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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, Plaintiff, v. INTERIOR BOARD OF LAND APPEALS & U.S. DEPARTMENT OF THE INTERIOR, Defendants.	No. 1:19-cv-37-BLW **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR TRANSFER VENUE (ECF No. 6)**

INTRODUCTION

Defendants' "Motion To Dismiss For Improper Venue Or, In The Alternative, To Transfer" (ECF No. 6) misrepresents the nature of this case and misapplies the applicable law on venue, and must be denied for both reasons.

Defendants find it "inexplicable" why Plaintiff Western Watersheds Project (WWP) sued in the District of Idaho, contending the case only challenges a Bureau of Land Management (BLM) grazing decision for the Duck Creek allotment in northern Utah. Defs' Op. Br. (ECF No.

6-1) at 1. But they ignore the Complaint, which contradicts their misrepresentations about the nature of this case.

In truth, WWP seeks this Court's reversal of a decision by the Interior Board of Land Appeals (IBLA)—the first named defendant, located in Arlington, Virginia—that impossibly increased the burden on WWP and other conservation groups in administratively challenging BLM's grazing decisions under the National Environmental Policy Act (NEPA), Federal Land Policy and Management Act (FLPMA), and Administrative Procedure Act (APA). *See* Compl. (ECF No. 1) ¶¶ 1-7 & Ex. A (IBLA decision). In so doing, the IBLA committed numerous errors, including by arbitrarily overriding the witness credibility and other determinations made by the Administrative Law Judge (ALJ) after a lengthy evidentiary hearing, at which WWP presented voluminous monitoring and other evidence showing how badly BLM's livestock grazing management has degraded the Duck Creek allotment. *Id.* Ex. B (ALJ decision).

This Court previously reversed the IBLA in the Nickel Creek grazing case, when the IBLA similarly reversed an ALJ decision after an evidentiary hearing without addressing all relevant factors, including witness credibility determinations. *See W. Watersheds Project v. U.S. Department of Interior*, Civ. No. 08-cv-506-BLW, 2009 WL 5218020 (D. Idaho Dec. 30, 2009). The IBLA committed similar errors here—but its Duck Creek decision is even more egregious, because it established new precedent being used to deny WWP grazing appeals across the West, which WWP asks this Court to reverse. *See* Compl. (ECF No. 1) ¶¶ 54-66.

WWP's challenges to the IBLA Duck Creek decision are properly brought in Idaho, WWP's home forum, under the federal venue statute, 28 U.S.C. § 1391(e)(3). Contrary to Defendants' argument, this Court and many others have held that challenges to public lands management decisions for violating NEPA or FLPMA do not "involve real property" under

§ 1391(e)(3), and thus are properly brought in the plaintiff's home forum. Because WWP raises no challenge to right, title or interest in any real property, Defendants' motion to dismiss for improper venue under § 1391(e)(3) must be denied.

Neither do Defendants carry their heavy burden of showing that convenience factors outweigh WWP's choice of its home state, as required for a discretionary venue transfer under 28 U.S.C. § 1404(a). Contrary to Defendants' assertions that transfer would be more convenient for witnesses or decision-makers in Utah, this is an APA judicial review case challenging the IBLA decision, which will be based on the Administrative Record already developed from the lengthy evidentiary hearing conducted by the ALJ. There will not be any trial in Utah, and transferring this case from Idaho to Utah would not have any efficiency or convenience gains.

Most importantly, Defendants are flatly wrong in their attempt to portray this case as a "localized controversy" only affecting Utah. The challenged IBLA decision has west-wide impacts on WWP and any other party administratively challenging BLM grazing decisions, and is plainly erroneous as a matter of law. This Court is particularly well positioned to review that IBLA decision in light of its experience and familiarity with this area of the law, as discussed below. Accordingly, the Court should deny the Motion to Dismiss/Transfer Venue.

STATEMENT OF RELEVANT FACTS[1]

Plaintiff Western Watersheds Project

Plaintiff WWP is an Idaho non-profit corporation, headquartered in Hailey, Idaho, with offices and staff in Boise and in other states. *See* Compl. ¶ 12.

[1] Defendants bring their motion to dismiss for improper venue under Fed.R.Civ.P. 12(b)(3), which they contend allows the Court to consider matters outside the Complaint. *See* Defs' Op. Br. at 3-4. The Court may thus consider the materials cited here from WWP's website, as well as the ALJ and IBLA decisions attached to WWP's Complaint. As Defendants acknowledge, all materials should be construed in favor of WWP, the non-moving party. *See Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1138-40 (9th Cir. 2004).

WWP "works to protect and restore over 250 million acres of public land in the west," and "provides oversight and monitoring to ensure the proper management of public lands," particularly from adverse impacts of improper livestock grazing management. *See* https://www.westernwatersheds.org/; *see also W. Watersheds Project v. Kraayenbrink*, 538 F.Supp.2d 1302 (D. Idaho 2008), *aff'd in relevant part* 632 F.3d 472, 484-86 (9th Cir. 2011) (WWP had standing to challenge BLM grazing regulation revisions on 160 million acres across Idaho and other western states). In keeping with this mission, WWP often challenges—via appeals to IBLA—BLM decisions that implement improper livestock grazing management practices and adversely impact the environment.

WWP "regularly employs field monitors to identify damaged watersheds and document abusive land-management practices." *See* https://www.westernwatersheds.org/about/; *see also* Compl. ¶¶ 22-27 (describing WWP monitoring efforts here). WWP monitoring reports are posted on its website. *See* https://www.westernwatersheds.org/resources/research-reports/. Many of these were authored or supervised by Dr. John Carter. *Id.* Dr. Carter is a Ph.D. ecologist with substantial experience and expertise in BLM and other protocols for gathering and analyzing field data to assess livestock grazing impacts on public lands and their resources. *See* Compl., Ex. B at 22 (ALJ decision describing Dr. Carter's expertise).

The IBLA's Duck Creek Decision

Prior to its Duck Creek decision challenged here, the IBLA had a longstanding rule that a party challenging BLM's grazing decisions must show with "objective evidence" that "BLM erred when collecting the underlying data, when interpreting the data, or when reaching the conclusion," or that "a demonstrably more accurate study has disclosed a contrary result." Compl. ¶ 22, *citing West Cow Creek Permittees v. BLM*, 142 IBLA 224, 238 (1998).

Relying on this precedent, WWP's Dr. Carter and two other experts—including a former BLM range specialist—spent three years monitoring and analyzing environmental data on the Duck Creek allotment. *See* Compl. ¶ 24-27, 44-48. Encompassing over 22,000 acres in northern Utah, of which 13,900 acres are BLM lands, the Duck Creek allotment historically provided habitat for a variety of sensitive and special status species, including greater sage-grouse. *Id.* ¶¶ 17-19. As Dr. Carter and the other WWP experts documented, however, livestock grazing has substantially degraded the Duck Creek allotment, leaving large amounts of bare ground, denuded slopes, cheatgrass invasion, incised streams that have lost connection to the floodplain, and heavily trampled and degraded wetlands, streams, and springs. *Id.* These ecological impacts have degraded and destroyed habitat for fish and wildlife. *Id.*

WWP presented these data and findings through the NEPA process, but BLM essentially ignored them in approving a new grazing decision for the Duck Creek allotment in 2008. *See* Compl. ¶¶ 28-43. WWP thus filed an administrative appeal of the 2008 BLM Duck Creek grazing decision and supporting Environmental Assessment (EA), alleging violations of NEPA, FLPMA and the APA. *Id.*[2]

ALJ James Heffernan in the Dept. of Interior's Office of Hearings and Appeals (OHA) conducted an evidentiary hearing on WWP's challenges to BLM's Duck Creek decision, which spanned 55 non-consecutive days between June 2009 and July 2011, generating a 15,639-page transcript and 375 exhibits. *See* Compl. ¶¶ 44-46 & Ex. B. WWP's experts testified for a total of 36 days, describing in detail their monitoring efforts, protocols, and results. *Id.*

