

1 JOHN C. CRUDEN
Acting Assistant Attorney General
2 Environment & Natural Resources Division

3 LUTHER L. HAJEK, D.C. Bar No. 467742
United States Department of Justice
4 Environment and Natural Resources Division
Natural Resources Section
5 Ben Franklin Station, P.O. Box 663
Washington, DC 20044-0663
6 Tel: (202) 305-0492
Fax: (202) 305-0274
7 E-mail: luke.hajek@usdoj.gov

8 DAVID GLAZER
United States Department of Justice
9 Environment and Natural Resources Division
Natural Resources Section
10 301 Howard Street
San Francisco, CA 94105
11 Tel: (415) 744-6491
Fax: (415) 744-6476
12 E-mail: david.glazer@usdoj.gov

13 Attorneys for Defendants

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 SIERRA CLUB, INC., MINNESOTA)
18 CENTER FOR ENVIRONMENTAL)
ADVOCACY, NATIONAL WILDLIFE)
19 FEDERATION, and INDIGENOUS)
ENVIRONMENTAL NETWORK,)

20 Plaintiffs,)

21 v.)

22 UNITED STATES DEPARTMENT OF)
23 STATE, HILLARY CLINTON, in her)
official capacity as Secretary of State,)
24 JAMES STEINBERG, in his official)
capacity as Deputy Secretary of State,)
25 and the UNITED STATES ARMY)
CORPS OF ENGINEERS,)

26 Defendants.)
27)
28)

No. 3:09-cv-04086-SI

**DEFENDANTS' NOTICE OF MOTION AND
MOTION TO TRANSFER VENUE AND
MEMORANDUM IN SUPPORT**

Hearing Date: September 25, 2009

Time: 9:00 am

Hon. Susan Illston
U.S. District Judge

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INTRODUCTION

1
2 Defendants United States Department of State, Secretary of State Hillary Clinton, Deputy
3 Secretary of State James Steinberg (“State Department”), and the U.S. Army Corps of Engineers
4 (“Corps”) (collectively “Defendants”), pursuant to 28 U.S.C. § 1404(a), hereby move to transfer this
5 case to a more appropriate venue.^{1/} This case involves the construction of the Alberta Clipper
6 Pipeline, which will transport crude oil from Alberta, Canada to Superior, Wisconsin. The pipeline
7 would cross the international border between the United States and Canada at Neche, North Dakota.
8 Plaintiffs allege that the State Department’s issuance of a Presidential Permit to Enbridge Energy,
9 Limited Partnership (“Enbridge”), allowing Enbridge to construct pipeline facilities at the Canadian
10 border, violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*
11 Plaintiffs also allege that the permits for the pipeline issued by the Corps under the Clean Water Act
12 (“CWA”) and Rivers and Harbors Act violate NEPA. In addition, Plaintiffs have filed an
13 administrative appeal challenging the U.S. Forest Service’s issuance of a special use authorization
14 allowing the pipeline to be constructed in the Chippewa National Forest in Minnesota. Plaintiffs
15 oppose construction of the pipeline and allege that it will adversely affect wetlands, air quality, and
16 national forest lands along the pipeline route. The Presidential Permit was issued in the District of
17 Columbia, and the Corps permits were issued in Minneapolis, Minnesota. This case has no
18 connection to California except for the presence of the headquarters of one of the Plaintiffs.
19 Therefore, the Court should transfer the case to a U.S. District Court in North Dakota, Minnesota,
20 Wisconsin, or the District of Columbia. While Defendants have no preference among those
21 jurisdictions, Minnesota may be the most appropriate venue because the most substantial portion of
22 the pipeline will run through Minnesota and two of the Plaintiff groups are based in Minnesota.

FACTUAL AND PROCEDURAL BACKGROUND

23
24 On August 3, 2009, Deputy Secretary of State James Steinberg signed a Record of Decision
25 and National Interest Determination (“ROD”) and Presidential Permit, indicating the State

26
27 ^{1/} As this is not a motion pursuant to Fed. R. Civ. P. 12(b), the waiver rule in Fed. R. Civ. P.
28 12(h) is not implicated. Nevertheless, out of an abundance of caution, Defendants expressly
reserve their right to raise any and all defenses in a responsive pleading or motion.

