IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN EXPLORATION & MINING ASSOCIATION, Plaintiff, v. U.S. DEPARTMENT OF THE INTERIOR, *et al.*, Defendants.	)	Case No. 1:16-cv-00737

DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO SEVER AND TRANSFER

INTRODUCTION

In its Opposition to Defendants' Motion to Sever and Transfer ("Pls.' Opp.") (ECF No. 13), Plaintiff American Exploration and Mining Association ("AEMA") fails to refute that severing and transferring its claims by geographic sub-region, so that its claims can be heard along with similar claims brought by other litigants, would promote judicial economy and avoid the risk of conflicting judgments. Further, AEMA fails to refute that there is a strong interest in having claims resolved by district courts in the geographic regions that are most directly impacted by the courts' rulings. In this case, Defendants seek only to sever and transfer claims regarding Sage-Grouse Plan Amendments governing geographic areas where claims challenging the same Plan Amendments, or Plan Amendments that apply in the same state, have already been brought—Nevada, Utah, and Wyoming. This would serve judicial efficiency and avoid the potential for conflicting judgments. AEMA argues that litigating in multiple courts would be less convenient, but that concern is outweighed by the interest in judicial economy and avoiding the risk of conflicting judgments. Accordingly, Defendants' motion should be granted.

ARGUMENT

I. Severance of AEMA's Claims Is Proper and Warranted

The Court should sever AEMA's claims so that claims challenging the Plan Amendments for particular sub-regions can be transferred to courts where similar challenges are already pending. In response, AEMA primarily argues that severance is inappropriate because its claims are not "discrete and separate claims" and severance would result in "six separate cases with nearly identical claims for relief." Pls.' Opp. at 5-6. AEMA also argues that Rule 21 allows severance of properly joined claims "under very limited circumstances." *Id.* at 6. Contrary to

AEMA's argument, severance of its claims will serve judicial efficiency and the Court's discretion to sever those claims is virtually unfettered.

First, AEMA oversimplifies the nature of the claims they are asserting. AEMA cannot assert a single legal claim across all sub-regions and decisions because such a claim would be an improper programmatic challenge. As a legal matter, under the Administrative Procedure Act ("APA"), it is improper for courts to adjudicate programmatic claims challenging the entirety of a government program. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 893 (1990) (government programs "cannot be laid before the courts for wholesale correction under the APA"). Rather, courts may only intervene when plaintiffs have challenged particular government actions that cause them harm. *See id.* at 891. Thus, properly construed, AEMA has brought each of its seven claims against the Plan Amendments and associated environmental impact statements ("EIS") for each of the six challenged sub-regions.

AEMA's reliance on the *Initiative & Referendum Institute* case is no help on this point. Pls.' Opp. 7. There, the plaintiffs had challenged a "nationwide regulation"—a single agency action that had nationwide impacts. 154 F. Supp. 2d 10, 13 (D.D.C. 2001) ("The same regulation will be applied to the facts regarding each claim."). The situation here is fundamentally different because it involves numerous separate and distinct agency actions. Whereas some litigants chose to challenge Plan Amendments for just one sub-region, AEMA chose to challenge the Plan Amendments for six sub-regions. Each set of sub-regional Plan Amendments was the result of a separate planning and National Environmental Policy Act ("NEPA") process and is supported by an administrative record for the specific geographic sub-region. Each set of Plan Amendments operates independently and governs a different area.

Therefore, the Plan Amendments are distinct from the nationwide regulation at issue in the *Initiative & Referendum Institute* case.

Second, even aside from the legal deficiencies in AEMA's characterization of its complaint—*i.e.*, as asserting individual and non-severable claims, but encompassing numerous discrete, agency actions—litigating AEMA's claims against six different sub-regions in a single case would be impractical. To begin with, there is a separate administrative record for each of the six challenged sub-regions and associated EISs, and each record is voluminous. *See* Defs.' Mot. to Sever & Transfer at 10-11 (ECF No. 10). Challenges to the Plan Amendments for each sub-region must be based on the administrative records applicable to that sub-region, and AEMA must demonstrate that it has standing to challenge each specific sub-region and that its claims involving each sub-region are ripe. *See, e.g., Summers v. Earth Island Inst.*, 555 U.S. 488, 493-94 (2009).[1] Assuming those threshold burdens can be met, AEMA would also have to prove its claims as to each of the legal and factual circumstances particular to the Plan Amendments for each sub-region. Litigating all of the claims regarding the six different sub-regions challenged by AEMA at once would be too unwieldy.

