

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

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

Plaintiffs,

v.

WILBUR ROSS, et al.,

Defendants.

Case No. 19-cv-07897-LB

**ORDER GRANTING MOTIONS TO
TRANSFER**

Re: ECF Nos. 40, 50

INTRODUCTION

In this lawsuit, the plaintiffs, a group of six environmental organizations, sued the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (and their official representatives), challenging final agency action in the form of each agency’s adoption of a biological opinion regarding the long-term operation of the Central Valley Project and the State Water Project (collectively, “Water Projects”) under the Administrative Procedures Act (“APA”), 5 U.S.C. § 706. The plaintiffs claim that the opinions increase the risk of extinction of endangered and threatened salmon, steelhead, and Delta Smelt.¹ The plaintiffs also sued the U.S. Bureau of

¹ FAC – ECF No. 52 at 1 (¶¶ 1–2), 57–62 (¶¶ 168–83). Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents. The plaintiffs are six environmental organizations: (1) Pacific Coast Federation of Fishermen’s Associations; (2) Institute for Fisheries Resources; (3) Golden State Salmon Association; (4) Bay.Org

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1 Reclamation (and its official representatives), claiming violations of the Endangered Species Act
2 (“ESA”), 16 U.S.C. § 1536(a)((2), and the National Environmental Policy Act (“NEPA”), 42
3 U.S.C. § 4321 *et seq.*²

4 The court previously granted permissive intervention to intervenor-defendants San Luis &
5 Delta-Mendota Water Authority and Westlands Water District (collectively, the “Water
6 Agencies”).³ The federal defendants and the Water Agencies have moved to transfer this action to
7 the Eastern District of California.⁴ The plaintiffs opposed the transfer motions and also filed a
8 motion for a preliminary injunction.⁵

9 The parties agree, and the court finds, that the transfer motions are suitable for determination
10 without oral argument.⁶ N.D. Cal. Civ. L. R. 7-1(b). The court grants the motions and transfers
11 this action and the related case, *California Natural Resources Agency et. al. v. Ross et. al.*, No.
12 3:20-cv-01299-LB, to the United States District Court for the Eastern District of California.⁷

13
14 **STATEMENT**

15 **1. The Relevant Biological Opinions**

16 In two biological opinions (one issued in 2008 by the U.S. Fish and Wildlife Service and one
17 issued in 2009 by the National Marine Fisheries Service), the Water Projects were authorized to

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19 d/b/a The Bay Institute; (5) Natural Resources Defense Council, Inc.; and (6) Defenders of Wildlife.
Id. at 8–12 (¶¶ 20–26).

20 ² *Id.* at 62–67 (¶¶ 184–99). The named individual defendants are Secretary of Commerce Wilbur Ross,
21 Assistant Administrator for Fisheries Chris Oliver, Secretary of Interior David Bernhardt, Director of
22 Fish and Wildlife Service Aurelia Skipwith, Commissioner of Bureau of Reclamation Brenda Burman,
23 and Acting Director of the Fish and Wildlife Service Margaret Everson. *Id.* at 15–16 (¶ 34). Ms.
Everson is not a named defendant in the “Parties” section of the FAC, but the plaintiffs name her as a
24 defendant in claim two, charging an APA violation. *Id.* at 60.

25 ³ Order – ECF No. 37.

26 ⁴ Mots. – ECF Nos. 40, 50.

27 ⁵ Opp’n – ECF Nos. 51, 80; Mot. – ECF No. 81.

28 ⁶ Joint Statement – ECF No. 89 at 4. The court had a hearing on March 5, 2020 and discussed issues
related to the transfer motions. Minute Entry – ECF No. 78.

⁷ The parties agreed at the March 5 hearing that the same transfer analysis applied to both cases and
confirmed this in their joint status statement. Joint Statement – ECF No. 89 at 4–5.

