IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STAND UP FOR CALIFORNIA!, *et al*. Plaintiffs, v. UNITED STATES DEPARTMENT OF THE INTERIOR, *et al*. Defendants.	Case No. 1:12-cv-2039-BAH Consolidated with: Civil Action No. 1:12-cv-02071-BAH
PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, Plaintiff, v. UNITED STATES OF AMERICA, *et al*. Defendants.	

PROPOSED INTERVENOR-DEFENDANT'S RESPONSE
TO FEDERAL DEFENDANTS' MOTION TO TRANSFER VENUE

Proposed Intervenor-Defendant the North Fork Rancheria of Mono Indians (North Fork or the Tribe) believes this litigation lacks substantive merit and has been brought principally for the strategic purpose of hampering North Fork's ability to move forward with an economic development project that has received careful scrutiny for many years; makes good sense; and enjoys wide local, state, and federal support. North Fork's priority is, accordingly, to have the

litigation move forward swiftly to a fair conclusion, which the Tribe is confident will result in sustaining the federal administrative determination that is challenged by plaintiffs' complaints. The Tribe is prepared to defend that determination in any forum, but it sees no compelling reason why these cases should not move forward promptly in the court in which they were brought.

ARGUMENT

A transfer of venue may be ordered "[f]or the convenience of the parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). This Court has said that a party urging transfer bears "a heavy burden." *Southern Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 86 (D.D.C. 2004). "[A] court may not transfer a case from a plaintiff's chosen forum simply because another forum, in the court's view, may be superior to that chosen by the plaintiff." *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 11 (D.D.C. 2007) (internal quotation marks and citation omitted). A moving party must demonstrate that transfer is warranted by "considerations of convenience and the interest of justice weigh in favor of transfer[.]" *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 65 (D.D.C. 2003). And the plaintiff's choice of forum "should rarely [be] disturb[ed] … unless the balance is strongly in favor of the defendant." *Paradyne Corp. v. DOJ*, 647 F. Supp. 1228, 1231 (D.D.C. 1986).

In striking this balance, courts weigh several "public" and "private" interest factors. *See, e.g., Gipson v. Wells Fargo & Co.*, 563 F. Supp. 2d 149, 156-157 (D.D.C. 2008). The public factors include each court's familiarity with the governing laws, how quickly each court is likely to resolve the litigation, and the local interest in the litigation. The private factors include the plaintiff's choice of forum, the defendant's choice of forum, where the claims arose, and the convenience of the parties. *Id*. In the end, courts must decide whether transfer would serve the purpose of the statute: "to prevent the waste of time, energy and money and to protect litigants,

witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks and citation omitted). In the Tribe's view, these considerations do not warrant transfer here.

A. Public Interest Factors

1. Governing laws

These consolidated cases present only questions of federal law, centered on issues of administrative law of the kind that this Court routinely addresses. This Court is as well-equipped as the Eastern District of California to address these matters.

2. Speed

Likely speed of resolution—the factor of greatest interest to the Tribe—weighs against transfer here. The Court has already set an appropriately expeditious schedule for hearing and resolving the initial question presented, which is the Stand Up plaintiffs' motion for a preliminary injunction to delay implementation of a long-awaited decision by the Secretary of the Interior—formally supported by the Governor of California—to take land into trust on behalf of the Tribe. Briefing on that motion is to be completed by January 22, and this Court has scheduled a hearing for January 25. To the Tribe, it seems likely that any transfer of the case to a new court could only delay resolution of the case.

3. Local interest

The Federal Defendants' primary argument in favor of transfer is that the land at issue is located in the Eastern District of California. This factor can certainly weigh in favor of transfer in some circumstances, but in the Tribe's view it is not compelling here. This is not a case in which, for example, the proponent of a project that faces widespread local opposition has brought a case in some distant forum, seeking to make it difficult for opponents to monitor or