The fact that AEMA's legal theories may largely be the same for each challenged sub-region does not make severance any less appropriate because the Plan Amendments and the records supporting them are different. *See, e.g., Nelson v. Aim Advisors, Inc.*, No. 01-CV-0282-MJR, 2002 WL 442189, at *2-3 (S.D. Ill. Mar. 8, 2002) (severing claims where plaintiffs

[1] Indeed, given that the Plan Amendments primarily guide future decisionmaking regarding site-specific projects, the issues of standing and ripeness have emerged as significant threshold issues in the Sage-Grouse litigation. *See* Mot. & Mem. in Supp. of Defs.' Mot. for Summ. J. & Opp. to Pls.' Mot. for Summ J. at 7-19, *W. Exploration LLC v. U.S. Dep't of Interior*, No. 3:15-cv-491-MMD (D. Nev.) (ECF No. 75); Fed. Defs.' Mem. in Supp. of Cross-Mot. for Summ. J. & Opp. to Pls.' Mot. for Summ. J. at 21-32, *Otter v. Jewell*, No. 1:15-cv-1566-EGS (D.D.C.) (ECF No. 55-1).

challenged numerous contracts under same legal theory); *Walgreen Co. v. Networks-USA V, Inc.*, No. 12 C 1317, 2012 WL 6591810, at *6-7 (N.D. Ill. Dec. 17, 2012) (severing claims related to three different leases because the leases are "separate, unrelated transactions and the disputes concerning the leases involve distinct events"); *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997) (finding judicial efficiency promoted by allowing discrete claims to be "viewed in a separate and individual light by the Court"). Because a court must consider AEMA's allegations against each sub-region in light of the record for that sub-region and the Plan Amendments within it, AEMA's claims against six different sub-regions cannot be considered and decided together as one.

Third, severing and transferring AEMA's claims would not create duplicative litigation. *See* Pls.' Opp. at 9. Rather, it would put all of the claims involving the same sub-regions before the same court. As it is, each of the six sub-regions challenged by AEMA is currently being challenged in at least one other court and, in some cases, three other courts. *See* ECF No. 10-5; *Wyo. Stock Growers Ass'n v. U.S. Dep't of Interior*, No. 2:15-cv-181 (D. Wyo.) (filed Oct. 14, 2015); *Wyo. Coal. of Local Gov'ts v. U.S. Dep't of Interior*, No. 2:16-cv-41 (D. Wyo.) (filed Mar. 1, 2016); *W. Watersheds Project v. Schneider*, No. 16-cv-83 (D. Idaho) (filed Feb. 25, 2016) ("*WWP*"); *W. Energy Alliance v. U.S. Dep't of Interior*, No. 16-cv-112 (D.N.D.) (filed May 12, 2016) ("*WEA*"); *Herbert v. Jewell*, No. 2:16-cv-101 (D. Utah) (filed Feb. 4, 2016); *Otter v. Jewell*, No. 1:15-cv-1566 (D.D.C.) (filed Sept. 25, 2015); *W. Exploration, LLC v. U.S. Dep't of the Interior*, No. 15-cv-491 (D. Nev.) (filed Sept. 23, 2015).

Each of these cases raises similar and, in many cases, overlapping claims under many of the same statutes. For example, both this case and others challenging the Plan Amendments for the same sub-regions raise allegations regarding the net conservation gain mitigation standard

under the Federal Land Policy Management Act ("FLPMA") and NEPA (*AEMA*, Compl. ¶¶ 604-06 (ECF No. 1); *Otter*, Compl. ¶¶ 12, 92-94, 99 (ECF No. 1)), failure to prepare a supplemental EIS under NEPA (*AEMA*, Compl. ¶¶ 587-98; *Herbert*, Compl. ¶ 196 (ECF No. 2); *W. Exploration*, Am. Compl. ¶¶ 60, 81, 84 (ECF No. 20); *Otter*, Compl. ¶¶ 90-96), failure to allow for adequate public participation in the decisionmaking process under NEPA, FLPMA, and the National Forest Management Act ("NFMA") (*AEMA*, Compl. ¶¶ 575-86; *W. Exploration*, Am. Compl. ¶¶ 188-91), unlawful decisions regarding ACECs under FLPMA and NFMA (*AEMA*, Compl. ¶¶ 608-18; *Otter*, Compl. ¶¶ 103-07; *WWP*, Compl. ¶¶ 277-81 (ECF No. 1)), and violation of FLPMA's multiple use mandate (*AEMA*, Compl. ¶¶ 619-34; *Otter*, Compl. ¶¶ 111-14; *Herbert*, Compl. ¶¶ 198-200). If all eight cases are allowed to proceed as filed, it will require multiple courts to duplicate their efforts in reviewing the same administrative records and risk conflicting applications of the law to those facts. In contrast, Defendants' proposed approach conserves judicial resources and reduces the potential for conflicting judgments by ensuring that only one court must review the record and resolve claims regarding a given sub-region.

II. Transfer to the Districts of Utah, Wyoming, and Nevada is Proper

AEMA's arguments against transfer are unfounded. Contrary to its assertions, granting severance and transfer will result in a more efficient resolution of the Sage-Grouse litigation. Any minor inconveniences that may be caused to AEMA as a result of severance and transfer are far outweighed by the benefits to judicial economy and efficiency.

A. Venue Is Proper in the Districts of Utah, Wyoming, and Nevada

Venue is proper in "any judicial district in which . . . a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(e)(1). Here, the Districts of Utah, Nevada, and Wyoming are proper venues for AEMA's claims against Plan Amendments

within the Utah, Nevada and Northeastern California, and Bighorn (Wyoming) sub-regions because those Plan Amendments govern lands in Utah, Nevada, and Wyoming respectively. *S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 233 (D.D.C. 2012) (finding venue appropriate in District of Utah where case challenged federal management of land in Utah). In addition, the BLM and Forest Service field and regional offices in those states were heavily involved in developing the Plan Amendments for those sub-regions. *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 922 F. Supp. 2d 51, 54 (D.D.C. 2013) ("This action 'might have been brought' in the District of Wyoming, *see* § 1404(a), because the tracts of land at issue are located there and the contested regulatory actions took place there.").

AEMA's allegation that it could not have brought its claims in these different judicial districts without engaging in unlawful "claim-splitting" misunderstands how that doctrine is applied. Pls.' Opp. 12. "To determine whether a plaintiff is claim-splitting, '[t]he proper question is whether, assuming the first suit was already final, the second suit would be precluded under res judicata analysis.'" *Clayton v. District of Columbia*, 36 F. Supp. 3d 91, 94 (D.D.C. 2014) (quoting *Katz v. Gerardi*, 655 F.3d 1212, 1219 (10th Cir. 2011)). As discussed above, the approval of the Plan Amendments within each sub-region are separate and distinct agency actions arising from a unique set of facts and their own administrative decisionmaking process. Thus, a decision regarding a claim involving actions taken in one sub-region would not preclude the same claim against actions taken in another sub-region. *Cf. id*. (finding claim-splitting where underlying facts are identical). For this reason, AEMA could have separately challenged the Plan Amendments and associated EISs for each sub-region if it had wished.

B. AEMA's Choice of Forum is Entitled to Minimal Weight

AEMA argues that this Court should defer to its choice of venue—the District of the District of Columbia. While a plaintiff's choice of forum is generally accorded deference, that deference is diminished "if a plaintiff is not a resident of the forum and 'most of the relevant events occurred elsewhere.'" *Atfab v. Gonzalez*, 597 F. Supp. 2d 76, 80 (D.D.C. 2009) (quoting *Hunter v. Johanns*, 517 F. Supp. 2d 340, 344 (D.D.C. 2007)); *see also Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 17 (D.D.C. 1996). Indeed, "the defendants' burden in a motion to transfer decreases when the plaintiffs' choice of forum has no meaningful nexus to the controversy and the parties." *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 128 (D.D.C. 2001). Here, AEMA is a resident of the State of Washington, not the District of Columbia, *see* Pls.' Opp. 14, and the claims that Defendants are seeking to sever and transfer—the claims involving Plan Amendments for the Utah, Nevada and Northeastern California, and Bighorn (Wyoming) sub-regions—have substantial connections to the Districts of Utah, Nevada, and Wyoming. The lands governed by the Plan Amendments in the Utah, Nevada and Northeastern California, and Bighorn (Wyoming) sub-regions are located in those states and their effects will be most felt in those states.