1 kill, as incidental to their operations, a limited number of threatened and endangered species of
 2 fish.⁸ In 2016, after years of drought, the agencies reinitiated consultation under the Endangered
 3 Species Act.⁹ In January 2019, the Bureau of Reclamation issued a biological assessment for a
 4 new operating plan for the Water Projects.¹⁰ The plaintiffs claim that the assessment increased the
 5 pumping of water from the Sacramento Delta (for export to the Central Valley and Southern
 6 California) and weakened or eliminated operational requirements in the 2008 and 2009 opinions
 7 that protected listed fish populations.¹¹

8 In July 2019, biologists at the Fisheries Service prepared a biological opinion that concluded
 9 that “Reclamation’s proposed plan was likely to jeopardize listed salmon and steelhead . . . and
 10 was likely to destroy or adversely modify critical habitat, in violation of the Endangered Species
 11 Act.”¹² Then, on October 21, 2019, the Fisheries Service issued a biological opinion that
 12 concluded — in contrast to the July 2019 opinion — that Reclamation’s proposed plan was not
 13 likely to jeopardize the existence of winter-run and spring-run salmon and Central Valley
 14 steelhead beyond that permitted under its 2009 opinion.¹³ Similarly, Fish and Wildlife Service
 15 issued an opinion that Reclamation’s proposed plan was not likely to jeopardize the continued
 16 existence of the Delta Smelt or modify its habitat.¹⁴ On February 18, 2020, Reclamation adopted
 17 its proposed plan and began implementing the altered operations of the Central Valley Project.¹⁵

22 ⁸ FAC – ECF No. 52 at 3–4 (¶ 6).

23 ⁹ *Id.* at 3–4 (¶ 1), 5 (¶ 10).

24 ¹⁰ *Id.* at 4 (¶ 7).

25 ¹¹ *Id.*

26 ¹² *Id.* at 5 (¶ 10).

27 ¹³ *Id.* at 5–6 (¶ 12).

28 ¹⁴ *Id.* at 5 (¶ 11).

¹⁵ *Id.* at 6 (¶ 14).

1 **2. Relevant Procedural History**

2 The plaintiffs filed their First Amended Complaint on February 24, 2020, claiming (1)
3 violations of the APA by the National Marine Fisheries Service and the U.S. Fish and Wildlife
4 Service (and their official representatives), and (2) violations of the ESA and NEPA by the Bureau
5 of Reclamation (and its official representatives).¹⁶

6 The court granted permissive intervention to the Water Agencies (San Luis & Delta-Mendota
7 Water Authority and Westlands Water District).¹⁷ On March 13, 2020, the parties stipulated to
8 permissive intervention by the Sacramento River Settlement Contractors and the Tehama-Colusa
9 Canal Authority.¹⁸ Certain state water agencies also moved to intervene: the Metropolitan Water
10 District of Southern California, Kern County Water Agency, Central Coast Water Agency, and
11 Solano County Water Agency.¹⁹ The plaintiffs oppose the motion to intervene.²⁰ It is fully briefed
12 on March 24, 2020.²¹ The plaintiffs filed a motion for a preliminary injunction on March 5,
13 2020.²² The oppositions are due March 26, 2020 (for the federal defendants) and March 31, 2020
14 (for the intervenor defendants), and the plaintiffs' reply is due April 9, 2020.²³

15 In a related case filed on February 20, 2020, *California Nat'l Res. Agency v. Ross*, No. 3:20-
16 cv-01299-LB (N.D. Cal.), the State of California and state agencies sued the National Marine
17 Fisheries Service, the U.S. Fish and Wildlife Service, and the U.S. Bureau of Reclamation (and
18 their official representatives), also challenging the October 2019 biological opinions as violations
19 of the APA, ESA, and NEPA.²⁴ The federal defendants have not appeared.²⁵ San Luis & Delta-

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21 ¹⁶ *Id.* at 57–67 (¶¶ 168–99).

