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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEIGHBORS AGAINST BISON SLAUGHTER, et al.,	)	Case No. 1:19-cv-3144-BAH
Plaintiffs;	)	**MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER VENUE**
v.	)	
THE NATIONAL PARK SERVICE, et al.,	)	
Defendants.	)	Administrative Procedure Act Case, 5 U.S.C. §§ 701 *et seq*.

INTRODUCTION

This Court should transfer this action—including Plaintiffs' pending Motion for a Preliminary Injunction/TRO, ECF No. 4—to the United States District Court for the District of Montana. Plaintiffs Bonnie Lynn and Neighbors Against Bison Slaughter are Montana residents. Their alleged injuries are to their landholdings in Montana and their personal safety in Montana. Not only does the hunting they seek to enjoin occur annually in Montana, the State of Montana has management authority over bison outside of National Park Service ("NPS") land under the

Interagency Bison Management Plan ("IBMP"). The hunters, American Indian tribes, and state interests that will be harmed by the emergency relief they seek are all in Montana.

Despite strong local ties to Montana, Plaintiffs opted to bring their late-arriving action in the District of Columbia. Plaintiffs have not demonstrated any meaningful ties to this District. None exists. Plainly, Montana is the appropriate venue for resolution of this entire case, including Plaintiffs' request for emergency relief. In the present circumstances, interests of justice counsel that this Montana-focused suit be heard in the District of Montana.

BACKGROUND

Plaintiffs seek to enjoin an annual bison hunt on Forest Service land in Montana as authorized by the State of Montana under the IBMP. Plaintiffs allege that Defendants "failed to consider public safety" when they authorized the hunt by signing the December 31, 2018 Operating Procedures for the IBMP Memorandum ("2019 Winter Plan"). Compl. ¶¶ 4-5*; see also* Pls.' Motion for a TRO and a Prelim. Inj., P. & A. in Supp., Ex. D, ECF No. 4-12 ("*2019 Winter Plan*"). Specifically, Plaintiffs argue that by allowing the hunt to move forward under the 2019 Winter Plan, Defendants have abdicated various statutory duties. Compl. ¶¶ 6-8. Plaintiffs claim the NPS has acted arbitrarily and capriciously in carrying out its statutory duty to manage Yellowstone bison. Compl. ¶¶ 55-56. They allege that the U.S. Forest Service has violated duties under its land management statutes by allowing the hunt on National Forest System land in Montana without adequately analyzing hunting's effects on private property owners in the area. Compl. ¶¶ 61-63. Finally, Plaintiffs argue that Defendants have violated NEPA by approving the 2019 Winter Plan without preparing a supplemental EIS for the IBMP. Compl. ¶ 71.

a. The IBMP

Yellowstone bison are managed under the IBMP. *See* Pls.' Motion for a TRO and a Prelim. Inj., P. & A. in Supp., Ex. H, ECF No. 4-16 ("*IBMP Record of Decision ("ROD")*"). The IBMP was developed as part of a court-mediated settlement between federal and state agencies in 2000, and its membership has since expanded to include various state, federal, and tribal stakeholders. *W. Watersheds Project. v. Salazar*, 766 F. Supp. 2d 1095, 1105 (D. Mont. 2011), *aff'd in part*, 494 F. App'x 740 (9th Cir. 2012). Long-term management of bison has been complicated by two interrelated factors: (1) bison roam across different jurisdictions and (2) federal and state agencies have different goals and responsibilities as they relate to the bison. As the ROD noted:

> When bison leave Yellowstone National Park and enter Montana, the management responsibilities and authorities change. Within the boundaries of Yellowstone National Park, the Secretary of the Interior has exclusive jurisdiction to manage the park's natural resources, including the bison. Outside the park the State of Montana has the management authority over the bison. When the bison are on national forest system lands, the U.S. Forest Service has responsibilities under federal laws to provide habitat for the bison, a native species. Federal law requires APHIS to control and prevent the spread of communicable and contagious diseases of livestock. Because of these mandates, the agencies recognize that a coordinated, cooperative management regime would provide consistency and reliability to the process.

IBMP ROD 6. Both the Final Environmental Impact Statement ("FEIS") and ROD explicitly provide for "adaptive management" changes to the IBMP, meaning that the agencies are authorized to agree to adjust elements of the IBMP based on research and new information. *IBMP ROD* 32.

