

**This moment:  
match law with reality**



**ATMOSPHERIC RECOVERY LITIGATION**



# **THE CLIMATE EMERGENCY: GEARING A LEGAL RESPONSE TO THE SCOPE OF THE CRISIS**

## **I. NEEDS OF THE CLIMATE SYSTEM**

## **II. ATMOSPHERIC TRUST LITIGATION**

## **III. ATMOSPHERIC RECOVERY LITIGATION:**

## **SUING THE FOSSIL FUEL COMPANIES FOR NATURAL RESOURCE DAMAGES**



The common law is “the felt  
necessities of the times.”  
Justice Holmes



The oceans are 30% more acidic than before the Industrial Revolution, killing coral reefs and shellfish





**40 dead, 100,000 evacuated, 5,700 structures  
burned**





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# The Uninhabitable Earth, Annotated Edition

The facts, research, and science behind  
the climate-change article that explored  
our planet's worst-case scenarios.

By David Wallace-Wells

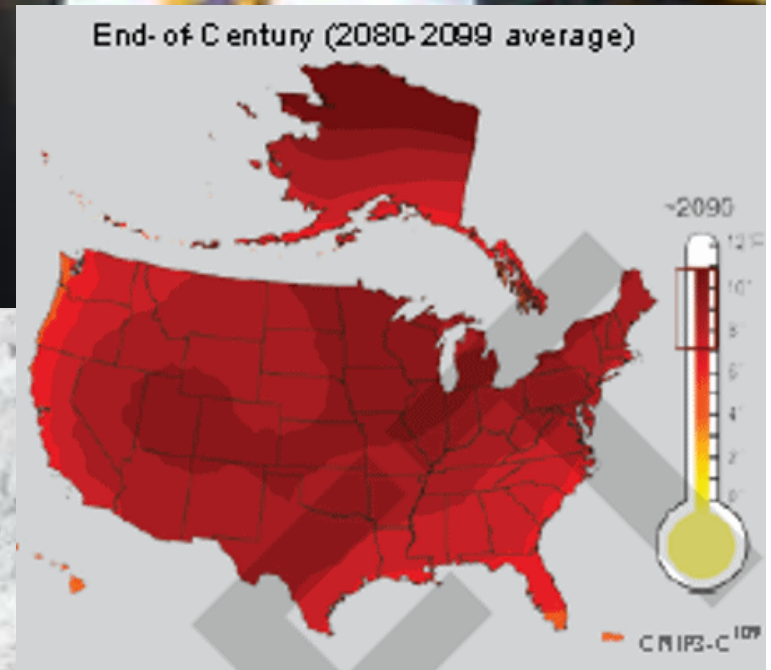


**“It is, I promise, worse than you think. . . . But no matter how well-informed you are, you are surely not alarmed enough.”**





Business as Usual: 9 -11°F  
warming over most of inland U.S.  
by 2090 U.S. Climate Impacts Report



# DANGEROUS FEEDBACK LOOPS





# Former UN Climate Chief: Only Three Years Left To Bend Emissions Curve

“[S]hould emissions continue to rise beyond 2020, or even remain level, the temperature goals set in Paris become almost unattainable.”

Christiana Figueres







PRESIDENT TRUMP: DEVELOP \$50 TRILLION  
RESERVES





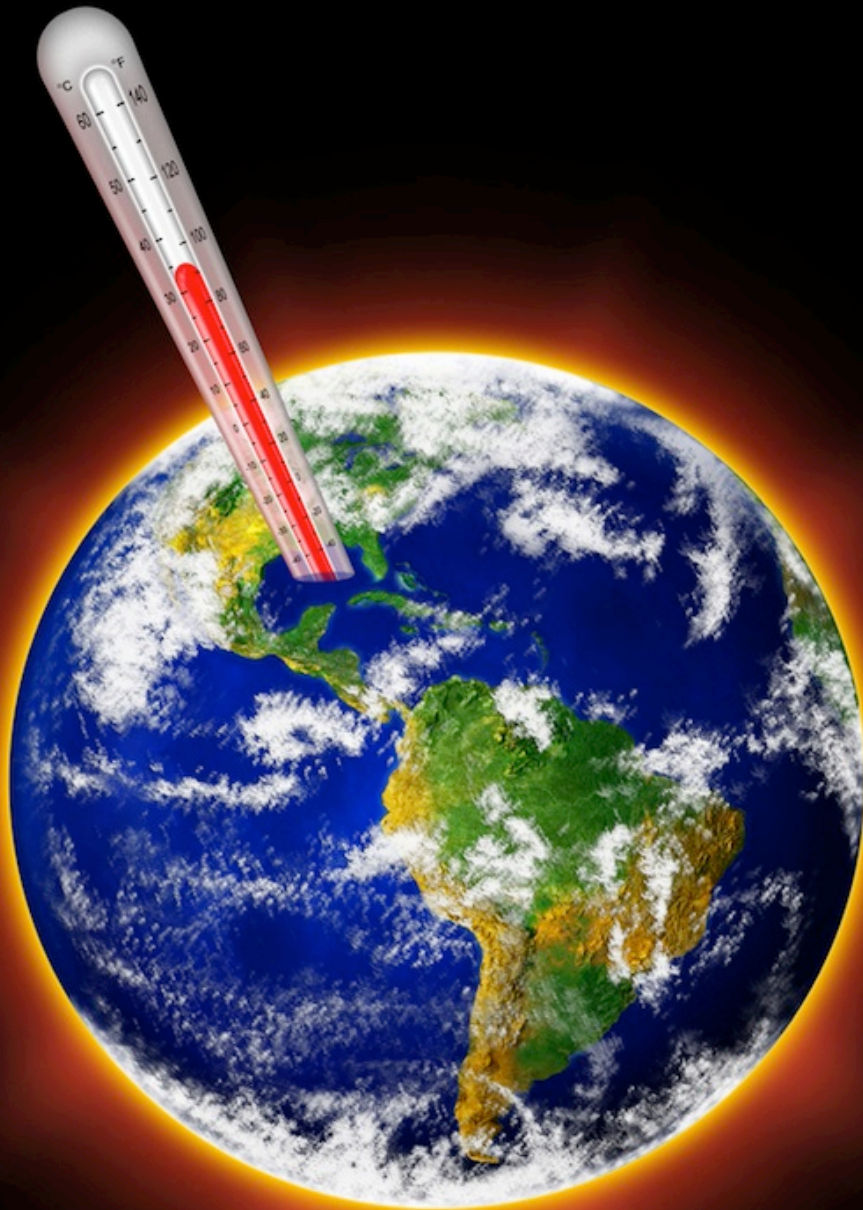




“The current situation of the world in relation to the climate problem is that we’re in a car with bad brakes driving toward a cliff in the fog . . . .”