After post-hearing briefing, ALJ Heffernan issued his 139-page Decision in May 2013, replete with evidentiary determinations, findings of fact, and conclusions of law. *Id.* His opinion

[2] In addition to WWP, the Wild Utah Project was an appellant in the administrative proceedings, but it is not a party to this litigation.

demonstrated a firm grasp of the science underlying the relevant monitoring methodologies, the analysis of the data, and the conclusions reached, and devoted substantial findings to witness credibility determinations. *Id.*

ALJ Heffernan specifically found that WWP's experts had "several years of on-the-job, on-the-ground, training conducting their extensive monitoring on the allotment, and, in my opinion, their testimony is credible with respect to the conditions on the allotment, particularly in the time frame post-2005, the year in which BLM conducted most of its monitoring." *See* Compl., Ex. B at 22. In contrast, ALJ Heffernan found the testimony of BLM's staff to be "at various times notably uninformed, inconsistent, and contradictory." *Id.*

ALJ Heffernan ruled in favor of WWP on almost all its legal claims, principally because the data collected by WWP's experts showed (among other things) excessive utilization and a significant loss of grass productivity across the allotment caused by cattle and sheep grazing. *See* Compl. ¶¶ 47-52 & Ex. B. He concluded that BLM violated NEPA and FLPMA in numerous ways, including by improperly rejecting WWP's data; failing to take a "hard look" at the baseline condition of the allotment's vegetation composition, particularly the loss of grasses; failing to analyze a reasonable range of alternatives; failing adequately to analyze cumulative impacts, or impacts on sage-grouse; failing to determine the actual livestock use occurring on the allotment; relying on an antiquated carrying capacity analysis; and failing to include enforceable terms and conditions to ensure compliance with the Fundamentals of Rangeland Health regulations, 43 C.F.R. Subpart 4180. *Id.*

ALJ Heffernan reversed and remanded BLM's decision, but declined WWP's request for remedial relief. *See* Compl. ¶ 53. Both BLM and WWP appealed to the IBLA, and then waited four years for an IBLA decision. *See* Compl. ¶¶ 54-56 & Ex. A.

The IBLA's Duck Creek decision flatly rejected ALJ Heffernan's witness credibility determinations, factual findings, and legal conclusions. *See* Compl. ¶¶ 56-61 & Ex. A. Without discussion, the IBLA expanded the deference given to BLM far beyond *West Cow Creek* and other prior IBLA cases, holding that BLM could simply disregard all the monitoring data and other evidence that WWP collected. *Id.* The IBLA's Duck Creek decision thus places WWP in an unwinnable situation: WWP must collect its own data and analyze it in the very same ways as BLM did, even if BLM's monitoring and analysis are defective, but even then BLM will receive deference no matter how faulty or erroneous its data, methods, or conclusions might be.

To support its ruling, moreover, the IBLA cited a regulation applicable only to disputes over Taylor Grazing Act "grazing preferences," 43 C.F.R § 4.480, which has no application to NEPA or FLPMA challenges over BLM grazing decisions, as WWP brought here. *See* Compl. ¶ 61. Subsequent OHA ALJ decisions have admitted this error. *Id.* ¶ 62 (citing OHA decisions).

Nevertheless, IBLA decisions are binding on the OHA, so other ALJs and IBLA itself have cited and relied on the IBLA's Duck Creek decision to apply an improper level of deference to BLM in other WWP administrative appeals in several states. *See* Compl. ¶¶ 65-66 (citing decisions). One recent OHA opinion explained that the IBLA's Duck Creek decision poses a nearly complete bar for conservation appellants, because "a party appealing a BLM grazing decision must carry an extremely high burden . . . even when an appellant produces its own extensive firsthand monitoring data on an allotment." *Id.*

WWP filed its Complaint to challenge the IBLA's wholly arbitrary reversal of the ALJ's factual and legal determinations after the evidentiary hearing, and the IBLA's impossible and unlawful new standard for environmental groups seeking to challenge BLM grazing decisions, which impacts WWP in Idaho and across the West. WWP asks the Court to reverse and vacate

the IBLA Duck Creek decision and reinstate ALJ Heffernan's decision, while remanding for BLM to develop a new grazing decision consistent with ALJ Heffernan's rulings within a set period of time. *See* Compl. ¶¶ 67-82 and Prayer for Relief.

ARGUMENT

I. VENUE IS PROPER IN THE DISTRICT OF IDAHO.

Defendants first move to dismiss for improper venue, arguing that Plaintiff WWP cannot invoke venue in the District of Idaho, where WWP resides, based on their misrepresentation that this case only challenges the BLM's 2008 Duck Creek grazing decision, and thus "involves" real property within the meaning of 28 U.S.C. § 1391(e)(3). That argument is contradicted by prior decisions of this Court and many others.

As Defendants acknowledge, the federal venue statute allows a plaintiff to bring suit against an officer, employee, or agency of the United States in "any judicial district in which . . . (3) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(3). It is undisputed that WWP "resides" in the District of Idaho, so venue is proper here unless "real property is involved."

But real property is not "involved" here within the meaning of § 1391(e)(3). This Court has rejected similar arguments that NEPA or FLPMA challenges to public lands management decisions—including BLM grazing decisions—"involve" real property under § 1391(e)(3). *See WWP v. Salazar*, No. 4:08-cv-0516-BLW, 2009 WL 1299626, at *2 (D. Idaho May 7, 2009) (*Salazar I*); *WWP v. Salazar*, No. 4:08-cv-0435-BLW, 2010 WL 375003, at *2 (D. Idaho Jan. 25, 2010) (*Salazar II*). Chief U.S. Magistrate Judge Bush of this Court recently reached a similar conclusion in the context of BLM oil and gas leasing. *See* Memorandum Decision and Order, *WWP v. Zinke*, No. 1:18-cv-187-REB (D. Idaho Sept. 4, 2018), ECF No. 66 at 10, n.7.

In *Salazar I*, WWP challenged BLM Resource Management Plans (RMPs) and their supporting EISs in several states across the sage-grouse range. BLM moved to dismiss WWP's challenges to the non-Idaho plans, arguing the case "involved" real property under § 1391(e)(3). The parties' briefings cited a dozen or more cases—going back decades—on the meaning of this statutory provision. *See Salazar I,* ECF Nos. 10-2, 14, 24. The parties also filed supplemental briefing addressing a then-recently issued opinion, *Center for Biological Diversity v. BLM*, No. C-08-05646, 2009 WL 1025606 (N.D. Cal. 2009). *See Salazar I,* ECF Nos. 29, 30.

This Court held that WWP's claims in *Salazar I* did not "involve" real property in the sense contemplated by § 1391(e), explaining:

> [T]he legislative history to this statute shows that the real property limitation was added due to congressional concerns "over the local nature of some real property actions," *see* 14D Wright, Miller & Cooper, Federal Practice and Procedure, § 3815 at p. 379 n. 18, suggesting that it relates to matters of right, title, and interest. *See generally, McCloskey v. U.S Postal Service*, 1988 WL 29291 at *1 (E.D.Pa.1988) (finding § 1391(e) inapplicable because suit did not involve "right, title, or interest to real property"). The Court finds persuasive cases that have held that environmental actions such as this are not actions in which "real property is involved." *See e.g., NRDC v. TVA*, 340 F. Supp. 400, reversed on other grounds, 459 F.2d 255 (2nd Cir.1972). Thus, suit is proper here under § 1391(e).

2009 WL 1299626, at *2. The Court reaffirmed this holding on reconsideration. *See Salazar I*, 4:08-cv-0516-BLW, ECF No. 58.

Similarly, in *Salazar II*, the Court considered WWP's challenges to numerous BLM land management decisions in Idaho and Nevada alleged to cumulatively harm the Great Basin "core" population of greater sage-grouse. BLM again moved to dismiss arguing that WWP's claims "involved" real property under § 1391(e)(3). *See Salazar II,* No. 4:08-cv-0435-BLW, ECF No. 55. BLM attempted to distinguish *Salazar I*, arguing that the challenged actions—including oil and gas leasing, geothermal development, and grazing permits—were "much more closely intertwined with real property than are Resource Management Plans." *Id.* ECF No. 55-1 at 19.