After the IBMP was finalized, the Montana Legislature authorized bison hunting outside of Yellowstone National Park.[1] *See, e.g.*, MONT. CODE. ANN. §§ 87-1-216(2)(c) (Wild

[1] Congress has specifically prohibited hunting on NPS land. 16 U.S.C. § 26.

Buffalo or bison as species in need of management – policy – department duties) and 87-2-730 (Special Wild Buffalo License – Regulation). Forest Service personnel "are responsible for enforcing the regulations that apply on National Forest System lands . . . ," but "[Montana Fish, Wildlife, and Parks] MFWP has primary responsibility regarding the public bison hunt, in cooperation with [Montana Department of Livestock] MDOL, as directed by state statute." *2019 Winter Plan* 3. Further, six treaty tribes participate in the annual hunt and "have reserved aboriginal hunting rights on open and unclaimed lands found within the state of Montana." *Id.* The Confederated Salish and Kootenai Tribes and the Nez Perce Tribe are voting members of the IBMP.

Through an adaptive management process, the IBMP members "agreed that the harvest of bison will be a preferred method for managing their abundance and distribution to the extent possible." *2019 Winter Plan* 6. Accordingly, "[h]unters from at least six different tribes and the State of Montana participate in the annual harvest of bison within the Greater Yellowstone Area." *Id.* The IBMP allows the annual hunt as a method of population management, but the State and the Tribes control the permitting schemes for participating hunters. In 2017, participating tribes "developed and signed a Memorandum of Agreement for coordinating bison harvest in the Beattie Gulch area near Gardiner, Montana, including common hunt protocols, safety provisions, regulations, and enforcement." *Id.*

b. The 2019 Winter Operating Plan

Plaintiffs' APA challenges appear to center on the 2019 Winter Plan, a memo dated December 31, 2018 and approved by the IBMP partners to address and update adaptive management practices for the coming year. *See 2019 Winter Plan.* Yearly updates are prescribed by the IBMP. *IBMP ROD* 42. The 2019 Winter Plan updates procedures for

implementing the IBMP "consistent with the analyses of impacts included in the federal and state Final Environmental Impact Statements for the IBMP that were completed in 2000." *2019 Winter Plan* 3. As described above, the 2019 Winter Plan includes updated operating procedures for bison harvest by tribes and state-permitted hunters and requires the tribes to document and report bison harvest numbers to the IBMP. *Id.* at 7.

The 2019 Winter Plan was the product of IBMP member deliberations, including several public meetings in the Yellowstone region. Interagency Bison Management Plan, *IBMP Meeting Material Archive*, http://ibmp.info/meetings.php (last visited Oct. 25, 2019). It was approved by all of the members of the IBMP, including: representatives of the Confederated Salish and Kootenai Tribes and the Nez Perce Tribe, the InterTribal Buffalo Council, the MBOL, the MFWP, the Montana State Veterinarian, the Superintendent of Yellowstone National Park, the Forest Supervisor of the Custer Gallatin National Forest in Montana, and the USDA APHIS District Director of Veterinary Services. *2019 Winter Plan* 1. Of the named individual Defendants sued here in their official capacity, only Yellowstone National Park Superintendent Cameron Sholly was a signatory to the 2019 Winter Plan.

c. Plaintiffs' Claims in This Lawsuit

Plaintiffs' APA challenges to the 2019 Winter Plan seem to center on their claim that throughout the broader IBMP planning process (of which the 2019 Winter Plan is the most recent approved document) Defendants did not adequately consider the bison hunt's potential impact on local landowners, neighbors, and visitors near Beattie Gulch, Montana. For example, Plaintiffs claim that "the bison hunt evicts property owners, neighbors, and visitors to Beattie Gulch, and risks their lives[,]" Compl. ¶ 43, and that the Defendants have "foisted the dangerous and concentrated impacts of bison hunting in this tiny geographic area [in Montana] onto a small

group of residents and neighbors." Compl. ¶ 53. Plaintiffs also claim that they face risks of physical injury from hunting in Montana.

STANDARD FOR VENUE TRANSFER

The Court has authority to transfer this case under 28 U.S.C. § 1404(a), which provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The statute facilitates transfer to a more appropriate federal forum, *see Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964), affording district courts wide discretion "according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Hawksbill Sea Turtle v. FEMA*, 939 F. Supp. 1, 3 (D.D.C. 1996) (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 27 (1988)).

