THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION Plaintiff, v. THE UNITED STATES DEPARTMENT OF THE INTERIOR, DAVID BERNHARDT, in his official capacity as Secretary of the Department of the Interior, the BUREAU OF RECLAMATION, and the BUREAU OF INDIAN AFFAIRS, And THE STATE OF UTAH, CENTRAL UTAH WATER CONSERVANCY DISTRICT, a political subdivision of the State of Utah, GARY HERBERT, in his capacity as Governor of Utah, and TERESA WILHELMSEN, P.E., in her capacity as Utah State Engineer and Director, Utah Division of Water Rights. Defendants.	Case No. 1:18-cv-00547-CJN **MEMORANDUM IN OPPOSITION TO FEDERAL DEFENDANTS' MOTION TO TRANSFER VENUE** Judge Carl J. Nichols

COMES NOW Plaintiff, the Ute Indian Tribe of the Uintah and Ouray Reservation, by and through its undersigned legal counsel, with its Memorandum in Opposition to the Motion to Transfer filed by the United States Department of the Interior ("DOI" or "Interior"), David

Bernhardt, in his official capacity as Secretary of the Interior, Bureau of Reclamation ("USBR"), and the Bureau of Indian Affairs ("BIA") (collectively the "Federal Defendants").

I. BACKGROUND

The Tribe provided a thorough account of the pertinent facts surrounding the Green River Block Exchange Contract ("GRBE Contract") in its Second Amended Complaint, ECF No. 57, ¶¶ 219-235, and the Tribe incorporates those factual allegations into the present pleading.

To summarize, the GRBE Contract is an agreement between the USBR and the State of Utah which was executed in March 2019. Under this agreement, the State of Utah agrees to "forebear" depletions of the State's apportionment of Colorado River waters under Article XV(b) of the Upper Colorado River Basin Compact, allowing Defendant USBR to utilize the forborne waters to satisfy USBR's requirements under the Endangered Species Act. In exchange, the State is "authorized to deplete an equal amount of CRSP project water from [Flaming Gorge] releases throughout the year as water is needed for the Green River Block portion of the assigned water right." The Tribe was not involved in either the negotiation nor the development of this agreement, nor did USBR engage in government-to-government consultation with the Tribe in connection with this Agreement.

The GRBE Contract was executed after the Tribe had already filed its First Amended Complaint as a matter of course under Fed. Rule Civ. Pro. 15(a). However, the GRBE Contract gave rise to issues with direct and immediate ties to the Tribe's lawsuit, including the prolonged and ongoing failure of the Tribe's federal trustee to provide much-needed water storage infrastructure for the Ute Tribe, the failure of the USBR to recognize the Tribe's Indian reserved water rights, and the USBR's misunderstanding of the legal distinction between Indian reserved water rights and state appropriative water rights under the Colorado River Compacts. Due to this

significant overlap in the salient issues, the Tribe determined it would be in the interest of judicial economy and reduce the risk of inconsistent rulings if it challenged the GRBE Contract as part of the present action. Accordingly, the Tribe's Second Amended Complaint includes four claims for relief supporting its request to invalidate and/or enjoin USBR's implementation of the GRBE Contract, Claims Twelve through Fifteen.

II. LEGAL STANDARDS AND APPLICABLE BURDENS

Under 28 U.S.C. § 1404(a), a party may request that a civil action be transferred to another federal district that has personal jurisdiction over the parties if necessary "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a). As a threshold matter, the party requesting the change in venue must demonstrate that the action could have been brought in the transferee district. If the court is satisfied that the moving party has shown the action could have been brought in the proposed transferee venue, then the moving party must then prove that disturbing the plaintiff's chosen venue is "in the interest of justice," necessary "[f]or the convenience of parties and witnesses," applying public and private interest factors to the case at hand.