1 Department's intention to issue a Presidential Permit to Enbridge. See ROD, Declaration of Luther
2 L. Hajek Exhibit ("Def. Ex.") 1; Presidential Permit, Def. Ex. 2. On August 20, 2009, pursuant to
3 Executive Order 13337, the State Department issued the Presidential Permit to Enbridge. See Notice
4 of Issuance of Presidential Permit, 74 Fed. Reg. 43212 (Aug. 26, 2009). The Presidential Permit
5 allows Enbridge to construct and maintain pipeline facilities at the international border between the
6 United States and Canada at Neche, North Dakota. Presidential Permit at 1.

7 The issuance of the Presidential Permit to Enbridge was the culmination of a more than two-
8 year process, which was initiated by the submission on May 15, 2007, of Enbridge's application for
9 a Presidential Permit for the Alberta Clipper Pipeline project. ROD at 5. Upon receipt of the
10 application, the State Department conducted an environmental review of Enbridge's application,
11 which included the preparation of an environmental impact statement under NEPA. Id. at 3, 12-24.
12 During the NEPA process, the State Department conducted a series of public scoping meetings in
13 North Dakota, Minnesota, and Wisconsin, accepted and reviewed public comments on its draft
14 environmental impact statement ("DEIS") and consulted with the Corps, U.S. Fish and Wildlife
15 Service, U.S. Environmental Protection Agency, and other federal and state agencies. Id. at 23. The
16 State Department notified the public of the completion of the final environmental impact statement
17 ("EIS") on June 8, 2009, and received additional comments through July 3, 2009. Id.

18 In addition to the Presidential Permit, the construction of the pipeline required numerous
19 other permits, licenses, approvals, and consultations from other federal and state agencies. See EIS
20 at 1-19 - 1-25, Def. Ex. 3. State agencies in North Dakota, Minnesota, and Wisconsin were an
21 integral part of that process. See id. at 1-22 - 1-25. Among the other federal permitting requirements
22 was the issuance of permits under Section 404 of the CWA and Section 10 of the Rivers and Harbors
23 Act. Id. at 1-19. The Corps conducted a review of Enbridge's permit applications following the
24 State Department's completion of the EIS. See Corps Record of Decision ("Corps ROD"), Def.
25 Ex. 4. The Corps issued a public notice regarding Enbridge's permit application for the Alberta
26 Clipper/Southern Lights Diluent pipelines on December 16, 2008, and a public notice regarding an
27 application for the Superior Terminal Pump Station on June 5, 2009. Id. at 1. The Corps' review
28

1 of the permit applications was based on the information and analysis in the EIS, additional
2 information submitted by Enbridge, and the Corps' analysis. Id. at 2. The Corps approved the
3 issuance of the permits on August 11, 2009. Id. at 32-33.

4 Another federal permit required for the Alberta Clipper Pipeline project was a special use
5 permit by the U.S. Forest Service allowing access to the Chippewa National Forest in Minnesota.
6 EIS at 1-20. On June 29, 2009, the U.S. Forest Service issued a record of decision to Enbridge
7 authorizing the amendment of Enbridge's existing Special Use Authorization and a Temporary
8 Construction Special Use Permit. See Forest Service ROD, Def. Ex. 5. The permits allow Enbridge
9 to construct, operate, and maintain 34 additional miles of the Alberta Clipper Pipeline and the
10 Southern Lights Diluent Pipeline through the Chippewa National Forest in Minnesota. See id. at 6-7,
11 13. On August 17, 2009, the Plaintiffs in this case filed an administrative appeal of the U.S. Forest
12 Service's decision to issue the permits. See Def. Ex. 6.

13 On September 3, 2009, Plaintiffs filed a Complaint challenging the issuance of the
14 Presidential Permit and the issuance of the CWA and Rivers and Harbors Act permits by the Corps.
15 Complaint ¶¶ 76-113 & Prayer for Relief (Docket No. 1). On the same date, Plaintiffs filed a motion
16 requesting a temporary restraining order. See Plaintiffs' Motion for Temporary Restraining Order
17 and Preliminary Injunction ("Motion for TRO") (Docket No. 8). On September 9, 2009, the Court
18 issued an order denying the motion for a temporary restraining order, deferring the motion for a
19 preliminary injunction, and ordering the parties to submit briefing on the issue of venue. (Docket
20 No. 35).