The Court denied the motion, explaining it was "not persuaded to depart from its ruling in *Salazar* that venue exists in this Court under [] § 1391(e)(3)." *Id.* ECF No. 89 at 2.

Magistrate Bush's September 2018 venue decision followed *Salazar I* and *II,* and rejected the argument that NEPA and FLPMA challenges to BLM oil and gas leasing decisions involve real property under § 1391(e)(3), explaining:

> To the extent Federal Defendants argue that real property *is* involved given the very nature of oil and gas leases generally, *Salazar* holds otherwise. *See Salazar*, 2009 WL 1299626 at *2 ("[T]he legislative history to this statute shows that the property limitation was added due to congressional concerns over the local nature of some real property actions, suggesting that it relates to matters of right, title, and interest" and finding persuasive cases that have held that *environmental actions such as this are not actions in which real property is involved*.")[.]

See Memorandum Decision and Order, *WWP v. Zinke*, No. 1:18-cv-187-REB (D. Idaho Sept. 4, 2018), ECF No. 66 at 10, n.7.

These District of Idaho decisions are in accord with many other decisions holding that actions "involve real property" under § 1391(e)(3) only where plaintiffs present a dispute over right, title, or interest in real property. As one court recently explained:

> [B]y using the legal term 'real property,' rather than allowing venue whenever 'the action relates a particular area of land,' Congress seems to have indicated that it intended mainly to cover disputes over legal interests in real property. . . .Defendants have cited no authority finding venue improper under 28 U.S.C. § 1391(e)(1)(C) in a case that did not involve a legal dispute over real property interests, and the Court sees no reason on these facts why it should be the first to limit plaintiffs' venue options.

Earth Island Inst. v. Quinn, 56 F. Supp. 3d 1110, 1115–16 (N.D. Cal. 2014); *see also Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 2013 WL 120185, *2-3 (N.D. Cal. 2013) (holding that no real property was central to action challenging federal compliance with environmental laws); *Ctr. for Envtl. L. and Policy v. U.S. Bureau of Reclamation*, 2009 WL 10668581, at *2 (W.D. Wash. May 12, 2009) (concluding that the real property limitation did not apply, where the case did "not present any issues of a property right, title, or interest").

Here, WWP's claims do not involve any legal dispute over right, title, or interest in real property. WWP instead seeks judicial review and reversal of the IBLA's faulty decision that ratchets up the bar to an impossible height for WWP and others to administratively challenge BLM grazing decisions for violating NEPA and FLPMA. The cases cited by Federal Defendants have no bearing on such claims. *See Ferguson v. Lieurance*, 565 F. Supp. 1013, 1015 (D. Nev. 1983) (finding that an action involves real property if it is a "suit involving the protection or recovery of real property or an estate therein," and holding that test was met where plaintiffs sought to compel issuance of oil and gas leases); *Landis v. Watt*, 510 F. Supp. 178, 180 (D. Idaho 1981) (finding real property was involved where plaintiff sought to compel Interior Department to reissue cancelled or rejected leases in several states). Even if oil and gas leasing is involved, notably, § 1391(e)(3) does not apply if the controversy does not squarely concern right, title or interest to real property. *See, e.g., Ashley v. Andrus*, 474 F. Supp. 495, 496-97 (D. Wis. 1979); *Santa Fe Int'l v. Watt*, 580 F. Supp. 27 (D. Del. 1984); *Shell Oil Co. v. Babbitt*, 920 F. Supp. 559, 563 (D. Del. 1996) (all affirming venue in plaintiff's home forum because right, title or interest to oil and gas leases was not directly challenged).

All of these decisions underscore that this action likewise does not "involve" real property under the venue statute, since WWP is not challenging right, title or interest to any real property in this case.

