UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOANN CHASE ET AL.,	§	No. 5:18-CV-1050-DAE
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
ANDEAVOR LOGISTICS, L.P., ANDEAVOR, f/k/a Tesoro Corporation, TESORO LOGISTICS GP, LLC, TESORO COMPANIES, INC., and TESORO HIGH PLAINS PIPELINE COMPANY, LLC,	§	
	§	
Defendants.	§	

ORDER: (1) GRANTING DEFENDANTS' MOTION TO TRANSFER; AND (2) DENYING ALL OTHER PENDING MOTIONS

Before the Court are five pending motions: (1) Defendants' Motion to Transfer to the District of North Dakota (Dkt. # 22); Plaintiffs' Motion to Certify Class (Dkt. # 32); (3) Defendants' Motion for an Extension of Time to File Response to Plaintiffs' Motion to Certify Class (Dkt. # 42); (4) Defendants' Amended Motion to Dismiss (Dkt. # 43); and (5) Plaintiffs' Motion for Venue Discovery (Dkt. # 48).

Pursuant to Local Rule CV-7(h), the Court finds these matters suitable for disposition without a hearing. After careful consideration of the briefs and exhibits filed in support of and in opposition to these motions, the Court—for the

reasons that follow—(1) **GRANTS** Defendants' Motion to Transfer (Dkt. # 22); (2) **DENIES WITHOUT PREJUDICE TO REFILING** in the receiving court Plaintiffs' Motion to Certify Class (Dkt. # 32) and Defendants' Amended Motion to Dismiss (Dkt. # 43); and (3) **DENIES AS MOOT** Defendants' Motion for an Extension of Time (Dkt. # 42) and Plaintiffs' Motion for Venue Discovery (Dkt. # 48).

BACKGROUND

This case concerns a crude-oil pipeline (the "Pipeline") that runs across the Fort Berthold Indian Reservation (the "Reservation") in North Dakota. (Dkt. # 28 at 2–3.) Plaintiffs are beneficial owners of land within the Reservation over which the Pipeline runs.[1] (Id. at 4.) Defendants are a group of related companies that operate numerous oil and natural-gas infrastructure projects across the United States, including the Pipeline that runs across the Reservation. (Id. at 2.)

A twenty-year right of way easement for the Pipeline was first approved on September 18, 1953, and all subsequent renewals of the easement

[1] The land on the Reservation is owned in trust by the United States Government for the benefit of the Three Affiliated Tribes of the Reservation: the Mandan, Hidatsa, and Arikara Nation. (Id. at 3.) Beneficial interests in trust land are then allotted to enrolled members of the Three Affiliated Tribes. (See id. at 4.)

were limited to twenty-year terms. (Id. at 15.) Plaintiffs contend that after a renewal of the easement in 1973, the easement expired without being renewed in 1993.[2] (Id. at 16.) Plaintiffs contend that because the Pipeline exists on their land without a valid easement, the Pipeline is in continuing trespass on their land. (Id. at 25.) Plaintiffs therefore assert a claim for trespass under federal common law against Defendants. (Id.) Plaintiffs additionally assert that Defendants are in breach of the of the 1973—or if valid, the 1993—easement agreement for failing to restore the land to its original condition after cancellation or termination of the right-of-way easement, and that Defendants have been unjustly enriched by operating the Pipeline across Plaintiffs' land without a lawful easement.[3] (Id. at 27–28.) Plaintiffs seek to assert these claims as a class under Rule 23 on behalf of themselves and all others similarly situated. (Id. at 20.)

As previously stated, before the Court are five pending motions.

[2] According to Plaintiffs' complaint, a purported renewal of the easement was approved by the Bureau of Indian Affairs ("BIA") in 1995. (Id. at 16.) Plaintiffs contend this purported easement was void ab initio because consent for the easement was not obtained from a majority of the beneficial owners of the land crossed by the Pipeline. (Id.) Plaintiffs additionally allege that, although void ab initio, the purported 1993 easement, if valid, expired on its own terms in June 2013. (Id. at 17.)

[3] Plaintiffs also seek punitive damages. (Id. at 29.)

On January 4, 2019, Defendants filed a motion, under 28 U.S.C. § 1404(a), to transfer this case to the District of North Dakota. (Dkts. ## 22, 25.) On February 26, 2019, Plaintiffs filed a response in opposition to Defendants motion. (Dkt. # 40.) On March 25, 2019, Defendants filed a reply in support of their motion. (Dkt. # 57.)

On February 20, 2019, Plaintiffs filed a motion to certify class under Rule 23. (Dkts. ## 32, 35.) In response, on February 28, 2019, Defendants filed a motion to extend their time to respond to Plaintiffs' certification motion until the Court had ruled on Defendants' motion to transfer and a soon-to-be-filed motion to dismiss. (Dkt. # 42.) On March 25, 2019, Plaintiffs filed a response in opposition to Defendants motion to extend. (Dkt. # 56.)

On March 1, 2019, Defendants filed a motion to dismiss, asserting multiple grounds under Rule 12(b) and for failure to exhaust administrative remedies.[4] (Dkts. ## 43, 45, 47, 54, 55.) On April 3, 2019, Plaintiffs filed a response to Defendants' motion to dismiss. (Dkt. # 59.) On April 26 and May 6, 2019, Defendants filed separate replies in support of their motion related to each of the four grounds for dismissal asserted in the motion. (Dkts. ## 61, 63–65.)

[4] Defendant filed one motion to dismiss, (See Dkt. # 43), but separate memorandums in support of their motion related to each of the four grounds asserted in the motion, (See Dkts. ## 45, 47, 54, 55).

Finally, on March 1, 2019, Plaintiffs filed a motion for expedited discovery related to Defendants' motion to transfer. (Dkt. # 48.) Plaintiffs filed a response in opposition on March 8, 2019. (Dkt. # 50.) Plaintiffs filed a reply in support on March 15, 2019. (Dkt. # 52.)

DISCUSSION

One of the arguments raised by Defendant's motion to dismiss is this Court's alleged lack of subject matter jurisdiction over this action. (See Dkts. ## 43 at 3; 54.) As subject matter jurisdiction involves the Court's power to hear an action, ordinarily the Court must address its jurisdiction before reaching any other issues. See Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.").

However, the Supreme Court has recognized that in appropriate circumstances, a Court may address non-merits issues, including forum and venue convenience, before addressing jurisdiction. See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 432–36 (2007); see also Tesoro Refining v. C.A.R. Enterprises, No. SA-18-CV-820-XR, 2018 WL 6050603, *8 (W.D. Tex. Nov. 11, 2018). Deciding a motion to transfer before ruling on other

motions "is particularly appropriate where a related suit is already pending in the transferee district[,]" as is the case here.[5] Hardwick v. Factor, No. H-10-5249, 2011 WL1831706, at *2 (S.D. Tex. May 9, 2011).

Accordingly, the Court will first address the motion to transfer.

I. Defendants' Motion to Transfer

A. Legal Standard

Title 28 U.S.C. § 1404(a) permits a district court to transfer any civil action to any other district in which it might have been brought "[f]or the convenience of parties and witnesses, in the interest of justice." The transfer statute is intended "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). "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988) (quoting Van Dusen, 376 U.S. at 622).

[5] A similar class action for trespass against Defendants based on the alleged expiration of the 1973 and 1993 easements is currently pending in the District of North Dakota. See Hall et al. v. Tesoro High Plains Pipeline Company, LLC et al., No. 1:18-CV-217 (D.N.D. 2018); (see also Dkt. # 25-2 at 46 –64 (complaint in North Dakota Case).).

