ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

ANDREW A. SMITH (NM Bar 8341)
Senior Trial Attorney
c/o United States Attorneys Office
201 Third Street, N.W., Suite 900
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
Andrew.Smith@usdoj.gov

ALISON D. GARNER (DC Bar 983858)
Trial Attorney
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-2855
Facsimile: (202) 305-0506
Alison.Garner@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FRONT RANGE EQUINE RESCUE, *et al.*, Plaintiffs, v. TOM VILSACK, Secretary of the U.S. Department of Agriculture, *et al.*, Federal Defendants.	No. 4:13-cv-03034-YGR FEDERAL DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE AND MEMORANDUM IN SUPPORT

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NOTICE OF MOTION AND MOTION

Please take notice that, pursuant to the Court's Scheduling Order, ECF No. 20, and before the Honorable Yvonne Gonzalez Rogers, of the United States District Court for the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, California 94612, Federal Defendants, Thomas J. Vilsack, *et al.*, will and hereby do move to dismiss this case for improper venue, or in the alternative, move to transfer this civil action to the U.S. District Court for the District of New Mexico or, alternatively, the District of Columbia.

Federal Defendants seek immediate dismissal or transfer because venue is not proper in the Northern District of California. The Northern District of California has no particular interest in this litigation. Plaintiffs seek to halt federal meat inspection services for equine species, including horses, at facilities far removed from this District -- in Roswell, New Mexico, and ostensibly in Sigourney, Iowa.[1] Plaintiffs allege that the Federal Defendants violated the National Environmental Policy Act ("NEPA"), by failing to adequately consider the potential environmental impacts of granting meat inspection services for equine species. But Plaintiffs fail to (and cannot) allege any environmental impacts outside the immediate vicinity of the facilities in New Mexico or Iowa. In addition, Federal Defendants do not reside in the Northern District of California, nor do any of the Plaintiffs with a concrete interest in the dispute. The events or omissions giving rise to Plaintiffs' claims did not and will not occur in this District and, therefore, California has no connection to this case. Dismissal or transfer is in the interest of justice because the District of New Mexico has far greater interests in this litigation. In the alternative, if this Court determines that New Mexico is not the appropriate venue, the case

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[1] The allegations in Plaintiffs' Complaint plainly focus on Federal Defendants' grant of inspection for the Valley Meat Company facility in New Mexico and the alleged environmental impacts in the surrounding Roswell community. *See, e.g.*, ECF No. 1 ¶¶ 14, 52-78, 113, 126, 139-41, 156-59. While Plaintiffs also make more generic allegations about facilities and alleged environmental injuries in Iowa and Missouri, *see, e.g., id.* ¶¶ 7, 20, 27, 45-51, Federal Defendants have not made a grant of inspection for the Missouri facility (and so there is no "final agency action" to challenge as required by the Administrative Procedure Act ("APA"), 5 U.S.C. § 704, *see* ECF No. 1), and Plaintiffs' counsel advised that he was not aware of the July 1, 2013 grant of inspection for the Iowa facility when he filed the Complaint on July 2, 2013, so that the now final agency action in Iowa could not have been challenged in the Complaint.

should be transferred to the District of Columbia because Agency officials residing there helped prepare the decisions that Plaintiffs challenge.

This motion is filed pursuant to Fed. R. Civ. P. 12(b)(3), Civil L.R. 7-2, and 28 U.S.C. §§ 1391(e), 1404(a), and 1406(a). A memorandum in support of this motion is set forth below.

INTRODUCTION

Plaintiffs have filed a case in the Northern District of California alleging that Federal Defendants have violated NEPA by failing to consider the potential environmental impacts of horse slaughter activities that will occur, if at all, only in States where Federal Defendants have granted federal inspections. Federal Defendants have made only two grants of inspection involving equine species, and those grants are for facilities in New Mexico and Iowa. No other grants of inspection for equine species are ripe for judicial review, and thus cannot form the basis for venue. Indeed, there are no applications for grants of inspection pending in the Northern District of California, nor would any such applications be expected, because horse slaughter and the sale of horse meat for human consumption are unlawful in California. Plaintiffs' case has no meaningful nexus to California, and therefore venue in this District is not appropriate.

Plaintiffs include groups with offices in the Northern District of California, and allege that they have members or "supporters" in California. But none of these groups or individuals in California is alleged to have any connection to alleged environmental impacts in New Mexico or Iowa. Instead, Plaintiffs merely allege that they have an interest in horse slaughter because they consider it to be inhumane and ill-advised. But possessing an interest in an issue, no matter how strongly and sincerely felt, does not establish the basis for the requisite "concrete interest" to establish standing or venue in this District. If the case were otherwise, venue rules would be easily circumvented and rendered meaningless, particularly with regards to federal agency actions such as those at issue here that are alleged to have only local environmental impacts. Undoubtedly, Plaintiffs could find groups and members in each and every federal judicial district in the country with strong interests opposing the slaughter of horses in New Mexico or Iowa. Venue, however, cannot rest on such a thin reed.

In short, the Northern District of California is not the proper venue for Plaintiffs' NEPA claims. Therefore, this Court should either dismiss this case without prejudice so that Plaintiffs may file it in a proper venue. Short of dismissal, this Court should transfer venue to the District of New Mexico, which is the focus of Plaintiffs' Complaint, is the location of the alleged environmental impacts that Plaintiffs claim Federal Defendants ignored, where there is intense debate and public interest, and which is home to a lawsuit in which lead Plaintiffs (and their same counsel) have moved to intervene on NEPA grounds to challenge the Valley Meat Company's claims that Federal Defendants should be *ordered* to grant inspections. Although the connections to the District of New Mexico are many and compelling, should this Court determine that the additional grant of inspection in Iowa renders this a "national" case that should not be transferred to New Mexico, then venue should be transferred to the District of Columbia. The District of Columbia is an appropriate venue because the Federal Defendants, including some of the Food Safety and Inspection Service ("FSIS") employees who reviewed and prepared the decisions at issue in this case, reside in the District of Columbia.