In exercising its discretion, a court must first determine whether the action could have been brought in the transferee district. *See S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 86 (D.D.C. 2004). If so, a court then considers "convenience of parties and witnesses" and "the interest of justice" through a balancing of private and public interests. *See Valley Cmty. Pres. Comm'n v. Mineta*, 231 F. Supp. 2d 23, 44-45 (D.D.C. 2002) (quoting 28 U.S.C. § 1404(a)). The private interest considerations include: (1) the plaintiffs' choice of forum; (2) the defendants' choice of forum; (3) where the claims arose; (4) convenience of the parties; (5) convenience of the witnesses; and (6) ease of access to sources of proof. *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 16 (D.D.C. 1996). The public interest considerations include: (1) "the local interest in deciding local controversies at home;" (2) the transferee district's familiarity with the governing law; and (3) congestion of the transferor and transferee districts. *Id.*

A plaintiff's choice of forum is normally entitled to deference, and the party seeking transfer bears the burden of showing that transfer is appropriate. *Id.* at 16-17. That deference and burden, however, are significantly diminished where the plaintiff's chosen forum has only an attenuated connection to the controversy as compared to the defendant's chosen forum. *DeLoach v. Phillip Morris Cos.*, 132 F. Supp. 2d 22, 24-25 (D.D.C. 2000). Put differently, the showing a defendant must make "is lessened when the 'plaintiff[s'] choice [of forum] has no factual nexus to the case'" and the defendant's chosen forum has substantial ties to the plaintiff and subject matter of the suit. *Trout Unlimited*, 944 F. Supp. at 17 (quoting *Harris v. Republic Airlines, Inc.*, 699 F. Supp. 961, 963 (D.D.C. 1988)).

Further, courts in this District "are instructed to consider motions to transfer venue favorably." *Pres. Soc'y of Charleston v. U.S. Army Corps of Engr's*, 893 F. Supp. 2d 49, 53 (D.D.C. 2012) (citing *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993)). Venue in this District is "not appropriate" where "the only real connection" to the District of Columbia is that "a federal agency headquartered here . . . is charged with generally regulating and overseeing the [administrative] process" that is being challenged. *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 98 n.2 (D.D.C. 2013) (internal quotation marks and citation omitted).

ARGUMENT

Transfer to Montana is warranted: this case could have been properly brought in Montana, and the balance of public and private interests weighs heavily in favor of transfer. There are strong local interests in Montana that will be harmed by the relief Plaintiffs seek, including any interim relief before the final resolution of this case. And any emergency is of Plaintiffs' own making. This Court should transfer this entire case—including Plaintiffs' motion for emergency relief—to the District of Montana.

I. Plaintiffs Could Have Brought This Action in the District of Montana, where the Bison Hunt Takes Place, where Plaintiffs Reside, and where State and Local Interests are Strongest.

Venue for civil actions in which a defendant is an officer of the United States, or an agency of the United States, is controlled by 28 U.S.C. § 1391(e). Section 1391(e) provides that venue is proper in any judicial district in which:

> (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.

28 U.S.C. § 1391(e)(1).

Plaintiffs seek to enjoin bison hunting in Montana. *See* Compl. ¶ 72. Plaintiffs Neighbors Against Bison Slaughter and Bonnie Lynn are residents of Montana. *See* Compl. ¶¶ 15-17. The harms and impacts alleged in the Complaint are entirely within Montana. *See* Compl. ¶¶ 42-53. The real property at issue in this case is in Montana. *See* Compl. ¶ 15. In addition, various entities located in or near Montana have strong interests in the outcome of this case: the State of Montana administers the hunt for state-permittees; the tribal members of the IBMP are actively involved in the administration and monitoring of the hunt in furtherance of their treaty rights; and all signatories to the 2019 Winter Plan are based in Montana or neighboring jurisdictions. *See 2019 Winter Plan* 3. There can be no serious argument that this case could not have been brought in Montana. 28 U.S.C. § 1404(a).

II. The Interests of Justice Weigh in Favor of Transfer to the District of Montana, Where the Beattie Gulch Bison Hunt Takes Place.

