IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, NUCLEAR WATCH OF NEW MEXICO, NATURAL RESOURCES DEFENSE COUNCIL, RALPH HUTCHINSON, ED SULLIVAN, JACK CARL HOEFER, and LINDA EWALD, Plaintiffs, v. JAMES RICHARD PERRY, SECRETARY, UNITED STATES DEPARTMENT OF ENERGY, and FRANK G. KLOTZ, ADMINISTRATOR, NATIONAL NUCLEAR SECURITY ADMINISTRATION, Defendants.	Case 1:17-cv-01446-RJL

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER CASE TO THE EASTERN DISTRICT OF TENNESSEE

Plaintiffs challenge the sufficiency of the environmental review that the National Nuclear Security Administration ("NNSA") completed under the National Environmental Policy Act ("NEPA") in support of an amended record decision that the agency issued in July, 2016. That decision authorized the construction and upgrade of certain uranium processing facilities at the Y-12 National Security Complex ("Y-12 Complex" or "Y-12") in Oak Ridge, Tennessee. *See* Declaration of Geoffrey L Beausoleil ("Beausoleil Decl."), attached as Exhibit 1, ¶ 4. "Y-12's

core mission is to ensure a safe, secure, and reliable U.S. nuclear deterrent, which is essential to national security." *Id.* ¶ 2. "Every weapon in the U.S. nuclear stockpile has components manufactured, maintained or ultimately dismantled at the Y-12 Complex, the nation's Uranium Center of Excellence." *Id.* The Y-12 Complex also provides enriched uranium for naval, research, and isotope production reactors, and supports nonproliferation activities to reduce the global nuclear threat. *See id.*

The question presented by this case is whether the Court should require the NNSA to supplement its prior NEPA analysis or undertake new NEPA analysis, given changes to the design of the facilities that NNSA previously approved in 2011 as well as allegedly new information concerning the environmental effects of the action. This question should be decided in the Eastern District of Tennessee, where the Y-12 Complex is located. The public interest factors to be considered under 28 U.S.C. § 1404(a), including particularly the local interest in making local decisions about controversies affecting the local environment, weigh heavily in favor of transfer. Here, virtually all of the events and operative facts in this case arose in the Eastern District of Tennessee, where the property and facilities at issue are located, the challenged NEPA analysis was prepared, and the projected on-the-ground environmental impacts of the challenged action will occur. By contrast, the limited involvement of NNSA Headquarters in signing the amended record of decision and the fact that one of the plaintiffs has an office in Washington, D.C. do not establish a sufficient connection to the District of Columbia to override the compelling public interest in having this local dispute heard in the Eastern District of Tennessee.

FACTUAL BACKGROUND

Plaintiffs challenge NNSA's determination in an April 16, 2016 "Supplement Analysis" that it did not need to prepare a new or supplemental Environmental Impact Statement ("EIS") under NEPA in support of a July 5, 2016 Amended Record of Decision, as well as NNSA's continued adherence to that position. Beausoleil Decl. ¶ 3. In the Amended Record of Decision, NNSA approved certain changes to a July 20, 2011 Record of Decision, in which it authorized the construction of a single structure Uranium Processing Facility ("UPF") at the Y-12 Complex. *Id*. NNSA issued its 2011 Record of Decision following its completion of a 2011 Final Site-Wide Environmental Impact Statement for the Y-12 Complex ("2011 EIS"). *See id*.

"Under the revised approach approved in the 2016 Amended Record of Decision, instead of proceeding with the construction of a single-structure UPF to meet all of NNSA's enriched uranium requirements, NNSA decided to meet some of those requirements at existing, but upgraded, enriched uranium processing facilities, and the remainder of those requirements at multiple new buildings." *Id*. ¶ 4. "The new buildings would each be smaller than the single-structure UPF approved in 2011 and would each be constructed to safety and security requirements appropriate to the building's function." *Id*. "The approach approved in the 2016 Amended Record of Decision 'is a hybrid of two alternatives previously analyzed' in the 2011 EIS." *Id*. (quoting 81 Fed. Reg. 45,139 (July 12, 2016)).