STATUTORY AND REGULATORY SCHEME

Congress enacted the Federal Meat Inspection Act ("FMIA"), Act of Mar. 4, 1907, ch. 2907, 34 Stat. 1260, "after Upton Sinclair's muckraking novel *The Jungle* sparked an uproar over conditions in the meatpacking industry. . . ." *Nat'l Meat Ass'n v. Harris*, 132 S. Ct. 965, 968, *vacated* 680 F.3d 1193 (9th Cir. 2012). As amended and codified, 21 U.S.C. § 601 *et seq.*, "FMIA regulates a broad range of activities at slaughterhouses to ensure both the safety of meat and the humane handling of animals." *Harris*, 132 S. Ct. at 968. In its current version, FMIA applies to certain "amenable species," including "cattle, sheep, swine, goats, horses, mules, and other equines." 21 U.S.C. § 601(w) (incorporating Wholesome Meat Act, Pub. L. No. 90-201, § 12(a), 81 Stat. 592 (1967)). FMIA requires any animal within an "amenable species" to be inspected prior to its "be[ing] allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which [it is] to be slaughtered and the meat and meat food products thereof are to be used in commerce. . . ." *Id.* § 603(a). FMIA also requires the remains of any animal within an "amenable species" to be inspected if the remains are to be "prepared at

any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in [the United States] as articles of commerce which are capable of use as human food. . . ." *Id.* § 604. FMIA prohibits the sale or transport "in commerce" of any article involving "any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals" if the article has not been "inspected and passed" in accordance with FMIA. *Id.* § 610(c).

Inspections under FMIA must be conducted by "inspectors appointed for that purpose." 21 U.S.C. §§ 603(a), 604. The Administrator of FSIS, as the delegate of the Secretary of Agriculture, is responsible for "caus[ing]" those inspections to take place. *Id.* §§ 601(a), 603(a), 604; 7 C.F.R. § 2.53(a)(2)(ii). "[E]ach person conducting operations at an establishment subject to [FMIA]" must "make application" to the Administrator before "inspection is granted." 9 C.F.R. § 304.1(a). "The Administrator is authorized to grant inspection upon his determination that the applicant and the establishment are eligible therefor and to refuse to grant inspection at any establishment if he determines that it does not meet the requirements. . . ." *Id.* § 304.2(b). A successful applicant receives a conditional grant of inspection for a period not to exceed 90 days, during which period the establishment must validate a plan for managing food safety. 9 C.F.R. § 304.3(b).

For Fiscal Year 2006 and for certain subsequent fiscal years, Congress prohibited the U.S. Department of Agriculture ("USDA") from using appropriated funds to pay the "salaries or expenses of personnel" to conduct inspections of horses under FMIA prior to their slaughter. *See* Pub. L. No. 109-97, § 794, 119 Stat. 2164 (2005); Pub. L. 110-161, div. A, § 741(1), 121 Stat. 1881 (2007); Pub. L. No. 111-8, div. A, § 739(1), 123 Stat. 559 (2009); Pub. L. No. 111-80, tit. VII, § 744(1), 123 Stat. 2129 (2009). This prohibition was not enacted for Fiscal Years 2012 or 2013. *See* Pub. L. No. 112-55, div. A., tit. VII, 125 Stat. 580 (2011); Pub. L. No. 113-6, 127 Stat. 198 (2013). A bill to restore the prohibition for Fiscal Year 2014 has been introduced in the House of Representatives by the chairman of the subcommittee on appropriations having jurisdiction over USDA. H.R. 2410, 113th Cong. § 749(1) (2013).

FACTUAL BACKGROUND

Valley Meat Company, LLC ("Valley Meat") is a small cattle slaughter and processing facility in Roswell, New Mexico. *See* Decision Memo for the Application of Valley Meat for a Grant of Federal Meat Inspection Services, Exhibit C. Its current owner, Ricardo de los Santos, has conducted federally inspected commercial slaughter of cattle, veal calves, goats, sheep, lambs, and swine at the facility since approximately 1991. *Id*. On March 15, 2013, Valley Meat filed an updated application with FSIS to modify its grant of inspection to receive inspection services for the commercial slaughter of horses, mules, and other equines. *Id*.[2] On June 27, 2013, FSIS approved Valley Meat's application consistent with a categorical exclusion issued pursuant to NEPA. *Id*.[3]

Responsible Transportation, LLC is a facility located in Sigourney, Iowa. *See* Decision Memo for the Application of Responsible Transportation for a Grant of Federal Meat Inspection Services, Exhibit D. The facility was previously used by West Liberty Foods for processing beef products, but is currently closed. *Id*. On December 13, 2012, Responsible Transportation filed an application with FSIS to grant federal meat inspection services for commercial horse slaughter operations. *Id*. FSIS approved Responsible Transportation's application consistent with a categorical exclusion issued pursuant to NEPA. *Id*.

FSIS has received applications to grant federal meat inspection services from four other companies. *See* Declaration of Daniel Engeljohn, Ph.D., Exhibit A ¶ 6. FSIS has not taken final agency action on any of these applications. None of the applications relate to potential

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[2] USDA regulations require that establishments that slaughter equine species be completely separate from establishments that slaughter cattle, sheep, swine, or goats. 9 C.F.R. § 305.2(b).

[3] "Categorical exclusions" ("CEs") are defined as "categor[ies] of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in [NEPA] procedures adopted by a Federal agency. . . ." 40 C.F.R. § 1508.4. CEs are an integral part of the framework for demonstrating compliance with NEPA and are, in fact, required by CEQ's regulations. *See* 40 C.F.R. § 1507.3(b)(2)(ii) (stating that agency NEPA procedures "*shall include* . . . [s]pecific criteria for and identification of those typical classes of action . . . [w]hich normally do not require either an [EIS] or an [EA] (categorical exclusions)") (citing *id*. § 1508.4; emphasis added).

operations in California and, indeed, such activities would be barred under California law, as discussed below.