The party requesting a venue transfer pursuant to 28 U.S.C. § 1404 bears a "weighty burden to demonstrate that the plaintiff[']s forum choice should be disturbed in favor of the ... defendants' choice." *Renchard v. Prince William Marine Sales, Inc.*, 28 F. Supp. 3d 1, 11 (D.D.C 2014) (quoting *United States ex rel. Westrick v. Second Chance Body Armor, Inc.,* 771 F.Supp.2d 42, 47 (D.D.C. 2011)). Where the Plaintiff's chosen forum is "properly laid,"[1] the defendant requesting transfer must show that the change in venue is necessary to "afford defendants protection where

[1] For cases against federal defendants, a venue is "properly laid" in the District of Columbia where, as here, "the federal officers named as defendants are to be found within the District of Columbia for purposes of personal jurisdiction." *Starnes* at 925.

maintenance of the action in the plaintiff's choice of forum will make litigation oppressively expensive, inconvenient, difficult or harassing to defend," and "[a]bsent such circumstances, transfer in derogation of properly laid venue is unwarranted." *Starnes v. McGuire*, 512 F.2d 918, 925-927 (D.C. Cir. 1974).

III. ARGUMENT

The Federal Defendants' request to transfer Claims 12 through 15 of its Second Amended Complaint to federal district court in Utah must be denied in its entirety. First, the statute upon which the Federal Defendants rely to authorize their requested venue transfer does not allow courts to transfer specific claims of a lawsuit while keeping the other claims in the current venue. The statute only allows transfer of an action in its entirety. Second, even if transfer of select claims within a larger action was permissible, the Tribe's choice of venue must be awarded substantial deference, and the public and private interest considerations by courts in reviewing a request to transfer venue weigh in favor of the Tribe. Therefore, Federal Defendants have failed to satisfy their "weighty burden to demonstrate that the plaintiff[']s forum choice should be disturbed in favor of the ... defendants' choice." *Renchard*, 28 F. Supp. 3d at 11.

A. The Statute Federal Defendants Rely on Does not Allow Transfer of Select Claims Within a Larger Action

Federal Defendants rely – as they must – on federal statute 28 U.S.C. § 1404(a) as authority for their requested venue transfer of Claims 12 through 15 of the Second Amended Complaint. This statute states: "[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 or to any district or division to which all parties have consented" (emphasis added).

Federal Defendants' request is facially indefensible because "the plain language of § 1404(a) permits transfer of an entire 'civil action,' and not of discrete claims therein." *Bederson*

v. U.S., 756 F. Supp. 2d 38, 47 (D.D.C. 2010); *Richter v. Analex Corp.,* 940 F. Supp. 353, 360 n. 9 (D.D.C.1996) ("28 U.S.C. § 1404 only authorizes the transfer of an entire action, not individual claims." [internal quotation marks omitted]); *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1518 (10th Cir. 1991) ("Section 1404(a) only authorizes the transfer of an entire action, not individual claims"); *Wyndham Associates v. Bintliff*, 398 F.2d 614, 618 (2nd Cir. 1968), *cert. denied,* 393 U.S. 977 (1968). Federal Defendants make no attempt to explain why the plain language of the governing statute should be expanded to authorize their request to transfer Claims 12 through 15 of the Tribe's 16-claim Complaint. Accordingly, the Federal Defendants' requested relief is not authorized under the applicable statute and must be summarily denied.

B. Even if Only a Portion of the Second Amended Complaint Could be Transferred to a New Venue, the Federal Defendants Have Not Met Their Burden to Justify Disturbance of the Plaintiff's Chosen Venue

Even if 28 U.S.C. § 1404(a) authorized the relief requested in the Federal Defendants' motion to transfer, the Federal Defendants have not met their substantial burden to justify disturbance of the Tribe's chosen forum.

