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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,
PACIFIC ENVIRONMENT, and TURTLE
ISLAND RESTORATION NETWORK,

Plaintiffs,

vs.

EXPORT-IMPORT BANK OF THE
UNITED STATES and FRED P.
HOCHBERG, in his official capacity as
Chairman and President of the Export-Import
Bank of the United States,

Defendants.

Case No: C 12-6325 SBA

**ORDER DENYING
MOTION TO TRANSFER**

Docket 15

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Plaintiffs Center for Biological Diversity ("CBD"), Pacific Environment, and Turtle Island Restoration Network ("Turtle Island") (collectively, "Plaintiffs") bring the instant environmental action against the Export-Import Bank of the United States ("Ex-Im Bank") and Fred P. Hochberg ("Hochberg"), in his official capacity as Chairman and President of Ex-Im Bank (collectively, "Defendants"). Plaintiffs allege that Ex-Im Bank provided financing for a natural gas project in Australia without complying with environmental laws in violation of the Endangered Species Act ("ESA"), 16 U.S.C. § 1531, et seq., the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470, et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

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The parties are presently before the Court on Defendants' motion to transfer venue to the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1404(a). Dkt. 15. Plaintiffs oppose the motion. Dkt. 20. Having read and considered the

1 papers filed in connection with this matter and being fully informed, the Court hereby
2 DENIES Defendants' motion, for the reasons stated below. The Court, in its discretion,
3 finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b);
4 N.D. Cal. Civ. L.R. 7-1(b).

5 **I. BACKGROUND**

6 **A. The Parties**

7 Ex-Im Bank is an independent federal agency tasked with providing loans,
8 guarantees, insurance, and credits to aid in financing and to facilitate the exports of goods
9 and services, imports, and the exchange of commodities and services between the United
10 States and any foreign country or the agencies or nationals of any such country. Compl. ¶¶
11 1, 44, Dkt. 1; see 12 U.S.C. § 635(a)(1). Ex-Im Bank is headquartered in Washington,
12 D.C., and is the official export credit agency of the United States. See 12 U.S.C. §
13 635(a)(1). Ex-Im Bank's "objective in authorizing loans, guarantees, insurance, and credits
14 [is] to contribute to maintaining or increasing employment of United States workers." Id.

15 The CBD is incorporated in California and its main office is located in San
16 Francisco, California. Compl. ¶ 12. Through science, policy, and environmental law, the
17 CBD advocates for the protection of threatened, endangered, and rare species and their
18 habitats throughout the United States and abroad. Id. The CBD has programs that focus
19 specifically on ocean protection and combating climate change.¹ Id. The CBD has more
20 than 39,000 active members and 474,000 online activists. Id. ¶ 13. Its members reside
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25 ¹ According to the CBD, the funding for the instant action falls within its Oceans
26 Program and its International Program, which are both based in Northern California.
27 Galvin Decl. ¶ 8. Of the four positions in the CBD's Oceans Program, three are based in
28 San Francisco, including the Program's Director. Id. The CBD's San Francisco office
serves as the "hub" for almost all of the Oceans Program activities, with most Freedom of
Information Act requests, court filings, and comment submittals handled out of this office.
Id.

1 throughout the United States and in many other countries, including Australia.² Id. Almost
2 3,000 of the CBD's members reside in the Northern District of California. Galvin Decl. ¶ 3.
3 According to Plaintiffs, the CBD has members and staff that reside in the United States and
4 have specific plans to visit Australia's Great Barrier Reef World Heritage Area generally
5 and the Gladstone area specifically to recreate and to view wildlife. Compl. ¶ 15.

6 Pacific Environment is a non-profit environmental organization based in San
7 Francisco, California. Compl. ¶ 16. Pacific Environment's mission is to protect the living
8 environment of the Pacific Rim. Id. Pacific Environment is dedicated to promoting
9 international efforts to protect biodiversity and to protect rare and endangered species. Id.
10 As part of Pacific Environment's broader mission to protect the Pacific Rim, it seeks to hold
11 public finance institutions, including Ex-Im Bank, accountable to local communities and
12 the environment through project monitoring to ensure that public money is used to support
13 best environmental protection practices. Id. Pacific Environment has staff and members
14 that live in the United States who have visited the Gladstone area of Australia. Id. ¶ 17