ARGUMENT

Venue is not proper in the Northern District of California because Federal Defendants' actions are not connected to California. Except as otherwise provided by law, a civil action against an agency of the United States or an officer or employee of the United States acting in his official capacity may be brought "in any judicial district in which (A) a defendant in the action resides, (B) 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, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e). Because venue is not appropriate in this District, the Court should dismiss Plaintiffs' case without prejudice subject to refilling in a proper venue, or the Court should transfer the case to the District of New Mexico, the jurisdiction with the most substantial nexus to Plaintiffs' claims.

I. VENUE DOES NOT LIE IN THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiffs cannot establish that venue is proper in the Northern District of California because Federal Defendants do not reside in this District, the challenged actions occurred outside this District, and this case involves real property in New Mexico and Iowa. In accordance with federal law, then, Plaintiffs' action should be dismissed or transferred to the District of New Mexico or the District of Columbia pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.)".

A. Federal Defendants Do Not Reside in this District

All three Federal Defendants, Tom Vilsack, Secretary of the U.S. Department of Agriculture; Elizabeth A. Hagen, Under Secretary for Food Safety, U.S. Department of Agriculture; and Alfred A. Almanza, Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, reside in Washington, D.C. for venue purposes. The residence of a federal officer is the place where he or she performs his or her official duties. *Reuben H.*

Donnelley Corp. v. Federal Trade Commission, 580 F.2d 264, 266 n.3 (7th Cir. 1978) ("The residence of a federal officer has always been determined by the place where he performs his official duties."); *accord*, *Lamont v. Haig*, 590 F.2d 1124, 1128 (D.C. Cir. 1978). The Secretary, Under Secretary, and Administrator perform their duties in Washington, D.C., where the headquarters of the U.S. Department of Agriculture and its agencies are located. Venue does not lie automatically in every judicial district where a federal agency has an office. *Reuben H. Donnelley*, 580 F.2d at 267 (holding that the 1962 amendments to 28 U.S.C. §1391(e) did not alter the general rule that the federal government resides only in the District of Columbia); *High Sierra Hikers Ass'n v. U.S. Forest Serv.*, No. C 04-03478 SI, 2005 WL 886851, at * 2 (N.D. Cal. April 8, 2005) (rejecting plaintiffs' argument that U.S. Forest Service resides in district solely because it has offices in that district). Thus, the first way for Plaintiffs to establish that venue is proper in this District under Section 1391(e)(1) cannot be met.

B. No Events or Omissions Giving Rise to Plaintiffs' Claims Occurred in this District

Not only do none of the Federal Defendants reside in this District, a "substantial part of the events or omissions giving rise to [plaintiffs'] claims," *see* 28 U.S.C. § 1391(e)(1), occurred in New Mexico or Washington, D.C., and no part of those events or omissions occurred in the Northern District of California. Thus, Plaintiffs cannot establish venue in this Court under this provision either. *See Lamont*, 590 F.2d at 1134 (venue should be ascertained by reference to "events having operative significance in the case, and a commonsense appraisal of the implications of those events for accessibility to witnesses and records"); *Sutain v. Shapiro & Lieberman*, 678 F.2d 115, 117 (9th Cir. 1982) (dismissing for lack of venue where events in district were not substantial); *Davies Precision Machining, Inc. v. Def. Logistics Agency*, 825 F. Supp. 105, 106 (E.D. Pa. 1993) (holding that marginal transactions did not constitute "a substantial part of the events giving rise to the claim").

Plaintiffs' Complaint on its face demonstrates that the allegations primarily concern the grant of an application for horse slaughter inspection in New Mexico,[4] and possibly Iowa.[5] *See, e.g.*, Compl., ECF No. 1, ¶¶ 52-78. The alleged "agency actions" by USDA officials took place outside of the Northern District of California, and the alleged impacts of concern to Plaintiffs would occur, if at all, in New Mexico or Iowa, also far removed from this District. In fact, horse slaughter for human consumption is unlawful in the State of California. Cal. Penal Code § 598c ("[I]t is unlawful for any person to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or having another kill, that horse, if that person knows or should have known that any part of that horse will be used for human consumption."). Similarly it is a misdemeanor to sell horse meat for human consumption in California. Cal. Penal Code § 598d. Thus, no events or omissions giving rise to Plaintiffs' claims have occurred or will occur in this District.

There is a compelling nexus between the allegations in the Complaint and the District of New Mexico and an equally compelling absence of any such connection with the Northern District of California.

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[4] To the extent that Plaintiffs allege a "nationwide program of horse slaughter," Compl., ECF No. 1 ¶ 2, no such new program exists and Plaintiffs have not presented evidence that one exists. Even if Plaintiffs could establish such a national "program," that would counsel for venue in the District of Columbia, not in California where horse slaughter operations may not occur as a matter of state law, as noted below.

[5] To the extent that Plaintiffs challenge grants of application for federal inspections at facilities in Missouri, Oklahoma, and Tennessee, *see* Compl., ECF No. 1 ¶ 7, FSIS has not acted on these applications. Therefore, Plaintiffs' claims are not ripe as to these applications. *See, e.g.*, *Abbot Labs v. Gardner*, 387 U.S. 136, 148-49 (1967) (ripeness doctrine is designed "to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties"); *Winter v. Cal. Med. Review, Inc.*, 900 F.2d 1322, 1325 (9th Cir. 1990) ("[W]here a series of contingent events must occur to produce an injury, a court may find the case inappropriate for judicial resolution."). Thus, Plaintiffs may not rely on these applications as a basis for venue and, of course, none of these applications relate to California.

C. No Plaintiff with Standing Resides In this District, and the Real Property Involved in this Action is Not Located in this District

The final prong under which venue may be established is Section 1391(e)(1), based on plaintiffs' residency and the location of real property involved in the action. The Complaint alleges that Plaintiff Marin Humane Society is a nonprofit organization located in Novato, California, that Plaintiff Horses for Life Foundation is "a Bay Area organization," and that Plaintiff Return to Freedom is a nonprofit organization headquartered in Lompoc, California. Compl. ¶¶ 29, 39, 40. The remaining Plaintiffs allege no direct connection to this District.