**John Holdren, President Obama’s science advisor.**





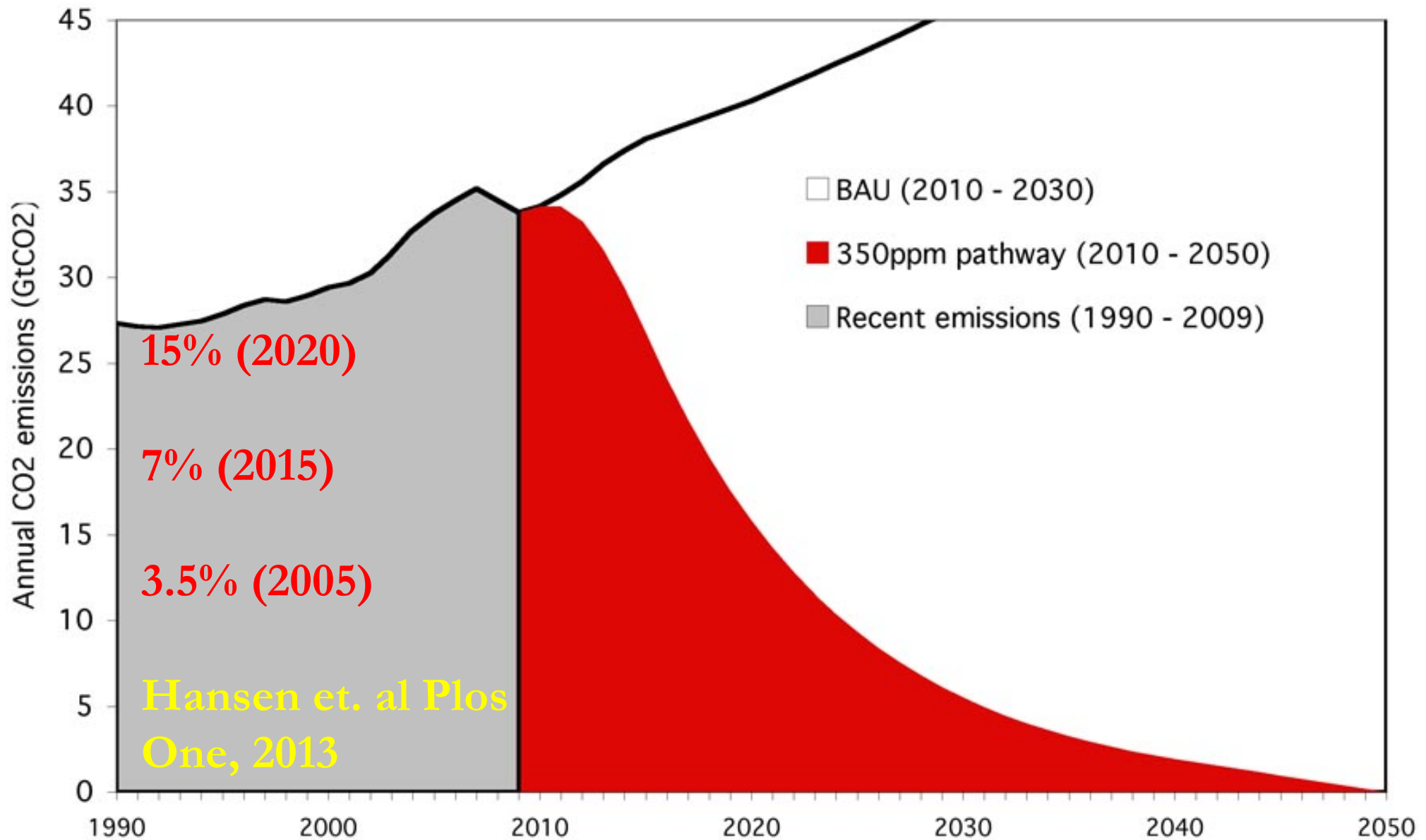
400 parts per million  
350 parts per million to  
stabilize climate

Two part response:

Decarbonization  
Drawdown CO<sub>2</sub> (100  
Gtc at least)

# The 350 ppm Emergency Pathway

EcoEquity and Stockholm Environment Institute





NATURAL DRAWDOWN POTENTIAL IN FOUR AREAS,  
UP TO 100 GTC

Reforestation

Wetlands/Mangrove Restoration

Regenerative Agriculture

Regenerative Grazing

# A Legal Strategy

Decarbonization

Drawdown CO<sub>2</sub>







# ATMOSPHERIC TRUST LITIGATION



# The Public Trust



*Hanging Lake, Glenwood Canyon, Colorado*



# ATMOSPHERIC TRUST LITIGATION CAMPAIGN

On behalf of youth plaintiffs/petitioners

Against governments

Asserts government as trustee

Duty against substantial impairment of climate system

Seeks enforceable, science based climate recovery plans

Spearheaded by Our Children's Trust



Early climate cases dismissed on procedural grounds

Judicial “nihilism” in face of climate change.

