

OPINION

GUEST VIEWPOINT

Bureaucrats violate trust by ignoring preservation

BY MARY CHRISTINA WOOD

This month, a new U.S. Congress will look at the federal budget. More urgent, however, is an accounting of nature's budget.

Scientists warn that Earth is dangerously heating from greenhouse gas emissions. Unchecked, global warming will unravel our social and economic systems through food scarcity, droughts, decreased water supplies, flooding, frequent and intense natural disasters, disease and massive environmental dislocation.

These facts flow from the ledger sheet of remaining natural capital; we face an unprecedented environmental deficit. Leading climate scientists still hope that we can stave off a disastrous temperature increase — but only if government acts now.

The new Congress 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 current and future generations is the most fundamental duty of any government. Yet the Environmental Protection Agency refuses to regulate.

A company president who failed to address colossal financial losses 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 them discretion to permit damage.

The permit systems were never intended to subvert statutory goals. Most agencies, however, elevate their own political well-being over the public's interest. They rarely say no to pollution.

Agencies have learned that complexity operates as a wonderful shield against public scrutiny. Impenetrable jargon mutes citizens' voices. Scientific "uncertainty" is misused to justify bureaucratic inertia.

All of this occurs behind the veil of the most ambitious set of environmental laws in the world.

The United States judiciary is supposed to ensure that federal agencies carry out the law. But courts have been indifferent toward the politicization of agencies. They often defer to

agency decisions on a false premise of neutrality. A compromised system of judicial checks and balances skews the constitutional scales in regard to who has power over the environment.

These dynamics drive global warming policy. Scientists warn that we have, at most, only 10 years to reverse the trajectory of global greenhouse gas emissions. Yet in a pending Supreme Court case, the EPA proclaims "quintessential administrative judgment" 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 could do so quickly. But agencies remain paralyzed.

Citizens can steer the political system to serve the public once again — by clearly voicing 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. All citizens are beneficiaries of this trust.

Government is trustee with a duty to defend the trust against injury and restore it where it has been damaged. These principles are embedded in original Supreme Court jurisprudence.

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.

Yet legislators and agency officials continue to use their public offices and budgets to institutionalize damage to the trust. And this takes place in clear contravention of the 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."

To rebuild natural wealth, government must halt further damage to our land and resources. 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. Property deeds didn't account for much during Hurricane Katrina.

Citizens should have no trust in a government that puts their future in jeopardy. They should demand global warming legislation as a first step in restoring the trust that matters most.

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