IGNACIA S. MORENO
Assistant Attorney General
PETER KRYN DYKEMA
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 663
Washington, D.C. 20044
(202) 305 0436

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YSLETA DEL SUR PUEBLO,	
Plaintiff,	
v.	**CIVIL ACTION NO. 1:10-cv-00760 (ESH)**
NATIONAL INDIAN GAMING COMMISSION,	**JUDGE HUVELLE**
Defendant.	**U.S. DISTRICT JUDGE**

DEFENDANT'S MOTION TO TRANSFER AND TO SUSPEND OBLIGATION TO ANSWER IN THE DISTRICT OF COLUMBIA, AND MEMORANDUM IN SUPPORT

The defendant, National Indian Gaming Commission ("Defendant" or "NIGC"), by and through its undersigned counsel, hereby respectfully moves this Court to transfer this civil action to the United States District Court for the Western District of Texas. If granted, this motion: would transfer this civil action to another district court where this action may have been brought; (ii) would serve the convenience of the parties and witnesses; and (iii) is in the interest of justice.

28 U.S.C. § 1404. Defendant respectfully submits a memorandum in support of its motion to transfer.

Defendant further requests leave of court so that their obligation to respond to the Complaint, served on May 20, 2010, be suspended until such time as the court has ruled on Defendant's motion to transfer venue.

Pursuant to Local Rule 7(m), counsel hereby certifies that it has conferred in good faith with counsel for the Plaintiff in this action regarding the instant motion, and that the parties were unable to reach agreement. Plaintiff's counsel indicated that Plaintiff will oppose the motion to transfer. With respect to Defendant's request that its obligation to respond to the Complaint be suspended pending resolution of the motion to transfer, counsel for Plaintiff indicated that Plaintiff would not oppose a specific and limited extension of 20-30 days, but would not approve a suspension tied to a ruling on the transfer motion.

MEMORANDUM

Introduction

This case involves a request by the Ysleta del Sur Pueblo Tribe ("Plaintiff" or the "Tribe") that the NIGC assume responsibilities over the Tribe's gaming activities at a facility in El Paso, Texas. Defendant moves to transfer this action to the location where Plaintiff's gaming activities occur, and where those activities have been and are the subject of protracted and ongoing litigation.

Plaintiff, a federally recognized Indian tribe with its reservation located in El Paso, Texas, filed this action in the United States District Court for the District of Columbia on May 12, 2010. The complaint was served on the United States Attorney on May 20, 2010. The Tribe seeks a declaration that the NIGC violated the Indian Gaming Regulatory Act ("IGRA"), 25

U.S.C. §§ 2701-2721, and the Restoration Act, 25 U.S.C. § 1300g et seq., by failing to exercise jurisdiction over the Tribe's gaming activities at the Speaking Rock Entertainment Center ("the Center") on its reservation. See Complaint For Declaratory and Injunctive Relief, ¶ 1 ("Complaint"). The Tribe also seeks an injunction to compel the NIGC to exercise jurisdiction over the Tribe's gaming activities and to provide the Tribe with technical assistance and training. See Complaint, Relief Requested.

There are compelling reasons for a transfer of this matter to the District Court for the Western District of Texas. As will be detailed below, the heart of this lawsuit involves a parcel of land located in El Paso, Texas (held in trust for the benefit of the Tribe) upon which certain gaming activities are proposed to be conducted. Both the location of the property itself and the ramifications of declaring whether or not the proposed gaming activities fall under IGRA are entirely local in nature. In addition, and of significant import, the District Court for the Western District of Texas has been actively involved in the subject matter of this litigation for several years. Accordingly, the interests of justice and convenience will be served by a transfer of this action to the District Court for the Western District of Texas.

