

## Understanding the *Sanders-Reed* Case & What it Says About Environmental Rights

In *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 350 P.3d 1221 (2015), in the face of state government action that was failing to meaningfully address New Mexico's contribution to the climate crisis, plaintiffs sought a determination that the common law public trust doctrine could provide an alternative government pathway for legally addressing the issue of climate change, which the Court of Appeals characterized as one that would be undertaken by the judicial branch of government and could displace the laws and mechanisms adopted by the legislative branch of government.

The Court of Appeals of New Mexico recognized that traditionally the common law public trust doctrine applies within states to public navigation, fishing rights and tidal lands and that each state has the power to determine the scope of the public trust doctrine within their own boundaries. The court noted that while "New Mexico courts have never referred to the public trust doctrine, ... they have recognized that common law public trust principles apply in the context of public waters and public trust lands." Relying upon the language of Article XX Section 21, the court concluded that within New Mexico, a "public trust duty exists for the protection of New Mexico's natural resources, including the atmosphere, for the benefit of the people...."

Having concluded that New Mexico government had a public trust duty to protect the natural resources of the state, including the atmosphere, the court explained that "although the common law has been adopted in New Mexico, ... the common law does not apply to the extent the subject matter of the duty or right asserted is covered by constitution, statute, or rule." The court determined that in New Mexico, Article XX Section 21 constitutionally defined the scope of the natural resources public trust obligation within the state by delegating to the state legislature the right and obligation to provide that definition, scope and implementation. The court held that "one may raise arguments concerning the duty to protect the atmosphere, but such arguments must be raised within existing constitutional and statutory framework and not alternatively through a separate common law cause of action." In other words, as the Court explained, because there is a constitutional provision and existing statutory law on the topic, the Court would not create a separate common law cause of action. The Court concluded that "where the State has a duty to protect the atmosphere under Article XX, Section 21 of the N.M. Constitution, the Courts cannot independently regulate greenhouse gas emissions in the atmosphere as Plaintiffs have proposed, based solely upon a common law duty established under the public trust doctrine as a separate cause of action."

In the context of the case, the court determined that the language of Article XX Section 21 of the constitution, while recognizing the duty of the state to protect New Mexico's natural resources including the atmosphere, delegated/entrusted that duty to the legislature, who in turn had put in place, by statute and regulation (through its delegate the Environmental Improvement Board), a mechanism, including public participation, for carrying forth this trust obligation with regards to the climate.

In sum, this case stands for the principle that Article XX Section 21 is the state's expression of the public trust doctrine within the state, and that it delegates protection of the natural resources of the state to the legislature. The court went on to assert that the statutory scheme enacted by the legislature was adequate and that if the public does not like how the legislature is carrying out its environmental protection obligations as articulated in Article XX Section 21, they, as "voters have the opportunity to exercise their desire for political change regarding complex environmental issues at the ballot box during each election cycle."<sup>1</sup>

The decision confirms that the New Mexico Constitution currently does not explicitly recognize an independent enforceable, right of the people to a clean and healthy environment. This is particularly consequential for under-resourced communities and communities of color, who are marginalized under the status quo, and need an enforceable constitutional right to a clean environment to protect their communities and their health.

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<sup>1</sup> Sanders-Reed ex rel. Sanders-Reed v. Martinez, 350 P.3d 1221 (2015)