

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL WILDLIFE REFUGE ASSOCIATION,
et al.,

Plaintiffs,

v.

Case No. 3:21-cv-00096-wmc
(lead)

RURAL UTILITIES SERVICE, et al.,

Federal Defendants,

AMERICAN TRANSMISSION COMPANY, LLC,
et al.,

Intervenor-Defendants.

NATIONAL WILDLIFE REFUGE ASSOCIATION,
et al.,

Plaintiffs,

v.

Case No. 3:21-cv-00306-wmc
(consol.)

ARMY CORPS OF ENGINEERS, et al.,

Defendants,

AMERICAN TRANSMISSION COMPANY, LLC,
et al.,

Intervenor-Defendants.

**FEDERAL DEFENDANTS' JOINDER IN INTERVENOR-DEFENDANTS' EXPEDITED
MOTION FOR STAY**

By this Joinder, Federal Defendants¹ hereby join in Intervenor-Defendants' Expedited Motion for Stay (ECF No. 49), filed August 11, 2021. A stay of proceedings in these consolidated cases is warranted in light of ongoing and expected agency decision-making that will likely moot many of the agency actions that Plaintiffs challenge. Those decisions would be based on different administrative records than those provided to Plaintiffs to date. The Parties should not brief—and the Court should not have to decide—the merits of agency actions that will have no effect on the challenged project. Proceeding with litigation of Plaintiffs' claims while these agency actions are in flux would result in waste of the parties' and the Court's resources.

For example, the U.S. Fish and Wildlife Service is moving forward with its consideration of Intervenor-Defendants' proposal for a land exchange, which would effectively replace the Compatibility Determination and Right-of-Way Permit that Plaintiffs currently challenge. The legal standards that apply to land exchanges are very different from those governing compatibility determinations. *Compare* 16 U.S.C. § 668dd(b)(3), *with* § 668dd(d)(1)(B). Needless adjudication of Plaintiffs' claims regarding the Compatibility Determination and Right-of-Way Permit would have no application to a land exchange.

Likewise, Intervenor-Defendants have represented that they have not used, and because of changes in construction timing, do not plan to use, Nationwide Permit 12. Based on Intervenor-

¹ Federal Defendants in Case No. 3:21-cv-00096-wmc are Rural Utilities Service (“RUS”); Christopher McLean, in his official capacity as Acting Administrator, Rural Utilities Service; United States Fish and Wildlife Service (“USFWS”); Charles Wooley, in his official capacity as Midwest Regional Director; and Sabrina Chandler, in her official capacity as Manager, Upper Mississippi River National Wildlife and Fish Refuge. Federal Defendants in Case No. 3:21-cv-00306 are United States Army Corps of Engineers (“Corps”); Lieutenant General Scott A. Spellmon, in his official capacity as Chief of Engineers and Commanding General for the Corps; Colonel Steven Sattinger, in his official capacity as Commander and District Engineer, Corps Rock Island District; and Colonel Karl Jansen, in his official capacity as Commander and District Engineer, Corps St. Paul District.

Defendants' representations, the current Nationwide Permit 12 verification will expire before any work on the challenged project implicating it occurs. Accordingly, Intervenor-Defendants will be required to seek new permissions for any impacts to waters of the United States in the State of Iowa.

Because the Court has previously indicated its preference that all claims in these consolidated cases be litigated simultaneously, a stay of all claims is appropriate. A stay would not unduly prejudice Plaintiffs because construction will not begin in the Upper Mississippi National Wildlife and Fish Refuge until more than a year from now, and because Intervenor-Defendants have committed to providing Plaintiffs with 30 days' notice before undertaking any construction activities in Wisconsin.

Because motions for summary judgment are due September 3, 2021, Federal Defendants request expedited consideration of the Motion for Stay.

Dated: August 11, 2021

Respectfully submitted,

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