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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PACIFIC COAST FEDERATION OF  
FISHERMEN'S ASSOCIATIONS, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
THE INTERIOR, et al.,

Defendants.

Case No.: 12-2158 JSC

**ORDER GRANTING DEFENDANTS'  
MOTION TO TRANSFER VENUE  
(Dkt. No. 4)**

Plaintiffs' lawsuit seeks to overturn Defendants' Environmental Assessment and Finding of No Significant Impacts for eight water service contracts for the delivery of water to the Central Valley of California. Now pending before the Court is Defendants' 12(b)(3) Motion to Dismiss for Improper Venue pursuant to U.S.C. § 1406(a), or in the alternative, to Transfer Venue to the Eastern District of California pursuant to 28 U.S.C.A. § 1404(a).<sup>1</sup> Defendants contend that venue is improper in the Northern District because all relevant agency decisions took place in the Eastern District and the water that is the subject of the dispute is delivered to the Eastern District. Plaintiffs respond that venue is proper in the

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), parties consented to the jurisdiction of a United States magistrate judge. (Dkt. Nos. 6,7.)

1 Northern District because water is taken from the Northern District, where the key pumping  
2 facility is located and environmental harm occurs in the Northern District. After carefully  
3 reviewing the parties’ submissions, and having had the benefit of oral argument on August 2,  
4 2012, the Court concludes that assuming venue is proper in the Northern District, the action  
5 should nonetheless be transferred to the Eastern District of California pursuant to section  
6 1404(a).

7 **ALLEGATIONS OF THE COMPLAINT**

8 The Pacific Coast Federation of Fishermen’s Association (“PCFFA”) and San  
9 Francisco Crab Boat Owners Association (collectively “Plaintiffs”) challenge the United  
10 States Bureau of Land Reclamation’s (“Reclamation”) and U.S. Department of the Interior’s  
11 (collectively “Defendants”) approval of eight water service contracts, referred to as the Three  
12 Delta Division and Five San Luis Unit Water Service Interim Renewal Contracts 2012-2014  
13 (“interim contracts”). (Dkt. No. 1 ¶ 2.)

14 Plaintiffs allege that the Environmental Assessment (“EA”) and Finding of No  
15 Significant Impact (“FONSI”) prepared by Defendant Reclamation to ascertain the  
16 environmental effects of the interim contracts violate the National Environmental Policy Act,  
17 42 U.S.C. section 4321 *et seq.* (“NEPA”). (Dkt. No. 1 ¶ 2.) In particular, the EA and FONSI  
18 violate NEPA because they assume that Defendant Reclamation has no discretion to (1) reject  
19 the interim contracts; (2) reduce the quantities of water exported from the San Francisco  
20 Bay/Sacramento River Delta (“Bay-Delta”); or (3) increase the interim contracts’ pricing  
21 structure to reduce water demand and thus reduce exports and their environmental impacts.  
22 (Dkt. No. 1 ¶ 2.) Since Defendants consider continued water delivery to be the environmental  
23 *baseline*, the EA and FONSI improperly conclude that water deliveries under the interim  
24 contracts will have *no effect on the environment*. (Dkt. No. 1 ¶ 3.) As a result of this  
25 assumption, Defendants have not considered any alternatives or mitigation measures to reduce  
26 the environmental impact of the interim contracts “on the Delta’s increasingly imperiled  
27 salmon, steelhead, sturgeon and other fish and wildlife.” (*Id.*) Plaintiffs also seek to compel  
28 Defendant Reclamation “to complete the long-overdue Environmental Impact Statement

1 (“EIS”) for the long-term contracts between Reclamation and the West San Joaquin Division  
2 and San Luis Unit contractors as required by the CVPIA.” (Dkt. No. 1 ¶ 5.)

3 Plaintiff PCFFA contends that the Central Valley Project (“CVP”) directly affects the  
4 health and population of anadromous fishes, including salmon and steelhead, on which its  
5 members rely for their sustainable harvests of ocean fish. (Dkt. No. 1 ¶ 12.) Plaintiff San  
6 Francisco Crab Boat Owners Association also alleges injury due to reliance on a sustainable  
7 harvest of crustaceans and fishes from the Pacific Ocean; its members operate small, family  
8 owned fishing boats that catch Dungeness crab, wild California king salmon, herring, and  
9 many other fish species that live in the Pacific Ocean. (Dkt. No. 1 ¶ 13.) According to  
10 Plaintiffs, Defendants’ environmental review ignores the environmental impacts its water  
11 exports are having on the Delta’s increasingly imperiled salmon, steelhead, sturgeon and other  
12 fish and wildlife. (Dkt. No. 1 ¶ 3.) The failure to conduct a serious environmental impact  
13 analysis for the CVP short term and long term water contracts puts these species at risk. (Dkt.  
14 No. 1 ¶ 19.)