21 ARGUMENT

22 The State Department's decision to issue a Presidential Permit and the Corps' decision to
23 issue permits under the CWA and Rivers and Harbors Act are the result of a lengthy regulatory
24 process involving numerous federal and state agencies in North Dakota, Minnesota, Wisconsin, and
25 the District of Columbia. The EIS prepared by the State Department for the Presidential Permit and
26 the Corps' permitting documents extensively analyze the potential impacts of the pipeline project
27 on wetlands, national forest lands, air quality, and other resources in North Dakota, Minnesota, and
28

1 Wisconsin. Plaintiffs allege specific harms to their interest in the environment in those states in
2 support of their standing in this case. In addition, two of the Plaintiff organizations are based in
3 Minnesota and have been involved in the NEPA process and state approval processes in those states.
4 On balance, it appears that Minnesota would be the most appropriate venue. Therefore, we request
5 that the Court transfer the case to the U.S. District Court for the District of Minnesota or, in the
6 alternative, to a U.S. District Court in North Dakota, Wisconsin, or the District of Columbia.

7 **I. STANDARD FOR GRANTING A MOTION TO TRANSFER**

8 This Court has broad discretion under 28 U.S.C. § 1404(a) to transfer claims to another
9 judicial district. Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986);
10 Inherent.com v. Martindale-Hubbel, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006) (“A motion to
11 transfer venue lies within the broad discretion of the district court”). Section 1404(a) provides that
12 “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer
13 any civil action to any other district or division where it might have been brought.” 28 U.S.C.
14 § 1404(a). In determining whether an action should be transferred under section 1404(a), courts
15 employ a two-step analysis. First, a court considers whether the action could have originally been
16 brought in those districts to which the transfer is sought. Hatch v. Reliance Ins. Co., 758 F.2d 409,
17 414 (9th Cir 1985); Inherent.com, 420 F. Supp. 2d at 1098. Second, a court undertakes an
18 individualized, case-by-case consideration of convenience and fairness, taking into account the
19 convenience of the parties and the interests of justice. Jones v. GNC Franchising, Inc., 211 F.3d 495,
20 498 (9th Cir. 2000).

21 Under the first part of the analysis, a court should determine whether suit could have been
22 brought in the district to which transfer is sought. In cases where the federal government is a
23 defendant, a case may be brought in a judicial district where: “(1) a defendant in the action resides,
24 (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part
25 of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property
26 is involved in the action.” 28 U.S.C. § 1391(e); see also Van Dusen v. Barrack, 376 U.S. 612, 613
27 (1964). If the statutory requirement is satisfied, under the second part of the analysis, a court should
28

1 balance considerations of both convenience and the interest of justice in determining whether to
2 transfer the case to another district. See Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29 (1988); GNC
3 Franchising, 211 F.3d at 498; Ctr. for Biological Diversity v. Kempthorne, No. C-0-0894 EDL, 2007
4 WL 2023515 at *3 (N.D. Cal. July 12, 2007).

5 In the Ninth Circuit, the “convenience” factor typically requires that a court consider a
6 number of *private* interests, including: (1) the relative ease of access to sources of proof; (2) the cost
7 of obtaining witnesses; (3) the availability of compulsory process for attendance of unwilling non-
8 party witnesses; and (4) the possibility of a view of the premises, if a view would be appropriate to
9 the action. See Decker, 805 F.2d at 843; see also Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508
10 (1947). The “interest of justice” factor requires the consideration of several *public* interests,
11 including (1) the administrative difficulties flowing from court congestion; (2) the local interest in
12 having localized controversies decided at home; (3) the interest in having a case heard in the state
13 that is most familiar with the governing law; (4) the relevant public policy of the forum state; (5) the
14 desire to avoid multiple litigation from a single transaction and to promote consistency among court
15 rulings that affect the development of the case; and (6) the relative intensity in the two jurisdictions
16 of any local interests that the litigation might implicate. See Decker, 805 F.2d at 843; GNC
17 Franchising, 211 F.3d at 499; Bomanite Corp. v. Newlook Intern., Inc., No. 1:07-CV-01640-OWW-
18 SMS, 2008 WL 1767037, *8 (E.D. Cal. April 16, 2008); Arete Power, Inc. v. Beacon Power Corp.,
19 No. C 07-5167 WDB, 2008 WL 508477, *9 (N.D. Cal. Feb. 22, 2008).

20 Of the two statutory factors — convenience and the interests of justice — generally more
21 weight is given to the interests of justice. “The ‘interests of justice’ consideration is the most
22 important factor a court must consider, and may be decisive in a transfer motion even when all other
23 factors point the other way.” Gerin v. Aegon USA, Inc., No. C06-5407 SBA, 2007 WL 1033472,
24 *6 (N.D. Cal., Apr. 4, 2007) (quoting London and Hull Mar. Ins. Co. Ltd. v. Eagle Pac. Ins. Co.,
25 1996 WL 479013, *3 (N.D. Cal. Aug. 14 1996)); see also Wright, Miller & Cooper, Federal
26 Practice and Procedure: Jurisdiction 2d § 3854 (1986) (“Indeed, a number of federal courts have
27 considered this factor decisive — outweighing the other statutory factors — in ruling on a change
28

1 of venue motion even though the convenience of the parties and witnesses pointed in a different
2 direction.”).

