

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 17, 2019

Elisabeth A. Shumaker
Clerk of Court

BOARD OF COUNTY
COMMISSIONERS OF BOULDER
COUNTY; BOARD OF COUNTY
COMMISSIONERS OF SAN MIGUEL
COUNTY; CITY OF BOULDER,

Plaintiffs - Appellees,

v.

SUNCOR ENERGY (U.S.A.), INC.;
SUNCOR ENERGY SALES INC.;
SUNCOR ENERGY INC.; EXXON
MOBIL CORPORATION,

Defendants - Appellants.

No. 19-1330
(D.C. No. 1:18-CV-01672-WJM-SKC)
(D. Colo.)

ORDER

Before **LUCERO** and **McHUGH**, Circuit Judges.

Appellants request an emergency stay of the district court’s remand order pending this court’s determination of their appeal. In deciding whether to grant a stay pending appeal, this court considers, “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks omitted). The decision

whether to grant a stay involves “an exercise of judicial discretion,” *id.* at 433 (internal quotation marks omitted), and “[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion,” *id.* at 433-34.

Upon consideration, we conclude that Appellants have not made the necessary showing to warrant entry of a stay pending appeal. Accordingly, the motion for stay is denied. The deadline for Appellees to file a response to the motion is vacated, and Appellants’ motion for clarification is denied as moot.

Entered for the Court

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk