

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MONTANANS FOR MULTIPLE USE, <u>et al.</u> ,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 03-1244 (RWR)
CATHY BARBOULETOS, <u>et al.</u> ,	)	
Defendants.	)	

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MEMORANDUM OPINION AND ORDER

Plaintiffs filed this lawsuit concerning forest land in Montana against numerous federal defendants. Intervenor-defendants filed a motion to transfer venue to the United States District Court for the District of Montana, Missoula Division, pursuant to 28 U.S.C. § 1404(a) (2000). Because the balance of interests does not favor transfer, intervenor-defendants' motion will be denied.

BACKGROUND

Plaintiffs are fourteen individuals and entities, private and governmental, residing in Montana. Defendants named in the complaint are Cathy Barbouletos, Forest Supervisor for the Flathead National Forest; Brad Powell, Regional Forester for the Northern Region of the United States Forest Service ("USFS"); Michael Dale Bosworth, Chief of the USFS; the USFS; Ann M.

Veneman, United States Secretary of Agriculture; the Department of Agriculture; and Does 1-50, alleged to be employees or agents of the United States, the United States Department of Agriculture, or the USFS. At least four of the seven defendants reside in the District of Columbia. Intervenor-defendants are four organizations including one, Defenders of Wildlife, which has its headquarters in the District of Columbia.

Plaintiffs allege that the defendants failed to prevent insect infestation in the Flathead National Forest in Montana in violation of the National Forest Management Act, 16 U.S.C. §§ 1600-1614 ("NFMA"); failed to follow procedure and unreasonably delayed in revising the Forest Plan in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-709 ("APA"), and NFMA; closed roads and threatened to close roads in violation of the Federal Land Policy Management Act, 43 U.S.C. §§ 1701-1784 ("FLPMA"); and failed to submit management plans to Congress under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 801 ("SBREFA"), because of an erroneous interpretation of the statute's application to management plans.

#### DISCUSSION

Intervenor-defendants have moved to transfer this case pursuant to 28 U.S.C. § 1404(a), which provides that "[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." 28 U.S.C. § 1404(a). When a genuine choice of venue exists,<sup>1</sup> the decision to transfer must be made "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 v. Barrack, 376 U.S. 612, 622 (1964)). In exercising its broad discretion under § 1404(a), a court must balance a number of case-specific factors which include the private interests of the parties as well as public interests such as efficiency and fairness. See id. at 30. Private interest considerations include:

- (1) the plaintiffs' 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 . . . , 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.

Trout Unlimited v. U.S. Dep't of Agric., 944 F. Supp. 13, 16 (D.D.C. 1996) (footnotes omitted). Public interest considerations include:

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<sup>1</sup> It is undisputed that this case could have been brought in the U.S. District Court for the District of Montana pursuant to 28 U.S.C. § 1391(e).

(1) the transferee's familiarity with the governing laws; (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.

I. PRIVATE INTEREST CONSIDERATIONS

A. Plaintiff's Choice of Forum

A case should not be transferred "from a plaintiff's chosen forum simply because another forum, in the court's view, may be superior to that chosen by the plaintiff." Pain v. United Technologies Corp., 637 F.2d 775, 783 (D.C. Cir. 1980). Absent specific facts that would cause a district court to question plaintiffs' choice of forum, plaintiffs' choice is afforded substantial deference. See Shapiro, Lifschitz & Schram, P.C. v. Hazard, 24 F. Supp. 2d 66, 71 (D.D.C. 1998) (citing Int'l Bhd. of Painters and Allied Trades Union v. Best Painting and Sandblasting Co., 621 F. Supp. 906, 907 (D.D.C. 1985) and Gross v. Owen, 221 F.2d 94, 95 (D.C. Cir. 1955)). Likewise, "[i]n weighing claims of convenience, the Court recognizes the diminished consideration accorded to a plaintiff's choice of forum where . . . that forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter." Islamic Republic of Iran v. Boeing Co., 477 F. Supp. 142, 144 (D.D.C. 1979); see also Hawksbill Sea Turtle v. FEMA,

939 F. Supp. 1, 3 (D.D.C. 1996) (noting that plaintiff's choice of forum is entitled to less deference when there is "an insubstantial factual nexus with the plaintiff's choice") (internal citations omitted); Trout Unlimited, 944 F. Supp. at 17.

The degree of deference accorded to plaintiffs' choice of forum here depends upon the nexus between plaintiffs' chosen forum -- the District of Columbia -- and the dispute regarding the USFS's management of the Flathead National Forest. Intervenor-defendants argue that the case does not have any meaningful ties to the District of Columbia (Intervenor-Defs.' Mem. Supp. Trans. at 7-8), and claim that because the National Forest at issue is in Montana and its management occurs there, Montana is the appropriate venue for this lawsuit.