3 Finally, while a plaintiff’s choice of venue is ordinarily entitled to some deference, “[i]f the
4 operative facts have not occurred within the forum of original selection and that forum has no
5 particular interest in the parties or the subject matter, the plaintiff’s choice is entitled only to minimal
6 consideration.” Pacific Car & Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968); see also
7 Ironworkers Local Union No. 68 v. Amgen, No. CV 07-5157 PSG (AGRx), 2008 WL 312309, *4
8 (C.D. Cal. Jan. 22, 2008).

9 **II. THE COURT SHOULD TRANSFER VENUE TO A MORE APPROPRIATE FORUM**

10 The Court should transfer the case to the U.S. District Court for the District of Minnesota or,
11 in the alternative, a U.S. District Court in North Dakota, Wisconsin, or the District of Columbia.
12 Venue would be proper in each of those districts and each has greater ties to the actions being
13 challenged in this case than this district. Moreover, the interest of justice and convenience of the
14 parties and the court both weigh in favor of a transfer.

15 **A. North Dakota, Minnesota, Wisconsin, and the District of Columbia Are Proper** 16 **Venues**

17 Under 28 U.S.C. § 1391(e), Plaintiffs could have brought suit in any one of four other
18 venues, any of which would have had greater ties to Plaintiffs’ claim than their chosen forum, the
19 U.S. District Court for the Northern District of California. The actions being challenged in this case
20 were the issuance of the Presidential Permit, which was issued by the State Department in
21 Washington, D.C., and the Corps’ decision to issue CWA and Rivers and Harbors Act Permits,
22 which was issued by the Corps’ St. Paul, Minnesota District. See Presidential Permit at 5, Def.
23 Ex. 2; Corps ROD at 1, 32-33, Def. Ex. 4. Therefore, venue would be proper in either the District
24 of Columbia or Minnesota. See 28 U.S.C. § 1391(e)(1)-(2). Furthermore, none of the proposed
25 pipeline facilities will be constructed anywhere near California. The border crossing facility
26 authorized by the State Department will be constructed in North Dakota, and the pipeline will be
27 constructed in North Dakota, Minnesota, and Wisconsin. See ROD at 5, Def. Ex. 1; EIS at 1-27

1 (map showing pipeline route), Def. Ex. 3. Public meetings during the NEPA process were held in
2 those states, and various state agencies in North Dakota, and Wisconsin were involved in issuing
3 various permits and approvals for the pipeline. See EIS at 1-19 - 1-25. Furthermore, the Corps'
4 permitting process was conducted in Minnesota. Corps ROD at 1, Def. Ex. 4. Therefore, venue
5 would be proper in either North Dakota, Minnesota, or Wisconsin because a substantial part of the
6 acts or omissions giving rise to Plaintiffs' claims occurred in those locations. See 28 U.S.C. §
7 1391(e)(2).

8 **B. The Interest of Justice Favors Transfer**

9 The interest of justice strongly favors transferring this case to U.S. District Court for the
10 District of Minnesota or another more appropriate forum. This case is brought pursuant to the
11 Administrative Procedure Act ("APA") and therefore will be resolved based on the administrative
12 record prepared by the agencies. In APA cases, the interest in resolving controversies in the regions
13 that will be most immediately affected by the litigation is an overriding interest. As articulated by
14 this Court in an APA case involving environmental issues:

15 [In APA cases], the factors set forth in the transfer statute, § 1404(a), and cases
16 applying it, such as Gerin, supra, are for the most part not implicated. There are no
17 witnesses to consider, and documentary evidence is as easily provided in one venue
18 as another, especially in this age of electronic transmission. The proposed transferee
19 courts are equally familiar with the environmental laws at issue Therefore, as
20 in most environmental cases, the issue of which federal district should adjudicate the
21 issues is determined by weighing a plaintiff's choice of forum against the competing
22 interest in "having localized controversies decided at home."

23 Ctr. for Biological Diversity, 2007 WL 2023515 at *5 (quoting Piper Aircraft v. Reyno, 454 U.S.
24 235, 241 n.6 (1981)). Based on the interest in having localized controversies decided locally, the
25 Court should transfer the case to Minnesota or another more appropriate forum.