For venue purposes, "a corporate plaintiff resides only in the district where it is incorporated." 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3815 (3d ed. 1986); *Reuben H. Donnelly Corp.*, 580 F.2d at 270. In a multi-district state such as California, venue for a corporate plaintiff "lies in the district in the state of incorporation in which the plaintiff's principal place of business is located. . . ." *Van's Supply Equip., Inc. v. Echo, Inc.*, 711 F. Supp. 497, 499-502 (W.D. Wis. 1989). A plaintiff that is an unincorporated association "resides" where it has its principal place of business. *See Flair Res., Ltd. v. Peat Marwick Intern.* 981 F.3d 294, at *4 (D. Or. 1989) ("It is well settled that, for venue purposes, an unincorporated association or partnership 'resides' where the partnership has its principal place of business."); *Federal Practice & Procedure* § 3812 (venue rule for unincorporated associations is "based on an analogy to corporations, and . . . the great weight of authority is that a corporate plaintiff . . . must sue where it is incorporated.").

Notwithstanding that three Plaintiffs may reside in this district for venue purposes, venue is still not proper in the Northern District because Plaintiffs' residence could establish venue under 28 U.S.C. § 1391(e) only if "no real property is involved in the action." *See, e.g.*, *Immigrant Assistance Project v. INS*, 306 F.3d 842, 868 (9th Cir. 2002). The facts alleged in the Complaint demonstrate that this prong cannot be met because real property is clearly involved in the action. That real property in question – the Valley Meat facility – lies exclusively within the District of New Mexico. Exhibit C. Similarly, the other facilities for which applications have

been filed lie outside the Northern District. *See* Engeljohn Decl. at ¶ 6. Under these circumstances, dismissal of the Complaint for lack of venue is warranted.

Because the requirements of Section 1391(e)(1) are not met, Plaintiffs must establish that a plaintiff with standing resides in this District. *See* 28 U.S.C. § 1391(e)(1). Plaintiffs have not shown that the three plaintiffs that reside in this district, Marin Humane Society ("MHS"), Horses for Life Foundation ("HLF") and Return to Freedom ("RTF"), *see* Compl. ¶¶ 29, 39, 40, have standing to challenge FSIS's decisions relating to New Mexico or Iowa. It is Plaintiffs' burden to demonstrate standing at the time they bring suit and at all stages of the litigation. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109 (1998). Venue in this District is not proper because Plaintiffs MHS, HLF and RTF cannot establish standing and have no cognizable interest in the federal agency actions challenged in the Complaint. *See Inst. for Certified Practitioners, Inc. v. Bentsen*, 874 F. Supp. 1370, 1372 (N.D. Ga. 1994) (dismissing case for improper venue because the plaintiff that resided in the district lacked standing and venue was improper as to the remaining plaintiff); *cf. Immigrant Assistance Proj.*, 306 F.3d at 867 n. 20 (recognizing that the standing of one plaintiff was "important because it is the only plaintiff . . . who is a resident of Washington and on whom, therefore, venue in the Western District of Washington could be based").

To establish Article III standing, a plaintiff must show that: (1) "he is under threat of suffering 'injury in fact'" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the Defendants' challenged action; and (3) that it is likely, as opposed to merely speculative, that a favorable judicial decision will prevent or redress the injury. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). In order to demonstrate a cognizable injury in the context of a procedural challenge under NEPA, Plaintiffs must demonstrate that: (1) FSIS violated certain procedural rules; (2) these rules protect Plaintiffs' concrete interests; and (3) it is reasonably probably that the challenged action will threaten their concrete interests. *Ctr for Food Safety v. Vilsack*, 636 F.3d 1166, 1171 (9th Cir. 2011).

Plaintiffs MHS, HLF, and RTF[6] have not established that it is reasonably probable that their concrete interests will be affected by FSIS's actions, which involve activities with potential environmental impacts affecting areas wholly outside of California.[7] Plaintiff MHS alleges that, as a result of FSIS's decision, its members' interest in "observing, photographing, studying and otherwise appreciating companion horses" are "injured by Defendants' decision to grant inspection to any horse slaughter plant ," Compl. ¶ 35, and Plaintiffs RTF and HLF do not allege any injury to their members' interests as a result of FSIS's decision. *See id.* ¶¶ 39-44. Such broad allegations, without any specific factual support, do not establish that a concrete injury is reasonably probable as a result of the challenged agency action. *Summers* , 555 U.S. at 496 ("[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation – a procedural right *in vacuo* – is insufficient to create Article III standing."). Accordingly, Plaintiffs cannot rely on MHS, HLF and RTF's residence as the sole basis for establishing venue under Section 1391(e)(3).

Because Plaintiffs have not demonstrated that venue is proper in the Northern District of California, the Court should dismiss the case for improper venue or at least transfer this matter to the District of New Mexico where it properly resides, as discussed below.[8]

II. THE COURT SHOULD TRANSFER VENUE BECAUSE THE FACTORS WEIGH HEAVILY IN FAVOR OF VENUE IN NEW MEXICO OR, TO A LESSER DEGREE, IN WASHINGTON, D.C.

The Court should transfer venue because the factors strongly support transferring venue to the District of New Mexico or, if the Court concludes that New Mexico is not the most

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[6] In this motion, Federal Defendants are challenging the standing of only Plaintiffs MHS, HLF and RTF. Federal Defendants do not concede that the remaining Plaintiffs have demonstrated Article III standing, and reserve the right to challenge the remaining Plaintiffs' standing in a future motion.

[7] To the extent Plaintiffs allege that they have members or "supporters" in California, Plaintiffs fail to allege any injuries resulting from FSIS's actions that may occur in California.

