

STATE OF NEW MEXICO
SANTA FE COUNTY
FIRST JUDICIAL DISTRICT COURT

AKILAH SANDERS-REED,
by and through her parents Carol
and John Sanders-Reed, and
WILDEARTH GUARDIANS,

Plaintiffs,

v.

No. D-101-CV-2011-01514

SUSANA MARTINEZ,
in her official capacity as Governor
of New Mexico, and
STATE OF NEW MEXICO,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER having come before the Court on Defendants' Motion for Summary Judgment and Plaintiffs' Motion for Summary Judgment, the Court having considered both of the motions, the responses and replies filed in relation to them, and the arguments of counsel at a hearing on June 26, 2013,

THE COURT FINDS that Defendants' Motion for Summary Judgment is well taken, and that Motion is hereby GRANTED.

THE COURT FURTHER FINDS that Plaintiffs' Motion for Summary Judgment is not well taken, and that Motion is hereby DENIED.

Accordingly, IT IS HEREBY ORDERED that summary judgment is entered in favor of Defendants and against Plaintiffs on the claims in this action.

The reasons for the Court's decisions on these motions are set forth in the transcript excerpt attached hereto as "Exhibit A."



HON. SARAH SINGLETON
DISTRICT JUDGE

APPROVED as to form:

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1 STATE OF NEW MEXICO
2 COUNTY OF SANTA FE
3 FIRST JUDICIAL DISTRICT COURT

4 No. D-101-CV-201101514

5 AKILAH SANDERS-REED, by and through her
6 parents CAROL AND JOHN SANDERS-REED,
7 and WILDEARTH GUARDIANS,

8 Plaintiffs,

9 vs.

10 SUSANA MARTINEZ, in her official
11 capacity as Governor of New Mexico,
12 and STATE OF NEW MEXICO,

13 Defendants.

14 PARTIAL TRANSCRIPT OF PROCEEDINGS

15 On the 26th day of June 2013, at approximately 1:25 p.m.,
16 this matter came for hearing on PLAINTIFFS' MOTION FOR SUMMARY
17 JUDGMENT; DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, before the
18 HONORABLE SARAH M. SINGLETON, Judge of the First Judicial
19 District, State of New Mexico, Division II.

20 The Plaintiffs, AKILAH SANDERS-REED, by and through her
21 parents CAROL AND JOHN SANDERS-REED, and WILDEARTH GUARDIANS,
22 appeared by Counsel of Record, SAMANTHA RUSCAVAGE-BARZ, Wildearth
23 Guardians Staff Attorney, 516 Alto Street, Santa Fe, New Mexico
24 87501.

25

1 The Defendant, SUSANA MARTINEZ, in her official capacity as
2 Governor of New Mexico, appeared by Counsel of Record, GARY J.
3 VAN LUCHENE, Keleher & McLeod, Attorneys at Law, Post Office
4 Drawer AA, Albuquerque, New Mexico 87102.

5 The Defendant, STATE OF NEW MEXICO, appeared by Assistant
6 Attorney General, JUDITH ANN MOORE, New Mexico Attorney General's
7 Office, 111 Lomas Blvd NW, Suite 300, Albuquerque, New Mexico
8 87102.

9 At which time the following proceedings were had:

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1 JUNE 26, 2013

2 (Note: In Open Court at 3:05 p.m.)

3 (Note: Excerpt of Court's Observations, Directions, Ruling:)

4
5 THE COURT: I previously ruled that I thought
6 that the New Mexico Supreme Court would apply the Public Trust
7 Doctrine if the Court was convinced that the Legislature or the
8 agencies charged with implementing environmental laws had ignored
9 the atmosphere, that in that situation the Court would apply a
10 Public Trust Doctrine. I have to say it's not an easy fit,
11 because many of the cases with the Public Trust Doctrine arose in
12 the context of water. And it's not easy, always easy to translate
13 water or ownership of streams or stream beds to something like
14 what to do about greenhouse gas emissions.

15 I think that in applying this Doctrine, as I've said
16 before, the Court would allow -- the Supreme Court would allow the
17 judicial branch to bypass the political process if there was an
18 indication that the political process had gone astray, that they
19 had ignored what they were supposed to do, or if the agency was
20 not attempting to apply the statutory scheme, or if the public was
21 excluded from the processes. And I think that those criteria are
22 all criteria that I need to use in looking at this summary
23 judgment motion.

