

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GLORI DEI FILIPPONE, a Minor, by and
through her Mother and Next Friend,
MARIA FILIPPONE,

AA:

Plaintiff-Petitioner,

PETITION FOR JUDICIAL REVIEW

v.

IOWA DEPARTMENT OF NATURAL
RESOURCES,

Defendants-Respondents.

COMES NOW the Plaintiff-Petitioner and petitions the Court to review the decision of the Iowa DNR of Natural Resources in the above-captioned matter and states:

1. That on June 22, 2011, Roger Lande, acting as the Director of the Iowa Department of Natural Resources (“DNR”) issued a decision in the above-captioned matter. *See Exhibit A* attached, "Denial of Petition for Rulemaking." Before the DNR this matter was captioned: In the Matter of: Petition by Kids vs Global Warming, for the adoption of rules relating to carbon dioxide emissions.” Glori Dei Filippone was also added as a Petitioner to this Petition and is a member of Kids v. Global Warming. Petitioner is also a resident of the State of Iowa. Petitioner does not believe the DNR assigns actual file numbers to these petitions as no file number is found on *Exhibit A*.

2. That the agency action which is the subject of this petition is the application for rulemaking request brought by the above petitioner, and others, seeking action by the Iowa DNR to promulgate a rule that requires the DNR to take the following steps in order to protect the integrity of Earth’s climate by adequately protecting the Iowa

atmosphere, a public trust resource upon which all those in Iowa rely upon for their health, safety, sustenance, and security:

- a. Ensure that carbon dioxide emissions from fossil fuels peak in the year 2012;
 - b. Adopt a carbon dioxide emissions reduction plan that, consistent with the best available science as described in the attached report, reduces state-wide fossil fuel carbon dioxide emissions by at least 6% annually until at least 2050, and expands Iowa's capacity for carbon sequestration;
 - c. Establishes a state-wide greenhouse gas emissions accounting, verification and inventory and issues annual progress reports so that the public has access to accurate data regarding the effectiveness of Iowa's efforts to reduce fossil fuel carbon dioxide emissions; and
 - c. Adopt any necessary policies or regulations to implement the greenhouse gas emissions reduction plan, as detailed in sections (1) and (2) above.
3. Petitioner's request for rulemaking was supported by arguments that the DNR did not rebut in the above proceeding. The support was presented in three logical parts, which are summarized as:

- a. The scientific case as it exists in 2011 establishes that human beings have already changed the atmosphere of the planet in ways that are dangerous both economically and from a human health standpoint. This portion of the petition laid out in precise detail the scientific foundation for the assertion that human activity has already changed the atmosphere on a global scale and that each person on the planet faces grave economic and health consequences as a result. See, Statement of Reasons, section A, of exhibit A, attached.
- b. That the best available scientific evidence conclusively establishes that the citizens of Iowa (both present and future) are both contributing to the change in climate and that the same citizens are already now facing harsh economic and health consequences as a result of the burning of carbon-based fuels in the State of Iowa. See, Statement of Reasons, section A, of exhibit B, attached.
- c. That the State of Iowa, acting through the DNR, has an affirmative statutory, and constitutional duty to protect public trust assets such as the Iowa atmosphere for present and future citizens of this state. Iowa has recognized by statute that certain assets of this State must be held and preserved for the public good. Typical examples of public trust assets include the waterways, ponds, sloughs, bayous, fish, mussels, clams, frogs, all wild game, animals, and all birds

including their nests and eggs. Iowa Code § 481A.2 (2010). The air that the citizens of Iowa breathe is certainly fundamental to life in this state. The law of Iowa and the constitutions of Iowa and United States all establish that no private business owns these public assets and further establishes that no private business should be allowed to alter, harm, or destroy public assets and thereby harm human health and life. The requested rulemaking would start the process of restoring the healthful environment of the state of Iowa. See Statement of Reasons, section C, of *Exhibit A*, attached.

