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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

CENTER FOR BIOLOGICAL  
DIVERSITY, et al.,

Plaintiffs,

v.

JERRY DAVIS, et al.,

Defendants,

and

STATE OF WYOMING,

Intervenor-Defendant.

Case No. 4:26-cv-00021-BMM

**PLAINTIFFS' COMBINED  
RESPONSE TO THE STATE OF  
WYOMING'S MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, SEVER AND  
TRANSFER AND  
DEFENDANTS' MOTION TO  
TRANSFER (ECF Nos. 21 & 24)**

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## INTRODUCTION

In this case, Plaintiffs challenge the U.S. Bureau of Land Management’s (“BLM”) approval of six resource management plan amendments (“RMPAs”) governing management of greater sage-grouse habitat across 71 million acres of federal lands in nine states. Compl. (ECF No. 1) ¶ 1. Although each RMPA covers a different geographic area, the RMPAs were developed in tandem as part of a “rangewide planning” effort, and all the RMPAs rely on the analysis from the same environmental impact statement (“EIS”). *See* 89 Fed. Reg. 18,963, 18,963–65 (Mar. 15, 2024).

BLM made many of the same errors when adopting each RMPA – not surprising, given that they were developed in tandem and all rely on the same EIS. For instance, in adopting each RMPA, BLM deviated, without explanation, from the agency’s Special Status Species Manual, which establishes a policy to manage species like the sage-grouse to avoid the need for listing under the Endangered Species Act (“ESA”). Compl. ¶¶ 180–86. These commonalities across the RMPAs make it efficient and convenient to adjudicate their legality together in one case.

BLM and the State of Wyoming, which has intervened on the side of BLM, have each moved the Court to transfer at least a part of this case to

the District of Wyoming.<sup>1</sup> The two motions are not the same; in fact, they conflict with each other. Wyoming asks this Court to dismiss Plaintiffs' challenge to the Wyoming RMPA or, in the alternative, sever and transfer that challenge to the District of Wyoming. BLM asks the Court to transfer this *entire case* to the District of Wyoming.

Neither motion comes close to justifying the relief sought. Wyoming, as an intervenor, cannot raise an improper-venue defense, and its alternative request to split up this case into two pieces and litigate them in different courts would disserve the interests of convenience and judicial economy. As for BLM, it offers no good reason to deprive Plaintiffs of their choice of forum. The Court should deny both motions.

## **BACKGROUND<sup>2</sup>**

### **I. The Greater Sage-Grouse and Past Planning Efforts.**

The greater sage-grouse is a ground-dwelling bird dependent on the sagebrush steppe ecosystem. Once abundant across the American West, the

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<sup>1</sup> The defendants in this case include BLM and several BLM officials sued in their official capacities. Plaintiffs will refer to the defendants collectively as "BLM."

<sup>2</sup> Except where otherwise noted, the background facts in this section are taken from the complaint.

species is declining toward extinction due to habitat loss and fragmentation.

In 2010, the U.S. Fish and Wildlife Service (“Service”) found that the greater sage-grouse was in sufficient danger of extinction to warrant ESA listing. To avoid ESA listing, BLM and the U.S. Forest Service made amendments to 98 resource management plans (“RMPs”) across the sage-grouse’s range in 2015 to better protect the bird’s habitat from threats like oil and gas drilling, mining, and grazing. Those 2015 plan amendments prompted the Service to find, in October 2015, that adequate regulatory mechanisms existed to protect the greater sage-grouse such that ESA listing was not warranted. 80 Fed. Reg. 59,858 (Oct. 2, 2015).

In 2019, during the first Trump Administration, BLM amended most of its RMPs to weaken protections for the sage-grouse. Those 2019 amendments were challenged and quickly enjoined, so the 2015 Plans have been in effect for almost all of the last 10 years. *See W. Watersheds Project v. Schneider (“Schneider III”),* 417 F.Supp.3d 1319, 1335 (D. Idaho 2019) (preliminarily enjoining 2019 amendments). Notably, in that litigation, the federal defendants and Wyoming unsuccessfully moved to split the case into state-specific challenges and transfer each to a different district. *See W.*

*Watersheds Project v. Schneider* (“*Schneider II*”), No. 1:16-CV-83-BLW, 2019 WL 4863483, at \*1–2 (D. Idaho Oct. 2, 2019); *W. Watersheds Project v. Schneider* (“*Schneider I*”), No. 1:16-CV-83-BLW, 2019 WL 3877281, at \*1–2 (D. Idaho Aug. 19, 2019).

Unfortunately, the 2015 Plans have not reversed the downward trend of the sage-grouse. A 2025 study from the U.S. Geological Survey in partnership with BLM found that sage-grouse populations are still declining at an average rate of 3 percent annually.<sup>3</sup> North Dakota’s sage-grouse population appears to be effectively extinct – a dire warning of what may happen in other parts of the bird’s range.

## **II. The 2025 Plan Amendments.**

In late 2021, BLM announced that it intended to again amend its RMPs for sage-grouse habitat across the American West. 86 Fed. Reg. 66,331 (Nov. 22, 2021). To fulfill its duties under the National Environmental Policy Act (“NEPA”) for these amendments, BLM prepared a single EIS, a draft of which was released in early 2024. 89 Fed. Reg. at 18,963. BLM stated that it was focusing the RMP amendment process and the EIS on “rangewide management actions,” although it would also be

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<sup>3</sup> <https://pubs.usgs.gov/dr/1217/dr1217.pdf>

amending certain “specific RMP management actions associated with State-specific circumstances.” *Id.* at 18,964–65.

BLM released a final EIS and a set of proposed RMPAs in November 2024. On January 15, 2025, BLM released final RMPAs for Colorado and Oregon. Then, in September 2025 – after President Trump started his second term – BLM announced that it intended to make “significant changes” to the proposed RMPAs covering the remaining states. 90 Fed. Reg. 42,607, 42,607 (Sep. 3, 2025).

In December 2025, BLM issued five records of decision (“RODs”) adopting RMPAs for the remaining states: the Montana/Dakotas ROD, the Idaho ROD, the Nevada/California ROD, the Utah ROD, and the Wyoming ROD. Plaintiffs challenge those five RODs/RMPAs along with the earlier-issued Colorado ROD/RMPA.

