IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF ALASKA, Plaintiff, v. UNITED STATES DEPARTMENT OF THE INTERIOR, *et al*., Defendants.	)	No. 1:25-cv-00330-PLF

REPLY IN SUPPORT OF DEFENDANT NATIVE VILLAGE OF EKLUTNA'S MOTION TO TRANSFER

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I. INTRODUCTION

The Native Village of Eklutna files this reply in support of its Motion to Transfer, ECF No. 16 ("Motion to Transfer"). This proceeding should be transferred to the District of Alaska for the reasons explained in the Memorandum of Points and Authorities In Support of Defendant Native Village of Eklutna's Motion Transfer, ECF No. 16 ("Mem."), and below. In the State of Alaska's Opposition to Motion to Transfer, ECF No. 25 ("State Opp'n"), the State attempts to avoid transfer by asserting an entirely new theory—never once articulated in its complaint—that this case is actually an action to enforce the judgment in the Tribe's prior lawsuit, rather than a garden-variety Administrative Procedure Act ("APA") claim and a preclusion claim as alleged in the complaint. That attempt is both procedurally improper and substantively wrong. Because the State has not shown that this Court has personal jurisdiction over the Tribe in this new APA action challenging new agency decisions, nor has it shown that venue is otherwise proper here, the case should be transferred to the District of Alaska. The factors governing change of venue under 28 U.S.C. § 1404(a) also support transfer.

II. ARGUMENT

A. TRANSFER IS APPROPRIATE BECAUSE THIS COURT LACKS PERSONAL JURISDICTION OVER THE TRIBE.

The State concedes that the Court lacks personal jurisdiction over the Tribe pursuant to the District of Columbia long-arm statute. *See* Mem. at 9-11. The State responds that the Court has personal jurisdiction because the State is seeking to enforce the Court's judgment in *Native Village of Eklutna v. U.S. Dep't of Interior*, No. 19-CV-2388 (DLF), 2021 WL 4306110 (D.D.C. Sept. 22, 2021) ("*Eklutna I*"). *See* State Opp'n at 7. The State's response fails for multiple reasons.

1. The Complaint does not support the State's new theory of enforcement of *Eklutna I.*

First, the State's assertion that its action seeks to enforce the Court's judgment in *Eklutna I* has no basis in the State's complaint. Nowhere in the Complaint does the State make a claim for enforcement of the judgment against the Tribe. The Complaint expressly states that in the first cause of action the State seeks "reversal" under the Administrative Procedure Act, 5 U.S.C. § 706, of the 2024 National Indian Gaming Commission ("NIGC") Indian lands opinion, the Assistant Secretary of the Interior's 2025 lease approval, and Solicitor's February 2024 Opinion M-37079 ("Anderson Opinion"), contending they are arbitrary and capricious and contrary to law. Complaint, ECF No. 1 ("Compl.") ¶¶ 10-11, 66-69; *see also id.* ¶ 1 ("The State of Alaska challenges a series of administrative decisions by officials within the Department of the Interior and the National Indian Gaming Commission."). In the first cause of action, the State contends that under the doctrines of collateral and judicial estoppel, the court's decision in *Eklutna I* prevents relitigation by the Tribe and Interior of whether the allotment qualifies as Indian land under the Indian Gaming Regulatory Act ("IGRA"). Compl. ¶¶ 68, 71. Similarly, the State argues the Anderson Opinion was arbitrary and capricious, *id.* ¶ 69, because the State disagrees with its reasoning and with its partial withdrawal of a prior Solicitor's opinion (known as the Sansonetti Opinion), which was the basis for the Department's 2018 decision at issue in *Eklutna I*, *see* Compl. ¶¶ 55-61. Nothing in the Complaint related to the first cause of action seeks relief from the Tribe or seeks enforcement of the judgment in *Eklutna I.*

The Complaint's second cause of action alleges that the parties to *Eklutna I* "litigated whether the Ondola Allotment qualifies as 'Indian land' under IGRA and the validity of the Sansonetti opinion on this issue," and the Tribe "is barred by collateral estoppel from relitigating" those issues. Compl. ¶ 71 (citing *McLaughlin v. Bradlee*, 803 F.2d 1197, 1201-02 (D.C. Cir.

