UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOHONO O'ODHAM NATION,

Plaintiff,

v.

KENNETH L. SALAZAR, in his official capacity as Secretary of the United States Department of the Interior,

Defendant.

Civil Action No. 1:10-cv-472-JDB

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER VENUE TO THE DISTRICT OF ARIZONA

The sole question in this action is whether, by failing for fourteen months to accept trust title to a 53.54 acre parcel of land owned by the Tohono O'odham Nation, the Secretary of the Department of the Interior has failed to comply with his mandatory duty under federal law, and should be compelled by this Court to do so. The Nation, a federally recognized Indian tribe, has chosen this Court as the forum for enforcing its rights. The defendant, the head of an agency of the United States government, is located in the District of Columbia. The agency action—or, rather, inaction—that the Nation is challenging occurred wholly within the District of Columbia. This case involves questions of federal law. Contrary to the Secretary's representation, there is no state-court litigation relevant to this matter. And while certain entities in Arizona have opposed the Nation's trust application, primarily because the Nation desires to use the property for gaming purposes, the question whether the land may be used for gaming is irrelevant to the Secretary's mandatory duty to take the land into trust, and thus irrelevant to this action. Indeed,

in materially identical circumstances, the Secretary has contended that local gaming opponents have no standing to contest a tribe's application to have land taken into trust under a mandatory acquisition statute like the one at issue here. Any "interest" local gaming opponents may have in this litigation thus cannot justify a transfer of venue. Under any weighing of the relevant factors—and, indeed, simply as a matter of common sense—the District of Columbia, not the District of Arizona, is the proper venue for this suit.

BACKGROUND

The facts relevant to this case are simple—much simpler than the Secretary acknowledges. Indeed, the Secretary's statement of the facts focuses almost entirely on matters that are wholly irrelevant to the question presented in this case, and his recitation of the procedural history of the Nation's trust application is misleading in several respects.

As an initial matter, the Secretary's professed confusion about which land is at issue in this action is puzzling. As the Nation has repeatedly explained, the Nation's original January 28, 2009 trust application (the "Trust Application") requested that the Secretary take the necessary steps to hold in trust 134.88 acres of land in Maricopa County, Arizona (the "Settlement Property"), as required by the Gila Bend Indian Reservation Lands Replacement Act, Pub. L. No. 99-503 (1986). In June 2009, however, the City of Glendale, Arizona, purported—in the Nation's view, unlawfully—to annex a portion of the Settlement Property. While the Nation is challenging the validity of the purported annexation in Arizona state court, if the annexation is ultimately upheld, it could arguably render the annexed portion of the Settlement Property ineligible for trust acquisition under the Lands Replacement Act. Accordingly, since August 2009, the Nation has repeatedly asked the Secretary to accept trust title to a portion of the Settlement Property—the 53.54 acres identified as Parcel 2 in the land survey attached to the

Nation's Trust Application—that is indisputably *not affected* by the purported annexation. The Nation's complaint and motion for summary judgment also clearly state that the Nation is asking this Court to order the Secretary "to accept trust title to *Parcel 2* of the Settlement Property." Complaint ¶ 1; Pl.'s Mem. in Supp. of Mot. for Summ. J. 41 (emphasis added). The remainder of the Settlement Property is *not at issue* here, and the Secretary's extended discussion of the City of Glendale's attempted annexation and the resulting litigation is thus entirely irrelevant.

The Nation has described the facts and procedural history of this matter in detail in its memorandum in support of its summary judgment motion and its memorandum in support of its motion for expedition. In the interest of clarity, however, the Nation summarizes the relevant facts briefly here.

Between the 1960s and 1980s, the United States flooded 10,000 acres of reservation lands held in trust for the Nation, rendering the land unusable and forcing the affected members of the Nation to relocate to a tiny 40-acre parcel incapable of supporting economic development. *See* H.R. Rep. No. 99-851, at 5-7 (1986) (Sibbison Decl. Ex. A, Tab 4A).[1] In 1986, Congress enacted the Lands Replacement Act. The Act provided that, in return for relinquishing its land claims against the United States, the Nation would receive the right to purchase replacement lands of up to 9,880 acres from private owners. Pub. L. No. 99-503, §§ 4(a), 6(c), 9(a). The Act further provides that "[t]he Secretary, at the request of the Tribe, *shall* hold in trust for the benefit of the Tribe any land which the Tribe acquires" under the Act that meets certain objective requirements as to size and location. *Id.* § 6(d) (emphasis added). One of those requirements is that the land may not be "within the corporate limits of any city or town." *Id.*

[1] All references to "Sibbison Decl." refer to the Declaration of V. Heather Sibbison in Support of Plaintiff's Motion for Summary Judgment (Mar. 22, 2010).