### **III. This Case.**

Plaintiffs filed this case on March 2, 2026. Plaintiffs claim that, in adopting the challenged RMPAs, BLM violated the Federal Land Policy and Management Act (“FLPMA”) and its implementing regulations, the Administrative Procedure Act (“APA”), and NEPA. Compl. ¶¶ 151–228. With some limited exceptions, Plaintiffs claim that BLM violated the law in

the *same way* with respect to each of the challenged RMPAs. For instance, BLM failed to explain key departures from its 2015 Plans and the science on which they were predicated and failed to grapple with important reliance interests engendered by the Service’s 2015 “Not Warranted” ESA finding. Compl. ¶¶ 8, 166–79. BLM failed to prioritize the designation of Areas of Critical Environmental Concern (“ACECs”) as required by its own regulations. *Id.* ¶¶ 198–205. BLM failed to ensure consistency of the RMPAs with the Forest Service’s stronger land-use protections for sage-grouse. *Id.* ¶¶ 206–20. And BLM violated NEPA and the APA by failing to adequately study the environmental effects of its 2025 Plans. *Id.* ¶¶ 225–28. BLM approved all the challenged RMPAs based on a single EIS, and that EIS failed to take the requisite “hard look” at impacts to sage-grouse. In short, this case is an overarching challenge to the 2025 RMPAs, not six disparate challenges glued together.<sup>4</sup>

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<sup>4</sup> The Montana and Wyoming RMPAs are also challenged in *Montana Wildlife Federation v. Burgum*, No. 4:26-cv-00133-BMM.

## ARGUMENT

### I. Wyoming Cannot Raise an Improper-Venue Defense, Nor Can It Raise Other Parties' Venue Defenses.

Wyoming first argues that Plaintiffs' claims challenging the Wyoming RMPA should be dismissed for improper venue. Wyoming Br. (ECF No. 22) at 3–10. But, as an intervenor, Wyoming cannot raise an improper-venue defense. And, even if it could raise such a defense, it would be limited to raising its *own* venue defense, which it has not done.

#### A. Wyoming Cannot Raise an Improper-Venue Defense.

“The vast majority of the authorities are in accord: ‘When a party seeks to enter pending litigation as an intervenor, he enters the litigation subject to the venue which already exists.’” *Eleutian Tech., LLC v. Global Educ. Techs., LLC*, No. 07-cv-00181-ABJ, 2008 WL 11337640, at \*4 (D. Wyo. Dec. 30, 2008) (quoting *Commonwealth Edison Co. v. Train*, 71 F.R.D. 391, 394 (N.D. Ill. 1976)). The Wright & Miller treatise is even more blunt, stating that an “intervenor cannot question venue.” 7C Wright & Miller, *Federal Practice & Procedure* § 1918 (3d ed. Apr. 2026 update).

Because an intervenor like Wyoming cannot raise an improper-venue defense, the Court need not consider the merits of Wyoming's argument that venue is not proper in this district for Plaintiffs' challenge to the

Wyoming RMPA. The Court can proceed directly to Wyoming's alternative request for severance and transfer, which is addressed below in Section III.<sup>5</sup>

Plaintiffs acknowledge that the Ninth Circuit has held that an intervenor may challenge personal jurisdiction notwithstanding their voluntary entry into a case. *SEC v. Ross*, 504 F.3d 1130, 1150–51 (9th Cir. 2007). But *Ross* did not decide whether an intervenor may challenge *venue*, and the differences between personal jurisdiction and venue are such that the holding of *Ross* should not be extended to venue.

Personal jurisdiction is about the power of a court, while venue is merely about convenience. *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1178–79 (9th Cir. 2004). Specifically, venue is focused on “protect[ing] the *defendant*” – who is brought into court involuntarily – “against the risk that a plaintiff will select an unfair or inconvenient place of trial.” *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183–84 (1979) (emphasis in original). Venue simply doesn't protect a party who is not brought into court involuntarily. *Cf. Gen. Elec. Co. v. Marvel Rare Metals Co.*, 287 U.S. 430, 435 (1932) (holding that a venue statute didn't apply to the

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<sup>5</sup> Plaintiffs will assume that Wyoming may seek a convenience transfer under 28 U.S.C. § 1404(a) even though it may not raise improper venue.

counter-defendants, who had brought the suit in the first place as plaintiffs).

**B. Wyoming Cannot Raise Another Party's Venue Defense.**

Even if Wyoming could object to venue as improper, it would be limited to raising *its own* venue defense. “Improper venue is a defense personal to the party to whom it applies. Thus one defendant may not challenge venue on the ground that it is improper as to a co-defendant.” *Pratt v. Rowland*, 769 F.Supp.1128, 1132 (N.D. Cal. 1991); *see also, e.g., Vance Trucking Co. v. Canal Ins. Co.*, 338 F.2d 943, 944 (4th Cir. 1964) (“[S]ince the protesting parties are not inconvenienced by [another party’s] nonresidence, they cannot complain that the requirements of the venue statute are not satisfied as to [that other party].”).

Here, Wyoming does not argue that venue is improper *as to it*. Rather, its arguments concern the propriety of venue of this case as filed — that is, the propriety of venue as to the federal defendants. *See Wyoming Br.* at 3–10. These venue objections are BLM’s to make, not Wyoming’s, and BLM has not raised an improper-venue defense. On the contrary, its own

transfer motion implicitly concedes that venue is proper in this district for all of Plaintiffs' claims. *See* BLM Br. (ECF No. 25) at 11–12 & 12 n.6.<sup>6</sup>

Wyoming cannot raise an improper-venue defense, and it certainly cannot raise other parties' improper-venue defenses. For those reasons, the Court should deny Wyoming's motion insofar as it seeks dismissal of Plaintiffs' challenge to the Wyoming RMPA.

## **II. Venue Is Proper in This District for Plaintiffs' Challenge to the Wyoming RMPA.**

If the Court does consider Wyoming's improper-venue arguments, it should reject them for three independent reasons.