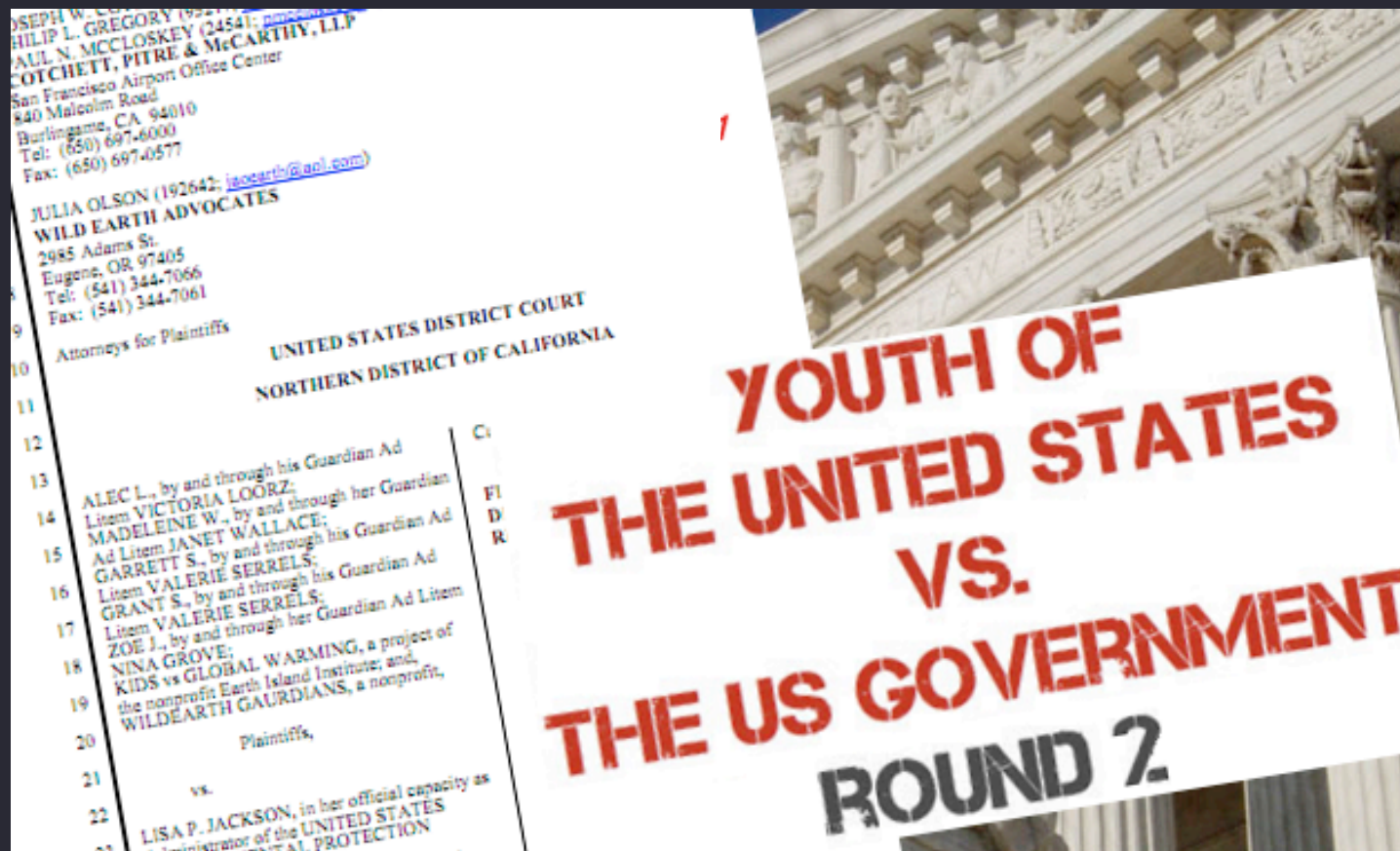
“[D]enying [their] own expansive power, [these courts] cowered before catastrophe.”

Yale Professor Douglas Kysar, R. Henry Weaver & Douglas A. Kysar,  
*Courting Disaster: Climate Change and the Adjudication of  
Catastrophe*





# THE ATL FEDERAL CASE – FILED IN OREGON AUGUST, 2015



“Defendants have acted with deliberate indifference to the peril they knowingly created.”

**Challenges Entire Fossil Fuel Policy of the United States**  
**Constitutional Duty Under Federal Public Trust**  
**Constitutional Duty Under Due Process Clause to Protect**  
**Fundamental Rights of Life, Liberty and Property**



**Requests Court to Order Enforceable Plan for**  
**De-carbonization and Drawdown**



# Juliana v. United States: Court's Order Denying Motions to Dismiss, November 10, 2016



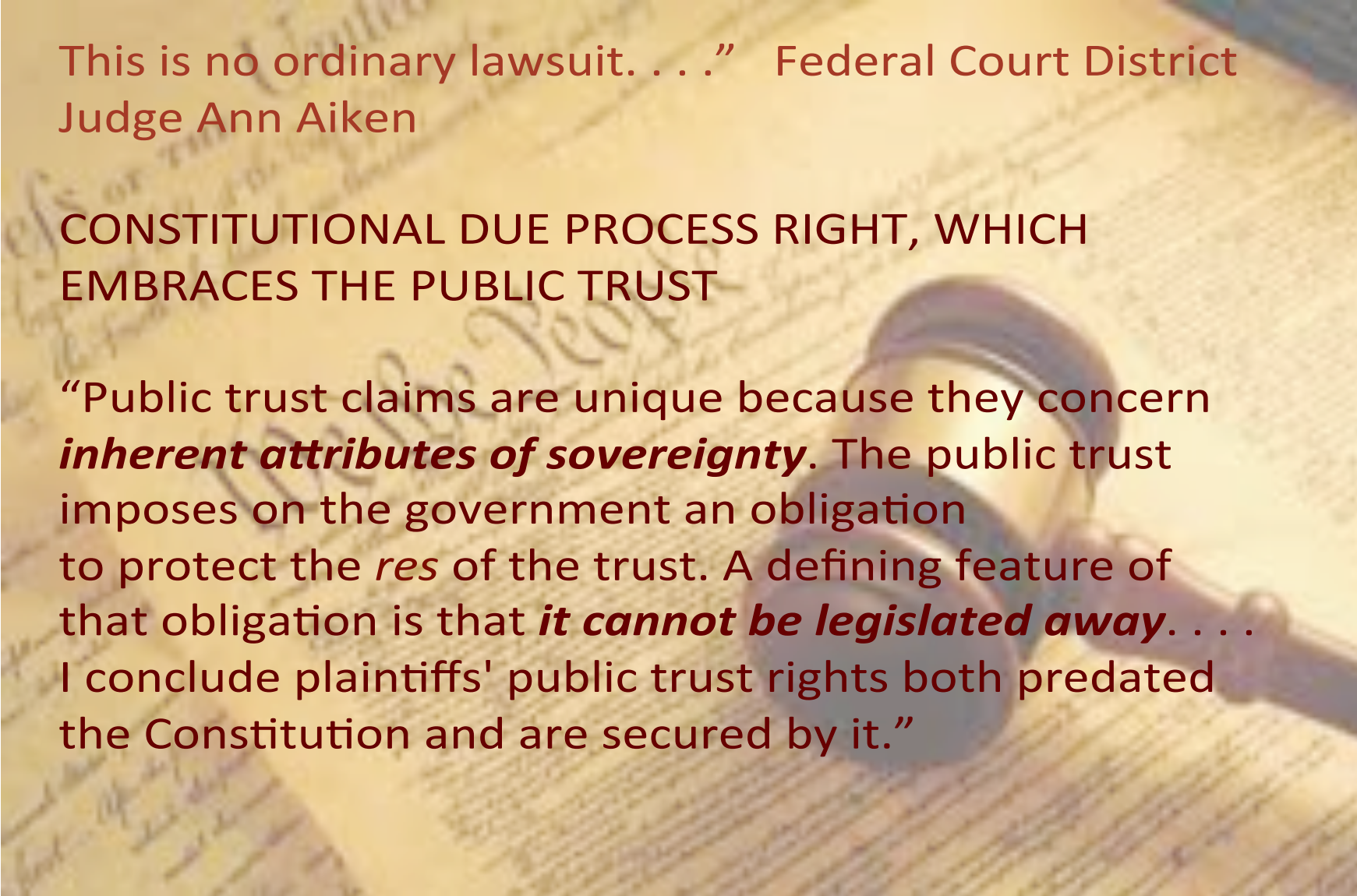


A bronze statue of Lady Justice, blindfolded and holding scales of justice, set against a dramatic sunset background. The statue is positioned on the left side of the frame, with its right arm raised holding the scales. The background features a bright sun low on the horizon, casting a warm, golden glow over the scene and creating a silhouette effect on the statue's face.

