



June 15, 2011

*Via Electronic Mail*

State Environmental Commission  
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Re: Public Petition of Kids v. Global Warming

Dear Commissioners:

Our Children's Trust, a non-profit organization dedicated to protecting intergenerational rights and the basic human right to a healthy livable planet, would like to formally register its support for Kids v. Global Warming in the above-captioned petition. We offer these written comments for the scheduled hearing on June 16<sup>th</sup>, held by the State Environmental Commission. We support the youth who are standing up for their right to inherit an earth not threatened with runaway heating, degraded natural systems, and everything the ruling generation and those that came before are laying at their feet. It is our position that the vested interests of corporations in fossil fuel consumption cannot be deemed a higher priority than the protection of children and the security, health and well-being of future generations of Nevadans and all Americans.

As are states throughout the country, Nevada is experiencing more frequent extreme weather, wildfires, drought, storms, and severe water shortages, impacting the lives of Nevadans of all ages. These impacts will worsen for our children if we continue business as usual fossil fuel consumption and emissions. It is estimated that within 10-20 years, Lake Mead will dry up, leaving Nevadans, as well as many Arizonans and Californians, without a secure source of drinking water. This in turn, leaves Nevada's youngest generation with a bleak future. The effects of climate change on Nevada's natural environment will also cause significant harm to the state's economy, and more specifically the tourism, hunting, and fishing industries.

We respectfully ask the Nevada State Environmental Commission to commence rulemaking to do its fair share to protect the atmosphere for present and future generations. In fact, as part of the executive branch of the state government, it is the Commission's obligation to protect the critical resources of the state, which includes, but is not limited to the atmosphere. Indeed, the Commission's failure to act to protect the atmosphere also harms other trust resources such as navigable waters. Our atmosphere is earth's life support system and the changes we are making to it threaten human and all

other life on the planet. *See e.g.*

<http://www.youtube.com/watch?v=jqxENMKaeCU&feature=watch-now-button&wide=1>

### They Public Trust Obligation

“The theory underlying [the public trust] doctrine can be traced from Roman Law through Magna Carta to present day decisions.” *Montana Coalition for Stream Access, Inc. v. Curran*, 210 Mont. 38, 47, 682 P.2d 163, 167 (1984). The Romans recognized: “The things which are naturally everybody’s are: air, flowing water, the sea, and the sea-shore.” Caesar Flavius Justinian, *The Institutes of Justinian*, Book II, Title I, Of the Different Kind of Things (533). Likewise, under English common law, “There are some few things which . . . must still unavoidably remain in common . . . Such (among others) are the elements of light, air, and water . . .” *Geer v. State of Connecticut*, 161 U.S. 519, 668 (1896) (citing William Blackstone, 2 BL Comm. 14).

The Public Trust Doctrine was incorporated into the colonial charters when the American colonies were first established. *Martin v. Waddell*, 41 U.S. 367, 413 (1842). Following the American Revolution, the doctrine was likewise adopted into the American common law as a mechanism to protect integral public interests. The Public Trust Doctrine imposes a mandatory duty on all three branches of the State government, and likewise upon all other legitimate governments, to preserve and protect the people’s trust assets from damage or loss, and not to use the trust assets in a manner that causes injury to the trust beneficiaries, present and future.

*Illinois Central Railroad v Illinois*, 146 U.S. 387 (1892) is considered the first full articulation of the Public Trust Doctrine in modern American law. The Supreme Court of the United States invalidated the Illinois legislature’s sale of a portion of the bed of Lake Michigan, finding that the state had no authority to alienate a public trust asset. Because private ownership of a portion of the lake would impede public access to the water for fishing and navigation, the lake was “a subject of public concern to the whole people of the state,” and must be held in trust perpetually by the government, *Illinois Central* 146 U.S. at 455. While the modern line of public trust jurisprudence following *Illinois Central* has largely concerned water resources, its earlier articulations make it clear that the doctrine’s utility has never been limited to water.

The continued evolution of the Public Trust Doctrine is highlighted in *Just v Marinette County*, 201 N.W.2d. 751 (1972) in which the Wisconsin Supreme Court upheld a shoreland zoning ordinance prohibiting landowners from filling wetland abutting Lake Noquebay. The court observed that while wetlands were once considered undesirable wasteland, modern human understanding of the interconnectedness of natural systems reveals that they serve “a vital role in nature, are part of the balance of nature and are essential to the purity of the water in our lakes and streams” *Just*, 758.

In 2000 the Hawaii Supreme Court became the first to hold the public trust applicable to groundwater, finding that the purposes and uses of the trust “have evolved with changing public values and needs,” (*In re Water Use Permit Applications*, 9 P.3d

409, 448 Haw. 2000) and that “[m]odern science and technology have discredited the surface-ground dichotomy. (*Id.* at 447).” The court went on to reason that in determining the scope of public trust resources, “we see little sense in adhering to artificial distinctions neither recognized by the ancient system nor borne out in the present practical realities of this state.” *Id.* Justices on the Nevada Supreme Court concur that the Public Trust Doctrine and its intrinsic evolving nature is alive in Nevada. *Mineral County & Walker Lake Group v. Nevada*, 117 Nev. 235, 20 P.3d 800, 807-808 (Nev. 2001) (concurring opinion; petition denied on other grounds).

The Public Trust Doctrine applies to the atmosphere. The atmosphere unquestionably is “a subject of public concern to the whole people of the state.” *Illinois Central*, 146 U.S. at 455. Modern understanding of the fragility of Earth’s climate system makes it clear that the atmosphere is a vital resource that must be protected. The applicability of the public trust doctrine to air generally is recognized in *National Audubon Society v. Superior Court of Alpine County*, 658 P.2d 709, 720 (1983); *Her Majesty v. City of Detroit*, 874 F.2d 332, 337 (6th Cir. 1989); Haw. Const. art. XI, §1; La. Const. art. IX, §1; and Pa. Const. art. I, §27.