*First*, venue is proper in this district under the "plaintiff-residence" provision, 28 U.S.C. § 1391(e)(1)(C), because Plaintiff Gallatin Wildlife Association maintains its principal place of business in this district. *See* Compl. ¶¶ 14, 18. Venue is proper under § 1391(e)(1)(C) "if at least one

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<sup>6</sup> BLM claims that it "take[s] no position as to whether" venue is proper in this district for the Wyoming RMPA claims. BLM Br. at 12 n.6. But BLM argues that the District of Wyoming is a proper venue for this entire case. *Id.* at 11–12. It necessarily follows from that argument that *this* district is a proper venue for the entire case, including the Wyoming RMPA claims. Indeed, BLM admits the converse. *See id.* at 12 n.6 ("[I]f the Court concludes that this district is a proper venue for Plaintiffs' claims, then it necessarily follows that the District of Wyoming also would be a proper venue.").

plaintiff resides in the district in which the action has been brought.” *Sidney Coal Co., Inc. v. Social Sec. Admin.*, 427 F.3d 336, 345–46 (6th Cir. 2005).

Wyoming insists that § 1391(e)(1)(C) is not applicable here because “real property is involved in the action.” Wyoming Br. at 6 (quoting 28 U.S.C. § 1391(e)(1)(C)). But as this Court noted in rejecting a venue motion in a similar case, “[c]ourts repeatedly have endorsed the understanding that general environmental challenges, including actions relating to public land management, do not involve real property” within the meaning of the venue statute. *W. Org. of Res. Councils v. U.S. Bureau of Land Mgmt.* (“WORC IV”), No. 4:20-cv-76-BMM, 2021 WL 718857, at \*4 (D. Mont. Feb. 24, 2021).

The District of Idaho’s recent decision in *Western Watersheds Project v. Burgum* (“*WWP v. Burgum*”) does not counsel otherwise. See No. 1:18-cv-00187-REP, 2025 WL 3853055 (D. Idaho Dec. 29, 2025). That case did not even involve RMPs; it involved challenges to oil-and-gas leasing decisions. *Id.* at \*1. Even if one assumes that *WWP v. Burgum* was correct to conclude that a challenge to a leasing decision “involves” real property within the meaning of § 1391(e)(1)(C), it does not follow that a challenge to a land-use plan “involves” real property. See *WORC IV*, 2021 WL 718857, at \*3 (distinguishing between a plaintiff who seeks “to contest a right in real

property – namely, leasehold interests in oil and gas” and “a blanket challenge to a land use plan that involve[s] no lease or any other such property interest”).

*Second*, venue is proper in this district for all of Plaintiffs’ claims because Defendant Jerry Davis is a resident of Montana.<sup>7</sup> The venue statute provides that a “civil action” against a federal officer or agency “may ... be brought in any judicial district in which ... a defendant *in the action* resides.” 28 U.S.C. § 1391(e)(1)(A) (emphases added). Defendant Jerry Davis is *a* defendant in “the action” – *i.e.*, the case as a whole – so venue is proper in this district for all of Plaintiffs’ claims.

Wyoming argues that Defendant Davis’s “residence cannot serve to make venue proper in Montana, as [he] has no relation to the Wyoming ROD/RMPA.” Wyoming Br. at 4–5. But § 1391(e)(1)(A) contains no requirement that one of the defendants for a particular *claim* must reside in a district for venue to be proper in that district for that claim; it requires only that “*a defendant in the action*” reside in the district. (Emphases

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<sup>7</sup> Wyoming’s brief refers to Sonya Germann, who, at the time the complaint was filed, held the position now occupied by Jerry Davis. Per Federal Rule of Civil Procedure 25(d), Davis has been “automatically substituted as a party” for Germann.

added.) In contrast, § 1391(e)(1)(B) requires “a substantial part of the events or omissions giving rise to *the claim*” to have occurred in a district to make venue proper in that district for that claim. (Emphasis added.) As this difference in language reflects, a “claim” is not the same thing as an “action.” *See, e.g.*, Fed. R. Civ. P. 54(b) (referring to “an action” and the “claim[s] for relief” that it presents). Under § 1391(e)(1)(A), venue for a claim is proper in a district if any defendant “in the action” resides in that district, assuming that all claims are properly joined.<sup>8</sup>

BLM’s motion to transfer confirms this reading of § 1391(e)(1)(A). BLM argues that venue would be proper in the District of Wyoming for this *entire case* “because Plaintiffs named Kristina Kirby, Acting BLM Wyoming State Director, in the suit.” BLM Br. at 11. That is correct. And it is equally correct that venue is proper for this entire case in the District of Montana because Plaintiffs named the Montana-Dakotas State Director as a defendant.

*Third*, venue is proper in this district for Plaintiffs’ challenge to the Wyoming RMPA under the doctrine of pendent venue. “[U]nder the pendent venue doctrine, when one or more claims are closely related ...,

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<sup>8</sup> Wyoming does not contend that Plaintiffs’ claims are improperly joined.

venue is proper as to all claims so long as venue is established for just one claim. This is because, where there is a close relationship, then judicial economy, convenience, and fairness all weigh in favor of adjudication in one proceeding.” *Serv. Women’s Action Network v. Mattis*, 320 F.Supp.3d 1082, 1089 (N.D. Cal. 2018). *See also Rosebud Sioux Tribe v. Trump*, 428 F.Supp.3d 282, 295 (D. Mont. 2019) (“When one or more claims are closely related, in that they arise out of a common nucleus of operative facts, venue proves proper as to all claims so long as venue is established for just one claim.”). Plaintiffs’ challenge to the Wyoming RMPA is closely related to their other challenges, making venue proper in this district. *See supra* pp. 5–6 (describing Plaintiffs’ claims).

Wyoming’s argument that Plaintiffs’ “Wyoming claims are not closely related to [their] remaining challenges” blinkers reality. *See Wyoming Br.* at 9. All of the challenged RMPAs, including the one for Wyoming, rely on the analysis from the same EIS. Moreover, Plaintiffs’ claims concerning the Wyoming RMPA either involve errors that BLM made with respect to all (or almost all) of the challenged RMPAs *as a group* or are otherwise substantially the same as Plaintiffs’ challenges to the other RMPAs. *See supra* pp. 5–6.

