UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE, formerly, SHEEP RANCH OF THE MI-WUK INDIANS OF CALIFORNIA,	)	
Plaintiff,	)	**Judge James Robertson**
	)	**No. I:05CV00739**
v.	)	
UNITED STATES OF AMERICA, et al.,	)	
Defendants.	)	

DEFENDANTS' MOTION TO TRANSFER VENUE AND TO SUSPEND OBLIGATION TO ANSWER IN THE DISTRICT OF COLUMBIA

Pursuant to 28 U.S.C. § 1404(a), the defendants move to transfer this case to the United States District Court for the Eastern District of California. There is no appreciable connection between this case and the District of Columbia and, for the reasons stated in the attached Memorandum of Law in Support of Motion to Transfer Venue, the matter should be transferred to the Eastern District of California.

The defendants further move the Court to suspend their obligation to answer the plaintiff's Complaint until ten days following judicial resolution of the venue issue or at a time to to be determined by the transferee court.

A memorandum of law in support of this motion is attached.

Dated this 13th day of June, 2005.

Respectfully submitted,

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Attachment

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER VENUE AND TO SUSPEND OBLIGATION TO ANSWER IN THE DISTRICT OF COLUMBIA

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER VENUE AND TO SUSPEND OBLIGATION TO ANSWER IN THE DISTRICT OF COLUMBIA

Pursuant to 28 U.S.C. § 1404, defendants move to transfer venue of this case.

Defendants also seek the issuance of an order suspending their obligation to answer in the District of Columbia. In the attached Memorandum in Support of this motion, defendants demonstrate that this Circuit's requirements for granting a motion to transfer venue clearly have been met.

The federal district court for the Eastern District of California (the potential transferee court) should entertain this action because the plaintiff is located in California, virtually all of the witnesses, including Federal officials, are located in California, virtually all relevant events occurred in California, and there is no material connection between this lawsuit and the District of Columbia. Indeed, the plaintiff has previously filed a suit against the same Federal defendants in Federal district court for the Eastern District of California. California Valley Miwok Tribe v.

United States, CIV S-02-0912 FCD (E.D.Cal.), appended hereto as Attachment A.[1/]

We turn now to the pertinent facts of this case.

STATEMENT OF FACTS

1. The California Valley Miwok Tribe (hereafter, "the Tribe") is a federally-recognized tribe. 68 Fed.Reg. 68180-01 (Dec. 5, 2003). The Tribe originated in the foothills of the Sierra Nevada Mountains in Calaveras County, California, particularly at and around Indian trust lands located near the towns of Sheep Ranch and West Point. At one time, BIA held 0.92 acre in trust for the Tribe, which was located in the town of Sheep Ranch.[2/] Declaration of Carol Rogers-Davis, appended hereto as Attachment B. At all times relevant to this litigation, the Tribe has had four adult members identified.

2. Around 1998, Ms. Sylvia Burley, a current representative of the Tribe, returned to Calaveras County after a few years' absence. She contacted Yakima Dixie, the son and heir of Mabel Hodge Dixie, who was then acknowledged by the Bureau of Indian Affairs as the Tribe's representative, and sole active member, and requested admission to the Tribe. After gaining membership for herself, her two daughters, and her granddaughter, Ms. Burley and Mr. Dixie began making plans to formally organize the Sheep Ranch Rancheria of Miwok Indians. To that end, Ms. Burley and Mr. Dixie established an interim tribal government, and denominated Mr.

[1/]Plaintiff appealed the district court's decision to dismiss the suit to the Court of Appeals for the Ninth Circuit. The appeal is still pending.

[2/] In the 1960's, beneficial title to the .92 acre Sheep Ranch Rancheria transferred from the Tribe to the sole resident of the Rancheria, Mabel Hodge Dixie. The plaintiff challenged that transfer, among other things, in California Valley Miwok Tribe v. United States, CIV S-02-0912 FCD (E.D.Cal.July 1, 2004), appended hereto as Attachment A. The court dismissed the action on jurisdictional grounds. The Tribe appealed this ruling to the Ninth Circuit; this appeal is pending. California Valley Miwok Tribe `v. United States, No. 04-16676 (9th Cir.).

