

IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

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SAMANTHA FARB, by and through)
her next friends and parents, JOANN)
FARB and JOE FARB)
Plaintiff,)

v.)

STATE OF KANSAS, SAM)
BROWNBACK, in his official capacity as)
Governor of the State of Kansas, KANSAS)
DEPARTMENT OF HEALTH AND)
ENVIRONMENT, and ROBERT)
MOSER, M.D., in his official capacity as)
the Secretary of the Kansas Department of)
Health and Environment,)
Defendants.)

Case No. 12-C-1133

Proceeding Pursuant to K.S.A. Chapter 60

Petition For Declaratory Judgment, for Writ of Mandamus and Application for Injunctive Relief

COME NOW, Samantha Farb, by and through her next friends and parents, JoAnn Farb and Joe Farb, and by and through her attorney undersigned. Plaintiff hereby petitions for declaratory relief pursuant to K.S.A. 60-1701, et seq. (declaratory judgment), for breach of the defendants' fiduciary obligation to protect the atmosphere from the effects of human-caused greenhouse gas emissions in violation of the public trust, and to act in the best interests of Kansas's children and future generations of this state. Plaintiff further seeks an order to compel the Kansas Department of Health and Environment (KDHE) to take regulatory action pursuant to K.S.A. 60-801, et seq.

(mandamus), and K.S.A. 60-901, et seq. (injunctions) requiring the reduction of carbon dioxide (CO2) emissions as set out more fully below. Plaintiff's mailing address is 1958 E. 850th Road, Lecompton, Kansas, 66050.

KDHE and Secretary Robert Moser's mailing address is 1000 S.W. Jackson, Suite 560, Topeka, Kansas 66612-1368.

Governor Sam Brownback's mailing address is 300 S.W. 10th Ave., Ste. 241S, Topeka, Kansas 66612-1590.

KDHE, Secretary Moser, Governor Brownback, and the State of Kansas may be served through their designate, the Kansas Attorney General, Derek Schmidt, at Office of the Attorney General, Memorial Hall, 120 S.W. Tenth Avenue, Second Floor, Topeka, Kansas 66612.

In support of this petition, Plaintiff alleges and states as follows:

Jurisdiction & Venue

1. This court has jurisdiction over the subject matter of this civil action (K.S.A. 20-301) and statutory authority to grant relief under the provisions of K.S.A. 60-1701, et seq. (declaratory judgment), and K.S.A. 60-801, et seq. (mandamus). This court also has authority to grant injunctive relief pursuant to K.S.A. 60-901, et seq. (injunctions).

2. Venue in this court is proper under K.S.A. 60-602.

Parties

3. Plaintiff Samantha Farb is a minor individual residing in Lecompton, Kansas. Miss Farb has had to curtail her outdoor activities, including recreation, exercise, and

gardening, in the summer months because of extreme temperatures in recent years. A stream flowing through her front yard is drying up, and she can no longer play in it as she did in years past. Miss Farb is a vegan, and she relies on her garden and other local food producers to support her diet. Recent long spells of extremely hot weather and decreased rainfall have negatively impacted her own garden, which requires more watering to keep productive, and is causing her family to pay significantly more for produce at the store. Miss Farb is also very concerned about the increases in extreme weather events in Kansas, particularly tornadoes. She has studied meteorological events in Kansas, and has noticed a sharp increase in the number of severe storms since the 1950s. Miss Farb is very concerned about the effects climate change will continue to have on her, as well as the effects it will have on future generations of Kansans.

4. Defendant State of Kansas, under the general police powers and the State Constitution, has the right and the duty to regulate human conduct to protect the health, welfare, and safety of the public. Further, the State is a trustee of public trust resources.

5. Defendant Sam Brownback is Governor of the State of Kansas, and, pursuant to the Constitution of the State of Kansas, is charged with the responsibility for the enforcement of the laws of this state. Governor Brownback is also a trustee of Kansas's public trust resources.

6. Defendant Robert Moser is Secretary of the Kansas Department of Health and Environment. KDHE and Secretary Moser are trustees of Kansas's public trust resources. They are statutorily empowered to establish rules and regulations for air pollutants, and are statutorily responsible for the control of air pollution. Air pollution is defined in the Kansas Air Quality Act as "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be,

injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property....” K.S.A. 65-3002.

Background

7. Kansas courts have recognized the common law doctrine of public trust and have applied the doctrine to navigable waters within the state for the purposes of protecting navigation, commerce, and fishing.