There are three public interest factors and six private interest factors the court may consider in determining whether transfer is necessary "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a). The private interest considerations include "(1) the plaintiff's choice of forum, unless the balance of convenience is strongly in favor of the defendants; (2) the defendants' choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses of the plaintiff and defendant, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the ease of access to sources of proof." *Foote v. Chu*, 858 F. Supp. 2d 116, 121 (D.D.C. 2012). The public interest factors include "(1) the transferee forum's familiarity with the governing laws and the pendency of related actions in that forum; (2) the relative congestion of the calendars of

the potential transferee and transferor courts; and (3) the local interest in deciding local controversies at home." *Id*. at 123.

The Federal Defendants argue, and the Tribe agrees, that the fifth and sixth private interest considerations should play little role in this analysis because the Tribe's Twelfth through Fifteenth Claims for Relief are brought under the Administrative Procedures Act, which is generally limited to review of the administrative record. This leaves seven (7) total private and public interest factors to consider. Each of these factors, including the most important factor: the Tribe's choice of venue, weighs in favor of keeping these claims in the District of Columbia.

i. The Tribe's Choice of Venue is Entitled to Substantial Deference

As the Federal Defendants admit in their Motion, the plaintiff is "normally entitled to deference, and the party seeking transfer bears the burden of showing that transfer is appropriate." Mot. Transfer, ECF. No. 69 at 12. Case law in this circuit goes even further, stating that the plaintiff's choice of venue is "a paramount consideration that is entitled to great deference in the transfer inquiry." *Renchard v. Prince William Marine Sales, Inc.*, 28 F. Supp. 3d 1, 11 (D.D.C. 2014) (quoting *FTC v. Cephalon, Inc.*, 551 F. Supp. 2d 21, 26 (D.D.C. 2008)).

Federal Defendants argue that the Tribe's decision to bring its claims in D.C. District Court is entitled to no deference, alleging that there is "no factual nexus" between the District of Columbia and the Tribe's claims, while the District of Utah has "strong ties to these claims" because the natural resources impacted and the Tribe's headquarters are both located in Utah. This argument is devoid of merit.

The Tribe's claims challenging the GRBE Contract share a substantial factual nexus to the District of Columbia because each of these fours claims for relief are tied to the government-to-government relation between the Ute Indian Tribe and the federal government. In particular, the Tribe's claims each implicate the Federal Defendants in their role as trustee for the Tribe, as each

of the subject claims revolves around Federal Defendants' failure to recognize, protect, and manage tribal trust assets or otherwise carry out the federal government's trust relationship with undivided loyalty to the Tribe and its members. The District of Columbia is "the Seat of the Government of the United States," U.S. Const. art. I, § 8, cl. 17, which, given the foregoing, is every bit as relevant to choice of venue as the Federal Defendants' contention that the location of the Tribe's headquarters gives the District of Utah "strong ties" to the Tribe's claims.

Furthermore, this Court has ruled that a nexus to the District of Columbia exists when adjudication of a case hinges on judicial interpretation of federal statutes. *Greater Yellowstone Coalition v. Bosworth*, 180 F. Supp. 2d 124, 128-29 (D.D.C. 2001). As the Federal Defendants themselves acknowledge, the federal trust obligation to Indian tribes is established and defined in the United States Constitution, federal treaties, and judicial precedent. In a seminal ruling nearly two centuries ago, the United States Supreme Court defined the federal government's trust responsibility to the "dependent sovereign" Indian tribes of America, with Chief Justice John Marshall ruling, *inter alia*:

> The defendant [Georgia] is a state, a member of the union, which has exercised the powers of government over a people [the Cherokee Nation] who deny its jurisdiction, and are under the protection of the United States.
>
> ….
>
> From the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts . . . manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guarantied by the United States.
>
> ….
>
> The act of the state of Georgia under which the plaintiff in error was prosecuted, is consequently void, . . .

> ….
>
> The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union.