Dixie as the chairperson and Ms. Burley as the vice-chairperson. The Tribe applied for financial assistance from the BIA for the purpose of organizing the Tribe, and the Tribe has received annual grants ranging from $166,160 to $374,753 since 1998. *See* Exhibit 1 to Attachment B (initial FY 1999 "Aid to Tribal Government" grant).

3. In organizing the Tribe, it has been BIA's expectations *inter alia* that the Tribe would identify and contact the Indian community in and around the Sheep Ranch Rancheria, where the siblings and other extended family of Silvia Burley and Yakima Dixie reside or resided, to involve them in the process of selecting a formal government structure, drafting governing documents, organize the Tribe, and defining short- and long-term tribal goals. Attachment B and Exhibit 1 thereto.

4. In 1999, BIA was informed by Ms. Burley that a tribal election had been held and she had become the chairperson. Attachment B. Ms. Burley claimed Mr. Dixie resigned as Chairman. The BIA accepted this change and commenced recognizing Ms. Burley as the "tribal chairperson." *Id.* Mr. Dixie did not agree with or accept the changes that had occurred with the tribal government, and he filed suit against the Tribe in 2001. Sheep Ranch Rancheria of Miwok Indian Tribe of California v. Burley, CIV S-01-1389 LKK (E.D.Cal.). That suit was dismissed voluntarily by plaintiff in 2002 after the court dismissed the suit for failure to exhaust his administrative remedies, but gave plaintiff leave to amend. Attachment C, hereto.

5. In a February 4, 2000 letter from the Superintendent BIA Central California Agency Office to Vice-Chairperson Yakima Dixie, the BIA states as follows:

(1) Prior to August 1998, Mr. Dixie was recognized as the “Spokesperson for the Tribe,”

(2) On August 5, 1998, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristan Wallace were accepted as enrolled members of the Tribe "enjoying all benefits, privileges, rights and responsibilities of Tribal membership, [including] the right to participate in the initial organization of the Tribe, provided that those persons are eighteen years or older;"

(3) That on September 8, 1998 and October 15, 1998, BIA Central California Agency staff met with Mr. Dixie, Ms. Burley and Ms. Reznor to "discuss the group's interest in formally organizing the Tribe;"

(4) In organizing an "undeterminated" tribe, the "initial issue" is "specifying those persons entitled to participate;"

(5) That as of that date, only those members over the age of 18 (Mr. Dixie, Ms. Burley and Ms. Reznor) were "entitled to participate in the organization of the Tribe;"

(6) That on or about November 5, 1998, Resolution #GC-98-01 was adopted by the Tribe which established a Tribal General Council to "serve as the governing body of the Tribe;" and

(7) "The general position of the Agency is that the appointment of tribal leadership and the conduct of Tribal elections are internal matters," but noted an exception arises when a tribal member files an appeal to BIA on such matters. See Attachment M, appended hereto.

6. On or about February 9, 2000, the Tribal Council notified Yakima Dixie that he had 30 days to initiate review of claims regarding his resignation. Mr. Dixie did not respond by

the expiration of the 30 day period. See Complaint, ¶ 20.

7. On March 6, 2000, the Tribe ratified its Constitution. See Complaint, ¶ 21.

8. On March 16, 2000, the Tribal Council passed Resolution R-2-3-16-2000, which resolved that pursuant to Resolution R-2-10/9/99 (Interim Operations Authorities and Rights), Yakima Dixie waived his right to contest his resignation by failing to respond to the Tribal Council within the prescribed 30-day period. See Complaint, ¶ 25.

9. On or about March 16, 2000, the Tribal Council informed Yakima Dixie of the Tribal Council's final determination of his claims. See Complaint, ¶ 26.

10. In a July 26, 2000 letter from the Superintendent of the Central California Agency to the Secretary of Indian Affairs, the BIA recognized that Silvia Burley was Chairperson of the Tribe and that she was an elected official of the Tribe. See Complaint, attached Exhibit 1.

11. In a June 7, 2001 letter from Chairperson Burley to the BIA Central California Agency office, the Tribe withdrew its request for a Secretarial Election, approximately 15 months after the Tribe's initial request. See Attachment N, appended hereto.

