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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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BACKCOUNTRY AGAINST DUMPS,  
THE PROTECT OUR COMMUNITIES  
FOUNDATION, EAST COUNTY  
COMMUNITY ACTION COALITION,  
and DONNA TISDALE,

Plaintiffs,

v.

NO. CIV. S-10-394 FCD/KJN

MEMORANDUM AND ORDER

JIM ABBOTT, in his official  
capacity as California State  
Director of the United States  
Bureau of Land Management, REN  
LOHOEFENER, in his official  
capacity as Pacific Southwest  
Regional Director of the  
United States Fish and  
Wildlife Service, KEN SALAZAR,  
in his official capacity as  
Secretary of the United States  
Department of the Interior, et  
al.,

Defendants.

and

SAN DIEGO GAS & ELECTRIC CO.,

Intervenor-Defendant.

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1  
2 This matter is before the court on defendants' motion for  
3 transfer of venue pursuant to 28 U.S.C. § 1404(a).<sup>1</sup> Defendant-  
4 Intervenor San Diego Gas & Electric Company ("SDG&E") joins  
5 defendants' motion. (Docket #13.) Defendants do not challenge  
6 the propriety of venue in the Eastern District of California, but  
7 argue that the United States District Court for the Southern  
8 District of California is the more convenient forum. Plaintiffs  
9 oppose the motion arguing the balance of factors weigh heavily in  
10 their favor, meriting retention of the case in this district.

11 For the reasons set forth below, the court GRANTS  
12 defendants' motion. The court finds that there is little, if  
13 any, nexus between the claims alleged and the Eastern District of  
14 California. Instead, the complaint demonstrates that very  
15 substantial connections with the parties, the documents, the  
16 lands, and the resources at issue in the litigation exist with  
17 the Southern District of California. Accordingly, the court  
18 concludes that transferring the action to that court best serves  
19 the interests of justice.

20 **BACKGROUND**

21 This action concerns the Bureau of Land Management's ("BLM")  
22 approval of the Eastern San Diego County Resource Management Plan  
23 ("RMP"), along with an amendment to that plan, and approval of  
24 rights-of-way to construct and operate the Sunrise Powerlink  
25 Transmission Line Project ("Sunrise Project"), which is designed

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26  
27 <sup>1</sup> Because oral argument will not be of material  
28 assistance, the court orders this matter submitted on the briefs.  
E.D. Cal. L.R. 230(g).

1 to deliver electricity to the San Diego area from renewable  
2 energy sources generated in San Diego and Imperial Counties. The  
3 action also challenges the related United States Fish and  
4 Wildlife Service ("FWS") biological opinions. The Sunrise  
5 Powerlink will run approximately 120 miles from Imperial Valley  
6 to San Diego. (Compl., filed Feb. 16, 2010.)

7 Plaintiffs are three community organizations and one  
8 individual, all based in, and residents of, San Diego County.  
9 The named defendants are the United States Department of the  
10 Interior ("DOI"), two agencies within the DOI, the BLM, the FWS,  
11 and six DOI officials sued in their official capacity. On April  
12 9, 2010, the court approved a stipulation executed by plaintiffs,  
13 defendants, and SDG&E and issued an order granting SDG&E's  
14 intervention as a defendant. (Docket #7.)

15 Plaintiffs contend that in adopting the RMP and approving  
16 rights-of-way for the Sunrise Project, DOI did not comply with  
17 several federal environmental statutes, including the National  
18 Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* (First and  
19 Fifth Claims for Relief), the Endangered Species Act, 16 U.S.C.  
20 §§ 1531-44 (Second and Seventh Claims for Relief), the Federal  
21 Land Policy and Management Act, 43 U.S.C. §§ 1701-85 (Third,  
22 Fourth, and Sixth Claims for Relief), the National Historic  
23 Preservation Act, 16 U.S.C. §§ 470 *et seq.* (Eighth Claim for  
24 Relief), and the Administrative Procedure Act ("APA"), 5 U.S.C. §  
25 706 (all Eight Claims for Relief). Plaintiffs request  
26 declaratory and injunctive relief with respect to these eight  
27 claims. Defendants filed an answer to the complaint on April 23,  
28 2010. (Docket #11.) SDG&E answered the complaint on April 13,

1 2010. (Docket #9.)

