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9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 BACKCOUNTRY AGAINST DUMPS, DONNA )  
 TISDALE, and JOE E. TISDALE )

13 )  
 14 Plaintiffs, )

15 v. )

16 UNITED STATES BUREAU OF INDIAN )  
 AFFIARS, DARRYL LACOUNTE, in his )  
 17 official capacity as Director of the United States )  
 Bureau of Indian Affairs, AMY DUTSCHKE, in )  
 18 her official capacity as Regional Director of the )  
 Pacific Region of the United States Bureau of )  
 19 Indian Affairs, UNITED STATES )  
 DEPARTMENT OF THE INTERIOR, DAVID )  
 20 BERNHARDT, in his official capacity as )  
 Secretary of the Interior. And TARA SWEENEY, )  
 21 in her official capacity as Assistant Secretary of )  
 22 the Interior for Indian Affairs, )  
 23 )

24 Defendants. )  
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 27 )  
 28 )

No. 2:20-cv-01380-KJM-DB

**FEDERAL DEFENDANTS’  
 NOTICE OF MOTION AND  
 MOTION FOR TRANSFER OF  
 VENUE TO THE SOUTHERN  
 DISTRICT OF CALIFORNIA**

Date: September 25, 2020  
 Time: 10:00 a.m.  
 Judge: Honorable Kimberly J. Mueller  
 Courtroom 3, 15th Floor,  
 501 I St., Sacramento, CA 95814

1 PLEASE TAKE NOTICE THAT on September 25, 2020, at 10:00 am, the following  
2 Motion for Transfer of Venue to the Southern District of California will be heard by the  
3 Honorable Chief Judge Mueller, Courtroom 3, 15<sup>th</sup> Floor, 501 I St., Sacramento, California.

4 Federal Defendants are entitled to transfer to the Southern District, under 28 U.S.C.  
5 § 1404(a) as the more convenient forum and in the interest of justice. Federal Defendants move  
6 to transfer this case to the Southern District because (1) venue would be proper in the Southern  
7 District, and this case could have been brought in that District, and (2) transferring venue to the  
8 Southern District would be for the convenience of parties and in the interest of justice, as it is  
9 where Plaintiffs reside and where the wind energy project at issue is to be constructed. The  
10 motion is based on the memorandum in support filed with this motion and attachments thereto,  
11 the complete record before the court, and such further evidence and argument as Federal  
12 Defendants may present at the hearing.

13 Pursuant to this Court's Standing Order regarding meet and confer obligations, counsel  
14 for Federal Defendants conferred with counsel for Plaintiffs regarding change of venue via  
15 email, and Plaintiffs' counsel provided Plaintiffs' opposition. Specifically, Federal Defendants'  
16 counsel proposed on Wednesday, July 29 that Plaintiffs agree to transfer the action to the  
17 Southern District and provided a summary of the basic facts supporting transfer as set forth  
18 herein and in the accompanying memorandum. Plaintiffs declined this request on Friday, July 31.  
19 Counsel for Federal Defendants provided further support for Federal Defendants' position that  
20 transfer to the Southern District is warranted in this case on Wednesday, August 5 and asked  
21 Plaintiffs' counsel to confirm Plaintiffs' position in light of this further discussion. Counsel for  
22 Plaintiffs confirmed Plaintiffs' opposition to transfer to the Southern District on Tuesday,  
23 August 11.

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*/s/ Jacob D. Ecker*  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and the accompanying memorandum was electronically filed with the Clerk of Court using CM/ECF on August 12, 2020. Copies of this document will be served upon interested counsel via the Notices of Electronic Filing that are generated by CM/ECF.