The law is never right until it is just.

“I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society . . . .” Judge Ann Aiken





This is no ordinary lawsuit. . . .” Federal Court District Judge Ann Aiken

## CONSTITUTIONAL DUE PROCESS RIGHT, WHICH EMBRACES THE PUBLIC TRUST

“Public trust claims are unique because they concern ***inherent attributes of sovereignty***. The public trust imposes on the government an obligation to protect the *res* of the trust. A defining feature of that obligation is that ***it cannot be legislated away***. . . . I conclude plaintiffs' public trust rights both predated the Constitution and are secured by it.”

June, 2017: Industry Interveners withdrew from case, *en masse* ; Trump Administration made motion for early appeal (writ of mandamus) before Ninth Circuit



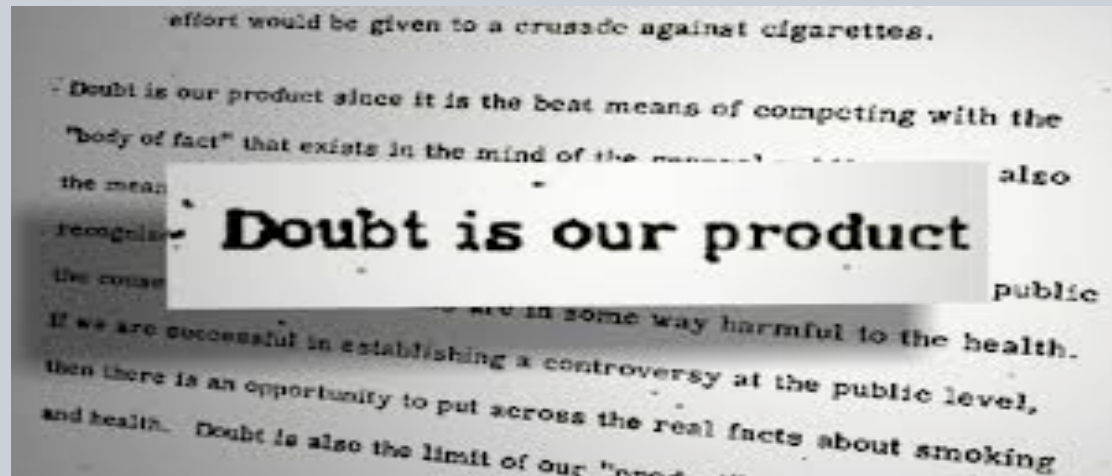




# The 11-Year-Old Suing Trump Over Climate Change

# The “Trial of the Millennium”

## U.S. Fossil Fuel Policy Meets Climate Science in Court for the First Time



Trial date scheduled Oct. 29, 2018 – 8-10 weeks





*The Green  
Judicial  
Dominoes*



Decarbonization

-- ATL (suits  
against  
government)



Drawdown

100+ GtC





No one in charge of  
accomplishing  
drawdown

# ATMOSPHERIC RECOVERY THROUGH DRAWDOWN OF CO<sub>2</sub>

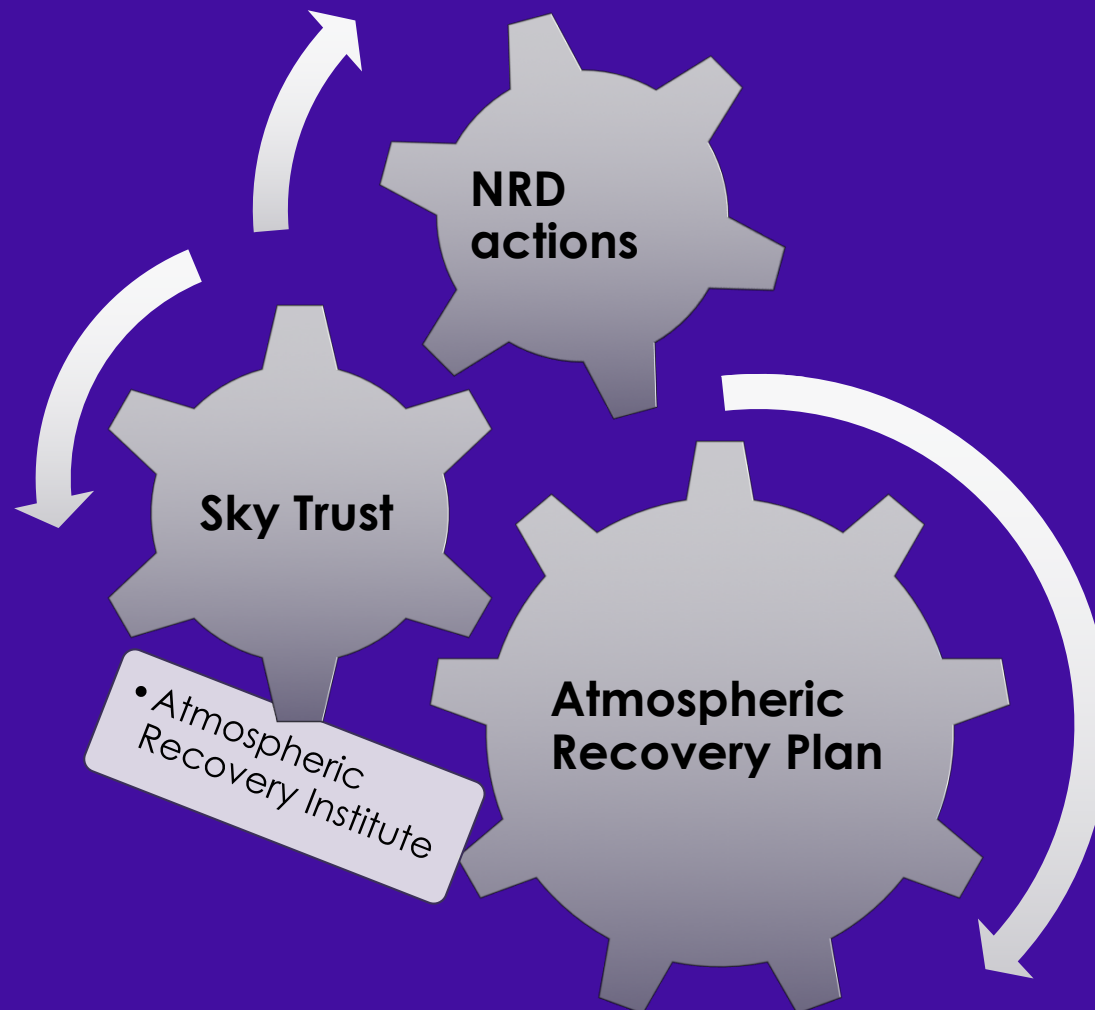
Reforestation

Wetlands/Mangrove Restoration

Regenerative Agriculture

Regenerative Grazing

# Atmospheric Recovery Strategy







# Atmospheric Recovery Plan

*Needed to provide framework for scattered efforts*

Soil-Based Drawdown of 100 GtC

Phase I Domestic U.S.