Defendants argue that this Court's prior rulings are wrong, however, and demand the Court instead should follow *Center for Biological Diversity v. BLM*, 2009 WL 1025606, *2-3 (N.D. Cal. Apr. 14, 2009)—which the Court previously addressed in denying reconsideration in *Salazar I*, as noted above. Although *CBD* was wrongly decided, it is distinguishable because the federal plan challenged there involved "rights of way and easements. . . , land withdrawals, and

land exchanges and acquisitions." *See* 2009 WL 1025606, at *1. *Accord Quinn*, 56 F. Supp. 3d at 1116 (distinguishing *CBD* on these grounds). In contrast here, the challenged decision—IBLA's unlawful Duck Creek precedent—did not address any issue of rights of way, easements, land withdrawals, or land exchanges.

The Court's prior reading of § 1391(e)(3) was and remains correct. This action does not "involve real property," so WWP properly has sued in its home forum. The Court should thus deny Defendants' motion to dismiss for improper venue.

II. DEFENDANTS CANNOT MEET THEIR HEAVY BURDEN TO JUSTIFY A DISCRETIONARY VENUE TRANSFER.

The Court should also deny Defendants' motion for a discretionary transfer of venue to the District of Utah pursuant to 28 U.S.C.§ 1404(a).

District courts have broad discretion under § 1404(a) to transfer an action to any other district where it might have been brought, "[f]or the convenience of parties and witnesses, in the interest of justice." The Court may weigh multiple factors in assessing a discretionary venue transfer, including: (1) convenience of the parties and witnesses; (2) familiarity of each forum with the applicable law; (3) the plaintiff's choice of forum; (4) contacts of the different parties with the forum; (5) local interest in the controversy; (6) the ease of access to sources of proof and evidence; and (7) relative congestion in each forum. *See Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

Consideration of these factors requires denying Defendants' motion for discretionary transfer here. As explained below, Defendants fail to carry their heavy burden of overcoming WWP's proper choice of this forum in its home state, and do not accurately characterize the other factors weighing against a discretionary transfer.

A. Plaintiffs' Choice of Forum is Entitled Substantial Deference.

First, courts apply "a strong presumption in favor of the plaintiff's choice of forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981). The defendant must "make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). A plaintiff's venue choice is entitled to more weight when the plaintiff resides in the chosen forum, as is the case here. *See Pacific Car and Foundry v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968).

As explained above, Defendants mischaracterize this case as simply challenging a BLM grazing decision in Utah. In truth, this case is centered on reversing the IBLA's unlawful Duck Creek precedent, which harms WWP in seeking to challenge unlawful BLM grazing decisions in Idaho as well as many other states.

WWP is headquartered in Idaho, and has brought numerous other cases in Idaho to challenge unlawful BLM or DOI decisions that have broad impacts upon WWP across the western states. These include the 2006 BLM grazing regulations litigation, *see Kraayenbrink, supra*, and the *Salazar I and II* cases cited above, as well as Endangered Species Act listing litigation over greater sage-grouse. *See W. Watersheds Project v. U.S. Fish and Wildlife Serv.*, No. 06-cv-277-BLW, 535 F. Supp.2d 1173 (D. Idaho 2007).

These cases underscore WWP's long-standing ties to this District, and that WWP's choice of its home forum weighs heavily against a discretionary transfer.

B. Convenience and Interests of Justice Weigh Against Transfer.

Defendants' arguments about convenience and interests of justice also fail, because they misstate the nature of this case—wrongly claiming it only affects Utah—and misunderstood how the Court will conduct judicial review of the IBLA decision challenged here.

1. This Is Not A "Local" Controversy

Defendants insist that this case only presents a "local" controversy over grazing on the Duck Creek allotment, but again that is mistaken. As the Complaint and discussion above underscore, WWP instead seeks reversal of the IBLA's precedent-setting decision that alters the playing field for WWP in attempting to challenge any BLM grazing decision, either in Idaho or elsewhere across the western landscape where BLM administers grazing on the public lands. The fact that the IBLA's Duck Creek decision has precedential impact across the West underscores that this is not a "local" controversy in Utah.

