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10 Attorneys for Proposed Intervenor-Defendant  
11 Terra-Gen Development Company, LLC

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 BACKCOUNTRY AGAINST DUMPS,  
15 DONNA TISDALE, and JOE E. TISDALE,

16 Plaintiffs,

17 v.

18 UNITED STATES BUREAU OF INDIAN  
19 AFFAIRS, DARRY LACOUNTE, in his  
official capacity as Director of the United  
20 States Bureau of Indian Affairs, AMY  
DUTSCHKE, in her official capacity as  
21 Regional Director of the Pacific Region of the  
United States Bureau of Indian Affairs,  
22 UNITED STATES DEPARTMENT OF THE  
INTERIOR, DAVID BERNHARDT, in his  
23 official capacity as Secretary of the Interior,  
and TARA SWEENEY, in her official  
24 capacity as Assistant Secretary of the Interior  
for Indian Affairs,

25  
26 Defendants.

CASE NO. 2:20-cv-01380-KJM-DB

**PROPOSED INTERVENOR-DEFENDANT  
TERRA-GEN DEVELOPMENT COMPANY,  
LLC'S PROPOSED JOINDER IN FEDERAL  
DEFENDANTS' MOTION FOR TRANSFER  
OF VENUE TO THE SOUTHERN  
DISTRICT OF CALIFORNIA**

Hearing Date: September 25, 2020  
Time: 10:00 a.m.  
Court Room 3, 15<sup>th</sup> Floor  
501 I Street, Sacramento, CA 95814

Hon. Kimberly J. Mueller

1 Proposed Intervenor-Defendant Terra-Gen Development Company, LLC (“Terra-Gen”)<sup>1</sup>  
2 hereby joins and incorporates by reference all arguments and authorities presented by Federal  
3 Defendants in their Motion for Transfer of Venue to the U.S. District Court for the Southern  
4 District of California. ECF No. 5 (“Motion”). Terra-Gen seeks the same relief requested in that  
5 Motion. Terra-Gen hereby lodges this Proposed Joinder in Federal Defendants’ Motion and  
6 respectfully requests that it be filed if this Court grants Terra-Gen intervention. Terra-Gen is the  
7 developer of the Campo Wind Project (“Project”), \$400 million renewable wind energy facilities  
8 to be constructed entirely within the Southern District. Plaintiffs seek to block Terra-Gen’s  
9 Project through this litigation.

10 For the reasons explained below and the numerous additional reasons set forth in Federal  
11 Defendants’ Motion for Transfer of Venue, not repeated herein for purposes of economy, this  
12 Court should transfer venue to the Southern District of California pursuant to 28 U.S.C. §  
13 1404(a) because all relevant considerations overwhelmingly support transfer: venue is proper in  
14 the Southern District under 28 U.S.C. § 1391(e); transfer will best advance the interests of justice  
15 where the land and environmental resources at issue are located within the Southern District; and  
16 transfer will enhance the convenience of the parties and witnesses, to the limited extent that such  
17 considerations are germane for this administrative record-based action. Plaintiffs routinely  
18 litigate in the Southern District, typically without success. Plaintiffs’ choice of forum in the  
19 Eastern District is not entitled to any deference under these circumstances where all Plaintiffs  
20 reside in and have previously challenged similar development projects in the Southern District.

21 This controversy concerns a long-term lease (“Lease”) between Terra-Gen and the  
22 Campo Band of Diegueno Mission Indians (“Tribe”) to allow Terra-Gen to construct and operate  
23 wind generation facilities on land within the Tribe’s Reservation. The Tribe approved the Lease  
24 through a resolution adopted by its General Council. Decl. of Craig Pospisil in Supp. of Mot. to  
25 Intervene ¶ 7, ECF No. 6-3. The Project’s local connections are strong. The Tribal government,

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26  
27 <sup>1</sup> On August 14, 2020, Terra-Gen filed its Motion to Intervene in this action. ECF No. 6.  
28

1 the Tribe’s Reservation where the wind turbines would be located, the gen-tie line and related  
2 facilities on adjacent private land, and Terra-Gen’s development office are all located within San  
3 Diego County, which is entirely within the Southern District. *Id.* ¶¶ 1, 3; *see also* BIA, Record  
4 of Decision for Campo Wind Project with Boulder Brush Facilities (Apr. 2020) at 1, *available at*  
5 <http://www.campowind.com/> (hereinafter Record of Decision). The Tribe entered into the Lease  
6 with Terra-Gen in exchange for payments and rents that will be a key source of revenue for the  
7 Tribe, contributing significantly to tribal government functions. Record of Decision at 1-2, 11.  
8 Construction and operation of the Project will create jobs for Tribal members, and will advance  
9 the development of renewable energy resources in the area. *Id.* at 2, 11. Once developed, the  
10 Project would connect to San Diego Gas & Electric Company’s Sunrise Powerlink transmission  
11 line and bring wind energy to San Diego. *Id.* at 1.

