UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE, formerly SHEEP RANCH OF ME-WUK INDIANS OF CALIFORNIA, Plaintiff, vs. UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, GALE A. NORTON, Secretary of the Interior, MICHAEL D. OLSEN, Acting Assistant Secretary – Indian Affairs, Defendants.	Case No.: JR-05-CV-00739

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

Sonya A. Smith-Valentine
Valentine Legal Group, LLC
7319 Hanover Parkway
Suite C
Greenbelt, MD 20770
(301) 513-9500
ATTORNEY FOR PLAINTIFF
CALIFORNIA VALLEY MIWOK TRIBE

Phillip E. Thompson
Thompson Associates
9450 Pennsylvania Avenue, Suite 4
Upper Marlboro, MD 20772
(301) 599-5385

George L. Steele
790 E. Colorado Boulevard
Suite 900
Pasadena, CA 91101
(626) 240-0628

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 1

ARGUMENT 3

I. THE DISTRICT OF COLUMBIA IS A PROPER VENUE FOR THIS ACTION 3

II. DEFENDANTS HAVE NOT SUSTAINED THE HEAVY BURDEN OF ESTABLISHING THAT VENUE SHOULD BE CHANGED 3

A. The Factual Nexus Of This Case Is In This Forum 4

B. The Interests Of Justice Do Not Weigh In Favor Of Transfer 6

C. The Convenience Of Parties And Witnesses Does Not Weigh In Favor Of Transfer 7

CONCLUSION 7

Exhibit A: Letter dated February 11, 2005, from Michael D. Olsen, Principal Deputy, Acting Assistant Secretary – Indian Affairs, to Mr. Yakima K. Dixie

Exhibit B: The People of the State of California vs. Yakima Dixie, No. F3211, Reporter's Transcript of Setting of Violation of Probation Hearing, dated May 23, 2005

Exhibit C: Letter dated March 26, 2004, from Dale Risling, Sr., Superintendent, to Ms. Sylvia Burley, Chairperson

Exhibit D: Letter dated March 11, 2005, from Silvia Burley, Chairperson, California Valley Miwok Tribe, to Mr. Clay Gregory, Director – PRO/BIA, Sacramento, CA

Exhibit E: Amended Enrollment Ordinance No. 2002-01, submitted March 11, 2005

Exhibit F: Letter dated February 24, 2005, from Karla D. Bell, to Dale Morris, Superintendent, Central California Agency, Sacramento, CA

Exhibit G: Letter dated March 15, 2005, from Karla D. Bell, to Carol Rogers-Davis, Central California Agency, Sacramento, CA

Exhibit H: Letter dated February 22, 2001, from Dale Risling, Sr., Superintendent, SHEEP RANCH RANCHERIA, Silvia Burley, Chair

Exhibit I: 25 C.F.R. 83.12

CVMT-2011-000792

INTRODUCTION

Plaintiff, California Valley Miwok Tribe ("Tribe") has brought this action for declaratory relief to confirm their right to adopt governing documents, and thereby invalidate a determination to the contrary by Defendants. The determination at issue is a February 11, 2005 letter from Michael D. Olsen, Acting Assistant Secretary – Indian Affairs. In this letter, Mr. Olsen stated *inter alia* that Defendants did not recognize the Tribe's constitution, leadership or tribal forum. The February 11, 2005 letter is the only act at issue in this case. The Tribe seeks declaratory relief affirming that the Tribe possesses the inherent authority to adopt the governing documents rejected by Mr. Olsen pursuant to settled case law, and 25 U.S.C. § 476(h).

Defendants seek to obtain a transfer of this matter to the Eastern District of California pursuant to 28 U.S.C. § 1404(a). However, venue is proper in this forum because Defendants are located in this forum, and the only operative facts occurred in this forum. Moreover, Defendants have not met their burden that any interest set out by § 1404(a) would be served by transferring the case to the Eastern District of California. Accordingly, Defendants' Motion to Transfer Venue should be denied.

STATEMENT OF FACTS

On February 11, 2005, Michael D. Olsen, Acting Assistant Secretary – Indian Affairs, sent a letter to Yakima Dixie. Exhibit A. Yakima Dixie is a member of the Tribe and is currently incarcerated. Exhibit B. In his February 11th letter, Mr. Olsen dismissed an appeal filed by Mr. Dixie on October 30, 2003. In addition, Mr. Olsen went on to assert that:

1) the Bureau of Indian Affairs ("BIA") had rejected the Tribe's constitution;
2) the BIA did not recognize Silvia Burley as tribal chairperson;
3) the BIA would not recognize anyone as the tribal chairperson until the Tribe had complied with the letter of Dale Risling, dated March 26, 2004; and

4) the BIA did not recognize the Tribe's hearing process as a legitimate tribal forum. Exhibit A; March 26, 2004 letter from Dale Risling, attached hereto as Exhibit C.

Mr. Olsen, while referring to the March 26, 2004 letter, went beyond that letter's determination, which was that despite the Tribe having a constitution, the BIA still considered the Tribe to be "unorganized." *See* Decl. of Carol Rogers-Davis, attached as Exhibit B to Defendants' Motion to Transfer Venue and to Suspend Obligation to Answer in the District of Columbia.

On April 12, 2005, the Tribe filed this action seeking declaratory relief from the February 11, 2005 letter of Michael D. Olsen in view of 25 U.S.C. § 476(h).

Both the Tribe and Defendants have proffered additional facts in prior pleadings that relate to the background of the relationship between the Tribe and Defendants. These additional facts are of questionable relevance to the merits of this case. At this time, the Tribe will limit the balance of this section to correcting errors in the version of the facts proffered by Defendants.

1. The Tribe has five adult members. Decl. of Karla D. Bell, filed concurrently herewith.

2. The Tribe's amended enrollment ordinance (Ordinance No. 2002-01), submitted to the BIA on March 11, 2005, provides for full membership of enrollees not included on the base roll in a manner consistent with 25 C.F.R. 83.12. Exhibits D, E, and I.

3. The BIA has been informed on several occasions of the Tribe's efforts to identify Indians eligible for membership in this Tribe. On February 24, 2005, the Tribe requested information on twenty-nine (29) individuals from the BIA. Exhibits F and G.

4. Yakima Dixie's appeal is no longer pending. It was dismissed pursuant to the February 11, 2005 letter of Michael D. Olsen, which is the subject of this litigation. Exhibit A.

ARGUMENT

I. THE DISTRICT OF COLUMBIA IS A PROPER VENUE FOR THIS ACTION

28 U.S.C. § 1391(e) provides in pertinent part:

> A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, (2) 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...

Defendant Michael D. Olsen is located in the District of Columbia. The only event giving rise to the instant case is the February 12, 2005 letter authored by Mr. Olsen in the District of Columbia. Accordingly, § 1391(e) explicitly affords venue on two bases, the Defendants' location, and the location of the event giving rise to the instant case.

II. DEFENDANTS HAVE NOT SUSTAINED THE HEAVY BURDEN OF ESTABLISHING THAT VENUE SHOULD BE CHANGED

Defendants' motion to transfer venue is made pursuant to 28 U.S.C. 1404(a), which provides in pertinent part: "For 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 may have been brought."

"Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer 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).

CVMT-2011-000795

"The Defendant has the burden of making a strong case that the convenience of the parties and citizens shall be served by transferring the action from the Tribal's selected forum." SEC v. Hart, 25 Fed.R.Serv. 2d (Callaghan) 1315 (D.C.C. May 26, 1978) (available on Lexis).

A. The Factual Nexus Of This Case Is In This Forum

Defendants argue that the only connection between the Tribe's action and the District of Columbia is the February 11, 2005 letter to Yakima Dixie from Michael D. Olsen – who at the time was Acting Assistant Secretary – Indian Affairs. That assertion is misleading, because the letter of Michael D. Olsen is the only act at issue in this case. Defendants rely on Wyandote Nation v. National Indian Gaming Commission[1] and Shawnee Tribe v. U.S.[2], for the proposition that the involvement of federal officials located in the District of Columbia is not determinative for venue purposes. Their reliance on these cases is misplaced.

In Wyandotte, the plaintiff challenged the determination of the National Indian Gaming Commission ("NIGC") that the plaintiff could not lawfully conduct gaming on a parcel of land in Kansas held in trust for the benefit of the plaintiff. *Id* at 1. In granting the motion to transfer, the court stated:

> Here, the court finds the local interest in deciding a sizeable local controversy at home to be the most persuasive factor favoring transfer of this litigation to Kansas. Both the location of the property itself, and the ramifications of declaring the land as falling under one of IGRA's gaming exceptions, are extremely local in nature. Because this dispute will have the greatest impact on the citizens of Kansas, there is a compelling interest is allowing the local government and citizens to attend any court proceedings in person.

Id at 12.

---

[1] Civ. No. 04-1727 (RMV), slip op. dated May 2, 2005.

[2] 298 F. Supp. 2d 21 (D.C. 2002)

CVMT-2011-000796

In Shawnee, the plaintiff sought a transfer of surplus land in Kansas to the Department of Interior to be held in trust for the plaintiff. *Id* at 22. The Shawnee court stated the following in granting the motion to transfer:

> 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. How the SFAAP property is allocated directly impacts the counties and neighborhoods surrounding the SFAAP. The SFAAP is a 9,065 acre piece of property located proximate to a major metropolitan center. Its division and allocation necessarily implicates considerable local economic, political and environmental interests. The Court is particularly concerned about exercising jurisdiction over a case that will affect the development of a massive area in Kansas in a venue with which Kansas citizens have little or no correction.

Id at 26.

In the instant case, the Tribe is landless, and will remain so for the foreseeable future. Letter of Dale Risling dated February 22, 2001, attached hereto as Exhibit H. There is no urban casino hinging on the outcome of this case, as in Wyandotte. *Id* at 1. There is no conversion to Indian land of surplus land proximate to a metropolitan center looming in this case, as in Shawnee. *Id* at 26. In view of the cases above, it is understandable that the respective courts, in weighing the factors, did not find the involvement of officials in the District of Columbia to be of great weight when compared to the local impact of a decision on the local communities.