participate in the proceedings. The Tribe's proposed project has been widely discussed in the local community over many years and has widespread *support*, well documented in the administrative record, from local bodies such as the Madera County Board of Supervisors, the Madera District Chamber of Commerce, the Madera County Workforce Investment Board, and the Governor of California, who has concurred in the Secretary's decision (challenged here) that the Tribe's project "would not be detrimental to the surrounding community," 25 U.S.C. § 2719(b)(1)(A).[1] The plaintiffs here have an interest in participating in the proceedings, but they have chosen to litigate in this Court. And while the Tribe's local supporters also may have some abstract interest in local proceedings, in the Tribe's judgment their overall interest in the project's success, like the Tribe's, is best served by litigating this case to a rapid conclusion. Under these circumstances, the "local interest" factor does not seem to the Tribe to weigh very heavily against the delay and disruption to the proceedings that any transfer would be likely to entail. *Cf., e.g., Sierra Club v. Van Antwerp*, 523 F. Supp. 2d at 13 (In light of "the national character of the statutes at issue in this case and the fact that the issue here is whether federal agencies complied with federal law, the Court is unable to say that the localized Florida impact of this suit sufficiently weighs in favor of transfer.").

[1] Bureau of Indian Affairs, Record of Decision, Secretarial Determination Pursuant to the Indian Gaming Regulatory Act for the 305.49-Acre Madera Site in Madera County, California, for the North Fork Rancheria of Mono Indians, at 79 (Sept. 1, 2011); Amended and Restated Request for a Secretarial Two-Part Determination Submitted by the North Fork Rancheria of Mono Indians of California (April 7, 2009), at 56-59; Office of Governor Edmund G. Brown, Governor Brown Concurs with U.S. Department of the Interior Decision, Signs Compact with North Fork Rancheria (Aug. 31, 2012), available at http://gov.ca.gov/news.php?id=17700.

B. Private Interest Factors

1. Plaintiffs' choice of forum

This Court has indicated that a plaintiff's choice to litigate in this district is owed deference so long as "the connection of [its] suit to the District of Columbia is not attenuated." *Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000). Here, the plaintiffs in each of the consolidated cases have chosen to sue in this district, and their claims are directed against federal officials who are located here and who presumably acted here in making the final agency decisions that the plaintiffs challenge. The decisions at issue here were made by the Department of the Interior's Assistant Secretary for Indian Affairs, under authority delegated to him by the Secretary. *See* Bureau of Indian Affairs, Record of Decision, Secretarial Determination Pursuant to the Indian Gaming Regulatory Act for the 305.49-Acre Madera Site in Madera County, California, for the North Fork Rancheria of Mono Indians, at 79; Bureau of Indian Affairs, Record of Decision, Trust Acquisition of the 305.49-acre Madera site in Madera County, California, for the North Fork Rancheria of Mono Indians (Nov. 26, 2012). The decision to approve the Tribe's gaming proposal under the Indian Gaming Regulatory Act (IGRA), in particular, is significant enough to have required specific statutory findings, committed by Congress to the Secretary's sound discretion. 25 U.S.C. § 2791(b)(1)(A). In other cases, this Court has denied motions to transfer venue where a challenged agency action took place here, even if it affected land located elsewhere. *See, e.g.*, *Greater Yellowstone Coalition v. Bosworth*, 180 F. Supp. 2d 124, 129-130 (D.D.C. 2001).[2] Here, similarly, "the plaintiffs' counts focus on

[2] *See also Akiachak Native Cmty. v. Dep't of Interior*, 502 F. Supp. 2d 64, 67-68 (D.D.C. 2007) (deferring to plaintiffs' choice to litigate in the District of Columbia even though plaintiffs were all Indian tribes based in Alaska, because decisions at issue were made in Washington); *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 177-78 (D.D.C. 2009) (denying motion to transfer in case involving waterways in Arizona, because challenged decision was

interpretation of federal statutes, and … federal government officials in the District of Columbia were involved in the decision[s]" at issue. *Id.* at 128-29. The Tribe sees no compelling reason for denying the plaintiffs the forum of their choice.

