

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 17-5132**

**September Term, 2016**

**1:14-cv-01471-RJL**

**Filed On: July 19, 2017**

John M. Fitzgerald, et al.,

Appellees

v.

Federal Transit Administration, et al.,

Appellees

State of Maryland,

Appellant

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Consolidated with 17-5161

**BEFORE:** Millett, Pillard, and Wilkins, Circuit Judges

**ORDER**

Upon consideration of the emergency motion for stay pending appeal, the opposition thereto, and the reply; the motion to dismiss, the opposition thereto, and the reply; and the motion to expedite, the opposition thereto, and the reply, it is

**ORDERED** that the motion to dismiss be denied. Although the appellees' timely Rule 59(e) motion "deprive[d] the judgment of finality," see Derrington-Bey v. Dist. of Columbia Dep't of Corrections, 39 F.3d 1224, 1225 (D.C. Cir. 1994), the notice of appeal will "become[] effective to appeal [the] judgment . . . when the order disposing of the [pending Rule 59] motion is entered," Federal Rule of Appellate Procedure 4(a)(4)(B)(i). Under 28 U.S.C. § 1292(a), this court may grant the State of Maryland's motion for stay pending appeal of the district court's grant of injunctive relief. See United States v. Philip Morris USA Inc., 840 F.3d 844, 849 (D.C. Cir. 2016); Comm. on the Judiciary of U.S. House of Representatives v. Miers, 542 F.3d 909, 910-11 (D.C. Cir. 2008). The district court granted appellees' request for injunctive relief by vacating the Record of

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Decision, which, as the district court noted in this case, had the direct and intended effect of preventing the use of federal funds and halting the project. See Friends of the Capital Crescent Trail v. Fed'l Transit Admin., 200 F. Supp. 3d 248, 254 (D.D.C. 2016), and Amended Complaint at 59-60 (seeking to set aside the Record of Decision and enjoin defendants “from spending any federal funding on . . . or otherwise proceeding with” the challenged project). The May 22, 2017, order that denied reinstating the Record of Decision effectively “continu[ed]” or “refus[ed] to dissolve” the injunction, 28 U.S.C. § 1292(a)(1). See HonoluluTraffic.com v. Fed'l Transit Admin., 742 F.3d 1222, 1229 (9th Cir. 2014); Sierra Club v. Van Antwerp, 526 F.3d 1353, 1358 (11th Cir. 2008); Sierra Club v. Glickman, 67 F.3d 90, 94 (5th Cir. 1995). Moreover, the pending Rule 59(e) motion in this case does not pertain to the district court’s grant of injunctive relief that is the subject of the State of Maryland’s motion for stay pending appeal. The Rule 59(e) motion is, atypically, a motion by the parties who prevailed on their request for injunctive relief. They do not question vacatur of the Record of Decision; their motion is “limited to seeking clarification or confirmation” of the breadth of the further environmental review the district court separately required. It is

**FURTHER ORDERED** that the emergency motion to stay the portion of the August 3, 2016, order that vacated the Record of Decision and the portion of the May 22, 2017, order that denied reinstating the Record of Decision be granted and the Record of Decision be reinstated pending appeal. The State of Maryland has satisfied the stringent requirements for a stay pending appeal. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2017). It is

**FURTHER ORDERED** that consideration of the motion to expedite be deferred pending further order of this court, while the district court acts on the pending Rule 59 motion. We are confident the district court will act promptly in this matter.

The Clerk is directed to transmit a copy of this order to the district court.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Robert J. Cavello  
Deputy Clerk