1986)). The State seeks a declaration that the Tribe is "barred by collateral estoppel and/or judicial estoppel from relitigating the issues resolved in" *Eklutna I*. Compl. Prayer for Relief A.[1] It also seeks an order declaring Interior and NIGC's actions were arbitrary and capricious, vacating the NIGC opinion and the lease approval, and enjoining Interior from applying the Anderson Opinion and barring the NIGC and Interior from approving gaming ordinances or gaming leases on any allotment in Alaska. *Id.* Prayer for Relief B-H. Again, nothing here mentions enforcement of a prior judgment or seeks injunctive relief as to the Tribe.[2]

In its opposition to the motion to transfer, the State now attempts to advance a new claim against the Tribe.[3] Yet nowhere does the Complaint say that the State seeks to enforce *Eklutna I* or even use the terms "enforce" or "judgment" except in entirely unrelated contexts.[4] The State concedes that the relief requested in its complaint goes far beyond even its own view of what could be enforced through the *Eklutna I* judgment, State Opp'n at 25, and it admits that it did not follow any of the procedures that would have applied to an enforcement action or that would have given

[1] While not included in the Prayer for Relief, the Complaint states in paragraph 11 that "[t]he State seeks reversal of these unlawful decisions pursuant to 5 U.S.C. § 706 and an injunction precluding the Tribe from engaging in any gaming activity on the Ondola Allotment." Compl. ¶ 11.

[2] The *McLaughlin* case cited in paragraph 71 of the Complaint does not involve an action to enforce a judgment. *See McLaughlin*, 803 F.2d at 1199 (applying preclusion principles).

[3] The State's opposition brief includes an extended background section based, the State explains, on a similar discussion in its brief in support of its motion for preliminary injunction, State Opp'n at 8 n.1. The Tribe disputes a number of characterizations in the background section, but those disputes are not relevant to the resolution of this motion. In any event, as discussed below, the State's claims are defined by its complaint, not by the assertions in its opposition brief.

[4] Compl. Caption (referencing the Declaratory Judgment Act authorizing relief sought in this action), ¶ 12 (same), Prayer for Relief (same); ¶ 18 (describing State interest in enforcing Alaska Native Claims Settlement Act), ¶ 48 (discussing tribal enforcement authority discussed in 2018 decision), ¶ 57 (discussing 2022 Alaska Tribal Public Safety Empowerment Act grant to tribes civil jurisdiction to enforce protection orders).

the other parties even minimal notice of the State's enforcement theory, *id.* at 25-26. The decision whether to transfer this proceeding to the District of Alaska must be tied to the complaint the State actually filed, not the hypothetical lawsuit the State *wishes* it filed.

2. *Eklutna I* is distinct from the State's claims to reverse the 2024 Anderson Opinion and NIGC decision and the 2025 lease approval.

Second, this action is "entirely new and original," and "the relief sought is of a different kind or on a different principle," *Peacock v. Thomas*, 516 U.S. 349, 358 (1996) (cleaned up), so there would be no basis for a claim for enforcement if the State made one. *Eklutna I* involved a claim for judicial review of the 2018 decision by the Acting Assistant Secretary regarding the Tribe's request for an Indian lands determination as to the Eklutna allotment and a request for approval of a lease. *Eklutna I*, 2021 WL 4306110 at *2. This action seeks judicial review of entirely distinct decisions, a July 2024 decision by the NIGC approving the Tribe's gaming ordinance, a January 2025 decision by the Assistant Secretary-Indian Affairs approving a lease of the Eklutna allotment, as well as the February 2024 Anderson Opinion issued by the Interior Solicitor. In the APA context, these are entirely different actions and facts, with a new administrative record and new final agency decisions.

In similar cases, even when plaintiffs expressly *did* seek to enforce a prior judgment (unlike the State's complaint here), courts have held that a challenge to the new agency actions must be brought as a separate proceeding and not as an enforcement action. *See The Fund for Animals v. Norton*, 390 F. Supp. 2d 12, 15 (D.D.C. 2005) (denying motion to enforce court order vacating 2003 regulations governing winter operations in certain national parks, where National Park Service issued subsequent 2004 regulations, as "[t]he 2004 Decision is a new 'final agency action' resulting from an entirely new rule making process; it imposes different substantive requirements, involves a different scope, and is based upon a different administrative record, including a new

Environmental Assessment ('EA') and Finding of No Significant Impact ('FONSI'), which are not before the Court in this case"); *see also Oceana, Inc. v. Coggins*, No. 19-CV-03809-LHK, 2021 WL 1788516, at *7 (N.D. Cal. May 5, 2021) ("[R]ather than moving to enforce a judgment that pertained to a different rule and a different administrative record, Plaintiff must challenge the 2020 Catch Rule based on its own administrative record."). The relief sought against the Tribe is also distinct from the 2021 litigation, as it is based on the State's estoppel theory and the Court's application of estoppel to the 2024 and 2025 decisions under APA review here. And as noted above, those decisions cannot be challenged as part of an enforcement action.