*/s/ Jacob D. Ecker*  
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22 in her official capacity as Assistant Secretary of )  
the Interior for Indian Affairs, )  
23 )

24 Defendants. )  
25 \_\_\_\_\_ )  
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No. 2:20-cv-01380-KJM-DB

**FEDERAL DEFENDANTS’  
MEMORANDUM OF POINTS  
AND AUTHROTIES IN SUPPORT  
OF MOTION TO TRANSFER  
VENUE TO THE SOUTHERN  
DISTRICT OF CALIFORNIA**

Date: September 25, 2020  
Time: 10:00 a.m.  
Judge: Honorable Kimberly J. Mueller

Courtroom 3, 15th Floor,  
501 I St., Sacramento, CA 95814

1 **I. INTRODUCTION**

2 Plaintiffs Backcountry Against Dumps (Backcountry), Donna Tisdale, and Joe E. Tisdale  
3 (collectively, Plaintiffs) seek judicial review in this Court of an approval by the Bureau of Indian  
4 Affairs (BIA) of a lease between the Campo Band of Diegueño Mission Indians (the Tribe) and  
5 Terra-Gen Development Company LLC (Terra-Gen) for development of a wind energy project,  
6 to be built principally on the Tribe's reservation (the Reservation) in San Diego County (the  
7 Project). Plaintiffs seek declaratory relief that the BIA's environmental review under the  
8 National Environmental Policy Act prior to approval of the Tribe's lease was inadequate, and  
9 otherwise violated the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act, and  
10 injunctive relief enjoining the Project. Plaintiffs' Complaint references preliminary injunctive  
11 relief, though no motion for such relief has been filed to date.  
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14 The Eastern District has little, if any, connection with this matter. The Project, the  
15 Reservation and other private lands involved, the natural resources at issue, and all Plaintiffs are  
16 located outside of this District, in the Southern District of California. And Plaintiffs' Complaint  
17 itself admits that the relevant final agency actions here occurred in Washington, D.C., in the  
18 office of the Assistant Secretary of the Interior for Indian Affairs. This case's only connection to  
19 this District is that the regional office and contact person for the BIA for purposes of  
20 environmental review are located here; however, the existence of a regional office in this District  
21 bears only on the physical location of records that will be made available electronically in this  
22 APA case and does not outweigh the enhanced convenience to the parties and the strong public  
23 interest in having this dispute involving lands and resources in the Southern District heard in that  
24 District. Plaintiffs have a history of litigating similar environmental disputes in the Southern  
25 District, which demonstrates that the Southern District is a convenient forum for them. In fact, a  
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1 previous challenge brought by Plaintiffs Backcountry and Ms. Tisdale in this District to the  
2 Sunrise Powerlink Project—a transmission line running through San Diego and Imperial  
3 counties designed to carry renewable energy to market—was transferred to the Southern District  
4 in light of the general rule that “localized controversies should be decided in the forum of  
5 greatest interest and impact.” *Backcountry Against Dumps v. Abbott*, 2:10-cv-394, 2010 WL  
6 2349194, at \*4 (E.D. Cal. June 8, 2010).<sup>1</sup> Because these same principles are implicated here, this  
7 Court should similarly transfer the instant action to the Southern District.  
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## 9 **II. FACTUAL BACKGROUND**

10 Plaintiffs challenge the record of decision (ROD) issued by the Department of the  
11 Interior’s Principal Deputy Assistant Secretary for Indian Affairs, located in Washington, D.C.,  
12 approving the Tribe’s lease of land on its Reservation for use as renewable energy generation  
13 facilities consisting of sixty wind turbines on the Tribe’s Reservation in San Diego County.  
14 Compl., ECF No. 1, at ¶¶ 1–2. “[T]he Project is slated to be constructed on 2,200 acres of land  
15 located within the Tribe’s 16,512-acre Reservation near the rural community of Boulevard in  
16 eastern San Diego, approximately 70 miles east of the City of San Diego.” Compl., ECF No. 1,  
17 at ¶ 26. The project will “include[] up to sixty 586-foot tall turbines, three 374-foot tall  
18 meteorological towers, 15 miles of new access roads, an electrical connection and  
19 communications system, a collector substation, an operation and maintenance facility, a  
20 generator-tie . . . line, and other components needed for construction and operation of the  
21 Project.” *Id.* Additionally, according to the Complaint, “[t]he Project also includes the closely  
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26 <sup>1</sup> Although Westlaw reports the opinion cited in the text accompanying this footnote as issuing  
27 from the Southern District of California, it is actually an opinion of this Court and has been cited  
28 accordingly. *See* Docket, No. 2:10-cv-39, ECF No. 17 (E.D. Cal. June 8, 2010) (transferring case  
from Eastern to Southern District).