The private and public factors that courts are to consider in deciding a motion to transfer demonstrate that the District of Montana is the far better forum for Plaintiffs' suit.

A. The Private Factors Weigh in Favor of Transfer

The private interest factors relevant to a motion to transfer are: "1) the plaintiff's choice of forum; 2) the defendant's choice of forum; 3) whether the claim arose elsewhere; 4) the convenience of the parties; 5) the convenience of the witnesses . . . ; and 6) the ease of access to sources of proof." *Bader v. Air Line Pilots Ass'n, Int'l*, 63 F. Supp. 3d 29, 34 (D.D.C. 2014) (citation omitted); *Trout Unlimited*, 944 F. Supp. at 16. Each of these factors either weighs in favor of transfer or is neutral.

i. Plaintiffs' Choice of Forum is Not Entitled to Deference because the District of Columbia Has No Substantial Ties to the Subject Matter of this Action.

"A plaintiff seeking to sue federal defendants in Washington, D.C. must demonstrate some substantial personalized involvement by a member of the Washington, D.C. agency before the court can conclude that there are meaningful ties to the District of Columbia." *W. Watersheds*, 942 F. Supp. 2d at 98 (internal quotation marks, alterations, and citations omitted). Plaintiffs have not shown such involvement.

The Complaint does not allege that any Defendant in this forum was substantially involved in the challenged decisions. Rather, the Complaint repeatedly points to the 2019 Winter Plan as the source of Plaintiffs' alleged injuries. *See* Compl. ¶¶ 4, 59, 63, 68. The individual Defendants sued in their official capacity who are headquartered in DC—Secretary of the Interior David Bernhardt and Secretary of the Department of Agriculture Sonny Perdue—were not signatories to the 2019 Winter Plan nor directly involved in the development of the 2019 Winter Plan or the IBMP. *See 2019 Winter Plan* 1. The sole named Defendant who was directly involved in approving the 2019 Winter Plan, Superintendent of Yellowstone National Park Cameron Sholly, is headquartered in Yellowstone National Park, Wyoming. *Id.*

The actions and events challenged in this case—hunting on the Custer Gallatin National Forest—do not have any ties to the District of Columbia. Therefore, the weight afforded to Plaintiff's selection of this forum should be "greatly diminished." *Armco Steel Co., L.p. v. CSX Corp.*, 790 F. Supp. 311, 323 (D.D.C. 1991); *see also, e.g., W. Watersheds*, 942 F. Supp. 2d at 99 (finding case had no meaningful tie to this forum where complaint alleged "no specific involvement or meaningful role by [agency] personnel in Washington in either crafting or implementing the [challenged] Determinations").

ii. Plaintiffs' Choice of Forum is Not Entitled to Deference Because Plaintiffs Have Strong Ties to the Proposed Transferee District.

Further, while courts generally afford deference to a plaintiff's choice of venue, little deference is afforded where the plaintiff has substantial ties to the proposed transferee district. *See, e.g., Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 54 (D.D.C. 2012) ("*PSC*") (noting less deference is accorded when "Defendants seek transfer to the plaintiffs' resident forum" (citing *Airport Working Grp. of Orange Cty., Inc. v. U.S. Dep't of Def.*, 226 F. Supp. 2d 227, 230 (D.D.C. 2002) (internal quotation marks omitted))); *see also Stockbridge-Munsee Community v. U.S.*, 593 F. Supp. 2d 44, 47 (D.D.C. 2009); *Citizen Advocates for Responsible Expansion v. Dole*, 561 F. Supp. 1238, 1239 (D.D.C. 1983). Here, all Plaintiffs are residents of Montana. Compl. ¶¶ 15-17. Accordingly, very little weight is due to Plaintiffs' choice of forum.

iii. Defendants' Choice of Forum is Entitled to More Deference Because There Are Legitimate Reasons for Preferring to Litigate the Case in the Transferee District.

In contrast, a defendant's choice of venue should be accorded great weight where, as here, the defendant has legitimate reasons for preferring to litigate the case in the transferee district. *See Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303, 313 (D.D.C. 2015) (citing

Nat'l Wildlife Fed'n v. Harvey, 437 F. Supp. 2d 42, 48 (D.D.C. 2006)). This is particularly so in APA cases—where the alleged harm from the decision would be "felt most directly in the transferee district." *Gulf Restoration Network*, 87 F. Supp. 3d at 313 (citing *Harvey*, 437 F. Supp. 2d at 46-47). Here, the fact that this controversy addresses a decision made in Montana related to natural resources in Montana that will impact private landowners, hunters, and state and tribal interests in Montana strongly supports Defendants' choice of the District of Montana.

iv. Plaintiffs' Claims Arose in Montana.

