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# Nature's Trust: A Paradigm for Natural Resources Stewardship

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## THE TRUST PARADIGM

Climate change uncertainty puts a premium on all remaining natural resources. Farmland, air, water, wetlands, wildlife, soils, mineral resources and forests must be protected to ensure that Americans – present citizens and future generations – have the fundamental survival resources they need in a future that holds many unknowns. Moreover, in light of the need to manage resources given climate and particle forcing, government must mitigate dangerous carbon loading of the atmosphere. Confronting climate change and protecting natural resources requires a clear sense of government obligation that is inherent to sovereignty, not a matter of political choice. Our government representatives can and must reframe government's *discretion* into a *trustee obligation* to protect Nature and ensure natural resource stewardship. Drawing upon enduring legal principles and court decisions, government can be characterized as a trustee of the natural resources essential to human survival. 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 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. Trustees have a fiduciary obligation to protect trust assets and may not allow destruction of property they manage.

This session will provide a policy frame for current scientific efforts to address climate change and natural resources loss. Under the Nature's Trust frame, U.S. government leaders and agencies at every level inherit a strict *fiduciary obligation* to protect our collective natural resources, including our water and the atmosphere, as assets in the trust. Their fiduciary standard of care consists of a proportionate responsibility, which ties directly to "Nature's Mandate" as defined by current climate scientists: each jurisdiction must cap and begin reducing total GHG emissions within the decade and continue reduction until they reach 80% below 1990 levels by 2050. The trust framework positions all nations of the world in a logical relationship that can guide international diplomacy. The atmosphere, oceans and the global hydrologic cycle are commonly held assets shared as property among all nations on Earth. Thus, all Nations are sovereign co-tenant trustees, each holding the fiduciary responsibility to not degrade the common asset and to accomplish proportionate carbon reduction.

### (1) Government is the Legal Trustee of our Natural Assets.

"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..."

*Illinois Central Railroad Co. v. Illinois, U.S. Supreme Court (1892).*

**What is a trustee?**

*It is someone who manages assets on behalf of another. Money is only one kind of asset. Natural assets are just as important.*



**Financial Trust**

**As trustee, what assets does government manage?**

*Our air, water, soils, forests, rivers, streambeds, wildlife, and any natural resource crucial to human welfare and survival.*



**Who are the beneficiaries of Nature's Trust?**

*Present and future generations of citizens. Government must manage the trust for the people.*



**Nature's Trust**

**As trustee, what assets does government manage?**



**Both are managed.**

"It is the continuing responsibility of the Federal Government to . . . fulfill the responsibilities of each generation as trustee of the environment for succeeding generations. . . ." National Environmental Policy Act, 42 U.S.C. 101 (b)(1).

"Every generation has a responsibility to the next to preserve that harmony of Nature. [These principles] are assumed to exist from the inception of humankind." Philippines Supreme Court, *Oposa v. Factoran* (1993).

"[T]he ownership is that of the people in their united sovereignty." *Geer v. Connecticut*, U.S. Supreme Court (1896).

### (2) Trustees have the Unwavering Duty to Protect the Assets and Restore any Assets that have been Damaged.

"[T]he power or control lodged 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, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good. . . ." *Geer v. Connecticut*, U.S. Supreme Court (1896).

**How do private interests fit in?**

*Trustees must protect public assets to private interests or allow private interests to irreparably damage them.*

"The trustee has a duty to protect the trust property against damage or destruction. He is obligated to the beneficiary to do all acts necessary for the preservation of the trust res which would be performed by a reasonably prudent man employing his own like property for purposes similar to those of the trust." *Bogert, The Law of Trusts*

### (3) The Atmosphere is the Most Crucial Asset in the Trust. It Supports All Other Assets in Nature.

**What is the role of other nations?**

*The atmosphere is a common asset among all nations on Earth as co-tenant sovereign trustees.*



**Do all nations have a duty not to harm the atmospheric asset?**

*All nations must together protect the atmosphere in order to prevent climate catastrophe. If even one major industrialized nation does not accept its share of carbon reduction, it will sink other planetary efforts and leave an "orphan share" that must be compensated for elsewhere.*

The Parties [Nations] should protect the climate system for the benefit of present and future generations of humankind. UN Framework Convention on Climate Change (1992).

**Is the United States government abdicating its trust duty?**

*By failing to take necessary action and allowing new coal-fired plants, government is destroying the atmospheric trust. Government trustees are now knowingly allowing damage to the trust. Ignoring global warming would be "criminally irresponsible."* Yvo de Boer, Director, UN Framework on Climate Change (Nov. 12, 2007).



"Because of the danger of passing the ice sheet tipping point, even the emissions from one Iowa coal plant, with emissions of 5,900,000 tons of CO2 per year and 297,000,000 over 50 years could be important as 'the straw on the camel's back.'" Testimony of Dr. Jim Hansen, Iowa coal-fired plant proceeding (2007).



"If we cannot stop the building of more coal-fired power plants, those coal trains will be death trains – no less gruesome than if they were boxcars headed to crematoria, loaded with uncountable irreplaceable species," Testimony of Dr. Jim Hansen, Iowa coal-fired plant proceeding (2007).



"The state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." *State of Ga. v. Tennessee Copper Co.*, U.S. Supreme Court (1907), cited by *Massachusetts v. EPA*, U.S. Supreme Court (2007).



### (4) By Abdicating its Trust Responsibility, the United States is Threatening the Future Welfare and Survival of its Own Citizens, Citizens of Other Nations, and Other Species on Earth.

"Climate crisis is . . . a civilizational issue." Ross Gelbspan, *Boiling Point* (2004).

**When is the atmospheric trust so degraded that Humanity risks runaway heating?**

*The IPCC and scientists have warned humanity to not exceed a 2 degree C temperature increase above pre-industrial levels. A key threshold is 450 ppm carbon in our atmosphere. This must not be crossed.*



"If human beings follow a business-as-usual course, continuing to exploit fossil fuel resources without reducing carbon emissions or capturing and sequestering them before they warm the atmosphere, the eventual effects on climate and life may be comparable to those at the time of mass extinctions. Life will survive, but it will do so on a transformed planet." Jim Hansen, *The Threat to the Planet*, New York Review of Books (2006).

"Earth [is] perilously close to dramatic climate change that could run out of our control. . . ." James Hansen et al., *Climate Change and Trace Gases*, Phil. Trans. R. Soc. A, 1925 (2007).

### (5) Trustees Have Specific Duties that Serve as Measures of Performance.

**How is the duty defined with the atmospheric trust?**

*The Union of Concerned Scientists has issued a path-breaking report, How to Avoid Dangerous Climate Change: A Target for U.S. Emissions Reductions. This report sets forth the steps government must take to meet its share of the planetary carbon reduction:*

- 1) Cap emissions by 2010;
- 2) Reduce emissions by 4% every year thereafter;
- 3) Ultimately reduce 80% below 2000 levels by 2050.

*This becomes the fiduciary standard of care for the atmosphere, and can be applied as an explicit mandate to all levels of government.*

"Given the estimated size of fossil fuel reservoirs, the chief implication is that we, humanity, cannot release to the atmosphere all, or even most, fossil fuel CO2. To do so would guarantee dramatic climate change, yielding a different planet than the one on which civilization developed. . . ." James Hansen et al., *Climate Change and Trace Gases*, Phil. Trans. R. Soc. A, 1939 (2007).