### 15 **PROCEDURAL HISTORY**

16 Plaintiffs filed this action in this District on April 30, 2012 and make claims for  
17 declaratory and injunctive relief. Defendants subsequently filed the pending Motion to  
18 Dismiss for Lack of Venue or, in the alternative, to Transfer Venue to the Eastern District of  
19 California. (Dkt. No. 4.) Defendants contend that venue is not proper in this District and,  
20 even if it is, the case should be transferred pursuant to 28 U.S.C. § 1404(a) in the interests of  
21 justice.

### 22 **LEGAL STANDARD**

23 A civil action may be brought in “a judicial district in which a substantial part of the  
24 events or omissions giving rise to the claim occurred, or a substantial part of property that is  
25 the subject of the action is situated.” 28 U.S.C. § 1391(b)(2). Once the propriety of venue is  
26 challenged pursuant to Rule 12(b)(3), the plaintiff bears the burden of proving that venue is  
27 proper. Piedmont Label Co. v. Sun Garden Packing Co., 589 F.2d 491, 496 (9<sup>th</sup> Cir. 1979).  
28 When considering a motion to dismiss for improper venue, a court need not accept the



1 diverted, in part, from the Northern District which harms the fish upon which Plaintiffs’  
2 members rely for their livelihoods. Defendants respond that the location of Plaintiffs’ injury  
3 in this District is irrelevant to the venue inquiry, but they cite no case to support their defense  
4 and at least one court in this District has held that the standing/injury inquiry and venue  
5 inquiry in an environmental case can be intertwined. See Center for Food Safety v. Vilsack,  
6 11-00831 JSW, 2011 WL 996343 \*4 (March 17, 2011) (denying motion to dismiss for  
7 improper venue because plaintiffs had standing based on geographic proximity to the  
8 impacted environmental area).

9 The Court, however, need not finally resolve whether venue is proper here because for  
10 the reasons explained below it finds that regardless of whether venue is proper or improper,  
11 this case should be transferred to the Eastern District of California.

## 12 **B. Section 1404(a) Transfer**

13 In deciding whether to transfer a case pursuant to section 1404(a) “[t]he transferor  
14 court must first determine whether the action ‘might have been brought’ in the transferee  
15 court, and then the court must make an “individualized, case-by-case consideration of  
16 convenience and fairness.” Ctr. For Biological Diversity & Pac. Env’t v. Kempthorne, No.  
17 07-0894, 2007 WL 2023515 at \*3 (N.D. Cal. July 12, 2007) (internal quotation marks and  
18 citations omitted).

### 19 **1. This Action Could Have Been Brought in the Eastern District**

20 With respect to the first prong of the analysis, it is undisputed that this case could have  
21 been brought in the Eastern District. Over 99 percent of the contracted quantities of water are  
22 delivered in the Eastern District. (Dkt. No. 4 at 6.) Further, the interim contracts were  
23 executed by officials at the U.S. Bureau of Reclamation’s South-Central California Area  
24 Office in Fresno, CA and this office is part of the Mid Pacific Regional Office headquartered  
25 in Sacramento, CA, both which are located in the Eastern District. (Dkt. No. 4 at 4.)  
26 Therefore, a substantial part of the events that are the subject of the action took place in the  
27 Eastern District. See 28 U.S.C. § 1391(b)(2).

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1 1240, 2008 WL 2622868, at \*1 (N.D. Cal. June 27, 2008) (granting transfer where no  
2 part of the plaintiff’s claims arose in the Northern District of California).

3 The relative court congestion and time to trial in each forum is a neutral factor.  
4 The Northern District had 6,122 civil cases pending as of March 2011, and the Eastern  
5 District had 6,840 civil cases pending, with only half as many judges. (Dkt. No. 8 at 9-  
6 10; Dkt. No. 8-1 at 50.) Also, the Eastern District itself has noted that it “has the highest  
7 weighted filings per judgeship in the country.” Hammond v. Wal-Mart Stores, Inc., No.  
8 10–1788, 2011 WL 1668209, at \*8 (E.D. Cal. May 2, 2011). However, notwithstanding  
9 the Eastern District’s heavy caseload, median time intervals from filing to disposition of  
10 civil cases were 8 months in the Northern District and 7.9 months in the Eastern District  
11 for the 12 month period ending September 30, 2011. (Dkt. No. 9 at 7 n.5.) In other  
12 words, notwithstanding the heavier caseload (which in large part is the result of pro se  
13 prisoner filings), cases are disposed of in as timely a fashion in the Eastern District as the  
14 Northern District. Thus, this factor is neutral in the Court’s analysis.