22 ¹⁷ Order – ECF No. 37.

23 ¹⁸ Stipulation – ECF No. 99 at 4.

24 ¹⁹ Mot. – ECF No. 63. The motion is currently pending before the court.

25 ²⁰ Opp'n – ECF No. 106.

26 ²¹ *See* docket text accompanying ECF No. 63.

27 ²² Mot. for Prelim. Inj. – ECF No. 81.

28 ²³ Order – ECF No. 101.

²⁴ Compl., No. 3:20-cv-01299-LB – ECF No. 1.

²⁵ *See* docket.

1 Mendota Water Authority and Westlands Water District (again, collectively, the “Water
2 Agencies” and intervenors in this case) moved to intervene.²⁶ The opposition is due March 24,
3 2020, and the reply is due March 30, 2020.²⁷ The state water agencies, including the Metropolitan
4 Water District of Southern California, Kern County Water Agency, Central Coast Water Agency,
5 and Solano County Water Agency, also moved to intervene.²⁸ The opposition is due April 2, 2020,
6 and the reply is due April 9, 2020.²⁹ The California plaintiffs oppose the transfer motion in the
7 related case for the reasons that the plaintiffs in this case oppose the transfer motion in this case.³⁰
8 They acknowledge that “given the significant overlap in the two cases, California believes that the
9 Court’s ruling” on the transfer motion in this case” “may decide the issue in the present [meaning,
10 related] case as well.”³¹

11 The related case in the Eastern District of California is *Natural Resources Defense Council v.*
12 *Bernhardt*, E.D. Cal., Case No. 1:05-cv-01207-LJO-EPG. The Federal Defendants recount the
13 substantial litigation in the Eastern District of California.³²

14 GOVERNING LAW

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16 28 U.S.C. § 1404(a) states: “For the convenience of parties and witnesses, in the interest of
17 justice, a district court may transfer any civil action to any other district or division where it might
18 have been brought.” Although Congress drafted § 1404(a) in accordance with the doctrine of
19 *forum non conveniens*, it was intended to be a revision to rather than a codification of the common
20 law. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 253 (1981); *Norwood v. Kirkpatrick*, 349 U.S. 29,
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24 ²⁶ Mot. to Intervene – ECF No. 13.

25 ²⁷ See docket text accompanying ECF No. 13.

26 ²⁸ Mot. to Intervene – ECF No. 24.

27 ²⁹ See docket text accompanying ECF No. 24.

28 ³⁰ Response to Mot. To Transfer, No. 3:20-cv-01299-LB – ECF No. 22. At a1–2.

³¹ *Id.* at 2.

³² Mot. to Transfer – ECF No. 40 at 10–13; Reply – ECF No. 58 at 5–12–13.

1 32 (1955). Thus, a § 1404(a) transfer is available “upon a lesser showing of inconvenience” than
2 that required for a *forum non conveniens* dismissal. *Norwood*, 349 U.S. at 32.

3 The burden is upon the moving party to show that transfer is appropriate. *Commodity Futures*
4 *Trading Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); *see also Los Angeles Mem’l*
5 *Coliseum Comm’n v. Nat’l Football League*, 89 F.R.D. 497, 499 (C.D. Cal. 1981), *aff’d*, 726 F.2d
6 1381, 1399 (9th Cir. 1984). Nonetheless, the district court has broad discretion “to adjudicate
7 motions for transfer according to an ‘individualized, case-by-case consideration of convenience
8 and fairness.’” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (quoting
9 *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)); *see Westinghouse Elec. Corp. v. Weigel*,
10 426 F.2d 1356, 1358 (9th Cir. 1970).