In the instant case, there is no such comparison. The issue in this case is simply whether the Tribe has the authority to adopt governing documents under its inherent authority and applicable law. 25 U.S.C. § 476(h). Here, the action being challenged is a specific act that was performed in the District of Columbia. Exhibit A. When the operative facts occur in the Plaintiff's chosen forum, that choice of forum should be given more than a little weight. SEC v. Savoy Industries, Inc., 587 F.2d 1149, 1154-1155.

There is no local interest involved in the Tribe's internal matters. The instant case addresses the very essence of the government-to-government relationship between Indian

tribes and the United States; specifically, an Indian Tribe's inherent right to self-governance, and whether that right is guaranteed under federal law. Rather than being a case of local interest, this controversy is national in scope because the outcome has potential implications for all Indian tribes in this country. When a controversy cannot be categorized as local, and is in fact national in scope, there is no local interest involved and that factor should be given no weight by this Court. *See, e.g.*, USLIFE Corp. v. American Public Ins. Co., 1982 U.S. Dist. LEXIS 10142; 218 U.S. P.Q. (BNA) 298 (D. D.C. 1982). Furthermore, given that the only contested act was committed in the District of Columbia, by a federal official based in the District of Columbia, Michael D. Olsen's involvement should be considered determinative in this case.

With respect to the involvement of officials in California, that involvement is beside the point of this litigation. The relevance of their involvement is only as background factual material. What they did, and why they did it has no bearing on whether the determination of Michael D. Olsen was contrary to law. Despite the fact that the Tribe is located in California, the wrongful act occurred in the District of Columbia. Consequently, the activities of California officials should have no weight in the court's evaluation of the instant motion. Venue is proper in the District of Columbia. 28 U.S.C. § 1391(e). Therefore, the Tribe is entitled to this forum. Wiren v. Laws, 194 F.2d 873, 874 (D.C. Cir. 1951). This Court should not disturb Plaintiff's choice of forum.

B. The Interests Of Justice Do Not Weigh In Favor Of Transfer

Defendants' arguments regarding the interests of justice rely on suggesting that this case concerns gaming, then conceding that it does not, as they must. The distinction between this case, and those involving localized controversies such as gaming, or land acquisitions was discussed at length above, and will not be repeated here. As Defendants raise no valid issues regarding the interests of justice, they have conceded this factor and fail to meet their burden. This Court should give this factor no weight in its analysis.

///

C. The Convenience Of Parties And Witnesses Does Not Weigh In Favor Of Transfer

This case requires a straightforward analysis of the law to determine the relationship between the parties. The pertinent administrative record consists of one document, and is already before this Court. Thus, it is not likely that discovery or live witnesses will be required, and this factor does not weigh in favor of transfer.

Defendants argue that they are "prepared to litigate this case in the Eastern District of California." To the extent that Defendants are referring to counsel, that carries little weight. Vencor v. Shalala, 63 F. Supp. 2d 1, 12. To the extent that they are referring to BIA employees, there is no need for live witnesses in this case. Moreover, the convenience of the non-existent witnesses is only a factor to the extent that the witnesses may be unavailable for trial in one of the fora. Trout Unlimited v. US Dep't of Agric., 944 F. Supp. 13, 16 (D.D.C. 1996). There has been no such showing here.

With respect to the Tribe's previous litigation in the Eastern District of California, Defendants fail to explain what relevance that has in this case. The litigation in the Eastern District of California was based upon Defendants' unlawful distribution of the Tribe's land in violation of the California Rancheria Act. *See* Exhibit A to Defendants' Motion to Transfer Venue and to Suspend Obligation to Answer in the District of Columbia. The instant case arose from an act that did not occur until after the Eastern District case was appealed. There are no common operative facts between the cases. Thus, the Eastern District litigation is of no relevance here.

Defendants have made no showing why the convenience of parties and witnesses is improved in any way by transferring the case. Accordingly, this Court should attribute no weight to this factor.

///

///

///

CONCLUSION

The only operative fact in this case is the letter of Michael D. Olsen that the Tribe challenges. The background facts serve to confirm that there is indeed a live controversy between the parties, but have no bearing on the merits. As a result, this case readily lends itself to a prompt determination on the merits by dispositive motion. Venue is proper in this forum. Defendants have not offered facts sufficient to carry their burden to justify a transfer under the statutory factors. The Tribe respectfully requests that Defendants' Motion be denied.

Dated: July 7, 2005

Respectfully submitted,

______________/s/______________
Sonya A. Smith-Valentine
D.C. Bar No. 475139
Valentine Legal Group, LLC
7319 Hanover Parkway
Suite C
Greenbelt, MD 20770
(301) 513-9500
ATTORNEY FOR PLAINTIFF
CALIFORNIA VALLEY MIWOK TRIBE

______________/s/______________
Phillip E. Thompson
Thompson Associates
9450 Pennsylvania Avenue, Suite 4
Upper Marlboro, MD 20772
(301) 599-5385

______________/s/______________
George L. Steele
790 E. Colorado Boulevard
Suite 900
Pasadena, CA 91101
(626) 240-0628