15 The convenience of the parties and witnesses and ease of access to evidence are  
16 also neutral factors because it is undisputed that the case will be decided on the  
17 administrative record. See Center for Biological Diversity v. Lubchenco, No. 09-4087,  
18 2009 WL 4545169 at \*3 (N.D. Cal. Nov. 30, 2009) (noting that convenience of parties  
19 and witnesses and access to evidence is irrelevant to a motion to transfer an  
20 administrative review environmental case). Plaintiffs nonetheless argue that the  
21 convenience of the parties weighs against transfer because “the case must be  
22 expeditiously litigated and the Eastern District’s caseload is overwhelming.” (Dkt. No. 8  
23 at 9.) As discussed above, relative congestion and time to trial in each forum is a  
24 separate factor in the analysis and is neutral given the median time to disposition in both  
25 districts. The Court does not find that Plaintiffs will be inconvenienced in this manner by  
26 a transfer to the Eastern District.

27 Next, the Court considers the local interests involved in this controversy. Courts have  
28 considered local environmental, aesthetic, and economic impacts when analyzing this factor,

1 as well as the location of other operative facts, such as public hearings. See Sierra Club v.  
2 United States Dep't of State, 2009 WL 3112102, at \*4 (N.D. Cal. Sept.23, 2009) (analyzing  
3 local interests based on environmental, aesthetic, and economic impacts); McCrary v.  
4 Gutierrez, No. 06-0086, 2006 WL 1748410, at \*3 (E.D .Cal. June 23, 2006) (granting transfer  
5 to the Northern District of California because the species that was the subject matter of the  
6 action, the alleged injury, and the formulation of the basis for the challenged decision  
7 occurred in the Northern District).

8         The gravamen of the complaint is that “the EA and FONSI violate NEPA because they  
9 assume that Defendant Reclamation has no discretion to (1) reject the interim contracts; (2)  
10 reduce the quantities of water exported from the [Bay-Delta]; or (3) increase the interim  
11 contracts’ pricing structure to reduce water demand and thus reduce exports and their  
12 environmental impacts.” (Dkt. No. 1 ¶ 2.) Plaintiffs also seek to compel Defendant  
13 Reclamation “to complete the long-overdue EIS for the long-term contracts between  
14 Reclamation and the West San Joaquin Division and San Luis Unit contractors as required by  
15 the CVPIA.” (Dkt. No. 1 ¶ 5.) Therefore, the challenged conduct is Defendant Reclamation’s  
16 approval of the eight interim contracts, methodology for the NEPA analysis, and failure to  
17 conduct an EIS for long-term contracts. (Dkt. No. 1 ¶¶ 3-5.) The relief Plaintiffs seek--  
18 requiring further environmental review and, presumably, modification of the water contracts--  
19 would have a major impact in the Eastern District. Ninety-nine percent of the water under the  
20 contracts is delivered to the Eastern District (specifically, the Central Valley) by diverting  
21 water from the Delta to the Central Valley. Accordingly, there is substantial local interest in  
22 the controversy in the Eastern District. See Sierra Club, 2009 WL 3112102 at \*4 (granting  
23 motion to transfer venue where the majority of the activities underlying the suit took place  
24 within or very near the jurisdiction of the transferee district, and the rights and interests of the  
25 citizens in transferee district would be directly affected by the outcome of the suit). And, as is  
26 discussed below, this local interest in the CVP has been ongoing for some time. Further,  
27 while Plaintiffs allege some harm in the Northern District due to the water contracts, and  
28 consequent harm to Plaintiffs’ members in the Northern District due to reduced fish



1 populations in the Pacific, they also specifically allege harm to the Central Valley  
2 environment: “Plaintiffs seek a speedy adjudication of this matter to address and reverse the  
3 accelerating decline of fish and wildlife caused by the water diversions authorized by the  
4 interim contracts and *to curtail the worsening contamination of ground and surface water*  
5 *resources in the Central Valley resulting from the harmful irrigation practices that these*  
6 *contracts perpetrate.”* (Dkt. No. 1 at ¶ 4 (emphasis added).)

