

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

OUACHITA RIVERKEEPER, INC., *et al.*,

Plaintiffs,

v.

THOMAS P. BOSTICK, Lieutenant General,  
U.S. Army Chief of Engineers and  
Commanding General of the U.S. Army  
Corps of Engineers, *et al.*,

Defendants,

EL DORADO WATER UTILITIES, *et al.*,

Defendant-Intervenors.

**Civil Action No. 12-803 (CKK)**

**MEMORANDUM OPINION & ORDER**

(January 29, 2013)

Plaintiffs Ouachita Riverkeeper, Inc., and Save the Ouachita, Inc., (collectively “Plaintiffs”), filed suit against the United States Army Corps of Engineers (the “Corps”), alleging the Corps improperly authorized a wastewater pipeline currently under construction by the Defendant-Intervenors pursuant to a general wetland destruction permit. Presently before the Court is the Defendants’ [15] Motion to Transfer, seeking to transfer the case to the Western District of Arkansas. Upon consideration of the pleadings,<sup>1</sup> the relevant legal authorities, and the record as a whole, the Court finds a transfer of venue is not appropriate in this case. Accordingly, for the reasons set forth below, the Defendants’ motion is DENIED.

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<sup>1</sup> See Defs.’ Mot. to Transfer, ECF No. [15]; Def.-Intervs.’ Jt. Resp., ECF No. [31]; Pls.’ Opp’n, ECF No. [33]; Def.-Intervs.’ Reply, ECF No. [34]; Defs.’ Reply, ECF No. [35].

## I. BACKGROUND

The allegations in the Complaint arise from the Army Corps of Engineers' authorization of the construction of a wastewater pipeline across wetland areas in western Arkansas, which will ultimately discharge treated wastewater into the Ouachita River. In short, the Corps authorized the pipeline pursuant to two nationwide, general discharge permits. Compl., ECF No. [1], ¶ 53. According to the Defendants, the permit application was processed and approved at the Army Corps of Engineers' district office in Vicksburg, Mississippi. Defs.' Mot. at 2.

The Plaintiffs allege that, in light of the acreage of wetlands that will be impacted by the construction of the pipeline, pursuant to various federal statutes, the Corps was required to complete an environmental impact statement and provide for public participation during the permitting process. *See generally* Compl. ¶¶ 54-72. The Plaintiffs filed suit alleging claims under the Administrative Procedures Act, 5 U.S.C. §§ 702-706, and the National Environmental Policy Act, 42 U.S.C. § 4321 *et. seq.* The Defendants, joined by the Defendant-Intervenors, now move to transfer the matter to the Western District of Arkansas.

## II. LEGAL STANDARD

Pursuant to 28 U.S.C. § 1404(a) ("Section 1404(a)"), "[f]or the convenience of parties and witnesses, in the interest of justice," the Court may transfer a case to any other district where the case might have been brought. Although the Court is afforded broad discretion to decide whether to transfer is proper under Section 1404(a), *SEC v. Savoy Indus. Inc.*, 587 F.2d 1149, 1154 (D.C.Cir.1978), the defendant "must satisfy a very substantial burden of demonstrating where 'justice' and 'convenience' lie," *Hoffman v. Blaski*, 363 U.S. 335, 366 (1960). The decision to transfer is made by an "individualized, case-by-case consideration of convenience and fairness." *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964). In determining whether a

transfer of venue is warranted in a particular case, the Court analyzes both public and private interests in the resolution of the action. *See Foote v. Chu*, 858 F. Supp. 2d 116 (D.D.C. 2012).

### III. DISCUSSION

#### A. *Preliminary Matter*

Before reaching the merits of the Defendants' motion, the Court finds it necessary to briefly address an issue raised by the parties' pleadings. Despite representation by able counsel and the generous page limits provided by Local Civil Rule 7(e), the parties insisted on making a significant number of their substantive arguments in the footnotes of their briefs. The parties are advised that the Court may (1) strike any future pleadings containing substantive and/or excessive footnotes; or (2) ignore any substantive arguments raised only in the footnotes of a party's brief. With this issue aside, the Court will address whether the case could have been brought in the Western District of Arkansas, as well as the private and public interests relevant to the request to transfer the action.

#### B. *This Case Could Have Been Brought In The Western District Of Arkansas*

Pursuant to Section 1404(a), absent the consent of the parties, the Court may only transfer a case to another district in which the case could have been brought originally. Here, the parties agree that the Plaintiffs could have filed the suit in the Western District of Arkansas because one Plaintiff—Save the Ouachita—resides in the Western District of Arkansas. 28 U.S.C. § 1391(c), (e)(1). Therefore, the Court turns to the balances of private and public interests to determine if transferring the case would be in the interest of justice.