"The preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the destination venue." In re Volkswagen of Am., Inc., 545 F.3d 304, 312 (5th Cir. 2008) (hereinafter "Volkswagen II"). If this requirement is met, the Fifth Circuit Court of Appeals has held that "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." Action Indus., Inc. v. U.S. Fid. & Guar. Co., 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." In re Volkswagen AG, 371 F.3d 201, 203 (5th Cir. 2004) (hereinafter "Volkswagen I") (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 n.6 (1982)). The public factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law."[6] Id. These factors are "not

[6] A plaintiff's choice of venue is not an independent factor in the venue transfer analysis, and courts must not give inordinate weight to a plaintiff's choice of venue. Volkswagen II, 545 F.3d at 314 n. 10, 315 ("[W]hile a plaintiff has the privilege of filing his claims in any judicial division appropriate under the general venue

necessarily exhaustive or exclusive" and "none can be said to be of dispositive weight." Action Indus., Inc. v. U.S. Fid. & Guar. Co., 358 F.3d 337, 340 (5th Cir. 2004).

The party moving for transfer under § 1404(a) carries the burden of showing good cause. See Humble Oil & Ref. Co. v. Bell Marine Service, Inc., 321 F.2d 53, 56 (5th Cir. 1963); see also Volkswagen II, 545 F.3d at 314 ("When viewed in the context of § 1404(a), to show good cause means that a moving party, in order to support its claim for a transfer, must . . . clearly demonstrate that a transfer is '[f]or the convenience of parties and witnesses, in the interest of justice.'") (quoting 28 U.S.C. § 1404(a)). However, 28 U.S.C. § 1404(a) was

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statute, § 1404(a) tempers the effects of the exercise of this privilege."). Instead, the deference owed to a plaintiff's choice of forum is reflected in the burden on the defendant to show good cause for transfer. Id. at 315. Therefore, "when the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." Id. at 315. However, when, as here, "the plaintiff's choice is not its home forum, . . . the presumption in the plaintiff's favor 'applies with less force,' for the assumption that the chosen forum is appropriate is in such cases 'less reasonable.'" Sinochem Int'l Co. Ltd., 549 U.S. at 430 (quoting Piper Aircraft Co., 454 U.S., at 255–56). Moreover, this Court has previously noted that "a plaintiff's choice of venue is generally accorded less deference when the plaintiff seeks to represent a class of individuals[,]" as Plaintiffs do here. See Vassallo v. Goodman Networks, Inc., 2015 WL 502313, *2 (W.D. Tex. Feb. 5, 2015); cf. Koster v. Am. Lumbermens Mut. Cas. Co., 330 U.S. 518, 524 (1947) (stating in the context of forum non conveniens that "where there are hundreds of potential plaintiffs, all equally entitled voluntarily to invest themselves with the . . . cause of action . . . the claim of any one plaintiff that a forum is appropriate . . . is considerably weakened").

intended to facilitate "easy change of venue within a unified federal system." Veba-Chemie A.G. v. M/V Getafiz, 711 F.2d 1243, 1246 (5th Cir. 1983) (citing Piper Aircraft Co., 454 U.S. at 253–54). To this end, "[t]he heavy burden traditionally imposed upon defendants by the forum non conveniens doctrine—dismissal permitted only in favor of a substantially more convenient alternative—was dropped in the § 1404(a) content." Veba-Chemie A.G., 711 F.2d at 1247. "In order to obtain a new federal forum, the statute requires only that the transfer be '[f]or the convenience of the parties, in the interest of justice." Id.

B. Analysis

1. Venue in the District of North Dakota

In adjudicating Defendants' motion to transfer, the Court must first determine whether this action "might have been brought" in the District of North Dakota. Volkswagen II, 545 F.3d at 312. The Court concludes that it could have been. First, venue is proper in any "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. This case concerns an alleged trespass to land located in North Dakota. Accordingly, the District of North Dakota is a judicial district in which a substantial part of the property that is the subject of the action is situated. Second, as previously stated, there is presently another case currently pending in the District of North Dakota

against the Defendants in this action that involves similar claims arising out of the same alleged facts. See Hall et al. v. Tesoro High Plains Pipeline Company, LLC et al., No. 1:18-CV-217 (D.N.D. 2018). Therefore, the Court finds that this action could have been brought in the District of North Dakota.

Next, the Court must determine whether the various public and private factors articulated by the Fifth Circuit militate in favor of transfer.