15 Turtle Island is a non-profit corporation with its principal place of business in Marin
16 County, California. Compl. ¶ 18. Turtle Island operates the Sea Turtle Restoration Project,
17 which is dedicated to the protection and restoration of endangered and threatened species of
18 sea turtles. Id. Turtle Island has over 6,300 members, including members in California³
19 and Australia, and more than 70,000 online activists and supporters who follow and take
20 action on its campaigns. Id. Turtle Island members each share a commitment to the study,
21 protection, enhancement, conservation, and preservation of the world's marine ecosystems
22 and the wildlife that inhabits the oceans. Id. Turtle Island has worked extensively to
23 conserve and protect sea turtles in the Pacific Ocean from a variety of threats, including
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25 ² Several members of the CBD live in Queensland, Australia and in the Gladstone
26 area of Australia. Compl. ¶¶ 13-14. Some of these members work in the fishing industry
27 in the Gladstone Harbour/Port Curtis area and rely on these waters for their income. Id. ¶
13. The CBD also has members that regularly recreate on Gladstone Harbour and the
broader Great Barrier Reef World Heritage Area. Id. ¶¶ 13-14.

28 ³ Turtle Island has 3,450 members in California. Shore Decl. ¶ 4, Dkt. 20-2.

1 efforts to conserve sea turtles and other marine wildlife in Australia. Id. Turtle Island has
2 staff and members who regularly visit Australia, including the Great Barrier Reef World
3 Heritage Area. Id. ¶ 19.

4 **B. The Project**

5 On May 3, 2012, Ex-Im Bank approved a \$2.95 billion direct loan to finance the
6 development and construction of the Australia Pacific Liquefied Natural Gas ("LNG")
7 Project ("the Project") within Australia's Great Barrier Reef World Heritage Area and the
8 Rodds Bay Dugong Protection Area. Compl. ¶¶ 1, 20, 76, 81. The Project will be located
9 in Queensland, Australia. Id. ¶ 69. It is a joint venture between Origin Energy,
10 ConocoPhillips, and the China Petrochemical Corporation (Sinopec). Id.

11 The Project includes drilling up to 10,000 coal-seam wells in the interior Surat and
12 Bowen Basins west of Brisbane, installing nearly 300 miles of underground pipe to
13 transport the gas to the coast,⁴ constructing a LNG facility on Curtis Island to process,
14 store, and facilitate transport of the LNG,⁵ and dredging Gladstone Harbor to enable
15 transport tankers to access the LNG facility. Compl. ¶¶ 69-72. Once operational, tankers
16 will transport the LNG across Port Curtis and typically through the Great Barrier Reef to
17 destinations worldwide. Id. ¶ 72. At maximum capacity, the Project may increase shipping
18 through the Great Barrier Reef Marine Park by 13%. Id.

19 According to Plaintiffs, the Project will adversely impact the environment and may
20 impact marine wildlife through the destruction of habitats of endangered or threatened
21 species, including the dugong, the green sea turtle, the South Pacific Ocean Distinct
22 Population Segment of the loggerhead sea turtle, the saltwater crocodile, the humpback
23 whale, and the sperm whale. See Compl. ¶¶ 53-66, 69-73, 75-78. Plaintiffs allege that the
24 construction and operation of the Project will result in the emission of substantial amounts

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26 ⁴ The underground pipeline includes a marine crossing over a channel that separates
the coast and Curtis Island. Compl. ¶ 70. The marine crossing will include dredging. Id.

27 ⁵ The LNG facility will also include a marine loading jetty to transport the LNG to
28 tankers for shipping. Compl. ¶ 71. The facility will occupy 740 acres of land and over 800
acres of seabed. Id. Construction of the facility will require dredging. Id.

1 of greenhouse gases. Id. ¶ 73. Specifically, Plaintiffs allege that the Project will emit over
2 11 million tons of carbon dioxide equivalents ("CO₂e") per year at maximum capacity. Id.

3 In 2010, the Project's proponents published an Environmental Impact Statement
4 ("EIS") to document the likely impacts from the construction and operation of the Project.
5 Compl. ¶ 74. The EIS was submitted to Ex-Im Bank and constitutes the Project's
6 Environmental Impact Assessment or equivalent documentation pursuant to Ex-Im Bank's
7 Procedures and Guidelines. Id. According to Plaintiffs, the EIS was not issued by Ex-Im
8 Bank in conformance with the requirements of the National Environmental Policy Act
9 ("NEPA"), 42 U.S.C. §§ 4321-4335, and thus does not comply with the statute. Id.