For these three independent reasons, venue is proper in this district for this entire case, including Plaintiffs' challenge to the Wyoming RMPA.

**III. Severance and Transfer of the Challenge to the Wyoming RMPA Does Not Serve the Interests of Convenience or Judicial Economy.**

Wyoming argues that, if this Court does not dismiss Plaintiffs' challenge to the Wyoming RMPA, it should sever that challenge from the rest of this case and then transfer it to the District of Wyoming as a matter of discretion under 28 U.S.C. § 1404(a). Wyoming Br. at 10–29. Wyoming's argument for severance and transfer relies heavily on the existence of *Western Energy Alliance v. U.S. Department of the Interior* (“*WEA v. DOI*”), No. 1:25-cv-00299-KHR (D. Wyoming), a case pending in the District of Wyoming in which the Western Energy Alliance (“*WEA*”) and Wyoming seek declaratory relief to the effect that the Wyoming RMPA complies with the law. *See* Ex. 1 (amended complaint in *WEA v. DOI*).

The standard for severing a claim under Federal Rule of Civil Procedure 21 and the standard for transferring a case under § 1404(a) are distinct, but the overall severance-and-transfer inquiry boils down to whether it serves the interests of convenience and judicial economy to proceed with two separate suits in two different courts. *See In re Rolls Royce*

*Corp.*, 775 F.3d 671, 680 (5th Cir. 2014) (“we suggested [in a previous case] that when considering a severance-and-transfer motion, the inquiry collapsed into an inquiry into the relative merits of convenience versus judicial economy”); *White v. ABCO Eng’g Corp.*, 199 F.3d 140, 144 (3d Cir. 1999) (“Before effecting such a severance, a judge should weigh the convenience to the parties requesting transfer against the potential inefficiency of litigating the same facts in two separate forums.”). Here, severance and transfer would seriously inconvenience Plaintiffs and would do little to conserve judicial resources. Furthermore, transferring the Wyoming RMPA challenge to the District of Wyoming because of *WEA v. DOI* would reward gamesmanship, because *WEA v. DOI* is anticipatory litigation.

**A. Adjudicating Plaintiffs’ Wyoming RMPA Challenge Separately from Their Other Challenges Is Inconvenient.**

Wyoming first argues that litigating over the Wyoming RMPA in the District of Wyoming would be more convenient for the parties. Wyoming Br. at 18–19. But the only parties Wyoming discusses are Plaintiffs, and Plaintiffs obviously would be “disadvantaged by the expense and inconvenience of having to litigate in two disparate fora and by the possibility of inconsistent results.” *Def. Distributed v. Bruck*, 30 F.4th 414,

428 (5th Cir. 2022). What is convenient for Plaintiffs is to litigate their claims in one case in the forum of their choice.

Perhaps anticipating this response, Wyoming pivots to arguing that Plaintiffs' choice of forum should not be given much weight. Wyoming Br. at 19–21. According to Wyoming, the facts relevant to Plaintiffs' Wyoming RMPA challenge did not occur in Montana, and the District of Montana has little connection to Plaintiffs, so Plaintiffs' choice of this district should be given only minimal weight. *Id.* at 19.

Wyoming seems to pretend that Plaintiffs' non-Wyoming RMPA challenges do not exist. Plaintiffs did not choose this forum to mount a challenge to the Wyoming RMPA alone; they chose this forum to challenge six related RMPAs covering nine states, including Wyoming and Montana. In assessing what weight to give Plaintiffs' choice of forum in the context of a motion to *sever and transfer*, the nature of the pre-severance case cannot be ignored.

As for Wyoming's argument concerning Plaintiffs' ties to Montana, Plaintiff Gallatin Wildlife Association is based in Montana, and if *any* plaintiff is "at home" in the forum in which suit was brought, that choice of forum is entitled to substantial weight. *See Bogard v. TikTok Inc.*, 725

F.Supp.3d 897, 907 (S.D. Ind. 2024) (“Plaintiffs chose Indiana, where [one plaintiff] resides, which reflects Plaintiffs’ joint decision as to their preferred forum. Thus, the court declines to accord less weight to Plaintiffs’ choice of forum on the basis that only [one plaintiff] resides there.”).<sup>9</sup> Indeed, “[t]he plaintiff’s choice deserves even ‘greater deference’” than usual “when he has chosen his home forum, which is presumed to be convenient.” *Seymour v. Contreras*, CV-22-73-GF-BMM, 2022 WL 22899890, at \*3 (D. Mont. Nov. 2, 2022) (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981)).

Wyoming also claims that there is “no risk of inconsistent judgments that would justify deference” to Plaintiffs’ choice of forum. Wyoming Br. at 20–21. Wyoming is wrong. Plaintiffs’ challenge to the Wyoming RMPA includes a challenge to the NEPA analysis that underlies *all* the RMPAs. Splitting up this case could easily lead to two rulings reaching opposite conclusions about the legality of the same NEPA analysis. That risk is particularly acute because the District of Wyoming and this district are in

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<sup>9</sup> As a factual matter, Wyoming is wrong about the extent of the other Plaintiffs’ ties to Montana. Plaintiffs Center for Biological Diversity, Western Watersheds Project, and WildEarth Guardians have offices in Montana, Compl. ¶¶ 17, 22, 23; and Plaintiffs Great Old Broads for Wilderness and Sierra Club have Montana chapters, *id.* ¶¶ 19, 21.

different circuits and thus apply different bodies of NEPA caselaw. *See Angotti v. Rexam, Inc.*, No. C 05-5264 CW, 2006 WL 335284, at \*4 (N.D. Cal. Feb. 14, 2006) (considering the “risk of inconsistent rulings, based on the law of two different circuits” when deciding whether to transfer a case).