Phase II Projects in Other Nations





## Co-Benefits of Drawdown:

enhanced food and water systems  
resiliency against climate change  
local jobs





**Fossil fuel industry  
profits of 1 trillion between  
2000 and 2010.**

**NRD suits against company  
responsible for spill, brought  
by sovereign trustees**





# NRD SUITS AGAINST CARBON MAJORS TO FUND ATMOSPHERIC RECOVERY PLAN

States, counties, tribes, foreign nations

Burning like  
there's no tomorrow

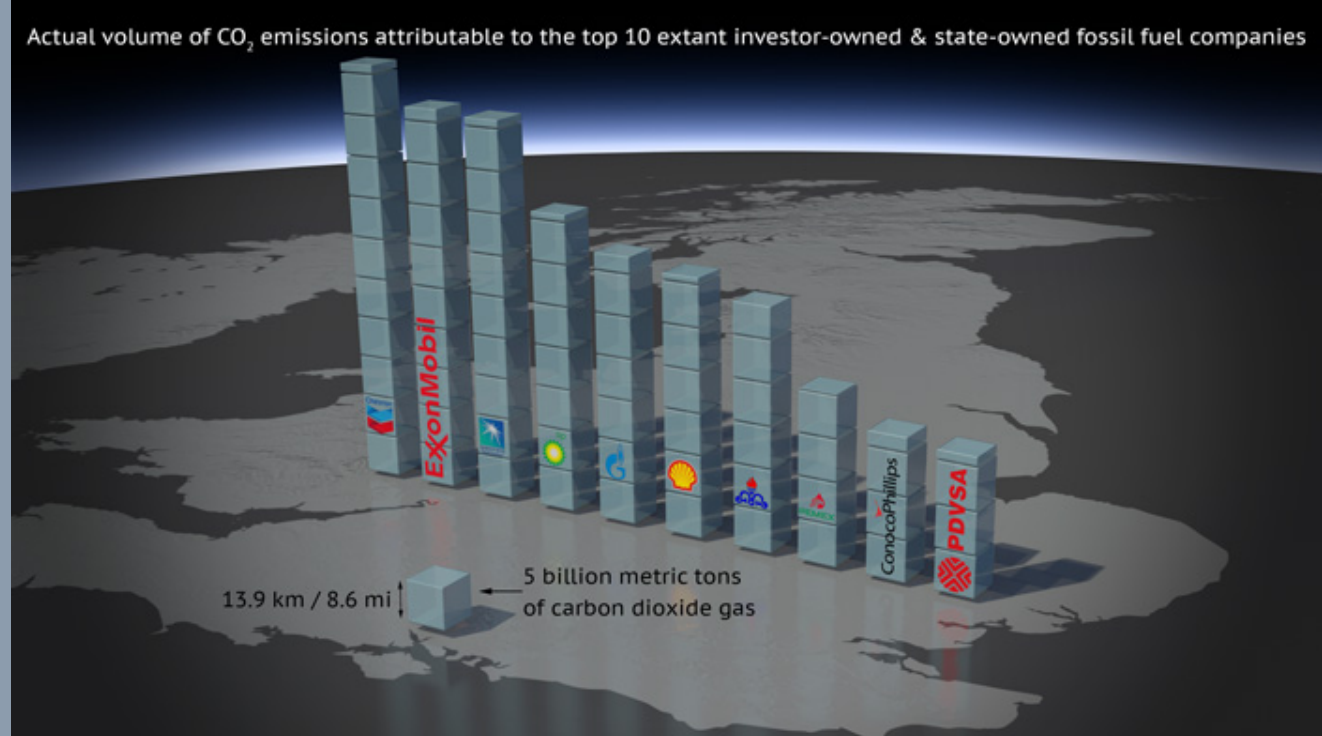


Members of the United States Climate Alliance  
Potential members





# The Potentially Responsible Parties (PRP)



Nearly two-thirds of carbon dioxide emitted since the 1750s can be traced to the 90 largest fossil fuel and cement producers, most of which still operate.  
Heede Study