12. In an October 31, 2001 letter from Dale Risling, Superintendent of the Central California Agency, to Silvia Burley, the BIA confirmed receipt of the September, 2001 version of the Tribe's constitution, and stated, in pertinent part, as follows:

> "The Agency will continue to recognized the Tribe as an unorganized Tribe and its elected officials as an interim Tribal Council until the Tribe takes the necessary steps to complete the Secretarial election process. Agency staff is available to provide technical assistance in this matter upon receipt of the Tribe's written request. We are returning the original document to the Tribe without any action."

See Attachment O, appended hereto.

13. On or about November 24, 2003, the BIA released a recognition letter acknowledging that the BIA maintains a government to government relationship with the Tribe through the tribal council chaired by Silvia Burley. See Complaint, attached Exhibit 2.

14. In January 2004, Silvia Burley sent the BIA a copy of a tribal constitution. Attachment B and Exhibit 2 thereto. The constitution identified the Tribe's base roll, *i.e.,* which ordinarily lists the Tribe's ancestors, as Yakima Dixie (born in 1940), Silvia Burley (born in 1960), Rashel Reznor (born in 1979), Anjelica Paulk (born in 1983) and Tristian Wallace (born in 1996).[3/] *Id.* at Exhibit 2. Moreover, the membership criteria, found in the enrollment ordinance also provided by Silvia Burley, specifies that only the direct lineal ancestors and descendants of those persons on the base roll were eligible for full tribal membership.[4/] *Id.* at Exhibit 3.

15. The BIA rejected the Tribe's proposed constitution because the larger tribal community had not been involved in its adoption. Rather, only Ms. Burley and her two daughters were involved. Following its evaluation of the tribal constitution submitted by Ms. Burley, BIA determined that it was necessary to clarify its prior recognition of Ms. Burley and her daughters as an interim tribal government. The BIA made clear it could recognize her only as a tribal spokesperson or representative with whom BIA communicates on federal-tribal

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[3/] The constitution defines "base roll" to be the list of current tribal members. Exhibit 2 to Rogers-Davis Decl. (Attachment B).

[4/] The enrollment ordinance does contain a provision for "adopting" other individuals as tribal members but under fairly strict circumstances. Exhibit 2 to Attachment B. Additionally, these "adoptees" would be non-voting tribal members, *id.*, and thus subject to whatever rights, including divestment thereof, that the voting members (the Burley family) might choose to bestow. *Id.*

matters because the Tribe was not organized. Exhibit 4 to Attachment B. This decision was communicated to Ms. Burley by letter dated March 26, 2004, from Dale Risling, Superintendent of the Central California Agency of the Bureau of Indian Affairs, located in Sacramento, California. *Id.* Given the base roll and membership criteria set out in the tribal constitution, BIA determined that Ms. Burley and her daughters created a tribe consisting only of their immediate family and Yakima Dixie.[5/] *Id.* BIA is unaware of any efforts by Ms. Burley to identify and/or contact and/or involve her extended family or the extended family of Yakima Dixie. *Id.* In addition, BIA has records relating to a number of other Indian families who lived or are living in Calaveras County and who are believed to be part of the Indian community of Sheep Ranch, California. *Id.*

16. Despite providing administrative appeal rights in the March 26th letter, (Exhibit 4 to Attachment B), and advising of the importance of the letter, (Exhibit 5 to Attachment B), no administrative appeal was ever submitted by the Tribe or Ms. Burley. That is, the Tribe has not appealed the decision to reject the Tribe's proposed constitution and Ms. Burley has not appealed the decision to recognize her as a tribal "spokesperson" or representative of an "unorganized" tribe. See Declaration of Fred Doka, attached hereto as Attachment D.

17. On or about October 30, 2003, BIA received an administrative appeal from Yakima Dixie challenging the BIA's continued recognition of Silvia Burley as tribal chairperson. Compl. at ¶30. That administrative appeal remains pending at the present time. *Id.* at ¶ 37.

18. On February 11, 2005, Michael D. Olsen, Acting Principal Deputy Assistant Secretary – Indian Affairs, sent a letter addressed to Yakima Dixie, of the "Sheep Ranch

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[5/] It is BIA's understanding that Yakima Dixie, who is 64 years old, is childless. Attachment B.

