement intact. Under the Administrative Procedure Act, “[w]hile unsupported agency action normally warrants vacatur, a court is not without discretion to leave agency action in place while the decision is remanded for further explanation.” *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 985 F.3d 1032, 1052 (D.C. Cir. 2021) (cleaned up; citation omitted).

Dated: May 22, 2023

Respectfully submitted,

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Counsel for Defendants

Certificate of Service

I certify that on May 22, 2023, I filed the foregoing Defendants' Response to Motion to Transfer with the Court's CMS/ECF system, which will notify each party.

/s/ Andrew J. Doyle