2 The principal agency officials at BLM and FWS who prepared  
3 and approved many of the environmental documents at issue have  
4 their offices located in El Centro and Carlsbad, California,  
5 respectively, both within the Southern District. Four of the  
6 named DOI officials and all three of the named governmental  
7 entities reside, for venue purposes, in Washington, D.C. Only  
8 the BLM State Director, defendant Jim Abbott, and defendant Ren  
9 Lohofener, the Regional Director of the FWS, reside in  
10 Sacramento. However, Lohofener did not issue any decisions  
11 challenged in this action.

12 Significantly, all of the land and resources at issues lie  
13 exclusively in Imperial and San Diego Counties, both within the  
14 Southern District. Also, the majority of the documents to be  
15 included in the administrative record, and which may be addressed  
16 during court hearings in the case, are being compiled from DOI  
17 offices in the Southern District.

18 **STANDARD**

19 Except as otherwise provided by law, a civil action against  
20 an agency of the United States or an officer or employee of  
21 the United States acting in his official capacity may be brought  
22 "in any judicial district in which (1) a defendant in the action  
23 resides, (2) a substantial part of the events or omissions giving  
24 rise to the claim occurred or a substantial part of property that  
25 is the subject of the action is situated, or (3) the plaintiff  
26 resides if no real property is involved in the action." 28  
27 U.S.C. § 1391(e). Here, defendants concede that the Eastern  
28 District qualifies as a forum with permissible venue for this

1 action because two named federal officials have their offices in  
2 Sacramento, California. However, they move for a change of venue  
3 based on 28 U.S.C. § 1404(a).

4 Said statute provides: "For the convenience of parties and  
5 witnesses, in the interest of justice, a district court may  
6 transfer any civil action to any other district or division where  
7 it might have been brought." 28 U.S.C. § 1404(a). In conducting  
8 an inquiry under Section 1404(a), the court examines whether the  
9 defendant seeking to transfer venue can "satisfy both of the  
10 following requirements: (1) the transferee district is one in  
11 which the action might have been brought originally; and (2)  
12 transfer will enhance the convenience of the parties and  
13 witnesses, and is in the interests of justice." Exact  
14 Identification Corp. v. Feldman Sherb & Co., No. Civ. S0502116  
15 FCD/PAN, 2006 WL 236921, \*1 (E.D. Cal. Jan. 31, 2006) (citing Van  
16 Dusen v. Barrack, 376 U.S. 612, 616 (1964)).

17 The United States Supreme Court has explained that the  
18 purpose of Section 1404 is to permit a case to be transferred,  
19 despite its initial forum, where it presents "issues and requires  
20 witnesses that make one District Court more convenient than the  
21 another." Continental Grain Co. v. Barge FBL-585, 364 U.S. 19,  
22 26 (1960). The statute "reflects an increased desire to have  
23 federal civil suits tried in the federal system at the place  
24 called for in the particular case by considerations of  
25 convenience and justice." Van Dusen, 376 U.S. at 616.  
26 Ultimately, the decision whether to transfer venue under Section  
27 1404(a) is committed to the sound discretion of the district  
28 court and should be exercised in light of all the circumstances

1 of a case. Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d  
2 834, 843 (9th Cir. 1986). Whether venue should be transferred  
3 depends on "individualized, case-by-case consideration of  
4 convenience and fairness." Stewart Organization v. Ricoh Corp.,  
5 487 U.S. 22, 29 (1988) (*quoting Van Dusen*, 376 U.S. at 622). In  
6 rendering this decision, courts consider a range of public and  
7 private interest factors, including access to proof, calendar  
8 congestion, where the relevant events took place, and whether the  
9 action and potential outcomes have a localized impact. See e.g.,  
10 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir.  
11 2000).

#### 12 ANALYSIS

13 As to the initial question, whether venue in the Southern  
14 District is proper, plaintiffs concede they could have filed this  
15 case in that district, either because plaintiffs reside there (28  
16 U.S.C. § 1391(e)(3)) or because a substantial part of the events  
17 giving rise to plaintiffs' claims occurred in San Diego and the  
18 Project is located in San Diego (28 U.S.C. § 1391(e)(2)).  
19 Accordingly, the first requirement to permit transfer is met.  
20 Venue properly lies in the Southern District.