On January 28, 2009, the Nation submitted its Trust Application requesting that the Secretary accept trust title to the 134.88 acre Settlement Property. The Nation stated that, if the Settlement Property was taken into trust, it intended to use the property for a destination resort and gaming facility. Sibbison Decl. Ex. A.[2] Thereafter, the City of Glendale and others located in Arizona wrote to the Department opposing the Nation's Trust Application and planned use of the property for gaming, in some cases appending legal memoranda in support of their position.

On May 29, 2009, the Department wrote to the City of Glendale stating that "[w]e have … completely and carefully considered all of the issues raised in [the City's] letter," and explaining that "[w]e have determined that the acquisition of the land is mandated by [the Lands Replacement Act]." Sibbison Decl. Ex. E at 2. The Department also sent a series of similar letters to other opponents of the Nation's trust application; several of those letters specifically stated that "[i]t has been determined that this acquisition meets the requirements of subsection 6(d) [of the Lands Replacement Act]." *Id.* at 4-8. A few days later, the Western Regional Director for the Bureau of Indian Affairs wrote to the Nation's Chairman, stating that "[w]e have determined [that the Settlement Property] qualifies as a mandatory acquisition under the [Lands Replacement Act]." Sibbison Decl. Ex. F. Despite the conclusion of the Western Regional Office that acquisition of the Settlement Property was mandatory, and despite the Department's own endorsement of that conclusion, the Secretary took no action on the Nation's Trust Application.

[2] While the Nation originally requested that the Department approve its proposed use of the land for gaming at the same time that it took the land into trust, the Nation subsequently withdrew that request to avoid any delay in the processing of its trust application. Sibbison Decl. Ex. T. The Nation's proposed use of the land for gaming is not now before the Department or at issue in this action.

On June 23, 2009, the City of Glendale passed an ordinance declaring that an annexation attempt the City had officially abandoned in 2002 had actually effected an annexation of a portion of the Settlement Property. Sibbison Decl. Ex. I. The purportedly annexed area overlaps with the portions of the Settlement Property identified as Parcels 1, 4, and 5 in the title survey attached to the Nation's Trust Application. *See* Sibbison Decl. Ex. A, Tab 2.

The Nation firmly believes that the purported annexation is invalid, and is now challenging it in Arizona state court. In light of the litigation over the purported annexation, however, on August 18, 2009, the Nation requested that the Secretary accept trust title to Parcel 2, which is unaffected by the litigation, and defer action on the remainder of the Settlement Property until resolution of the state-court litigation. Sibbison Decl. Ex. J. That letter led to discussions with Department staff in which counsel for the Nation made clear that the Nation urgently needed the Department to take action on at least a portion of the Nation's application, and that the Nation was willing for the Department *either* to act promptly on the entirety of the Settlement Property *or* to take action promptly on Parcel 2 and defer action on the remainder of the Settlement Property. Sibbison Decl. ¶ 7. After Department officials indicated that they did not anticipate that the Arizona litigation would affect processing of the Trust Application, the Nation wrote to the Department again on September 8, 2009, requesting that the Secretary complete the fee-to-trust process for the entire Settlement Property. Sibbison Decl. ¶¶ 5-6 & Ex. K. Nonetheless, the Secretary neither took any action on the Trust Application nor offered an explanation for his continued delay.

On January 28, 2010, the Nation wrote to the Secretary asking once again that the Secretary take action on the Trust Application, and explaining again that the Arizona litigation affected only a portion of the Settlement Property and that the Nation had offered, if necessary,

to limit its request for immediate action to Parcel 2. Sibbison Decl. Ex. L, Patton Boggs Mem. at 5. The Secretary did not respond. After meeting with Department staff on March 3 and March 4, 2010 to convey its position, the Nation wrote to the Secretary on March 12, 2010, stating in the clearest possible terms that "**the Nation hereby asks the Secretary to take action immediately to acquire trust title to Parcel 2**," and explaining that if the Secretary failed to act the Nation would be forced to bring suit. Sibbison Decl. Ex. O at 5.[3]

When the Secretary still took no action, the Nation filed this suit on March 22, 2010, asking that this Court compel the Secretary to accept trust title to Parcel 2. The Secretary has now moved to transfer this action to the U.S. District Court for the District of Arizona.