12           This Project required approval from the U.S. Bureau of Indian Affairs (“BIA”) for the  
13 Lease to be legally valid because it is located on Tribal trust lands. Plaintiffs now challenge  
14 BIA’s approval of the Lease and the agency’s associated environmental review, and seek to  
15 overturn the legal authorization to construct and operate the Project. They claim harm from “the  
16 impacts of the Project’s construction and operation on [their] recreational, wildlife, cultural,  
17 scientific, spiritual, aesthetic, safety and property interests.” Compl. ¶ 15. At issue in this case is  
18 BIA’s multi-year environmental review process evaluating the Project’s potential impacts on the  
19 surrounding area—a process that included multiple rounds of public comments and local public  
20 meetings. *See* Record of Decision at 2-3. Of course, all of these purported impacts are located  
21 in the Southern District. This action is a classic environmental case that “epitomizes the  
22 principle that local matters of acute interest should be decided locally.” *See Backcountry Against*  
23 *Dumps v. Abbott*, No. Civ. S-10-394 FCD/KJN, 2010 WL 2349194, at \*5 (E.D. Cal. June 8,  
24 2010) (granting transfer from Eastern District to Southern District in challenge to Sunrise  
25 Powerlink project on similar environmental grounds).

26           Furthermore, the relative degree of court congestion, which weighs in favor of transfer to  
27 the Southern District, is of particular importance to Terra-Gen. *See* Motion at 13. To the extent  
28 that a less congested court would be able to more quickly resolve Plaintiffs’ claims challenging

1 Terra-Gen’s Lease with the Tribe, this would provide earlier certainty for the Project.

2 In addition, consideration of the convenience of the forum for the parties and witnesses in  
3 the transfer inquiry under 28 U.S.C. § 1404(a) “is not particularly significant” here because this  
4 case will be decided based on the administrative record. *Backcountry*, 2010 WL 2349194, at \*3.  
5 In such environmental cases, documentary evidence from an electronic administrative record is  
6 as easily provided in one venue as another and there are typically no witnesses to consider. *Ctr.*  
7 *for Biological Diversity & Pac. Env’t v. Kempthorne*, No. C 07 0894 EDL, 2007 WL 2023515, at  
8 \*5 (N.D. Cal. July 12, 2007). Moreover, where, as here, plaintiffs’ chosen forum “is not  
9 plaintiffs’ place of residence, no particular deference is given to plaintiffs’ selection.”  
10 *Backcountry*, 2010 WL 2349194, at \*3.

11 For over two decades, Plaintiffs have opposed local development projects. They  
12 routinely file cases without success in the Southern District—the local court. In fact, these  
13 Plaintiffs filed suit unsuccessfully to block two other wind energy projects—both located within  
14 an hour’s drive of the proposed Campo Wind Project—in the Southern District. *See, e.g.*, BIA,  
15 Final Environmental Impact Statement for the Proposed Campo Wind Energy Project, (January  
16 2020) at 11 (describing close proximity of other wind facilities and transmission infrastructure),  
17 *available at* <http://www.campowind.com>. Indeed, Plaintiffs *Backcountry* and Donna Tisdale,  
18 along with another community organization, alleged that the Federal Government’s approval of  
19 the nearby Tule wind project violated the exact same statutes they now argue BIA violated in the  
20 instant action and they challenged the Federal Government’s approval of the Ocotillo wind  
21 project on similar grounds. *See* Complaint ¶ 79, *Protect Our Communities Found. v. Salazar*,  
22 No. 3:13-cv-00575-JLS-JMA (S.D. Cal. Mar. 12, 2013); Complaint ¶ 89, *Protect Our*  
23 *Communities Found. v. Salazar*, No. 3:12-cv-02211-GPC-PCL (S.D. Cal. Sept. 11, 2012). The  
24 Southern District rejected all of the plaintiffs’ claims in both cases. *Protect Our Communities*  
25 *Found. v. Jewell*, No. 3:13-cv-00575-JLS-JMA, 2014 WL 1364453, at \*4, \*11, \*14, \*16 (S.D.  
26 Cal. Mar. 25, 2014) (finding that plaintiffs’ arguments were “simply unsupported by the record,”  
27 “inaccurate,” and “misleading,” and evidence invoked by plaintiffs was “flawed and  
28 unpersuasive”), *aff’d*, by 825 F.3d 571 (9th Cir. 2016); *Protect Our Communities Found. v.*

1 *Salazar*, No. 3:12-cv-02211-GPC-PCL, 2013 WL 5947137, at \*19 (S.D. Cal. Nov. 6, 2013),  
2 *aff'd sub nom. Backcountry Against Dumps v. Jewell*, 674 Fed. App'x 657 (9th Cir. 2017).

3 Back in 2010 when Plaintiffs Backcountry and Donna Tisdale filed suit in the Eastern  
4 District to challenge the federal approval of the Sunrise Powerlink project—the transmission line  
5 located entirely within the Southern District that will ultimately transmit power generated by the  
6 Campo Wind Project—the court granted Defendants' motion to transfer venue to the Southern  
7 District. *See Backcountry*, 2010 WL 2349194, at \*5. This Court should do the same here.

8 Therefore, for the reasons set forth in the Federal Defendants' Motion and supplemented  
9 herein, Terra-Gen respectfully joins in the Federal Defendants' Motion to Transfer Venue and  
10 requests that this Court transfer this action to the Southern District of California.

11  
12 Dated: August 28, 2020

**LATHAM & WATKINS LLP**

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