In determining where a claim arose, "courts generally focus on where the decisionmaking process occurred." *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) (citation omitted). As illustrated above, Plaintiffs' claims stem from the 2019 Winter Plan and the overarching IBMP, which are rooted in years of planning and negotiations in Montana and the surrounding region. The federal IBMP ROD "is the culmination of a planning process in excess of ten years regarding the management of bison that leave Yellowstone National Park and enter the Gallatin National Forest and private lands within the State of Montana." *IBMP ROD* 3. And, just as IBMP negotiation process was firmly rooted in Montana, the 2019 Winter Plan was developed after considering input from a series of local public meetings held in Montana. This action is premised entirely on the annual bison hunting season in Montana, and the decisions authorizing the hunt itself were made through a collaborative process by IBMP members in the region. Plaintiffs' claims arose in Montana, and this factor weighs in favor of transfer.

v. The District of Montana is a More Convenient Venue than the District of Columbia for the Parties.

Plaintiffs cannot reasonably claim that this District would be more convenient for the parties in this case than the District of Montana. Both Plaintiffs reside in Gardiner, Montana. The only named individual Defendant with direct involvement in the challenged agency action is

headquartered in Yellowstone National Park, Wyoming—closer to the District of Montana than the District of Columbia.

Further, the state and tribal members of the IBMP—who have not been named as parties but have strong interests in the outcome of this case and may seek to participate in the litigation—are in Montana.[2] The State of Montana, the Nez Perce Tribe, and the Confederated Salish and Kootenai are members of the IBMP and at least as involved in the authorization and administration of the bison hunt as Defendants. The six treaty tribes that coordinate and regulate their members' participation in the hunt retain aboriginal hunting rights within Montana that intersect with their participation in sanctioned hunts on National Forest System Land. *See 2019 Winter Plan* 6-7. This factor weighs heavily in favor of transfer to the District of Montana.

vi. The District of Montana is a More Convenient Venue for Potential Witnesses and Provides Easier Access to Any Other Potential Sources of Proof.

Because this case arises under the narrow judicial review provisions of the APA, 5 U.S.C. §§ 701-706, the reviewing court will confine its review to the Administrative Records the agencies will lodge at a future date. So, as in most APA cases, the "convenience of witnesses" factor likely "has less relevance." *S. Utah Wilderness All. v. Norton*, No. Civ. A. 01-2518(CKK), 2002 WL 32617198, at *4 (D.D.C. June 28, 2002). Here, however, Plaintiffs have already filed a motion for Preliminary Injunction and Temporary Restraining Order, ECF No. 4. As a result, witness testimony may be necessary. Plaintiffs' allegations of injury and irreparable harm are premised entirely on the bison hunt's alleged harm to Ms. Lynn, her family members, and other "property owners, neighbors, and visitors" to areas nearby Beattie Gulch in Montana. *See* Pls.' P. & A. in Supp. of Mot. for TRO & Prelim. Inj. 36, ECF No. 4-1 ("Pls.' Mem."). In sum, any

[2] In fact, the State of Montana has informed counsel for the United States that it will likely soon seek to participate in this litigation in some fashion.

and all individuals that would be potentially affected or harmed by the bison hunt—and who may be called as witnesses at any hearing on Plaintiffs' Motion for a Preliminary Injunction or Temporary Restraining Order—reside in Montana. *See* Pls.' Mem. 37-38; *see also* Exs. S (ECF No. 4-27), Y (ECF No. 4-36). Any witnesses to rebut Plaintiffs' showing of alleged harm also reside in Montana. To the extent this factor is afforded any weight, it favors transfer to the District of Montana.

B. The Public Factors Weigh Strongly in Favor of Transfer

The public interest factors include: "(1) the transferee forum's familiarity with the governing laws and the pendency of related actions in that forum; (2) the relative congestion of the calendars of the potential transferee and transferor courts; and (3) the local interest in deciding local controversies at home." *Bader*, 63 F. Supp. 3d at 36 (citation omitted). Like the private factors, the public factors are either neutral or weigh in favor of transfer.