2. Private Factors

i. Relative Ease of Access to Sources of Proof

"Typically, the accessibility and location of sources of proof should weigh only slightly in this Court's transfer analysis, particularly since these factors have been given decreasing emphasis due to advances in copying technology and information storage." Mateos v. Select Energy Servs., LLC, 919 F. Supp. 2d 817, 822 (W.D. Tex. 2013 (quoting Mohamed v. Mazda Motor Corp., 90 F.Supp.2d 757, 778 (E.D. Tex. 2000)). However, "the fact '[t]hat access to some sources of proof presents a lesser inconvenience now than it might have absent recent developments does not render this factor superfluous.'" Vassallo v. Goodman Networks, Inc., No. 5:14–CV–743–DAE, 2015 WL 502313, at *3 (W.D. Tex. Feb. 5, 2015) (quoting Volkswagen II, 545 F.3d at 316).

Based on the arguments presented by the parties, the Court concludes that there is likely to be roughly equal amounts of relevant evidence readily

accessible in both the District of North Dakota and the Western District of Texas, respectively. Because Defendants, and their Director of Right-of-Way and Real Estate, James Sanford, are all headquartered in this District, there is significant relevant evidence likely to be more readily accessible in the Western District, including documents and records created and maintained by Defendants related to the easements and Defendants' income from the pipeline and refinery. Conversely, significant relevant evidence likely to be more readily accessible in North Dakota includes: (1) records from Bell Oil and Gas Permitting, LLC ("Bell Oil")—located in Minot, North Dakota—which was Defendants' point of contact in negotiating with the individual land allottees; (2) records from the Plaintiffs and putative class members, who predominantly reside in North Dakota; (3) records from law firms who represented Plaintiffs and putative class members in their negotiations with Defendants, which are likely to be located in North Dakota; and (4) records from Norman H. Lee, an independent appraiser who was commissioned to appraise the value of the tracks of land at issue and who is located in Hamilton, Montana.

Accordingly, the Court finds that this factor is neutral as to transfer.

ii. Availability of Compulsory Process to Secure the Attendance of Witnesses

This factor only applies to non-party witnesses. Piernik v. Collection Mgmt. Co., No. 5:17–CV–320–DAE, 2018 WL 1202972, at *4 (W.D. Tex. Jan. 25,

2017). And employees of a party are considered party witnesses, as opposed to non–party witnesses. Id.

Under Federal Rule of Civil Procedure 45, a subpoena can command a non-party witness to attend a trial, hearing, or deposition only: (1) "within 100 miles of where the person resides, is employed, or regularly transacts business in person"; or (2) "within the state where the person resides, is employed, or regularly transacts business in person, if the person . . . is commanded to attend a trial and would not incur substantial expense." Fed. R. Civ. Proc. 45(c)(1).

Defendants' motion purports to identify eighteen categories of witnesses who are located within 100 miles of the courthouse for the District of North Dakota in Minot, North Dakota, thus making them subject to the compulsory processes of the District of North Dakota. (Dkt. # 25 at 33.) The Court first notes that several of these categories, however, constitute party witnesses, and thus are not to be considered for the purposes of this factor. Plaintiff also argues that several other categories of witnesses are not subject to the subpoena power of the District of North Dakota because they are either tribal officials[7] or United States

[7] The law of the Eight Circuit, in which the District of North Dakota sits, holds that third-party subpoenas against either a tribe or one of its officers in a private civil litigation are "suits" subject to tribal immunity and can be quashed on that basis. Alltel Comms., LLC v. DeJordy 675 F.3d 1100, 1105 (8th Cir. 2012).

Government employees[8] and are thus exempt from the obligation to comply with a subpoena under Rule 45. (See Dkt. # 40 at 26.)

