

COPY



200TH DISTRICT COURT

GISELA D. TRIANA

Judge

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TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767

July 9, 2012

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RE: Cause No. D-1-GN-11-002194; In the 201st Judicial District Court of Travis Co., Tx.
Angela Bonser-Lain, et al. v. Texas Commission on Environmental Quality

Dear Counsel,

On June 14, 2012, the Court considered and took under advisement Defendant's plea to the jurisdiction and the merits in the above-referenced cause. The Court allowed the parties to submit additional briefing to the Court by June 28, 2012. After considering all briefing, the administrative record, and the applicable law, the Court will find as follows.

Although the Commission argues that the Court must affirm the Commission's action if there exists any valid basis, the Court finds that the agency cannot base such action on grounds that are not legally valid. The Court will examine each of the Commission's grounds to determine if a valid basis does support its decision.

The Court will find that the Commission's conclusion, that the public trust doctrine is exclusively limited to the conservation of water, is legally invalid. The doctrine includes all natural resources of the State. This doctrine is not simply a common law doctrine but was incorporated into the Texas Constitution at Article XVI, Section 59, which states: "The conservation and development of all of the natural resources of this State. ... and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto." The protection of air quality is mandated by the Texas Legislature in the Texas Clean Air Act (TCAA). See Health & Safety Code § 382.001 *et seq.* The Texas Legislature has provided the Commission with the authority to protect against adverse effects including global warming. See § 382.0205.

Filed in The District Court
of Travis County, Texas

JUL 09 2012 LAM

At 3:40 P.M.
Amelia Rodriguez-Mendoza, Clerk

LaDELLE ABILEZ
Official Court Reporter
(512) 854-9325

LYDIA MARTINEZ
Court Clerk
(512) 854-5838

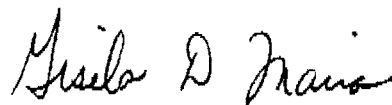
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The Court will also find that the Commission's conclusion that it is prohibited from protecting the air quality because of the federal requirements of the Federal Clean Air Act (FCAA), Section 109 is also legally erroneous. The Commission relies upon a preemption argument that the State of Texas may not enact stronger requirements than is mandated by federal law. The Court will find that the FCAA requirement is a floor, not a ceiling, for the protection of air quality, and therefore the Commission's ruling on this point is not supported by law. See 42 U.S.C. § 7604(e).

While the Commission states that it has no authority under the TCAA to regulate greenhouse gases, that issue is involved in separate litigation and is on appeal to the Third Court of Appeals. See *Public Citizen Inc. v. Texas Comm'n on Environmental Quality*; Cause No. D-1-GN-09-003426, in the 250th Judicial District Court of Travis County; Case No. 03-10-00296-CV (submitted on Aug. 3, 2011). Although Plaintiffs note the recent decision of the D.C. Circuit Court which involves the challenge by the State of Texas and other states to the actions of the Environmental Protection Agency, that decision is not final and it will likely be appealed to the U.S. Supreme Court. Because the legal landscape is uncertain, the Court will find, at this time, the Commission's refusal to exercise its authority based on current litigation is a reasonable exercise of its discretion.

Mr. Abrams, please draft an order that reflects the Court's ruling, circulate it to opposing counsel for approval as to form, and submit it to me for my signature. Thank you.

Sincerely,



Gisela D. Triana
Judge, 200th District Court
Travis County, Texas