Plaintiffs' claims are based on alleged actions and inactions of defendants located in both Montana and the District of Columbia regarding their management responsibilities over the Flathead National Forest. Four of the seven defendants are residents of the District of Columbia. Notably, none of the defendants chose to join in the motion to transfer. These factors suggest that the deference afforded plaintiff's choice of forum should not be disturbed.

B. Defendants' Choice of Forum

Defendants have filed a notice of non-opposition to the intervenor-defendants' motion to transfer venue, leaving no preference expressed for one forum over the other. Only intervenor-defendants have expressed a preference for the case to proceed in the District of Montana. Their bases are their contention that plaintiffs forum shopped, as well as the locations of plaintiffs, defendants and the Flathead National Forest. Intervenor-defendants cite as evidence of plaintiffs' forum shopping and judge shopping one newspaper article in which one plaintiff organization's officer was quoted as expressing unhappiness "with the track record" of one federal Judge in Montana, saying "[w]e think he is biased toward the preservationists. We obviously don't want [that judge] to rule on our complaint because we don't think he would give us a fair hearing." (Intervenor-Defs' Mem. Supp. Trans. at p. 2.)

Courts consider the possibility that a party is forum shopping when deciding whether transfer is appropriate. "[P]ublic-interest considerations that weigh against a transfer include the possibility that the defendants are forum shopping." Greater Yellowstone Coalition v. Bosworth, 180 F. Supp. 2d 124, 130 (D.D.C. 2001). Here, one quote in a newspaper attributed to one plaintiff regarding the perceived bias of one judge in

Montana is some, but not weighty, evidence that fourteen plaintiffs were forum shopping when they filed in the District of Columbia.

Intervenor-defendants may have legitimate reasons to prefer the District of Montana. However, there is substantial support for the proposition that an intervenor may not question venue. See Beam Laser Systems, Inc. v. Cox Communications, Inc., 117 F. Supp. 2d 515, 517 (E.D. Va. 2000); Commonwealth Edison Co. v. Train, 71 F.R.D. 391, 394 (N.D. Ill. 1976) (stating that the purpose of venue is to alleviate the hardship on a defendant from being forced to defend a suit in an inconvenient forum and that such a consideration does not apply to an intervenor); Trans World Airlines, Inc. v. C. A. B., 339 F.2d 56, 63-64 (2d Cir. 1964) (stating that venue is a privilege personal to a defendant in a civil suit and that a person intervening on either side of the controversy may not object to improper venue).

Intervenor-defendants cite two cases from federal courts in this circuit to argue that intervenor-defendants have successfully sought to have cases transferred to other districts in the past. The first, Simons & Simons v. Federal Regulatory Comm'n, 951 F.2d 1324 (D.C. Cir. 1991), is easily distinguished because, unlike the defendants here, the defendants in Simons & Simons joined in the intervenors' motion for transfer. The

second, Harvison v. Sunbelt Savings, FSB, No. 9101271, 1991 WL 153108 (D.D.C. July 23, 1991), also fails to support intervenor-defendants' argument. Harvison involved an intervenors' motion to transfer a case from the United States District Court for the District of Columbia to a federal district court in Texas after the intervenor had removed the action from Texas state court to the United States District Court for the District of Columbia pursuant to a federal statute, see 12 U.S.C. § 1441a(1)(3), that allowed for removal to the United States District Court for the District of Columbia under certain circumstances. Notably, neither the plaintiff nor the defendant there sought to have the case remain in the District of Columbia. Both the plaintiff and defendant there sought to have the case remanded back to Texas state court. It was undisputed that Texas -- whether state or federal court -- was the more appropriate geographic forum in that case.

As defendants have expressed no forum preference and intervenor-defendants' choice of forum is entitled to diminished weight, this factor does not weigh in favor of transfer.

C. Where the Claim Arose

The allegations in the complaint involve the Montana defendants' and District of Columbia defendants' alleged actions and failures to act pursuant to federal statutes. Since the

claims as alleged arose in both venues, this factor does not tip the scales in either direction.

D. Convenience to the Parties

Intervenor-defendants argue unconvincingly that this venue is inconvenient to the parties. Certainly, they cannot make that argument on behalf of the plaintiffs -- even if none of the plaintiffs has offices in the District of Columbia -- since plaintiffs chose this venue. Nor is inconvenience apparent for the defendants since four of the seven defendants have offices in the District of Columbia, and no defendant joined in the motion to have the case transferred.