4. Petitioner asserts that the Director of the DNR did not consider the merits (scientific and legal) of her un rebutted application when the DNR Director declared in substance:

a. That because the State of Iowa has acted in the past on the general issue of greenhouse gas emissions it need not re-examine past action in light of the advancing body of scientific evidence establishing an urgent need to act with vigor in 2012. This will be referred to as the "We Made Rules A While Ago" justification.

b. That because the State of Iowa has established protocols to deal with substantial (generally described as a new stationary sources that will emit more than 100,000 tons of carbon dioxide equivalents per year) emitters of greenhouse gases, that is not necessary to promulgate rules regarding statewide CO₂ emissions from all sources. This will be referred to as the "Iowa Regulates The Really Big Polluters" justification.

c. That because the federal government (likely through the federal EPA) may choose to act at some undefined future time that it is therefore unnecessary for the Iowa DNR to meet its statutory, and constitutional obligations to protect Iowa's public trust assets (the atmosphere generally). This will be referred to as the "Iowa Hopes Big Government Will Save Us" justification; and,

d. That because the requested action for DNR rulemaking might take unspecified money and unspecified effort away from other projects of the DNR that it should forgo its duty to create rules that would protect present and future citizens of Iowa. This will be referred to as the "Money Instead Of Safety" justification.

5. The record made before the DNR will establish that no substantive challenge was presented to the three-part presentation of petitioners. As such the scientific foundation before the DNR was un rebutted. The DNR did not consider the

scientific evidence presented in the petition, nor did it discuss its duty under Iowa's statutory and constitutional provisions to act. Without a word being said the DNR committee charged with first resolving requests for rulemaking voted unanimously to deny the request for rulemaking. The record before the DNR committee will also establish that the *only* matters considered publicly by the DNR committee were matters unrelated to the request for rulemaking consisting mainly of imploring a 13-year-old petitioner to give up her personal decision to forgo red meat in her diet. For this reason alone the actions of the DNR, as adopted by the Director, are certainly arbitrary and capricious.

6. Specifically, the DNR's duties under the Public Trust Doctrine were unaddressed in the denial of the request for rulemaking. This duty was specifically brought to the attention of the DNR by petitioner in the written petition, and in her public comments. The Public Trust Doctrine requires that the DNR hold vital natural resources in *trust*, for both present and future generations of Iowa citizens. Such resources are deemed so vital to the well being of all people, including the citizens of Iowa, that they must be protected by this long-standing judicial principle. The atmosphere, essential to human existence, is an asset that belongs to all people and is one of the most crucial assets of our public trust and each sovereign government shares a co-tenant trustee duty to protect it.

7. Today the citizens of Iowa are confronted with an atmospheric emergency. The DNR must therefore regulate and account for CO₂ output in the state of Iowa through its fiduciary duties under the Public Trust Doctrine. The DNR is responsible for preserving and protecting the atmosphere, as a public resource for future generations.

8. The Public Trust Doctrine is an ancient legal mandate originating in Roman law that establishes a sovereign obligation in states to hold vital natural resources in trust for the benefit of their citizens. “The things which are naturally everybody’s are: air, flowing water, the sea, and the sea-shore.” Caesar Flavius Justinian, *The Institutes of Justinian*, Book II, Title I, Of the Different Kind of Things (533). Likewise, under English common law, “There are some few things which . . . must still unavoidably remain in common . . . Such (among others) are the elements of light, air, and water . . .” *Geer v. State of Connecticut*, 161 U.S. 519, 668 (1896) (citing William Blackstone, 2 BL Comm).

9. The Public Trust Doctrine was incorporated into the colonial charters when the American colonies were first established. *Martin v. Waddell*, 41 U.S. 367, 413 (1842). Following the American Revolution, the doctrine was likewise adopted into the American common law as a flexible mechanism to protect integral public interests.