"Plaintiffs request the Court to vacate NNSA's 2016 Supplement Analysis and Amended Record of Decision and remand 'those decisions to the agency to prepare either a Supplemental Environmental Impact Statement or a new Site-Wide Environmental Impact Statement regarding the new design for the Uranium Production [sic] Facility at the Y-12 Complex.'" Beausoleil Decl. ¶ 5 (quoting Compl. at 44, ¶ 2, ECF No. 1). "In support of that request, Plaintiffs allege that the new design 'is significantly different from the one the agency chose to analyze in 2011'

and that Defendants should have considered new information post-dating the 2011 EIS." Beausoleil Decl. ¶ 5 (quoting Compl. at 2, ¶ 1). Plaintiffs further assert that this requested relief is necessary to address a host of alleged environmental harms that could occur at the Y-12 Complex and surrounding area, including the alleged "risk of a catastrophic collapse of aging buildings containing nuclear weaponry or components of nuclear weaponry," the possible "release of nuclear or toxic materials," and an alleged reduced ability to perform cleanup of legacy contamination at Y-12. Complaint at 2, ¶ 5. Plaintiffs thus seek review of determinations concerning facilities located entirely within the Eastern District of Tennessee and alleged environmental risks associated with those facilities. Yet, Plaintiffs filed this lawsuit in the District of Columbia, a forum that has little connection to those facilities, the environmental harms alleged by Plaintiffs, or the NEPA analysis that they challenge.

LEGAL BACKGROUND

"The Court has broad discretion to adjudicate motions to transfer pursuant to 28 U.S.C. § 1404(a)." *McGovern v. Burrus*, 407 F. Supp. 2d 26, 27 (D.D.C. 2005). Section 1404(a) states 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). Under this statute, courts exercise the discretion to transfer according to "an 'individualized, case-by-case consideration of convenience and fairness.'" *Otter v. Salazar*, 718 F. Supp. 2d 62, 64 (D.D.C. 2010) (citing *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 this discretion, the courts should consider what districts would support venue, as well as public and private interest factors. *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 23-24 (D.D.C. 2002); *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 65 (D.D.C. 2003).

The first question in this analysis "is whether the potential transferee court is a proper venue under 28 U.S.C. § 1391." *Harris v. U.S. Dep't of Veterans Affairs*, 196 F. Supp. 3d 21, 24 (D.D.C. 2016). If venue is proper in the transferee court, "the Court then undergoes a 'factually analytical, case-by-case determination of convenience and fairness,' . . . by balancing 'case-specific factors related to the public interest of justice and the private interests of the parties and witnesses.'" *Id*. The "[p]ublic interest factors typically include: 1) the local interest in making local decisions about local controversies, 2) the potential transferee court's familiarity with the applicable law, and 3) the congestion of the transferee court compared to that of the transferor court." *Id*. The private interest factors include: "1) the plaintiff's choice of forum, 2) the defendant's choice of forum, 3) where the claim arose, 4) the convenience of the parties, 5) the convenience of the witnesses, particularly if important witnesses may actually be unavailable to give live trial testimony in one of the districts, and 6) the ease of access to sources of proof." *Id*.

The party requesting transfer has the burden "to show that the 'balance of convenience of the parties and witnesses and the interest of justice are in [its] favor.'" *Shawnee Tribe*, 298 F. Supp. 2d at 23 (citation omitted). "Courts in this circuit are instructed to consider motions to transfer venue favorably, given '[t]he danger that a plaintiff might manufacture venue in the District of Columbia . . . by naming high government officials as defendants . . . .'" *Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 53 (D.D.C. 2012) (citing *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993)). "[M]ere involvement on the part of federal agencies, or some federal officials who are located in Washington D.C. is not determinative," particularly "where the involvement of government officials in Washington has not been significant, and there is no real connection between the District of Columbia and [the]

litigation other than the presence of federal agencies in [that] forum." *Shawnee Tribe*, 298 F. Supp. 2d at 25–26.

ARGUMENT

Transfer of this case to the Eastern District of Tennessee satisfies the statutory requirement that venue be proper in that district. Moreover, the public and private interest factors strongly favor transfer of the case, including particularly the local interest in hearing this local controversy in the district where: (1) the facility at issue is located; (2) the alleged environmental effects of the underlying action will occur; (3) the pertinent NEPA documents were prepared; (4) all public outreach concerning the underlying action occurred; and (5) the majority of the parties reside. The Court should therefore decline Plaintiffs' invitation to hear this case that has little connection to the District of Columbia and exercise its discretion to transfer it to the Eastern District of Tennessee.