The fact that certain agency decisionmakers are located in the District of Columbia does not alter this analysis: "Mere involvement . . . on the part of federal agencies, or some federal officials who are located in Washington, D.C. is not determinative" of venue. *Stockbridge-Munsee Cmty. v. United States*, 593 F. Supp. 2d 44, 47 (D.D.C. 2009) (internal quotation marks & citation omitted); *see also New Hope Power Co. v. U.S. Army Corps of Eng'rs*, 724 F. Supp. 2d 90, 95-96 (D.D.C. 2010) (finding in favor of transfer despite involvement of a D.C. official who wrote a memorandum reviewing the regional office's issue paper). Indeed, officials in

BLM and Forest Service offices in Utah, Wyoming, and Nevada were heavily involved in the decision making processes for Plan Amendments within those sub-regions. *See Airport Working Grp. of Orange Cnty., Inc. v. U.S. Dep't of Def.*, 226 F. Supp. 2d 227, 230 (D.D.C. 2002) (finding in favor of transfer despite fact that record of decision was signed by D.C. official because "any role played by officials in the District of Columbia is overshadowed by the fact that their decisions were based on work done by government employees in California . . . .").

In sum, AEMA's choice of forum is entitled to no deference here. AEMA is but one of many parties involved in these eight cases. Its individual preferences should not outweigh the broader need for judicial efficiency. This is especially true when AEMA chose to file all of its claims challenging Plan Amendments for the Utah, Nevada and Northeastern California, and Bighorn Basin (Wyoming) sub-regions in this Court after cases challenging Plan Amendments for those same sub-regions, or, in the case of Bighorn, a different sub-region within the same state, had already been filed in the Districts of Utah, Nevada, and Wyoming.

C. The Interests of Judicial Economy and Efficiency Outweigh Any Minor Inconveniences to AEMA

AEMA argues that severing and transferring its claims would be less convenient because AEMA would have to argue its claims in multiple courts. *See* Pl. Opp. 17-19. What AEMA ignores is the fact that claims regarding the Plan Amendments for the Utah and Nevada sub-regions, and the Plan Amendments for the Wyoming sub-region, which neighbors the Bighorn Basin sub-region in the same state, are already being litigated in other courts. The courts and the parties involved in those cases will litigate those claims regardless of the involvement of AEMA. Thus, if AEMA's claims are not transferred, multiple courts will address similar, and, in some cases, the same, claims arising under the same statutes and regarding the same Plan Amendments. Such a duplication of efforts is an inefficient use of judicial resources and could

well lead to conflicting judgments. AEMA's inconvenience does not outweigh the broader interest of the Court and the many other parties to these cases in allowing a single court to hear and decide all of the claims challenging the same sub-region.

For the same reason, the fact that transfer of certain claims to other districts may inconvenience AEMA's attorney does not counsel against transfer: "Any inconvenience to plaintiff's counsel caused by the transfer of this action is not a factor that carries considerable weight in the Court's determination of whether or not to grant a motion to transfer pursuant to section 1404(a)." *McClamrock v. Eli Lilly & Co.*, 267 F. Supp. 2d 33, 40 (D.D.C. 2003). This is especially true in these eight cases which involve parties and attorneys from all over the country. The determination of venue should not accommodate one party or attorney at the expense of others. Rather than require any party with an interest in the Plan Amendments for any sub-region to participate in court proceedings in up to four different fora, the Court should sever and transfer the claims so that the claims can be heard in a more manageable fashion.

Moreover, AEMA's counsel, Steven Lechner is already counsel of record representing proposed intervenors the Petroleum Association of Wyoming and the Wyoming Stock Growers Association in the *Western Watersheds Project* case in the District of Idaho. *See* Petroleum Ass'n of Wyo. & Wyo. Stock Growers Ass'n's Mot. to Intervene, *W. Watersheds Project v. Schneider*, No. 1:16-cv-83-BLM (D. Idaho) (ECF No. 21). And the organization for which Mr. Lechner works, the Mountain States Legal Foundation, also represents the Wyoming Stock Growers Association in the Wyoming litigation. *See* Pet. for Review, *Wyo. Stock Growers Ass'n v. U.S. Dep't of Interior*, No. 2:15-cv-181-ABJ (D. Wyo.) (ECF No. 1). Given the involvement of Mr. Lechner and the Mountain States Legal Foundation in multiple cases challenging the Sage-Grouse Plan Amendments in various courts, AEMA's convenience arguments ring hollow.