# Claims

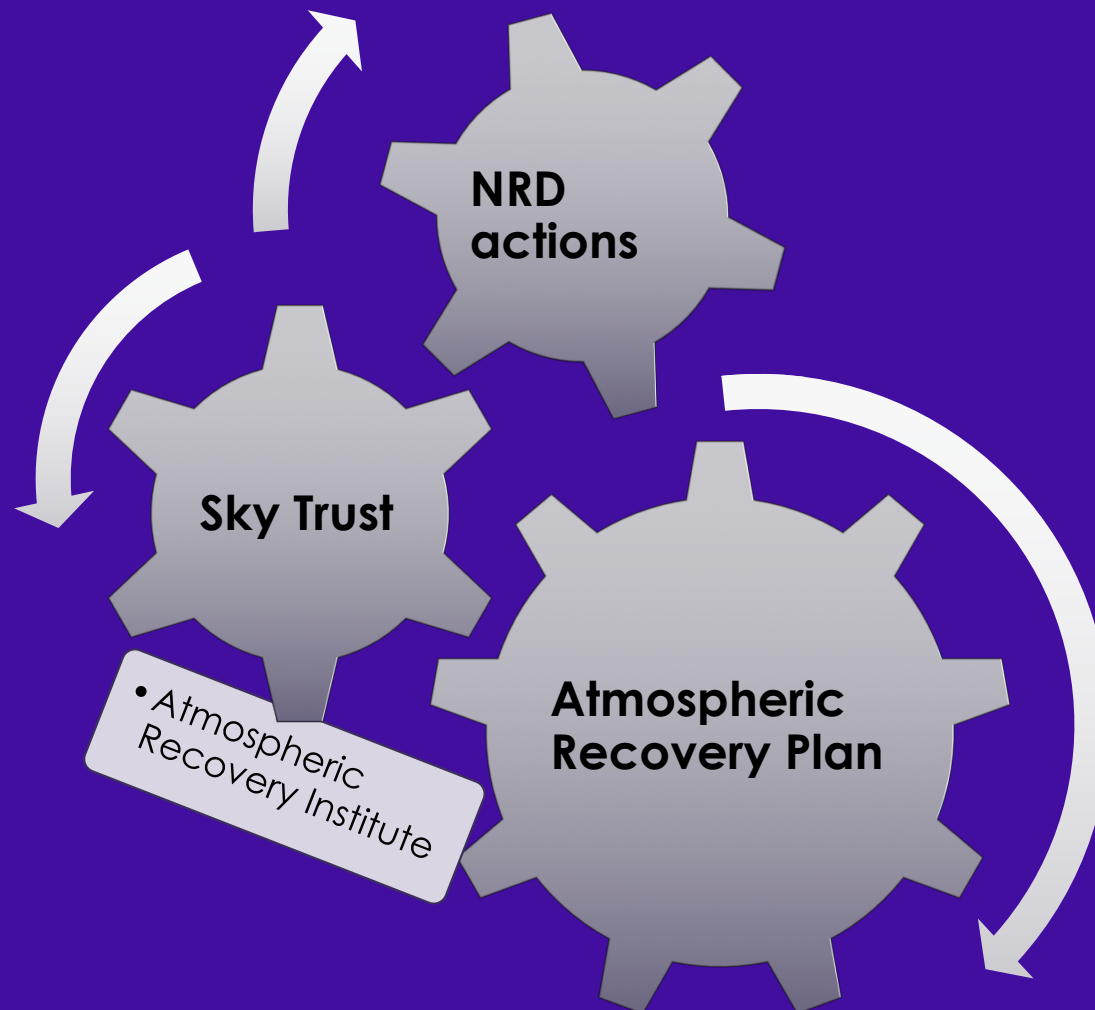


No statutory NRD provision for CO<sub>2</sub> release

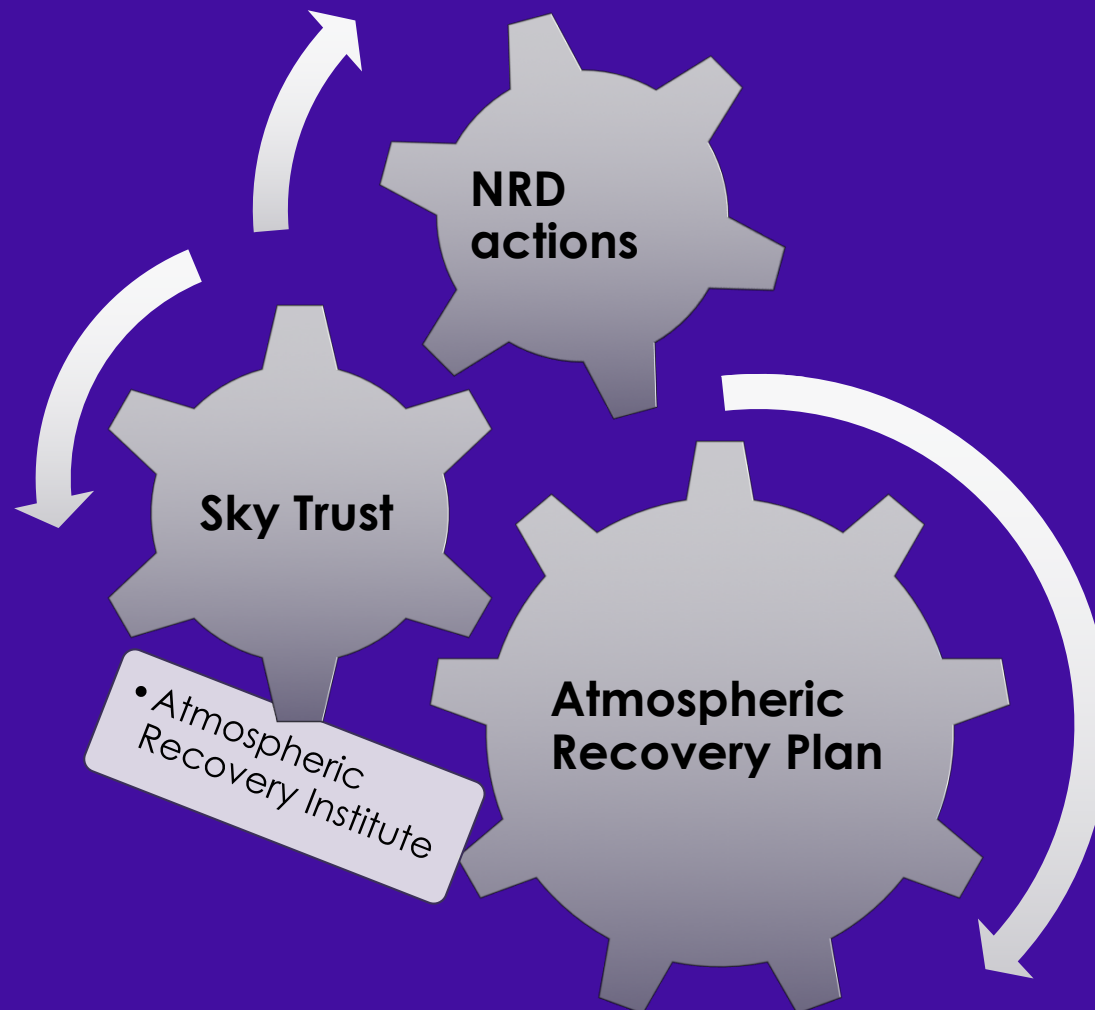
Common law tort claims and public trust claim