10 **C. Plaintiffs' Claims**

11 The complaint alleges two claims for relief: (1) violation of § 7 of the ESA; and (2)
12 violation of the NHPA and the APA. Compl. ¶¶ 87-98. Plaintiffs' first claim for relief
13 alleges that Defendants violated the ESA by failing to comply with the procedural
14 mandates of § 7 of the ESA. Id. ¶¶ 92-93. Specifically, Plaintiffs allege that Ex-Im Bank
15 failed to request from the U.S. Fish and Wildlife Service and the National Marine Fisheries
16 Service ("the Services") a list of endangered and threatened species present in the action
17 area, and failed to prepare a biological assessment describing the impacts of the Project on
18 these species as required by the ESA. Id. ¶ 90. Plaintiffs further allege that Ex-Im Bank
19 failed to initiate or complete consultation with the Services regarding the impacts of its
20 action on ESA-listed species as required by the ESA. Id. ¶ 91.

21 Plaintiffs' second claim for relief alleges that Ex-Im Bank failed to generate and
22 collect information regarding the Project's effects on the Great Barrier Reef World Heritage
23 Area, determine whether the effects will be adverse, consider mitigation to avoid those
24 effects, and to properly consult with all parties regarding the Project's effects. Compl. ¶ 97.
25 Plaintiffs allege that Defendants' failure to properly take into account the Project's effects
26 on the Great Barrier Reef World Heritage Area violates the NHPA, is arbitrary, capricious,
27 and otherwise not in accordance with law, and/or constitutes an action unlawfully withheld
28 under the APA. Id. ¶ 98.

1 **II. LEGAL STANDARD**

2 Title 28 of the United States Code, section 1404(a), provides that "[f]or the
3 convenience of parties and witnesses, in the interest of justice, a district court may transfer
4 any civil action to any other district or division where it might have been brought. . . ." 28
5 U.S.C. § 1404(a). The purpose of § 1404(a) is to "prevent the waste of time, energy, and
6 money and to protect litigants, witnesses and the public against unnecessary inconvenience
7 and expense." Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (internal quotation marks
8 omitted). The decision whether to transfer an action under § 1404(a) is committed to the
9 sound discretion of the district court. See Decker Coal Co. v. Commonwealth Edison Co.,
10 805 F.2d 834, 842-843 (9th Cir. 1986).

11 Section 1404(a) involves a two-step inquiry. First, the Court must determine
12 whether the transferee court is one where the action might have been brought. Hatch v.
13 Reliance Ins. Co., 758 F.2d 409, 414 (9th Cir. 1985). If so, the Court may transfer the case
14 for the convenience of the parties and witnesses and in the interest of justice. Id. In
15 deciding the second step, a district court may consider the following non-exhaustive list of
16 factors:

- 17 (1) the location where the relevant agreements were negotiated
18 and executed, (2) the state that is most familiar with the
19 governing law, (3) the plaintiff's choice of forum, (4) the
20 respective parties' contacts with the forum, (5) the contacts
21 relating to the plaintiff's cause of action in the chosen forum,
(6) the differences in the costs of litigation in the two forums,
(7) the availability of compulsory process to compel attendance
of unwilling non-party witnesses, and (8) the ease of access to
sources of proof.

22 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-499 (9th Cir. 2000). The Court may
23 also consider any local interest in the controversy, and the relative court congestion and the
24 time until trial in each forum. Ward v. Fluor Enterprises, Inc., 2011 WL 778720, at *2
25 (N.D. Cal. 2011). "The court has the broad discretion to address some of these or other
26 factors based on the particular facts of each case." Id. The burden is on the moving party
27 to demonstrate that the action should be transferred. Commodity Futures Trading Comm'n
28 v. Savage, 611 F.2d 270, 279 (9th Cir. 1979).

1 **III. DISCUSSION**

2 **A. Where the Action Might Have Been Brought**

3 "In determining whether an action 'might have been brought' in a district, the court
4 looks to whether the action initially could have been commenced in that district." Hatch,
5 758 F.2d at 414. A civil action in which a defendant is an officer or employee of the
6 United States or any agency thereof may be brought in any judicial district in which (1) "a
7 defendant in the action resides," (2) "a substantial part of the events or omissions giving
8 rise to the claim occurred, or a substantial part of property that is the subject of the action is
9 situated," or (3) "the plaintiff resides if no real property is involved in the action." 28
10 U.S.C. § 1391(e).