However, even if the District of North Dakota is unable to compel the attendance of such witnesses, there still remain several categories of non-party witnesses identified by Defendants that would be subject to the District of North Dakota's subpoena power, but not this Court's subpoena power. Such witnesses are likely to include: (1) employees of Bell Oil; (2) the Three Affiliated Tribes outside legal counsel—located in Mandan, North Dakota; (3) law firms and lawyers who represented the Plaintiffs and putative class members in their negotiations with Defendants; and (4) personnel of the Fort Berthold Allottee Land and Mineral Owners Association. Plaintiffs raise no arguments that these non-party witnesses are not subject to the subpoena power of the District of North Dakota. Equally important, Plaintiffs do not appear to argue that there are any non-party witnesses that are subject to the subpoena power of this Court but would

[8] Under United States ex rel. Touhy v. Ragen, executive agencies are permitted to "proscribe regulations not inconsistent with law" governing the release of information by agency subordinates, including in defiance of otherwise valid federal subpoenas. 340 U.S. 462, 468–69 (1951). Relevant here, the Department of the Interior, within which the BIA sits, has enacted regulations stating that "it is the Department's general policy not to allow its employees to testify or to produce Department records either upon request or by subpoena. However, if you request in writing, the Department will consider whether to allow testimony or production of records under this subpart." 43 C.F.R. § 2.281.

not be subject to the subpoena power of the District of North Dakota. (See id. at 26–27.)

Accordingly, the Court concludes that this factor weighs in favor of transfer.

iii. Cost of Attendance for Willing Witnesses

"[C]onvenience of witnesses, most particularly nonparty witnesses who are important to the resolution of the case" is "[o]ften cited as the most important factor in passing on a motion to transfer under Section 1404(a) . . . ." Seeburger Enters., Inc. v. Mike Thompson Recreational Vehicles, Inc., 502 F. Supp. 2d 531, 539 (W.D. Tex. 2007) (quoting 15 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3851 (3d ed. 1998)). In considering this factor, "[t]he Court must consider the convenience of both the party and non-party witnesses." Vargas v. Seamar Divers Intern., LLC, No. 2:10–cv–178–TJW, 2011 WL 1980001, at *7 (E.D. Tex. May 20, 2011) (citing Volkswagen I, 371 F.3d at 204 (requiring courts to "contemplate consideration of the parties and witnesses")). However, the convenience of non-party witnesses is afforded greater weight than that of party witnesses. See NovelPoint Learning LLC v. Leapfrog Enters., Inc., No. 6:10-cv-229-JDL, 2010 WL 5068146, at *6 (E.D. Tex. Dec. 6, 2010) (citing cases). Finally, "when a movant claims that transfer is warranted for the convenience of witnesses, the movant must

specifically identify the key witnesses and outline the substance of their testimony." Mateos, 919 F. Supp. 2d at 823.

The Fifth Circuit employs a 100-mile rule to assess this private interest factor. Volkswagen I, 371 F.3d at 204–05. "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." Id. "Additional distance means additional travel time; additional travel time increases the probability for meal and lodging expenses; and additional travels time with overnight stays increases the time which these fact witnesses must be away from their regular employment." Id. at 205.

"A logical starting point for analyzing convenience is to consider the parties' residence." Mateos, 919 F. Supp. 2d at 822. In this case, Defendants' corporate headquarters are located in the Western District, while 29 of the 48 named Plaintiffs have addresses in North Dakota. (See Dkt. # 25 at 9.) Plaintiffs have identified only one named Plaintiff who resides in Texas. (See Dkt. 40 at 13.) So far as the parties' residences are concerned, then, this factor is neutral.

However, it is the convenience of non-party witnesses that is most important in analyzing this factor. See NovelPoint Learning LLC, 2010 WL 5068146, at *6. An extensive number of potential non-party witnesses are located

within 100 miles of the District of North Dakota's Courthouse in Minot, North Dakota, including: (1) employees of the BIA; (2) officials of the Three Affiliated Tribes[9]; (3) lawyers for the tribe and the individual Plaintiffs and putative class members who negotiated with Defendants over the easement; and (4) employees of Defendants local point of contact with the Plaintiffs and putative class members; and (5) personnel of the Fort Berthold Allottee Land and Mineral Owners Association. (See Dkt. 25 at 26.) Two additional potential witnesses reside in Hamilton, Montana, and Aberdeen, South Dakota, roughly 1,000 miles closer to Minot, North Dakota than to San Antonio, Texas. (See id. at 24.) Conversely, Plaintiffs have not identified any potential non-party witnesses who are located closer to San Antonio, or for whom travel to San Antonio would be significantly more convenient than travel to Minot, other than speculating that, should the Government permit any officials to testify, it might choose officials from Washington, D.C., Albuquerque, New Mexico, or Lenexa, Kansas, despite the officials presumptively most knowledgeable about this issue being located at the BIA's Fort Berthold Agency, located in New Town, North Dakota, 74 miles from Minot.