AEMA argues that the fact that another Sage-Grouse case, *Otter v. Jewell*, No. 1:15-cv-1566 (D.D.C.) (filed Sept. 25, 2015), is already pending in the District of the District of Columbia should weigh against transfer. But Defendants are not asking this Court to transfer AEMA's challenge to the Plan Amendments for the Idaho and Southwestern Montana sub-region—the only sub-region involved in the *Otter* case—out of this Court. Nor do Defendants seek transfer of the claims involving the Oregon and HiLine sub-regions in this Court because, aside from the *Western Watersheds Project* and *Western Energy Alliance* cases which Defendants also seek to sever and transfer, those Plan Amendments are not subject to prior court challenges. But AEMA could have brought claims challenging the Plan Amendments for the Utah, Nevada and Northeastern California, and Bighorn Basin sub-regions in the District Courts for Utah, Nevada, and Wyoming, respectively, where similar challenges are already pending.

Finally, AEMA contends that it will face financial hardship if it must litigate in multiple fora. Pls.' Opp. 17-19. AEMA overstates the financial burden: because AEMA's claims arise under the APA and will not involve discovery or witnesses, counsel will only be required to travel for court appearances. All other expenses arising from the need to litigate AEMA's claims against six different sub-regions remain the same regardless of whether those claims are heard in this Court or severed and transferred to other districts. Further, the fact that AEMA's counsel is already involved in multiple Sage-Grouse cases undermines any assertion of financial hardship. In any case, AEMA chose to bring its own lawsuit challenging six different sub-regions. It should not now be heard to complain about the burden of litigating its claims in the venues that are most connected to those claims and most efficient for the judiciary.

As it is, any parties interested in or affected by the six sub-regions challenged by AEMA in this case must participate in litigation in up to four different courts. The inconvenience,

financial or otherwise, to any one plaintiff should not outweigh the interests of the judiciary and of the many other parties to this litigation in severing AEMA's claims and transferring them to courts that are already considering similar claims against the same Plan Amendments and sub-regions. *See In re Bristol Bay, Alaska Salmon Fishery Antitrust Litig.*, 424 F. Supp. 504, 506 (J.P.M.L. 1976) ("[O]ne of the purposes of coordinated or consolidated [] proceedings is to streamline the efforts of the parties . . . , their counsel and the judiciary in order to effectuate an overall savings of cost and a minimum of inconvenience to all concerned.").

D. The Interests of Justice Are Best Served By Transfer

AEMA argues that the interests of justice weigh against transfer, citing this court's familiarity with the governing law, the relative congestion of the courts' dockets, and the lack of a strong local interest in having AEMA's claims decided in other districts. Pls.' Opp. 19-23. These factors have little to do with the fundamental issue raised in Defendants' motion, *i.e.*, the interest in judicial economy and avoiding inconsistent judgments. In any case, they do not weigh against transfer. First, both this court and the potential transferee courts—the Districts of Utah, Wyoming, and Nevada—are equally capable of resolving AEMA's claims. *Ctr. for Envtl. Sci., Accuracy & Reliability v. Nat'l Park Serv.*, 75 F. Supp. 3d 353, 358 (D.D.C. 2014) ("Federal district courts have equal familiarity with . . . federal laws" such as the APA). While this Court is familiar with the Idaho and Southwestern Montana Plan Amendments from the *Otter* case, the Districts of Utah, Nevada, and Wyoming are familiar with Plan Amendments in those states from the *Herbert*, *Western Exploration*, and *Wyoming Stock Growers Ass'n* and *Wyoming Coal. of Local Governments* cases, respectively. Thus, Defendants' proposed approach of severing and transferring claims by sub-region would allow each of these courts to make the most of its

familiarity with particular sub-regions, rather than duplicating those efforts across multiple courts.

Second, while the dockets of the Districts of Nevada and Utah are slightly more congested than that of this Court, the docket of the District of Wyoming is less congested. Therefore, this factor does not does not tip the scale either for or against transfer. *See Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 57 (D.D.C. 2012) ("Absent a showing that either court's docket is 'substantially more congested' than the other, this factor weighs neither for nor against transfer." (quoting *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 178 (D.D.C. 2009)). Further, AEMA is ignoring the judicial efficiency that would be gained by transferring claims to a court that is already familiar with the same subject matter.