11 An action may be transferred to another court if: (1) that court is one where the action might
12 have been brought; (2) the transfer serves the convenience of the parties; and (3) the transfer will
13 promote the interests of justice. *E & J Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465, 466 (E.D.
14 Cal. 1994) (citing 28 U.S.C. § 1404(a)). The Ninth Circuit has identified additional factors that a
15 court may consider in determining whether a change of venue should be granted under § 1404(a):

16 (1) the location where the relevant agreements were negotiated and executed, (2)
17 the state that is most familiar with the governing law, (3) the plaintiff’s choice of
18 forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating
19 to the plaintiff’s cause of action in the chosen forum, (6) the differences in the
20 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.

21 *Jones*, 211 F.3d at 498–99. Courts may consider “the administrative difficulties flowing from
22 court congestion . . . [and] the ‘local interest in having localized controversies decided at home.’”
23 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (quoting *Piper*
24 *Aircraft*, 454 U.S. at 241 n. 6).

25 Generally, the court affords the plaintiff’s choice of forum great weight. *Lou v. Belzberg*, 834
26 F.2d 730, 739 (9th Cir. 1987). But when judging the weight to be given to plaintiff’s choice of
27 forum, consideration must be given to the respective parties’ contact with the chosen forum. *Id.* “If
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1 the operative facts have not occurred within the forum and the forum has no interest in the parties
2 or subject matter,” the plaintiff’s choice “is entitled only minimal consideration.” *Id.*

4 ANALYSIS

5 The parties do not dispute that the case could have been brought in the Eastern District of
6 California. They dispute only whether transfer is appropriate based on the “convenience of the
7 parties and witnesses, [and] in the interest of justice.” 28 U.S.C. § 1404(a).

8 Given the Eastern District’s local interest in the case and other considerations about judicial
9 economy, the court transfers both cases.

11 1. Plaintiffs’ Choice of Forum and the Eastern District’s Local Interest

12 Although the plaintiffs’ choice of forum is entitled to some deference, the Eastern District’s
13 significant ties to the case outweigh the plaintiffs’ choice of forum.

14 Generally, “unless the balance of the § 1404(a) factors ‘is strongly in favor of the defendants,
15 the plaintiff’s choice of forum should rarely be disturbed.’” *Getz v. Boeing Co.*, 547 F. Supp. 2d
16 1080 (N.D. Cal. 2008) (quoting *Secs. Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1317
17 (9th Cir. 1985)); *see also Decker*, 805 F.2d at 843 (“[D]efendant must make a strong showing ... to
18 warrant upsetting the plaintiff’s choice of forum.”). “This is especially true when a plaintiff
19 chooses to sue in its ‘home turf.’” *Natural Wellness Ctrs. of Am. v. J.R. Andorin Inc.*, No. 11-
20 04642 EDL, 2012 WL 216578, at *10 (N.D. Cal. Jan. 24, 2012).

21 But sometimes a plaintiff’s choice of forum is entitled to only minimal weight, “*even if the*
22 *plaintiff is a resident of the forum.*” *Chesapeake Climate Action Network v. Export-Import Bank of*
23 *the U.S.*, No. 13-cv-03532-WHA, 2013 WL 6057824, at *2 (N.D. Cal. Nov. 15, 2013) (emphasis
24 in original). “[T]he deference accorded to a plaintiff’s chosen forum should be balanced against
25 the extent of both the defendant’s and plaintiff’s contacts with the chosen forum, including those
26 relating to plaintiff’s claims.” *Ctr. for Biological Diversity v. Export-Import Bank*, No. C 12-6325
27 SBA, 2013 WL 5273088, at *5 (N.D. Cal. Sept. 17, 2013) (citing *Pac. Car & Foundry v. Pence*,
28 403 F.2d 949 (9th Cir. 1968)). “If the operative facts have not occurred within the forum of

1 original selection and that forum has no particular interest in the parties or the subject matter, the
 2 plaintiff's choice is entitled only to minimal deference." *Pac. Car & Foundry*, 403 F.2d at 954.

