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New Mexico Court of Appeals Declares Atmosphere To Be Public Trust Resource Entitled to Constitutional Protection

Santa Fe, New Mexico – The New Mexico Court of Appeals issued an important ruling in the climate case brought by youth plaintiff Akilah Sanders-Reed and environmental advocacy group WildEarth Guardians. Sanders-Reed asked the Court of Appeals to uphold her rights as a beneficiary of the Public Trust Doctrine in New Mexico and order the state to fulfill its duty as trustee by preventing further impairment to the atmospheric trust resource from New Mexico’s greenhouse gas emissions. While falling short of granting the full relief sought by Sanders-Reed, the court declared:

We agree that Article XX, Section 21 of our state constitution recognizes that a public trust duty exists for the protection of New Mexico's natural resources, including the atmosphere, for the benefit of the people of this state.

This is the clearest and most comprehensive expression of public trust protection for New Mexico’s natural resources ever issued by a New Mexico court. It is among only a few in the country expressly extending this constitutional protection to the atmosphere.

However, the Court also found that the constitutional public trust protection given to the atmosphere should be realized through the process established by New Mexico’s Air Quality Control Act. The Court also determined that Sanders-Reed did not argue that the Act is inconsistent with the public trust principles for implementing the constitutional public trust protection for the atmosphere. As a result, the court affirmed the lower court’s dismissal of the case and the youth plaintiff is evaluating her options for appeal to the New Mexico Supreme Court.

“This decision is a win for our climate and for the people of New Mexico in many respects and the New Mexico legislature and executive should pay attention to this decision.,” said Sanders-Reed’s attorney, Samantha Ruscavage-Barz of WildEarth Guardians. “The Court has ruled the State does have a duty to act to protect the atmosphere and that duty lies with the legislature and the EIB. We disagree with other aspects of the decision that limit the ability of citizens to seek judicial relief to uphold their

constitutional trust rights in the face of complete abdication by the State of its duty to control carbon emissions and protect the people.”

Sanders-Reed’s and co-plaintiff WildEarth Guardians’ lawsuit, filed on May 4, 2011 against Governor Susana Martinez and the State of New Mexico, relies upon the long-established principle of the Public Trust Doctrine, which requires all branches of government to protect and maintain certain shared resources fundamental for human health and survival, like water and air, and in this case the atmosphere and climate system. While disappointed with some aspects of the Court’s decision, Sanders-Reed isn’t ready to give up and is discussing further action with her attorney.

The New Mexico lawsuit is part of one of the most comprehensive legal strategies on the climate crisis to date, organized by Our Children’s Trust. As part of the global Campaign, OUR CHILDREN’S TRUST has supported youth in the filing of legal actions in all 50 states and against the federal government to establish the right to a healthy atmosphere and stable climate. To learn more about the TRUST Campaign, watch [A Climate of TRUST](#) and visit www.ourchildrenstrust.org.

***WildEarth Guardians** is a nonprofit environmental conservation and advocacy organization based in Santa Fe, New Mexico. Guardians works to replace fossil fuels with clean, renewable energy in order to safeguard public health, the environment, and the Earth’s climate for future generations. <http://www.wildearthguardians.org>.*

***Our Children’s Trust** is a nonprofit organization advocating for urgent emissions reductions on behalf of youth and future generations, who have the most to lose if emissions are not reduced. OCT is spearheading the international human rights and environmental TRUST Campaign to compel governments to safeguard the atmosphere as a "public trust" resource. We use law, film, and media to elevate their compelling voices. Our ultimate goal is for governments to adopt and implement enforceable science-based Climate Recovery Plans with annual emissions reductions to return to an atmospheric carbon dioxide concentration of 350 ppm. www.ourchildrenstrust.org/*

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