

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, ET AL.,

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND
MANAGEMENT, et al.,

Defendants.

Case No. [17-cv-03804-EDL](#)

Related to Case No. 17-cv-03885-EDL

**ORDER DENYING DEFENDANTS'
MOTION TO TRANSFER**

Re: Dkt. Nos. 14, 49, 64

Before the Court is Defendants’ Motion to Transfer these related cases to the District of Wyoming. For the reasons set forth below, the Court DENIES the motion.¹

I. BACKGROUND

Plaintiffs State of California, State of New Mexico, and seventeen environmental organizations filed this case on July 5, 2017, alleging that the decision by Defendants U.S. Bureau of Land Management, Secretary of the Interior Ryan Zinke, and Acting Assistant Secretary for Land and Minerals Management Katharine S. MacGregor to postpone certain compliance dates of the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (the “Rule”) violated the Administrative Procedures Act (“APA”). On July 12, 2017, the Court granted Plaintiffs’ unopposed motion to relate this case to another case pending before this Court, Sierra Club et al. v. Zinke et al., Case No. 17-cv-03885-EDL.

¹ Intervenor State of North Dakota has moved to join Defendants’ motion to transfer here (Dkt. No. 64) and in the related case Sierra Club et al. v. Zinke et al., Case No. 17-cv-03885-EDL, Dkt. No. 49. Because the Court denies Defendants’ motion to transfer, these motions are denied as moot. The motions are denied for the additional reason that, as with Intervenor’s Western Energy Alliance and Independent Petroleum Association of America’s motion for administrative relief for leave to file joinder, they are untimely.

1 On July 26, 2017, Plaintiffs filed a motion for summary judgment in State of California et
2 al. v. U.S. Bureau of Land Management et al., Case No. 17-cv-03804-EDL. The next day,
3 Plaintiffs filed a motion for summary judgment in Sierra Club et al. v. Zinke et al., 17-cv-03885-
4 EDL.

5 On July 27, 2017, Defendants filed a motion to transfer these cases to the United States
6 District Court for the District of Wyoming. Case No. 17-cv-03894-EDL, Dkt. No. 14. Defendants
7 are currently defending a challenge to the validity of the Rule before that court. See W. Energy
8 All. v. Zinke, Case No. 16-cv-00280 (D. Wyo. filed Nov. 15, 2016). The States of California and
9 New Mexico and, separately, the conservation and tribal groups filed opposition briefs on August
10 9, 2017. The parties agreed that the motion to transfer was suitable for decision without a hearing.

11 **II. LEGAL STANDARD**

12 Defendants seek to transfer these actions pursuant to 28 U.S.C. § 1404(a), which provides:
13 “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may
14 transfer any civil action to any other district or division where it might have been brought.” 28
15 U.S.C. § 1404(a). Determining whether an action should be transferred pursuant to section
16 1404(a) is a two-step process. The transferor court must first determine whether the action “might
17 have been brought” in the transferee court, and then the court must make an “individualized, case-
18 by-case consideration of convenience and fairness.” Inherent.com v. Martindale-Hubbell, 420 F.
19 Supp. 2d 1093, 1098 (N.D. Cal. 2006) (citing Hatch v. Reliance Ins. Co., 758 F. 2d 409, 414 (9th
20 Cir. 1985); Jones v. GNC Franchising, 211 F. 3d 495, 498 (9th Cir. 2000)). The burden is on the
21 defendant to show that transfer is appropriate. See Earth Island Inst. v. Quinn, 56 F. Supp. 3d
22 1110, 1115 (N.D. Cal. 2014) (citing Commodity Futures Trading Comm’n v. Savage, 611 F. 2d
23 270, 279 (9th Cir. 1979)).

24 **III. DISCUSSION**

25 **A. Where Suit Could Have Been Brought**

26 There is no dispute that the first prong of the section 1404(a) analysis is met. This action
27 might have been brought under 28 U.S.C. § 1391(b)(1) in the District of Wyoming because
28 Defendant resides there. See 28 U.S.C. § 1391(b) (“A civil action wherein jurisdiction is not

1 founded solely on diversity of citizenship may . . . be brought only in (1) a judicial district where
 2 any defendant resides, if all defendants reside in the same State . . . ”). The Bureau of Land
 3 Management maintains offices and manages land in both California and Wyoming, so venue is
 4 proper in both jurisdictions.

5 **B. Convenience of Parties, Convenience of Witnesses, and Interests of Justice**

6 As to the second prong of the 1404(a) analysis, the plain language of the statute requires
 7 the Court to consider at least three factors in deciding whether to transfer a claim to another court:
 8 (1) convenience of parties; (2) convenience of witnesses; and (3) interests of justice. In
 9 determining the convenience of the parties and witnesses and the interests of justice, the Court
 10 may consider a number of factors, including:

11 (1) the plaintiff’s choice of forum; (2) the convenience of the
 12 parties; (3) the convenience of the witnesses; (4) ease of access to
 13 evidence; (5) familiarity of each forum with applicable law; (6)
 14 feasibility of consolidation of other claims; (7) any local interest in
 the controversy; and (8) the relative court congestion and time of
 trial in each forum.

