

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY,

Plaintiff,

v.

UNITED STATES OF AMERICA
and JAMES G. WATT, SECRETARY
OF THE INTERIOR,

Defendants.

Civil No. 82-0145

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER

Plaintiff Salt River Pima-Maricopa Indian Community, seeks an order that would require the United States Secretary of the Interior ("the Secretary"): to determine and declare plaintiff's alleged rights with respect to water from the Salt River and the Salt River Project, both of which are in Arizona (Compl. Prayer ¶¶ 1(A)-(C)); to cancel a decision made in 1914 upon which individuals, communities, businesses, and other entities in Arizona rely as a basis for at least part of their water supply (Compl. Prayer ¶1D); and to review contracts and other unspecified arrangements that provide for water supply in Arizona (Compl. Prayer ¶1(E)). The contracts and arrangements are between entities that are not parties to this lawsuit. ^{*}/ These entities are in Arizona, not the District of Columbia.

^{*}/ The entities listed in plaintiff's complaint are: the Salt River Valley Water Users' Association, a corporation organized under the laws of the Arizona Territory in 1903 (Compl. ¶5); the Salt River Project Agricultural Improvement and Power District, a municipality organized under Arizona law (Compl. ¶5); the Roosevelt Water Conservation District, an Arizona farm irrigation district (Compl. ¶8A); the Roosevelt Irrigation District, an Arizona farm irrigation district (Compl. ¶8B); Phoenix, Arizona (Compl. ¶8C); Tempe, Arizona (Compl. ¶8C); Peoria, Arizona (Compl. ¶8C); Gilbert, Arizona (Compl. ¶8C); Mesa, Arizona (Compl. ¶8C); Chandler, Arizona (Compl. ¶8C); and Scottsdale, Arizona (Compl. ¶8C).

Further, plaintiff seeks a second phase of relief. In paragraph 2 of the Prayer for Relief, plaintiff seeks Court review of those secretarial decisions which it asks the Court to order in paragraph 1 of the Prayer. Ultimately, plaintiff asks for orders regarding administration of the Salt River Project (Compl. Prayer ¶2), a project created pursuant to The Reclamation Act of June 17, 1902, 32 Stat. 388. Determinations and orders concerning water from the Salt River, stored by the Salt River Project, would affect numerous Arizona entities and relationships, and countless individuals, communities and businesses in Arizona. Plaintiff's Complaint alone evinces this effect on people and entities in Arizona.

Defendants ask that this action be transferred to the United States District Court for the District of Arizona, where it could have been brought by plaintiff. 28 U.S.C. 1404(a) provides for transfer when it would serve the interests of justice, or for the convenience of the parties and the witnesses. Transfer is appropriate here for both reasons.

It is eminently in the interests of justice that this case be transferred to the United States District Court for the District of Arizona.

Important interests would be served by transfer of this case to Arizona:

-- If the case is transferred, a matter which affects the claims to water of many persons and entities in Arizona would be litigated within their view, rather than in a remote part of the country. Litigation close to them would facilitate their ability to monitor the developments in the litigation. Such monitoring would enable them to determine whether they need to move to intervene to protect their interests or whether they need to come forward with relevant information or evidence.

We can expect that a considerable number of individuals, businesses, and other entities who are in Arizona, and not the District of Columbia, will seek to intervene to protect their claims to water, which may be defeated or diminished as a result of the outcome of this lawsuit. We cannot sufficiently stress that the water that is the subject of this lawsuit is scarce, and that the competition for it is great. Note that in ¶6A of the Complaint plaintiff claims entitlement to 168,000 acre feet per year of water, an amount plaintiff claims is needed to irrigate 28,000 acres of land. Further, plaintiff claims illegal receipt of the following quantities of water: 40,000 acre feet of water per year by the Roosevelt Water Conservation District (Compl. ¶8A); 145,000 acre feet of water per year by the Roosevelt Irrigation District (Compl. ¶8B); 200,000 acre feet of water per year by numerous Arizona cities (Compl. ¶8C); and, 100,000 acre feet of water per year by the Buckeye Irrigation District (Compl. ¶8D).

Given the importance and quantity of the interests in water at stake in this case, it should be clear that justice would be served by transfer of this case to Arizona.

-- Transfer of this case will help to avoid the distinct possibility of multiple, and potentially conflicting, judicial decisions that would be created if this case is litigated in the District of Columbia. Any decision of this Court, which would not be binding on the numerous interested parties who are in Arizona, is likely to be the subject of relitigation in Arizona should it be perceived that a decision of this Court diminishes the rights of those in Arizona. Such probable multiple litigation can be expected to produce decisions that are perceived to be inconsistent. In turn, such potential inconsistency leads to difficulties in enforcement of any orders

this Court might enter. Avoiding such problems is in the interest of the administration of justice. Transfer would insure that decisions would be enforceable, and judicial resources would be efficiently used.

-- Transfer to Arizona will enable joinder of parties who may be indispensable to this litigation. These parties, at a minimum, would include those in the footnote on the first page of this Memorandum.

These interests have been identified as the kinds of considerations that should be taken into account in determining whether to exercise discretion to transfer a matter. In Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-509 (1947), the Court described these factors when it reviewed the application of the forum non conveniens doctrine. The Court's discretion to take these considerations into account was broadened when 28 U.S.C. 1404(a) became effective. Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955).