26 The residents of North Dakota, Minnesota, and Wisconsin – through which the pipeline will
27 be constructed – have a compelling interest in seeing the controversies surrounding the pipeline
28 resolved in the region that will be impacted by a court decision regarding the pipeline. See Ctr. for
Biological Diversity, 2007 WL 2023515, at *5-*6. The interest of justice is promoted when a
localized controversy, such as this, is decided in the region that it impacts. See Piper, 454 U.S. at
241 n.6; Decker, 805 F.2d at 843. "In cases which touch the affairs of many persons, there is reason

1 for holding the trial in their view and reach rather than in remote parts of the country where they can
2 learn of it by report only.” Gulf Oil Corp. v. Gilbert, 330 U.S. at 501, 509 (1947); see also
3 Hawksbill Sea Turtle v. Fed. Emergency Mgmt. Agency, 939 F. Supp. 1, 3 n.5 (D.D.C. 1996) (“The
4 Court . . . notes the importance of allowing local citizens to attend and observe the proceedings of
5 this case.”). In matters of environmental law and land use decisions such as those involved here,
6 disputes “that are of great importance to the State . . . should be resolved in the forum where the
7 people ‘whose rights and interests are in fact most vitally affected by the suit’” are located. Trout
8 Unlimited v. Lohn, 994 F. Supp. 13, 19-20 (D.D.C. 1996) (quoting Adams v. Bell, 711 F.2d 161,
9 167 n.34 (D.C. Cir. 1983)); see also Southern Utah Wilderness Alliance v. Norton, 315 F. Supp.2d
10 82, 88 (D.D.C. 2004) (“Land is a localized interest because its management directly touches local
11 citizens.”); Sierra Club v. Flowers, 276 F. Supp. 2d 62, 70 (D.D.C. 2003). The Northern District of
12 California is not a convenient forum for those individuals with the greatest interest in viewing the
13 proceedings.

14 In this case, the activities challenged by Plaintiffs are taking place in North Dakota,
15 Minnesota, and Wisconsin, where the pipeline and related facilities are being built. A court decision
16 regarding the pipeline will have the most immediate effects on the residents of those states.
17 Individuals and businesses who are relying on the construction of the pipeline for economic benefit
18 will be directly affected. Similarly, residents of North Dakota, Minnesota, and Wisconsin who live
19 near the pipeline route and have concerns about the environmental impact of the project also would
20 be affected by the outcome of the case. Furthermore, should Plaintiffs subsequently seek to add a
21 claim challenging the U.S. Forest Service’s a special use authorization to allow construction of the
22 pipeline in the Chippewa National Forest, the litigation of that claim would most directly affect the
23 residents of Minnesota. See Def. Exs. 5, 6.

24 Plaintiffs’ own standing declarations demonstrate that the individuals most affected by this
25 lawsuit reside in the region where the pipeline is being constructed. All of Plaintiffs’ standing
26 declarants reside in Minnesota or Wisconsin and allege injuries from the construction and operation
27 of the pipeline or the expansion of refineries in those states. See Motion for TRO, Exs. 17-23
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1 (Docket Nos. 8-28 - 8-34). Plaintiffs' declarants allege, for example, that their interests in the
2 environment will be injured due to the clearing of forest land, risk of oil spills, and the effects of air
3 quality along the pipeline route and near refineries in the area. See, e.g., Norrgard Decl. ¶¶ 7-10
4 (Docket No. 8-28); Davis Decl. ¶¶ 5-10; Smith-Johnson Decl. ¶¶ 6-10. Thus, the individuals
5 representing the Plaintiffs, who are the only individuals with a stated personal interest in the case,
6 reside in Minnesota or Wisconsin. Accordingly, venue would be more appropriate in one of those
7 locations. See Kings County Economic Comm. Devel. Assoc. v. Hardin, 333 F. Supp. 1302, 1304
8 (N.D. Cal. 1971) (“[T]he general rule [is] that venue is confined to districts with some minimum
9 contact with the real parties in interest or the subject matter of the action.”).

10 Under the circumstances, therefore, a transfer of venue would serve the interest of justice and
11 should be granted. See, e.g., Tropos Networks, Inc. v. IPCO, LLC, No. C 05-04281 JSW, 2006 WL
12 1883316, at *4 (N.D. Cal. July 7, 2006) (granting transfer where challenged conduct occurred
13 primarily in transferee district, and party opposing transfer failed to identify members in the
14 transferor district that were subjected to the allegedly illegal act); Jarvis v. Marietta Corp., No. C 98-
15 4951 MJJ, 1999 WL 638231, at *7 (N.D. Cal. Aug. 12, 1999) (granting transfer where the actions
16 underlying the claim had occurred predominantly in New York and involved a New York
17 corporation and, accordingly, New York had “a greater local interest in the controversy at issue than
18 d[id] California”); Edwards v. Mallory, No. C-96-2049SI, 1996 WL 681973, *3 (N.D. Cal. Nov. 18,
19 1996) (Illston, J.) (transferring case where real property at issue and actions challenged occurred
20 outside the district).