Background Facts

This action represents the latest chapter in a long-running conflict between Plaintiff and the State of Texas ("State") involving Plaintiff's attempts to conduct certain gaming activities at the Center. Plaintiff's first suit against the State, filed in the Western District of Texas in 1993, sought to compel the State to negotiate a compact, pursuant to IGRA, to permit the Tribe to engage in casino-type gambling at the Center. Ysleta del Sur Pueblo v. State of Texas, 852 F. Supp. 587, 589 (W.D. Tex. 1993). The District Court for the Western District granted Plaintiff summary judgment, finding that neither IGRA nor the Restoration Act barred Plaintiff from

engaging in casino-type gambling at the Center. Id. at 597. The State filed its appeal of this decision in the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit reversed, holding that IGRA is inapplicable to Plaintiff's gaming activities on its reservation, and that Plaintiff's gaming activities are instead governed by the prohibitions in the Restoration Act. Ysleta del Sur Pueblo v. Texas, 36 F.3d 1325, 1335 (5th Cir. 1994).

The Restoration Act, which restored Plaintiff's trust status with the federal government, also dealt with the issue of gaming by Plaintiff on its lands in El Paso, Texas. Section 107 of the Restoration Act specifically provides that:

> (a) All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86 … .
>
> **********
>
> (c) Notwithstanding section 1300g-4(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

25 U.S.C. § 1300g-6. The Fifth Circuit thus "conclude[d] that (1) the Restoration Act and IGRA establish different regulatory regimes with regard to gaming, [and] (2) the Restoration Act prevails over IGRA when gaming activities proposed by the [Tribe] are at issue … ." Ysleta del Sur Pueblo v. Texas, 36 F.3d at 1332. The effect of section 107 of the Restoration Act was to prohibit certain gaming activities on Plaintiff's lands to the extent that the laws of Texas prohibit such gaming activities, and to federalize Texas's gaming laws as applied to Plaintiff. See id. at 1327-1329. In short, Plaintiff's gaming activities were limited to those not prohibited by Texas laws.

Despite the Fifth Circuit's holding, Plaintiff subsequently proceeded to conduct certain gaming activities at the Center that are prohibited by Texas gaming laws. In 1999, the State sued Plaintiff under the Restoration Act to enjoin Plaintiff from conducting certain prohibited gaming activities at the Center. On September 27, 2001, Judge Eisele of the Western District of Texas issued an injunction against Plaintiff ordering it "to cease and desist from operating, conducting, engaging in or allowing others to conduct, operate or engage in gaming and gambling activities" at the Center. Texas v. Ysleta Del Sur Pueblo et al., 220 F. Supp. 2d 668 (W.D. Tex. 2001). The Western District of Texas court later modified the 2001 injunction to allow certain gaming activities by Plaintiff, to be conducted in strict accord with Texas gaming laws. See Texas v. Ysleta Del Sur Pueblo et al., 220 F. Supp. 2d 668, 698 (W.D. Tex. 2002).

Notwithstanding the strict limitations contained in the modified injunction, Plaintiff continued to conduct certain prohibited gaming activities at the Center, which led to a contempt citation entered by Judge Hudspeth on August 3, 2009 (copy attached hereto as Exhibit A). Subsequently, as required by the Western District of Texas court, Plaintiff has filed several reports concerning its discontinuation of certain prohibited gaming activities at the Center. See (Docket sheet) (copy attached hereto as Exhibit B). On September 23, 2009, Plaintiff filed a petition in the Western District of Texas seeking a ruling authorizing Plaintiff to conduct charitable bingo games at the Center. See Interim Petition to Conduct Bingo, Sept. 23 2009 (copy attached as Exhibit C). That petition is still pending.

In an attempt to supplant the Western District's ongoing judicial oversight of the Tribe's gaming activities, Plaintiff suggested, in a status report filed on April 21, 2010 that the NIGC was another option for oversight, and asserted that "oversight of operations of the Pueblo by NIGC is required ." Defendant's Third Report to the Court in Response to Memorandum and

Opinion and Order Granting Motion for Contempt, Case No. EP-99-CA-320-H (April 21, 2010) (copy attached as Exhibit D) at 6-7, ¶ 3. The transcript of the hearing mentioned in the Third Status Report discloses that the suggestion of NIGC oversight followed a suggestion that a special master monitor compliance with the court's injunction. The State responded that this is the role and responsibility of the State Attorney General, not a special master. State of Texas v. Ysleta Del Sur, et al., Case No. EP-99-CA-320-H , Nov. 16, 2009 Hearing Transcript (copy attached as Exhibit E) at 41 ("… the Restoration Act 107(c) says clearly the Attorney General of Texas is empowered. And the reason Congress empowered us is because we have the most knowledge of gambling law in the State of Texas. It's our job and our duty to enforce that.")