ARGUMENT

Once the irrelevant facts that the Secretary highlights are stripped away, the Secretary has no serious argument for moving this case to the District of Arizona. To the contrary, both the factors traditionally weighed by courts in deciding venue transfer motions and simple common sense dictate that this litigation belongs where it was brought: in this Court.

The venue transfer statute provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). It is undisputed that the Nation could have brought this action in the District of Arizona, since the Nation is located there. *See id.* § 1391(e)(3). The Secretary must therefore show that "considerations of convenience and the interest of justice weigh in favor of transfer to that court." *Sierra Club v. Flowers*, 276

[3] The Secretary's assertion that the Nation's March 12 letter "requested that 'the Department accept trust title to approximately 134.88 acres of land'" (Def.'s Mem. of Points & Auths. in Supp. of Its Mot. to Transfer ("Mem.") 3) is incorrect. As is entirely clear from the letter as a whole, the quoted language refers to the Nation's original Trust Application. The letter requested only that the Secretary take action on Parcel 2.

F. Supp. 2d 62, 65 (D.D.C. 2003). To answer that question, courts weigh several "private" and "public" factors. The private factors include the plaintiff's choice of forum, the defendant's choice of forum, where the claims arose, the convenience of the parties, the convenience of the witnesses, and the ease of access to sources of proof. The public factors include each court's familiarity with the governing laws, how quickly each court is likely to resolve the litigation, and the local interest in the litigation. *Gipson v. Wells Fargo & Co.*, 563 F. Supp. 2d 149, 156-157 (D.D.C. 2008). In sum, the Court must decide whether a transfer of venue would serve the purpose of the statute: "to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks omitted).

These considerations must weigh heavily in the Secretary's favor to support transfer. "[A] court may not transfer a case from a plaintiff's chosen forum simply because another forum, in the court's view, may be superior to that chosen by the plaintiff." *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 11 (D.D.C. 2007) (internal quotation marks omitted). Indeed, the plaintiff's forum "should rarely [be] disturb[ed] … unless the balance is strongly in favor of the defendant." *Paradyne Corp. v. DOJ*, 647 F. Supp. 1228, 1231 (D.D.C. 1986). The Secretary thus has "a heavy burden" to show that the Nation's choice of the District of Columbia "is inappropriate." *Southern Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 86 (D.D.C. 2004) (internal quotation marks omitted).

The Secretary cannot come close to meeting that burden. The convenience of parties and witnesses, as well as the nature of the challenged agency action, strongly support keeping this action in this Court. The defendant is located in the District of Columbia, and the plaintiff has chosen to litigate here—a choice that deserves substantial deference. And, as the Secretary

concedes (Mem. 11), it is unlikely that any witnesses will be necessary. Accordingly, neither the parties' nor potential witnesses' convenience could justify a transfer. Moreover, the need to compel agency action in this case arose in this district. Although agency officials in Arizona had an important role to play in making a recommendation to the Secretary regarding the Nation's Trust Application, they acted almost a year ago. It is the review of the Nation's application by Department officials *in the District of Columbia* and those officials' failure to act—not the actions of agency officials in Arizona—that are at issue in this suit. Finally, no "public" consideration warrants a transfer. This case presents a question of federal law properly handled by this Court. It is an urgent matter that will almost certainly be resolved more promptly if retained in this Court. And any interest Arizona entities may have in the Nation's proposed use of the property once it is held in trust—which is not relevant to any issue in this case—cannot justify transferring this suit away from its natural home and the Nation's chosen forum.

I. THE PRIVATE-INTEREST FACTORS WEIGH HEAVILY AGAINST TRANSFER

A. This Case Has A Substantial Nexus To This District And The Nation's Choice Of Forum Is Therefore Entitled To Deference

The Nation, a federally recognized Indian tribe, has chosen this forum to bring its claims, which are directed against an officer of the United States residing in the District of Columbia and which arise out of his failure to act in this district. That reasonable choice deserves substantial deference.