In addition, splitting up this case into two pieces would raise a serious risk of inconsistent resolutions of issues common to all the RMPAs. For instance, this Court could decide that BLM erred by failing to prioritize the designation of ACECs in the Montana RMPA (and the other RMPAs), while the District of Wyoming could reach the opposite conclusion with respect to the Wyoming RMPA. *See* Compl. ¶¶ 198–205 (Plaintiffs’ ACEC claim). Although technically these would not constitute conflicting *judgments*, these decisions would nonetheless be in conflict with one another, because BLM made the same error with respect to ACECs for both the Montana and Wyoming RMPAs. *See id.* ¶¶ 201–02, 204 (describing how BLM erred).

Wyoming is asking this Court to break this case into two pieces and litigate those pieces in separate fora. This would obviously be inconvenient for Plaintiffs and would upset Plaintiffs’ choice of forum, which weighs against severance and transfer.

**B. Splitting Up This Case Does Not Serve the Interest of Justice.**

Wyoming spends a large portion of its brief discussing its interests in the Wyoming RMPA and how those interests support severance and transfer. Wyoming Br. at 21–25. Wyoming invokes the principle that the local interest “in having local controversies decided in a home forum,” is among the factors that goes into the analysis of the “interest of justice.”

Wyoming misunderstands the law: the local interests that matter for purposes of the “interest of justice” analysis are not *Wyoming’s* interests, but rather “the interest[s] of *non-party citizens* in adjudicating the case” in Wyoming. *In re Clarke*, 94 F.4th 502, 511 (5th Cir. 2024) (emphasis in original). In analyzing the “local interests” factor, courts “do not consider the parties’ connections to the venue because the local interest analysis is a public interest factor.” *Id.* The interests that Wyoming cites are *Wyoming’s* own interests as a sovereign or proprietor, but those are not the “local interests” that count for purposes of the analysis, because Wyoming is a party. *See* Wyoming Br. at 22–23 (discussing “Wyoming’s interest in ensuring the federal plans continue to follow” Wyoming’s preferred management approach); *id.* at 24–25 (discussing Wyoming’s “interest due

to the considerable time and money it has invested in sage-grouse conservation efforts”).

Even putting that aside, Wyoming overstates the degree to which the issues involved in Plaintiffs’ challenge to the Wyoming RMPA present a “local controversy.” Yes, the Wyoming RMPA is its own agency action, and it is not identical to the other RMPAs. But this case is, for the most part, about common errors that Federal Defendants made with respect to all the challenged RMPAs. *See supra* pp. 5–6. Given that, the dispute over the legality of the Wyoming RMPA is not really a “local controversy” at all. As Judge Winmill of the District of Idaho reasoned when rejecting Wyoming’s attempt to sever and transfer challenges to earlier sage-grouse plans, “the interests of justice and the interests of local concerns” do not justify severance and transfer where “Plaintiffs allege that the challenged Plans suffer from common failings that did not result entirely from errors of local Field Offices.” *Schneider I*, 2019 WL 3877281, at \*1–2.

What is conspicuously missing from Wyoming’s argument about the “interest of justice” is any explanation of how severance and transfer

would serve the interest of judicial economy.<sup>10</sup> Judicial economy is the most important factor in assessing whether the “interest of justice” warrants severance and transfer. *See In re Rolls Royce Corp.*, 775 F.3d at 681 (“While judicial economy is not the sole consideration for a district court facing a severance-and-transfer motion, it retains a cardinal role.”). Here, severance and transfer would disserve the interest of judicial economy by forcing “courts to render duplicative – and perhaps conflicting – decisions.” *Schneider I*, 2019 WL 3877281, at \*2. Because of the commonalities across the RMPAs, severance and transfer would “require[] two courts to engage in the work of one, prompting serious concerns about duplication of judicial resources, the consistency of rulings, and litigation costs.” *Bruck*, 30 F.4th at 429. Wyoming has failed to show that there is any benefit in terms of convenience to the parties or some other relevant factor to warrant this reduction in judicial efficiency.

### C. The “First-to File Rule” Is Inapplicable Here.

Wyoming’s final argument in favor of severance and transfer leans heavily on *WEA v. DOI*. Wyoming argues that, because *WEA v. DOI* was

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<sup>10</sup> Wyoming does discuss judicial economy in the course of arguing that the “first-to-file rule” should apply. That argument is addressed below.

filed before this case, the “first-to-file rule” counsels in favor of severance and transfer of Plaintiffs’ Wyoming RMPA challenge to the District of Wyoming. Wyoming Br. at 25–29.

This case and *WEA v. DOI* are not sufficiently similar to one another for the first-to-file rule to apply. Moreover, *WEA v. DOI* is a transparent piece of anticipatory litigation meant to preempt Plaintiffs’ choice of forum, and applying the first-to-file rule based on it would reward gamesmanship.

1. *The Parties and Issues in This Case Are Not the Same as in WEA v. DOI.*

The “first-to-file rule” is not really a rule, but rather “a judge-made doctrine” that “guides [a] district court’s exercise of discretion in handling related cases.” *In re Bozic*, 888 F.3d 1048, 1054 (9th Cir. 2018). Generally speaking, the first-to-file rule “may be invoked ‘when a complaint involving the same parties and issues has already been filed in another district.’” *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991) (quoting *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir.1982)).

Here, *WEA v. DOI* and this case do not involve the same parties or the same issues. As to parties, none of the Plaintiffs in this case are parties in *WEA v. DOI*. As to issues, *WEA v. DOI* involves the relatively narrow

issue of the Wyoming RMPA's consistency with Wyoming's state sage-grouse management plans, Ex. 1, whereas this case involves a broad range of issues and six RMPAs. Even considering only the Wyoming RMPA, this case is substantially broader than *WEA v. DOI*, involving issues of BLM's compliance with a host of statutory and regulatory duties. *See, e.g.*, Compl. ¶¶ 151–65 (alleging that BLM violated the “sustained-yield” and “no undue degradation” requirements of FLPMA), ¶¶ 166–97 (alleging that BLM violated the APA in several distinct ways), ¶¶ 225–28 (NEPA claim).