Under section 2706(d)(2) of title 25, United States Code, the NIGC is authorized to offer training and technical assistance to federally recognized tribes that are conducting gaming under the provisions of IGRA. The core of Plaintiff's complaint in this action involves the allegation that, when Plaintiff's attorney requested technical assistance for its gaming commission, the NIGC[1] allegedly declined the request on the ground that any gaming conducted by Plaintiff is not subject to NIGC jurisdiction, as held by the Fifth Circuit in its Ysleta Del Sur Pueblo v. Texas decision. Complaint at ¶¶ 16-18 & Exhibits B-C. Plaintiff's complaint thus seeks injunctive and declaratory relief requiring the NIGC to assume regulation over Plaintiff's gaming activities, and to provide the requested technical assistance and training.

1. Defendant intends to file a motion to dismiss on the basis that the act complained of (the General Counsel's letter) does not constitute a "final agency action" under Section 704 of the Administrative Procedure Act, 5 U.S.C. § 704, or under IGRA. Specifically, 25 U.S.C. § 2714 limits judicial review of NIGC final agency actions to a few categories of actions by the NIGC Commission, including and limited to decisions that involve the approval or disapproval of tribal gaming ordinances and management contracts (25 U.S.C. §§ 2710-2712), and enforcement actions (25 U.S.C. § 2713). That motion should be resolved in the venue that already resolved related issues, and which presently has pending related issues before it for adjudication related to an existing injunction.

ARGUMENT

THE STANDARDS FOR CHANGE OF VENUE TO THE WESTERN DISTRICT OF TEXAS ARE AMPLY MET HERE.

Transfer of this action to the United States District Court for the Western District of Texas is proper under 28 U.S.C. § 1404(a) (1993), which provides that:

> For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it may have been brought.

The purpose of § 1404(a) is "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) (citing Continental Grain v. Barge, FBL-585, 364 U.S. 19, 26-27 (1960)). The burden is on the moving party to demonstrate that transfer would be proper. Reiffin v. Microsoft Corp., 104 F. Supp. 2d 48, 60 (D.D.C. 2000) (citing Air Line Pilots Ass'n v. Eastern Air Lines, 672 F. Supp. 525, 526 (D.D.C. 1987)). That burden, however, is substantially diminished where, as here, "transfer is sought to the forum in which Plaintiffs have substantial ties and where the subject matter of the lawsuit is connected to that state." Citizen Advocates for Responsible Expansion, Inc. v. Dole, 561 F. Supp. 1238, 1239 (D.D.C. 1983) (finding that deference to plaintiffs' choice of forum is diminished when "transfer is sought to the forum where plaintiffs reside . . . and the connection between plaintiffs, the controversy and the chosen forum is attenuated."). See also Martin-Trigona v. Meister, 668 F. Supp. 1, 3 (D.D.C. 1987) (Plaintiff's choice of forum is a much less significant factor where the plaintiff is a foreigner to that forum). Numerous cases in this Circuit recognize that a plaintiff's choice of forum receives substantially less deference where the plaintiff neither resides in nor has any substantial connection to that forum. See Reiffin, 104 F. Supp. 2d at 52; Hawksbill Sea Turtle v. FEMA, 939 F.Supp. 1, 3 (D.D.C. 1996); Airport Working Group of Orange County, Inc. v. U.S.

Dept. of Defense, 226 F.Supp.2d 227, 230 (D.D.C. 2002).

This Court has been accorded broad discretion in considering a motion under 28 U.S.C. § 1404(a) and should adjudicate such a motion "according to individualized, case-by-case consideration of convenience and fairness." Hawksbill Sea Turtle, 939 F. Supp. at 3 (quoting Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 27 (1988)). In exercising that discretion, the Court must first determine whether this action could have been brought in the Western District of Texas. If it could, the Court must then examine three interests to determine if transfer to that forum is warranted: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. 28 U.S.C. § 1404(a). The Court, however, is not limited to these three factors. Trout Unlimited v. U.S. Dep't of Agric., 944 F. Supp. 13, 16 (D.D.C. 1996). Rather, the Court may also consider a number of public- and private-interest factors, which include: (a) the private interest of the parties, such as the plaintiff's choice of forum, unless the balance of convenience is strongly in favor of the defendant; (b) the defendant's choice of forum and whether the claim arose elsewhere; and (c) public interests such as efficiency, fairness, and the local interest in deciding local controversies at home. Id.