[8] The Court need not address the standing issue before deciding to transfer the case. *Cf. Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429-31 (2009) (finding that a court has the discretion to dismiss a case on the grounds of *forum non conveniens* before deciding whether it has jurisdiction); *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466-67 (1962).

appropriate venue, to the District of Columbia. The Court has the authority under 28 U.S.C. § 1404(a) to transfer this case to the District of New Mexico or the District of Columbia. 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. . . ." The purpose of Section 1404(a) is to "prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal citations and quotation marks omitted). Section 1404 was designed exactly for a case like this one. This Court has broad discretion under 28 U.S.C. § 1404(a) to transfer claims to another judicial district. *Inherent.com v. Martindale-Hubbel*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006). This Court should exercise that discretion and grant Federal Defendants' motion.

Courts employ a two-step analysis when determining whether to transfer an action pursuant to Section 1404(a). First, a court considers whether the action could have originally been brought in those districts to which the transfer is sought. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir 1985); *Inherent.com*, 420 F. Supp. 2d at 1098. Second, a court undertakes "an individualized, case-by-case consideration of convenience and fairness," taking into account the convenience of the parties and the interest of justice. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (citation omitted) (internal quotations omitted). That two-step process demonstrates that transfer is warranted here.

A. Plaintiffs Could Have Filed this Action in the District of New Mexico or the District of Columbia

Before transferring a case pursuant to Section 1404(a), the Court must determine whether the action could have been brought in the transferee district. *See Van Dusen*, 376 U.S. at 616-24. The transferee district must have jurisdiction over the case, and venue must be proper there. *See Hoffman v. Blaski*, 363 U.S. 335, 343-44 (1960). Here, Plaintiffs assert that jurisdiction is proper under several statutes, including federal question jurisdiction pursuant to 28 U.S.C. § 1331. *See* Compl. ¶ 11. If federal question jurisdiction is proper in this District, the District of New Mexico and the District of Columbia would also have such jurisdiction. The District of New

Mexico is the proper venue for this case because the Roswell facility is located there and it is the location of all of the environmental impacts that Plaintiffs allege will occur as a result of Federal Defendants' grant of inspection for the Valley Meat facility. *See* Ex. C. If the Court determines that New Mexico is not the appropriate venue, venue would be proper in the District of Columbia because the Federal Defendants reside in Washington, D.C. *See* 28 U.S.C. § 1391(e)(1).

B. Both the Interests of Justice and the Convenience of the Parties Will Be Served By Transferring This Action to the District of New Mexico

Because this action could have been brought in the District of New Mexico, the Court should balance case-specific considerations of the convenience of the parties and the interest of justice in determining whether to transfer the case. *See Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). Of these two statutory factors — convenience and the interests of justice — courts generally place greater weight on the interests of justice. "The 'interest of justice' consideration is the most important factor a court must consider, and may be decisive in a transfer motion even when all other factors point the other way." *Gerin v. Aegon USA, Inc.*, No. C06-5407 SBA, 2007 WL 1033472, *6 (N.D. Cal., Apr. 4, 2007) (internal citations omitted); *see also* 15 Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, et al., *Federal Practice & Procedure* § 3854 (3d ed. 2008) ("[A] number of federal courts have considered this factor decisive—outweighing the other statutory factors . . . .").

1. The Interests of Justice Will Be Best Served By Transferring This Action

In the Ninth Circuit, the "interest of justice" factor requires the consideration of several *public* interests, such as (1) the local interest in the controversy; (2) administrative difficulties flowing from court congestion; and (3) the interest in having a case heard in the state that is most familiar with the governing law. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986); *Jones*, 211 F.3d at 498-99. A court should also consider whether transfer will promote judicial economy and ensure consistency among court rulings that affect the development of the case. *See Continental Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 26 (1960); *Arete Power, Inc. v. Beacon Power Corp.*, No. C 07-5167 WDB, 2008 WL 508477, at *9

(N.D. Cal. Feb. 22, 2008); *Jones*, 211 F.3d at 498. *See also Nat'l Computer Ltd. v. Tower Indus., Inc.*, 708 F. Supp. 281, 281 (N.D. Cal. 1989) (transferring case to Central District of California because the dispute does not involve a controversy of particular interest to the Northern District); *Ctr. for Food Safety v. Vilsack*, No. 11-00831, 2011 WL 996343, at *10 (N.D. Cal. Mar. 17, 2011) (transferring case to D.C. to better serve the efficient administration of justice); *Bell v. U.S. Forest Serv.*, 385 F. Supp. 1135, 1137-38 (N.D. Cal. 1974).

a. The Local Interests in the Case Strongly Favor Transfer to the District of New Mexico

In matters of environmental law and land use decisions such as those involved here, disputes "should be resolved in the forum where the people 'whose rights and interests are in fact most vitally affected by the suit . . . .'" *Trout Unlimited v. U.S. Dep't of Agric*., 944 F. Supp. 13, 20 (D.D.C. 1996). As the Supreme Court has stated: "In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. *There is a local interest in having localized controversies decided at home.*" *Gulf Oil Corp.*, 330 U.S. at 509 (emphasis added). *See also S. Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) ("Land is a localized interest because its management directly touches local citizens.").

The local interest in having decisions heard in the jurisdiction where the facility is located and operations will occur is a significant element in deciding whether the interest of justice favors transfer. *See Ctr. for Biological Diversity v. Kempthorne*, No. 07-0894, 2007 WL 2023515, at *6 (N.D. Cal. July 12, 2007) (transferring case to Alaska because the challenged decision authorizing "incidental take" of polar bears and Pacific walrus as part of industrial oil and gas activities in Alaska was one in which Alaska and its residents have a "great interest"). *See also Chrysler Capital Corp. v. Woehling*, 663 F. Supp. 478, 483 (D. Del. 1987); *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 71 (D.D.C. 2003) (granting motion to transfer suit involving Florida Everglades in part because of the "depth and extent of Florida's interest").