The situation here is similar to that in *Montana Environmental Information Center v. Bernhardt*, CV 19-130-BLG-SPW-TJC, 2020 WL 4346604 (D. Mont. July 29, 2020). There, a group of conservation organizations challenged an agency's approval of a mining plan modification. *Id.* at \*1. The mine operator then intervened and sought a transfer to the District of Columbia, where it had already filed a challenge to the same decision. *Id.* at \*1–2. The mine operator's D.C. case was narrow – it alleged that the agency had wrongly excluded 74 acres from mining – whereas the environmental plaintiffs “broadly challenge[d] the entire” agency decision. *Id.* at \*4.

For reasons that are equally applicable here, Magistrate Judge Cavan concluded that the first-to-file rule did not apply. First, the two cases

“involve[d] substantially different parties” because the plaintiffs in the Montana case were not parties to the D.C. case and because several agency officials named as defendants in the Montana case were not parties to the D.C. case. *Id.* at \*3. Second, the Montana case involved a “much broader” set of issues than the D.C. case and the plaintiffs in the two cases sought different relief. *Id.* at \*4. That last point – the difference in relief sought – is especially salient here, because WEA and Wyoming seek only declaratory relief in *WEA v. DOI*, whereas Plaintiffs seek vacatur in this case. Compare Ex. 1 ¶¶ 1–3, with Compl. Prayer for Relief.

Because this case and *WEA v. DOI* do not have a sufficient overlap of parties or issues, the first-to-file rule does not apply.

2. *WEA v. DOI Is Improper Anticipatory Litigation.*

Another reason the first-to-file rule should not be applied here is that *WEA v. DOI* is an obvious piece of anticipatory litigation. “The circumstances under which an exception to the first-to-file rule typically will be made include bad faith, anticipatory suit, and forum shopping.” *Alltrade*, 946 F.2d at 628 (citations omitted). As the name suggests, an anticipatory suit is one in which a party “race[s] to the courthouse door in an attempt to preempt a later suit in another forum.” *Callaway Golf Co. v.*

*Corp. Trade Inc.*, No. 09cv384 L(POR), 2010 WL 743829, at \*3 (S.D. Cal. Mar. 1, 2010). Applying the first-to-file rule in such circumstances incentivizes gamesmanship. *See id.*

It is obvious from the timing of the complaint, the relief sought, and the case's lack of merit that *WEA v. DOI* was filed in a "race to the courthouse door to preempt a later suit in another forum." *Callaway Golf*, 2010 WL 743829, at \*3. The case was filed *the day after* the Wyoming RMPA was signed. The only relief sought is a declaratory judgment, which is a "red flag" indicating a potential anticipatory suit. *Mont. Merch., Inc. v. Dave's Killer Bread, Inc.*, CV 17-26-GF-BMM, 2017 WL 2536530, at \*3 (D. Mont. June 9, 2017). And the case – especially the initial complaint, which can only be described as frivolous – is so plainly defective that it is difficult to see it as anything other than a clumsy attempt to get *something* on file before anyone else.

This last point merits more discussion given how heavily both Wyoming and BLM rely on *WEA v. DOI*. WEA filed the complaint in *WEA v. DOI* the day after the Wyoming RMPA was finalized, bringing a single claim seeking a declaratory judgment that BLM *complied* with its legal obligation to ensure consistency between the Wyoming RMPA and

Wyoming's state sage-grouse management plans. Ex. 2 ¶¶ 15, 76–79. The complaint asserted that a declaratory judgment would prevent or redress injury to WEA by “reduc[ing] litigation[] and alleviat[ing] ongoing business hardship caused by unresolved legal and regulatory uncertainty.” *Id.* ¶ 77; *see also id.* ¶ 67 (similar).

Simply put, one cannot sue a federal agency seeking a declaratory judgment that the agency acted lawfully. For one thing, such a judgment would not actually resolve legal uncertainty – and thus would not redress any injury flowing from such uncertainty – because nonparties would not be bound by the judgment. *E.g., Haaland v. Brackeen*, 599 U.S. 255, 293–94 (2023). In addition, any injury from legal uncertainty is caused by third parties challenging the agency action, not by any “allegedly unlawful conduct” of the agency, which is alleged to have acted lawfully. *California v. Texas*, 593 U.S. 659, 669 (2021) (quotation marks omitted). There is also a lack of adversity between the parties, and therefore no “case or controversy,” because “both litigants desire precisely the same result.” *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47, 48 (1971) (per curiam). To top it all off, there is no cause of action: the APA provides a cause of action for plaintiffs who want a court to “hold unlawful ... agency

action,” 5 U.S.C. § 706(2), not for plaintiffs who want a court to put a stamp of approval on agency action, and the Declaratory Judgment Act does not itself provide a cause of action, *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878 (9th Cir. 2022) (per curiam).

In short, the complaint filed by WEA one day after the Wyoming RMPA was approved was not just meritless, but frivolous. The amended complaint, which adds Wyoming as a plaintiff and includes a second claim concerning the proper interpretation of certain provisions of the Wyoming RMPA, is hardly any better.<sup>11</sup> See Ex. 1. The amended complaint does not allege that there is a present or likely dispute between Wyoming and BLM about the proper interpretation of the Wyoming RMPA; it says only that certain provisions in the RMPA “may conflict with the State’s sage-grouse executive order, depending on how they are interpreted.” *Id.* ¶ 3. Thus, there is no injury-in-fact for the second claim. See *Missouri v. Yellen*, 39 F.4th 1063, 1070 (8th Cir. 2022) (“Missouri asks us to declare, in the abstract, what a statute does not mean. It asks us to enjoin a hypothetical interpretation .... That would be a quintessential advisory opinion.”). There

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<sup>11</sup> Notably, the amended complaint in *WEA v. DOI* was filed *after* the complaint in this case.

is also no cause of action, because there is no allegation that the Wyoming RMPA violates the law.

Ultimately, it is for the District of Wyoming, not this Court, to adjudicate *WEA v. DOI*. But this Court can consider whether *WEA v. DOI* is so plainly meritless as to support the inference that it was filed as an anticipatory lawsuit. *Cf. Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 795 (6th Cir. 2016) (collecting cases in which courts considered potential jurisdictional defects in earlier-filed cases in other districts when deciding whether to transfer or dismiss later-filed cases). Allowing what is effectively a “sham complaint” to be invoked in support of the first-to-file rule creates perverse incentives, so courts must ask whether a first-filed case is a sham or is otherwise jurisdictionally defective. *Cf. Campbell v. Redding Med. Ctr.*, 421 F.3d 817, 823–25 (9th Cir. 2005) (rejecting an absolute first-to-file bar for the False Claims Act because such a bar would allow sham complaints to preclude meritorious complaints).