Worcester v. Georgia, 31 U.S. 515, 521-62 (1832). Accordingly, just like the Tribe's other claims based on the Federal Defendants' failure to satisfy the federal government's statutory and fiduciary trust obligations to the Ute Tribe, Claims Twelve through Fifteen indeed share a nexus with the District of Columbia.

ii. The Federal Defendants are not Entitled to Deference in their Choice of Venue

Unlike the Tribe, the Federal Defendants are not entitled to any deference in their choice of venue. A defendant's choice of venue is "not ordinarily entitled to deference" and will not weigh in favor of the requested transfer unless the defendant can demonstrate "special reasons…why [the] [d]efendant's choice of forum should be entitled to such unusual deference." *Forest County Potawatomi Community v. United States*, 169 F. Supp. 3d 114, 118 (D.D.C. 2016). Where the named defendants are "readily able to defend the lawsuit" in the chosen forum, and thus have "no real stake in having the case heard in either forum," deference to the defendants' chosen venue is unwarranted. *Sheffer v. Novaris Pharmaceuticals Corp.,* 873 F. Supp 2d 371, 376 (D.D.C. 2012).

Federal Defendants have not cited any law or otherwise put forward any "special reasons" for why their choice of forum should be entitled to "unusual deference" in this matter, and, as to *these* Defendants, there is simply no compelling reason they would not be able to defend these claims in their home forum. *See In re Vitamins Antitrust Litigation*, 263 F. Supp. 2d 67, 69 (D.D.C. 2003) (finding that the convenience of the chosen venue must be applied to the particular

defendants named in the action). Therefore, the Federal Defendants are entitled to no deference in their choice of venue.

iii. Claims Twelve through Fifteen Arose in Connection with Events and Decisions Made in the District of Columbia

Federal Defendants argue that Claims Twelve through Fifteen arose exclusively in the District of Utah because the key decision-making surrounding the GRBE Contract took place in Utah. This near-sided view of the dispute surrounding the GRBE Contract suggests that the GRBE Contract arose in isolation from a long history of actions, events, and decisions made not in Utah but in the District of Columbia. That simply is not the case.

The Tribe's objection to the Green River Block Exchange has arisen in connection with a long and distressing track record of the United States failing, at a centralized level, to recognize the full quantity of the Tribe's Indian reserved water rights and to fulfill its promise and trust obligations to provide storage infrastructure for the Tribe. Of course, the Presidential Executive Orders and federal statutes establishing the present Uintah and Ouray Reservation and, pursuant to *Winters v. United States*, the Tribe's appurtenant Indian reserved water rights, came out of the District of Columbia. In addition, the 1965 Deferral Agreement, through which the United States not only promised to recognize the full quantity of the Tribe's Indian reserved water rights, but also—once again—placed the Tribe in a position of reliance on the United States to develop storage infrastructure for the benefit of the Tribe, was signed by the BIA Commissioner and the Deputy Commissioner of the USBR, both of which offices are located in the District of Columbia, and the implementation of this contract required input and oversight from Congress. *See* Colorado River Basin Project Act of 1968, P.L. 90-537 Sec. 501(a) (September 30, 1968) ("the planning report for the Ute Indian unit of the Central Utah participating project shall be completed on or before December 31, 1974, to enable the United States of America to meet the commitments hereto

made to the Ute Indian Tribe of the Uintah and Ouray Indian Reservation under the agreement dated September 20, 1965 (Contract Numbered 14-06-W-194)"). The 1965 Deferral Agreement in particular plays in a critical role in the Tribe's dispute over the GRBE Contract, as the Federal Defendants' decision to ensure that the State of Utah has a reliable, stored water right in Flaming Gorge would not even be possible but for Federal Defendants' unfulfilled promise to construct the Ute Indian Unit for the benefit of the Tribe. Second Am. Compl., ECF. No. 57 at 65-66, 96-97. This connection between the GRBE Contract and the 1965 Deferral Agreement is integral to why the GRBE Contract violates the Federal Defendants' fiduciary responsibilities to the Tribe.