While it may be more convenient for intervenor-defendants to litigate this suit in Montana, the intervenor-defendants have not demonstrated any particular hardship to themselves in litigating this suit in the District of Columbia. Accordingly, this factor does not weigh in favor of transfer.

E. Convenience of the Witnesses

Intervenor-defendants assert that to the extent that witness testimony will be required, it will be very inconvenient and expensive for witnesses to come from Montana to the District of Columbia. However, convenience of the witnesses should be considered "only to the extent that the witnesses may actually be unavailable for trial in one of the fora." Trout Unlimited, 944

F. Supp. at 16 (citing 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3851 (2d ed. 1986)). Intervenor-defendants have not argued or demonstrated that any potential witnesses will be entirely unavailable. This factor, then, does not favor transfer.

F. Ease of Access to Sources of Proof

Intervenor-defendants argue that the relevant documents concerning the Flathead National Forest are likely in Montana, but that only the defendants know with certainty. On the other hand, plaintiffs claim that the pertinent documents are in the agency files in both the District of Columbia as well as in Montana. Defendants' non-opposition notice expressed no concern that litigation in either venue would be unduly burdensome with respect to sources of proof. This factor is neutral because documents relevant to the litigation likely are located both in the District of Columbia and Montana.

II. PUBLIC INTEREST CONSIDERATIONS

Section 1404(a) permits a court to transfer cases "for the convenience of parties and witnesses, in the interest of justice. . . ." 28 U.S.C. § 1404(a). "Amorphous though it may be, the interest of justice 'may be decisive in ruling on a transfer motion even though the convenience of the parties and witnesses point in a different direction.'" Hawksbill, 939 F.

Supp. at 4 (quoting Wright, supra, § 3854). In determining which venue is favored by the interest of justice, courts focus on several public interest considerations, including (1) the transferee court's familiarity with the governing laws; (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. See, e.g., Trout Unlimited, 944 F. Supp. at 16.

A. Transferee Court's Familiarity With Governing Law

A court's special knowledge and familiarity with the legal issues presented can weigh in favor of transfer in the interest of justice. For example, in Trout Unlimited, the court found that the familiarity of the United States District Court for the District of Colorado with Colorado state law issues made transfer appropriate. See Trout Unlimited, 944 F. Supp. at 19. Unlike plaintiffs' claim in Trout Unlimited, this case does not involve any issues of state law. There is therefore no advantage to having a federal court thoroughly familiar with and experienced in the state law of Montana adjudicate this suit. Id. Because the federal district courts here and in Montana can be presumed to share equal adjudicative competence concerning the federal statutes governing plaintiffs' claims, there is no reason to transfer the case on these grounds.

B. Relative Congestion of the Courts

Neither the intervenor-defendants nor the plaintiffs argue that congestion in either court will cause undue delay. Because the parties presented no evidence that plaintiffs will receive a speedier resolution of their claim in either court, this factor is of no effect.

C. The Local Interest in Deciding Local Controversies at Home

As the Supreme Court has noted, "[there is a local interest in having localized controversies decided at home." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 509 (1947). The issue here is whether the actions or failures to take action alleged in the complaint constitute a local controversy. Intervenor-defendants offered no argument concerning whether the controversy was local in nature. The controversy is certainly "local" in that it will affect land located in Montana and local residents. However, it is also regional in scope because it implicates the decisions made by the Regional Forester for the Northern Region of the USFS, Brad Powell. Further, because the case involves a challenge to USFS's position regarding the applicability of a statute to forest management plans, the controversy is national in scope. The controversy cannot be categorized as entirely local and this factor does not compel transfer of the case.

CONCLUSION

The management of the Flathead National Forest is of local and national significance. The USFS's position regarding the applicability of the SBREFA to its forest management plans is of national significance. Although the plaintiffs are located in Montana, the suit's connection to the District of Columbia is not insubstantial, and four of the seven defendants are headquartered in the District of Columbia.

Because plaintiffs have shown that the connection of this suit to the District of Columbia is not attenuated, their choice of forum is entitled to substantial weight. Intervenor-defendants' argument that this case should be heard in Montana is certainly not devoid of merit, as the specific land at issue is in Montana. However, some of the allegations involve the regional office and agency headquarters, and the defendants do not seek to have the case transferred. In short, plaintiffs' choice of forum, defendants' decision not to seek transfer, the claims alleging acts and omissions in this district, and the national component of this controversy require that the intervenor-defendants' motion to transfer venue be denied. Accordingly, it is hereby

ORDERED that intervenor-defendants' Motion to Transfer Venue be, and hereby is, DENIED.

SIGNED this 2nd day of July, 2004.

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RICHARD W. ROBERTS  
United States District Judge