But one need not read between the lines to conclude that *WEA v. DOI* is an anticipatory suit, because the complaint itself admits it. The amended complaint discusses at length the “regulatory uncertainty” caused by challenges to sage-grouse plans, Ex. 1 ¶¶ 16–25, and states that

“[d]eclaratory relief is appropriate and necessary to ... promote regulatory certainty[ and] reduce duplicative and piecemeal litigation,” *id.* ¶ 71. *See also id.* ¶ 81 (similar). Of course, at the time *WEA v. DOI* was filed, there was no other litigation concerning the 2025 Wyoming RMPA – which had been signed *the previous day* – and *WEA v. DOI* cannot resolve any uncertainty about the legality of pre-2025 sage-grouse plans. Thus, the complaint’s statements that declaratory relief is needed to reduce litigation and resolve legal uncertainty refer to *anticipated future* litigation over the 2025 RMPA (like this case) and the legal uncertainty potentially created by that litigation. The complaint all but announces that WEA foresaw the Wyoming RMPA would be challenged and “race[d] to the courthouse door in an attempt to preempt a later suit in another forum.” *Callaway Golf*, 2010 WL 743829, at \*3.

*WEA v. DOI* is a fumbling piece of anticipatory litigation, and applying the first-to-file rule based on it would reward gamesmanship.

#### **IV. Transfer of This Entire Case to the District Wyoming Does Not Serve the Interests of Convenience or Justice.**

Unlike Wyoming, BLM wants the Court to transfer this *entire case* to the District of Wyoming. BLM Br. at 1. To obtain that relief, BLM “must make a strong showing of inconvenience to warrant upsetting [Plaintiffs’]

choice of forum.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986), *superseded by statute on other grounds as recognized in Byler v. Deluxe Corp.*, 222 F.Supp.3d 885, 903 (S.D. Cal. 2016). BLM’s attempt to make that showing – which relies heavily on the premise that *WEA v. DOI* is a potentially meritorious case rather than a sham – falls flat.

**A. There Is a Strong Presumption in Favor of This District.**

As an initial matter, BLM understates its burden. In deciding whether to transfer this case under § 1404(a), this Court must conduct an “individualized ... consideration of convenience and fairness” in which it “weigh[s] in the balance a number of case-specific factors.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (citation and quotation marks omitted). But there is a thumb on the scale: “[c]ourts ordinarily must employ a ‘strong presumption in favor of the plaintiff’s choice of forum, which may be overcome only when the private and public interest factors clearly point toward trial in the alternative forum.’” *Seymour*, 2022 WL 22899890, at \*3 (quoting *Piper Aircraft*, 454 U.S. at 255). “The plaintiff’s choice deserves even ‘greater deference’ when he has chosen his home forum, which is presumed to be convenient.” *Id.* (quoting *Piper Aircraft*, 454 U.S. at 255).

BLM argues that this presumption should not apply here because “Plaintiffs’ claims have only a tenuous connection to” Montana and because Plaintiffs do not have extensive ties to Montana. BLM Br. at 23–25. But there is nothing “tenuous” about the connection between this district and Plaintiffs’ claims, which include a challenge to the Montana RMPA that governs management of more than 5.5 million acres of land in this state. As for the connection between Plaintiffs and Montana, Plaintiff Gallatin Wildlife Association resides here, and other Plaintiffs have offices and staff in this district. *See supra* n. 9. The residence of Gallatin Wildlife Association is by itself sufficient to make Plaintiffs “at home” here. *See Bogard*, 725 F.Supp.3d at 907 (rejecting the argument that less weight should be given to the plaintiffs’ chosen forum because only one of the plaintiffs resided in the forum).

Plaintiffs have not chosen a forum far away from the action; they have chosen a forum right in the middle of it, a forum with strong ties to the dispute and to Plaintiffs themselves. *Cf. Schneider II*, 2019 WL 4863483, at \*2 (“It certainly would be ‘unwise’ to set venue in a court that had nothing to do with the controversy, such as a court in Maine resolving a dispute over a Wyoming lease. ... But [that] concern does not apply here

where this Court is not distant from the geographical location of the dispute but is actually right in the middle of it.”). Plaintiffs’ choice is entitled to great weight in the analysis. *Seymour*, 2022 WL 22899890, at \*3.

**B. BLM Does Not Even Attempt to Show That Transfer Would Serve the Interest of Convenience.**

BLM does not even attempt to show that it would be more convenient for the parties to litigate this case in Wyoming; rather, BLM contends that “[t]he convenience factor does not strongly favor one forum over another.” BLM Br. at 25. This ignores that Plaintiff Gallatin Wildlife Association is at home in this forum, whereas *no* Plaintiff is at home in Wyoming. When a plaintiff chooses their home forum, it “is presumed to be convenient.” *Seymour*, 2022 WL 22899890, at \*3. The fact that the other Plaintiffs reside elsewhere does not change this. *See Bogard*, 725 F.Supp.3d at 907.

**C. It Does Not Serve the Interest of Justice to Deprive Plaintiffs of Their Choice of Forum Due to Another Party’s Gamesmanship.**

BLM spends most of its brief discussing the “interest of justice” factor. The “interest of justice” inquiry focuses on “systemic integrity and fairness.” *Stewart Org.*, 487 U.S. at 30. Transferring this case to the District

of Wyoming would not advance either “systemic integrity” or “fairness,” especially if the basis of that transfer is *WEA v. DOI*.

1. *Transfer Would Not Conserve Judicial Resources or Avoid Conflicting Judgments.*

BLM argues that, because of *WEA v. DOI*, transferring this case to the District of Wyoming would “serve judicial economy” and “avoid the risk of conflicting judgments.” BLM Br. at 12–17. BLM’s claims regarding “judicial economy” and “the risk of conflicting judgments” are overblown, if not entirely illusory. More fundamentally, *WEA v. DOI* is a clear case of anticipatory litigation designed to preempt Plaintiffs’ choice of forum, *supra* pp. 25–30, and it does not serve the interest of justice to reward such gamesmanship.

