

Nature's Trust: A Paradigm for Natural Resources Stewardship

Mary Christina Wood

Philip H. Knight Professor of Law, University of Oregon School of Law

Background

Global warming is leagues beyond what Humanity has ever faced before.ⁱ Scientists warn that, to stave off climate disaster, society must dramatically reduce carbon emissions within the *coming decade*.ⁱⁱ Albert Einstein once said, "We cannot solve our problems with the same thinking we used when we created them." The world today needs a seismic paradigm shift that creates unwavering governmental obligation to protect the atmosphere and all other natural resources.

The current political paradigm in the United States gives little sense of government obligation. Agencies portray the environment as a nebulous feature of our world and use permit provisions in environmental statutes to allow massive, unending injury to public resources. Claiming "discretion" to issue permits, government uses statutes as a tool to institutionalize damage to natural infrastructure, undermining the protective purposes of such laws. This government discretion, in turn, attracts undue influence by private parties seeking to profit from exploiting and destroying the environment.ⁱⁱⁱ Under the prevailing political paradigm, there is no end in sight to resource destruction.

Climate change and the uncertainty it brings puts a premium on virtually all remaining natural assets in the country. Farmland, air, water, wetlands, wildlife, soils, mineral resources and forests must be protected to ensure that Americans have the fundamental survival resources they need in a future that holds many unknowns. Moreover, to thwart climate catastrophe and the consequent impacts on these fundamental resources, government must prevent dangerous carbon loading of the atmosphere. Addressing climate crisis is a matter of carbon math. If the United States does not accept its responsibility to reduce emissions, it will leave an orphan share of carbon on the doorstep of the world that will consign all other nations to climate disaster. Confronting climate crisis therefore requires a clear sense of government obligation that is inherent to sovereignty, not a matter of political choice.

Proposal

Our new leaders can and must reframe government's *discretion* to destroy Nature into an *obligation* to protect Nature and to ensure Natural Resource Stewardship. Drawing upon timeless, enduring legal principles and court decisions, leaders can characterize government as a trustee of the natural resources essential to human survival.^{iv} A trust is a fundamental type of ownership whereby one manages property for the benefit of another. Viewed as a trust, the environment consists of a portfolio of quantified natural assets that government, in fact, manages. As beneficiaries, citizens hold a common property interest in defined, bounded assets that make up Nature's Trust. Such trust principles form the bedrock of statutory law.^v Trustees have a clear fiduciary obligation to protect trust assets. In other words, governmental trustees are not at liberty to allow destruction of the property they are charged with managing on behalf of citizens. In this light, government's failure to mount a national climate defense is akin to sitting idle during an attack on American soil.

The Atmospheric Fiduciary Obligation

Under the Nature's Trust frame, all U.S. government agencies at every level – local, state, and federal – are inherently burdened with a strict *fiduciary obligation* to protect the atmosphere as one of the assets in the trust. Their fiduciary standard of care consists of proportionate responsibility that ties directly to the climate imperative as defined by scientists: 1) peak greenhouse gas emissions by 2010; 2) reduce emissions 4 percent per year thereafter; and 3) reduce emissions at least 80 percent by 2050.^{vi} Moreover, the trust framework positions all nations of the world in a logical relationship that can guide international diplomacy.^{vii} The atmosphere is a commonly held asset shared as property among all nations on Earth. Thus, all Nations are sovereign co-tenant trustees of the atmosphere, each holding the fiduciary responsibility to not degrade the common asset and to accomplish proportionate carbon reduction.

Conclusion

By expressing a vision of government obligation based on trust principles, leaders will tap into a common well-spring of human thought encompassing the economic and moral realms. Nature's Trust principles give force to the economic approach of natural capitalism, which requires businesses to build profits by using Earth's interest, not the capital.^{viii} These principles also crystallize moral accountability: failure to protect Nature's Endowment amounts to generational theft. Planetary in scope and holistic in approach, Nature's Trust principles will define leadership of a new world – a world in which all nations on Earth are united in an urgent defense effort to secure the natural systems on this planet for present and future generations of Humankind.

i See James Hansen *et. al.*, *Climate Change and Trace Gases*, PHIL. TRANS. R. SOC. A 1925, 1949 (2007) (“Planet Earth today: imminent peril.”).

ⁱⁱ Jim Hansen, *The Threat to the Planet*, N. Y. REV. BOOKS 13, July 13, 2006 available at <http://www.nybooks.com/articles/19131>.

iii See ROBERT F. KENNEDY, JR., *CRIMES AGAINST NATURE* (Harper, 2004).

iv In 1892, the Supreme Court said: “The state can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers in the administration of government” Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 453 (1892); *see also* Geer v. Connecticut, 161 U.S. 519, 525-29 (1896) (detailing ancient principles of sovereign trust ownership of air, water, sea, shores, and wildlife and stating: “[T]he power or control pledged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people.”). In court cases, these legal principles have been bundled together as the “public trust doctrine.” For commentary, see JAN G. LAITOS, SANDRA B. ZELLMER, MARY C. WOOD, & DAN H. COLE, *NATURAL RESOURCES LAW* Chapter 8.II (West Publishing, 2006); Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 558-66 (1970); Charles F. Wilkinson, *The Headwaters of the Public Trust: Some of the Traditional Doctrine*, 19 ENVTL. L. REV. 425, 431 (1989); Mary Christina Wood, *Nature’s Trust: A Legal, Political and Moral Frame for Global Warming*, 34 BOSTON COLLEGE ENVTL. AFF. L. REV. 577 (2007). Mary Christina Wood, *Nature’s Trust: Reclaiming an Environmental Discourse*, 25 VIRGINIA L. J. 243 (2007); Gerald Torres, *Who Owns the Sky?*, 19 PACE ENVTL. L. REV. 515 (2002); PETER BARNES, *WHO OWNS THE SKY? OUR COMMON ASSETS AND THE FUTURE OF CAPITALISM* (Island Press, 2001).

^v In the National Environmental Policy Act (NEPA), Congress declared a national duty to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.”

^{vi} See UNION OF CONCERNED SCIENTISTS, *HOW TO AVOID DANGEROUS CLIMATE CHANGE* 5 (2007),

http://www.ucsusa.org/global_warming/science/emissionstarget.html. *See also* Goddard Institute for Space Studies, NASA, *Research Finds that Earth’s Climate is Approaching ‘Dangerous Point’* (May 30, 2007), available at <http://www.giss.nasa.gov/research/news/20070530/> (discussing study setting forth “alternative scenario” to prevent dangerous global warming). These targets are consistent with the IPCC’s recent report calling for a worldwide emissions peak by 2015 and reductions approaching 80% by 2050. As quantitative measures of the fiduciary obligation, they are potentially enforceable in United States courts through an approach called atmospheric trust litigation. *See* Mary Christina Wood, *Atmospheric Trust Litigation*, <http://www.law.uoregon.edu/faculty/mwood/docs/ATLDraft1005.pdf>.

^{vii} *See* United Nations Framework Convention on Climate Change (international treaty signed in 1992 by United States and almost all nations of the world setting forth goal to stabilize atmospheric greenhouse gasses “at a level that prevents dangerous human-made interference with the climate system.”).

^{viii} *See* PAWL HAWKEN, ARMORY LOVINS, & L. HUNTER LOVINS, *NATURAL CAPITALISM: CREATING THE NEXT INDUSTRIAL REVOLUTION* (Little Brown 1999); PETER BARNES, *CAPITALISM 3.0* (Barrett-Koehler 2006).