The first public interest factor is either neutral or weighs in favor of transfer. Both Districts are equally familiar with the federal law at issue in this case. *See Harvey*, 437 F. Supp. 2d at 48-49. The *Cottonwood Environmental Center v. Bernhardt* case referenced by Plaintiffs, however, involves a common nucleus of fact: hunting in the same part of Montana as authorized by the IBMP. *See Cottonwood Envtl. Ctr. v. Bernhardt*, *appeal docketed*, No. 19-35150 (9th Cir. Aug. 2, 2019.). In fact, *Cottonwood* provides a useful illustration of why the District of Montana is a better venue for litigating issues related to the IBMP and bison hunts in Montana. In *Cottonwood*, the plaintiff brought suit in the District of Montana from the start, acknowledging that venue was proper because the plaintiff was located there and "a substantial part of the events or omission giving rise to the claims[,]" namely, the Blackfeet Tribe's notice of intent to hunt near the Gardiner area pursuant to the IBMP, occurred within the District of Montana. *See*

Cottonwood Envtl. Law Ctr. v. Zinke, No. 18-cv-12, Compl. 4, ECF No. 1. In *Cottonwood*, the plaintiff named various State of Montana agencies and officials in addition to the federal Defendants, and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and the InterTribal Buffalo Council intervened as defendants. *See Cottonwood*, ECF No. 24. That this similar litigation with similar interested parties has been litigated in the District of Montana weighs in favor of transfer under the public factors.

The second public interest factor is largely neutral. According to the Administrative Office of the U.S. Courts' most recent report, this District has more pending cases (5,091) than the District of Montana (1,030), but it has more judgeships (15) than does Montana (3). *See Administrative Office of the U.S. Courts, Federal Court Management Statistics—Profiles, https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2018/12/31-1 (June 30, 2018).* As a result, with respect to pending cases per judgeship, the District of Montana (ranked 78th) and this District (ranked 79th) are similarly congested. The relative caseload of the Courts is neutral.

Finally, the "arguably most important" of the public interest factors is "the local interest in deciding local controversies at home." *PSC*, 893 F. Supp. 2d at 57; *accord, e.g., Ala. Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 116 (D.D.C. 2015). "This rationale applies to controversies involving federal decisions that impact the local environment, and to controversies requiring judicial review of an administrative decision." *Pool*, 942 F. Supp. 2d at 102 (quoting *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 70 (D.D.C. 2003)). As described in detail above, the residents of Montana and other relevant entities in the region have a "compelling interest . . . in having this localized controversy decided at home" because Montana, as well as its hunters and tribes, have a significant interest in this suit. *Trout Unlimited*, 944 F. Supp. at 19.

Montana and its citizens will be most affected by the decision in this lawsuit, as its wildlife, its bison hunt permitting system, its citizens' private lands, and its unique ecosystems are inextricably linked in this case and are necessarily of "great importance" to the State and tribes with connection to the Yellowstone basin region. *See Trout Unlimited*, 944 F. Supp. at 20. Further, Plaintiffs brought this suit as a result of concern that the Beattie Gulch bison hunt in Montana "endanger[s] hunters, local property owners, residents, and guests" in Montana. Compl. ¶ 1. In short, this case "should be resolved in the forum where the people 'whose rights and interests are in fact most vitally affected by the suit . . .'" reside. *Adams v. Bell*, 711 F.2d 161, 167 n. 34 (D.C. Cir. 1983).

Under these circumstances, the Court should recognize the compelling interest in having this case resolved in the forum where the challenged actions are located—a well-recognized guidepost in this Court. *See, e.g.*, *Harvey*, 437 F. Supp. 2d at 46-47, 49-50 (transferring case involving federal management of Florida lake); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26-27 (D.D.C. 2002) (transferring case involving sale of federal land in Kansas); *Trout Unlimited*, 944 F. Supp. at 19-20 (transferring case involving federal management of Colorado reservoir); *SUWA*, 315 F. Supp. 2d at 88-89 (transferring to Utah a case challenging decision to allow sale of oil and gas leases on Utah lands managed by the Bureau of Land Management); *Flowers*, 276 F. Supp. 2d at 71 (granting motion to transfer case involving Florida Everglades in part because of the "depth and extent of Florida's interest").

