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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HALCYN OLENEC, et al.,
Plaintiffs,
v.
NATIONAL MARINE FISHERIES
SERVICE, et al.,
Defendants.

No. C10-1644 RSL

ORDER GRANTING DEFENDANTS'
MOTION TO TRANSFER VENUE

I. INTRODUCTION

This matter comes before the Court on defendants' Motion to Transfer Venue. Dkt. #18. Defendants seek a transfer to the District of Oregon pursuant to 28 U.S.C. § 1404(a) because this case could have been brought in that district and the convenience of the parties, witnesses, and the court and the interests of justice all favor transferring venue. Plaintiff argues that plaintiff Halcyn Olenec's choice of her home forum should be given substantial deference, and that defendants fail to meet their heavy burden to justify transfer. Having reviewed the memoranda, exhibits and the record herein, the Court GRANTS defendants' motion to transfer venue to the District of Oregon for all the reasons stated herein.

1 **II. BACKGROUND**

2 On May 8, 2008, proposed intervenor-defendant Oregon Resources Corporation
3 (“ORC”)¹ submitted an application to the U.S. Army Corp of Engineers in Eugene, Oregon
4 (“Corps”) for a permit to fill wetlands under Section 404 of the Clean Water Act. Dkt. #18-1
5 [Monical Decl.] ¶ 4. ORC proposed to mine at four sites near Coos Bay, Oregon, totaling
6 approximately 160 acres, which provide habitat for Oregon coast coho salmon. The proposed
7 mining operations involve the excavation of up to 70 feet of soil to reach chromite-bearing
8 material, construction of roads and stream crossings, the filling of seven acres of wetlands,
9 rerouting of streams, construction and subsequent dewatering of mine pits and the placement of
10 mine tailings back into two salmon-bearing watersheds. Dkt. #1 [Complaint] ¶¶40-44.
11 Plaintiffs recreate in the area, are local property owners and fisher people and allege that the
12 proposed mining operations threaten to degrade aquatic habitat and impact Oregon coast coho
13 salmon. Id. ¶11-21. Plaintiffs also allege that the mining operations may pollute the
14 groundwater with hexavalent chromium, and plaintiffs obtain their drinking water from
15 groundwater wells in the vicinity of the mining operations. Id.

16 On June 9, 2008, the Corps issued a public notice to interested federal and state
17 agencies, and to concerned individuals, particularly owners of property adjacent to the
18 proposed mining sites and other area residents. Dkt. #18-1 [Monical Decl.] ¶¶5-6. All
19 agencies, organizations and individuals to whom the Corps mailed copies of the public notice
20 were located in Oregon, except for one company in Federal Way which is the owner of the land
21 wherein the proposed mining sites are located. Id. ¶7. The Corps received comments to the
22 public notice from Oregon-based associations and individuals, particularly residents and
23 property owners from the area near the Coos Bay mining sites. Id. ¶8.

24 On July 16, 2008, the Corps requested consultation with the National Marine Fisheries
25 Service (“NMFS”) on potential impacts to listed species pursuant to section 7 of the
26

¹ORC’s motion to intervene is noted for January 7, 2011. Dkt. #20. This Court will not decide
ORC’s motion on an expedited basis.

1 Endangered Species Act. 16 U.S.C. § 1536. *Id.* ¶9. During the review of ORC's permit
2 application, the Corps coordinated with various Oregon state agencies, other Oregon offices of
3 federal agencies, and Native American Tribes that have offices in Oregon. *Id.* ¶¶10-13. On
4 June 29, 2009, NMFS requested a formal consultation and preparation of a biological opinion
5 under section 7 of the Endangered Species Act. Dkt. #26-1, Ex. A.

6 On February 12, 2010, NMFS determined that the project as proposed was not likely to
7 adversely affect the Oregon coast coho salmon or any other listed species within the
8 jurisdiction of the National Oceanic and Atmospheric Administration. Dkt. #18-1 [Monical
9 Decl.] ¶14. The letter was sent from NMFS's regional Seattle office pursuant to agency
10 practice that all decision letters bear the return address of the regional office in Seattle. Dkt.
11 #18-2 ¶8. However, it was signed in Oregon on behalf of Barry A. Thom, the then Acting
12 Regional Administrator.² Dkt. #26-1, Ex. B; Dkt. #18-2 ¶8. The Corps issued the permit on
13 March 2, 2010. Dkt. #18-1 ¶16.

