

## Feature Cover Sheet

Title	<b>Approaching the global warming tipping point</b>
Subhead?	<b>Creating a legal framework for saving our planet</b>
Byline	Interview with Mary Christina Wood by Carla Wise
Photos supplied?	n/a
Photo credit?	n/a
Stock photo suggestions/keywords?	<p>Pollution - water, air smokestacks highway traffic</p> <p>emissions from silo, smokestacks</p> <p>polluted streams</p> <p>littered beaches</p> <p>clear-cut forests</p> <p>etc.</p> <p>Try Union of Concerned Scientists * Citizens and Scientists for Environmental Solutions website ?</p> <p><a href="http://www.ucsusa.org">www.ucsusa.org</a></p>
Author descriptor?	Yes, received
Author photo?	yes
How many sidebars?	3 possible, use as needed, they can be cut
Sidebar #1 title	Fast Facts Coal use has risks other than global warming
Sidebar #2 title	Additional Resources
Sidebar #3 title	How can our government fulfill its atmospheric trust obligation?
Other graphics/charts? Source information?	<p>Toles cartoon</p> <p>TOLES (c) 2008 The Washington Post. Reprinted by permission of Universal Press Syndicate. All rights reserved.</p>

<p>Pull quote suggestions?</p>	<p>Government doesn't have political discretion to allow our trust to be destroyed.</p> <p>Every city, county, state, every nation must accept its own responsibility for carbon reduction and that's not happening now. People are treating this as a political choice.</p> <p><i>"By the law of nature, these things are common to humankind: the Air, running Water, the Sea . . ."</i> - Institutes of Emperor Justinian, 2.1.1 (A.D. 529)</p> <p>(This quote is not in the text but it might be appropriate to use somewhere)</p>
<p>Edited by:</p>	
<p>PK</p>	<p>x</p>
<p>SC</p>	<p>x</p>
<p>AB</p>	<p>x</p>

The news on climate is dismal. Polar ice caps are melting, fires, floods and droughts increasing, crops failing. Scientists warn of an approaching tipping point beyond which global warming may be unstoppable, with catastrophic consequences. Americans are slowly beginning to grasp this but few know what to do about it.

Mary Christina Wood has an idea though. Wood, an environmental law professor at the University of Oregon, has developed a novel legal framework to confront the global warming crisis in the courts.

She begins with the public trust doctrine, an ancient legal principle laying out the duty of government to protect natural resources for present and future generations. Her premise is that the atmosphere, like all natural resources, belongs to the people as a natural trust administered by the government. She argues that government is failing in its obligation as trustee of our atmosphere using scientific evidence to prove her point. She proposes using the public trust doctrine to bring "atmospheric trust litigation" in court. Successful lawsuits would require that the federal government act immediately to curb global warming. In March, 2008, she presented her work to the Public Interest Environmental Law Conference in Eugene, Oregon. The response "was like a light going on," says Wood. A group of 30 attorneys formed a committee to use her work to bring atmospheric trust lawsuits nationwide.

Mary Christina is a mother of three, a fourth-generation Oregonian and a passionate defender of Western landscapes. Carla A. Wise, a reporter for High Country News, interviewed her about her work, her motivations and thoughts about controlling climate change before it's too late.

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Carla Wise: Can you summarize the legal approach that you are working on for reining in climate change?

Mary Wood: The atmosphere is an asset that people own in common. The government is a trustee of that asset. This approach has a basis in our environmental law. You can even think of it as an attribute of sovereignty ... that is, a duty of government to protect our natural resources. The atmosphere is one of those natural resources. In fact, it's the most crucial resource in our trust because it holds everything else together.

So while courts haven't focused on climate change, there are many, many cases which say clearly that government must protect our wildlife, our waters and our streambeds. Government doesn't have political discretion to allow our trust to be destroyed. So government has a strict fiduciary obligation (duty as a trustee) and now, thanks to the scientists, that can be translated into specific terms that the people can enforce.

The Union of Concerned Scientists ... just came out with a clear prescription for returning our atmosphere to climate equilibrium. Even that prescription is probably not enough because of recent polar ice cap data showing that climate is unraveling much quicker than scientists believed even seven or eight months ago. Nevertheless, it's a good start.

The prescription is to arrest the growth of emissions by 2010, bring emissions down by 4 percent a year thereafter and finally achieve 80 percent reduction by 2050. I've been talking to scientists who've said you have to keep going and achieve zero carbon emissions ultimately.

CW: Let's turn now to the specifics of the atmospheric litigation.

MW: The public needs to understand the concept of 'orphan shares.' Every level of government has to reduce carbon emissions from all sources within its jurisdiction. Otherwise it leaves its share on the table without anybody taking responsibility for it. I call that an orphan share. If we have any orphan shares left out there, we can't reduce the carbon in time to prevent catastrophic climate heating ... because no other government is going to take a deadbeat sovereign's share.

So virtually every city, county, state, every nation must accept its own responsibility for carbon reduction and that's not happening now. People are treating this as a political choice. It's not. Scientists have defined the fiduciary obligation and now it's up to every level of government to carry out that obligation in a uniform manner so that all carbon reduction will add up to the amount we need. This is a matter of carbon math. If there's a piece missing, it won't add up.