3. Enforcement of *Eklutna I* is not available for a judgment *denying* APA relief.

Third, even if the Complaint could reasonably be construed to allege a claim by the State "to enforce the judgment it received in 2021," State Opp'n at 23—and it cannot—there is no mandate to enforce. Ancillary enforcement jurisdiction is limited and does not "extend[] beyond attempts to execute, or to guarantee eventual executability of, a federal judgment" such as proceedings for "attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent conveyances." *Peacock*, 516 U.S. at 356-57. For example, in *Peacock* the Court held ancillary enforcement did not supply jurisdiction over "a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment." *Id.* The State's last-minute attempt here falls far outside the limits set by the Court.

In *Eklutna I* the court denied the Tribe's request to overturn the Acting Assistant Secretary's 2018 decision. Consistent with this outcome, the *Eklutna I* judgment ordered that "the plaintiff recover nothing, the action be dismissed on the merits, and the defendant U.S. Department of the Interior, et al recover costs from the plaintiff Native Village of Eklutna." *Eklutna I*, Judgment dated September 22, 2021 *nunc pro tunc*, Ex. 1. There is no ongoing obligation to enforce. *Cf. Sierra Club v. McCarthy*, 61 F. Supp. 3d 35, 39 (D.D.C. 2014) ("[I]f a plaintiff 'has received all

relief required by that prior judgment, the motion to enforce [should be] denied.'" (second alteration in original) (quoting *Heartland Hosp. v. Thompson*, 328 F. Supp. 2d 8, 11 (D.D.C. 2004))).

Even beyond the text of the judgment itself, the *Eklutna I* court issued no mandate or injunction. Rather, the court concluded "Interior made a reasoned judgment which the Court will not second-guess." *Eklutna I*, 2021 WL 4306110, at *10. It found that the Department's conclusion was "rational" and the "the Tribe's claim that Interior acted arbitrarily and capriciously in applying the Indian lands test set forth in the Sansonetti Opinion must fail." *Eklutna I*, 2021 WL 4306110 at *10. The decision was consistent with the arbitrary and capricious review under the APA, which only determines "that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513-14 (2009); *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981)). The court did not tell the Department what it must do (or must not do); it simply upheld the 2018 decision as a reasonable construction of the relevant law as it stood at the time.[5] These circumstances do not give rise to a claim for enforcement of the prior judgment, which is available in the APA context only when the court specifically orders the agency to do something, such as a court-ordered remand. *See, e.g.*, *McCarthy*, 61 F. Supp. 3d at 39 (exercise of ancillary enforcement authority is "'particularly appropriate' when a case returns to a court on a motion to

[5] As the Tribe will discuss in its opposition to the State's motion for preliminary injunction, there have subsequently been material changes in the applicable law. The State concedes the change in law, Compl. ¶ 57; State Opp'n at 17-18 (acknowledging that statute "recognized and affirmed Alaska tribes' inherent authority over Indians in their respective villages"), and the Tribe will show that the State's attempt to diminish the effect of the change in law fails.

enforce the terms of its mandate to an administrative agency" (quoting *Flaherty v. Pritzker*, 17 F. Supp. 2d 52, 55 (D.D.C. 2014))).

The Court's denial of relief (and the lack of any ongoing mandate or injunction) in *Eklutna I* is in stark contrast to the lower court decisions the State cites. *See* State Opp'n at 22. Those cases involved injunctions issued against state court proceedings in conflict with a prior federal court injunction and a declaratory judgment. They did not involve prior federal decisions in APA actions. In *Berman v. Denver Tramway Corp.*, 197 F.2d 946, 947-48 (10th Cir. 1952), the Tenth Circuit affirmed a district court order enjoining a state court proceeding to enforce an *ongoing federal court decree* that enjoined local government from enforcing, and bringing litigation to enforce, an ordinance limiting public transportation fares. In *Southwest Airlines Co. v. Texas Int'l Airlines, Inc.*, 546 F.2d 84, 88, 103 (5th Cir. 1977), the Fifth Circuit affirmed a district court injunction against a state court action that conflicted with a prior federal court declaration that local authorities could "not lawfully exclude" Southwest Airlines from using a local airport.

The State cites no cases in which ancillary enforcement jurisdiction could be used to enforce a judgment where the court's only action was to *deny* relief to the plaintiff. Rather this case more closely resembles *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), which illustrates the narrow scope of ancillary enforcement jurisdiction. The Court found no jurisdiction over a state law action to enforce a settlement agreement which was the basis for dismissal of a prior federal lawsuit. *Id.* at 378-380. In that prior case, the court order dismissing the prior case referenced the settlement but did not incorporate it into its terms or retain jurisdiction to enforce the settlement agreement. In finding no ancillary enforcement jurisdiction, the Court reasoned, "the only order here was that the suit be dismissed, a disposition that is in no way flouted

or imperiled by the alleged breach of the settlement agreement," *id.* at 380, because the "facts to be determined with regard to such alleged breaches of contract are quite separate from the facts to be determined in the principal suit, and automatic jurisdiction over such contracts is in no way essential to the conduct of federal-court business." *Id.* at 381.