[9] Although employees of the BIA and officials of the Three Affiliated Tribes may not be able to be compelled to testify, should they choose to do so, North Dakota would be a significantly more convenient venue for them. Additionally, this convenience might impact the decision whether or not to voluntarily appear.

Accordingly, the Court finds that this factor weighs in favor of transfer.

iv. All Other Practical Problems that Make Trial of a Case Easy, Expeditious and Inexpensive

As previously stated, a related class action case is currently pending in the District of North Dakota, in which putative class members assert similar claims against the same Defendants relating to the same pipeline and alleged trespass. See Hall et al. v. Tesoro High Plains Pipeline Company, LLC et al., No. 1:18-CV-217 (D.N.D. 2018). "[T]he existence of multiple lawsuits involving precisely the same issues is a *paramount consideration* when determining whether a transfer is in the interest of justice." In re Volkswagon of America, Inc., 566 F.3d 1349, 1351 Fed. Cir. 2009) (emphasis added) (hereinafter "Volkswagen III"). "To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent." Cont'l Grain Co. v. The FBL-585, 364 U.S. 19, 26 (1960). A single court overseeing these two cases "would avoid wasteful duplication of effort by two courts on essentially the same issues." Affinity Labs of Texas v. Samsung Elecs. Co., Ltd., 968 F. Supp. 2d 852, 860 (E.D. Tex. 2013); see also Devon Energy Prod. Co., L.P. v. GlobalSantFe S. Am., No. H-06-2992, 2007 WL 1341451, at * (S.D. Tex. May 4, 2007) ("[T]he interests of

justice will not be served by the maintenance of two suits arising from the same occurrences in two separate district courts.").

Accordingly, the Court finds that this factor weighs strongly in favor of transfer.

3. Public Factors

i. Administrative Difficulties Flowing from Court Congestion

This factor "considers the relative congestion of the courts in question" and generally "favors a district that can bring a case to trial faster." Vassallo, 2015 WL 502313, at *5. The parties have pointed the Court to various statistics from each district, including weighted filings per judgeship and time from filing until disposition, in an effort to make their point about which court is relatively more congested than the other. (See Dkts. ## 25 at 38; 40 at 31–35.) But this Court has previously stated that it is "careful . . . not to place undue weight on these statistics" because "Court congestion is considered the 'most speculative' of the factors, since 'case-disposition statistics may not always tell the whole story.'" Vassallo, 2015 WL 502313, at *5 (quoting In re Genentech, 566 F.3d 1338, 1347 (Fed. Cir. 2009)).

Accordingly, the Court finds this factor is too speculative to be helpful under the present circumstances and therefore is neutral as to transfer.

ii. Local Interest in Having Localized Interests Decided at Home

"The focus of the inquiry . . . is the relative connection of the localities to the events giving rise to this suit and their corresponding interests in the resolution of this controversy." Id. (citing Volkswagen II, 545 F.3d at 318). "[T]he location of the alleged injury is an important consideration in determining how to weigh this factor." Vassallo, 2015 WL 502313, at *5 (quoting Frito–Lay N. Am. v. Medallion Foods, Inc., 867 F.Supp.2d 859, 869 (E.D. Tex. 2012)). "The place of the alleged wrong is one of the most important factors in venue determinations." Devon Energy Prod., Co., 2007 WL 1341451, at *8; see also Lemery v. Ford Motor Co., 244 F. Supp. 2d 720, 732 (S.D. Tex. 2002) ("The place of the alleged wrong is of primary importance in the Court's venue determination.").