8. Defendants have a duty to protect and conserve the public trust in Kansas for current and future generations.

9. Through scientific understanding of the hydrologic cycle, all surface waters—including the navigable waters of the State of Kansas—ground waters, and the atmosphere are inextricably interconnected, with the result being that a detrimental change to one of these resources is capable of causing, and indeed likely to cause, detrimental changes to the others.

10. This interconnection between resources in the hydrologic cycle requires the State to expand its public trust protections of navigable waters to the publicly-shared water and atmospheric resources, and further requires the State to protect and conserve those resources for the Plaintiff, as a beneficiary of the trust, and for all current and future beneficiaries of that trust.

11. The scientific community has reached consensus that human-caused increases in the concentration of CO₂—a pollutant under the Clean Air Act—and other greenhouse gases (GHGs) in the atmosphere are causing the climate to change.

12. Climate change is already causing changes to the hydrologic cycle in Kansas that are detrimentally affecting the resources already held in trust by the state for the

people. Protracted drought conditions mixed with extreme weather events in recent years have led to flooding of major rivers, crop losses in Kansas's agricultural sector, and economic losses to farmers and associated agricultural industries in the state.

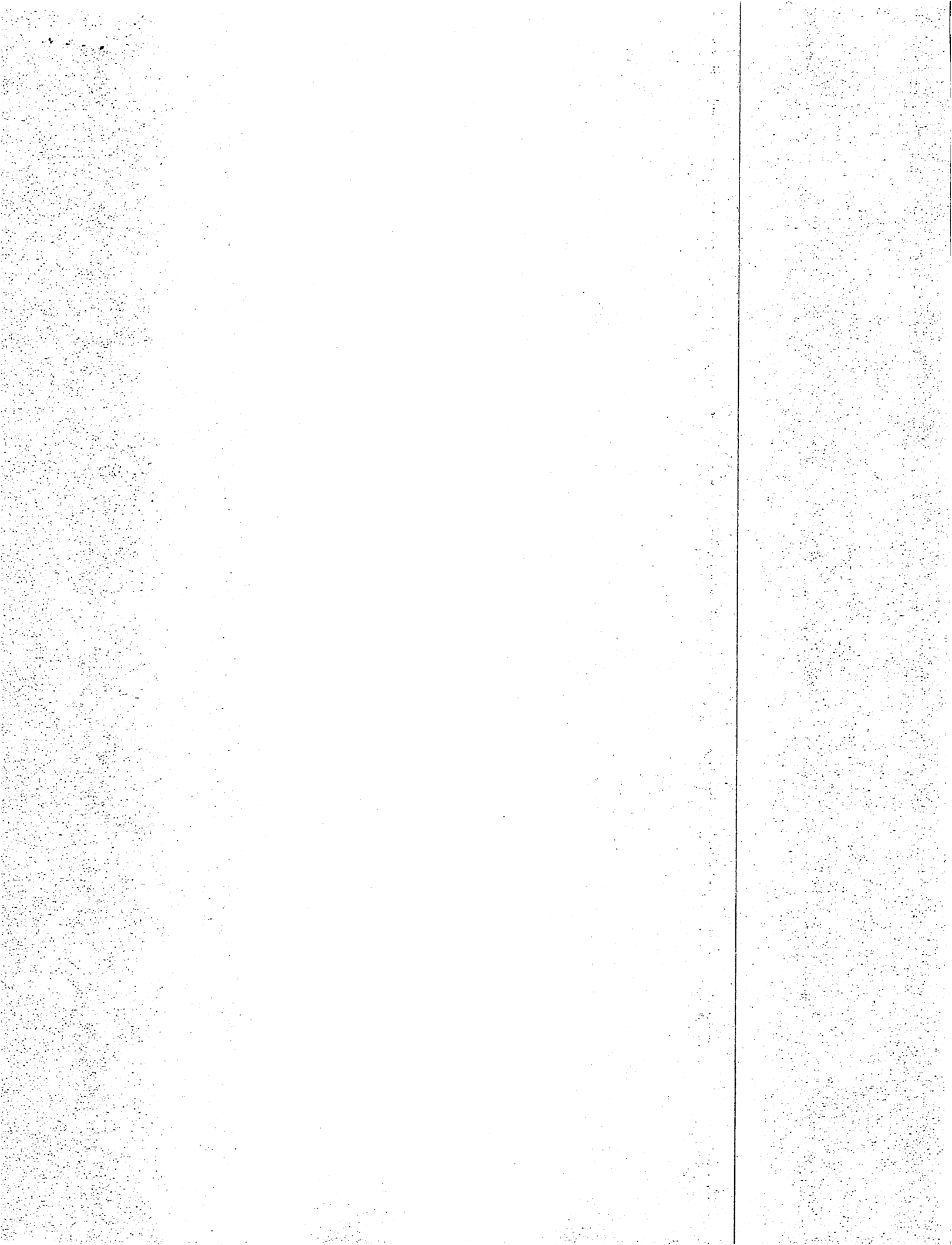
Streamflows in the Missouri River are below normal, and are being supplemented by several Kansas reservoirs. The National Oceanic and Atmospheric Administration reports that as of October 2012, the Missouri River is running at 15 percent below normal streamflow.