21 Transfer is warranted because none of the actions challenged by Plaintiffs have any tie to the
22 Northern District of California. As this Court stated in Center for Biological Diversity:

23 The present case, at its core, involves the environmental impact of oil and gas
24 industry activities in the Beaufort Sea and adjacent coast of Northern Alaska.
25 Although Plaintiffs' arguments in favor of adjudicating this case in the Northern
26 District of California have some merit, they do not fully offset the countervailing
27 aspects to be considered by the Court such as the fact that none of the operative facts
28 occurred within this district and the challenged FWS decision authorizing ‘incidental
take’ of polar bears and Pacific walrus as part of industrial oil and gas exploration,
development, and production activities in Alaska is one in which Alaska and its
residents have a great interest.

1 Center for Biological Diversity, 2007 WL 2023515, at *6. Similarly, in this case, none of the
2 operative facts giving rise to this case occurred in the Northern District of California, and the
3 residents of North Dakota, Minnesota, and Wisconsin have a much more direct interest in the
4 outcome of the litigation than the residents of California.

5 Plaintiffs may argue that the interests at stake in this litigation are not just local issues, but
6 also national issues, such as climate change and the impacts of developing tar sands. That does not
7 change the fact that the outcome of the litigation will most directly affect the region in which the
8 pipeline will be located. Indeed, in Center for Biological Diversity, the plaintiffs argued that the
9 “considerable national interest” in polar bears and their habitat supported hearing the case in the
10 Northern District of California. 2007 WL 2023515, at *5. The Court rejected that argument, stating:
11 “widespread concern does not by itself resolve the question of which of the proposed federal forums
12 is the most appropriate.” Id. at *6; see also Southern Utah Wilderness Alliance, 315 F. Supp.2d at
13 88 (“Notwithstanding this national attention, the dispute remains focused on 21 parcels in Utah.”).
14 The analysis and result should be the same in this case.

15 In sum, given the strong interest in having controversies resolved where there is the greatest
16 local interest in the outcome, the interest of justice strongly favors a transfer of this case to a U.S.
17 District Court in North Dakota, Minnesota, or Wisconsin.

18 **C. The Convenience of the Parties and the Court Favors Transfer**

19 On balance, the convenience of the parties and the Court favors transfer of the case to a more
20 appropriate venue. There are significant connections between the challenged actions and North
21 Dakota, Minnesota, Wisconsin, and the District of Columbia that make each of those fora an
22 appropriate venue in which to litigate this case. This case has no connection to California other than
23 the location of the Sierra Club’s headquarters. Therefore, this Court would not be the most
24 convenient venue to litigate the case, and any of the other proposed fora would be a more appropriate
25 venue.

26 Plaintiffs’ claims would be more conveniently litigated in North Dakota, Minnesota,
27 Wisconsin, or the District of Columbia. The Corps Office that issued that permits challenged by
28

1 Plaintiffs is located in St. Paul, Minnesota. See Corps ROD at 1, Def. Ex. 4. The State Department
2 issued the Presidential Permit in the District of Columbia, and the permit applies to facilities at the
3 international border near Necho, North Dakota. Presidential Permit at 1, Def. Ex. 2. The EIS was
4 prepared largely in the District of Columbia and involved extensive public involvement in North
5 Dakota, Minnesota, and Wisconsin. EIS at 1-19 - 1-25, Def. Ex. 3. As discussed above, because
6 this is an APA case, there likely will not be a need to conduct discovery and gather evidence.
7 Nevertheless, there are some instances in APA cases in which discovery or evidentiary hearings are
8 necessary. If such an instance were to arise in this case, it would be much more convenient for all
9 of the parties if the case were litigated in Minnesota or the District of Columbia. In addition, in
10 environmental cases, it is not unusual for a judge to conduct a site visit of the area affected by the
11 litigation to gain a better understanding of the issues in the case. Accordingly, North Dakota,
12 Minnesota, Wisconsin, and the District of Columbia would all be more convenient venues than this
13 district.

