



**“The Public Trust is actually an expression of the most fundamental responsibility of government: to care for all the things we share, the things that are part of the commonwealth and the public health. That includes drinking water, parks, wildlife, roads, bridges, public schools the atmosphere and so much more.”**

Friends of SEHN,

Barry Lopez, the great writer, once said “[Free market capitalism is an experiment](#), of course, but so is democracy.”

We’ve been running an experiment in the role of government for the past two hundred years. The experiment was testing the hypothesis that government’s primary responsibility was to get out of the way of the free market and to grow the economy. The results of that test are conclusive: government and the free market have failed to protect the basic necessities of life—air, drinking water, healthy soils, public health and essential norms of justice.

Given the failure of that experiment, it is time to use a different guiding principle in our democracy than economic growth at all costs.

In this case, we don’t have to look very far, or even reinvent the wheel, for a different approach to government. It exists as an ancient precept of law that can be traced back to the Roman Empire, through the Magna Carta, and on to very recent court cases. It offers an approach to governance that stands a far better chance of protecting the commonwealth and public health than leaving it to the dead hand of the free market. This approach, formally known as the Public Trust Doctrine, stands for the proposition that the commons (traditionally shorelines and submerged lands), are held for the public *in trust* by government. The commons are to be stewarded for present and future generations.

The Public Trust Doctrine was established so no one (king or corporation) could keep the public from access to fishing and navigation. The rationale for the Public Trust was that people had a right to access the commons. When they were denied access to the tidal waters and submerged lands, they couldn’t obtain the essential necessities for a livelihood.

This basic idea of the Public Trust Doctrine has been extended beyond the economic necessities of transportation and fishing to cover access of shorelines and waterbodies for the recreational benefits provided by these waterways and adjacent lands.



Recently, the Public Trust Doctrine has been expanded to commons assets other than water bodies. Young people are bringing lawsuits in state and federal courts charging that government has a public trust responsibility to reduce greenhouse gases to stabilize the climate. These young people, as beneficiaries, are making the case that the atmosphere is part of the public trust and that government, as the trustee, has a fiduciary duty to protect the atmosphere from climate change.

We at SEHN and the Women’s Congress for Future Generations are advocating a much wider view of the Public Trust Doctrine: it is actually an elegant approach to the role of government. The Public Trust is an expression of the most fundamental responsibilities of government: to care for all the things we share, the things that are part of the commonwealth and the public health. The commons include drinking water, parks, wildlife, roads, bridges, public schools the atmosphere and so much more. As the earliest advocates of the Public Trust Doctrine recognized, the commons are the foundation of the economy. Without the road to market, farm products have little value. Without clean drinking water for the city of New York there is no city. And on it goes.

Most of us can manage some of our needs—we garden or maybe even have a well in our yard-- but we cannot provide for all our needs. The infrastructure and environmental gifts of nature such as clean air or public transportation that we cannot provide on our own is the primary responsibility of governments.

A [recent court case in Minnesota](#) points the way for how government can fulfill its charge to care for the commonwealth and public health for present and future generations. While the court was deciding about a traditional commons asset, a lake, the overall decision shows a clear roadmap to how decisions should be made about all of our shared commons.

In this case, Ramsey County judge Margaret Marrinan ruled that the shore, water and lake bed of White Bear Lake, is held in trust by the state of Minnesota for the benefit of the public, both now and in the future. The court held that a state agency had violated that public trust by allowing excessive groundwater pumping that had substantially lowered the Lake. There was sufficient harm to the trust assets to grant equitable relief.

The idea of equitable relief is important when it comes to the commons that are held in trust for the public. Equitable relief is a non-monetary remedy ordered by a court. In this case, cash couldn’t fix the harm done. In most cases harm to commons such as clean air or drinking water, the atmosphere and other necessities of life cannot be made whole through money. Justice requires action, restoration, protection.



The court went on to say that the state agency had the power to take precautionary measures to ensure the long-term sustainability of the Lake to ensure drinking water supplies as well as ground and surface water quantity and quality. It is worth emphasizing this point: the court made clear that the state agency had an obligation to take precautionary measures to prevent harm to White Bear Lake. [The precautionary principle is a powerful tool to help governments fulfill their trust obligations](#) to care for the commons.

What would it mean if we actually demanded that government hold our common assets in trust and care for them for the benefit of present and future generations? What would this experiment look like? Here are some preliminary thoughts. You can add your own.

1. Each level of government would do an audit of the commons under its jurisdiction and prepare a plan to restore and protect them.
2. Governmental budgets would be tailored to the trust responsibilities of government and minimize the give-aways to corporations.
3. Governments would do long range plans that would include goals for the common assets they were responsible for.
4. Agencies would employ the precautionary principle to make decisions.
5. Trust assets (drinking water to parking meters) would not be privatized since they belong to the public.

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