The Inside Story by Dawn Reeves

EPA Seeks To Block Climate Suit Review

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EPA and other agencies, along with industry groups, are urging a federal judge to deny a request from plaintiffs to reconsider his decision dismissing novel climate change claims under the public trust doctrine.

"Plaintiffs are displeased with the outcome, but the court's decision is founded on precedent, is well reasoned, and is clearly correct," the federal defendants' filing in *Alec L. et al. v. Lisa Jackson* said in a July 16 brief to the U.S. District Court for the District of Columbia.

"A motion for reconsideration is neither a vehicle to re-argue facts and theories upon which a court has already ruled nor a vehicle to raise issues that could have been raised previously," the agencies' brief adds.

The group Our Children's Trust, representing youth plaintiffs in the case, is arguing that the public trust doctrine obligates governments to protect the atmosphere from global warming emissions. They want the court to order the agencies to craft climate protection plans to significantly cut greenhouse gases (GHGs).

Federal District Judge Robert Wilkins dismissed the case May 31, finding that "plaintiffs have not raised a federal question to invoke this court's jurisdiction." He said the Supreme Court's 2012 ruling in *PPL Montana v. Montana* "foreclosed" litigation by holding that there is no federal public trust doctrine. In their ruling, the justices found that even if there was such a doctrine, a federal challenge would be preempted by EPA's GHG rules.

But plaintiffs argued in a June 28 motion to reconsider that they were not allowed to brief the *PPL Montana* argument, which the group says was first raised by backers in reply briefs.

Industry intervenors, including the National Association of Manufacturers, say in their July 16 filing that plaintiffs "had an adequate opportunity to address the *PPL Montana* decision" and also urges Wilkins to deny the motion. "Moreover, in suggesting that the defendant-intervenors somehow hid the ball, plaintiffs overlook their own duty to address the *PPL Montana* decision -- and the strategic risks they took in failing to do so. . . . Here, nearly two months after the *PPL Montana* decision, plaintiffs filed a brief that repeatedly argued that the public trust doctrine 'is not in any way exclusively a state law doctrine.'"

Our Children's Trust says it filed the reconsideration motion as a first step prior to appealing the ruling to the U.S. Court of Appeals for the District of Columbia Circuit. The group has also filed similar claims in state courts and has seen two recent procedural victories, including a decision by a New Mexico judge to allow the case to proceed on the merits, and one by a Texas judge declaring the atmosphere is a public trust but then dismissing the case for other reasons.