I. This Case Could Have Been Brought in the Eastern District of Tennessee.

There can be no dispute that the first requirement to transfer of this action is met – namely, that "the potential transferee court is a proper venue under 28 U.S.C. § 1391." *Harris*, 196 F. Supp. 3d at 24. Section 1391 provides that an action against the United States may be brought in "any judicial district in which . . . a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. § 1391(e)(1). Here, the Y-12 Complex that is the subject of this action is located in Oak Ridge in the Eastern District of Tennessee, and a substantial part of the alleged events or omissions giving rise to this case occurred at the facility. *See infra* Part II. The first prong of the transfer analysis is plainly satisfied.

II. There is a compelling public interest in resolving this case locally.

The public interest considerations also strongly favor transfer. Of particular importance, there is a strong local interest in resolving this case in the home forum of the Eastern District of Tennessee, which should receive dispositive weight in this case.

The local interest factor is "[p]erhaps the most important factor in the motion-to-transfer balancing test." *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 116 (D.D.C. 2015) ("*AWL*") (quoting *Pres. Soc'y*, 893 F. Supp. 2d at 54 (internal quotation marks and alterations omitted)); *Shawnee Tribe*, 298 F. Supp. 2d at 26 ("What the Court finds to be the most persuasive factor favoring transfer of this litigation to Kansas is the local interest in deciding a sizeable local controversy at home."). Courts in this district have frequently granted transfer of lawsuits to the district in which the property at issue is located and the environmental effects of the action will occur.[1] The local interest is further heightened where local federal officials played a leading role in the challenged action. *See*, *e.g.*, *Otter*, 718 F. Supp. 2d at 64; *Shawnee Tribe*, 298 F. Supp. 2d at 25; *Flowers*, 276 F. Supp. 2d at 70-71; *Trout Unlimited*, 944 F. Supp.

[1] *See*, *e.g.*, *Otter*, 718 F. Supp. 2d at 64–65 (transferring case to Idaho where species at issue under challenged Endangered Species Act listing decision was located); *Shawnee Tribe*, 298 F. Supp. 2d at 26 (granting transfer to Kansas where military ammunitions plant at issue was located); *Intrepid Potash-New Mexico, LLC v. U.S. Dep't of Interior*, 669 F. Supp. 2d 88, 99 (D.D.C. 2009) (transferring case where "[t]he controversy is centered on property located in New Mexico, and land commonly has been considered a local interest."); *AWL*, 99 F. Supp. 3d at 116 (transferring suit where incidental-take decision affected oil and gas exploration activities occurring only "around (and within) Alaska's sovereign territory" and allegations were "local at every turn"); *S. Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) (transferring case challenging failure to prepare EIS for federal oil and gas development in Utah because "[i]t makes sense that these alleged consequences would be most particularly felt in Utah, and thus that the courts of Utah would have a clear interest in resolving the dispute.""); *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13, 17 (D.D.C. 1996) (transferring suit about reservoir in national forest because of "the impact that . . . [the] action will have upon the affected lands, waters, wildlife and people of [Colorado]"); *Flowers*, 276 F. Supp. 2d at 65 (D.D.C. 2003) (granting transfer to S.D. Florida in case challenging mining permits for certain Everglades wetlands in southern Florida).

at 19-20; *see also Hawksbill Sea Turtle v. Fed. Emergency Mgmt. Agency*, 939 F. Supp. 1, 3 n.5 (D.D.C. 1996) ("The Court also notes the importance of allowing local citizens to attend and observe the proceedings of this case.").

Under these decisions, the residents of the Eastern District of Tennessee have a "compelling interest . . . in having this localized controversy decided at home." *Trout Unlimited*, 944 F. Supp. at 19. This action is fundamentally about the alleged environmental effects of not supplementing an EIS concerning new construction and upgrades at the Y-12 Complex in Oak Ridge, Tennessee. There is a compelling localized interest in deciding this issue within the Eastern District of Tennessee, closest to the people it most vitally affects. Virtually all facets of the action challenged in this litigation are predominantly local in nature. Specifically,

- "The property and facilities that are the subject of this action are located at the Y-12 Complex in Oak Ridge." Beausoleil Decl. ¶ 7.
- "The projected environmental effects underlying this action, as addressed by the 2016 Supplement Analysis and 2011 EIS, are entirely local to the Y-12 Complex and the surrounding Oak Ridge area." *Id.* ¶ 8.
- "The on-the-ground environmental concerns alleged by Plaintiffs are limited to the Y-12 Complex and the surrounding Oak Ridge area." *Id.* ¶ 9. "The Complaint alleges no environmental harms that are specific to the District of Columbia area." *Id.*
- "All of the information used in the 2011 EIS and 2016 Supplement Analysis was generated, collected, and analyzed by federal NNSA and contractor staff at the UPF Project Office and the NNSA Production Office in Oak Ridge." *Id.* ¶ 10.
- "[D]raft and final versions of the 2011 EIS and the Supplement Analysis were all prepared by NNSA federal and contractor staff at the NNSA Production Office and the

UPF Project Office in Oak Ridge." *Id*.

- "All public outreach in connection with the 2011 EIS occurred in the Oak Ridge area." *Id*. ¶ 11. "Public comments for the 2011 EIS were received in Oak Ridge," and "[p]ublic hearings on the Draft EIS were held on November 17 and 18, 2009, in Oak Ridge." *Id*.
- "The determination in the Supplement Analysis that no further NEPA documentation was required was made by senior officials at the NNSA Production Office and UPF Project Office in Oak Ridge," who signed that document. *Id*. ¶ 12. "[S]enior officials at the NNSA Production Office and UPF Project Office in Oak Ridge" also "prepared and issued the 2011 EIS." *Id*.
- NNSA's responses to an October 27, 2016 letter from Plaintiffs Oak Ridge Environmental Peace Alliance and Nuclear Watch of New Mexico requesting NNSA to prepare a supplemental EIS, as identified in the Complaint at ¶ 95, were prepared by NNSA staff in NNSA Production Office in Oak Ridge and signed by the Field Manager of that office. *See id*. ¶ 14.

Given these compelling local connections, the citizens of the Eastern District of Tennessee have an overriding interest in the matters at issue in this case, and the foregoing cases demonstrate that motions to transfer are routinely granted in similar circumstances.

Nor does the fact that federal officials in Washington, D.C. signed the 2011 and 2016 records of decision change this conclusion. As this Court explained in *Otter* in granting transfer to the District of Idaho in a case challenging a listing decision under the Endangered Species Act:

> [T]he only connection to the District of Columbia is the fact that the Department of the Interior, headquartered in this District, has ultimate responsibility for the administration of the ESA. But as the record makes clear, the role played by officials in Washington was minor, and the Secretary did not have any special

> involvement in the listing decision. Foss. Decl., Def.'s Mot. Attach. 1, ¶¶ 3, 7, 8, 10; *see* Final Rule, 74 Fed. Reg. at 52,063 (stating that the "primary authors of this document are staff members of the Idaho Fish and Wildlife Office"). In fact, the decision at issue here was drafted mainly by Service staff in Boise, as were the two previous decision on the status of the slickspot peppergrass. Foss Decl. ¶¶ 3–4, 6–7. The majority of the public comments the Service received came from the residents of Idaho, and those from the regulated community impacted by the listing are also located in Idaho. *Id.* ¶¶ 6, 9. In short, this action's ties to the District of Columbia are tenuous, at best, and any impact of the listing determination is completely localized to Idaho: all potential activities that may affect the slickspot peppergrass are located in Idaho, including housing developments, oil pipelines, and electric transmission lines, all of which have localized considerations in Idaho. Final Rule, 74 Fed. Reg. at 52,036.

Otter, 718 F. Supp. 2d at 64.

To similar effect, this Court in *Shawnee Tribe* determined that the active involvement of local federal officials outweighed the nominal federal involvement of agency officials in Washington D.C. in granting transfer to the District of Kansas where the ammunitions facility at issue was located:

> [W]hile the Tribe argues that the events that give rise to this suit, (i.e., the decisions of the GSA regarding disposal of the SFAAP), occurred in Washington, the Court, after further examination during oral argument, does not find that the government's actions to date are even centered in this forum. While some officials from the GSA and the Department of Interior who work in the Washington, D.C. area are involved in the SFAAP disposal, the decisionmaking process, by and large, has not been substantially focused in this forum. Indeed, it became clear to the Court during oral argument that the Washington D.C. office of the GSA has not made a final decision on the Tribe's appeal of the GSA decision to continue the disposal process and, in fact, it refused to act on the appeal due to [] this litigation. Moreover, correspondence between the Tribe and the GSA offices in Fort Worth, TX and Auburn, WA clearly demonstrate that these field offices have been actively involved in the determination of the Tribe's interest in the SFAAP and the possible disposal of the property.

Shawnee Tribe, 298 F. Supp. 2d at 25 (footnotes omitted).[2]

[2] *See also Flowers*, 276 F. Supp. 2d at 67 ("the fact that the parties each have offices in the District of Columbia is not dispositive of the question of deference. *Kafack v. Primerica Life Ins. Co.*, 934 F. Supp. 3, 7 (D.D.C.1996) (noting that cases decided under section 1404(a) place much less emphasis on the parties' residence). Here, the parties' presence in the District of Columbia is overshadowed by the lack of evidence that federal officials in this forum played 'an active or

These rulings confirm that, in determining appropriate venue, the lead role played by local federal officials in Oak Ridge in the challenged action outweighs the limited involvement of federal officials in Washington, D.C. "While NNSA Headquarters in Washington, D.C. provides guidance to the NNSA field office in Oak Ridge and ultimately signed the 2011 Record of Decision and the 2016 Amended Record of Decision, both of these documents were drafted by NNSA staff and contractors in Oak Ridge, and no substantive changes were made to these documents after they were transmitted to Headquarters." *See* Beausoleil Decl. ¶ 13. Further, and of critical importance, "[t]he 2011 EIS and Supplement Analysis were both prepared and issued locally in Oak Ridge." *Id*. In these circumstances, the compelling public interest in resolving this localized dispute in a local forum weighs heavily in favor of transfer.[3]

III. The Private Interest Factors Also Support Transfer Because the Claims Arose in Eastern District of Tennessee and Have Little Nexus to the District of Columbia.

The private interest factors also favor of transfer. Although Plaintiffs' choice of forum is entitled to some deference under the first of the private interest factors, this deference is mitigated where, as here, Plaintiffs' chosen forum has little nexus to the controversy and the proposed transferee forum has substantial ties to both the Plaintiffs and the subject matter of the

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significant role' in the decision to issue the permits."); *Cameron*, 983 F.2d at 256 ("Courts in this circuit must examine challenges to personal jurisdiction and venue carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia. By naming high government officials as defendants, a plaintiff could bring a suit here that properly should be pursued elsewhere.")

[3] The other public interest factors – familiarity with applicable law and docket congestion – are neutral and of negligible import in this case. First, all federal courts are "competent to decide federal issues correctly." *Flowers*, 276 F. Supp. 2d at 70 n.6. Because the claims pled in this action are entirely based on federal law, neither potential venue has greater familiarity with the governing law. Second, "[s]ince this case is in its earliest stages, there would be no delay associated with the [Tennessee] district court's having to familiarize itself with this case. *Trout Unlimited*, 944 F. Supp. at 19. Nor does the Court have any "reason to suspect" that the docket of the Eastern District of Tennessee "could not accommodate this case." *Harris*, 196 F. Supp. 3d at 25. Docket congestion is also a neutral factor.

litigation. Moreover, the second and third of the private interest factors – defendants' choice of forum and where the claim arose – favor transfer, particularly in light of the substantial connection that the claims, property, environmental impacts, and the parties in this action have with the Eastern District of Tennessee. Finally, the remaining private interest factors – the convenience of the parties, the convenience of the witnesses, and the ease of access to sources of proof – are largely neutral in this case brought under the Administrative Procedure Act, which is to be reviewed based upon an administrative record compiled by the agency rather than live testimony of witnesses. To the extent these factors have any relevance, they also favor transfer.

A. Plaintiffs' choice of forum in the District of Columbia receives diminished weight in light of the limited factual nexus between this District and the subject matter of this lawsuit.

A plaintiff's choice of forum is not dispositive of venue. Although "[t]he court must afford some deference to the plaintiff's choice of forum . . . , this deference is mitigated where the plaintiff's choice of forum has 'no meaningful ties to the controversy and no particular interest in the parties or subject matter.'" *Trout Unlimited*, 944 F. Supp. at 17 (citations omitted). This deference is "lessened further still when the forum to which transfer is sought has 'substantial ties' to both the plaintiff and 'the subject matter of the lawsuit.'" *Douglas v. Chariots for Hire*, 918 F. Supp. 2d 24, 31–32 (D.D.C. 2013) (quoting *Trout Unlimited*, 944 F. Supp. at 17 (additional citations omitted)); *see also Armco Steel Co., L.P. v. CSX Corp.*, 790 F. Supp. 311, 323 n.11 ("The deference accorded the plaintiff's choice of forum is diminished even further when 'the plaintiff has brought suit in a forum which is not its "home turf."'" (citations omitted)). Finally, any deference to a plaintiff's choice of forum is outweighed by the competing "interests of justice [that] are promoted when a localized controversy is resolved in the region it impacts." *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 102 (D.D.C. 2013).

As discussed above, this controversy involves the Y-12 Complex in Oak Ridge and predominantly implicates environmental concerns in the Eastern District of Tennessee. *See S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 234-35, 237-38 (D.D.C. 2012) (transferring case because the "controversy will affect the use of discrete parcels of land" in Utah.). Moreover, the decision-making process primarily occurred in Tennessee, where the NNSA drafted and issued the Supplement Analysis, engaged the public, and prepared the Amended Record of Decision.

By contrast, five of the seven Plaintiffs are residents of Tennessee, and only one appears to have an office in the District of Columbia. The Complaint lists all four non-corporate Plaintiffs and Plaintiff Oak Ridge Environmental Peace Alliance as residing in either Knoxville or Oak Ridge, Tennessee. Of the other two Plaintiffs, Nuclear Watch of New Mexico is listed with a New Mexico address, and only Natural Resources Defense Council ("NRDC") is listed with a District of Columbia address. However, NRDC's principal place of business is in New York City,[4] not Washington, D.C., and the on-the-ground injuries allegedly sustained by NRDC and its members are specific to the Oak Ridge and Knoxville, Tennessee area, not the District of Columbia. *See, e.g.*, Compl. at 5, ¶ 9 ("Plaintiff NRDC brings this action on its own behalf and on behalf of its members who live in Oak Ridge, Tennessee, and Knoxville, Tennessee, and whose health will be put at risk in the event that an earthquake causes a release of hazardous radiological materials from the Y-12 Complex."). The marginal connection between NRDC and the subject matter of this action is underscored by the fact that "NRDC submitted no comments

[4] *See* https://www.nrdc.org/contact-us, visited on September 13, 2017; *see also* Compl. at 2, ¶ 5, *Nat. Res. Def. Council, Inc. v. Nat'l Oceanic and Atmospheric Admin.*, No. 15 CV 1260, 2015 WL 757805 (S.D.N.Y. Feb. 20, 2015) ("Venue is proper in this district because Plaintiff NRDC resides and has its principal place of business in this judicial district.").

on the 2011 EIS, did not subsequently exchange any correspondence with NNSA concerning the Y-12 Complex, and never requested the NNSA to prepare a new or supplemental EIS concerning the actions approved in the 2016 Amended Record of Decision." Beausoleil Decl. ¶ 15. In these circumstances, any deference to Plaintiffs' choice of forum is outweighed by the substantial connection that Plaintiffs and the subject matter of this litigation have to the Eastern District of Tennessee. *Compare Home Builders Ass'n of N. Cal. v. U.S. Fish & Wildlife Serv.*, No. CIVA 06-932 RWR, 2006 WL 3334956, at *1 (D.D.C. Nov. 16, 2006) (transferring case to the Northern District of California where "the plaintiff has little or no connection with the forum it selected, but does have ties with the transferee forum."); *see also Range Creek Holdings, LLC v. Cypress Capital, II, LLC*, No. CIV.A.08-0695-CG-B, 2009 WL 857533, at *7 (S.D. Ala. Mar. 25, 2009); *Herrera v. Command Sec. Corp.*, No. C-12-1079 EMC, 2012 WL 6652416, at *4 (N.D. Cal. Dec. 20, 2012).