First and foremost, this case involves the grant for meat inspections at Valley Meat Company in Roswell, New Mexico. Compl. ¶ 7; Ex. C. Valley Meat's owners and employees

reside there. Ex. C. The Governor and Attorney General of New Mexico, as well as members of Congress representing New Mexico, have all articulated great interest in the company and its activities. *See* Ex. E (letters from New Mexico government officials to USDA regarding the Valley Meat facility). Citizens of the State of New Mexico have also expressed interest in the challenged activities, as evidence by newspaper articles. *Id*.[9]

Moreover, the allegations in Plaintiffs' Complaint make clear that the District of New Mexico has more ties to the dispute. For example, Plaintiff Krystle Smith, a resident of New Mexico, states that she travels by the Roswell Livestock Auction Barn, viewing horses for transport to Valley Meat, allegedly causing her injury. *Id*. ¶ 56. Plaintiff Ramona Cordova, a resident of New Mexico, alleges that "the byproducts of Valley Meat's horse slaughter will pollute the surrounding area." *Id*. ¶ 62. *See also id*. ¶¶ 53, 65-67 (similar allegations from Plaintiffs Smith and Deborah Trahan). Plaintiff Cassie Gross alleges that if Valley Meat begins operations, "tourism will significantly drop, and funding for public schools . . . will be reduced . . . [and] merchants will also lose significant income. . . ." *Id*. ¶¶ 72-73. The declarations filed in support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction also make clear that the alleged environmental effects from FSIS's decisions will be felt, if at all, in New Mexico. *See* ECF No. 13, Ex.20 at ¶¶ 7-17 (alleging worries about discharges in local waterways and travel past livestock auction facility in Roswell, New Mexico); Ex. 21 at ¶¶ 7-12 (alleging concern about pollution in the Roswell area); Ex. 22 at ¶¶ 6-21 (alleging concerns for tourism industry in Roswell); Ex. 23 at ¶¶ 7-11 (alleging concerns about pollution in Roswell rivers and streams).

In addition to the numerous declarations that Plaintiffs filed in support of their motion for preliminary injunction asserting impacts to the local community in New Mexico, Plaintiffs also

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[9] *See also Chemically Tainted Horse Meat Unfit for Human Consumption*, http://www.koat.com/news/new-mexico/albuquerque/chemically-tainted-horse-meat-unfit-for-consumption/-/9153728/20500588/-/4mxb0az/-/index.html#ixzz2VqRrGcHp (last visited July 8, 2013); *Horse Slaughter in New Mexico Blocked by State Attorney General*, http://www.examiner.com/article/horse-slaughter-new-mexico-blocked-by-state-attorney-general (last visited July 8, 2013).

claim that the grant of inspection to Valley Meat will harm "threatened and endangered species in the area" in the "proximity" of the Valley Meat facility. Compl. ¶¶ 154-60. *See also id.* ¶ 81 (alleging that "Plaintiffs injuries will be redressed if the Plaintiffs prevail in this action, because when the grant of inspection is set aside, the horse slaughter plant will be prohibited from operating and causing harmful environmental effects *in local communities* unless proper precautions have been taken.") (emphasis added).

Plaintiffs further allege that Federal Defendants violated NEPA by failing to consider the potential for Valley Meat operations to violate local and State law. *See, e.g.*, Compl. ¶ 125 ("Approval of horse slaughter inspections threatens a violation of Federal, State, and local environmental laws, because past horse slaughter facilities repeatedly and brazenly violated local laws pertaining to waste management and air and water quality, costing host communities large sums of money to seek compliance and remedy environmental harms, and because of the special dangers inherent in horse meat."); *see also, e.g., id.* ¶ (alleging that Plaintiff FRER "has been instrumental in bring to light Valley Meat's numerous, blatant violations of New Mexico environmental law" and getting the New Mexico Environment Department to take action). Plaintiffs' arguments in support of their motion for preliminary injunction rely on these alleged "repeated" violations of State and local laws. *See* ECF No. 16-1 at 6-7, 20-21 (citing exhibits 14-16). As noted above, "the interest in having a case heard in the state that is most familiar with the governing law" is an important factor in determining whether the interest of justice supports a transfer of venue. *See Decker Coal Co*, 805 F.2d at 843. The New Mexico Environment Department and the New Mexico Attorney General, as well as other State and local officials based on Plaintiffs' own allegations, have substantial interests in having Plaintiffs' case heard in the District of New Mexico. The District of New Mexico has substantial ties to and a more particularized interest in the dispute.

In sum, the residents and officials of the District of New Mexico have a "compelling interest . . . in having this localized controversy decided at home." *Trout Unlimited*, 944 F. Supp. at 19; *see also Ctr. for Biological Diversity v. Rural Utils. Serv.*, No. C-08-1240, 2008 WL 2622868, *1 (N.D. Cal. June 27, 2008) (transferring case to Kentucky because public interest

and localized controversy favored transfer); *United States ex rel. Swan v. Covenant Care, Inc.*, No. 97-3814, 1999 WL 760610 at *4 (N.D. Cal. Sept. 21, 1999) (transferring case to Eastern District of California because all the events giving rise to suit occurred in Eastern District); *Garcia v. Allstate Ins. Co.*, No. 96-2434, 1996 WL 601689 at *1 (N.D. Cal. Oct. 9, 1996) (same). Therefore, the interests of justice strongly support transferring venue to the District of New Mexico.

Alternatively, if this Court determines that New Mexico is not the most appropriate venue for Plaintiffs' action, the District of Columbia has an interest in the decision because the Federal Defendants reside there and some portions of the administrative process occurred there. *See Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 13-14 (D.D.C. 2000) (maintaining case in District of Columbia because of involvement in agency decision by Secretary of the Interior and other Washington-based officials); *see also Greater Yellowstone Coal. v. Kempthorne*, Nos. 07-2111 & 07-2112, 2008 WL 1862298, *7 (D.D.C. Apr. 24, 2008) (same). Secretary Vilsack, Under Secretary Hagen, and Administrator Almanza reside in Washington, D.C. and agency officials in Washington, D.C. helped prepare the decisions that Plaintiffs challenge. *See* Engeljohn Decl. ¶ 3 ("My primary responsibility is to write all regulations governing the strategic risk management activities of the agency, as well as the instructions for implementing those regulations . . . ."); ¶ 4 ("My primary responsibility is to provide executive management of the agency's inspection programs . . . .").