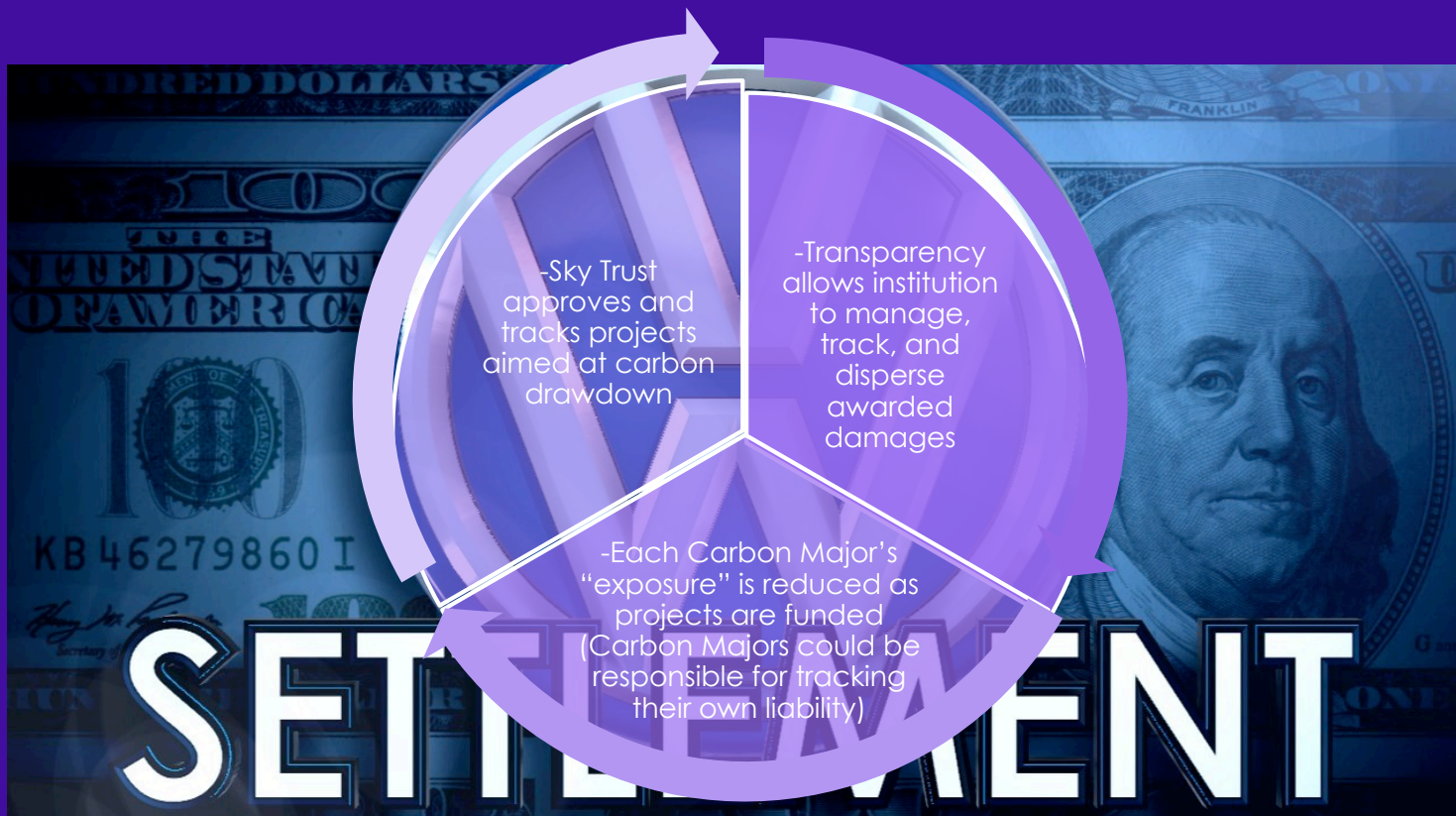
# Atmospheric Recovery Strategy



# Atmospheric Recovery Strategy





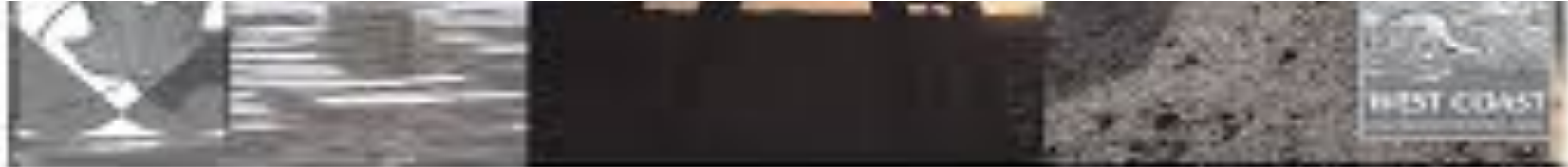


\$2.7 billion to be collected by the Trust and distributed as funding for eligible mitigation actions for NOX removal

**Global Climate Damages: \$600 Billion & rising.**



# **California Locales Sue Fossil Fuel Companies for Rising Seas**



**Chances of climate lawsuits also rising.**

**Seeking disgorgement of profits for sea wall and other infrastructure costs of adaptation**



Energy and Environment

# New York City sues Shell, ExxonMobil and other oil companies over climate change

By **Chris Mooney** and **Dino Grandoni** January 10 [✉ Email the author](#)



Colorado suit filed this week

## ***Climate Lawsuits, Once Limited to the Coasts, Jump Inland***





The background of the slide is a dense, overlapping pattern of US dollar bills, primarily \$100 bills, scattered across the entire surface. The bills are slightly out of focus, creating a textured, monochromatic effect in shades of green and grey.

## PROBLEM:

**There is not enough money in the world to pay for all of the damage unleashed on this planet by the fossil fuel industry.**

*Loss of life and property*

*Economic losses*

*Relocation expenses*

*Infrastructure damage*

*Secondary natural resource damages (shorelines, fisheries, wildlife, forest, waterways)*

***Atmospheric Natural Resource Damages***





# Cases paving the way for carbon major liability.



California v. BP et. al – recent order denying motions for remand to state court

# Analogous case dealing with lead paint



**NEWS CENTER**

## Court Upholds Landmark Judgment Against Sherwin-Williams, Conagra And NL Industries Ordering Removal Of Lead Paint From Homes

 [Print PDF](#)

**November 16, 2017**

On November 14, 2017, the California Court of Appeal affirmed a trial court's decision that defendants Sherwin-Williams, ConAgra and NL Industries are liable for public nuisance because they promoted lead paint for use in the inside of homes with knowledge that such promotion would create a serious risk of harm to children, in homes built pre-1950.



# *California v. BP* (N.D. Cal. Feb. 27, 2018) Judge Alsup's Order Denying Motion to Remand

“If ever a problem cried out for a uniform and comprehensive solution, it is the geophysical problem described by the complaints. . . . [The] scope of the worldwide predicament ***demands the most comprehensive view available***, which in our American court system means our federal courts and our federal common law. A patchwork of fifty different answers to the same fundamental global issue would be unworkable.”

# *California v. BP* (N.D. Cal. Feb. 27, 2018) Judge Alsup's Order Denying Motion to Remand

“[Climate crisis] demands to be governed by as universal a rule of *apportioning responsibility* as is available.”



# Judge Alsup's tutorial – March 21

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WRITTEN BY [BRITTANY M. HUGHES](#) ON MARCH 9, 2018. POSTED IN [CLIMATE](#), [LATEST NEWS](#), [LEGAL](#), [SCIENCE](#)

## Global Warming On Trial: Federal Judge Orders the First Climate Change 'Tutorial' In Landmark Case

For the first time ever, a federal judge has ordered a court hearing specifically focused on the science behind man-made global warming.