Similarly, here the judgment of *Eklutna I* rejected the Tribe's claims and dismissed the action without granting affirmative relief except costs in favor of the Department of Interior. *See* Judgment, Ex. 1. And this action involves new agency decisions distinct from the 2018 decision at issue in *Eklutna I*, and those new agency decisions involved interpretation of a newly enacted statute. *See supra* at 4-5.[6] The State's contention that *Eklutna I* "already declared the rights of these parties to the exact same parcel of land," State Opp'n at 24, misunderstands the nature of APA review and therefore overstates the holding of *Eklutna I.* The decision in *Eklutna I* merely reviewed the 2018 decision under the APA and rejected the Tribe's claims for APA review. The decision did not involve the State's "rights to" the allotment, whether sovereignty-based, proprietary or otherwise. As in *Peacock*, "once judgment was entered" in *Eklutna I* "the ability to

[6] Even if there *were* some ongoing obligation to enforce, in the context of judicial review of agency action, "the court will deny a motion to enforce judgment against the agency if the agency adequately explains its reasons for adopting the [new] rule." *Heartland Hosp. v. Thompson*, 328 F. Supp. 2d 8, 11 (D.D.C. 2004). The Complaint shows that the Federal Defendants explained their decisions. *See* Compl. ¶¶ 10-11, 55-58. While the merits of the State's preclusion arguments are not before the Court in the Motion to Transfer, the Tribe will show that the State's preclusion-based challenges to the Interior decisions lack merit, *inter alia*, an agency may reasonably depart from its prior policies or opinions, as long as it provides a reasoned explanation for doing so. *F.C.C. v. Fox Television Stations, Inc*., 556 U.S. 502, 514-15 (2009). This is true even if a court has previously interpreted the relevant statute. *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 982 (2005). An agency may change its position by rescinding regulations, expanding the scope of its enforcement power, or abandoning decades-old practices. *See Food & Drug Admin. v. Wages & White Lion Invs., L.L.C*., 145 S. Ct. 898, 918 (2025). Even a case cited by the State, State Opp'n at 40, acknowledges the importance of "the willingness of agencies to reconsider an agency decision after first obtaining a favorable judgment as a defendant in a lawsuit," *Hardison v. Alexander*, 655 F.2d 1281, 1289 (D.C. Cir. 1981).

resolve simultaneously factually intertwined issues vanished," and *Eklutna I* cannot form the basis for jurisdiction even over factually related claims. In any event, there is "insufficient factual dependence" between the claims in *Eklutna I* and the State's claims here involving different agency decisions, and "no greater efficiencies would be created by the exercise of federal jurisdiction over them." *See Peacock*, 516 U.S. at 355-56.

4. As a doctrine of subject matter jurisdiction, ancillary jurisdiction does not provide a basis for the exercise of personal jurisdiction.

Finally, the State's reliance on ancillary jurisdiction does not cure the State's failure to establish personal jurisdiction over the Tribe in this action. Ancillary jurisdiction goes to subject matter jurisdiction, not personal jurisdiction. *See Peacock*, 516 U.S. at 352 (granting certiorari "to determine whether the District Court had subject-matter jurisdiction").

Personal jurisdiction is distinct from subject matter jurisdiction, and personal jurisdiction in the context of venue questions is typically resolved before questions regarding subject matter jurisdiction. *See Chevron U.S.A. Inc. v. Env't Prot. Agency*, 45 F.4th 380, 385 (D.C. Cir. 2022) (venue is a "threshold, non-merits issue that a court can address without first establishing its jurisdiction"); *Lab'y Corp. of Am. Holdings v. N.L.R.B.*, 942 F. Supp. 2d 1, 3 (D.D.C. 2013) ("[M]embers of this Court often address whether a plaintiff's chosen venue is appropriate prior to reaching the merits of the underlying cause of action."). Personal jurisdiction involves questions of "fair play and substantial justice" to ensure due process. *Int'l Shoe Co. v. State of Wash., Off. of Unemp. Comp. & Placement*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Due process "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297

(1980)). The State cites no cases showing relevance of ancillary jurisdiction to the jurisdictional question presented by the Motion to Transfer: whether this Court has personal jurisdiction over the Tribe for purposes of this action. It does not.