A plaintiff's choice of forum must be "given paramount consideration." *Air Line Pilots Ass'n v. Eastern Air Lines*, 672 F. Supp. 525, 526 (D.D.C. 1987). Where, as here, there is a connection between a plaintiff's claims and the chosen court, the plaintiff's choice of forum is entitled to "substantial deference" and "outweighs" the defendant's choice of forum. *National Ass'n of Home Builders v. EPA*, 2009 WL 5125905, at *6 (D.D.C. Dec. 30, 2009); *see also, e.g.*,

Greater Yellowstone Coalition v. Bosworth, 180 F. Supp. 2d 124, 129 (D.D.C. 2001) (as long as a plaintiff's claims have a "sufficient nexus to the District of Columbia," its choice to litigate here "deserves deference").

The Secretary wrongly contends (Mem. 11) that the Nation's choice of the District of Columbia is "entitled to far less deference" because this venue is not the Nation's "home forum." As this Court has made clear, a plaintiff's choice to litigate in this district is owed deference whenever "the connection of [its] suit to the District of Columbia is not attenuated." *Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000). For example, in *Akiachak Native Community v. Department of Interior*, 502 F. Supp. 2d 64 (D.D.C. 2007), this Court granted deference to plaintiffs' choice to litigate in the District of Columbia—even though plaintiffs were all Indian tribes based in Alaska—because there was "a sufficiently substantial nexus to this district." *Id.* at 68.

Here, there is an obvious and substantial nexus between the Nation's claims and the District of Columbia: the Nation seeks to compel agency action here. The Secretary, who is, of course, located in this district, is specifically charged with the statutory duty and trust responsibility under the Lands Replacement Act to hold the Nation's land in trust. Pub. L. No. 99-503, § 6(d). This suit challenges the Secretary's failure to fulfill that duty for ten months *after* the BIA's Western Regional Office had concluded that acquisition of the Settlement Property was mandatory under the Lands Replacement Act.

During those ten months, the Nation's trust application was purportedly under review by Department staff, including the staff of the Solicitor of the Interior, who are located at Department headquarters in the District of Columbia. *See, e.g.*, Sibbison Decl. Ex. N (March 12, 2010 letter from Solicitor Hilary C. Tompkins stating: "My staff is working diligently to provide

a final recommendation regarding the legal sufficiency of the application."); Sibbison Decl. Ex. P (March 18, 2010 letter from Senior Counsel to the Solicitor Vincent J. Ward stating: "[A]s legal advisors to the Secretary and the Assistant Secretary, we are, and have been, actively and diligently reviewing the legal issues associated with the Nation's application."). Indeed, as early as May 29, 2009, Department staff located in the District of Columbia were responding to opponents of the Nation's Trust Application. Sibbison Decl. Ex. E. Since then, virtually all of the Nation's communications with the Department regarding the substance of its Trust Application, including several in-person meetings, have been with officials in Washington. *See* Sibbison Decl. ¶¶ 5-7 & Exs. D, J, K, L, N, O, P, Q.

In this context, the Secretary's contention that "all of the relevant events occurred in Arizona, where the application to take the land into trust was submitted and analyzed" (Mem. 10-11) is quite ironic. While it may be true that all the meaningful analysis of the Nation's application occurred in Arizona, the Nation is not challenging the actions of any agency official located in Arizona. Rather, the Nation is challenging the Secretary's failure to act on the conclusions and recommendations of Arizona officials and take the action he is required to take under the Lands Replacement Act. All events relevant to *that* claim have occurred, or failed to occur, in the District of Columbia. This district is the proper venue for a suit to compel action here.

That common-sense conclusion is borne out by the caselaw. This Court has repeatedly recognized that any case challenging agency action taken by officials in the District of Columbia has a substantial nexus to this district for venue purposes. *See Akiachak Native Cmty.*, 502 F. Supp. 2d at 67-68 (finding a "substantial nexus" to the District of Columbia because "the national rulemaking process" occurred here); *Southern Utah Wilderness Alliance*, 315

F. Supp. 2d at 87 (suggesting that "extensive involvement by headquarters" can "justify keeping a case in this jurisdiction"); *Greater Yellowstone Coalition*, 180 F. Supp. 2d at 128-129 (finding "a nexus to the District of Columbia" because "federal government officials in the District of Columbia were involved in the [challenged] decision"); *Wilderness Soc'y*, 104 F. Supp. 2d at 14 (noting that the connection to the District of Columbia was "substantial" because the Secretary of the Interior's involvement with the challenged agency action "was far from routine"); *Southern Utah Wilderness Alliance v. Norton*, 2002 WL 32617198, at *3 (D.D.C. June 28, 2002) (indicating that "substantial personalized involvement" by a senior agency official in the District of Columbia "supports a finding of meaningful ties to this District" (internal quotation marks omitted)).