3 Moreover, "in most environmental cases, the issue of which federal district should adjudicate
 4 the issues is determined by weighing the plaintiff's choice of forum against 'having localized
 5 controversies decided at home.'" *Ctr. for Biological Diversity & Pac. Env't v. Kempthorne*, No. C
 6 07-0894 EDL, 2007 WL 2023515, at * 5 (N.D. Cal. July 12, 2017) (quoting *Gulf Oil Corp. v.*
 7 *Gilbert*, 330 U.S. 501, 509 (1947) (citation omitted)); see *Bay.org v. Zinke*, No. 17-cv-03739-
 8 YGR, No. 17-cv-03742-YGR, 2017 WL 3727467, at *3-4 (N.D. Cal. Aug. 30, 2017) (transferring
 9 case — involving APA and ESA challenges to federal agencies' actions about water projects and
 10 fish species — to the Eastern District of California in part because the plaintiffs were (essentially)
 11 advocacy groups with regional, state-wide, or national heft, and in part because local interests
 12 favored transfer because the challenged projects took place primarily in the Eastern District).

13 Here, as in *Zinke*, the plaintiffs have a regional, state-wide, or national presence. Also, the
 14 critical habitats are in the Eastern District of California, and the reservoirs affected by the Water
 15 Projects are located there too.³³ There are other ties to the Eastern District.³⁴ The local interests
 16 thus favor transfer. See *Zinke*, 2017 WL 3727467 at *4; see also *Sierra Club v. Angelle*, 19-cv-
 17 03263-RS, Slip. Op., at *5-6 (N.D. Cal. Nov. 26, 2019) (transferring case because, while the
 18 plaintiffs have "more-than-minimal deference" in their choice forum, the strong ties to the
 19 transferee-district "dwarf[ed]" this deference).

21 **2. Interests of Justice**

22 The interests of justice favor transfer too.

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 26 ³³ Souza Decl. – ECF No. 40-2 at 3 (¶¶ 6-7) ("[a]pproximately 85% of the total critical habitat
 designation occurs in" the Eastern District); Brown Decl. – ECF No. 40-3 at 2 (¶ 6) (estimating "more
 than 95%" of the critical habitat "occurs in the Central Valley").

27 ³⁴ Souza Decl. – ECF No. 40-2 at 2-3 (¶¶ 3-5) (personnel and agency responsible for the biological
 opinion are located in the Eastern District); Brown Decl. – ECF No. 40-3 (¶¶ 3-4) (agency personnel
 28 and administrative records are located in Eastern District).

1 “A district court hearing a motion to transfer must also consider public-interest factors such as
2 relative degrees of court congestion, local interest in deciding local controversies, potential
3 conflicts of laws, and other interests of justice.” *Chesapeake*, 2013 WL 6057824 at *3. “In
4 evaluating the ‘interest of justice,’ the pendency of related actions in the proposed transferee
5 forum is a highly persuasive factor.” *Wiley v. Trendwest Resorts, Inc.*, No. 04-cv-4321-SBA, 2005
6 WL 1910934, at *3 (N.D. Cal. Aug. 10, 2005) (internal citations omitted).

7 On balance, these factors favor transfer too. The case here — like the case in the Eastern
8 District — is a challenge to the federal agencies’ operation of the Water Projects and a purported
9 failure to consider harmful effects on listed fish in the Sacramento River. *NRDC v. Bernhardt*,
10 1:05-cv-01207-LJO-EPG, 2020 WL 364098, at *1–2, 7 (E.D. Cal. Jan. 22, 2020); *see also Pac.*
11 *Coast Fed’n v. Gutierrez*, No. 05-cv-3232-JCS, 2006 WL 194507, at *1 (N.D. Cal. Jan. 24, 2006)
12 (cases were similar when both involved the same water projects and “both represent an attempt by
13 environmental and fishing groups to ensure that the impacts of [] operational changes [of the
14 projects] on federally listed fish species are adequately considered”). The facts do not need to be
15 identical to merit transfer of the case. *Zinke*, 2017 WL 3727467 at *4–5 (the WaterFix project is
16 “distinct” from the projects in the related cases in the Eastern District, but “a relationship exists
17 between” the underlying challenged biological opinions in the cases such that transfer is
18 warranted); *see also NRDC v. Norton*, No. 05-cv-00690-CW, Slip. Op., *6 (N.D. Cal. Sept. 6,
19 2005) (interests of justice favor transfer even though “the cases do not involve identical factual
20 records and legal duties”).