24 As recognized by the Court in Hawaii, the State may
25 compromise public rights in the resource only when the decision is

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Order on Summary Judgment**

1 made with a level of openness, diligence, and foresight that is
2 commensurate with the high priorities that the rights command
3 under the laws of the state. That's somewhat of a paraphrase, but
4 it's pretty close to what Kelly said.

5 So have any of these criteria that I identified or
6 that Kelly identified been met in this case? Well, I think I've
7 already said, in my opinion, there has been no inaction by the
8 Legislature. The Legislature has established statutes, and has
9 established a scheme, an administrative scheme for protecting the
10 atmosphere. So then the issue would be, has there been the type
11 of inaction by the legislative body that would warrant application
12 of the Public Trust Doctrine? Has the State forgotten its role in
13 protecting the atmosphere?

14 The EIB proceedings, clearly, they repealed
15 regulations, and that clearly was done pursuant to their statutory
16 authority. But the issue in front of me today is whether or not
17 the EIB did something other than determine that those regulations
18 were not appropriate. Did the EIB decide that no regulations were
19 needed to protect the environment?

20 Based on the discussions with counsel and reading of
21 the EIB decision, I believe that they did do more than simply
22 strike down the regulations that had been previously adopted. I
23 believe that they made findings that there was no need to regulate
24 the State's greenhouse gas emissions, because that would have no
25 impact on the issue of global warming or on the climate change.

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1 And I believe they further determined that decreases simply in the
2 state's emissions, which would after all be a goal of regulation,
3 would have no perceptible impact on climate change. So they did
4 make a broader statement about the need or lack of need for
5 greenhouse gas regulations.

6 The issue is not today whether the Plaintiff agrees with
7 that decision. It's not even whether I even agree with that
8 decision. The question is whether or not the State is ignoring
9 its role in protecting the environment or the atmosphere. The
10 State's not ignoring it, it just disagrees with what the Plaintiff
11 thinks is needed. So the State, in my opinion, has acted on this.

12 Now, is there the possibility under the Public Trust
13 Doctrine that the State's action could be so wrongheaded as to
14 invoke the Public Trust Doctrine? I suppose that in rare
15 circumstances, it could. But I believe that before a court should
16 jump in to apply a doctrine like the Public Trust Doctrine, there
17 should be some showing that the process was tainted or that the
18 public was foreclosed from pursuing the issue. That is not the
19 case here.

20 They certainly -- the Plaintiff and others who believe
21 that regulation of greenhouse gas emissions is appropriate, were
22 given the opportunity to participate in the former case. And even
23 more importantly, they are given the opportunity to participate in
24 requesting an even broader discussion, or consideration of
25 different regulations under 74-2-6 of the statutes.

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1 Now, Plaintiff says, But that's not the same thing as
2 applying the Public Trust Doctrine, because there we, the
3 Petitioner, would bear the burden of proof. Well, I think that's
4 a distinction without a difference, because contrary to
5 Plaintiffs' argument, I believe they bear the burden of proof in a
6 Public Trust Doctrine case also. They would have to prove, first
7 of all, that there is an issue which would justify the application
8 of the Public Trust Doctrine. Then they would have to prove that
9 the State violated the Public Trust Doctrine by its actions. And
10 finally, on the remedy situation, they would have to prove that
11 the remedies they sought were appropriate.

12 So I believe here we have no indication that the Public
13 Trust Doctrine should be applied in this case. I believe that
14 what we are really talking about, at bottom, are political
15 differences, and that the real remedy is to elect people who
16 believe that greenhouse gases are a problem, that man does
17 contribute to climate change, and that those are the people who
18 should be making policy decisions. But that's a political
19 decision, not a Court decision.

20 I think the courts of New Mexico have long recognized
21 the importance of separation of powers. And given the case
22 presented to me today, I cannot believe, given those concerns, the
23 things that were expressed in cases like Shoobridge and others,
24 that the court -- an appellate court would decide that the Public
25 Trust Doctrine should be applied.