The Northern District of California will not be affected by the Federal Defendants' actions. No USDA employees located in California were involved in any of the challenged decisions. Engeljohn Decl. ¶ 8. FSIS has not received—and does not expect to receive—any applications for inspection of commercial horse slaughter facilities from any facilities in California. *Id.* ¶ 7. As discussed above, horse slaughter for human consumption is a felony in California, and it is a misdemeanor to sell horse meat for human consumption in California. Cal. Penal Code § 598c; § 598d. These facts support transfer of venue to New Mexico or the District of Columbia, which are more closely connected to the decision. *See, e.g., Wilderness Soc'y*, 104 F. Supp. 2d at 13-14; *Flowers*, 276 F. Supp. 2d at 67-68, 70-71 (transferring case with NEPA

claim to Florida where entire ecosystem was located). Accordingly, the local interests and the location of the facilities strongly favor transfer.

b. Judicial Economy Favors Transfer

The interest in promoting judicial economy also supports transfer to the District of New Mexico. On October 19, 2012, Valley Meat filed a lawsuit in the District of New Mexico challenging USDA's alleged failure to act on Valley Meat's application for a Grant of Inspection as arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706. *Valley Meat Co., LLC v. Vilsack, et al.*, No. 12-01083 (D.N.M.) (attached hereto as Exhibit F). Lead Plaintiffs Front Range Equine Rescue and the Humane Society of the United States have moved to intervene in the New Mexico case, arguing that the District of New Mexico court should not grant Valley Meat's requested relief because such an order without Federal Defendants having undertaken "careful review under NEPA" would allegedly be contrary to federal law.[10] *Id*. at ECF No. 11, ECF No. 11-1 at 8 (attached hereto as Exhibits F and H, respectively). If the instant case is permitted to proceed in this District, two separate suits involving the same agency action may require the attention of two courts, based on the same NEPA argument. Such duplicative lawsuits unnecessarily waste limited judicial resources and create the risk of inconsistent rulings. *Continental Grain Co.*, 364 U.S. at 26 ("To permit a situation in which two cases involving . . . the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent.").

Here, Plaintiffs' Complaint requests that the Court to set aside FSIS's decision to grant inspections for horse slaughter plants, including the Valley Meat facility. Compl. at 36, ¶ 3. If the Court ultimately finds for Plaintiffs, FSIS's grant of inspection may be set aside and Valley Meat will be required to cease operations. In the New Mexico case, Valley Meat's complaint requests that the New Mexico court compel FSIS to issue a grant of inspection for equine slaughter to Valley Meat. *Valley Meat*, No. 12-01083-JCH-CG, ECF No. 1 at 7 (D.N.M.). Because the grant of inspection for Valley Meat has been granted, Federal Defendants have

[10] Plaintiffs failed to notify the Court of this potentially related case in accordance with Civ. Local R. 3-12.

moved to dismiss Valley Meat's claim as moot, but Valley Meat opposes that motion. Thus, there exists the possibility at this juncture, that FSIS could be ordered in one case to issue (or leave in place) a grant of inspection and, in this case, to revoke the same grant of inspection. Therefore, judicial economy also favors transfer to the District of New Mexico.

Additionally, the factor requiring consideration of administrative difficulties arising from court congestion also supports transfer. *Sierra Club v. U.S. Def. Energy Support Ctr.*, No. 10-02673 JSW, 2011 WL 89644, at * 3 (N.D. Cal. Jan. 11, 2011) (determining that this factor favored transfer from the Northern District of California to the Eastern District of Virginia). Judges in this district carry a significantly heavier caseload than district judges in the District of New Mexico or the District of Columbia. Specifically, as of December 2012, each district judge in the Northern District of California had 519 pending cases, while each judge in the District of New Mexico had 378 and the District of Columbia had 227. *See* Federal Court Management Statistics, available at: http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics.aspx (last visited July 8, 2013). Thus, transfer would reduce the caseload of this district.

In sum, these public interest factors strongly support transfer to the District of New Mexico or, alternatively, the District of Columbia.

2. The Convenience of the Parties Favors Transfer

The convenience of the parties favors transfer because Federal Defendants involved in the agency action reside near there, and many Plaintiffs also reside there. The "convenience" factor in Section 1404(a) generally requires a court to consider a number of private interests when evaluating transfer of venue, including: (1) the relative ease of access to sources of proof; (2) the cost of obtaining witnesses; (3) the availability of compulsory process for attendance of the unwilling; (4) the possibility of view of premises, if view would be appropriate to the action; and (5) "all other practical problems that make trial of a case easy, expeditious and inexpensive." *Decker*, 805 F.2d at 843 (quoting *Gulf Oil Corp.*, 330 U.S. at 508) (internal quotations omitted).

The convenience of the parties and the witnesses generally plays a less significant role in an Administrative Procedure Act case because the decision will be based on the Court's review

of the Administrative Record. *See Ctr. for Biological Diversity v. Lubchenco*, No. 09-4087, 2009 WL 4545169 at *3 (N.D. Cal. Nov. 30, 2009) (noting that the convenience of parties and witnesses and access to evidence is irrelevant to a motion to transfer an administrative review environmental case); *see also Pac. Coast Fed'n of Fishermen's Ass'ns v. U.S. Dep't of the Interior*, No. 12-2158, 2012 WL 3236163, *5 (N.D. Cal Aug. 6, 2012) (same). However, in the unlikely event that limited discovery is required, these factors would favor transfer to the District of New Mexico because Valley Meat, its owners, and employees reside there. *See* Ex. C. Some of the Agency officials who prepared the decision reside near there. *Id.* The District of New Mexico will also be an equally convenient forum for Plaintiffs, as Plaintiffs Krystle Smith, Ramona Cordova, Deborah Trahan, and Cassie Gross all reside in Roswell, New Mexico. Compl. ¶¶ 52, 59, 64, 70. These Plaintiffs have submitted declarations in support of Plaintiffs' motion for preliminary injunction, and their live testimony may be required at any hearing on that motion.