1 related Boulder Brush Facilities on 320 acres of private land adjacent to the Reservation,” which  
2 will include a portion of the generator-tie line, “a high-voltage substation, a 500 kilovolt . . .  
3 switchyard and connection, and access roads.” *Id.* at ¶ 27.

4 Plaintiffs assert that the ROD violates the Administrative Procedure Act, 5 U.S.C.  
5 §§ 703–706 (APA), the National Environmental Policy Act, 42 U.S.C. §§ 4321–70 (NEPA), the  
6 Migratory Bird Treaty Act, 16 U.S.C. §§ 703–12 (MBTA), and Bald and Golden Eagle  
7 Protection Act, 16 U.S.C. §§ 668–668d (BGEPA). Compl., ECF No. 1, at ¶ 3. Plaintiffs’  
8 Complaint describes Backcountry as a community organization comprised of individuals and  
9 families residing in San Diego and Imperial Counties who will allegedly be affected by the  
10 Project. Compl., ECF No. 1, at ¶ 16, 19. According to the Complaint, Plaintiffs Donna and Joe  
11 Tisdale live on Morningstar Ranch, located in San Diego County adjacent to the Tribe’s  
12 Reservation. Compl., ECF No. 1, at ¶ 17–19. Defendants in this action are the Department of  
13 Interior, the BIA, and four Interior Department and BIA officials sued in their official capacities  
14 (collectively, “Federal Defendants”). Compl., ECF No. 1, at ¶¶ 20–25.

15 Plaintiffs request declaratory and injunctive relief for the BIA’s alleged violations of law  
16 in approving the Project. Compl., ECF No. 1, at ¶¶ 26–31. They allege a myriad of harms to their  
17 use and enjoyment of property in San Diego and Imperial Counties, as well as impacts to local  
18 wildlife, an increased risk of wildfires, dangers to commercial and private aircraft, and threats to  
19 human health and welfare. *Id.* at ¶ 4. Plaintiffs’ Complaint thus demonstrates that it concerns  
20 issues and alleged harms localized to the Southern District on land situated in that District.  
21 Because the interested public is located there, and because Plaintiffs and the Tribe reside there  
22 (and no Defendant resides here for venue purposes), this action should be transferred to the  
23 Southern District.  
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1 **III. ARGUMENT**

2 Except as otherwise provided by law, a civil action against an agency of the United States  
3 or an officer or employee of the United States acting in his official capacity may be brought “in  
4 any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the  
5 events or omissions giving rise to the claim occurred, or a substantial part of property that is the  
6 subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the  
7 action.” 28 U.S.C. § 1391(e)(1).

9 “For the convenience of parties and witnesses, in the interest of justice, a district court  
10 may transfer any civil action to any other district or division where it might have been brought.”  
11 28 U.S.C. § 1404(a). In conducting an inquiry under section 1404(a), courts examine whether the  
12 defendant seeking to transfer venue can “satisfy both of the following requirements: (1) the  
13 transferee district is one in which the action might have been brought originally; and (2) transfer  
14 will enhance the convenience of the parties and witnesses, and is in the interests of justice.”  
15 *Exact Identification Corp. v. Feldman Sherb & Co.*, 2006 WL 236921, \* 1 (E.D. Cal. 2006)  
16 (citing *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)). The decision to transfer venue under  
17 Section 1404(a) is committed to the court’s sound discretion, exercised in light of all  
18 circumstances. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.  
19 1986); accord *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981). “In rendering this decision,  
20 courts consider a range of public and private interest factors, including access to proof, calendar  
21 congestion, where the relevant events took place, and whether the action and potential outcomes  
22 have a localized impact.” *Backcountry*, 2010 WL 2349194, at \*2 (citing *Jones v. GNC*  
23 *Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)). These considerations strongly favor  
24 transfer here.  
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1           **A. This action could have been brought in the Southern District.**

