

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CENTER FOR BIOLOGICAL)
DIVERSITY, et al.,)
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Plaintiffs,)
)
v.	Case No. 20-cv-00855 (APM))
)
DAVID L. BERNHARDT, et al.,)
)
Defendants.)
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WESTERN WATERSHEDS)
PROJECT, et al.,)
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Plaintiffs,)
)
v.	Case No. 20-cv-00860 (APM))
)
DAVID L. BERNHARDT, et al.,)
)
Defendants.)
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ORDER

I.

Pending before the court in this consolidated action are Defendants’ Motions to Transfer to the District of Wyoming. *See* Mot. to Transfer & Mem. of Law, *Ctr. for Biological Diversity v. Bernhardt*, 20-cv-00855 (APM) (D.D.C.), ECF No. 13 [hereinafter *Ctr. for Biological Diversity* Mot.]; Mot. to Transfer & Mem. of Law, *W. Watersheds Project v. Bernhardt*, 20-cv-00860 (APM) (D.D.C.), ECF No. 25. The court has carefully considered Defendants’ transfer request pursuant to this court’s decision in *Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303 (D.D.C. 2015). As *Gulf Restoration* sets forth the governing legal principles for a transfer request, the court does

not repeat them here but refers to them as applicable in the analysis below. For the reasons that follow, Defendants' Motions to Transfer are granted.

II.

The parties all agree that Plaintiffs could have brought this action in the District of Wyoming. *See Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). This threshold inquiry is therefore satisfied.

III.

Turning to the private-interest factors, Plaintiffs' choice of forum is entitled to some deference but not "substantial deference," because this forum has few, if any, meaningful ties to the controversy. *See Gulf Restoration*, 87 F. Supp. 3d at 311. "All of the substantive work leading to the issuance of the biological opinion and the incidental take statement," including the drafting of those decisions, "was completed by staff in the Wyoming Field Office" of the U.S. Fish and Wildlife Service, with input from the Service's "Grizzly Bear Recovery Coordinator, located in Missoula, Montana." *Ctr. for Biological Diversity Mot.*, Decl. of Nathan Darnall, ECF No. 13-5, ¶ 2. "[N]o substantive work on the biological opinion and incidental take statement occurred in any office or location outside of Wyoming." *Id.*; *see also Ctr. for Biological Diversity Mot.*, Decl. of Randall Griebel, ECF No. 13-1, ¶ 5 (stating that the "2017 Final Environmental Impact Statement and the development of the 2019 Record of Decision for the Upper Green River Rangeland Project was completed by employees on the Pinedale Ranger District with assistance from resource specialists from other Districts and the Supervisor's Office of the Bridger-Teton National Forest"). The fact that the named-defendant agencies and officials are located in Washington, D.C. is not, by itself, sufficient to establish a factual nexus to this District. *See Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 18 (D.D.C. 1996) (finding the relationship of

the agency action to Washington, D.C. to be “attenuated” where “[t]he decision-making process at both the forest and regional level occurred in Colorado, not in Washington, D.C. and not as a result of a directive from a local agency”).

Defendants’ choice of forum is entitled to “some weight” and favors transfer. *See Gulf Restoration Network*, 87 F. Supp. 3d at 313. That is so because, as discussed further below, the effects of the challenged agency’s actions, and a court’s resolution of them, will be felt most directly in the transferee district. *See id.*

The third private-interest factor—where the claim arose—likewise favors transfer. *See id.* In administrative law cases, like this one, courts focus on where the decision-making process occurred to determine where the claim arose. *See id.* As noted, the challenged agency decision-making here all occurred in Wyoming.

The remaining private-interest factors slightly favor remaining in this District. Moving this case to the District of Wyoming will cause some inconvenience, as the parties already have litigated the preliminary injunction motion here and would have to restart in a new forum. The other two factors—the convenience of the witnesses and the ease of access to sources of proof—are neutral with respect to transfer. APA cases typically are decided on the administrative record, so these convenience considerations are not relevant. *See id.* at 315.

IV.