This Court has thus routinely denied motions to transfer venue in cases in which the agency action at issue took place in this district, even when the land affected by the agency action was located elsewhere. *See, e.g.*, *National Ass'n of Home Builders*, 2009 WL 5125905 (retaining case because agency action occurred in the District of Columbia, even though land was located in Arizona); *Greater Yellowstone Coalition*, 180 F. Supp. 2d 124 (retaining case because agency action occurred in the District of Columbia, even though land was located in Montana); *Wilderness Soc'y*, 104 F. Supp. 2d 10 (retaining case because agency action occurred in the District of Columbia, even though land was located in Alaska).[4]

[4] By contrast, in the cases on which the Secretary relies (*see* Mem. 8-9, 11), transfer was granted because the challenged agency action occurred outside the District of Columbia. *See Southern Utah Wilderness Alliance*, 315 F. Supp. 2d at 87 (noting that officials in the District of Columbia "were not actively involved"); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 25 (D.D.C. 2002) (noting that "the decisionmaking process, by and large, has not been substantially focused in this forum"); *Valley Cmty. Pres. Comm'n v. Mineta*, 231 F. Supp. 2d 23, 45 (D.D.C. 2002) ("[D]espite plaintiffs' contentions that the present action has a substantial nexus to the District of Columbia, it appears that all the primary decision-makers and actors in this matter

The Secretary's claim that "[t]he District of Columbia has no meaningful ties to, or interest in, the factual and policy issues underlying this litigation" (Mem. 11) is thus simply wrong. Quite the contrary: the Nation's claims arise out of the inaction of the Secretary and his Washington staff, and the Nation seeks to compel agency action here. Nothing in the Secretary's submission remotely calls into question the substantial deference owed to the Nation's wholly reasonable choice to bring this case in this Court.

B. The Convenience Of The Parties And Witnesses Weighs Against Transfer

Nor can a transfer to the District of Arizona be justified on the ground of "the convenience of parties and witnesses"—the central objective of the transfer statute. 28 U.S.C. § 1404(a). Viewed from that perspective, this is an odd case for transfer indeed.

While the Nation is located in Arizona, it has chosen to litigate here, in part because this is the most convenient venue for it. *See Wilderness Soc'y*, 104 F. Supp. 2d at 15 (explaining that when a plaintiff chooses the District of Columbia, "the argument that this venue is inconvenient for the plaintiff[] is weak"). The Secretary does not—and cannot—claim that litigating in Arizona would be more convenient for him; both he and his counsel are located here. The Secretary concedes (Mem. 11) that "[b]ecause this case involves judicial review of an agency's potential obligations, it is unlikely that any witnesses will be necessary." Potential witnesses' convenience therefore should not be an issue. *See, e.g.*, *Greater Yellowstone Coalition*, 180 F. Supp. 2d at 128 n.3 ("Because this is an APA review case that will in all likelihood be decided on motions for summary judgment and will not require a trial, the convenience of witnesses is

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reside in New Mexico."); *Trout Unlimited v. Dep't of Agric.*, 944 F. Supp. 13, 18 (D.D.C. 1996) (finding that the nexus to the District of Columbia was "attenuated" because "[t]he decision making process … occurred in Colorado, not in Washington, D.C."); *Hawksbill Sea Turtle v. FEMA*, 939 F. Supp. 1, 3 (D.D.C. 1996) (noting that "the alleged violation of the environmental laws took place [in the Virgin Islands]").

not relevant." (citation omitted)). If there *were* a witness—for example, someone called to explain why, as a matter of fact, the Secretary has not acted—that individual would undoubtedly be from Washington, which is the only place where action has been withheld. And access to other sources of proof will certainly be no easier in Arizona than here. As a general matter, the "location [of the administrative record] should be afforded little weight." *Southern Utah Wilderness Alliance*, 315 F. Supp. 2d at 88. And, in any event, according to the Secretary, the record exists partly in this district and partly in Arizona, so the burden of compiling the record would be the same in either forum. *See* Decl. of Maria K. Wiseman ¶ 5 (Mar. 26, 2010).