BLM first complains that, absent a transfer, it will need to “file the [administrative] record in two different courts.” BLM Br. at 14. *Filing* the administrative record is not the hard part – *compiling* the record is. And because the administrative record for *WEA v. DOI* is a subset of the record for this case, BLM will compile the former in the course of compiling the latter, as it more or less admits. *See* BLM Br. at 14.

BLM next argues that, absent a transfer, it will be forced to “draft and file summary judgment briefs in two different courts.” BLM Br. at 14.

Although it is fascinating to imagine what BLM’s summary-judgment response brief might look like in *WEA v. DOI*—perhaps “we agree that we did not violate the law” and then a signature block?—the world will never find out, because *WEA v. DOI* is beset by a host of threshold defects that doom it at the pleading stage. *See supra* pp. 26–28. Even if BLM (inexplicably) does not move to dismiss *WEA v. DOI*, most of the case’s obvious defects are jurisdictional, so the court “ha[s] a duty to consider them *sua sponte*.” *Wilkins v. United States*, 598 U.S. 152, 157 (2023). The only briefs BLM is likely to draft in *WEA v. DOI* will involve jurisdictional and other threshold issues far removed from the merits issues that will occupy the briefs in this case, so transferring this case would not reduce duplicative briefing or conserve judicial resources.

Finally, BLM argues that “the interest of justice strongly favors a single court hearing similar claims ... to avoid the risk of conflicting judgments.” BLM Br. at 15–17. But even if *WEA v. DOI* presented a case or controversy that could result in a binding judgment, that judgment would involve only narrow claims concerning the Wyoming RMPA. *See supra* pp. 26–27. The judgment would not conflict with a judgment from this Court

that the Wyoming RMPA violates the law in other ways, nor would it conflict with any judgment concerning the other RMPAs.

But the more fundamental problem with this “conflicting judgments” argument is that there is no risk of *WEA v. DOI* resulting in a judgment given the many defects with the case. In assessing the “risk” – *i.e.*, the probability – of conflicting judgments, those obvious defects are highly relevant.

Transferring this case to the District of Wyoming because of the existence of *WEA v. DOI* would reward gamesmanship and would not advance the cause of “systemic integrity and fairness” that is the focus of the “interest of justice” inquiry. *Stewart Org.*, 487 U.S. at 30.

2. *The “Local Interests” Factor Does Not Favor Transfer.*

BLM next argues that transfer of this case to the District of Wyoming is supported by the “local interests” factor, which considers the “local interest in having localized controversies decided at home.” *Piper Aircraft*, 454 U.S. at 241 n.6 (citation omitted). Of course, transferring this entire case to Wyoming would impair the local interests of the citizens of *Montana* in having the dispute over the Montana RMPA decided at home. BLM more

or less acknowledges this, but then argues that “the interests of Wyoming are demonstrably greater than those of other states.” BLM Br. at 17–22.

There are at least three problems with BLM’s arguments on this point. *First*, as discussed earlier, the “local interests” that matter are “the interest[s] of *non-party citizens* in adjudicating the case” in a forum. *In re Clarke*, 94 F.4th at 511 (emphasis in original). BLM focuses on the acreage of BLM-managed sage-grouse habitat in Wyoming compared to Montana. But just as “people, not land or trees or pastures, vote,” *Reynolds v. Sims*, 377 U.S. 533, 580 (1964), people, not acres of sage-grouse habitat, possess cognizable interests in having localized controversies decided at home. BLM has offered nothing to show that there is more of a local interest on the part of the *people* of Wyoming than on the part of the people of Montana in having the legality of their respective RMPA adjudicated at home.

*Second*, BLM focuses on the interests of Wyoming as a sovereign or proprietor, rather than the interests of the *people of Wyoming*, in having the legality of the Wyoming RMPA decided at home. *See* BLM Br. at 19–21 (discussing Wyoming’s interests, as reflected in its participation in litigation). Wyoming is a party to this case and, in analyzing the “local

interests” factor, courts “do not consider the parties’ connections to the venue because the local interest analysis is a public interest factor.” *In re Clarke*, 94 F.4th at 511; *see also supra* pp. 20–21 (discussing this same flaw with Wyoming’s argument regarding “local interests”).

*Third*, as discussed above, *see supra* p. 21, this case does not really present a “local controversy.” Rather, this case is largely about alleged legal deficiencies common to all the challenged RMPAs.<sup>12</sup>

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BLM comes nowhere close to making the “strong showing of inconvenience” that would “warrant upsetting [Plaintiffs’] choice of forum.” *Decker Coal Co.*, 805 F.2d at 843. Its motion should be denied.

## CONCLUSION

The Court should deny the venue motions filed by BLM and by the State of Wyoming.

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<sup>12</sup> BLM’s argument regarding “court congestion” merits little response. *See* BLM Br. at 22–23. The argument rests entirely on statistics of annual case filings in the District of Montana versus the District of Wyoming, but these kinds of statistics are not very helpful in assessing court congestion. *See In re Clarke*, 94 F.4th at 509–10 (discussing how docket statistics such as median time to trial and weighted cases pending “carry little weight” in determining court congestion).

Respectfully submitted on this 12th day of June, 2026,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I hereby certify that this response contains no more than 7,980 words, excluding the caption, certificate of compliance, tables of contents and authorities, and exhibit index. This word count complies with the Court's order of June 2, 2026. *See* ECF No. 27.

Date: June 12, 2026

/s/ Andrew R. Missel  
Andrew R. Missel (*pro hac vice*)

**EXHIBIT INDEX**

**Exhibit 1: Amended Complaint in *W. Energy Alliance v. U.S. Dep't of the Interior*, No. 1:25-cv-00299-KHR (D. Wyoming)**

**Exhibit 2: Complaint in *W. Energy Alliance v. U.S. Dep't of the Interior*, No. 1:25-cv-00299-KHR (D. Wyoming)**