21 The court is mindful about the Eastern District’s docket. As the court said at the March 5, 2020
22 hearing, it talked with the trial judge in the Eastern District (a process that the Manual on Complex
23 Litigation encourages), and it is satisfied that — despite the enormous workload there — the
24 district has the expertise and the bandwidth to address the lawsuit. *See also Bernhardt*, 2020 WL
25 364098 at *8 (previous trial judge recounted the transition of the case “through various means,
26 including transfer of staff with extensive experience”); *cf. Zinke*, 2017 WL 3727467 at *5
27 (transferring case to the Eastern District of California because the court there had “not only factual
28 and technical knowledge regarding the water systems at issue and the different water projects[,]

1 but also . . . ‘knowledge of the consultation processes’ involved in developing the biological
 2 opinions); *Pac. Coast Fed’n of Fishermen’s Ass’n v. U.S. Dept. of Interior*, 12-cv-2158-JSC, 2012
 3 WL 3236163, at *4 (N.D. Cal. Aug. 6, 2012) (addressing the burdens of the Eastern District of
 4 California).

5 This factor weighs in favor of transfer.

7 **3. Convenience of the Witnesses and the Parties**

8 In environmental cases involving an administrative record, factors such as convenience “are
 9 for the most part not implicated.” *Ctr. for Bio. Diversity and Pac. Environ.*, 2007 WL 2023515 at
 10 *5. This is because “[t]here are no witnesses to provide, and documentary evidence is as easily
 11 provided in one venue as another, especially in this age of electronic transmission.” *Id.*; *see also*
 12 *Pac. Coast Fed’n of Fishermen’s Ass’n*, 2012 WL 3236163 at *5 (“The convenience of the parties
 13 and witnesses and ease of access to evidence are also neutral factors because it is undisputed that
 14 the case will be decided on the administrative record.”).

15 The federal defendants concede that the convenience factors may not be implicated “in
 16 administrative cases like this one.”³⁵ Moreover, the agencies and officials involved with the
 17 challenged biological opinions are in Sacramento.³⁶ This factor does not militate against transfer
 18 and is neutral at worst. *See Pac. Coast Fed’n of Fishermen’s Ass’n*, 2012 WL 3236163 at *5.

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³⁵ Mot. – ECF No. 40 at 21.

28 ³⁶ Souza Decl. – ECF No. 40-2 at 2–3 (¶¶ 2–5); Brown Decl. – ECF No. 40-3 at 1–2 (¶¶ 1–3).

CONCLUSION

The court transfers this case and the related case — *California Natural Resources Agency et. al. v. Ross et. al.*, No. 3:20-cv-01299-LB³⁷ — to the Eastern District of California. The briefing deadlines remain in place.

This disposes of ECF Nos. 40 and 50.

IT IS SO ORDERED.

Dated: March 20, 2020



LAUREL BEELER
United States Magistrate Judge

United States District Court
Northern District of California

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³⁷ The parties and intervenors in this case have consented. Not all parties have appeared in the related case. But the undersigned can issue a non-dispositive order transferring the case. *See Kinney v. Gutierrez*, No. 3:16-cv-02278-LB, 2016 WL 4268679, at *1 (N.D. Cal. Aug. 15, 2016) (citing *Pavao v. Unifund CCR Partners*, 934 F. Supp. 2d 1238, 1241 n.1 (S.D. Cal. 2013)).