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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION
15

16 WESTERN WATERSHEDS PROJECT;
17 NATURAL RESOURCES DEFENSE
18 COUNCIL; CENTER FOR BIOLOGICAL
19 DIVERSITY; CALIFORNIA TROUT;
20 ENVIRONMENTAL PROTECTION
21 INFORMATION CENTER; KLAMATH
22 SISKIYOU WILDLANDS CENTER; LOS
PADRES FOREST WATCH; SIERRA
FOREST LEGACY; SEQUOIA FOREST
KEEPER; GRAND CANYON TRUST;
UTAH ENVIRONMENTAL CONGRESS;
RED ROCK FORESTS; and OREGON
NATURAL DESERT ASSOCIATION,

23 Plaintiffs,

24 v.

25 U.S. FOREST SERVICE,

26 Defendant.
27
28

Case No. 4:08-cv-01460-PJH

**[PROPOSED] ORDER DENYING
DEFENDANT'S RENEWED MOTION TO
SEVER CLAIMS AND TRANSFER
VENUE**

Date: October 27, 2010
Time: 9:00 a.m.
Dept: Courtroom 3, 3rd Floor
Judge: Phyllis Hamilton

Date Comp. Filed: March 14, 2008

Trial Date: Not Assigned

1 Defendant's Renewed Motion to Sever Claims and Transfer Venue (Dkt. # 104) came on
2 for hearing on October 27, 2010. Having reviewed the papers submitted by both parties and the
3 record in this case, and having heard argument by counsel, it is hereby

4 ORDERED AND ADJUDGED that the Renewed Motion to Sever Claims and Transfer
5 Venue is DENIED.

6 1. Plaintiffs' Third Amended Complaint challenges ten (10) decisions by the U.S.
7 Forest Service, in which grazing was re-permitted without review under the National
8 Environmental Policy Act (NEPA). The decisions were implemented in five national forests
9 across the northern half of California, all of which fall within Forest Service Region 5.

10 2. Federal Rule of Civil Procedure 21, "Misjoinder & Nonjoinder of Parties," does
11 not allow the Court to sever a Plaintiff's claims for the purpose of effectuating transfer to another
12 district. Nor does it allow the severance of individual claims, without severing parties. Plaintiffs
13 are the masters of their Complaint, and Plaintiffs have asserted only two causes of action against
14 a single Defendant, the U.S. Forest Service, to redress asserted violations of NEPA (First Claim),
15 and the 2005 Appropriations Rider (Second Claim). The Court will not order the Plaintiffs to
16 rewrite their Complaint as separate causes of action broken out by the federal judicial district in
17 which each affected forest sits. Severance is not appropriate here.

18 3. Venue in this district is proper under 28 U.S.C. § 1391(e)(2) because a substantial
19 part of the events giving rise to the claims occurred in this district. Plaintiffs challenge Forest
20 Service decisions in five national forests in California, including the Mendocino National Forest,
21 which is located in the Northern District. Furthermore, venue is proper pursuant to 28 U.S.C. §
22 1391(e)(3) because two plaintiffs (California Trout and Environmental Protection Information
23 Center) reside in this district, and plaintiffs' claims do not affect the right, title or interest in real
24 property. *See NRDC v. Tennessee Valley Authority*, 340 F. Supp. 400 (S.D.N.Y. 1971), *rev'd on*
25 *other grounds*, 495 F.2d 255 (2d Cir. 1972). The relief sought by Plaintiffs would not extinguish
26 anyone's permission to graze on federal lands – or otherwise directly alter property rights – but
27 would merely require that the Forest Service conduct additional environmental review of grazing
28 activities. Thus, the facts of this case are different from *Center for Biological Diversity v. BLM*,

1 2009 WL 1025606 (N.D. Cal. Apr. 14, 2009).

2 4. The Court declines to transfer venue pursuant to 28 U.S.C. § 1404. Considering
3 the standards applicable to a motion to transfer venue, *see Williams v. Bowman*, 157 F. Supp. 2d
4 1103, 1106 (N.D. Cal. 2001), the Court notes the following: First, the Plaintiffs chose this
5 forum, which has a substantial connection to the alleged events. Second, this district is at least as
6 convenient for the parties and witnesses, because numerous plaintiffs are located here; the
7 regional office for Forest Service Region 5 is in Vallejo, California, just twenty-five miles away;
8 and the relevant forests are scattered throughout Northern California. Third, there is not a
9 particularly strong local interest in having a part of this controversy heard in the Eastern District
10 of California versus the Northern District of California, where all of the affected forests are in
11 Northern California and are utilized by individuals from both districts. Fourth, the interests of
12 justice would not be served by creating parallel litigation in the Eastern District of California to
13 handle a portion of this case, with the same plaintiffs, the same defendant, and the same legal
14 issues. Fifth, and finally, the courts of the Eastern District of California are even more congested
15 than the courts in the Northern District. As such, the balance of venue factors tips in favor of
16 retaining venue in this district.

17 IT IS SO ORDERED.

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19 Dated: November 4, 2010