2           The first criteria for transfer is met because this case could have been brought in the  
3 Southern District. *See Exact Identification*, 2006 WL 236921, \* 1. Here, the property subject to  
4 this suit is located in the Southern District and the Plaintiffs reside there. Compl., ECF No. 1, at  
5 ¶¶ 16–18. As an environmental dispute centering on the approval of a lease and the development  
6 of land, “real property is involved” in this action, and all of the affected property is located in  
7 San Diego County. Venue is therefore proper in the Southern District under Section  
8 1391(e)(1)(B). *Cf. Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, No. C 08-05646  
9 JSW, 2009 WL 1025606, at \*2–3 (N.D. Cal. Apr. 14, 2009) (noting that “[t]he Ninth Circuit has  
10 not addressed the meaning of ‘real property in § 1391(e)(3)’” and holding that action involves  
11 real property for venue purposes where action “directly concerns the management of lands”  
12 under Bureau of Land Management’s authority). But this Court need not so hold in order for  
13 venue to be proper in the Southern District. If “real property is involved,” then venue in the  
14 Southern District is triggered under subsection (e)(1)(B) because all such property is located in  
15 San Diego County. *See* 28 U.S.C. § 1391(e)(1)(B); 28 U.S.C. § 84(d) (“The Southern District  
16 comprises the counties of Imperial and San Diego.”). Conversely, “if no real property is involved  
17 in the action” for venue purposes, then venue is proper under subsection (e)(1)(C) because  
18 Plaintiffs reside in the Southern District. *See* 28 U.S.C. § 1391(e)(1)(C) (establishing venue  
19 where “the plaintiff resides if no real property is involved in the action”).  
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23           By contrast, the Complaint fails to adequately plead venue exists in this District.  
24 Plaintiffs’ Complaint alleges only that “[v]enue is proper in this judicial district . . . because BIA  
25 and one or more individual Defendants officially reside in this judicial district.” Compl., ECF  
26 No. 1, at ¶ 12. But the BIA does not reside in a judicial district merely because it maintains an  
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1 office there. *See Tsi Akim Maidu of Taylorsville Rancheria v. U.S. Dep’t of Interior*, No. 16-CV-  
2 07189-LB, 2017 WL 2289203, at \*2 (N.D. Cal. May 25, 2017) (“Generally, ‘all federal  
3 defendants reside in Washington, D.C.’” and “[v]enue does not lie in every judicial district  
4 where a federal agency has a regional office.” (quoting *Williams v. United States*, No. C-01-  
5 0024-EDL, 2001 WL 1352885, \*1 (N.D. Cal. Oct. 23, 2001)); *Lamont v. Haig*, 590 F.2d 1124,  
6 1128 n.19 (D.C. Cir. 1978) (for the purposes of section 1391(e)(1) “[w]hat controls is the official  
7 residence of the federal defendant where the official duties are performed”). The same is true for  
8 the individual defendants. *See Tsi Akim Maidu*, 2017 WL 2289203, at \*2 (“Federal officers and  
9 employees reside at the ‘official’ residence—i.e., where the official duties are performed—not  
10 the personal residence (where the defendant lives).” (internal quotation marks omitted)).  
11  
12 Plaintiffs have the burden to establish that venue in this Court is proper. *Wordtech Sys. Inc. v.*  
13 *Integrated Network Sols., Corp.*, No. 2:04-CV-01971-TLN, 2014 WL 2987662, at \*2 (E.D. Cal.  
14 July 1, 2014) (citing *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th  
15 Cir. 1979); *Koresko v. RealNetworks, Inc.*, 291 F. Supp. 2d 1157, 1160 (E.D. Cal. 2003)).  
16  
17 Plaintiffs’ failure to set out allegations establishing venue in this Court provides additional  
18 support for transfer to a court with clearly proper venue.  
19