15 Gerin v. Aegon USA, Inc., 2007 WL 1033472, at *4 (N.D. Cal. Apr. 4, 2007) (citing Jones, 2011
 16 F. 3d at 498-99 (9th Cir. 2000)). In the usual case, unless the balance of the section 1404(a)
 17 factors weighs heavily in favor of the defendants, “the plaintiff’s choice of forum should rarely be
 18 disturbed.” Sec. Investor Prot. Corp. v. Vigman, 764 F. 2d 1309, 1317 (9th Cir. 1985); Decker
 19 Coal Co. v. Commonwealth Edison Co., 805 F. 2d 834, 843 (9th Cir. 1986) (“defendant must
 20 make a strong showing . . . to warrant upsetting the plaintiff’s choice of forum”). However, “[i]f
 21 the operative facts have not occurred within the forum of original selection and that forum has no
 22 particular interest in the parties or the subject matter, the plaintiff’s choice is entitled only to
 23 minimal consideration.” Pacific Car & Foundry Co. v. Pence, 403 F. 2d 949, 954 (9th Cir. 1968).
 24 Transfer should be denied where it would “merely shift rather than eliminate the inconvenience.”
 25 Decker Coal, 805 F. 2d at 843.

26 **1. Plaintiffs’ Choice of Forum**

27 While this suit could have been brought in either court, Plaintiff’s choice of forum is
 28 accorded substantial deference, especially where, as here, it is Plaintiff State of California’s home

1 forum. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981) (explaining that there is a
2 “strong presumption in favor of the plaintiff’s choice of forum” and that “plaintiff’s choice of
3 forum is entitled to greater deference when the plaintiff has chosen the home forum”). This may
4 be especially true when the plaintiff is a sovereign state. See New Jersey v. U.S. Army Corps of
5 Eng’rs, 2010 WL 1704727, at *3-4 (D.N.J. Apr. 26, 2010). Indeed, Defendants have not cited any
6 cases where a lawsuit filed by a state plaintiff in its home court was transferred pursuant to Section
7 1404(a).

8 Moreover, Plaintiffs’ interests in having this case decided in California do not end there.
9 The conservation and tribal citizen groups also have close ties to California. Three of the
10 Plaintiffs, the Sierra Club, Center for Biological Diversity and Earthworks, are incorporated in
11 California, and the Sierra Club is headquartered in Oakland while the Center for Biological
12 Diversity and Earthworks each have offices there. The Environmental Defense Fund, Natural
13 Resources Defense Council, and Wilderness Society all have offices in San Francisco. All
14 together, the conservation and tribal citizen groups have over half a million members who reside in
15 California, of whom over 150,000 live in the Northern District of California.

16 Plaintiffs have demonstrated that the forum has a significant interest in the litigation,
17 considering the millions of acres of public lands in California that are administered by the Bureau
18 of Land Management. Therefore, this is not the type of case where Plaintiffs’ choice of forum is
19 given little consideration. Rather, Plaintiffs’ decision to file suit in this court weighs heavily
20 against transfer.

21 **2. Relationship to Pending Litigation in Wyoming**

22 Defendants’ principle argument in support of transfer is that it would serve the interests of
23 justice because litigation related to the validity of the original issuance of the Rule is already
24 pending in the District of Wyoming. However, judicial economy does not favor transfer because
25 there is no overlap between this case and the litigation in the District of Wyoming. This case
26 concerns an agency action in which Defendants postponed compliance dates under Section 705
27 after the effective date had passed. By contrast, the District of Wyoming litigation challenges a
28 different agency action, the BLM’s promulgation of the Rule, published on November 18, 2015,

1 as exceeding its authority under the operative statute. Thus, this case concerns a completely
2 distinct, purely legal question about Defendants' authority to postpone the compliance dates under
3 Section 705. The extent of Defendants' authority under Section 705 is not at issue in the District
4 of Wyoming case, as Section 705 was not invoked.

5 The mere fact that BLM invoked its Section 705 authority in this case based on pending
6 judicial review in the District of Wyoming does not require deep analysis, if any, of the issues on
7 the merits of that case. Notably, Plaintiffs represent, and the Defendants do not deny, that the
8 administrative record in the District of Wyoming litigation does not even include the
9 postponement notice at issue in this case (82 Fed. Reg. 27,430 (June 15, 2017)), but stops with the
10 issuance of the Waste Prevention Rule in November 2016. The District of Wyoming has already
11 denied the preliminary injunction motions brought by the challengers there. Unlike Wireless
12 Consumers Alliance, Inc. v. T-Mobile USA, Inc., 2003 WL 22387598, at *5 (N.D. Cal. Oct. 14,
13 2003), which Defendants rely upon in support of their motion, this litigation and the District of
14 Wyoming litigation are neither "intimately related" nor "identical." Thus, judicial economy would
15 not be served by transferring this case to the District of Wyoming. Moreover, the lack of overlap
16 between this case and the case pending in the District of Wyoming make consolidation uncertain
17 and, therefore, that factor also weighs against transfer.