CW: And you believe the way to do this is atmospheric trust litigation?

MW: That's one piece of it. The trust approach ... is part of an overall paradigm shift which demands that our government, every level of it, start protecting the resources that we, the public, own. The atmospheric trust litigation is a road map for citizens to bring suit against their government--city, state

or federal--to enforce their fiduciary obligation. We have three branches of government in this country but the courts have been passive observers to this monumental destruction that threatens the future of human civilization and our children. The courts must provide a check against runaway politicization by the other two branches. They have been on the sidelines in climate crisis.

CW: How would it work?

MW: The court would declare this a trust obligation. Then it could craft a declaratory judgment setting forth its principles. That alone would go a long way because the public would have clarity on its own government's responsibility.

Then a judge can order an accounting against any level of government. An accounting is a very standard tool ... it means the government would have to measure its carbon footprint and it would have to show the court that it's reducing carbon in accordance with the scientifically defined fiduciary obligation.

A court would not tell the jurisdiction *how* to accomplish carbon reduction. That would be up to the political branches and the citizens. But the court would *enforce* that carbon reduction and have a method by which the citizens can know whether their government is protecting their resources through this accounting.

There could be injunctive backstops. If officials do not perform as trustees, they would be subject to contempt of court or injunctions such as prohibitions on logging, road building and other activities that contribute carbon.

CW: Is there really time for this legal strategy to bear fruit in two years or less?

MW: Lawsuits often take decades but judges have the power to structure their lawsuits to provide expeditious or even emergency relief. Every judge has the power to organize his or her docket to address climate crisis with the urgency it demands. My own feeling is that there will be judges who will accept this responsibility.

CW: You just presented your work at the annual Environmental Law conference. What was the reaction of the attorneys there?

MW: It was like a light going on! It's a totally different approach, a macro approach to the problem. So far, attorneys have clung to the statutory claims that are most familiar to them ... the Clean Air Act or the National Environmental Protection Act. These are fine for stopping individual actions that contribute carbon but they are not going to reduce carbon overall in the time we have left.

This approach underscores an organic duty on the part of virtually every level of government. The attorneys saw the power of that. Rather than suing every single government agency, just a few lawsuits declaring this would change the paradigm by which we are approaching climate change. Suddenly the pieces fall in place. Every government has to take its share of responsibility.

Mary Christina Wood is a professor at the University of Oregon School of Law. She has written for ¡Viva! Mercy before and shared this interview for reprinting. She is the author of a forthcoming book *Nature's Trust* from Cambridge University Press. She can be reached [mwood@law.uoregon.edu](mailto:mwood@law.uoregon.edu).

Carla Wise, Ph.D., is an environmental writer and plant conservation biologist. She writes about climate change, agriculture and the environment from Corvallis, Oregon.

## Sidebar 1

Fast Facts: Coal use has risks other than global warming

Coal-fired power plants in the United States emit more heat-trapping carbon dioxide than any other source. But there are many other reasons why this fossil fuel is detrimental to our health and environment.

- Coal plants are also the largest source of human-generated mercury, a potent neurotoxin. Mercury emissions contaminate lake and streams and the fish that live in them and can harm people who eat contaminated fish.
- Mountaintop mining in Appalachia has buried more than 700 miles of some of the most biologically diverse streams in the country.
- The burning of coal generates more than 120 million tons of ash, slag and sludge annually – roughly the same amount as all municipal solid waste disposed of in the U.S. landfills each year.
- Fine particulate pollution from U.S. power plants cuts short the lives of approximately 24,000 people each year – 50 percent more than were murdered in the country in 2004.

*Source: Earthwise, Volume 11, Number 1. Winter 2008-2009. The newsletter of the Union of Concerned Scientists*

Sidebar 2

## Additional Resources

Climate Safety in Case of Emergency (Public Interest Research Center, United Kingdom 2008)

<http://climatesafety.org/wp-content/uploads/climatesafety.pdf>

An explanation of climate tipping points and goals that citizens can use.

**"Atmospheric Trust Litigation,"** *Climate Change Reader*, W.H. Rodgers, Jr. and M. Robinson-Dorn, eds. (forthcoming 2009, Carolina Academic Press)

[www.law.uoregon.edu/faculty/mwood/docs/atmo.pdf](http://www.law.uoregon.edu/faculty/mwood/docs/atmo.pdf)

[Atmospheric Trust Obligation](http://www.law.uoregon.edu/faculty/mwood/docs/atmospheric.pdf), chapter in *Adjudicating Climate Change: Sub-national, National and Supra-national Approaches*, William C.G. Burns & Hari M. Osofsky, eds. (forthcoming 2009, Cambridge University Press)  
[www.law.uoregon.edu/faculty/mwood/docs/atmospheric.pdf](http://www.law.uoregon.edu/faculty/mwood/docs/atmospheric.pdf).

Sidebar 3

*How can our government fulfill its atmospheric trust obligation:*

- 1) Arrest the growth of emissions by 2010
- 2) Reduce emissions by 4% a year thereafter
- 3) Achieve 80% reduction by 2050

Source: Union of Concerned Scientists