Furthermore, USBR's decision to defer to the future execution of a compact among the Tribe, the State, and the U.S. instead of recognizing the Tribe's Indian reserved water rights in the Green River as they exist today is not a decision that can be attributed to local USBR agents. To the contrary, it has been the Federal Government's modus operandi in recent years to proseltyze and coerce the Tribe into executing the 1990 Compact that was approved by Congress under the 1992 CUPCA, and this approach has been cultivated at the central level in the District of Columbia. This is clear from the Declaration of Irene Cuch and other records included in the court record as part of the Tribe's objection to the United States' motion to dismiss the Tribe's First Amended Complaint. Tribe's Opp. Mem., ECF No. 34. Ms. Cuch, the then-Chair of the Ute Tribe's governing body, was unsuccessful in attempts to engage the United States in negotiations after the Ute Tribe's membership refused to ratify a proposed water compact in 2009. *See* Irene Cuch Decl., ECF No. 34-1, 141-53, ¶¶ 15-18. Correspondence between the Tribe and the Federal Government flowed to and from the "Office of the Secretary" in Washington, D.C. Tribe's Opp. App.., ECF No. 34-2 at 143-46, 147-53.

A more recent example is the Department of Interior's decision to deny the Tribe's Water Resources Ordinance establishing a tribal water regulation code, on the basis that this ordinance must be consistent with the quantification and administration of tribal as set forth in the 1990 Compact. This decision was memorialized in an April 26, 2019, letter to the Tribe signed by Assistant Secretary of Indian Affairs (based in the District of Columbia), with a copy to the Acting Director of the BIA. Attachment 1.

As the foregoing reflects, the key decisions and events leading to the present dispute over the GRBE Contract were not limited to the State of Utah and indeed have substantial connections to the District of Columbia. Alternatively, to the extent USBR's localized decision to execute the GRBE Contract is still considered determinative of where the claims arose, this particular private interest consideration should be afforded little weight given the critical important of viewing the Tribe's claims in proper context.

iv. The District of Columbia is the More Convenient Venue for the Federal Defendants

The fourth private interest consideration, convenience of the chosen venue to the parties, falls squarely in favor of maintaining the Tribe's chosen venue. The Federal Defendants "cannot reasonably claim to be inconvenienced by litigating in this district. After all, this is [their] home forum." *Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 7 (D.D.C. 2013). The Tribe, meanwhile, has chosen the District of Columbia as preferred forum due to the strong ties between its claims and the government-to-government relationship between the Tribe and the Federal Government. To the extent the Tribe has "inconvenienced" itself through its choice of venue, it is willing and able to bear this inconvenience in litigating these claims.

v. The Pendency of a NEPA claim challenging the GRBE Contract in Utah District Court does not Favor Transfer of the Tribe's Twelfth through Fifteenth Claims for Relief

The first public interest consideration is the "transferee forum's familiarity with the governing laws and the pendency of related actions in that forum." *Foote*, 858 F. Supp. 2d at 123. Federal Defendants contend the two respective venues have equal familiarity with NEPA and the APA, but argue that the pendency of *Center for Biological Diversity et al., v. Department of the Interior, et al.*, Case No. 2:19- cv-636 (D. Utah), challenging the GRBE Contract on NEPA grounds in the Utah federal district court tips the scales in favor of transfer.

In making this argument, Federal Defendants turn a blind eye to the civil action before them. The Tribe included Claims Twelve through Fifteen in its Second Amended Complaint because these claims have direct, substantial and integral ties to the Tribe's facts and other claims for relief. In particular, the Tribe challenges the GRBE Contract on the basis that the USBR failed to recognize the Tribe's Indian reserved water rights in the Green River, asserting instead that the Tribe "*will* have a water right with a priority date of 1861 to natural flows in the Green River" only once the Ute Tribe has executed a compact with the State of Utah and the United States. These claims are inextricably connected to what is arguably the heart of the Tribe's lawsuit – that the Tribe is entitled to proper federal and state recognition of the full quantity of its Indian reserved water rights.