13 III. ANALYSIS

14 Pursuant to section 1404(a), defendants must show that venue is proper in the transferor
15 district and that the convenience and interests of justice weigh in favor of transfer. 28 U.S.C. §
16 1404(a). Plaintiffs do not dispute that the District of Oregon is a proper venue because this
17 action could have been brought there pursuant to 28 U.S.C. §1391(e)(1) or (2). Dkt. #26 at 7
18 n.5. In determining whether the convenience of parties and interests of justice weighs in favor
19 of transfer, the Court should weigh a number of private and public interests. See Decker Coal
20 Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). Private-interest factors
21 include: (1) the plaintiff's choice of forum; (2) the respective parties' contacts with the forum;
22 (3) the contacts relating to the plaintiff's cause of action in the chosen forum; (4) the
23 differences in the costs of litigation in the two forums; (5) the availability of compulsory
24 process to compel attendance of unwilling non-party witnesses, and (6) the ease of access to

25 ²Pursuant to Fed. R. Civ. P. 25(d), William W. Stelle, Jr. has been substituted for Barry A.
26 Thom as the Acting Regional Administrator.

1 sources of proof. Id. The public-interest factors include: (1) the relative congestion of the
2 calendars³; (2) the avoidance of conflict of laws issues; (3) the unfairness of burdening citizens
3 in an unrelated forum with jury duty; and (4) the local interest in having local controversies
4 decided at home. Id. However, in environmental cases, which are typically resolved by the
5 court examining the administrative record, many of the factors set forth in Decker are not
6 implicated. Ctr for Biological Diversity, 2007 U.S. Dist. LEXIS 53187, 16-17 (N.D. Cal.
7 2007). The most important factors in environmental cases are the plaintiff's choice of forum
8 and any local interest in the controversy. Sierra Club v. United States Dep't of State, 2009 U.S.
9 Dist. LEXIS 93683, 6 (N.D. Cal. 2009).

10 In general, controversies should be resolved in the locale where they arise. Trout
11 Unlimited v. Lohn, 2006 U.S. Dist. LEXIS 77355, 5 (W.D. Wn. 2006). Accordingly, transfer
12 is often appropriate in cases such as this where the controversy at issue arises out of, and
13 impacts, a particular geographic region. See eg., Id., S. Utah Wilderness Alliance v. Norton,
14 315 F. Supp. 2d 82, 88 (D.D.C. 2004) (granting motion to transfer because dispute focused on
15 21 parcels of land in Utah, and land is a localized interest because its management directly
16 touches local citizens); Sierra Club v. Flowers, 276 F. Supp. 2d 62, 70-71 (D.D.C. 2003)
17 (“strong local interest” in Everglades dictated transfer to Florida).

18 Here, the land that will be affected is in Oregon. The administrative record is in
19 Oregon. During the nearly two-year process that culminated in the issuance of the permit,
20 virtually all of the legal and regulatory obligations required of the Corps in connection with
21 reviewing and processing ORC's permit application occurred in Oregon. Dkt. #18-1 [Monical
22 Decl.] ¶ 17. Only Oregon-based organizations and individuals provided comments to the
23 public notice during the comment period. Id. ¶8. Any direct effects of the project will be
24 experienced by people in Oregon. This is reflected by the fact that eight out of nine plaintiffs

25 ³The Court notes that in addition to having a longer median time from filing to disposition than
26 this district, the District of Oregon also is operating with two vacant positions (out of six authorized
judgeships) while the Western District of Washington is fully staffed with experienced judges.
Therefore this factor weighs against transfer. If the District of Oregon decides its present situation
makes it a hardship to receive this transfer, this district will accept return of the case.

1 live in Oregon, and the one who lives in the Western District of Washington premises her
2 standing on the alleged harms that will occur in Oregon if ORC is allowed to proceed with the
3 permit. Dkt. #26-3, Ex. C ¶¶4-9. See Sierra Club, 2009 U.S. Dist. LEXIS 93683 at 7 (while
4 courts typically apply a strong presumption in favor of plaintiff's choice of forum, where the
5 operative facts have not occurred within the forum and the forum has no interest in the parties
6 or subject matter, little deference will be given). The only links that plaintiffs can identify
7 between the Western District of Washington and the operative facts of this case is the presence
8 of NMFS's Northwest Regional Office in Seattle, and the limited participation of a marine
9 mammal biologist and NMFS's legal counsel. Dkt. #18-2 [Kratz Decl.] ¶10. The Court finds
10 that these limited Seattle links are too attenuated to overcome the public interest that would be
11 advanced by transferring the case to the District of Oregon.

12 The Court concludes that Oregon's strong interest in having this distinctly local
13 controversy decided at home weighs heavily in favor of transfer of the matter to the District of
14 Oregon. Trout Unlimited, 2006 U.S. Dist. LEXIS 77355 at 7-8.

14 IV. CONCLUSION

15 For all the foregoing reasons, the Court GRANTS defendants' motion to transfer venue.
16 Dkt. #18. Given the Court's decision to grant defendants' motion to transfer, proposed
17 intervenor-defendant ORC's motion to transfer is stricken as MOOT. Dkt. #21. The Clerk of
18 the Court is directed to transfer this matter to the United States District Court for the District of
19 Oregon.

20 DATED this 30th day of December, 2010.

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22 Robert S. Lasnik
23 United States District Judge
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