11 It is undisputed that the instant action could have been commenced in the District of
12 Colombia. Ex-Im Bank is a federal agency headquartered in the District of Colombia and
13 Hochberg is sued in his official capacity as Chairman and President of Ex-Im Bank. See
14 Williams v. United States, 2001 WL 1352885, at *1 (N.D. Cal. 2001) ("For purposes of
15 venue, all federal defendants reside in Washington, D.C."). Further, a substantial part of
16 the events and omissions giving rise to this action occurred in the District of Colombia.
17 Plaintiffs commenced the instant action to challenge the Defendants' approval of a \$2.95
18 billion direct loan to finance the development and construction of the Project. All of the
19 agency staff that worked on the loan are based in Washington D.C., and the Ex-Im Board of
20 Directors meeting at which the loan was approved was held in Washington D.C. Parsons
21 Decl. ¶ 4. In addition, apart from site visits to inspect the Project in Australia, the entire
22 environmental review process for the Project occurred in Washington D.C., and members
23 of the transaction team held meetings about the Project in Washington D.C, Australia, and
24 China. Id. ¶ 5. Accordingly, because the instant action could have been brought in the
25 District of Colombia, the remaining issue is whether a transfer of this action to the District
26 of Colombia is appropriate based on the convenience of the parties and witnesses and the
27 interest of justice. These factors are discussed below.

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1 **B. Factors Concerning Convenience and the Interests of Justice**

2 In this environmental case, several of the factors in the transfer analysis are neutral.
3 The convenience of witnesses and ease of access to sources of proof factors are neutral
4 because it is undisputed that this is an administrative record case, and because the relevant
5 documentary evidence is easily transported to this district.⁶ In addition, the Northern
6 District of California and the District of Columbia are equally familiar with the
7 environmental laws at issue in this case. See Cary v. Hall, 2006 WL 6198319, at *2 (N.D.
8 Cal. 2006) ("The law recognizes no doctrine of specialization amongst federal districts, but
9 considers every federal court competent to consider challenges under the Endangered
10 Species Act.").

11 **1. Plaintiffs' Choice of Forum**

12 Generally, a plaintiff's choice of forum is afforded substantial deference when the
13 district court is considering a motion to transfer under § 1404. See Decker Coal, 805 F.2d
14 at 843 ("defendant must make a strong showing of inconvenience to warrant upsetting the
15 plaintiff's choice of forum"); see Creative Tech., Ltd. v. Aztech Sys., 61 F.3d 696, 703 (9th
16 Cir. 1995) ("there is normally a strong presumption in favor of honoring the plaintiff's
17 choice of forum"); Securities Investor Protection Corp. v. Vigman, 764 F.2d 1309, 1317
18 (9th Cir. 1985) ("unless the balance of factors is strongly in favor of the defendants, the
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20 ⁶ The parties agree that the merits of this case should be decided based on the
21 administrative record. However, Defendants suggest that extra-record evidence may be
22 necessary, including testimony from agency staff members located in Washington D.C. In
23 the absence of a showing that extra-record evidence is necessary to resolve the instant
24 action, the Court considers this case to be one that is based solely on the administrative
25 record. In the event that witnesses or proof located in the District of Columbia become
26 necessary to these proceedings, Defendants can file another § 1404 motion to transfer. See
27 Schwarzer, Tashima & Wagstaffe, Federal Civil Procedure Before Trial (2013 ed.) § 4:667
28 (while a transfer for "convenience" should be brought as soon as the "inconvenience"
 becomes apparent, "the motion technically can be made at any time."). To the extent
 Plaintiffs contend that the convenience of witnesses factor weighs against transfer because
 there are witnesses located in this district that may have to testify to establish Article III
 standing, the Court disagrees. Plaintiffs have failed to explain why witness testimony
 would be necessary to establish standing. Plaintiffs have not argued, let alone shown, that
 affidavits would be insufficient to establish standing. In fact, Plaintiffs concede that they
 "typically demonstrate standing by submitting standing declarations from individual,
 organizational members." Pls.' Opp. at 7.