The Tribe also asserts that the execution and implementation of the GRBE Contract is arbitrary, capricious, and contrary to law because the USBR has chosen to utilize federally-administered storage infrastructure in the Uintah Basin to ensure the State of Utah a reliable stored water right, once again marginalizing the Tribe's enduring need for water storage infrastructure. This claim is deeply connected to the Tribe's claim in its Second Amended Complaint (and every

prior iteration of the Complaint) that the Federal Defendants are breaching their fiduciary duties to the Tribe by placing the Tribe in a position of dependent reliance on its federal trustee to provide much-needed storage infrastructure for the Tribe, and consistently failing to satisfy that need.

Finally, the Tribe challenges the GRBE Contract on the basis that it misinterprets the Colorado River Compact by assuming the State of Utah has a transferrable right to an unperfected quantity of Colorado River water based solely on its apportionment of water under the 1948 Upper Colorado River Compact, without accounting for the Tribe's "present perfected" water rights. This claim is directly linked to the Tribe's claim for declaratory relief that its Indian reserved water rights in the tributaries of the Colorado River are present perfected water rights, and thus fully vested tribal property rights irrespective of present use.

While the Tribe's claims challenging the GRBE Contract have direct and substantial ties to the above-captioned civil action, these claims have only an attenuated connection to the NEPA-based claims brought by the Center for Biological Diversity, et al., in Case No. 2:19- cv-636. The only connection between these two actions is that the plaintiffs in both cases allege that USBR violated NEPA by failing to produce an environmental impact statement, which is only one of the four claims for which the Federal Defendants seek transfer. The plaintiffs in Case no. 2:19- cv-636, not being Indian tribes, cannot and do not raise claims based on the United States' trust responsibility toward Tribes and their members. Even if, hypothetically, the plaintiffs in that matter were Indian Tribes, they are not the *Ute Indian Tribe*, whose unique and complex history involving water rights and mistreatment by their federal trustee provides the foundation for its claims challenging the GRBE contract. Therefore, the pendency of Case No. 2:19- cv-636 in Utah federal district court should carry significantly less weight than the pendency of the Tribe's above-captioned civil action in this Court.

vi. The Federal District Court in Utah is More Congested the D.C. District Court

Despite admitting that the District of Utah has more pending cases per judgeship than the District of Columbia, Federal Defendants arbitrarily assert that the relative congestion of the proposed venues comes out neutral. This asserting is simply inconsistent with the facts. First, as Federal Defendants admit, "with respect to pending cases per judgeship, the District of Utah (ranked 42nd) is somewhat more congested than this District (ranked 71st)." ECF No. 69 at 17. In fact, the relative congestion of these two courts is not even close. In the twelve-month period ending March 31, 2020, the Utah federal district court had 512 pending cases per judgeship, compared to 355 pending cases per judgeship in the District of Columbia. United States District Courts – National Judicial Caseload Profile, available at https://www.uscourts.gov/statistics-reports/federal-court-management-statistics-march-2020.

The statistics are equally lopsided when viewed in terms of weighted filings for the two respective districts. The "weighted filings" methodology provides a numeric quantification to account for the different amounts of time district judges require to resolve various types of civil and criminal actions, providing a more precise measurement of relative congestion than simply counting the number of filings or pending cases. In the twelve-month period ending March 31, 2020, the District of Utah had 476 weighted filings, to the District of Columbia's 311. *Id*.

The above statistics suggest that the District of Utah is in fact much more congested than the District of Columbia, and the Federal Defendants' suggestion that the relative congestion of the two districts is "neutral" has no merit.

vii. The Tribe's Claims Challenging the GRBE Contract Go Far Beyond "Local Interests."