#### C. *The Private Factors Weigh Against Transfer*

The Court begins by considering the private interests at stake in a transfer, which include: (1) the plaintiffs' choice of forum, unless the balance of convenience is strongly in favor of the

defendant; (2) the defendant's 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 they may actually be unavailable for trial in one forum; and (6) the ease of access to sources of proof. *Ravulapalli v. Napolitano*, 773 F.Supp.2d 41, 55 (D.D.C. 2011). On balance, these factors do weigh against transferring this matter to the Western District of Arkansas.

Courts generally give considerable deference to the plaintiffs' choice of forum. However, that choice is "conferred less deference by the court when [it] is not the plaintiff[s'] home forum. *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 24 (D.D.C. 2002) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981)). The home forum for Plaintiffs Ouachita Riverkeeper and Save the Ouachita are the District of Louisiana and the Western District of Arkansas, respectively. Compl. at 1; *see* 28 U.S.C. § 1391(c). Therefore, their choice of the District of Columbia as the forum in this case is accorded less deference than usual, and is partially counter-balanced by the Defendants and Defendant-Intervenors' preference for the Western District of Arkansas.

With respect to the third private factor, the Court notes that the claim arose in Vicksburg, Mississippi, not the Western District of Arkansas. *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) ("In cases brought under the APA, courts generally focus on where the decisionmaking process occurred to determine where the claims arose."). The third factor therefore is neutral insofar as the claims did not arise in either this district or the venue sought by the Defendants. The final private factors—convenience of the parties, convenience of witnesses, and ease of access to sources of proof—are largely irrelevant in an action brought under the Administrative Procedures Act. *Ravulapalli*, 773 F. Supp. 2d at 56. The case will be decided on the Administrative Record, eliminating the need for any witnesses or parties to travel

to the District of Columbia. The relevant documents comprising the Administrative Record are located in Mississippi, but must be converted into electronic format for filing in either district court, making Mississippi's proximity to Arkansas irrelevant. While most of the private interests are neutral, on balance, the private factors weigh slightly against transfer.

*D. The Public Factors Do Not Favor A Transfer Of Venue*

The Court turns next to consideration of the public interest factors: (1) the transferee forum's familiarity with the governing laws and the pendency of related actions in that forum; (2) the relative congestion of the calendars of the potential transferee and transferor courts; and (3) the local interest in deciding local controversies at home. *Foote v. Chu*, 858 F. Supp. 2d 116, 123 (D.D.C. 2012).

The Plaintiffs' claims for relief arise entirely under federal law, and neither party has indicated that any related actions are pending in the Western District of Arkansas. Accordingly, the first public factor does not weigh in favor of transferring the case. *Foote*, 858 F. Supp. 2d at 123. As the Defendants concede, on average, it takes nearly twice as long for a civil case to reach a final disposition in the Western District of Arkansas compared to the District of Columbia. Defs.' Mot. at 8, n.4. The relative congestion of the courts counsels in favor of maintaining venue in this Court.

The final public consideration is the only factor that weighs in favor of transferring the case to any degree. The land at issue is located in Arkansas, and the pipeline will discharge into a river that flows through Arkansas and several other southern states. Arkansas certainly has a strong interest in deciding its own environmental disputes. Nevertheless, there is a federal interest in ensuring federal agencies properly interpret and apply federal statutes and nationwide discharge permits. Moreover, the potential environmental impact of the pipeline crosses state

boundaries, meaning this is not a purely “local” controversy implicating public interests solely within the Western District of Arkansas. For these reasons, the local interest in deciding local controversies at home weighs in favor of transfer, although not overwhelmingly so. Considered in combination with the private interests which weigh against transfer, the Court finds the Defendants and Defendant-Intervenors have failed to meet their substantial burden to show transfer is appropriate in this case.

#### IV. CONCLUSION

For the foregoing reasons, the Court finds that transferring this case to the Western District of Arkansas is not appropriate. Because this case will be decided on the Administrative Record, most of the private factors are neutral. The Plaintiffs’ choice of forum is less weighty than usual insofar as the District of Columbia is not the home forum of either Plaintiff, but it is nevertheless entitled to some deference, which is only partially offset by the Defendants and Defendant-Intervenors’ preference for the Western District of Arkansas. Both courts are equally competent to interpret and apply federal law, but the congestion of the federal courts in Arkansas weighs in favor of keeping the case in this district. Finally, Arkansas has a stronger interest in a dispute regarding land located in the state, but there is some national interest at stake. On balance, the Court finds the Defendants and Defendant-Intervenors have not satisfied the substantial burden to show that it would be in the interest of justice to transfer the case to the Western District of Arkansas.

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