20 **B. The Southern District is the more convenient forum.**

21 The second criteria—that transfer to the Southern District will “enhance the convenience  
22 of the parties and witnesses”—is also met here. Plaintiffs cannot reasonably dispute that the  
23 Southern District is the most convenient forum for this case. Plaintiff Backcountry alleges that it  
24 “is a community organization comprising numerous individuals and families residing in eastern  
25 San Diego County and Imperial County” suing to prevent harm to members’ “use [of] the area  
26 affected by the Project.” Compl., ECF No. 1, ¶ 16. Plaintiffs Donna and Joe Tisdale live on a  
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1 ranch adjacent to the Project site and allege the Project “will harm [their] use and enjoyment of  
2 [their] ranch and the surrounding natural resources, and will diminish [their] lifetime investment  
3 in [the] property.” Compl., ECF No. 1, ¶ 17–18.

4         Though Plaintiffs’ choice of forum is a factor in determining whether to transfer an  
5 action, that choice is entitled to no deference when, as here, the Plaintiffs do not reside in the  
6 selected forum. *See Backcountry Against Dumps*, 2010 WL 2349194, at \*3 (“While plaintiffs are  
7 correct that the court must consider their choice of forum, where that forum is not plaintiffs’  
8 place of residence, no particular deference is given to plaintiffs’ selection.”); *FieldTurf USA, Inc.*  
9 *v. Blue Sky Int’l, Inc.*, No. CIV S-11-2035 KJM, 2012 WL 4510671, at \*3 (E.D. Cal. Sept. 30,  
10 2012) (“Where, as here, plaintiffs are not residents of the forum, the assumption that their choice  
11 of forum is reasonable is significantly more attenuated.”).

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14         Indeed, Plaintiffs’ litigation history demonstrates that Plaintiffs have found the Southern  
15 District to be a convenient forum for litigating numerous other environmental disputes, including  
16 one dispute they reference in their Complaint as potentially related to the present action. *See,*  
17 *e.g., Protect our Communities Found. v. Jewell*, No. 13-cv-575-JLS-JMA, 2014 WL 1364453, at  
18 \*1 (S.D. Cal. Mar. 25, 2014), *aff’d* 825 F.3d 571 (9th Cir. 2016) (granting summary judgment for  
19 federal defendants in challenge by Backcountry and Ms. Tisdale, among others, of “development  
20 of the Tule Wind Project, a utility-scale wind energy facility, on public lands in San Diego  
21 County”); *Protect Our Communities Found. v. Ashe*, No. 12-cv-2212-GPC PCL, 2013 WL  
22 6121421, at \*1–\*11 (S.D. Cal. Nov. 20, 2013) (granting summary judgment for government in  
23 challenge to Ocotillo Wind Energy Facility Project in Imperial County by Backcountry and Ms.  
24 Tisdale, among others); *Backcountry Against Dumps v. Abbott*, No. 10-CV-1222-BEN, 2011 WL  
25 13176672, at \*1 (S.D. Cal. June 30, 2011), *aff’d* 491 F. App’x 789 (9th Cir. 2012) (granting  
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1 summary judgment for federal defendants, after transfer from Eastern District, in challenge to the  
2 “Sunrise Powerlink Project,” a transmission line running through Imperial and San Diego  
3 Counties, by Backcountry and Ms. Tisdale, among others).

4 Unlike most ordinary civil actions, the convenience of witnesses is of minimal relevance  
5 to Plaintiffs’ action here, which will proceed under the APA on review of the administrative  
6 record only. *Backcountry*, 2010 WL 2349194, at \*3 (Inquiry into “convenience of the parties and  
7 potential witnesses . . . . is not particularly significant since the case, brought pursuant to the  
8 APA, will likely be determined exclusively on the administrative record.”). The relative  
9 availability of proof is, for these same reasons, also of little import here. *See Earth Island Inst. v.*  
10 *Quinn*, 56 F. Supp. 3d 1110, 1117 (N.D. Cal. 2014) (“[T]he availability of witnesses and proof is  
11 unlikely to be a factor in a NEPA record review case, since the relevant agency action will be  
12 reviewed on a paper record.”).