21 Transfer to that district, however, is not warranted unless  
22 the Southern District is more convenient to the parties and  
23 witnesses or a transfer is otherwise in the interests of justice.  
24 28 U.S.C. § 1404(a). Typically, courts consider the convenience  
25 of the parties and potential witnesses in the first instance.  
26 Here, this inquiry is not particularly significant since the  
27 case, brought pursuant to the APA, will likely be determined  
28 exclusively on the administrative record. Nevertheless, it is

1 noteworthy that as alleged in the complaint, all four plaintiffs  
2 reside in San Diego County, and they specifically allege they use  
3 and enjoy the land and resources in San Diego and Imperial  
4 Counties where the Sunrise Project is located. (Compl., ¶s 14-  
5 17.) While plaintiffs are correct that the court must consider  
6 their choice of forum, where that forum is not plaintiffs' place  
7 of residence, no particular deference is given to plaintiffs'  
8 selection. See Decker Coal Co., 805 F.2d at 843 (holding that  
9 where a plaintiff's choice of forum is his place of residence, a  
10 defendant must make a "strong showing of inconvenience to warrant  
11 upsetting the plaintiff's choice of forum"); Exact Identification  
12 Corp., 2006 WL 236921 at \*2 ("[W]hile courts generally afford  
13 considerable weight to [a] plaintiff's choice of forums, the  
14 deference is considerably less where [the] plaintiff does not  
15 reside in the forum where the action was commenced."). Moreover,  
16 courts routinely recognize that a plaintiff's choice of forum is  
17 not entitled to deference where the chosen forum "'has no  
18 meaningful ties to the controversy and no particular interest in  
19 the parties or subject matter.'" Kafack v. Primerica Life Ins.  
20 Co., 934 F. Supp. 3, 6 (D.C. Cir. 1996); accord CBD v.  
21 Kemphorne, No. C-07-0894 EDL, 2007 WL 2023515, \*3 (N.D. Cal.  
22 July 12, 2007) (holding that deference to the plaintiff's chosen  
23 forum is not afforded where the connection between the  
24 plaintiffs, the controversy, and the chosen forum is attenuated).

25 Additionally, contrary to plaintiffs' protestations, it is  
26 not relevant where *counsel* is located--that plaintiffs' counsel  
27 is located in Oakland and defendants' counsel in Sacramento is  
28 not pertinent to the motion. What is relevant is whether it

1 would be more convenient to the *parties* and *potential witnesses*  
2 to have the case heard in the Southern District.

3       Clearly, since plaintiffs reside in San Diego, the Southern  
4 District is a convenient forum for them. Also, should testimony  
5 be required in the case, nearly all potential witnesses for  
6 either plaintiffs or defendants reside within the Southern  
7 District. Thus, while convenience to the parties and witnesses  
8 is not weighty factor in this case which will likely involve only  
9 an administrative record review, the factor does minimally  
10 support a transfer since the Southern District is a convenient  
11 location for plaintiffs and the vast majority of witnesses who  
12 reside in the district.

13       While convenience to the parties and witnesses may not  
14 heavily support transfer, transferring this action to the  
15 Southern District will best advance the interests of justice,  
16 taking into account the full range of public and private interest  
17 factors. In considering the second criterion under Section  
18 1404(a), courts examine a variety of factors, including access to  
19 proof, calendar congestion, where the relevant events took place,  
20 and whether the action and potential outcomes have a localized  
21 impact. See e.g. Jones, 211 F.3d at 498; Heller Financial, Inc.  
22 v. Midway Powder Co., 883 F.2d 1286, 1293 (7th Cir. 1989)  
23 (holding that the "interests of justice," for purposes of Section  
24 1404(a), includes such concerns as ensuring speedy trials, trying  
25 related litigation together, and having a judge who is familiar  
26 with local law try the case).

27       Here, all land and real property related to the RMP for  
28 Eastern San Diego County and the transmission corridor for the



1 Sunrise Project are located entirely within the Southern  
2 District. All environmental resources of concern similarly lie  
3 within the Southern District. The residents of that district are  
4 most impacted by this controversy, including plaintiffs' claims  
5 related to use of McCain Valley and the habitat of ESA-listed  
6 species in San Diego County. The Sunrise Project has been the  
7 subject of extensive public input and involvement in the  
8 Southern District over a more than three-year period of time, and  
9 public input is still being received today. Between October 2005  
10 and August 2008, the California Public Utilities Commission  
11 ("CPUC"), the BLM, and SDG&E conducted nearly 50 public meetings  
12 on the Sunrise Project in San Diego, involving tens of thousands  
13 of people in the Southern District. As part of the environmental  
14 review process and public comment opportunities, the CPUC and BLM  
15 held, also in San Diego, 13 scoping meetings prior to the  
16 development of the Draft Environmental Impact  
17 Report/Environmental Impact Statement (EIR/EIS), 16 informational  
18 workshops and public hearings on the Draft EIR/EIS and  
19 Recirculated Draft EIR/Supplemental Draft EIS, and received  
20 thousands of public comments primarily from individuals,  
21 businesses and organizations located in San Diego and Imperial  
22 Counties. Clearly, the interested public is located primarily in  
23 the Southern District.