Turning to the public-interest factors, the first two—the transferee court’s familiarity with the governing law and the relative congestion of the courts’ dockets—are neutral with respect to transfer. *See id.* at 315. A federal court in Wyoming is no more or no less competent to address questions of federal law. Although the parties cite to various cases both here and in Wyoming and the Tenth Circuit to urge a finding of greater competence as to the issues presented here, their

presentation only underscores the neutrality of this factor. Moreover, no party suggests that docket congestion either supports or diminishes the need for transfer.

The final public-interest factor—the local interest in having local controversies decided at home—weighs heavily in favor of transfer. “[S]uits such as this one, which involve . . . environmental regulation, and local wildlife . . . should be resolved . . . where the people ‘whose rights and interests are in fact most vitally affected’” are located. *Trout Unlimited*, 944 F. Supp. at 19–20 (quoting *Adams v. Bell*, 711 F.2d 161, 167 n.34 (D.C. Cir. 1983)). This action primarily concerns the use of federal lands in Wyoming and the management of the grizzly bear population on those lands. Cattle ranchers whose livestock are permitted to graze these lands are all businesses that own base properties in Sublette County, Wyoming. *See Ctr. for Biological Diversity Mot.*, Decl. of Chad Hayward, ECF No. 13-3, ¶ 5. The Forest Service has authorized 19 seasonal grazing permits for the Upper Green River project area involving 7,765 cattle, for a four-month period from June 15 through October 15. *See W. Watersheds Project v. Bernhardt*, 468 F. Supp. 3d 29, 35 (D.D.C. 2020). These “permittees range from families who have been working and living on the same ranch for five generations to ranches recently purchased by corporations who employ local people to manage their ranching interests.” *Id.* ¶ 6. Thus, the consequences of a judicial decision will be felt most acutely in Wyoming.

The State of Wyoming’s stake in this litigation only enhances the local interest. The Wyoming Game and Fish Department plays a key role in managing the grizzly bear population in the Upper Green River area, *see Ctr. for Biological Diversity Mot.*, 2019 Biological Opinion, ECF No. 13-4, at 32–34, and is to be consulted before the taking of a nuisance bear is authorized, *see id.* at 43 (“Ultimately, the Service’s Grizzly Bear Recovery Coordinator, in close coordination with WGFD (for conflicts in Wyoming), makes the final determination on grizzly bear removals.”).

The outcome of this matter therefore will have a direct effect on the governing interests of Wyoming state authorities.

Plaintiffs attempt to nationalize the controversy here, asserting that it involves a threatened species, the grizzly bear, that is protected under the Endangered Species Act. But, as Defendants correctly point out, the mere fact that a case involves a protected species does not transform a local controversy into one of national significance. *See* Defs.’ Reply in Support of Mot. to Transfer, *Ctr. for Biological Diversity v. Bernhardt*, 20-cv-00855 (APM) (D.D.C.), ECF No. 20, at 11–12 (citing authorities from this District transferring cases involving protected species). That is true here, where the controversy giving rise to the dispute centers on a biological opinion that authorizes continued livestock grazing on six allotments of land totaling 170,643 acres in the western part of Wyoming and the incidental taking of grizzly bears on that land. *See Ctr. for Biological Diversity* Mot. at 4–5. Though involving a threatened species, this case is decidedly a more local controversy than a national one.

V.

For the foregoing reasons, Defendants’ Motions to Transfer are granted. These consolidated cases are hereby transferred to the District of Wyoming. The court leaves to the transferee court to resolve the outstanding motions to supplement the administrative record, *see* Mot. to Complete the Admin. Record, *Ctr. for Biological Diversity v. Bernhardt*, 20-cv-00855 (APM) (D.D.C.), ECF No. 36; Mot. to Complete and Suppl. the Admin. Record, *Ctr. for Biological Diversity v. Bernhardt*, 20-cv-00855 (APM) (D.D.C.), ECF No. 37, and to set a summary judgment briefing schedule.

Dated: November 28, 2020

A handwritten signature in black ink that reads "Amit Mehta". The signature is written in a cursive style with a large initial "A" and a long horizontal stroke at the end.

Amit P. Mehta
United States District Court Judge