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15 Finally, Federal Defendants anticipate that Plaintiffs may argue that this Court is the  
16 more convenient venue because their counsel is only a relatively short drive away. But this Court  
17 has rejected this consideration, stating in an earlier case brought by Plaintiffs Backcountry and  
18 Ms. Tisdale, that “it is not relevant where *counsel* is located . . . . What is relevant is whether it  
19 would be more convenient to the parties and potential witnesses to have the case heard in the  
20 Southern District.” *Backcountry*, 2010 WL 2349194, at \*3.

21  
22 **C. Transfer is in the interest of justice.**

23 Finally, it is in the interest of justice to transfer this case for three principal reasons. First,  
24 there is a strong public interest in seeing this dispute, which centers on land and resources in the  
25 Southern District and is alleged to have localized impacts there, decided by a local forum.  
26 Second, though the substantive law is the same in this Court and the Southern District, the  
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1 Southern District’s experience with actions brought by Backcountry challenging other projects in  
2 the Southern District, including one that Plaintiffs now implicate as potentially relevant to this  
3 action, militates in favor of transfer. And third, as this Court is well aware, this Court is  
4 significantly congested, supporting transfer to the Southern District.

5 “[T]he local interest in deciding local controversies at home” has been described as  
6 “arguably [the] most important of the public interest factors” in a Section 1404(a) analysis.  
7 *S. Utah Wilderness v. Norton*, No. CIV.A. 01-2518(CKK), 2002 WL 32617198, at \*5 (D.D.C.  
8 June 28, 2002); *see also Quinn*, 56 F. Supp. 3d at 1119–20 (collecting cases and noting that  
9 weight of authority supports transfer to district where proposed project is located in  
10 environmental cases). This Court has previously transferred an action brought by Backcountry  
11 and Ms. Tisdale to the Southern District based largely on this factor. *Backcountry*, 2010 WL  
12 2349194, at \*4–5. There, after evaluating a proposed transmission corridor located entirely  
13 within the Southern District called the “Sunrise Powerlink Transmission Line,” this Court  
14 determined that that court had “the greatest connection to the citizens, the lands, the resources,  
15 and environmental interests impacted by the [project].” *Id.* at \*1, \*5. And because “the Eastern  
16 District ha[d] absolutely no impact on, nor any nexus with, any of the land or habitat at issue,”  
17 this Court transferred the case to the Southern District. *Id.* at \*4–5.