C. Any Emergency is a Product of Plaintiffs' Own Delay

Plaintiffs cannot argue this action should not be transferred because it is in need of emergency relief; Plaintiffs' long delay in filing suit until the challenged activity is imminent undercuts any justification that the more appropriate venue should be ignored due to exigency.

The supposed emergency posture is entirely of Plaintiffs' own making. This Court should transfer the entire case now, including Plaintiffs' late-arriving motion for emergency relief. An expedited transfer will allow the Montana federal district court to adjudicate the merits of Plaintiffs' motion for emergency relief—which would have direct effects on citizens of Montana, on hunting conducted in Montana, on land use management in Montana, and on the rights of federally recognized tribes in Montana and the State of Montana itself.

Plaintiffs focus on the 2019 Winter Operations Plan, a document dated December 31, 2018. *2019 Winter Plan* 1. Plaintiffs concede that the activities to which they object have been going on for "years." Pls.' Mem. 15. Yet Plaintiffs chose to wait until now—with the annual hunting season right around the corner—to bring their case. This delay counsels against finding any emergency warranting the relief Plaintiffs seek. *See Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87, 90 (D.D.C. 2014) ("An unexcused delay in seeking extraordinary injunctive relief may be grounds for denial because such delay implies a lack of urgency and irreparable harm." (quoting *Newdow v. Bush*, 355 F. Supp. 2d 265, 292 (D.D.C. 2005)). This principle is well established in this Circuit.

For example, in *Fund for Animals*, the Circuit Court reasoned that its decision to deny the plaintiffs' motion for preliminary injunction was "bolstered" by the plaintiffs' 44-day delay in bringing suit. *Fund for Animals v. Frizzell*, 530 F.2d 982, 987-88 (D.C. Cir. 1975). The plaintiffs in *Fund for Animals* challenged the close of a comment period for proposed regulations, but they knew of the comment period deadline 44 days before bringing suit and requesting preliminary injunctive relief. *Id.* The Circuit Court found this delay "inexcusable." *Id.* at 987. In *Open Top Sightseeing*, this Court determined that a delay of 36 days in bringing a preliminary injunction motion, paired with a request to push back the Court's consideration,

"demonstrated that any alleged harm lacks the urgency and immediacy required to grant the extraordinary relief the plaintiffs[] request." *Open Top Sightseeing*, 48 F. Supp. 3d at 91.

Here, Plaintiffs could have brought this suit months ago; Plaintiffs could have challenged the 2019 Winter Operations Plan any time after that document was published on December 31, 2018. In fact, many aspects of Plaintiffs' challenge are years old, and several of Plaintiffs' claims are so stale as to be time-barred. *See* Pls.' Mem. 19-20 (arguing that Plaintiffs enjoy a "likelihood of success" on a challenge to the analysis of hunting impacts in the IBMP ROD, which was completed in 2000); *Chenault v. McHugh*, 968 F. Supp. 2d 268, 272 (D.D.C. 2013) (explaining that actions seeking review of final agency actions are subject to a six-year statute of limitations that is "jurisdictional . . . and as such must be strictly construed."). Rather than bringing their suit when these issues could have been litigated on a normal briefing schedule, Plaintiffs have delayed some ten months, submitting over 800 pages of material for this Court's review at the eleventh hour.

Courts in this District have transferred cases to the appropriate forum despite pending motions for emergency relief. *See, e.g.*, *Triumvirate, LLC v. Zinke*, No. 18-cv-00511-RCL, 2018 WL 6179513 (D.D.C. April 3, 2018) (transferring case to the District of Alaska while a motion for a preliminary injunction was pending where the plaintiff was a resident of Alaska and there were no meaningful ties between the plaintiff's claims and the District of Columbia). This Court should do so here, and transfer this entire action—including Plaintiffs' motion for a preliminary injunction—to the District of Montana.

CONCLUSION

The District of Columbia has no significant connection to the subject matter of this suit. In contrast, the District of Montana is where the challenged decision-making occurred, where the

federal and state natural resources at issue are located, and where the resolution of this litigation will be most keenly felt. Therefore, for all of the reasons stated above, immediate transfer to the District of Montana is appropriate. *Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d. 10, 13 (D.D.C. 2000).

Respectfully submitted this 25th day of October, 2019,

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