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1 For that reason, I am granting the Defense Motion for
2 Summary Judgment, given the showing that was made about what was
3 done by the EIB on this issue. It's moot. But just as an aside,
4 so you would know, even if I had not granted the Defendant's
5 motion, I would not grant the Plaintiffs' motion. I believe that
6 there are significant issues of fact that the Plaintiff has not
7 overcome in its summary judgment pleadings before the Public Trust
8 Doctrine could be applied.

9 So I would like now for an order to be prepared.
10 Because I'm granting summary judgment, I'm going to require that
11 the order contain the reasons that I've given you, so that they
12 can give the Appellate Court guidance in my thinking. You may do
13 it one of two ways: You may obtain a transcript of the hearing,
14 and just attach that to the order, and say, By the reasons given
15 by the Court at the hearing, the transcript of which is attached
16 hereto, summary judgment is granted the Defense. Or you can write
17 up what you believe to be the salient points of my ruling, and
18 include those in the order.

19 Then after you do that, Mr. Van Luchene, you need to
20 circulate it to opposing counsel, for opposing counsel to see if
21 she is able to approve it as to form. If she has language changes
22 to suggest, I expect you to negotiate with her over those. If you
23 can get approval as to form, that's great. Then e-mail your
24 proposed order indicating in the e-mail it's approved. Send it to
25 me in Word format in case I want to make changes.

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1 If you can't get approval as to form, then you will
2 send me your proposed order via e-mail, in Word format. You
3 should file objections to his proposed order, and you should send
4 me your objections via e-mail, also in Word format, so if I wish
5 to cut and paste from your objections, I can do so.

6 What amount of time do you think you will need to do
7 all of that, drafts, circulate, negotiate?

8 MR. VAN LUCHENE: Your Honor, I think that your
9 suggestion of possibly getting a transcript and attaching it is
10 the one that's least likely to lead to any disagreements about the
11 form of the order. And so it depends on how long it will take to
12 get a transcript from the court reporter.

13 THE COURT: Of just the ruling?

14 MR. VAN LUCHENE: Of just the ruling.

15 (Note: Off the record discussion held.)

16 THE COURT: Well, let's say you could get it by
17 the end of the week. After that, how long would you need?

18 MR. VAN LUCHENE: Five days. So a week from
19 Friday.

20 THE COURT: Why don't we give you a week from
21 Monday. All right?

22 MR. VAN LUCHENE: Okay.

23 THE COURT: And if you need more time because
24 you're really negotiating over things, just send me an e-mail and
25 I'll give you more time.

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1 All right. Is there anything else we need to do in
2 this case?

3 MR. VAN LUCHENE: Your Honor, in the order, you
4 mentioned that the Plaintiffs' summary judgment motion was moot.
5 Do you want it denied as moot, or how do you want me to deal with
6 that in the order? How do you want us to deal with that in the
7 order?

8 THE COURT: Well, you can -- it is moot, but I'm
9 denying it because I don't think they made a prima facie showing
10 that there are no disputes of fact on the application of the
11 Public Trust Doctrine to this issue and this action.

12 MR. VAN LUCHENE: Okay.

13 THE COURT: So I think you should put in both.

14 MR. VAN LUCHENE: Okay. Thank you, Your Honor.

15 THE COURT: Or, again, you can say, For the
16 reasons given at the hearing, which will be in there. All right.

17 MR. VAN LUCHENE: We'll do. Thank you.

18 THE COURT: Then is there anything else?

19 MR. VAN LUCHENE: Not for Defense, Your Honor.

20 MS. RUSCAVAGE-BARZ: Not for Plaintiffs,
21 Your Honor.

22 THE COURT: All right. We'll be in recess, then.
23 Thank you for your presentations, for your excellent briefing on
24 both sides.

25 (Note: Court in recess at 3:20 p.m.)

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C E R T I F I C A T E

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, LORETTA L. BRANCH, Official Court Reporter for the First
Judicial District of New Mexico, hereby certify that I reported,
to the best of my ability, the proceedings, D-0101-CV-201101514;
that the pages numbered TR-1 through TR-7, inclusive, are a true
and correct partial transcript of my stenographic notes, and were
reduced to typewritten transcript through Computer-Aided
Transcription; that on the date I reported these proceedings, I
was a New Mexico Certified Court Reporter.

Dated at Santa Fe, New Mexico, this 26th day of June 2013.

LORETTA L. BRANCH
New Mexico CCR No. 169
Expires: December 31, 2013