7 Plaintiffs argue that local interests weigh against transfer because crucial facilities are  
8 located in the Northern District and environmental consequences are felt in the Northern  
9 District. (Dkt. No. 8. at 10.) Plaintiffs assert that the Jones Plant is central to the dispute  
10 because without this facility there would be no water diversions from the Delta to contractors.  
11 (Dkt. No. 8 at 5.) The Court is unpersuaded; the Jones Plant is not responsible for approving  
12 the interim contracts, conducting the EA, issuing the FONSI, or failing to conduct the EIS,  
13 which are the core issues of the dispute. And by this action Plaintiffs are not seeking to shut  
14 down the Jones Plant. Rather, this action is about whether Defendants have discretion to  
15 modify or disprove the interim contracts and, if so, whether they need to conduct their  
16 environmental review anew. Plaintiffs also emphasize, however, that water is taken, in part,  
17 from the Northern District, which harms the fish and wildlife in the Northern District and  
18 therefore there is local interest in this lawsuit in the Northern District.

19 In sum, the Court finds that the Eastern District has a greater localized interest in this  
20 dispute than does the Northern District, but not so much that it would warrant upsetting the  
21 Plaintiffs’ choice of forum. This case does not involve improper forum shopping where there  
22 is no meaningful connection to the District.

23 The Court finds instead that the familiarity of each forum with the facts and law  
24 relevant to this lawsuit favors transfer to the Eastern District. The Eastern District has a long  
25 history of adjudicating cases involving the CVP and the CVPIA. See Dkt. No. 4 at 8-9 (citing  
26 numerous cases involving the CVP, CVPIA and Westlands Water District). In doing so the  
27 Eastern District has interpreted other contracts and laws that are related to the subject of this  
28 action, and also addressed the impact of the contracts on fish and wildlife. See, e.g., Natural

1 Res. Def. Council v. Kempthorne, No. 05-01207, 2008 WL 5054115 (E.D. Cal. Nov. 19,  
2 2008), superseded in part, 621 F. Supp. 2d 954 (E.D. Cal. 2009), decision clarified, 627 F.  
3 Supp. 2d 1212 (E.D. Cal. 2009, on reconsideration, No. 05-1207, 2009 WL 2424569 (E.D.  
4 Cal. Aug. 6, 2009), and decision clarified, 627 F. Supp. 2d 1212 (E.D. Cal. 2009, on  
5 reconsideration, No. 05-1207, 2009 WL 2424569 (E.D. Cal. Aug. 6, 2009).

6 Plaintiffs respond that the Northern District is equally capable of applying federal law  
7 and that this factor carries little weight. They also highlight that District Court Judge Oliver  
8 W. Wanger decided many of the district court cases cited by Defendants and has since retired.  
9 While Judge Wanger’s retirement is a consideration, District Court Judge O’Neill has taken  
10 over a number of Judge Wanger’s cases, including The Consolidated Delta Smelt Cases, No.  
11 09-00407, Dkt. No. 1062 and San Luis & Delta-Mendota Water Authority v. Locke, No. 09-  
12 01053, Dkt. No. 644. (Dkt No. 10 at 11 n. 9.) Given his work on these cases in the past two  
13 years, Judge O’Neill is more familiar with the general factual background of this case, and the  
14 claims in this case are closely linked to the lengthy history of Bay-Delta litigation in the  
15 Eastern District. The judicial goals of consistency and efficiency would therefore be served  
16 by a transfer to the Eastern District. See Gonzales v. F/V DANIELA, 2012 WL 2375086 \*4  
17 (S.D. Cal. June 22, 2012) (a court may consider “the promotion of judicial efficiency and  
18 economy in determining whether to transfer an action”).

### 19 CONCLUSION

20 In an administrative review environmental case such as this, “the issue of which federal  
21 district should adjudicate the issues is generally determined by weighing a plaintiff’s choice of  
22 forum against the competing interest in having localized controversies decided at home.” Ctr.  
23 for Biological Diversity & Pac. Env’t, 2007 WL 2023515 at \*5 (internal quotation marks and  
24 citation omitted). Here, while there is likely greater localized interest in the Eastern District  
25 given the importance of water to the Central Valley economy, there is certainly some  
26 localized interest in the Northern District as well. Nonetheless, in light of the long history of  
27 litigation involving the CVP and CVPIA in the Eastern District, and the Eastern District’s  
28 familiarity with the background facts, contracts, and the relevant law, the Court finds that

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Defendants have met their burden of showing that a 1404(a) transfer is warranted. A transfer will efficiently utilize judicial resources, promote consistency and will likely lead to speedier adjudication given the Eastern District's familiarity with the CVP and CVPIA.

Accordingly, this action is TRANSFERRED to the Eastern District of California.

This Order disposes of Docket No. 4.

**IT IS SO ORDERED.**

Dated: Aug. 6, 2012

  
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JACQUELINE SCOTT CORLEY  
UNITED STATES MAGISTRATE JUDGE