Magistrate Bush similarly rejected arguments that local interests in oil and gas leasing required discretionary transfer, where WWP claimed that BLM leases threaten sage-grouse across its range, stating:

> It can reasonably be assumed, and Federal Defendants affirmatively contend, that there are state-specific interests in the discussed oil and gas lease sales. The subject-matter of this lawsuit, however, is much more expansive. Plaintiffs contend that, as to such sales (regardless of which state is involved), there are common violations of federal laws predicated on strategic policy directives from the Trump Administration, which, in turn, will result in cumulative impacts threatening sage-grouse across the sage-grouse range.

See Memorandum Decision and Order, *WWP v. Zinke*, No. 1:18-cv-187-REB (D. Idaho Sept. 4, 2018), ECF No. 66 at 11. The District of Montana recently denied a similar motion to sever and transfer. *See Mont. Wildlife Fed'n v. Zinke*, No. 4:18-cv-00069-BMM, 2018 WL 5810502 (D. Mont. Nov. 6, 2018) (ECF No. 62) (declining to transfer challenges to non-Montana leases, finding that the impacted land "may be local, but the challenged national directives that allowed for the leases present less parochial concerns").

The fact that the IBLA's Duck Creek decision has precedential impact across the West underscores that this is not a "local" controversy. Defendants' incorrect attempt to portray this

case as only presenting a "local" controversy thus fails to overcome the strong presumption in favor of WWP's election to sue in its home forum.

2. The Court's Familiarity With the Applicable Law Favors Venue in This District

The interests of justice would also be best served by keeping this case in the District of Idaho, because of the Court's familiarity with the legal standards relevant to WWP's challenges. The relative expertise of a particular district court in an area of substantive law is relevant in weighing venue transfer under § 1404(a). *See* Wright, Miller & Kane, *Federal Practice and Procedure: Civil 3d*, § 5859, p. 293 & n. 26 (citing cases).

The Court, of course, has extensive experience and knowledge of BLM grazing administration on the public lands, including from the *Kraayenbrink* litigation and many other WWP grazing cases. Particularly relevant here is the Nickel Creek case, from which the Court is already familiar with the applicable legal standards when reviewing an IBLA decision that reversed an ALJ's rulings after an evidentiary hearing. *See WWP v. DOI,* 2009 WL 5218020, at *6-*8 (citing and quoting cases on reviewing IBLA decisions).

3. Convenience of the Parties Does Not Favor Transfer

Convenience of the parties also favors this forum. The lead defendant—IBLA—is based in Virginia, and Defendants cannot seriously contend that defending its decision is any more inconvenient in Idaho than Utah. By contrast, litigating this case in Idaho is more convenient for the Plaintiff and its undersigned counsel, who are based in Boise. Transfer would require WWP to locate and retain local counsel in the District of Utah, and impose burdens on Plaintiffs' counsel and staff for travel to court hearings. Hence, the Court should deny the transfer motion under 28 U.S.C. § 1404(a). *See Van Dusen v. Barrack,* 376 U.S. 612, 645-46 (1964) ("Section 1404(a) provides for transfer to a more convenient forum, not to a forum likely to prove equally convenient or inconvenient").

4. Convenience for Witnesses and Access to Evidence Do Not Favor Transfer

Defendants assert that the convenience of witnesses and the ease of access to evidence are factors weighing in favor of transfer, citing the possibility of a trial or site inspection. *See* Defs' Op. Br. at 15. That is incorrect. There has already been a long evidentiary hearing, resulting in the ALJ's findings of fact and conclusions of law; and the Court will review the IBLA decision reversing the ALJ based on the Administrative Record developed from that hearing. Moreover, Federal Defendants now produce administrative records in electronic format, so they are highly portable and readily reviewed anywhere. The same path was followed in the Nickel Creek case, where the Court reviewed the IBLA decision against the ALJ decision and key record documents. There is no convenience or efficiency to be gained by transferring this APA judicial review proceeding to Utah.

In summary, Defendants fail to carry their heavy burden to overcome the heavy presumption in favor of WWP's choice of forum in its home state, requiring denial of their motion for discretionary transfer.

CONCLUSION

For the foregoing reasons, this Court should deny Defendants' motion to dismiss or transfer venue.

Dated this 29th day of April, 2019.

Respectfully submitted,

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