24 In contrast, the Eastern District has absolutely no impact  
25 on, nor any nexus with, any of the land or habitat at issue, a  
26 consideration that supports transfer. See Sierra Club v.  
27 Flowers, 276 F. Supp. 2d 62, 67-68, 70-71 (D.D.C. 2003)  
28 (transferring case with NEPA claim to Florida where entire

1 ecosystem was located); Airport Working Group of Orange Co. v.  
2 U.S. Dep't of Defense, 226 F. Supp. 2d 227, 230 (D.D.C. 2002)  
3 (transferring case with NEPA claim to Central District of  
4 California because military facility at issue was located there).  
5 Courts regularly find that localized controversies should be  
6 decided in the forum of greatest interest and impact. Oil, Chem.  
7 & Atomic Workers Local Union No. 6-148, AFL-CIO v. N.L.R.B., 694  
8 F.2d 1289, 1300 (D.C. Cir. 1982); Citizen Advocates for  
9 Responsible Expansion v. Dole, 561 F. Supp. 1238, 1240 (D.D.C.  
10 1983) (finding that the interest of "justice requires that . . .  
11 localized controversies should be decided at home.").  
12 This principle has often been applied in environmental cases, to  
13 justify transfers of cases to the locality with the greatest  
14 interest in the project or where the greatest impact from the  
15 project exists. See e.g., Environmental Defense v. U.S. Dep't of  
16 Transp., Civ. No. 06-2176 (GK), 2007 WL 1490478, \* 4, 7 (D.D.C.  
17 May 18, 2007) (granting transfer to Maryland because dispute  
18 centered on highway on Maryland land and local interests most  
19 significantly affected); Hawksbill Sea Turtle v. FEMA, 939 F.  
20 Supp. 1 (D.D.C. 1996) (transferring challenge to housing project  
21 to the District of Virgin Islands where project, endangered  
22 species, and alleged violation of environmental laws occurred);  
23 Northwest Forest Res. Council v. Babbitt, Civ. No. 93-1579 JHG,  
24 1994 WL 908586 (D.D.C. April 13, 1994) (transferring challenge to  
25 ESA listing of marbled murrelet to Washington where  
26 bird's habitat was located).

27         These cases provide ample persuasive authority for this  
28 court to transfer this action to the Southern District as the

1 judicial district with the greatest connection to the citizens,  
2 the lands, the resources, and environmental interests impacted by  
3 the RMP for Eastern San Diego County and the proposed Sunrise  
4 Project.

5 Finally, the court remarks that judicial economy  
6 considerations further support a transfer of this case to the  
7 Southern District, which has a less congested docket than this  
8 district and significantly more federal judges. The Eastern  
9 District court located in Sacramento has only 7 active judges who  
10 maintain a caseload of nearly 1100 cases per judge. This is the  
11 highest caseload per judge in the country, exceeding by hundreds  
12 the national average of approximately 450 cases per judge.

13 In sum, the San Diego region's unique and overwhelming  
14 public interest in the Sunrise Project militates strongly in  
15 favor of transferring this matter to the Southern District where  
16 most interested parties reside. This controversy arises entirely  
17 out of events that occurred in or will affect the land and  
18 residents of California's Southern District and epitomizes the  
19 principle that local matters of acute interest should be decided  
20 locally.

#### 21 **CONCLUSION**

22 For the foregoing reasons, the court GRANTS defendants'  
23 motion to change venue, and HEREBY transfers the instant action  
24 to the United States District Court for the Southern District of  
25 California. This case has very substantial links with the  
26 Southern District, and, in contrast, no meaningful connection  
27 with the Eastern District. As such, on balance, the interests of  
28 justice favor transfer of this case to the Southern District,

1 where venue properly lies and where plaintiffs, as residents of  
2 San Diego County, could have filed their complaint.

3 IT IS SO ORDERED.

4 DATED: June 8, 2010



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7 FRANK C. DAMRELL, JR.  
8 UNITED STATES DISTRICT JUDGE  
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