

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

NATIONAL WILDLIFE REFUGE ASSOCIATION,)
DRIFTLESS AREA LAND CONSERVANCY, and)
WISCONSIN WILDLIFE FEDERATION)

Plaintiffs,)

v.)

No. 24-cv-00139

RURAL UTILITIES SERVICE, ANDY BERKE,)
Administrator, Rural Utilities Service, UNITED)
STATES FISH AND WILDLIFE SERVICE, WILL)
MEEKS, Midwest Regional Director, and SABRINA)
CHANDLER, Manager, Upper Mississippi River)
National Wildlife and Fish Refuge, UNITED STATES)
ARMY CORPS OF ENGINEERS, LIEUTENANT)
GENERAL SCOTT A. SPELLMON, Chief of)
Engineers and Commanding General, U.S. Army Corps)
of Engineers, COLONEL STEVEN SATTINGER,)
Commander and District Engineer, Rock Island)
District, U.S. Army Corps of Engineers, and)
COLONEL KARL JANSEN, Commander and District)
Engineer, St. Paul District, U.S. Army Corps of)
Engineers,)

Defendants,)

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65(b), Plaintiffs National Wildlife Refuge Association, Driftless Area Land Conservancy and Wisconsin Wildlife Federation hereby move for a temporary restraining order (“TRO”) to preserve the status quo and prevent Defendant United States Fish & Wildlife Service (“USFWS”) from closing its land exchange agreement with transmission line developers for at least 14 days. Plaintiffs have filed a Complaint challenging the legality of the Defendant USFWS’s February 23, 2024 final decisions approving the land exchange, the agency’s net benefits analysis, and the agency’s Finding of No Significant Environmental Impact from the proposed huge Cardinal-Hickory Creek transmission line running through and crossing the Upper Mississippi River National Wildlife and Fish Refuge. Plaintiffs’ lawsuit also challenges other final agency actions by the Federal Defendants USFWS, Rural Utilities Service and U.S. Army Corps of Engineers.

Plaintiffs request a hearing on this TRO motion at the earliest possible time that is available for the Court. The Transmission Companies (American Transmission Company, ITC Midwest and Dairyland Power Cooperative) have created exactly the “orchestrated trainwreck” that this Court warned against in its Opinion and Order, dated January 14, 2022, in *National Wildlife Refuge Ass’n v. Rural Utilities Serv.*, 580 F.Supp.3d 588, 600-01 (W.D. Wis. 2022).

Defendant USFWS states that it plans to close the land exchange by early the week of March 11, 2024, or, at the latest, by March 22, 2024. On information and belief, the Transmission Companies have assembled heavy equipment at the edge of the protected Refuge and are prepared to imminently commence construction of the CHC high-voltage transmission line and up to 200-foot high towers through and across what has long been the protected Upper Mississippi River National Wildlife and Fish Refuge lands and waters.

Counsel for the Transmission Companies has advised counsel for the Plaintiffs that they will not commence bulldozing and construction for the high-voltage transmission line through and across the lands and waters of the Upper Mississippi River National Wildlife Refuge, as it was established by Congress in 1924, unless and until the land exchange closes.

In order to preserve the status quo and allow the Court to adjudicate the merits of Plaintiffs' claims, this Court should set a schedule allowing for a hearing and a reasonable briefing schedule with sufficient time for the Court to issue its decision on preliminarily enjoining the Defendant USFWS from acting on its plans to imminently close the land exchange.

Issuance of the TRO will preserve the status quo and prevent irreparable harm to Plaintiffs, and will enable the Court to set briefing schedules and ensure an orderly process for judicial review and adjudication of the substantive merits of Plaintiffs' lawsuit.

Plaintiffs are simultaneously filing the attached Plaintiffs' Memorandum in Support of their Motion for a Temporary Restraining Order. Counsel for the Federal Defendants and counsel for the Transmission Companies have been notified of this TRO motion, and this motion and supporting memorandum have been served on them by email.

WHEREFORE, Plaintiffs respectfully request that the Court: (1) immediately enter a TRO stopping the Defendant USFWS from taking any action to close its land exchange agreement in order to maintain the status quo; (2) set a hearing at the earliest possible time that is available for the Court; and (3) set a reasonable briefing schedule with sufficient time for the Court to conduct meaningful judicial review and issue its decision on the merits of Plaintiffs' lawsuit and whether to preliminarily enjoin the Defendant USFWS from acting on its plans to imminently close the land exchange.

Respectfully submitted this 6th day of March.

/s/ Howard A. Learner

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Wisconsin by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. In addition, I will email this document to all participants in the case.

DATED: March 6, 2024

SIGNED: /s/ Howard A. Learner

Howard A. Learner

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