

# Trust in property rights to stem global warming

BY MARY CHRISTINA WOOD

In January, a new federal Congress and state legislatures will look at budget issues. More urgent, however, is an accounting of Nature's budget. Scientists warn that Earth is dangerously heating from greenhouse gasses emissions.

The polar ice cap, Greenland, and nearly all glaciers are melting. These trends will cause a sea level rise that will inundate United States coastlines, including major east coast cities. Unchecked, global warming will unravel our social and economic systems through food scarcity, droughts, decreased water supplies, flooding, frequent and intense natural disasters, increased disease, and massive environmental dislocation.

These facts are not born out of fear tactics. They simply flow from the ledger sheet of remaining natural capital.

We face an environmental deficit that is unprecedented in human history. Leading climate scientists still hope that we can stave off a disastrous climate temperature rise — but only if government acts now. The new Congress and state legislatures should immediately pass legislation in line with several European nations to achieve a 70 percent reduction of greenhouse gas emissions by 2050.

Protection of natural resources for present and future generations has remained, since ancient times, the most fundamental duty of any government. A company president who failed to address colossal losses of financial stock would be fired. What explains our government's clear dereliction of duty?

Oddly enough, the answer might rest in our system of environmental

law. Statutes give agency officials ample authority to protect natural assets. But these laws also give discretion to issue permits to destroy resources. The permit systems were never intended to subvert statutory goals. Most agencies, however, elevate their own political security over the public's interest. They rarely say no to pollution.

Agencies have learned that complexity operates as a wonderful shield to public scrutiny. Impenetrable techno-jargon mutes citizens' voices. Scientific "uncertainty" is misused to justify bureaucratic inertia that caters to powerful private interests. All of this occurs behind the veil of the most ambitious set of environmental laws in the world.

Our third branch of government — the judiciary — is supposed to ensure that agencies carry out the law. But courts have been indifferent towards the politicization of agencies. They often defer to agency decisions on the false premise of neutrality. A compromised judicial check skews the Constitutional balance of power over the environment.

These dynamics drive global warming policy. Leading climate scientists warn that we have, at most, only ten years to reverse the trajectory of global greenhouse gas emissions. The United States is responsible for 30 percent of these emissions. Yet the Environmental Protection Agency has still not regulated new automobile sources. In a pending Supreme Court case, government lawyers maintain that EPA — the only federal agency charged by Congress to control air pollution — has discretion to do nothing. By wasting precious time in court, EPA is closing the last window of opportunity.

Environmental law was not supposed to work this way. It is now painfully obvious that the statutes passed in the 1970s vested far too much discretion in the agencies. The good news is that this vast bureaucracy holds the tools and funding to halt much environmental destruction, and do so quickly. But agencies remain paralyzed.

A national grassroots movement is gathering around the issue of climate disaster. Citizens can steer the political system to serve the public once again — if they clearly voice their property rights.

Americans hold a property right to an enduring natural trust. A trust is a legal concept whereby someone manages property for the benefit of another. Nature's trust consists of air, waters, streambeds, wildlife, fisheries, and other crucial elements. The beneficiaries of this trust are all generations of citizens. Government is trustee with a duty to defend the trust against injury and restore it where it has been damaged. These principles are embodied in original Supreme Court jurisprudence.

Yet legislators and agency officials have long forgotten them. They continue to use their public offices and budgets to institutionalize damage to the trust, in contravention of the Supreme Court's words that the trust "is for the benefit of the people, and not for the benefit of private individuals as distinguished from the public good."

The moral imperative behind the trust speaks universally to all ages, cultures, and nations. The Philippines Supreme Court invoked the trust to halt deforestation, stating, "(T)he day would not be too far when all else would be lost not

only for the present generation, but also for those to come — generations which stand to inherit nothing but parched Earth incapable of sustaining life."

Today, young people across America are confronting their parents over the impoverishment of natural resources that are rightly theirs. They have every reason to be angry. Their property rights are being ignored. The trust is supposed to secure their natural inheritance.

In order to rebuild natural wealth, government must draw the line against further damage to land and resources. Unfortunately, by squandering time government has narrowed its options. Inevitably, some will argue that regulation unfairly restricts private property rights. To the contrary, private property rights depend foremost on natural infrastructure. Deeds didn't account for much during Hurricane Katrina.

Americans are the beneficiaries of a multi-billion dollar trust account in the form of natural resources. The trustee is permitting phenomenal loss of assets. Citizens should not sit by. They should demand that their new leaders fix the trust that matters most.

(Mary Christina Wood, of McColl, is the Philip H. Knight Professor of Law and Morse Center for Law and Politics Resident Scholar, and founding director of the Environmental and Natural Resources Law Program, University of Oregon School of Law. She is currently writing a book entitled, "Nature's Trust." She will be giving a free public talk at the Community Congregational Church in McColl on Wednesday, Jan. 10, from 7-8 p.m.)