14 Moreover, Minnesota would be a no less convenient forum for Plaintiffs. Two of the four
15 Plaintiff groups are located in Minnesota. The Minnesota Center for Environmental Advocacy is
16 located in St. Paul, Minnesota, and the Indigenous Environmental Network is located in Bemidji,
17 Minnesota. Complaint ¶¶ 15.a., 16.a. Three of Plaintiffs' standing declarants are members of the
18 Minnesota Center for Environmental Advocacy and reside in Minnesota. See Aalgaard Decl. ¶ 1
19 (Docket No. 8-31); Steva Decl. ¶ 1 (Docket No. 8-32); Caron Decl. ¶ 1 (Docket No. 8-33). One of
20 the standing declarants is a member of the Indigenous Environmental Network in Minnesota.
21 Goldtooth Decl. ¶ 1 (Docket No. 8-34). Therefore, it would be no less convenient for the Minnesota
22 Center for Environmental Advocacy and the Indigenous Environmental Network to litigate the case
23 in Minnesota.

24 The Sierra Club's headquarters are in San Francisco, California. Complaint ¶ 14.a. The
25 Sierra Club's standing declarants, however, reside in Minnesota or Wisconsin. See Norrgard Decl.
26 ¶ 4 (Docket No. 8-28); Davis Decl. ¶ 4 (Docket No. 8-29); Smith-Johnson Decl. ¶ 4 (Docket No. 8-
27 30). Moreover, the Sierra Club is a national organization with affiliated offices around the country.

1 In fact, the attorneys for the Sierra Club listed on the cover of Plaintiffs' Complaint are located in
2 Boulder, Colorado. Complaint at 1. These are the same attorneys who have been involved in the
3 NEPA review process and administrative appeals regarding the pipeline in Minnesota. See, e.g.,
4 Plaintiffs' Appeal of Forest Service ROD at 1, Def. Ex. 6. Accordingly, although the Sierra Club
5 lists the address of its headquarters for purposes of establishing venue, see Complaint ¶¶ 12-13, it
6 appears that its headquarters has had little, if any, involvement with the Alberta Clipper Pipeline
7 project or this litigation. Therefore, it would be just as convenient for the Sierra Club to litigate this
8 case in Minnesota as in this district.

9 The National Wildlife Federation is located in Reston, Virginia and submitted no standing
10 declarations. Complaint ¶ 17.a. This raises the question of whether the National Wildlife Federation
11 has standing. In any case, given that its headquarters are close to Washington, D.C., the District of
12 Columbia would be the most convenient forum for the National Wildlife Federation.

13 Plaintiffs may argue that it is more convenient for their attorneys in Earthjustice's Oakland,
14 California office to litigate the case in this district than elsewhere. Convenience of the attorneys,
15 however, is not a factor that the Court should consider in determining which venue is the most
16 appropriate. See Ctr. for Biological Diversity v. Rural Utilities Serv., No. C-08-1240 MMC, 2008
17 WL 2622868, *1 (N.D. Cal. June 27, 2008) (holding "the convenience of counsel is not a recognized
18 factor" to be considered); In re Horseshoe Entm't, 337 F.3d 429, 434 (5th Cir. 2003) ("The factor
19 of 'location of counsel' is irrelevant and improper for consideration in determining the question of
20 transfer of venue"); Solomon v. Cont'l Am. Life Ins. Co., 472 F.2d 1043, 1047 (3rd Cir. 1973) ("The
21 convenience of counsel is not a factor to be considered"); Sierra Club, 276 F. Supp.2d at 69
22 ("Because this action involves an administrative review that the court is likely to determine on the
23 papers, the location of counsel — already given little, if any, weight in transfer determinations —
24 makes no difference here") (internal quotation marks removed). Moreover, Earthjustice has offices
25 around the country and litigates in district courts around the country. See
26 <http://www.earthjustice.org/>. Therefore, the location of Plaintiffs' attorneys should be given no
27 weight.

1 In sum, this district is not the most convenient forum in which to litigate this case for any of
2 the parties. Given all the parties' respective interests, the most convenient forum is Minnesota.
3 Furthermore, because this case has not progressed beyond the initial stages, there will be no delay
4 caused by the time it would take for the Minnesota court to familiarize itself with the case. See
5 Trout Unlimited, 944 F. Supp. at 19.