18 Further, this Court is already familiar with the legal issues in this lawsuit because it
19 recently decided another case involving a federal agency's authority under Section 705 to
20 postpone compliance dates after the effective date has passed. See People of the State of
21 California, et al. v. U.S. Dep't of the Interior et al., Case No. 17-cv-02376-EDL. Accordingly, this
22 factor weighs in favor of maintaining the action in this forum.

23 3. Convenience of Witnesses and Ease of Access to Evidence

24 As the parties recognize, the convenience of witnesses and the ease of access to evidence
25 are neutral factors because this case is limited to resolving legal issues. Therefore, neither forum
26 is better situated with respect to witnesses or other evidence.

27 4. Convenience of the Parties

28 Convenience of the parties also favors this forum. Litigating this case in California is

1 more convenient for the Plaintiffs, many of whom are located in California including the State of
 2 California and most of the conservation and tribal groups. This remains true even though the State
 3 of California is going to the extra expense of making an appearance as an intervenor in the District
 4 of Wyoming litigation. Although the State of California and some of the conservation group
 5 Plaintiffs intervened in the District of Wyoming litigation after it was initiated by those seeking to
 6 invalidate the Rule, Plaintiffs did not choose to file the litigation in that forum. Thus, their
 7 decision to intervene does not mean their choice of forum in this case should be disturbed to
 8 require them to make additional trips to Wyoming. On the other hand, Wyoming and California
 9 are equally convenient for Defendants, as they are primarily based in Washington, D.C.

10 Moreover, it is reasonable to look at the relative burden to the parties' counsel when
 11 assessing this factor, given that the issues raised in this case are predominantly issues of law.
 12 None of the attorneys representing Plaintiffs or Defendants are located in Wyoming, and, further
 13 reducing their burden, Defendants' counsel is exempt from both jurisdictions' local counsel
 14 requirements. See District of Wyoming, Civil Local Rule 84.2(d); Northern District of California,
 15 Civil Local Rule 11-2.

16 **5. Local Interest in the Controversy**

17 This forum's local interest in the controversy is a neutral factor, as both California and
 18 Wyoming have substantial federally-managed mineral estate and oil and gas production. While
 19 Wyoming produces more oil and gas, California has more acres of federal mineral estate
 20 administered by BLM than Wyoming. Cf. Mot. at 11, Ex. A ¶ 4 (in 2016 "Wyoming produced
 21 38,795,792 barrels of oil and 1,447,859,133 Mcf of natural gas, whereas the federal minerals in
 22 the entire State of California produced 11,495,815 barrels of oil and 12,173,184 Mcf of natural
 23 gas") with Mot. at 6 ("Wyoming contains 40.7 million acres of federal mineral estate") and
 24 Compl. ¶ 12 ("In California, the Bureau administers 15.2 million acres of public lands, nearly 15
 25 percent of the State's land area, as well as 47 million acres of subsurface mineral estate and
 26 592,000 acres of Native American tribal land").

27 As Defendants' accurately summarized, "Wyoming has ties to and an interest in these
 28 cases that is at least equal to that of California." Mot. at 11. But the fact that another forum also

1 has an interest in the outcome of this dispute does not override Plaintiff's choice to litigate in this
 2 forum. See Ctr. for Biological Diversity v. Kempthorne, 2008 WL 4543043, at *3 (N.D. Cal. Oct.
 3 10, 2008) (concluding that transfer was not proper where the litigation could have impacts "in all
 4 fifty states" and therefore "Alaska [was] not the only state with an interest in the litigation").

5 **6. Relative Court Congestion and Time to Disposition**

6 The relative time to disposition slightly favors this forum. See Ctr. for Biological
 7 Diversity v. McCarthy, 2015 WL 1535594, at *5 (N.D. Cal. Apr. 6, 2015) ("Courts may use the
 8 average time between filing and disposition or trial as a measure for court congestion."). The
 9 average time from filing to disposition is 7.4 months in the Northern District of California
 10 compared to 9.6 months in the District of Wyoming. See United States District Courts—National
 11 Judicial Caseload Profile (Mar. 31, 2017), available at
 12 http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2017.pdf. As
 13 Plaintiffs point out, this slight difference in average time to disposition could make a difference in
 14 this case because the compliance dates at issue are in January 2018. See Ctr. for Biological
 15 Diversity v. Lubchenco, 2009 WL 4545169, at *3 (N.D. Cal. Nov. 30, 2009) ("a modest difference
 16 in the congestion of the courts' calendars . . . weighs slightly against transfer").

17 **IV. CONCLUSION**

18 The balance of factors relating to transfer under section 1404(a) weigh against transfer.
 19 Therefore, Defendants' motion to transfer is DENIED.

20 **IT IS SO ORDERED.**

21 Dated: September 7, 2017

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 24 ELIZABETH D. LAPORTE
 25 United States Magistrate Judge
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