Federal Defendants argue that the Tribe's challenge to the GRBE Contract involves purely local interests, and that the "residents of Utah, and its local communities," have a "compelling

interest . . . in having this localized controversy decided at home." ECF. No. 69 at 12. But the Federal Defendants' characterization of this issue as a "localized controversy" is based solely on the geographic location of the natural resources impacted by the GRBE Contract. As such, it is an oversimplification that fails to reach the issue at the heart of this dispute, which is not just the management of natural resources within a certain geographic location, but the management of natural resources *among separate sovereigns*, based on their relationship to one another under federal law. The Tribe's GRBE claims are not simply a matter of local interest, but an issue of national significance under federal law. *See Bosworth*, 180 F. Supp. 2d at 129 (finding that the alleged local interests implicated in a dispute over a federally-issued grazing permit carried little weight because the dispute did "not involve any issues of state law and has some national significance"); *Wilderness Society v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000) (denying a request to transfer venue from the District of Columbia and finding the District of Columbia appropriate due to the "national significance" of a controversy over the Federal Government's administration of the National Petroleum Reserve in Alaska). !!!

Indeed, it should be noted that over the past century management of the Colorado River has not been simply a matter of national significance, but a matter of *international* significance as well. Both the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact specifically required Congressional approval, as did The Mexican Water Treaty of 1944, which obligates the United States to deliver 1.5 million acre-feet of water from the Colorado River to Mexico each year, plus an additional 200,000 acre-feet under surplus conditions. The treaty is overseen by the International Boundary and Water Commission.[2] The Congressional Acts

[2] *See, e.g.* Colorado River Water and Mexico, published by the Water Education Foundation and posted at https://www.watereducation.org/aquapedia/mexico-and-colorado-river-water (last visited on 7/30/2020).

approving the 1922 and 1948 compacts — the 1928 Boulder Canyon Project Act and the 1956 Colorado River Storage Project Act, respectively — were not just bare ratifications, but statutes that also established a comprehensive framework for developing and conserving waters in the Colorado River Basin. More recently, in April 2019, Congress introduced and approved the Drought Contingency Plan for the Colorado River, which became Public Law 116-14 a mere two weeks after being initially introduced in the House of Representatives. Consequently, as the foregoing facts illustrate, management of the Colorado River and its tributaries historically has been a matter of centralized national and international importance and attention, and remains so to this day.

Further, as Chief Justice Marshall made clear in *Worcester v. Georgia*, in the field of Federal Indian law, state interests do not outweigh national interests and the government-to-government relationship between Indian tribes and the federal government—a policy that was once again affirmed just this year in another Supreme Court ruling, *McGirt v. Oklahoma*, which held that the State of Oklahoma has no criminal jurisdiction over Indians within the Indian lands of the Creek Nation in Oklahoma. *McGirt v. Oklahoma*, __ U.S. __, 140 S. Ct. 2452 (2020).

Assuming *arguendo*, there are issues that are "local" to the State of Utah under Claims Twelve through Fifteen of the Tribe's complaint, those local interests certainly do not predominate. Further, those local interests, if any, will be adequately represented by the State of Utah—a party that acted affirmatively to intervene in this lawsuit in this judicial district, and whose Answer to the Tribe's First Amended Complaint does not dispute the Tribe's claim that venue in this Court is proper. *See* State of Utah Answer, ECF No. 54 at 3. Consequently, it is this federal district court, constituted in the Nation's capital, that should decide the issues raised under the Tribe's complaint.

IV. CONCLUSION

Federal Defendants have requested a transfer of only four of the Tribe's sixteen claims for relief. This request controverts the plain language of 28 U.S.C. § 1404(a) which authorizes only the transfer of complete "actions," and it seeks improperly to sever the Tribe's integrated and cohesive civil action. Furthermore, even if this governing statute allowed only a portion of a civil action to be transferred to a new venue, the private and public interest considerations dictating whether such transfer is justified weigh in favor of the keeping the Tribe's claims in the District of Columbia, especially when viewed with proper deference to the Tribe's choice of venue, the national interests that predominate, and nearly two centuries of Federal Indian law precedents, beginning with *Worcester v. Georgia* and continuing through this year's Supreme Court decision in *McGrit v. Oklahoma*. Based on the facts and authorities cited herein, the Federal Defendants' Motion to Transfer Venue must be denied.

Respectfully submitted this 30th day of July, 2020.

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