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21 Here, as in the earlier *Backcountry* case, Plaintiffs seek to enjoin activity that will take  
22 place exclusively in the Southern District. *See* Compl., ECF No. 1, at ¶¶ 26–31. The  
23 environmental impacts they allege—including supposed harms to the area’s wildlife habitat,  
24 unnecessary creation of wildfire risk, risks to commercial and private aircraft, threats to birds and  
25 other wildlife, and dangers to human health from noise and wildfires—would be felt mainly in  
26 the Southern District and hardly, if at all, in the Eastern District. *See id.* at ¶ 4. And, as the ROD  
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1 indicates, it is not merely Plaintiffs’ localized concerns that are at stake in this litigation. BIA’s  
2 approval of the Project sought to “support[] the Tribe’s long-term economic viability, establish  
3 resources to address chronic social issues and increase capacity to respond to population  
4 pressure, climate variability and resource impacts.” Ex. 1, at 6, ROD, attached as Attachment A  
5 to the Declaration of Ryan Hunter (Hunter Dec.). The Tribe’s Reservation, of course, is located  
6 entirely within the Southern District. Compl., ECF No. 1, at ¶ 26. The fact that the public  
7 scoping meeting at the outset of environmental review (a meeting that Plaintiff Ms. Tisdale  
8 attended) was held on the Tribe’s Reservation in the Southern District further demonstrates that  
9 public interest—both positive and negative—is located in the Southern District. Ex. 1 at 63–64,  
10 Scoping Meeting Transcript, attached as Attachment B to Hunter Dec.  
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12  
13 Similar considerations routinely result in transfer in environmental cases to the district  
14 where the challenged project or plan will have the most impact. *See, e.g., Quinn*, 56 F. Supp. 3d  
15 at 1119–20 (applying preference of “having localized controversies decided at home” in “most  
16 environmental case” (internal quotation marks omitted)); *Backcountry*, 2010 WL 2349194, \*4  
17 (same); *Sierra Club v. U.S. Dep’t of State*, No. C-09-04086 SI, 2009 WL 3112102, at \*3 (N.D.  
18 Cal. Sept. 23, 2009) (transferring action to Minnesota based on principle that “environmental  
19 cases often provide a particularly strong basis for finding a localized interest in the region  
20 touched by the challenged action”); *Nat’l Wildlife Fed’n v. Harvey*, 437 F. Supp. 2d 42, 46  
21 (D.D.C. 2006) (transferring case contesting lake water management to Florida); *S. Utah*  
22 *Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 86 (D.D.C. 2004) (transferring NEPA case to  
23 Utah where dispute focused on parcels of land in that district); *S. Utah Wilderness All. v. Norton*,  
24 2002 WL 32617198, \*5 (D.D.C. June 8, 2002) (transferring case to Utah in part because “the  
25 dispute in this instance will have the greatest impact on the citizens of Utah”); *Shawnee Tribe v.*  
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1 *United States*, 298 F. Supp. 2d 21, 26 (D.D.C. 2002) (granting transfer where Indian reservation  
2 is located, finding “to be the most persuasive factor favoring transfer of this litigation . . . the  
3 local interest in deciding a sizeable local controversy at home”).

4       Moreover, though Federal Defendants have identified no companion cases challenging  
5 the Project itself in any other jurisdiction, Plaintiffs’ Complaint implicates the Sunrise Powerlink  
6 case as potentially related in alleging that the Project should have been considered in conjunction  
7 with another wind generation project, because, according to the Complaint, the two facilities  
8 would share a substation and switchyard that would connect both to the Sunrise Powerlink  
9 transmission line. *See* Compl., ECF No. 1, at ¶ 33. As discussed, this Court previously held that  
10 litigation surrounding the Sunrise Powerlink should proceed in the Southern District.

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12 *Backcountry*, 2010 WL 2349194, at \*4–5. Ultimately, the Southern District granted summary  
13 judgment for the federal defendants in that case, and the Ninth Circuit affirmed. *See Backcountry*  
14 *Against Dumps v. Abbott*, 491 F. App’x 789, 790 (9th Cir. 2012). The Southern District has also  
15 adjudicated *Backcountry*’s and Ms. Tisdale’s challenges to at least two other wind energy  
16 projects located in the Southern District—Tule Wind Project in San Diego County and Ocotillo  
17 Wind Project in Imperial County—finding for the government in both cases. *See Protect our*  
18 *Communities*, 2014 WL 1364453, at \*1 (Tule Wind); *Protect Our Communities*, 2013 WL  
19 6121421, at \*1 (Ocotillo Wind). On appeal, the Ninth Circuit affirmed the Southern District’s  
20 grant of summary judgment for the government in the Tule Wind Project case in a published  
21 opinion. *See Protect Our Communities Found. v. Jewell*, 825 F.3d 571, 576–77 (9th Cir. 2016)  
22 (affirming summary judgment for government in challenge under NEPA, MBTA, and BGEPA to  
23 wind energy project). These similar challenges to energy projects in the area demonstrate the  
24 Southern District’s familiarity with this area of law and the natural resources in that District,  
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1 lending further support to the propriety of transferring the case. *Cf. Mandan, Hidatsa & Arikara*  
2 *Nation v. United States Dep't of the Interior*, 358 F. Supp. 3d 1, 9–10 (D.D.C. 2019) (noting  
3 presumptive ability of all federal courts “to decide issues of federal law,” but identifying “courts’  
4 respective knowledge of the parties and facts as well as any considerable experience the transfer  
5 court may have in a particular area of law” as a relevant public interest factor); *see also Sullivan*  
6 *v. Nutribullet, L.L.C.*, No. 2:18-cv-04800, 2020 WL 2219205, at \*4 (C.D. Cal. Mar. 9, 2020)  
7 (“Judicial economy considerations, such as ensuring speedy trials, trying related litigation  
8 together, and having a judge familiar with the applicable law try the case, are also relevant in  
9 determining whether to transfer.”).