1 plaintiff's choice of forum should rarely be disturbed"). "This is especially true when a
2 plaintiff chooses to sue in its 'home turf.' " Natural Wellness Centers of America, Inc. v.
3 J.R. Andorin Inc., 2012 WL 216578, at *10 (N.D. Cal. 2012); see Piper Aircraft Co. v.
4 Reyno, 454 U.S. 235, 255 (1981). However, the deference accorded to a plaintiff's chosen
5 forum should be balanced against the extent of both the defendant's and plaintiff's contacts
6 with the chosen forum, including those relating to plaintiff's claims. Pac. Car & Foundry v.
7 Pence, 403 F.2d 949, 954 (9th Cir. 1968). "If the operative facts have not occurred within
8 the forum of original selection *and* that forum has no particular interest in the parties or the
9 subject matter, [a] plaintiff's choice is only entitled to minimal consideration." Id.
10 (emphasis added).

11 Defendants contend that Plaintiff's choice of forum is entitled to minimal deference
12 because the operative facts giving rise to this action occurred in Washington D.C., and
13 because this District has no particular interest in or connection to this litigation. Defs.' Mtn.
14 at 4-5. While Plaintiffs do not contend that the operative facts giving rise to the instant
15 action occurred within the Northern District of California, and have not identified a
16 particularized local impact that would result from the Defendants' alleged unlawful
17 conduct,⁷ they contend that Defendants have failed to show that the Northern District of
18 California has no particular interest in the parties or the subject matter of this litigation.
19 The Court agrees.

20 Plaintiffs are all incorporated in California, have offices in this district, have
21 members that live in this district who are concerned about the challenged decision,
22 developed this case, in part, while in this district, and made the decision to file the case
23 while in this district. See Norlen Decl. ¶¶ 4-5, 7-9, Dkt. 20-1; Shore Decl. ¶¶ 3-5; Galvin
24 Decl. ¶¶ 3, 5-8, 12, 14. The CBD directs its climate and ocean protection efforts from

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26 ⁷ In fact, Plaintiffs admit that the environmental impacts will occur "almost
27 exclusively in Queensland, Australia." Pls' Opp. at 9. According to Plaintiffs, "[o]utside
28 of the project's climate change impacts, the . . . project will not affect the lands or waters of
the United States. However, the project will affect three U.S. Endangered Species Act-
listed species, including the dugong and distinct population segments of green and
loggerhead sea turtles." Galvin Decl. ¶ 11.

1 offices in this district. Galvin Decl. ¶¶ 7-8. Likewise, Pacific Environment and Turtle
2 Island direct their respective environmental protection efforts from offices in this district.
3 See Norlen Decl. ¶¶ 5, 8; Shore Decl. ¶ 3. Further, Plaintiffs assert that Northern
4 California-based members of their organizations have specific plans to travel to Australia to
5 view the affected environment and wildlife, and are concerned that the Project will harm
6 their recreational and aesthetic interests. See Norlen Decl. ¶ 10; Shore Decl. ¶ 6; Galvin
7 Decl. ¶ 14. Thus, this case is not one in which the forum has no particular interest in the
8 parties or subject matter of the action. The Northern District of California has a particular
9 interest in this action because Plaintiffs are residents of California and each has an office in
10 this district as well as members that reside in this district who are concerned about the
11 potential impacts from the Project, including impacts on endangered and threatened species
12 and the climate. Accordingly, this factor weighs against transfer. See Center for Biological
13 Diversity v. Lubchenco, 2009 WL 4545169, at *4 (N.D. Cal. 2009) (finding that plaintiffs'
14 choice of forum is entitled to deference because California has an interest in litigation
15 involving one of its residents); Applied Elastomerics, Inc. v. Z-Man Fishing Products, Inc.,
16 2006 WL 2868971, at *3 (N.D. Cal. 2006) (noting that California has an interest in
17 litigation concerning its residents).