Third, the Districts of Utah, Wyoming, and Nevada, and the residents of those states, have a strong interest in having controversies regarding the management of lands within those states decided at home. The environmental and regulatory effects of the challenged Plan Amendments—and of any judicial decisions affecting the implementation of those Amendments—will be felt in Utah, Wyoming, and Nevada, respectively, not the District of Columbia. *See Trout Unlimited*, 944 F. Supp. at 19-20 (finding that cases involving natural resource claims should be transferred to the forum where the alleged environmental impacts will occur because these are "matters that are of great importance in [their State of origin]" that "should be resolved in the forum where the people 'whose rights and interests are in fact most vitally affected by the suit . . .'" (quoting *Adams v. Bell*, 711 F.2d 161, 167 n.34 (D.C. Cir. 1983))); *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 102 (D.D.C. 2013) (transferring to Utah in part because "Utah residents who use [the federal lands at issue] for cattle grazing will

be directly affected by the outcome of the case"); *S. Utah Wilderness All.*, 315 F. Supp. 2d at 88 ("Land is a localized interest because its management directly touches local citizens."). Because the local interest in deciding local issues at home is arguably the "most important" public interest factor in deciding whether to transfer a case, this Court should transfer AEMA's claims against the Utah, Nevada and Northeastern California, and Bighorn Basin (Wyoming) Plan Amendments to the Districts of Utah, Nevada, and Wyoming, respectively. *Pres. Soc'y of Charleston*, 893 F. Supp. 2d at 57.

AEMA next argues that Defendants' "fear of conflicting judgments is purely speculative" and that, "if Defendants truly wished to avoid conflicting judgments, they should have moved to transfer" all of the cases to Nevada, where the first Sage-Grouse case was filed. Pls.' Opp. 22-23. Regarding the first point, AEMA relies heavily on *Greater Yellowstone Coalition v. Kempthorne*, No. CIV.A. 07-2111 (EGS), 2008 WL 1862298 (D.D.C. Apr. 24, 2008), where the court refused to transfer a case pending in the District of the District of Columbia to the District of Wyoming, despite the existence of similar cases in that court. The circumstances in *Greater Yellowstone* were much different. In that case, two courts presided over cases challenging the same rule issued by the National Park Service, and, in an effort to get both claims in front of one court, Defendants filed competing motions to transfer in both districts. *Id.* at *4. Here, in contrast, multiple entities have challenged different Plan Amendments in different courts. Rather than the competing transfer motions filed in the *Greater Yellowstone* case, Defendants' three parallel severance and transfer motions seek to put all claims involving one sub-region before the same court. The Sage-Grouse litigation involves eight different lawsuits in five different courts. Thus, the judicial inefficiency and risk of conflicting judgments if the claims are not severed and transferred is far greater here than in *Greater Yellowstone*.

AEMA's suggestion that Defendants have "sat idly by" as cases challenging Sage-Grouse Plan Amendments have been filed rather than proactively seeking to transfer those cases to Nevada, the location of the first-filed case, misunderstands the order in which the cases were filed and the goal of Defendants' motion. The first case, *Western Exploration*, filed in September 2015 in the District of Nevada, challenged only the Plan Amendments for the Nevada and Northeastern California sub-region. *See* ECF No. 10-1. The next four cases, filed in late 2015 and early 2016—*Otter, Wyoming Stock Growers, Wyoming Coalition of Local Governments*, and *Herbert*—challenged only Plan Amendments for a single sub-region, the Idaho and Southwestern Montana, Wyoming, and Utah sub-regions, respectively. *Id.* Because each of these cases challenged a single sub-region, their claims did not overlap (with the exception of the two Wyoming cases, which were filed in the same court and consolidated). It was not until *WWP*, *WEA*, and the instant case were filed later in 2016 that overlapping claims regarding the same sub-regions in different venues became a problem. *See id.* Defendants did not move to transfer all of the cases to Nevada because, as explained above, each set of sub-regional Plan Amendments constitutes a discrete agency action that is supported by one of 15 different sub-regional EISs. Transferring claims involving sub-regions other than the Nevada and Northeastern California sub-region to the District of Nevada would not consolidate overlapping claims. Rather, it would inundate a single court with claims involving 15 different sub-regions.

In sum, rather than trying to litigate an unwieldy case challenging multiple land use plans for different geographic regions, it would be more efficient and more convenient for the court and the parties in this case, and for the courts and parties in the seven other related Sage-Grouse

cases, to sever and transfer AEMA's claims to those districts where overlapping litigation is already pending.

CONCLUSION

For the reasons stated above, and as explained in detail in Defendants' opening memorandum, the Court should grant Defendants' motion to sever and transfer.

Respectfully submitted this 8th day of August, 2016,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of August, 2016, I filed the foregoing electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Clare Boronow
CLARE BORONOW