6 **D. Plaintiffs' Choice of Forum Is Entitled to Minimal Consideration**

7 Plaintiffs may argue that their choice of forum in this district is entitled to deference and
8 should not be disturbed. While, as a general rule, some deference should be given to the Plaintiffs'
9 choice of forum, no such deference is appropriate here because the events giving rise to Plaintiffs'
10 claims occurred totally outside of this district. See Pacific Car & Foundry, 403 F.2d at 954 ("If the
11 operative facts have not occurred within the forum of original selection and that forum has no
12 particular interest in the parties or the subject matter, the plaintiff's choice is entitled only to minimal
13 consideration."); Ironworkers Local Union No. 68, 2008 WL 312309, at *4. Section 1404 contains
14 a built-in mechanism to "remedy the evils of forum shopping" by giving little or no weight to
15 plaintiffs' choice of venue when it lacks sufficient ties to the controversy. Wireless Consumers
16 Alliance, Inc. v. T-Mobile USA, Inc., No. C 03-3711 MHP, 2003 WL 22387598, at *5 (N.D. Cal.
17 Oct. 14, 2003). In cases such as this one, where plaintiffs' choice of forum has "no meaningful ties
18 to the controversy and no particular interest in the parties or subject matter," that choice is no longer
19 afforded deference. See Shalaby v. Newell Rubbermaid, Inc., No. C06-07026 MJJ, 2007 WL
20 3144357, at *6 (N.D. Oct. 24, Cal. 2007) ("[A] plaintiff's choice of forum should be given less
21 weight when it is not 'the place where the operative facts occurred.'" (citation omitted). In fact,
22 where forum-shopping is evident, courts should disregard plaintiff's choice of forum. Alltrade, Inc.
23 v. Uniweld Products, Inc., 946 F.2d 622, 628 (9th Cir. 1991); Helm v. Alderwoods Group, Inc., Nos.
24 C 08-01184 SI, C 08-01190 SI, 2008 WL 2915424, at *3 (N.D. Cal. July 22, 2008); Italian Colors
25 Rest. v. Am. Express Co., No. C 03-3719 SI, 2003 WL 22682482, at *4 (N.D. Cal. Nov. 10, 2003);
26 Royal Queentex Enters. v. Sara Lee Corp., No. C-99-4787 MJJ, 2000 WL 246599, at *3 (N.D. Cal.

1 Mar. 1, 2000). Accordingly, because none of the operative facts giving rise to Plaintiffs' claims
2 occurred in this district, Plaintiffs' choice of forum is entitled to no weight.

3 **CONCLUSION**

4 As demonstrated above, the interest of justice and the convenience of the parties and the
5 Court provide compelling grounds to transfer this case to a district court in one of the states where
6 the Alberta Clipper Pipeline will be constructed or the District of Columbia, where the State
7 Department prepared the environmental impact statement and issued the Presidential Permit.
8 Accordingly, Defendants request that the Court transfer the case to the U.S. District Court for the
9 District of Minnesota or, in the alternative, a U.S. District Court in North Dakota, Wisconsin, or the
10 District of Columbia.

11 Respectfully submitted this 14th day of September, 2009.

12 JOHN C. CRUDEN
13 Acting Assistant Attorney General
14 Environment & Natural Resources Division

15 */s/ Luther L. Hajek*
16 LUTHER L. HAJEK, D.C. Bar No. 467742
17 United States Department of Justice
18 Environment and Natural Resources Division
19 Natural Resources Section
20 Ben Franklin Station, P.O. Box 663
21 Washington, DC 20044-0663
22 Tel: (202) 305-0492
23 Fax: (202) 305-0274
24 E-mail: luke.hajek@usdoj.gov

25 DAVID GLAZER
26 United States Department of Justice
27 Environment and Natural Resources Division
28 Natural Resources Section
301 Howard Street
San Francisco, CA 94105
Tel: (415) 744-6491
Fax: (415) 744-6476
E-mail: david.glazer@usdoj.gov

Attorneys for Defendants

26 Of Counsel:

27 KEITH BENES
28 JOHN SCHNITKER

1 Attorney-Advisers
U.S. Department of State
2 2201 C Street NW
Washington, DC 20520
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CERTIFICATE OF SERVICE

I, Luther L. Hajek, hereby certify that on September 14, 2009, I electronically filed the foregoing DEFENDANTS' NOTICE OF MOTION AND MOTION TO TRANSFER VENUE AND MEMORANDUM IN SUPPORT, DECLARATION OF LUTHER L. HAJEK and EXHIBITS thereto, and PROPOSED ORDER with the Clerk of Court using the CM/ECF system, which will automatically send email notification to all attorneys of record whose e-mail addresses are listed below:

mwagner@earthjustice.org

sburt@earthjustice.org

kreuther@mncenter.org

eric.huber@sierraclub.org

doug.hayes@sierraclub.org

jsmith@steptoe.com

/s/ Luther L. Hajek
Luther L. Hajek