13. Climate change models predict that the detrimental effects of climate change will accelerate in the coming years, with catastrophic consequences to the Earth's natural resources, to the health and welfare of the people, and to the economy unless action is taken to immediately halt increases of CO₂ emissions into the atmosphere and to steadily decrease emissions yearly.

14. To protect trust resources, the best available science concludes that carbon dioxide emissions need to peak in 2012 and then begin to decline at a global average of 6% per year between 2013 and 2050 and 5% per year through 2100 in order to reduce atmospheric concentrations of CO₂ to 350 parts per million (ppm) by the end of the century.

15. An emissions plateau until 2020 would require carbon dioxide emissions reductions of 15% per year beginning in 2020 in order to stabilize the climate system and protect trust resources.

16. The failure of the State, the Governor and, specifically, KDHE and Secretary Moser to issue regulations, orders or a plan requiring CO₂ reductions reflecting the best available science constitutes a breach of the State's duty to protect public trust resources.



17. Due to the scientific consensus on climate change, it is reasonably probable that Plaintiff and the public trust in Kansas will be irreparably damaged by Defendants' inaction.

18. Injury to Plaintiff is not hypothetical or remote; the consequences of climate change in Kansas are already being suffered by Plaintiff and by those who are the current beneficiaries of the public trust.

19. There is no other adequate remedy through an action at law Plaintiff can pursue.

20. The threatened injuries to Plaintiff and to the present and future beneficiaries of the public trust outweigh any damage the proposed injunction would cause the Defendants.

21. An injunction, if issued, would not be adverse to the public interest and would, in fact, serve the public interest now and for generations to come by preserving and restoring the resources held in trust for the public by the State of Kansas.

Request for Relief

Plaintiff respectfully requests the Court enter judgment declaring: (a) that the State of Kansas holds the atmosphere and all waters connected to the hydrologic cycle in trust for the present and future generations of Kansans pursuant to the Public Trust Doctrine; (b) that the defendants have an affirmative fiduciary obligation as public trustees of the atmosphere to take affirmative action to protect the atmosphere and all other shared public trust resources from the impacts associated with climate change and human-caused greenhouse gas emissions; (c) that the defendants' fiduciary obligation is

what the best available science defines as necessary to protect the public trust; and (d) that the defendants have violated their fiduciary obligation under the public trust doctrine by failing to exercise their right of control over these critical natural resources in a manner that promotes the public's interest in these natural resources and does not substantially impair the resources.


Further, Plaintiff respectfully requests that this Court issue an order in mandamus and a permanent injunction directing Defendants to exercise and implement their fiduciary obligations to protect public trust resources, including the atmosphere, by developing a comprehensive plan and issuing regulations that promote the public's interest in public trust resources and do not substantially impair those resources. Such orders should further identify and require carbon dioxide reduction measures of at least 6% on an annual basis, based upon identification of 2012 as the year carbon emissions in Kansas peak, consistent with achieving a target CO₂ atmospheric concentration level of at least 350 parts per million by the end of this century, and award such other relief as the Court may deem just and proper in the face of this atmospheric emergency.

Further, Plaintiff respectfully requests that this Court issue an order in mandamus and a permanent injunction directing Defendants to submit to the public and this Court an annual accounting of emissions in Kansas to demonstrate compliance with its plan to protect trust resources.

WHEREFORE, Plaintiff prays that judgment be entered on her behalf as set forth above, that she be allowed her costs and other relief as this Court deems appropriate under the circumstances.

Respectfully submitted,

KAUFFMAN & EYE

By:  _____

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