A. The Western District of Texas is a forum in which this action could have been brought.

The threshold question in determining the appropriateness of transfer under 28 U.S.C. § 1404(a) is whether the action may have been initially brought in the Western District of Texas. Trout, 944 F. Supp. at 16; see also, Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (transfer power is expressly limited by clause restricting transfer to those districts in which action "might have been brought"). In a suit based on federal question jurisdiction, venue is proper in the "judicial district in which ... a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C.

§ 1391(e)(2).

Here, because Plaintiff bases its claims on federal question jurisdiction, this Court needs only consider whether venue is proper in the Western District of Texas. See Martin-Trigona, 668 F. Supp. at 4. This case involves the review of an alleged agency decision regarding the regulation of Indian gaming on a tract of land located in El Paso, Texas. As such, the property on which this gaming is to be regulated is located entirely within the state of Texas. In addition, any conclusions reached by this Court in review of this matter may affect the status and economic uses of the Center, which are of local concern. It is therefore clear that the events giving rise to the claim and the property in question are all based in Texas. Venue for this case is, therefore, appropriate in the Western District of Texas.

B. The convenience of the parties will be served by transferring this action.

Because Texas is a state in which Plaintiff already has substantial ties, Plaintiff will not be inconvenienced by a transfer of this action to the Western District of Texas. See Reiffin, 104 F. Supp. 2d at 52 (limited deference was due to Plaintiff's choice of forum where Defendant sought to transfer the action to Plaintiff's home forum). Plaintiff is a federally recognized Indian tribe whose lands, seat of tribal government, and majority of tribal members, are located in the El Paso area. These facts support a finding that a transfer of this matter to the Western District of Texas is significantly more convenient for Plaintiff and its members than the District of Columbia. Transfer of this matter to the Western District of Texas is also more geographically convenient for Plaintiff's counsel, who is based in Albuquerque, NM, which is considerably closer to El Paso than to the District of Columbia.

C. The interests of justice will be best served by transferring this action.

1. This action should be transferred to avoid duplication of judicial resources and the possibility of inconsistent results.

One of the most significant reasons to transfer this action to the Western District of Texas is that the interests of justice will be best advanced by such a transfer. Section 1404(a) was designed in part to reduce the waste of time, energy and money, particularly when two cases involve similar issues. Continental Grain Co., 364 U.S. at 26. The interests of justice are furthered by preventing unnecessary expense to the public and duplicative use of judicial resources. Continental Grain Co., 364 U.S. at 26; see also, Martin-Trigona, 668 F. Supp. at 3 ("The interests of justice are better served when a case is transferred to the district where related actions are pending"); Towns of Ledyard, N. Stonington, and Preston, Conn. v. United States, 1995 WL 908244 at *2, (in action involving Indian gaming operations, transfer serves to "conserve judicial resources" and "avoid the possibility of inconsistent results").

This action and others brought by Plaintiff, currently and in the past, seek judicial action with respect to certain proposed gaming activities, and the regulation thereof, to be conducted on Plaintiff's lands in Texas. The courts with jurisdiction over federal questions in Texas have already analyzed the question of whether gaming activities by Plaintiff are governed by IGRA or whether they are governed by the Restoration Act. In addition, the bingo operation that is the subject of Plaintiff's complaint here is also the subject of ongoing litigation proceedings in the Western District of Texas in which direct related, if not identical issues, are presently pending.

The outcome of these proceedings are sufficiently interrelated that determinations in one case may pose the risk of inconsistent results. The fact that Plaintiff's gaming aspirations have been the subject of ongoing litigation in the federal courts of Texas for more than 15 years

militates strongly in favor of a transfer.[2] See, e.g., Shawnee Tribe v. United States, 298 F. Supp. 2d 21, 27 (D.D.C. 2002) (transfer of related cases that "involve central questions regarding the future of the [ ] property … serve the interests of judicial economy and efficiency.")