This case concerns an alleged trespass to land in North Dakota. (Dkt. # 28 at 2–3, 13, 18.) The alleged trespass is by virtue of an oil pipeline that transports crude oil from the Bakken Region of North Dakota to a refinery in Mandan, North Dakota, and finally to a rail spur in Fryburg, North Dakota. (Dkts. ## 28 at 16–17; 25-1 at 4.) Plaintiffs' desire to have the Pipeline removed from their trust land. (Dkt. # 28 at 26–27.) And the Pipeline is located almost entirely within North Dakota, with no portion traveling through or into Texas. (Dkt. # 25-1 at 4.) As such, this case implicates "considerable economic, political, and legal

interests" in North Dakota, and it is the residents of North Dakota, not the Western District, who will be most affected by the outcome of this case. See Wyandotte Nation v. Salazar, 825 F. Supp. 2d 261, 266–67 (D.D.C. 2011).

Accordingly, the Court finds that this factor weighs heavily in favor of transfer. See In re Volkswagen II, 545 F.3d at 317–18.

iii. Familiarity of the Forum with the Law that Will Govern the Case and Avoidance of Unnecessary Problems of Conflict of Laws of the Application of Foreign Law

The third and fourth public factors consider familiarity with governing law and avoidance of unnecessary conflicts of law. Because this case will apply federal law and does not raise conflicts of law issues, these factors do not favor either venue. See Oneida Cty. v. Oneida Indian Nation of New York State, 470 U.S. 226, 235 –36 (1985) (highlighting the long history of upholding tribal land rights under federal common law); Vasquez v. El Paso II Enters., LLC, 912 F. Supp. 2d 445, 451 (W.D. Tex. 2012) (stating that because all federal courts are equally capable of applying federal law, the third public interest factor "weighs neither for nor against transfer").

Based upon the foregoing analysis, the Court finds that the overwhelming weight of the public and private interest factors weighs in favor of transfer. As discussed, all of the public and private interest factors are either neutral or weigh in favor of transfer. And those factors that are the most salient all

support transfer. See Seeburger Enters., Inc., 502 F. Supp 2d. at 539 (stating that "the convenience of witnesses, most particularly nonparty witnesses who are important to the resolution of the case" is "[o]ften cited as the most important factor"); Lemery, 244 F. Supp. 2d at 732 ("The place of the alleged wrong is of primary importance in the Court's venue determination"); Volkswagen III, 566 F.3d at 1351 ("[T]he existence of multiple lawsuits involving the same issues is a paramount consideration when determining whether a transfer is in the interest of justice.") The Court therefore concludes that Defendants have carried their burden of clearly demonstrating that transfer to the District of North Dakota is more convenient for the parties and in the interest of justice. See Volkswagen II, 545 F.3d at 314. Defendants' Motion to Transfer is thus **GRANTED**. (Dkt. # 22.)

II. Remaining Motions

Having determined that this case should be transferred to the District of North Dakota, the Court declines to reach the remaining motions that are currently pending before it. Any issues raised in these motions that are not hereby moot are best addressed by the receiving court after the transfer. Therefore: (1) Plaintiffs' Motion to Certify Class (Dkt. # 32) and Defendants' Amended Motion to Dismiss (Dkt. # 43) are **DENIED WITHOUT PREJUDICE TO REFILING**; and (2) Defendants' Motion for an Extension of Time (Dkt. # 42) and Plaintiffs' Motion for Venue Discovery (Dkt. # 48) are **DENIED AS MOOT.**

CONCLUSION

For the reasons stated, the Court **GRANTS** Defendants' Motion to Transfer. (Dkt. # 22.) Additionally, the Court **DENIES WITHOUT PREJUDICE TO REFILING** Plaintiffs' Motion to Certify Class (Dkt. # 32) and Defendants' Amended Motion to Dismiss (Dkt. # 43). Finally, the Court **DENIES AS MOOT** Defendants' Motion for an Extension of Time (Dkt. # 42) and Plaintiffs' Motion for Venue Discovery (Dkt. # 48).

This case is hereby **TRANSFERRED** to the District of North Dakota.

IT IS SO ORDERED.

DATED: San Antonio, Texas, July 9, 2019.

David Alan Ezra
Senior United States Distict Judge