B. Defendants' choice of forum and the strong connections between this action and the Eastern District of Tennessee tip the balance in favor of transfer.

In contrast to this action's minimal nexus with the District of Columbia, the close link between this case and the Eastern District of Tennessee is strong and immediately evident.

First, the Eastern District of Tennessee is Defendants' chosen forum. A defendant's choice of forum is entitled to "some weight" when it is where the challenged actions are "felt most directly." *Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303, 313 (D.D.C. 2015) (giving weight to defendants' choice of forum where "the economic and environmental impacts [of their action] will be felt most acutely"). The actions challenged here most directly affect Tennessee lands and residents. Defendants' choice of forum in Tennessee therefore receives some weight in the balancing. *See, e.g.*, *Pres. Soc'y*, 893 F. Supp. 2d at 55 (balance favored defendants' preferred forum "wherein the project itself, the decisionmakers, and the affected

community are all located, thus giving [that District Court] a strong interest in the outcome"); *Nat'l Wildlife Fed'n v. Harvey*, 437 F. Supp. 2d 42, 48 (D.D.C. 2006) (giving "some weight" to defendants' proposed forum where decisions occurred and where affected wildlife were found).

Second, the Eastern District of Tennessee is where the claims arose. In determining where a claim arose, "courts generally focus on where the decisionmaking process occurred." *Nat'l Ass'n of Home Builders v. EPA*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) (citation omitted). For the reasons discussed extensively above, the decisions at issue here arose in Tennessee, where the vast majority of the decision-making process occurred. Again, NNSA staff and contractors in Oak Ridge prepared and issued the Supplement Analysis and the 2011 EIS. Likewise, NNSA staff and contractors in Oak Ridge drafted both the 2011 and 2016 records of decision that were ultimately signed by federal officials in Washington, D.C. Finally, NNSA staff in Oak Ridge prepared and signed NNSA's responses to an October 27, 2016 letter from Plaintiffs Oak Ridge Environmental Peace Alliance and Nuclear Watch of New Mexico requesting NNSA to prepare a supplemental EIS. The claims in this action arose out of actions that predominantly occurred in the Eastern District of Tennessee.

Finally, to the extent relevant, the remaining private interest factors would also modestly favor transfer. The claims in this case will be reviewed under the Administrative Procedure Act on the basis of an administrative record compiled by the agency. *See Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743 (1985); *Fund for Animals v. Babbitt*, 903 F. Supp. 96, 105 (D.D.C. 1995), *amended*, 967 F. Supp. 6 (D.D.C. 1997). As a result, convenience of witnesses and access to evidence "has less relevance because this case involves judicial review of an administrative decision." *Trout Unlimited*, 944 F. Supp. at 18; *see also S. Utah Wilderness All.*, 315 F. Supp. 2d at 88 (not considering convenience to witnesses where court's review would be

based upon administrative record and parties agreed witnesses would not be necessary); *Flowers*, 276 F. Supp. 2d at 69 (stating that because the case involved review of an administrative record, "the location of witnesses is not a significant factor"). Nonetheless, in the event that access to original documents or live witness testimony were necessary, these factors would also favor transfer, given that Tennessee is where the facilities are issue are located, the Supplement Analysis and other pertinent NEPA documents were prepared, and any potential witnesses likely reside. *See* Beausoleil Decl. ¶ 16. For all these reasons, the private interest factors also tilt in favor of transfer to the Eastern District of Tennessee.

CONCLUSION

Given the compelling public interest in hearing this case locally and its limited connections to the District of Columbia, the Court should exercise its discretion to transfer this case to the Eastern District of Tennessee where the property at issue is located, the challenged NEPA analysis was prepared, and the projected on-the-ground environmental impacts of the underlying action will occur.

Respectfully submitted this 28th day of September, 2017.

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