18 **2. Convenience of the Parties**

19 Defendants are both located in Washington D.C. and do not have any apparent
20 connection to the Northern District of California beyond the fact that Ex-Im Bank has
21 previously litigated a case similar to the instant action in this district. See Friends of Earth,
22 Inc. v. Mosbacher, 488 F.Supp.2d 889 (N.D. Cal. 2007). As discussed above, Plaintiffs are
23 all incorporated in California and have offices in this district. Galvin Decl. ¶ 5; Shore Decl.
24 ¶ 3; Norlen Decl. ¶ 4. Defendants do not dispute that Turtle Island and Pacific
25 Environment reside in the Northern District of California. Defs.' Mtn. at 5-6. Nor do they
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1 dispute that Plaintiffs are incorporated in California, and that the CBD has an office in San
2 Francisco, California.⁸

3 Defendants contend that Washington D.C. is "evidently" not an inconvenient forum
4 for the CBD because it litigates regularly in the District of Colombia. Defs'. Mtn. at 6.
5 Plaintiffs do not dispute that the CBD has previously litigated in the District of Colombia.
6 However, Plaintiffs argue that this factor weighs against transfer because they all "operate
7 in northern California and maintain large offices here," and because "key staff people
8 assisting with and making decisions regarding this case" would be unable to attend hearings
9 if the case is transferred to Washington D.C. Pls'. Opp. at 7-8.

10 The Court finds that this factor is neutral. While it is clear that the respective parties
11 will face increased litigation expenses and inconvenience if the case proceeds in their non-
12 preferred forum, transfer is not appropriate if it simply shifts the inconvenience from one
13 party to another. Decker Coal, 805 F.2d at 843; see also STX, Inc. v. Trik Stik, Inc., 708
14 F.Supp. 1551, 1556 (N.D. Cal. 1988) ("If the gain to convenience to one party is offset by
15 the added inconvenience to the other, the courts have denied transfer of the action."). There
16 is nothing before the Court demonstrating that Plaintiffs will be more inconvenienced by a
17 transfer of this action than Defendants will be if the action is not transferred. Contrary to
18 Plaintiffs' contention, the fact that "key staff" members will be unable to attend hearings if
19 this case is transferred does not demonstrate that this factor weighs against transfer. As
20 pointed out by Defendants, if this case is not transferred, Ex-Im Bank staff members will be
21 unable to attend hearings. Defs.' Reply at 5.

22 Finally, to the extent Plaintiffs argue that this factor weighs against transfer because
23 litigating this action in the District of Colombia will be inconvenient for their counsel, the
24 Court disagrees. The location of counsel is not an appropriate factor for the Court to
25 consider when deciding a motion to transfer under § 1404(a). Clark v. Sprint Spectrum

26 _____
27 ⁸ Defendants dispute whether the CBD's "main office" is located in this district. Id.
28 at 6 n. 2. However, because the resolution of the instant motion does not require the Court
to determine whether the CBD's "main office" is located in this district, the Court will not
reach this issue.

1 L.P., 2010 WL 5173872, at *3 (N.D. Cal. 2010); Bibo v. Federal Express, Inc., 2007 WL
2 2972948, at *3 (N.D. Cal. 2007); see also In re Horseshoe Ent., 305 F.3d 354, 358 (5th Cir.
3 2002) (the factor of "location of counsel" is irrelevant and improper for consideration in
4 determining the question of transfer of venue).

5 **3. Relative Court Congestion**

6 The relative docket congestion of the competing forums is also relevant to the
7 Court's decision on whether to transfer an action. See Decker Coal, 805 F.2d at 843. This
8 factor examines "whether a trial may be speedier in another court because of its less
9 crowded docket." Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1337 (9th Cir. 1984). "To
10 measure congestion, courts compare the two fora's 'median time from filing to disposition
11 or trial.'" Shore to Shore Properties, LLC v. Allied World Assur., 2011 WL 4344177, at
12 *6 (N.D. Cal. 2011) (quoting Costco Wholesale Corp. v. Liberty Mutual Ins. Co., 472
13 F.Supp.2d 1196 (S.D. Cal. 2007)).

14 Defendants contend that the relative Court congestion in each forum favors transfer.
15 Defs.' Mtn. at 7. In support of their position, Defendants cite to "Federal Court
16 Management Statistics (September 30, 2011)." Id. A review of the most recent Federal
17 Court Management Statistics reveals that in the 12-month period ending March 31, 2013,
18 the median time from filing to disposition in civil cases is 6.4 months in the Northern
19 District of California and 8.9 months in the District of Columbia. See
20 [http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-
22 march-2013.aspx](http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-
21 march-2013.aspx). Further, the Northern District of California has an average of 499
23 pending cases per judgeship while the District of Columbia has an average of 215 pending
24 cases per judgeship. Id. Finally, the median time from filing to trial in civil cases is 28.4
25 Id.