U.S. District Court Judge William Alsup has ordered both parties to present evidence for and against man-made global warming in a court case between several major oil companies



Meanwhile, up in Oregon, the state is taking a public trust natural resource damage recovery approach to a contaminated waterway

BUSINESS

## Oregon Sues Monsanto, Says Company Responsible for PCB Pollution



9.

The State brings this action in its sovereign capacity as trustee for all natural resources within its borders, which it holds and protects for the benefit of all Oregonians.



**G. Land, Waters, and Natural Resources Owned or Held in Trust by the State of Oregon Have Been Impaired by PCB Contamination.**



# CAN OREGON LEAD THE ATMOSPHERIC RECOVERY EFFORT?

- REGIONAL VISION
- NATURAL CAPITAL
- POLITICAL WILL
- CREATIVITY
- LEGAL TRUST FRAMEWORK
- DESIRE TO INNOVATE AND TAKE RISK
- POTENTIAL FOR PILOT PROJECTS
- EARLY ADOPTERS OF DRAWDOWN APPROACHES



*Question: Could (and **would**) an Oregon sovereign trustee present an atmospheric recovery public trust frame to the court in these fossil fuel damages cases?*

# STEPS TOWARDS CREATING AN ATMOSPHERIC RECOVERY PLAN

1) CONVENE TOP THINKERS IN SERIES OF  
THREE WORKSHOPS TO DEVELOP  
GOVERNING CONCEPTS (DOSSIER)

*SCIENCE OF DRAWDOWN*

*FINANCING OF PROJECTS*

*DESIGN OF PROJECTS (LANDSCAPE ARCHITECTURE)*



2) ESTABLISH ATMOSPHERIC RECOVERY  
INSTITUTE TO DEVELOP PLAN AND SERVE AS  
THIRD PARTY MONITOR

*COLUMBIA, OSU, ASU, STANFORD ? UNIPCC serves as model*



# The Atmospheric Recovery Institute

Design plan designating high potential areas

Design project parameters (both science based and legal/financial/social to assure monitoring, equity, permanence, and community buy-in through co-benefits)

Global education and outreach

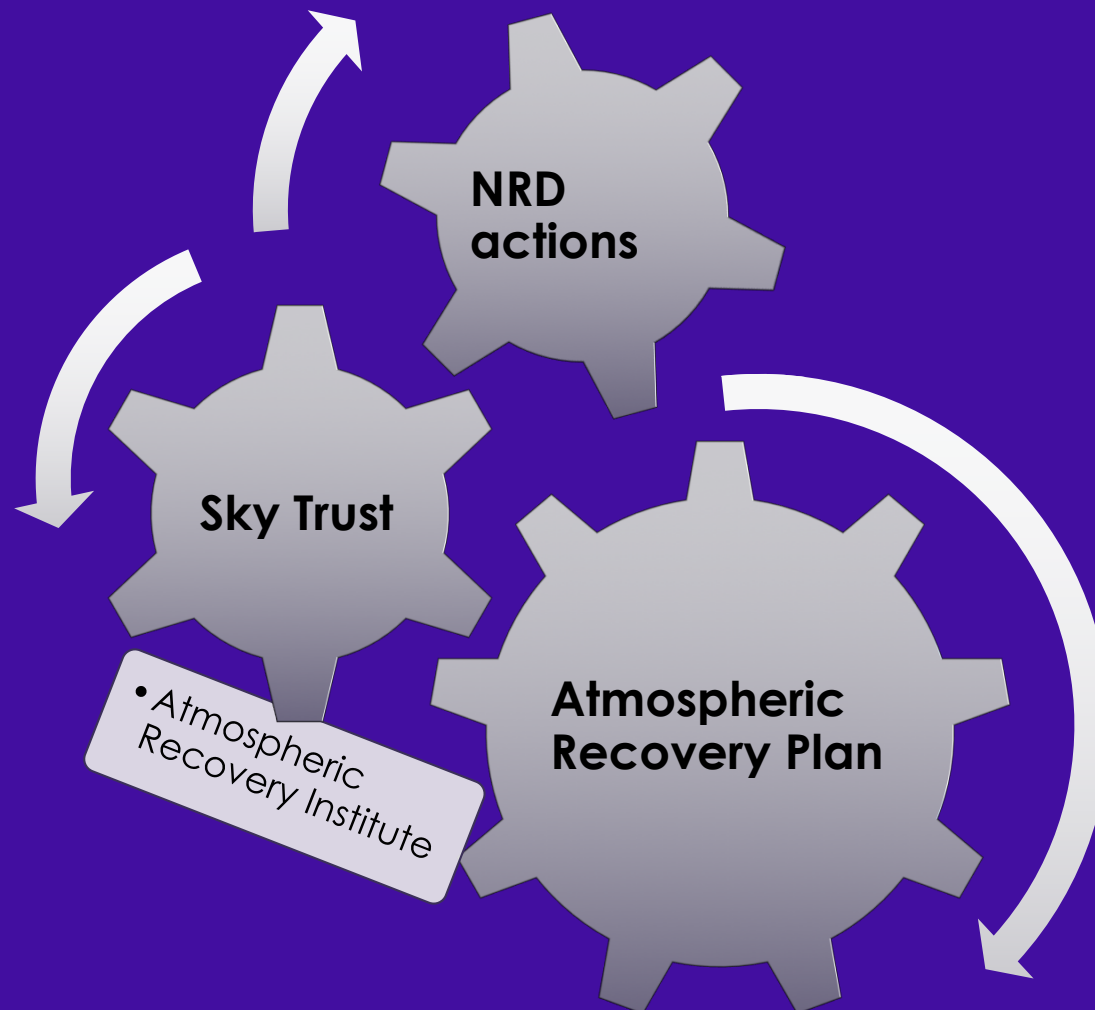
Serve as third party monitor

Conduct global carbon accountings



“In this planetary climate emergency, the level of our ambition must match the scale of the threat.”

# Atmospheric Recovery Strategy



Visit my website for prospectus

[https://law.uoregon.edu/images/uploads/entries/Atmospheric\\_Recovery\\_Concept\\_Paper\\_FI](https://law.uoregon.edu/images/uploads/entries/Atmospheric_Recovery_Concept_Paper_FI)



A background image of a sunset over the ocean. The sun is a bright, glowing orb on the horizon, casting a warm orange and yellow light across the sky and reflecting on the water. The sky transitions from a deep orange near the horizon to a dark blue at the top. The ocean is dark with some white-capped waves visible in the foreground.

# The Planet on the Docket

“[Judicial relief] may be the best, the last, and, at this late stage, the only real chance to preserve a habitable planet for young people and future generations.”

*Scientist amicus brief in federal ATL case*