Rancheria of MiWok Indians of California." In this letter, the Acting Principal Deputy Assistant Secretary dismissed Yakima Dixie's appeal on three grounds: first, it was rendered moot by the Department's March 26, 2004 decision not to recognize Ms. Burley as "tribal chairman;" second, it was procedurally defective; and third, Mr. Dixie's appeal was untimely. The Assistant Secretary went on to state that:

(1) the BIA had rejected the Tribe's "proposed constitution" on March 26, 2004 because it did not involve the larger membership;

(2) the BIA did not "recognize Sylvia Burley as tribal Chairman," but did recognize her as "a person of authority within the California Valley Miwok Tribe;"

(3) "Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal chairman;" – that is, organized "along the lines outlined in the March 26, 2004 letter;" and

(4) the "BIA does not recognize [the Tribe's hearing officer] Mr. Woodward as a tribal official or his hearing process as a legitimate tribal forum." This is because the Tribe does not have a "recognized tribal government." Complaint, attached Exhibit 4.

19. The Tribe filed this action on April 12, 2005 seeking declaratory relief that, certain tribal governing documents are valid, that the Tribe has lawfully organized pursuant to 25 U.S.C. § 476 and that the letter of February 5, 2005 from the Acting Principal Deputy Assistant Secretary – Indian Affairs to Yakima Dixie is invalid – principally, because it states that the Tribe is "unorganized" and Sylvia Burley is recognized as the tribal "spokesperson" only.

SUMMARY OF ARGUMENT

This case meets the requirements of 28 U.S.C. § 1404(a) for a transfer of this case to the Eastern District of California because: this suit could have been brought in the Eastern District of California, just as a prior suit against the United States was brought there in 2002; it is a "localized controversy" that should be resolved locally, thereby serving the interest of justice; and the interests of the parties and the witnesses would be served by a transfer because virtually all of them are located in California.

In addition, the defendants request that their obligation to answer the Complaint be suspended until ten days after the Court's ruling on the transfer motion, or, at a time to be fixed by the transferee court .

ARGUMENT

TRANSFER OF THIS CASE TO THE EASTERN DISTRICT OF CALIFORNIA IS APPROPRIATE UNDER THE CHANGE OF VENUE STANDARD OF 28 U.S.C. § 1404.

Section 1404(a) of 28 U.S.C. provides:

> For 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.

This section is intended to facilitate transfer of actions to a more appropriate federal forum. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 (1981); Van Dusen v. Barrack, 376 U.S. 612, 616 (1964). In general, a district court acting pursuant to 28 U.S.C. § 1404(a) may transfer an action to another federal forum if two requirements are met. First, as a threshold matter, the proposed transferee district must be one in which the action might have been brought originally. See DeLoach v. Philip Morris Companies, Inc., 132 F. Supp. 2d 22, 24 (D.D.C.

2000). Second, the court must then decide, in the exercise of its discretion, whether the transfer is warranted. In making the latter determination – whether transfer is warranted – the statute requires the Court to examine three elements : (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interest of justice. The Court has broad discretion to order transfer under this standard. In re Scott, 709 F.2d 717, 720 (D.C. Cir. 1983). See also Norwood v. Kirkpatrick, 349 U.S. 29 (1955). An analysis of the Section 1404(a) factors demonstrates that transfer to the Eastern District of California is appropriate.

A. This Case Could Have Been Brought In the Eastern District of California.

A "threshold consideration" in determining the appropriateness of transfer under § 1404(a) is whether the action "might have been brought" in the transferee district. Nichols v. U.S. Bureau of Prisons, 895 F. Supp. 6, 8 (D.D.C. 1995); see also Van Dusen, 376 U.S. at 616 (transfer power is expressly limited by the clause restricting transfer to those districts in which the action "might have been brought"). This determination encompasses the forum choices of both plaintiff and defendant, the location in which the claim arose, the convenience of witnesses, the convenience of the parties and ease of access to sources of proof. Trout Unlimited v. United States Department of Agriculture, 944 F. Supp. 13, 16 (D.D.C. 1996). While a plaintiff's choice of forum is entitled to substantial deference, "numerous cases in this Circuit recognize that such a choice receives considerably less deference where the plaintiffs neither reside in, nor have any substantial connection to that forum." Deloach, 132 F. Supp. 2d at 24; see also Trout Unlimited, 944 F. Supp. at 17 (showing that defendants must make to overcome plaintiff's choice of forum "is lessened when the plaintiff's choice of forum has no factual nexus to the case." (Internal quotation omitted)).

