

No. 24-1492

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

National Wildlife Refuge Association, et al.,

Plaintiff-Appellees,

v.

ITC Midwest LLC, et al.,

Intervenor-Defendants-Appellees.

**On Appeal from the United States District Court
for the Western District of Wisconsin
The Honorable William M. Conley, Judge
Case Nos. 24-cv-00139-wmc**

**EMERGENCY MOTION TO STAY COURT'S ORDER GRANTING A STAY
OF THE PRELIMINARY INJUNCTION**

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Plaintiff-Appellees National Wildlife Refuge Association, Driftless Area Land Conservancy, and Wisconsin Wildlife Federation hereby move for a stay of this Court's Order (Doc. 27) staying the effectiveness of the district court's preliminary injunction while Plaintiffs concurrently move in the district court for a temporary restraining order and preliminary injunction to enjoin the closing of the land exchange agreement and any construction in the federally protected Upper Mississippi River National Wildlife and Fish Refuge. In accordance with Fed. R. App. P. 8(a)(2)(A), Plaintiff-Appellees move first in this Court because moving before the district court first would be impracticable, as explained below.

Intervenor-Appellants have stated their intention to begin construction in the Refuge as soon as possible. *See* Dist. Ct. Doc. 72 at 1 ("A stay would allow the Utilities to consummate the land exchange . . . and build the last portion of the Cardinal-Hickory Project Work to complete the Project could proceed while the parties brief summary judgment motions and any further appeals."). Time is of the essence. Plaintiff-Appellees have briefed the issues identified by this Court, namely whether the agency's action is legally forbidden and how the Court should consider of 42 U.S.C. Section 4370m-6(b)(1) & (2) (the "Fast Act"). Plaintiffs will move today in the district court for a renewed motion for temporary restraining order and preliminary injunction. The district court should be afforded an opportunity to address this Court's decision prior to any

land exchange closing and construction begins which would cause irreparable harm to Plaintiffs and the federally protected Refuge.

Dated: May 2, 2024

Respectfully submitted,

/s/ Howard A. Learner

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CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally-spaced typeface using Microsoft Word in 13-point Book Antiqua.

DATED: May 2, 2024

SIGNED: *s/Howard A. Learner*
Howard A. Learner
Daniel Abrams
Attorneys for Plaintiff-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit 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.

DATED: May 2, 2024

SIGNED: *s/ Howard A. Learner*
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