5. The Tribe's filing of *Eklutna I* did not waive immunity for purposes of this action.

The State further argues that this Court has personal jurisdiction based on erroneous assertions that the Tribe's filing of *Eklutna I* waived immunity for purposes of this action. *E.g.*, State Opp'n at 28. This contention fails for the reasons discussed above, namely that the State's complaint does not show this action seeks to enforce *Eklutna I*, and there is no basis for enforcement of *Eklutna I*. The State's arguments regarding sovereign immunity do not establish this Court's personal jurisdiction over the Tribe because sovereign immunity goes to subject matter jurisdiction, not personal jurisdiction. *See Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 386 (2023) ("They argued that the Bankruptcy Court lacked subject-matter jurisdiction over Coughlin's enforcement proceeding, as the Band and its subsidiaries enjoyed tribal sovereign immunity from suit."); *Narragansett Indian Tribe By & Through Narragansett Indian Tribal Historic Pres. Off. v. Pollack*, No. CV 20-576 (RC), 2022 WL 782410, at *5 (D.D.C. Mar. 15, 2022) (rejecting argument that State defendants' alleged waiver gave personal jurisdiction and concluded that it was directed at subject matter jurisdiction).[7]

The State's waiver contention also fails based on well-established principles of sovereign immunity. The courts repeatedly have held "[s]uits against Indian tribes are . . . barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." *Okla. Tax*

[7] As noted in the Motion, the Tribe reserves its right to bring subject matter jurisdictional challenges, including based on sovereign immunity, and other challenges in response to the State's complaint.

Comm'n v. Potawatomi Tribe, 498 U.S. 505, 509 (1991). This applies to litigation waivers as well, including for compulsory counterclaims in litigation filed by the tribe. *Id.* at 509-10. The D.C. Circuit recognizes "[a]n Indian tribe's immunity is co-extensive with the United States' immunity, and neither loses that immunity by instituting an action, even when the defendant files a compulsory counterclaim." *Wichita & Affiliated Tribes v. Hodel*, 788 F.2d 765, 773-74 (D.C. Cir. 1986) (citing *United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 514 (1940)).[8] Accordingly, tribal waiver through litigation conduct "must be unequivocal and may not be implied," and the courts have set a high bar for finding waiver. *Alaska Logistics, LLC v. Newtok Vill. Council*, 357 F. Supp. 3d 916, 927 (D. Alaska 2019) (quoting *Kescoli v. Babbitt*, 101 F.3d 1304, 1310 (9th Cir. 1996)).

Consistent with this narrow rule for waiver by litigation conduct, no case has ever held that a tribe waived its immunity from suit simply by filing a *different* lawsuit that concerned similar (or even identical) issues. For example, in *McClendon v. United States*, 885 F.2d 627, 631 (9th Cir. 1989), the Ninth Circuit held that the Colorado River Indian Tribes' filing of a lawsuit to eject the predecessor in interest of a lessee of tribal land did not waive immunity for the lessee's claim for breach of a lease agreement contemplated in the settlement of the prior suit. The court held that the Tribe waived immunity for purposes of determining the issues in the prior lawsuit, but not for "related matters, even if those matters arise from the same set of underlying facts." 885 F.2d at 630. The court expressly rejected the appellant's assertion that "inherent jurisdiction to enforce

[8] The bar on counterclaims against an immune plaintiff rejects the State's reliance on the statement in *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 451 (1932), that the Tribe's suit in *Eklutna I* submitted to the Court's jurisdiction "with respect to all issues embraced in the suit." State Opp'n at 26. That case pre-dates the clear holding in *U.S. Fid. & Guar. Co.* that a sovereign plaintiff does not lose immunity by filing suit, even as to compulsory counterclaims *in the same suit*—much less as to related issues filed in a different case, as is the circumstance here. 309 U.S. at 514.

the terms of the lease because these terms were an integral part of the agreement settling the original litigation brought before the district court" in light of the strict requirements for waiver of immunity. *Id.* at 632-33.

Similarly here, the Tribe's suit to challenge the 2018 decision did not constitute a waiver of immunity for purposes of this action challenging later Interior decisions, even though they arise from circumstances that overlap to some degree. Furthermore, as noted above, the 2018 decision reviewed in *Eklutna I* is not the same administrative decision as the 2024 and 2025 decisions that are the subject of this action.

The State's reliance *United States v. Oregon*, 657 F.2d 1009, 1012 (9th Cir. 1981), is no help to the State because that case involved judicial control over a res, and the tribe expressly agreed to the court's retention of jurisdiction over the fishery. The *McClendon* court explained that in *Oregon*, "the initial action was analogous to an action in rem, with the fishery constructively in possession of the court," whereas in *McClendon*, "[u]nlike the initial action in *United States v. Oregon*, no ongoing equitable remedy was necessary; there was no res over which the district court had to maintain control in order to do equity." 885 F.2d at 631. The *Oregon* court also noted the Tribe explicitly agreed to submit disputes over the management of the fishery to the court, and the settlement agreement provided the court would retain jurisdiction. *Id*. at 630 n.2, 632 n.5.