2. Convenience of the parties

The Federal Defendants do not contend that transfer to the Eastern District of California would be more convenient for them, or that any consideration of witness convenience or the location of necessary records or other factual materials weighs in favor of transfer. The case will be litigated on the administrative record, and all the Federal Defendants are headquartered here—as is the Department of Justice. The plaintiffs have all chosen to litigate here, so the forum is presumably convenient for them. And as to North Fork, after the Stand Up plaintiffs filed suit in this district, the Tribe engaged Washington counsel to represent it. Litigating the case in Fresno would be significantly less convenient for the Tribe's counsel, and the Tribe would prefer to avoid having to pay for transportation, lodging, and potentially additional local counsel in order to litigate the case.

3. Delay

As noted above, the Tribe's paramount interest is in resolving this litigation, which the Tribe believes to be meritless, as quickly and efficiently as possible, so that the Tribe can move forward with its project and realize the associated self-sufficiency and self-determination benefits contemplated by IGRA. Developing the land will provide the Tribe (and the local community) with employment and other economic opportunities, and the revenue generated will

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made in Washington); *Concerned Rosebud Area Citizens v. Babbitt*, 34 F. Supp. 2d 775, 776 (D.D.C. 1999) (denying motion to transfer in case involving South Dakota factory on tribal property, because "the issue in this case is solely whether the federal government complied with federal law, and that is the kind of question that is routinely and properly answered in this District and Circuit. Moreover, in this case, a swift answer is in order.").

allow the Tribe to become self-sufficient and to fund its governmental operations and much needed social, housing, educational, health, and other services for its approximately 1,900 tribal citizens. *See* 25 U.S.C. § 2719(b)(1)(A). Any additional, unnecessary delay in achieving these benefits—including through any administrative delay associated with a transfer—would impose distinct and irremediable hardships on the Tribe.

C. Transfer Would Not Facilitate Any Consolidation of Related Cases

The Federal Defendants suggested in the Joint Status Report (ECF 14) that transferring venue might allow "all related issues [to] be decided in the same venue." This Court's order directing briefing on the issue quoted that language from the government's submission. In the end, however, the government's transfer motion does not rely on such a consolidation rationale for transfer here, and the Tribe is not aware of one. In that respect this case is quite different from *United Auburn Indian Cmty. of the Auburn Rancheria v. Salazar*, No. 12-1988, slip op. (D.D.C. Jan. 4, 2013), which Judge Walton recently transferred to the Eastern District of California.[3] There, a primary reason for transfer was that "a related case challenging the Secretary's actions with respect to the Yuba Site [was] currently pending in the Eastern District of California." *Id.* at 3 (citing *Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm. v. Salazar*, No. 2:12-3021 (E.D. Cal.)). Because the cases pending here and in the Eastern District were related, the Court concluded that there was a compelling reason to transfer the case pending here to the Eastern District so that the two could be consolidated and addressed together. *Id.* Here, in contrast, there is no related case pending in the Eastern District. The only related

[3] *Citizens for a Better Way v. United States Department of the Interior*, No. 12-2052 (D.D.C. December 20, 2012), mentioned in the Joint Status Report, has been consolidated with the *United Auburn* case. *United Auburn* has been designated as the lead case.

case was also filed here, and the two cases have been consolidated.[4] The Tribe sees no good reason not to move forward quickly to adjudicate them here.

CONCLUSION

The motion to transfer venue should be denied.

Dated: January 11, 2013

Respectfully submitted,

/s/ Christopher E. Babbitt

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[4] To the extent that there is any resemblance between these cases and the *United Auburn* cases (which involve a determination under the same provision of IGRA, but otherwise involve completely different facts), that resemblance would not support transfer. As noted in point A.3, the Federal Defendants' principal argument for transfer is that these cases should be heard in the area where the land at issue is located. That factor would support transfer only if these cases would then be heard by an Eastern District judge sitting in Fresno. The *United Auburn* case was transferred so that it could be heard with the *Cachil Dehe* case, which is pending in Sacramento (and involves a project near Yuba City, even further north of the Madera site at issue here).

CERTIFICATE OF SERVICE

I certify that on January 11, 2013, the foregoing Proposed Intervenor-Defendant's Response to Federal Defendants' Motion to Transfer Venue was filed electronically via the Court's ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: January 11, 2013

Respectfully submitted,

/s/ Christopher E. Babbitt

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