26 The Court finds that this factor is neutral or weighs slightly against transfer. While
27 this district has more pending cases per judgeship (i.e., this district is more congested), the
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1 median time from filing to disposition and the median time from filing to trial is longer in
2 the District of Colombia.

3 **4. Localized Interest in the Action**

4 The Ninth Circuit has directed courts to consider "the local interest in having
5 localized controversies decided at home" when deciding whether a transfer of venue is
6 appropriate. Decker Coal, 805 F.2d at 843. Defendants contend that this factor weighs in
7 favor of transfer because the Northern District of California does not have a localized
8 interest in this action. Defs.' Mtn. at 6. According to Defendants, Washington D.C. has a
9 localized interest in this action because Ex-Im Bank is headquartered in Washington, D.C.,
10 the agency's administrative process occurred in Washington D.C., and the case involves
11 issues of national and international import. Id. Plaintiffs disagree, arguing that the District
12 of Colombia does not have a localized interest in this case because "local" refers to where
13 the environmental impacts occur and where the people whose rights and interests are most
14 vitally affected. Pls'. Opp. at 8-9.

15 The Court finds that this factor weighs slightly in favor of transfer. Plaintiffs
16 concede that the environmental impacts will occur "almost exclusively in Queensland,
17 Australia," and do not contend that residents of this district will suffer a unique harm as a
18 result of the Project. Pls.' Opp. at 9. Plaintiffs have not identified a local interest in this
19 case beyond the fact that they and some of their members are located in this district.
20 Defendants, for their part, have not shown that the District of Colombia has a strong
21 localized interest in this controversy. In fact, Defendants concede that "the operative facts
22 in this case cannot be accurately characterized as local; they are overwhelmingly national
23 and international in scope." Defs.' Mtn. at 4. According to Defendants, this case raises
24 issues regarding the jurisdictional reach of the ESA and NHPA, and will impact businesses
25 in the United States that will export goods to Australia for the Project. Id. at 4-5.

26 Given the nature and scope of this controversy, the Court finds that the District of
27 Colombia, on balance, has a stronger localized interest in this controversy than the
28 Northern District of California. This district's generalized interest in the impacts from the

1 Project is outweighed by the District of Columbia's interest in the case, as the District of
2 Columbia is where the Defendants reside and where the administrative process giving rise
3 to the challenged decision occurred. See Alec L. v. Jackson, 2011 WL 8583134, at *5
4 (N.D. Cal. 2011) (finding that the District of Columbia "likely" had a greater interest in a
5 case challenging the federal government's actions in contributing to global warming
6 because California has only a general interest in the effects of global warming while the
7 District of Columbia is where the relevant policies were made, where the policymakers are
8 located, and where the named Defendants reside).

9 **5. Interests of Justice**

10 "In determining whether to transfer a case . . . the district court must determine
11 whether the 'interests of justice' dictate such a transfer." Sherar v. Harless, 561 F.2d 791,
12 794 (9th Cir. 1977). The interests of justice refer to "those public-interest factors of
13 systemic integrity and fairness." Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 30 (1988)
14 These interests include "whether efficient and expeditious administration of justice would
15 be furthered." Sherar, 561 F.2d at 794. Defendants argue that the interests of justice
16 counsel in favor of transfer because this case involves a federal agency headquartered in
17 Washington D.C. and questions of national and international interest and policy. Defs'.
18 Mtn. at 7. The Court finds that Defendants have failed to sustain their burden to show that
19 this factor weighs in favor of transfer. Defendants have not argued, let alone demonstrated,
20 that transfer would further the efficient and expeditious administration of justice. Nor have
21 Defendants otherwise shown that the interests of justice dictate a transfer of this action.

22 **6. Conclusion**

23 In sum, the Court concludes that Defendants have failed to sustain their burden to
24 demonstrate that a transfer of this case to the District of Columbia is warranted.
25 Defendants have not made a sufficient showing to warrant upsetting Plaintiffs' choice of
26 forum. Accordingly, Defendants' motion to transfer is DENIED.

27 **IV. CONCLUSION**

28 For the reasons stated above, IT IS HEREBY ORDERED THAT:

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1. Defendants' motion to transfer is DENIED.

2. This Order terminates Docket 15.

IT IS SO ORDERED.

Dated: 9/17/2013


SAUNDRA BROWN ARMSTRONG
United States District Judge