In this case, the only connection between plaintiff's action and the District of Columbia is the February 11, 2005 letter to Yakima Dixie from Michael D. Olsen, the Acting Principal Deputy Assistant Secretary – Indian Affairs who works at the Department of the Interior's headquarters office which is located here. The involvement of Federal officials located in Washington, DC is not determinative for venue purposes. Wyandotte Nation v. National Indian Gaming Commission, et al., Civ. No. 04-1727 (RMU), slip. op. at 8-9, dated May 2, 2005 (Attachment L); Shawnee Tribe v. United States, 298 F.Supp. 2nd 21, 25-26 (D.D.C. 2002). In contrast, this action has substantial connections to the Eastern District of California. The plaintiff primarily objects to decisions of Federal officials in California. Its objection to the decision of Michael Olsen is limited to one issue – the tribal forum. In contrast, the plaintiff objects to two issues decided in California – rejection of the Tribe's proposed constitution and the failure to recognize Sylvia Burley as the Tribal "Chairperson." Virtually all relevant events occurred in California. Moreover, the plaintiff Tribe is located in California, as are its headquarters and members, including those who oppose Ms. Burley. Simply put, there is no substantial connection between the plaintiff's claims and the District of Columbia.

B. Transfer to the Eastern District of California is in the Interests of Justice.

The United States Supreme Court has stated: "There is a local interest in having localized controversies decided at home." American Dredging Co. v. Miller, 510 U.S. 443, 448 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-509); Trout Unlimited, 944 F. Supp. at 16. In Trout Unlimited, the court declared that "[c]ontroversies should be resolved in the locale where they arise . . . " 944 F. Supp. at 17. "Justice requires that such localized controversies be decided at home." Citizen Advocates for Responsible Expansion, Inc. (I-Care) v. Dole, 561 F. Supp. 1238,

1240 (D.D.C. 1983). See to the same effect: Shawnee Tribe v. United States, 298 F.Supp. 21, 26 (D.D.C. 2002) (local interest in deciding a local controversy considered to be "most persuasive factor" for granting transfer); Armco Steele Co. v. CXS Corp., 790 F. Supp. 311, 324 (D.D.C. 1991); Harris v. Republic Airlines, 699 F. Supp. 961, 963 (D.D.C. 1998).

For example, this Court has often recognized that the interests of justice are promoted by transferring cases (related to Indian gaming controversies) back to the federal district court in the state in which the controversy is located. Towns of Ledyard, North Stonington and Preston, Connecticut v. United States, Civ. No. 95-0880 (TAF) (D.D.C.) slip op. dated May 31, 1995, at 4-6; (Attachment G) at 5-6; Apache Tribe of the Mescalero Reservation v. Reno and Babbitt, Civil Action No. 96-115 (RMU) (D.D.C.), (February 5, 1996), (Attachment H). Cheyenne-Arapaho Tribe of Oklahoma v. Reno, Civil Action No. 98-CV-065 (RMU) (D.D.C.), (Attachment I). This Court ably articulated the considerations in favor of transfer in a case involving the Santee Sioux Tribe of Nebraska:

> ". . . [t]he federal courts do not allow cameras or tape recorders in courtrooms, there is intense local interest in this controversy, and there is a significant benefit to allowing those whose lives will be most immediately affected by the outcome of litigation, as well as the local media, to physically attend the proceedings which will determine that outcome. There is no substitute for personally observing, watching and evaluating the judge who presides, hearing the quality of the arguments, and getting a first-hand impression of whether the proceeding is being handled with the appropriate fairness and seriousness. Furthermore, the members of this District Court have repeatedly honored this principle by transferring cases involving Indian gaming controversies back to the state in which the controversy and the gaming were located. See Towns of Ledyard, N. Stonington, and Preston, Conn. v. United States, Civ. No. 95-0880, slip op. at 4-5 (D.D.C. May 31, 1995); Apache Tribe of the Mescalero Reservation v. Reno, Civ. No. 96-115, slip op. (D.D.C. Feb. 5, 1996); Cheyenne-Arapaho Tribe of Okla. v. Reno, Civ No. 98-065, slip op. (D.D.C. Sept. 8, 1998); and Citizen Advocates for Responsible Expansion, Inc. v.