2. This action involves claims that are local in nature and specific to the State of Texas, and therefore, should be transferred there.

An equally significant reason to transfer this case to the Western District of Texas is the fact that the people of Texas have a substantial interest in its subject matter. Gaming and gambling are controversial issues wherever they are proposed, but especially in Texas. In the past, the Texas legislature has banned most gambling activities, and the Attorney General of Texas has gone to great lengths to secure an injunction and contempt citation with respect to certain prohibited gambling activities conducted by Plaintiff at the Center. These facts indicate that Plaintiff's gaming activities, and the regulation thereof, are a matter of substantial local interest. The Supreme Court has made clear that the interests of local concerned citizens must be given voice in the analysis of the interests of justice standard under 28 U.S.C. § 1404:

> In cases which touch the affairs of many persons there is a reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is local interest in having localized controversies decided at home.

Gulf Oil v. Gilbert, 330 U.S. 501, 509 (1947). See also, Oil, Chemical & Atomic Workers, 694 F. 2d 1289, 1300 (D.C. Cir. 1982) (quoting Liquor Salesmen's Union Local 2 v. NLRB, 664 F.2d 1200, 1205 (D.C. Cir. 1981)) (directing inquiry as to "'whether the impact of the litigation is local to one region...'"). The interests of justice are promoted when a localized controversy is resolved locally, where concerned citizens may closely follow the proceedings. Citizen

2. See Exh. A (August 3, 2009 Contempt Order) at 1 ("This case lends new meaning to the term protracted litigation. The matters brought before the Court by the Plaintiff's motion for contempt represent the latest chapter in a dispute which began in 1993 and has proceeded, in fits and starts, ever since.")

Advocates, 561 F. Supp. at 1240; Gulf Oil v., 330 U.S. at 509.

The strong interest in allowing the local government and its citizens to follow the proceedings can only be furthered by transfer of this case to the Western District of Texas. Armco Steel Co., L.P. v. CSX Corp., 790 F. Supp. 311, 324 (D.D.C. 1991). As this Court has repeatedly recognized, the interests of justice are promoted by transferring cases involving Indian gaming controversies back to the state in which the controversy or enforcement activity is located. Towns of Ledyard, 1995 WL 908244 at *2; Apache Tribe of the Mescalero Reservation v. Reno and Babbitt, Civil Action No. 96-115 (RMU) (D.D.C.), (February 5, 1996) (copy attached hereto as Exhibit F); Cheyenne-Arapaho Tribe of Oklahoma v. Reno, Civil Action No. 98-CV-065 (RMU) (D.D.C.) (Sept. 9, 1988), (copy attached hereto as Exhibit G). This Court ably described this rationale in a case involving the Santee Sioux Tribe of Nebraska:

> [T]here is some truth to Plaintiff's argument that in this day of computers and virtually instantaneous communications, Gilbert is far less persuasive than it was fifty years ago. However, the federal courts do not allow cameras or tape recorders in courtrooms, there is intense local interest in this controversy, and there is a significant benefit to allowing those whose lives will be most immediately affected by the outcome of litigation, as well as the local media, to physically attend the proceedings which will determine that outcome. There is no substitute for personally observing, watching and evaluating the judge who presides, hearing the quality of the arguments, and getting a first-hand impression of whether the proceeding is being handled with the appropriate fairness and seriousness. Furthermore, the members of this District Court have repeatedly honored this principle by transferring cases involving Indian gaming controversies back to the state in which the controversy and the gaming were located. See Towns of Ledyard, N. Stonington, and Preston, Conn. v. United States, Civ. No. 95-0880, slip op. at 4-5 (D.D.C. May 31, 1995) [1995 WL 908244]; Apache Tribe of the Mescalero Reservation v. Reno, Civ. No. 96-115, slip op. (D.D.C. Feb. 5, 1996); Cheyenne-Arapaho Tribe of Okla. v. Reno, Civ. No. 98-065, slip op. (D.D.C. Sept. 9, 1998); and Citizen Advocates for Responsible Expansion, Inc. v. Dole, 561 F. Supp. 1238, 1240 (D.D.C. 1983).