Furthermore, a transfer to the District of Arizona would impose a distinct hardship on the Nation, since the Nation's counsel is located here. While the location of counsel is ordinarily afforded limited weight in the transfer analysis, in this case, where there is no argument that Arizona is more convenient for any party or witness, fairness suggests that the Nation ought not be required to change counsel midstream or shoulder the burden of paying for transportation to and lodging in Arizona for its District of Columbia counsel. The Nation was obliged to file this suit to compel the Secretary to fulfill his statutory and trust duty under the Lands Replacement Act. The Secretary's continued delay thwarts the very objective of the Act: to provide the Nation with lands suitable for economic development and thus ameliorate the real and dire financial hardship imposed on the Nation after the United States destroyed nearly 10,000 acres of the Nation's lands. Because the Secretary's inaction is perpetuating the Nation's poverty and fragile economy, this Court should pause before permitting the Secretary to force the Nation to incur additional unnecessary expense to vindicate its rights.

II. THE PUBLIC-INTEREST FACTORS DO NOT WARRANT TRANSFER

A. This Court Is As Familiar With The Governing Law As An Arizona Court

This Court is certainly as well-equipped as the District of Arizona to address the issues presented by this case. The only question here is a question of federal law: whether the Secretary's delay in taking Parcel 2 into trust pursuant to the Lands Replacement Act warrants an order requiring him to do so. This Court is well-suited to resolve that question; indeed, this case primarily centers on administrative-law principles of the sort that this Court routinely addresses.

Contrary to the Secretary's suggestion, this case involves no question to be resolved as a matter of state law. The Secretary suggests (Mem. 10) that "it may be necessary to consider local law to determine whether [Parcel 2] is 'within the corporate limits'" of the City of Glendale. But the meaning of the phrase "within the corporate limits" in the Lands Replacement Act—a federal statute—is a question of *federal* law. There is no dispute about the legal status of Parcel 2 as a matter of *state* law. It is undisputed that Parcel 2 is located within a "county island," unincorporated land under the jurisdiction of Maricopa County, which island is surrounded on all sides by land that has been made part of the incorporated City of Glendale. The only question here is whether, on these facts, Parcel 2 is "within the corporate limits" of Glendale as a matter of federal law (an argument, incidentally, that the Department has already rejected, *see* Sibbison Decl. Exs. C, D, E). An Arizona court has no advantage over this Court in deciding that issue.

Also contrary to the Secretary's suggestion (Mem. 9), and as explained above, the pending litigation in Arizona over a portion of the Settlement Property is not relevant to the legal issues presented by this suit. That litigation contests the validity of the City of Glendale's purported annexation of a portion of the Settlement Property *other than Parcel 2.* However that litigation is resolved, it will not alter the legal status of Parcel 2 or affect the resolution of the

federal question whether Parcel 2 is "within the corporate limits" of the City of Glendale under the Lands Replacement Act.

Ultimately, "the issue in this case is solely whether the federal government complied with federal law, and that is the kind of question that is routinely and properly answered in this District and Circuit." *Concerned Rosebud Area Citizens v. Babbitt*, 34 F. Supp. 2d 775, 776 (D.D.C. 1999) (denying motion to transfer); *see also Otay Mesa Property L.P. v. Dep't of Interior*, 584 F. Supp. 2d 122, 126 (D.D.C. 2008) (denying transfer because "[q]uite simply, this case presents a controversy over the application of a federal law"); *Van Antwerp*, 523 F. Supp. 2d at 13 (denying transfer because "plaintiffs essentially allege that the federal government failed to comply with federal law").[5]

B. This Case Is Likely To Be Resolved More Quickly If Not Transferred

While the Secretary contends (Mem. 10) that this case "will not take longer to resolve in the District of Arizona," citing nearly equal median times from filing to disposition in the two courts, that fails to take account of this Court's order, entered after the Secretary's motion was filed, setting an expedited schedule for the resolution of this litigation. That order, which sets a hearing on the parties' dispositive motions for June 15, 2010, means that this case will almost certainly be resolved in substantially less time if it is retained in this Court than if it is transferred to an Arizona court. There is no guarantee that an Arizona court would be willing or able to provide similar expedition. Moreover, the transfer itself would necessarily delay resolution of

[5] Even if the case did involve issues of Arizona law, that in itself would not meaningfully tip the balance as between two federal courts. *See, e.g.*, *Thayer/Patricof Educ. Funding, L.L.C. v. Pryor Res., Inc.*, 196 F. Supp. 2d 21, 36-37 (D.D.C. 2002) (suggesting that state-law issues "do[] not strongly favor transfer" and refusing to transfer case to Kansas even though 8 of 17 counts in complaint depended on Kansas law).