We recognize that we have the burden to show why the matter should be transferred, and that each transfer request is to be decided on a case by case basis. Starnes v. McGuire, 512 F. 2d 918, 929 (D.C. Cir. 1974) (en banc); SEC v. Savoy Industries, 587 F. 2d 1149, 1154 (D.C. Cir. 1978) citing Van Dusen v. Barrack, 376 U.S. 612 (1964). We think the reasons we have identified more than meet this burden. But we will discuss precedent to show further why we meet this burden, and to support the view that transfer in this case is strongly indicated.

In Lopez Perez v. Hufstedler, 505 F. Supp. 39, 41 (D.D.C. 1980), the Court transferred an action from the United States District Court for the District of Columbia to the United States District Court for the District of Puerto Rico in part because the real effect of enforcement of the court's action,

should plaintiffs prevail on the merits, would be in Puerto Rico, not the District of Columbia. The Perez plaintiffs sought a declaration that the United States Department of Education improperly granted to Puerto Rico a waiver of certain requirements of Title I of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 2701 et seq. The relief plaintiffs sought might have the effect of cutting off federal funds under Title I to the Puerto Rican Department of Education ("PRDE"), although PRDE was not a party to the litigation.^{*/}

The Perez case is quite similar to the instant one, and thus transfer is similarly indicated. Here plaintiff has fashioned a complaint which, on its face at least, raises issues that may appear to be susceptible to litigation strictly between the federal government and plaintiff. The Complaint does not appear to request that contracts be voided. It does not seek a general adjudication of water rights. Instead, the Complaint asks the Court to order the Secretary of Interior, as the Perez complaint asked with respect to the Secretary of Education, to make certain decisions. But there's the rub. For just as in Perez, the real effect of the relief, the real effect of such secretarial decisions, would be a cutoff or curtailment of water delivery to people or entities in Arizona.

Moreover, plaintiff is seeking more than secretarial decisionmaking. Plaintiff is seeking review of secretarial decisions, and actions taken pursuant to those decisions. In effect, by this lawsuit plaintiff is seeking an order that would: (1) require the Secretary to bring a stream adjudication, which would of necessity require joinder of parties in Arizona; and

^{*/} The Court had previously ruled that PRDE was not indispensable to the litigation.

(2) take measures to void contracts, parties to which are in Arizona. Voiding of such contracts would engender litigation in Arizona.

While we do not believe the relief sought by plaintiff is available, we have no doubt that if some form of the relief is granted within this district, such relief would result in this court overseeing actions and positions taken by the government in courts in Arizona. This is surely a judicial administrative nightmare to be avoided. Other courts have transferred actions when it was clear, as here, that the whole of the war and all the parties to it are in a different theater. See Kerotest Manufacturing Co. v. C-O-TWO Fire Equipment Co., 342 U.S. 180, 183, citing the three judge panel decision in the matter, 88 U.S.P.Q. 335, 337. This Court should similarly transfer this action, thereby short circuiting the potential for multiple litigation, inconsistent judgments, unfairness to individuals and entities who have a strong interest in the outcome of this action, and alleviating what is likely to be a recurring issue of whether to dismiss this action for failure to join indispensable parties who are not subject to service in the District of Columbia.

For the convenience of the parties
and the witnesses, this action
should be transferred.

The precise nature and scope of this lawsuit is not yet clear to defendants. Consequently, it is difficult to state what evidence and witnesses will be required for the defense. However, we think that plaintiff's recent notice to take the depositions of City of Phoenix' officials in Phoenix, Arizona, is an indication that we can expect that evidence and witnesses will be from Arizona. (A copy of the notice accompanies this memorandum.) Therefore, it makes sense to transfer this case to the locale where attendance of witnesses

can be more easily and inexpensively obtained and where the records in this case are located. See Gulf Oil Corp., supra, and Perez, supra.

Additionally, we urge that fairness to the defendants dictates that this action be litigated close to where those individuals who are most likely to have knowledge about the underlying facts and issues are located. If the action is litigated in Arizona it is more likely for the developments of the litigation to come to the attention of such knowledgeable people. Consequently, those people about whom defendants do not now know, may step forward over time to offer evidence. This may be particularly important with respect to plaintiff's challenge to the decisions made in 1914 concerning the definition of the service area for the Salt River Project. Thus, for the purpose of case development, which is in the interest of justice as well as for the convenience of defendants, transfer should be granted.

Conclusion

Essentially, we urge transfer of this case because it deals with matters that affect the legal rights of countless individuals and entities in Arizona. Many reasons for transfer, which we have described, emanate from this. Thus the Court should not allow plaintiff's choice of forum. As other courts have noted, the deference normally given to the plaintiff's choice of forum is somewhat diminished when, as here, the inconvenience to plaintiff and plaintiff's counsel who are from Arizona is negligible or non-existent. Oudes v. Block, 516 F. Supp. 13, 14 (D.D.C. 1981), citing Haase v. Mallenkrodt, Inc., 415 F. Supp. 889 (S.D. N.Y. 1976); Cressman v. United

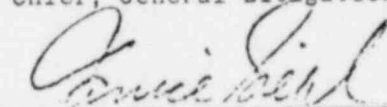
Air Lines, 158 F. Supp. 404, 407 (S.D. N.Y. 1958); Unico Industrial Corp. v. S.S. Andros City, 323 F. Supp. 896, 897 (S.D. N.Y. 1971).

In light of the strong reasons for transfer, the Court should not hesitate to grant defendants the relief sought.

WHEREFORE, defendants ask that this matter be transferred to United States District Court for the District of Arizona.

Respectfully submitted,

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