Alternatively, these factors favor transfer to the District of Columbia because the named defendants and the agency officials who participated in the decision live in or near Washington, D.C. *See Sierra Club v. U.S. Def. Energy Support*, No. C 10-02673, 2011 WL 89644, at *2 (N.D. Cal. Jan. 11, 2011) (transferring case because, in the event that discovery were required, sources of proof would be located in transferee district); *Nat'l Computer Ltd. v. Tower Indus., Inc.*, 708 F. Supp. 281, 281 (N.D. Cal. 1989) (transferring case to Central District of California for convenience of the parties); *Swan*, 1999 WL 760610 at *1 (transferring case to Eastern District of California for convenience of the witnesses and parties); *Garcia*, No. 96-2434, 1996 WL 601689 at *4 (same). The District of Columbia is also convenient for Plaintiffs as the headquarters of Plaintiff Humane Society of the United States is located in Washington, D.C. Compl. ¶ 21. Several other Plaintiffs are located throughout the country (Plaintiff Front Range Equine Rescue is based in Colorado, *id.* ¶ 12; Plaintiff Barbara Sink resides in Gallatin, Missouri, *id.* ¶ 45).

Accordingly, the District of New Mexico is, on the whole, is the most convenient forum for the parties and witnesses. Alternatively, the District of Columbia is also a more convenient,

or no less convenient, forum for the parties than the Northern District of California. Therefore, the Court should transfer the case to the District of New Mexico or, alternatively, the District of Columbia.

C. Plaintiffs' Choice of Forum Is Entitled to Minimal Consideration

The final factor in determining whether transfer is appropriate is evaluating the choice of forum. As with all the other factors here, it too supports transfer of venue. Although courts generally give deference to a plaintiff's choice of forum, "[i]f the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or the subject matter, the plaintiff's choice is entitled only to minimal consideration." *See Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968); *Sierra* Club, 2011 WL 89644, at *2 (transferring case and noting that "Plaintiff's choice of forum is given little weight because Defendant has shown that the underlying action is not connected to the Northern District of California" and transferee court had a particularized interest in the litigation because named defendants and agency officials resided there). *See also Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) (where "operative facts have not occurred" in plaintiff's chosen forum, plaintiff's choice is "entitled only to minimal deference"); *Florens Container v. Cho Yang Shippin*g, 245 F. Supp. 2d 1086, 1092 (N.D. Cal. 2002). Indeed, if the plaintiffs' choice of forum is a result of forum shopping, it may be entirely disregarded. *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 628 (9th Cir. 1991). *See also Wireless Consumers Alliance, Inc. v. T-Mobile USA, Inc.*, No. C 03-3711 MHP, 2003 WL 22387598, at *5 (N.D. Cal. Oct. 14, 2003) (Section 1404 intended to "remedy the evils of forum shopping" by giving little or no weight to a plaintiff's choice of venue when it lacks sufficient ties to the controversy).

In this case, Plaintiffs' choice of forum has no meaningful ties to the controversy and should not be afforded deference. *See Sierra Club v. U.S. Dep't of State*, No. C 09-4086 SI, 2009 WL 3112102, at *3 (N.D. Cal. Sept. 23, 2009) (transferring case and stating that "[n]one of the operative facts occurred in this district, and . . . this district has little interest in the parties or subject matter, other than the single plaintiff (Sierra Club) whose headquarters are located in San Francisco."); *Nat'l Computer Ltd v. Tower Indus., Inc.*, 708 F. Supp. 281 (N.D. Cal. 1989)

(transferring case to Central District of California because dispute does not involve a controversy of particular interest to the Northern District). As discussed above, horse slaughter for human consumption is illegal in the State of California, Cal. Penal Code § 598c, and it is a misdemeanor to sell horse meat for human consumption in California, *id*. at § 598d. Thus, no events or omissions giving rise to the claims in this case occurred in this District, nor could they occur in this District in the future. Accordingly, because none of the operative facts giving rise to Plaintiffs' claims occurred in this district, Plaintiffs' choice of forum is entitled to no weight.

CONCLUSION

The Court should dismiss the case because venue does not lie in this District. Federal Defendants do not reside in this district, no events or omissions giving rise to Plaintiffs' claims occurred in this District, and the only Plaintiffs that reside in this District lack Article III standing. In the alternative, in the interests of justice, judicial economy, and the convenience of the parties, the Court should transfer this case to the United States District Court for the District of New Mexico or, alternatively, the District of Columbia.

If this Court grants Federal Defendants' motion to transfer, the Court should not entertain Plaintiffs' request for emergency injunctive relief. Emergency injunctive relief is not warranted or justified in this Court because it was Plaintiffs' choice to file their claims in an improper venue, when they could have filed their same requests for emergency injunctive relief in a proper venue and given the court in that venue the same amount of time this Court would have had to consider Plaintiffs' motion as a motion for a preliminary injunction. Federal Defendants (and Valley Meat) should not be penalized for Plaintiffs' plainly improper choice of venue. In any event, as will be demonstrated in Federal Defendants' upcoming response papers, Plaintiffs misconstrue Federal Defendants' NEPA obligations and also fail to demonstrate that any irreparable harm would occur during the pendency of this litigation, let alone during the term of a temporary restraining order.

Respectfully submitted, July 8, 2013.

ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

/s/Alison D. Garner

ANDREW A. SMITH (NM Bar 8341)
Senior Trial Attorney
c/o United States Attorneys Office
201 Third Street, N.W., Suite 900
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
Andrew.Smith@usdoj.gov

ALISON D. GARNER (DC Bar 983858)
Trial Attorney
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-2855
Facsimile: (202) 305-0506
Alison.Garner@usdoj.gov

Attorneys for Federal Defendants