Modern understanding of the hydrologic cycle further makes it clear that what effects the atmosphere necessarily effects the lakes, rivers, and groundwater. Indeed, “[t]he entire ecological system supporting the waterways is an integral part of them (the waterways) and must necessarily be included within the purview of the trust.” *People of Town of Smithtown v. Poveromo*, 336 NYS 2d 764 at 775. Abnormal climate warming threatens all natural systems on which people depend for their continued prosperity, including but not limited to the lakes and other water bodies which are intrinsic to the identity of this state, such as Lake Mead.

These trustee obligations of government to protect the public trust run to all three branches of the government, and cannot be abdicated by any branch. *Illinois Central*, 146 U.S. at 460. “Just as private trustees are judicially accountable to their beneficiaries for dispositions of the res, so the legislative and executive branches are judicially accountable for their dispositions of the public trust.” *Ariz. Center for Law in the Pub. Interest*, 837 P.2d at 169. The duty to protect has been defined as: “the duty to ensure the continued availability and existence of [trust] resources for present and future generations,” and “incorporates the duty to promote the development and utilization of [trust] resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the state.” *Kelly v. 1250 Oceanside Partners*, 140 P.3d 985, 1003 (Haw. 2006). Thus the Public Trust Doctrine obligates Defendants to do what is necessary to reduce the imbalance of GHGs which threatens these public trust assets.

#### The Nevada Manufacturers Association Letter Has Several Inaccuracies

The letter by the Manufacturers, who undoubtedly have interests in sustaining a highly subsidized fossil fuel industry, states: “No action by Nevada—no matter how dramatic or extreme—can realize such an unattainable goal of reducing the world’s greenhouse gas emissions to levels not seen since the start of the Industrial Revolution.”

Letter at 1. This statement is false. The petition is asking for a 6% reduction in carbon dioxide emissions per year. Petn. at 2. Pre-industrial levels were 280ppm, not 350ppm, which is the target carbon dioxide level. Petn. at 5. Unquestionably, Nevada alone cannot return atmospheric carbon dioxide concentrations to 350 ppm by itself. Likewise, the world cannot return to that safe level of carbon dioxide, based on best available science today, without Nevada's emission reductions. This is indeed a global crisis and every government has an obligation to act, but the state and federal governments of the United States have an even greater duty because of our historic contribution to the climate crisis, our continued high levels of emissions and our capacity to lead the world into a clean energy era.

The letter suggests that only the legislature, and not the other branches of government, has the authority to adopt the regulations necessary to achieve the 6% reduction in carbon dioxide emissions per year, which scientific analysis deems necessary to avoid catastrophic climate change. As explained above, the trustee obligations of government to protect the public trust run to all three branches of the government, and cannot be abdicated by any branch. *Illinois Central Railroad v Illinois*, 146 U.S. 387, 460 (1892); *Ariz. Center for Law in the Pub. Interest*, 837 P.2d at 169; *Kelly v. 1250 Oceanside Partners*, 140 P.3d 985, 1003 (Haw. 2006).

The letter asserts that the application of the Public Trust Doctrine to the atmosphere is unprecedented, and it is therefore an impermissible expansion. Letter at 3. The continued evolution of the Public Trust Doctrine is highlighted in *Just v. Marinette County*, 201 N.W.2d. 751 (1972). This reasoning is easily applicable to the "planet's energy imbalance due to human-induced GHG increases." Petn. at 8. Moreover, the applicability of the public trust doctrine to air generally is recognized in *National Audubon Society v. Superior Court of Alpine County*, 658 P.2d 709, 720 (1983); *Her Majesty v. City of Detroit*, 874 F.2d 332, 337 (6<sup>th</sup> Cir. 1989); Haw. Const. art. XI, §1; La. Const. art. IX, §1; and Pa. Const. art. I, §27. And the interconnectedness between the atmosphere and lakes and rivers, as part of the hydrologic cycle makes it clear that the atmosphere is just as important and essential a resource to people and to the State as is Lake Mead or navigable rivers. *People of Town of Smithtown v. Poveromo*, 336 NYS 2d 764 at 775.

#### For the Children

The adoption of the proposed rules would protect the health, well-being, safety and security of Nevada's young people and all citizens. Young people will bear the greatest burden of living in a changed climate with less access to water and food, more forest fires and drought, increased national security crises and threats as more people begin suffering and migrating. Moreover, public health will suffer as a result of greater heat-related deaths and illnesses and increases in insect-borne diseases. Dr. Hansen's paper attached to the petition, co-authored by one of the leading authorities on public health, Dr. Paul Epstein from Harvard, describes the increased public health effects that will occur as earth continues to warm. These effects will be keenly felt in Nevada.

We ask the Nevada State Environmental Commission to consider the commencement of the proposed rulemaking on behalf of the state's youngest generation. It has authority to do so under the public health and safety exception of the 2010 Executive Order. The time to act is now. Our children and our children's and grandchildren's futures are at stake, as are our own. Reducing emissions now can be done at a graduated level, but waiting even 5 years will require significantly higher reductions to avoid climate tipping points and runaway heating.

We understand that what the youth are asking of you is significant. It takes courage and responsibility. It takes vision for what the world should be. It takes looking at the moral landscape and making an ethical decision on behalf of those who will come after you. Their lives will depend on it.

Respectfully yours,

A handwritten signature in black ink that reads "Julia Olson". The signature is written in a cursive, flowing style.

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