The State's reliance on *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244-45 (8th Cir. 1995), fares no better, as the tribe in that case did not simply file a claim; it affirmatively asked the court to order opposing parties to file their own claims against the tribe and conceded to the court that it had consented to those other parties' claims. Finally, *Aquinnah/Gay Head Cmty. Association, Inc. v. Wampanoag Tribe of Gay Head (Aquinnah)*, 989 F.3d 72, 83 (1st Cir. 2021), also cited by the State, has no application to a case such as this one involving two different lawsuits.

There the court found the tribe waived immunity by abandoning the issue on appeal, concluding, "a tribe cannot raise the issue of sovereign immunity in a district court, forgo it on appeal while seeking relief from an adverse ruling, and then employ it in a later appeal to secure a do-over." *Id.* at 83. In sum, clear precedent from the Supreme Court and lower courts confirms that *Eklutna I* has no bearing on the Tribe's immunity here, and none of the State's cases dictate a different result.[9]

B. VENUE IS NOT PROPER IN THIS DISTRICT.

Even if this Court could exercise personal jurisdiction over the Tribe, venue is not otherwise proper here. The State's argument on venue rests primarily on the same fallacy that it raised in support of personal jurisdiction. State Opp'n at 30. Having reimagined its lawsuit as an action to enforce *Eklutna I*, the State seems to believe that the *Eklutna I* decision is itself "the event[] . . . giving rise to the claim here," and thus that venue is proper in this district. *Id.* That argument fails for the reasons already articulated: this case is not—nor could it be—an action to enforce the judgment in *Eklutna I*. Thus the existence of a prior (and long closed) case in this district does not dictate the propriety of venue in this *new* action to challenge *new* agency decisions. And the fact that venue was proper in this district for claims brought exclusively against federal

[9] The State's plea that in these circumstances its rights will be irretrievably lost, and the tribal immunity doctrine will become a rule "that tribes may never lose a lawsuit" unless the Court accepts its newly minted theory, State Opp'n at 29, has no basis in the sovereign immunity precedent or in *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978), on which the State relies. In that case the Court held ancillary enforcement jurisdiction did not exist when its recognition would be contrary to statutes limiting federal courts' subject matter jurisdiction and noted "[a] plaintiff cannot complain if ancillary jurisdiction does not encompass all of his possible claims in a case such as this one, since it is he who has chosen the federal rather than the state forum and must thus accept its limitations." *Id.* at 376. Likewise here, the State is responsible for its complaint, its allegations and its claims, as well as its choices about the parties to sue as defendants and where to file.

defendants in *Eklutna I*, *see* State Opp'n at 30, says nothing about the propriety of venue in this separate action, particularly as to the State's claims against the Tribe.

The State also suggests that venue is proper here because the federal decisionmakers who signed the challenged decisions are located in Washington, D.C. *Id.* As an initial matter, this argument appears to concede (albeit briefly) that this action *is* a challenge to the new decisions, not an action to enforce *Eklutna I.* *See id.* at 30-31 (citing actions relating to the 2024 NIGC decision and 2025 lease approval). Moreover, as the Tribe explained in its Motion, venue must be proper as to all defendants, 28 U.S.C. § 1391(e), and the events involving the Tribe and the disputed parcel all occurred in the District of Alaska, *see* Mem. at 7-9.

The State then returns to its mantra that this is an action to enforce *Eklutna I*. State Opp'n at 31. It cannot establish proper venue on this basis, and the case must be transferred to the District of Alaska.

C. THE 28 U.S.C. § 1404(a) FACTORS WEIGH IN FAVOR OF TRANSFER.

Transfer to Alaska is also appropriate under 28 U.S.C. § 1404(a), and the State's arguments do not dictate otherwise. The State asserts that "it's not clear whether" this case could have been brought in the District of Alaska because the District of Alaska "likely does not have the same 'inherent authority' to enforce this Court's judgement in" *Eklutna I.* State Opp'n at 33. As explained above, the State's complaint does not support its argument that this lawsuit seeks enforcement of the judgment in *Eklutna I*, and even if the State sought such enforcement, that claim would have no merit. *See supra* at 1-9. The State cites *Winter v. Novartis Pharms. Corp.*, 39 F. Supp. 3d 348 (E.D.N.Y. 2014), which held that the Eastern District of New York did not have subject matter jurisdiction on removal to enforce a judgment of the Western District of Missouri unless the plaintiff registered the judgment in the Eastern District of New York pursuant to 28 U.S.C. § 1963. *Id.* at 352. In that case, the plaintiff had not registered the judgment. *Winter*

stands for nothing more than the proposition that even if the State were seeking to enforce the *Eklutna I* judgment—it is not—and even if such a claim had merit—it does not—such a claim "could have been brought" in the District of Alaska with the simple step of registration. *Id.* at 354.