11 Finally, as this court is well aware, congestion is a factor for cases filed in this District.  
12 *See, e.g., Backcountry*, 2010 WL 2349194, at \*5 (“Finally, the court remarks that judicial  
13 economy considerations further support a transfer of this case to the Southern District, which has  
14 a less congested docket than this district and significantly more federal judges. The Eastern  
15 District court located in Sacramento has only 7 active judges who maintain a caseload of nearly  
16 1100 cases per judge. This is the highest caseload per judge in the country, exceeding by  
17 hundreds the national average of approximately 450 cases per judge.”). The most recent  
18 available data suggests that this District is significantly more congested than the Southern  
19 District, and thus congestion remains a significant factor in favor of transfer: For the twelve  
20 month period ending March 31, 2020, each of the six judgeships in this District is listed as  
21 carrying 1,224 pending cases, while each of the thirteen judgeships in the Southern District is  
22 listed as carrying 476 pending cases. *See Combined Civil and Criminal Federal Court*  
23 *Management Statistics* (March 31, 2020), [https://www.uscourts.gov/statistics/table/na/federal-](https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2020/03/31-1)  
24 [court-management-statistics/2020/03/31-1](https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2020/03/31-1) (last accessed Aug. 12, 2020).  
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1 To the extent Plaintiffs counter that venue is more appropriate in this Court because  
2 certain relevant BIA actions occurred here, Federal Defendants note that, as Plaintiffs’  
3 Complaint recognizes, the relevant agency actions were approved “by signing a ROD and related  
4 authorizations including approval of the [final environmental impact statement], all allowing  
5 construction and operation of the Project,” by Tara Sweeney, Assistant Secretary of the Interior  
6 for Indian Affairs. *See* Compl., ECF No. 1, ¶ 25. Tara Sweeney resides in Washington, D.C. *See*  
7 Ex. 1, at 2, Hunter Dec., ¶ 4. Moreover, the only potential relevance of BIA’s regional office in  
8 Sacramento to venue in this District is the location of the administrative record, which, as  
9 discussed, will be lodged with the Court and made available to all parties electronically. This  
10 consideration in no event outweighs the substantial public interest in favor of transferring this  
11 action to the Southern District, where the Plaintiffs, the Tribe, and the disputed Project and the  
12 alleged environmental impacts all reside, and where Plaintiffs’ previous lawsuits in the Southern  
13 District has generated familiarity with the legal issues and local interests involved here.

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15  
16 **IV. CONCLUSION**

17 This action could have been brought in the Southern District. Transfer to that District  
18 would enhance the convenience of the parties because Plaintiffs reside there. Transfer to the  
19 Southern District would also further the public interest in having localized disputes decided  
20 locally, and advance the aims of judicial economy by transferring the action to a less congested  
21 judicial district that also has experience with Plaintiffs’ prior environmental challenges to  
22 renewable energy projects in San Diego and Imperial Counties. Accordingly, this Court should  
23 transfer venue to the Southern District of California for all further proceedings pursuant to 28  
24 U.S.C. § 1404(a).  
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1 Respectfully submitted this 12<sup>th</sup> day of August, 2020.

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