this case, as a second court would be forced to acquaint itself with the issues and determine an appropriate schedule for the proceedings. This factor thus weighs strongly against transfer. And this factor is particularly significant here, where, as the Nation's motion for expedition demonstrated, time is of the essence. Delay in resolving this case exacerbates the very injury for which the Nation is seeking redress. It also permits local opponents of the Nation's trust application to continue their improper efforts to thwart the Nation's ability to invoke its federal rights. Those efforts, if successful, may require the Nation to engage in yet more time-consuming, costly, and wasteful litigation, simply to obtain part of the promised compensation—mandated by statute nearly 25 years ago—for the Nation's settlement of its claims against the United States for destruction of its trust lands.

C. The "Local Interest" In This Case Does Not Warrant Transfer

The Secretary's central justification for seeking transfer of this case to Arizona is that "Arizona citizens, governments, and tribal nations" have "expressed" "interest" in this case (Mem. 1), that the Nation's plans to develop a gaming facility on the property have been contentious and have "received substantial media coverage in Arizona" (Mem. 3), and that "'such localized controversies [should] be decided at home'" (Mem. 6 (citation omitted)). To be sure, certain Arizona entities have expressed opposition to the Nation's Trust Application and to the Nation's intention to use the land for gaming if it is taken into trust. That opposition is not, however, legally relevant to the mandatory acquisition and mandamus issues presented by this case, and cannot justify transfer where other factors weigh so strongly against it.

The local interest in this matter is driven in large part by certain entities' opposition to the Nation's hope that it can develop a resort and gaming facility on the land to be taken into trust. But opposition to gaming is not remotely relevant to the legal issues in this case. The Lands

Replacement Act requires the Secretary to take land into trust as long as it meets the Act's requirements, regardless of the proposed use of the land. Nor will this litigation determine whether the Nation can engage in gaming on the land. That question will be governed by the requirements of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.*, and the terms of the Nation's tribal-state compact with Arizona. Because the eligibility of the Settlement Property for gaming will not be decided in this litigation, retaining this case in this district will not deprive any party of any opportunity it would otherwise have under IGRA to participate in proceedings regarding that issue.[6]

Indeed, in very similar circumstances, the Secretary has contended—and a district court has agreed—that gaming opponents lack standing to be heard regarding a tribe's application to have land taken into trust pursuant to a mandatory trust acquisition statute. *See Stop the Casino*

[6] For these reasons, among others, this case is not comparable to the decisions on which the Secretary relies (*see* Mem. 7). Those cases, unlike this case, had a direct impact on tribal gaming operations. Moreover, other compelling reasons for transfer existed in those cases that are not present here, including the existence of litigation raising the same issues in the transferee forum. *See Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. United States*, No. 01-CV-1042, slip op. at 2 (D.D.C. Aug. 16, 2002) (transferring venue to the Western District of Wisconsin in a suit seeking to invalidate the requirement that the Governor of Wisconsin concur in the Department's approval of tribe's gaming plans, where previous related litigation had taken place in the transferee district); *Santee Sioux Tribe v. National Indian Gaming Comm'n*, No. 99-CV-528, slip op. at 8 (D.D.C. Apr. 16, 1999) (transferring venue to the District of Nebraska in a suit by a tribe to enjoin closure of its gaming facility, where the tribe had already litigated that issue and lost in the transferee district); *Cheyenne-Arapaho Tribe v. Reno*, No. 98-CV-065, slip op. at 4 (D.D.C. Sept. 8, 1998) (transferring venue to the District of Oklahoma in a suit by tribes seeking a declaration that certain gaming devices were lawful, where the suit could be consolidated with a similar action pending in Oklahoma); *Apache Tribe of Mescalero Reservation v. Reno*, No. 96-CV-115, slip op. at 6 (D.D.C. Feb. 5, 1996) (transferring venue to the District of New Mexico in a suit to enjoin the federal government from taking enforcement actions against a tribe's gaming operations, where a suit challenging the same threatened actions was already pending in New Mexico); *Town of Ledyard v. United States*, No. 95-CV-880, 1995 WL 908244, at *2 (D.D.C. May 31, 1995) (transferring case to the District of Connecticut where the transferee district already had a similar case pending). In short, these cases bear no resemblance to this one.

101 Coalition v. Salazar, 2009 WL 1066299 (N.D. Cal. Apr. 21, 2009). In *Stop the Casino*, the Federated Indians of Graton Rancheria applied to have land taken into trust pursuant to the Graton Rancheria Restoration Act, 25 U.S.C. § 1300 *et seq.* The Act provides that "[u]pon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California," as long as there are no adverse legal claims to the property. 25 U.S.C. § 1300n-3(a). Like the Nation here, the Tribe had announced its intention to develop a gaming facility on the site once it was taken into trust. Recognizing his mandatory duty to do so, the Secretary accepted the property into trust, and explained that the Tribe would have to satisfy IGRA's requirements before it could engage in gaming. The district court held that the plaintiffs lacked standing to object to the mandatory trust acquisition of the land because "[i]rrespective of the Tribe's intentions—and the Tribe does not dispute that it seeks to use the parcel to operate a casino—the Secretary's [decision] did not approve the Tribe's plan. Until the Tribe obtains such approval, plaintiffs' injuries remain too anticipatory to create standing." *Stop the Casino*, 2009 WL 1066299, at *4. In the pending appeal to the Ninth Circuit, the Secretary has again argued that because his decision "did not approve a casino, nor does it commit the Tribe to building a casino," the Tribe's intention to use the property for gaming does not confer standing on gaming opponents to challenge the trust acquisition determination. Federal Defendants-Appellees' Answering Brief at 23, *Stop the Casino 101 Coalition v. Salazar*, Nos. 09-16294, 09-16297 (9th Cir. Nov. 19, 2009).

Similarly, here, local opponents of the Nation's Trust Application are undoubtedly "interested" in its resolution—because scuttling the Trust Application would also scuttle the planned gaming facility—but, under the Secretary's own logic, they have no legal stake in the trust acquisition itself. To be sure, persons without legal standing may nonetheless have an

interest in being able to attend and observe proceedings that may indirectly affect them. But the nebulous interest of Arizona entities in having a federal court in Arizona decide a dispute that, on the Secretary's reasoning, would have no legally cognizable effect on them cannot possibly outweigh the Nation's concrete and compelling interest in having this case decided promptly, in the district in which it seeks to compel agency action, and in the venue of the Nation's choice.[7]

Moreover, as this Court has recognized, even when a dispute has a "localized impact," transfer may be unwarranted if the case also involves issues that are "national in scope." *Van Antwerp*, 523 F. Supp. 2d at 13; *see also Wilderness Soc'y*, 104 F. Supp. 2d at 13. The issues in this case have a national dimension. Congress passed the Lands Replacement Act to remedy damage caused by the federal government's flooding of the Nation's land, recognizing that the United States had "a responsibility to exercise its plenary power over Indian affairs to find an alternative land base[] for the [Nation]." H.R. Rep. No. 99-851, at 7. The Act implements the United States' settlement of the Nation's land claims by "facilitat[ing] replacement of [destroyed] reservation lands with lands suitable for sustained economic use which is not principally farming" and thus "promot[ing] the economic self-sufficiency of the O'odham Indian people." Pub. L. No. 99-503, § 2(4). Because this case centers on a settlement with the United States, and seeks to enforce the United States' statutory and trust duties to an Indian tribe, it is of more than merely local significance.

* * *

[7] *See, e.g.*, *National Ass'n of Home Builders*, 2009 WL 5125905, at *3, *6 (in a suit against the EPA over the Clean Water Act treatment of an Arizona river, holding that even though there might be "some degree of local interest in deciding the case in [Arizona]," that interest was "outweighed by the need to grant deference to the plaintiffs' choice of forum given that the plaintiffs' claims arose in the District of Columbia").

Ultimately, the question this Court must answer is whether transfer of this case to the District of Arizona is "in the interest of justice." 28 U.S.C. § 1404(a). It is not. This case involves the federal-law obligations of the head of a United States agency; the Nation seeks to compel agency action in the District of Columbia; the plaintiff has chosen to litigate in this district; the defendant resides here; and the Nation would suffer real harm from the additional delay and expense inherent in a transfer. On the other side of the scales, the Secretary can put nothing but a vague "interest" in this matter on the part of local opponents of the Nation's future plans—plans that are completely unrelated to any legal issue in this case. Under these circumstances, there can be no question as to the proper balance to be struck.

CONCLUSION

The Secretary's motion to transfer venue should be denied.

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Respectfully submitted,

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