Although the State then contends that the private and public interest factors do not favor transfer, each of those arguments lacks merit.

1. The private interest factors weigh in favor of transfer.

The State argues that its choice of forum should be given deference as the plaintiff because of this Court's decision in *Eklutna I* and because the decisionmakers were located in Washington, D.C. State Opp'n at 34. The State does not address the precedent cited in the Motion to Transfer showing that deference to the plaintiff is reduced where "the subject matter of the lawsuit is connected to" the transferee forum, including when the plaintiff resides in the transferee forum. *See* Mem. at 21 (citing *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 17 (D.D.C. 1996); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 24 (D.D.C. 2002); *Rasool v. Mayorkas*, No. 1:21-cv-02367 (TNM), 2021 WL 5492976, at *2 (D.D.C. Nov. 23, 2021)). The State does not dispute the Tribe's points that the case involves subject matter connected to the District of Alaska, including the allotment, the Tribe, the Tribe's gaming enterprise and the Tribe's exercise of jurisdiction over the allotment, the BIA Regional Office in Anchorage, and the effects of the requested relief in this action, which would impact employment, tribal revenues and finances, tribal members and other area residents. Mem. at 20-21.

The State's conclusory assertion that the other private interest factors do not weigh in favor of transfer, State Opp'n at 34 n.15, is not supported by the precedent upon which it relies. The State cites *Wilderness Workshop v. Harrell*, 676 F. Supp. 3d 1 (D.D.C. 2023), in which the court declined to transfer because it found the case involved issues of national significance and decisionmakers in Washington, D.C. *Id.* at 6 ("[T]he threshold issue in this case is the

interpretation of a federal statute—a legal question with the potential to affect the administration of national forests throughout the country."). The Tribe has shown, Mem. at 17-19, and the State concedes, State Opp'n at 35, that there is a significant local interest in this case that weighs heavily in favor of transfer, so the reasoning of *Wilderness Workshop* with respect to the first private interest factor is not relevant here. The court in *Wilderness Workshop* also acknowledged that the *defendant's* preference "weighs in favor of transfer, even more so because the transferee district is also Plaintiffs' home jurisdiction." 676 F. Supp. 3d at 7. This is consistent with the Tribe's showing that the second private interest factor weights in favor of transfer because the Tribe is located in the transferee district, the majority of operative events occurred in the transferee district, and the outcome of the case "will be felt most directly" (indeed, almost exclusively) in the transferee district. Mem. at 22 (citing *Bergmann v. U.S. Dep't of Transp.*, 710 F. Supp. 2d 65, 74 (D.D.C. 2010)). The *Wilderness Workshop* court also agreed that the third private interest factor weighs in favor of transfer when "the location of the decisionmaking process and the location of the impacts of the project" are in the transferee forum. *Wilderness Workshop*, 676 F. Supp. 3d at 7. The State concedes the Tribe's point, Mem. at 22-23, that the convenience factors weigh in favor of transfer because the State, the Tribe and the allotment are located in Alaska under *Wyandotte Nation v. Salazar*, 825 F. Supp. 2d 261, 269 (D.D.C. 2011), even though it is an administrative review case.

2. The public interest factors also weigh in favor of transfer.

Relatedly, when it comes to the public interest factors the State concedes the Tribe's showing regarding the local interest in this litigation and absence of a national interest. State Opp'n at 35; *see* Mem. at 17-19. The State does not dispute the precedent, Mem. at 17-18, holding that "'[p]erhaps the most important factor' in the motion-to-transfer balancing test is the interest in having local controversies decided locally," *Mandan, Hidatsa & Arikara Nation v. U.S. Dep't*

of the Interior, 358 F. Supp. 3d 1, 6 (D.D.C. 2019) (alteration in original) (quoting *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 116 (D.D.C. 2015)), and that gaming disputes, like other disputes involving Indian tribes, have "strong local implications." *See Ysleta del Sur Pueblo*, 731 F. Supp. 2d at 41 (citing *Cheyenne-Arapaho Tribe of Okla. v. Reno*, No. 98-cv-065, slip op. at 4 (D.D.C. Sept. 9, 1998)).