Santee Sioux Tribe of Nebraska v. NIGC, Civil Action No. 99-528 (GK) slip op. at 8 (D.D.C.) (April 19, 1999) (copy attached hereto as Exhibit H); See also, Lac Courtes Oreilles Band of

Lake Superior Chippewa Indians of Wisconsin v. United States, Civil Action No. 01-1042 (HHK/DAR) slip op. at 1, 6-7 (D.D.C.) (Aug. 16, 2002) (copy attached hereto as Exhibit I); Wyandotte Nation v. National Indian Gaming Commission et al., Civil Action No. 04-1727 (RMU) slip op. at 12 (D.D.C.) (May 2, 2005) (copy attached as Exhibit J). In this case, the State, the city and county where the lands are located, and their respective citizenry, have a substantial interest in the outcome of this litigation. The interests of justice would therefore best be served by transferring this matter to the Western District of Texas.

Following the Supreme Court's lead, this Court has repeatedly held that where an action's impact is localized and there is local controversy over the action, "justice requires that such localized controversies be decided at home." Citizen Advocates, 561 F. Supp. at 1240; Armco Steel, 790 F. Supp. at 324 (the interest in having local controversies decided locally is compelling); Harris v. Republic Airlines, 699 F. Supp. 961, 963 (D.D.C. 1988); Islamic Republic of Iran v. Boeing, Co., 477 F. Supp. 142, 144 (D.D.C. 1979). Here, Plaintiff's claims are directed at an alleged agency action whose effects will be felt entirely within Texas and which has been the subject of controversy among individuals residing in that state. The controversy has been, at times, quite heated. See, e.g., W. Gardner Selby, *GOP Leaders Staying Away from Gaming Issues* (visited July 6, 2010) <http://www.statesman.com/news/content/region/legislature/stories/04/14/0414gamble.html>. Defendant urges the Court to once again find that justice requires that such localized controversy be decided at home, by transferring this action to the United States District Court for the Western District of Texas.

3. An attempt to avoid Fifth Circuit precedent is not in the interests of justice.

Circumstances suggest that Plaintiff has chosen to bring this action because it prefers the

caselaw in this Circuit for their claim. But this preference cannot be honored. As noted in Schmid Lab., Inc. v. Hartford Acc. and Indem. Co., 654 F.Supp. 734 (D.D.C. 1986):

> The transfer provisions in the U.S. Code, which grew out of the common law doctrine of forum non conveniens, were in part intended to prevent forum shopping. Cheeseman v Carey, 485 F. Supp. 203, 214-15 (S.D.N.Y. 1980). This Court cannot find that it is in the interest of justice to encourage, or even allow, a plaintiff to select one district exclusively or primarily to obtain or avoid specific precedents, particularly in circumstances such as these where the relevant law is unsettled and the choice of forum may well dictate the outcome of the case. See id. at 215.

645 F. Supp. at 737; Santee Sioux Tribe of Indians v. National Indian Gaming Commission, Civil Action No. 99-528 (GK) slip op. at 9-10. This matter belongs in the same forum where this controversy first began, where intense local interest in this controversy continues to exist, and where plaintiffs have pending an action already addressing in part this issue. Any forum choices made on avoiding particular judges or precedent must be rejected and this action transferred.

Conclusion

Analysis of the factors relevant to consideration of transfer under 28 U.S.C. § 1404(a) strongly supports transfer of this action to the Western District of Texas. Accordingly, to promote the interests of justice in having local controversies decided in a local forum, Defendant respectfully requests this Court to transfer this action to the District Court for the Western District of Texas.

Dated: July 9, 2010

Respectfully submitted,

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division

/s/ *Peter Kryn Dykema*
Peter Kryn Dykema (DC Bar 419349)
Trial Counsel
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, DC 20044-0663
Tel: (202) 305-0436
Fax: (202) 305-0274

OF COUNSEL:
Armando J. Acosta
Office of the General Counsel
National Indian Gaming Commission
1441 L Street, NW, Suite 9100
Washington, DC 20005