10. Because the atmosphere is necessary for humanity’s very survival, it logically follows that the Public Trust Doctrine extends to the atmosphere, and DNR, as trustee of the atmosphere for the people of Iowa, holds this resource in trust for present and future generations of Iowans.

11. Just as in traditional trusts, the Public Trust Doctrine imposes a duty on the DNR to affirmatively preserve and protect the public’s trust assets from damage or loss, and to avoid using the asset in a manner that causes injury to the trust beneficiaries, present and future. The trustee has an affirmative fiduciary duty to prevent waste, to use reasonable skill and care to preserve the trust property and to maintain trust assets. The duty to protect the trust asset means that the sovereign ensures the continued availability

and existence of healthy trust resources for present and future generations. The duty mandates the development and utilization of the trust resource in a manner consistent with its conservation and in furtherance of the self-sufficiency of Iowa.

12. The fiduciary's duty in this instance is defined by scientists' concrete prescriptions for carbon reductions. As presented in the Petition, scientists have identified the minimum CO₂ reductions needed to restore the Earth's equilibrium, and scientists have also established the requisite timelines for implementation of those reductions. The failure of the DNR to act at the present time is mathematically certain to create further harm to Iowa Public Trust assets and will create far more difficult remedial steps in the future. The DNR may not delay and may not disclaim its fiduciary duty as the DNR is subject to an ongoing mandatory duty to preserve these resources.

13. In many parts of the country, climate change is causing massive weather events including heat waves, drought, wildfires, more severe storms and loss of biodiversity. Locally, Iowa is experiencing similar impacts ranging from extreme heat waves to flooding to unreliable water supply for agriculture and municipal uses. These Iowa impacts will certainly grow more devastating with time, especially if the DNR does not fulfill its Public Trust duty to act now with greater urgency.

14. In light of these impacts, the atmosphere must also be protected under the Public Trust Doctrine of Iowa because of its impact on other well-recognized trust assets. Iowa has recognized by statute that certain assets of this State must be held and preserved for the public good. Typical examples of public trust assets include the waterways, ponds, sloughs, bayous, fish, mussels, clams, frogs, all wild game, animals, and all birds including their nests and eggs. Iowa Code § 481A.2 (2010). Iowa courts have also

recognized the role of the Public Trust Doctrine to protect various resources in Iowa. *Roberts River Rides v. Steamboat*, 520 N.W.2d 294, 299-301 (Iowa 1994)(discussing history and development of public trust doctrine in Iowa); *State v. Sorensen*, 436 N.W.2d 358, 360-63 (Iowa 1989); *see, Bushby v. Washington County Conservation Board*, 654 N.W.2d 494 (Iowa 2002); *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808 (Iowa 2000); *Larman v. State*, 552 N.W.2d 158 (Iowa 1996).

15. That the Petitioner has exhausted all administrative remedies and has been aggrieved and adversely affected by the final agency action.

16. That the venue is based upon the provisions of Iowa Code § 17A.19(2) (2011).

17. That the relief prayed for herein is sought on one or more of the following grounds:

- a. In violation of properly raised constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;
- c. In violation of an agency rule;
- d. Made upon unlawful procedure;
- e. Affected by other error of law;
- f. Unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole;
- g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

WHEREFORE, the Plaintiff-Petitioner prays that the District Court find as a matter of law that:

1. The atmosphere is a public trust resource and the DNR has a duty to protect it and prevent harm to it for present and future generations of Iowans; and

2. In order to protect other public trust resources in the state from the harm caused by human-induced climate change, Defendant must act to reduce carbon dioxide emissions.

WHEREFORE, the Plaintiff-Petitioner prays:

1. That the District Court order the DNR to engage in the requested rulemaking for the precise reasons urged in Petitioner's original petition for rulemaking; and

2. For any other appropriate relief as may be deemed proper in this case be made, including but not limited to an order that the costs of this action be taxed to the DNRs.

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