Nevertheless, the State hangs its hat on *Wilderness Workshop* because that court found a "meaningful connection" to Washington, D.C., State Opp'n at 35, presumably because of the involvement of federal officials located in Washington, D.C. in the decisions under review. However, the State misreads the court's reasoning in *Wilderness Workshop*, which as stated above relied on the national implications of the case to deny transfer. 676 F. Supp. 3d at 7. The State concedes there is no national significance here, so its reliance on *Wilderness Workshop* fails. In fact, this Court has not hesitated to transfer cases to another district if "the . . . dispute is a 'localized' one"—as it is here—even if the federal decisionmakers were located in Washington, D.C. *W. Watersheds Project v. Tidwell*, 306 F. Supp. 3d 350, 361 (D.D.C. 2017).[10] As this Court has explained, "the interest in deciding local issues at home 'applies to controversies involving federal decisions that impact the local environment, and [also] to controversies requiring judicial review of an administrative decision.'" *Id*. at 360-361 (alteration in original) (quoting *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 70 (D.D.C. 2003)). Accordingly, "courts in this District have routinely found it appropriate to transfer cases involving land and local wildlife to the local forum." *Id.* at 361; *see also S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 237–38 (D.D.C. 2012)

[10] Notably, the court in *Western Watersheds* transferred the proceeding to the District of Wyoming despite the fact that there were at least three previous decisions from this court addressing the management of the same disputed elk herd on federal lands in Wyoming. 306 F. Supp. 3d at 362-63.

("The fact that this controversy will affect the use of discrete parcels of land counsels towards transfer to the judicial district where that land is located." (citing *Intrepid Potash–New Mexico, LLC v. U.S. Dep't of Interior*, 669 F. Supp. 2d 88, 99 (D.D.C. 2009))). The State also repeats its contention that this Court's decision in *Eklutna I* provides a basis for finding the public interest factors weigh in favor of transfer, but offers no further explanation of the connection between its preclusion arguments and the transfer factors.

The State agrees there is a risk of inconsistent results if this case is not transferred in light of *Holl* litigation. State Opp'n at 36. Yet it appears to believe the *Holl* case should be transferred here in light of *Eklutna I*. This view arises from the State's erroneous view on the merits that preclusion principles prevented the federal defendants from issuing the decisions that the State challenges and that the Tribe was obligated to seek a modification of the *Eklutna I* judgment. The State's argument regarding the effect of *Eklutna I* is wrong, as shown above, *supra* at 8 n.6, and as the Tribe is prepared to show when the merits of the State's claims are before the Court. In any event, the State's repetition of its merits argument is irrelevant to the public interest factors.[11]

The State argues that the fact that there is only one active judge in Alaska weighs against transfer, State Opp'n at 38, but this consideration is accounted for in the data regarding court workload discussed in the Tribe's Motion to Transfer, which show that even considering vacancies, this Court is more congested than the District of Alaska. The data show that while the

[11] Relatedly, the State argues that the Tribe was obligated under Local Civil 16.1(e) of the District of Alaska to file a Notice of Related Case in the *Holl* case in the District of Alaska regarding *Eklutna I.* State Opp'n at 37-38. That argument is a red herring; it is not a question for this Court to decide, and it is not relevant to the transfer decision. In any event, the Tribe cited *Eklutna I* in its first substantive filing in the *Holl* case. *See* State Opp'n, Ex. B at 21 (Motion to Dismiss, *Holl v. Avery*). Moreover, looking to the considerations in the local rule, *Eklutna I* and *Holl* are not "likely to create an unduly burdensome duplication of labor and expenses or the potential for conflicting results if assigned to different judges," Local Civil Rule 3.1(b)(1), because *Eklutna I* is closed, and its content and nature is of record available to the District of Alaska.

District of Alaska had 17.8 vacant judgeship months in 2024, this Court experienced 32.7 vacant judgeship months that period, and the length of time to decision is greater in this Court, where 25.6 percent of this Court's cases were more than three years old in 2024 while only 17.8 percent of cases in Alaska were pending for that period of time. Mem. at 19 & n.14 (citing United States District Courts – National Judicial Caseload Profile, https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf).

The State argues that the District of Alaska's designation of James Robart, a judge in the Western District of Washington, to decide the *Holl* case undercuts the Tribe's argument that the District of Alaska is more familiar with the Alaska-specific legal relevant to the State's claims in this action. State Opp'n at 39. The State does not dispute that its claims involve Alaska-specific statutes which the District of Alaska and the Ninth Circuit have construed over the years. *See* Mem. at 19-20. If this case is transferred to the District of Alaska, and the District of Alaska assigns this case to Judge Robart, the interests of judicial economy would be served in light of the pendency of *Holl* before him. However, it is possible that the District of Alaska will not assign the case to Judge Robert, but rather to a senior status judge in the District of Alaska, several of whom continue to take cases. In either event, any appeal will be to the Ninth Circuit, which has the experience with Alaska statutes that the State invokes.

III. CONCLUSION

The Court should reject the State's attempt to adopt an entirely new theory of the case, found nowhere in its complaint, and should grant the Tribe's Motion to Transfer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 30th day of April 2025, a copy of the foregoing document was served via ECF on:

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