Dole, 561 F.Supp. 1238, 1240 (D.D.C. 1983). [Emphasis added].

Santee Sioux Tribe of Nebraska v. National Indian Gaming Commission, Civil Action No. 99-528 (GK) slip op. at 8-9 (Attachment J). See also Lac Courtes Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. United States, Civil Action No. 01-1042 (HHK/DAR) slip op. at 1, 6-7 (Attachment K). On balance, the interests of justice would best be served by transferring this matter to the Eastern District Court of California. Although this case does not concern Indian gaming, we believe that the considerations set forth in the first two sentences of the quoted portion of the Santee Sioux opinion favor transfer.

Plaintiff's Complaint demonstrates that this is primarily a "localized controversy" that should be decided in the Eastern District of California.

The Tribe is located in California. The members of the Tribe reside in California. With the exception of Mr. Olsen, the Federal officials are located in California. Furthermore, the fact the challenged February, 2005 determination was issued in Washington, D.C. does not mean this is where plaintiff's claim "arose." Wyandotte Nation v. National Indians Gaming Commission, et al.; Civ. No. 04-1727 (RMU), slip. op. dated May 2, 2005, at 9-10 (Attachment L); Shawnee Tribe v. United States, 298 F.Supp. 2d 21, 25-26 (D.D.C. 2002).

In sum, the foregoing considerations favor transfer of this case.

C. The Transfer to the Eastern District of California Will Serve the Convenience of the Parties and the Witnesses.

The purpose of § 1404(a) is "to prevent the waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense . . .'" Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (citing Continental Grain v. Barge, FBL-585, 364 U.S. 19, 26-27 (1960)). Transfer of this case will serve the convenience of the parties and

the witnesses; therefore, the second and third elements of the determination as to whether the transfer is warranted are satisfied. The United States is fully prepared to litigate this case in the Eastern District of California. The BIA Office that has been involved with this matter on an ongoing basis is located in Sacramento, California. Plaintiff's tribal office is located in Stockton; the Tribe's members reside in California. The principal BIA witnesses are located in Sacramento. The Plaintiff's principal witness would presumably be Sylvia Burley.

Since this appears to be a suit under the Administrative Procedure Act, 5 U.S.C. § 551, et seq., defendant anticipates this controversy will be decided by dispositive motion. The Eastern District of California is the most appropriate forum for the filing of the administrative record and the most convenient forum for the parties. Finally, we stress that the Tribe has previously sued the United States in the federal district court for the Eastern District of California. See California Valley Miwok Tribe v. United States, No. CIV S-02-09012 FCD/GGH (E.D. Calif.).[6/] The foregoing considerations heavily favor proceedings in the Eastern District of California. Oil, Chemical & Atomic Workers Local Union No. 6-418 v. N.L.R.B., 694 F.2d 1289, 1300 (D.C. Cir. 1982) (citing Liquor Salesmen's Union Local 2 v. N.L.R.B., 664 F.2d 1200, 1205 (D.C. Cir. 1981)).

D. Transfer of This Action At this Stage of the Litigation is Appropriate.

This litigation is at its earliest stage.

The United States contends, that this case is at the juncture where it is appropriate for the Court to address the issue of transfer. See Shawnee Tribe, supra, 298 F. Supp. 2d at 21, 22-23;

[6/] The Tribe appealed the Court's ruling to the Ninth Circuit Court of Appeals; this appeal is pending. California Valley Miwok Tribe v. United States, No.04-16676 (9th Cir.).

Trout Unlimited, supra, 944 F. Supp. at 19 (granting of transfer motion where present forum has not dealt with any issues in, or with the merits, of this case; also, there would be no delay in the need for the transferee court having to familiarize itself with this case).

CONCLUSION

For the foregoing reasons, the defendants' motion to transfer and to suspend answering the Complaint in the District of Columbia should be granted.[7/]

In concert with defendants' motion to transfer venue of the case, defendants also move the Court to suspend their obligation to answer the Complaint until ten days following judicial resolution of the motion to transfer, or, at a time to be determined by the transferee court.

[7/] A proposed Order is attached.

Dated this 13th day of June, 2005.

Respectfully submitted,

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Attachments