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Environmental Law & the Defense of Nature

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As Oren Lyons explains the thing you have to understand about nature and natural laws is there's no mercy. There's only law. Environmental law's main purpose is to keep us in compliance with these laws of nature because there is no negotiating our way out of them. If environmental law becomes unmoored from nature's laws, society will eventually collapse and environmental law no matter how voluminous will have been irrelevant. And that seems to be about where we stand right now.

For the past 50 years, half century, we've defined this field by a set of statutes passed in the 1970s, including the Clean Air Act, the Clean Water Act, NEPA, (National Environmental Policy Act) the Endangered Species Act, the public lands statutes, and many others. And states and local governments passed their own laws in the same model, and so did many other countries. So, let's examine those for a bit.

All of these legislatively enacted laws rely on agencies to carry out their mandates, agencies that exist within the executive branch. You can think of nature in its entirety as partitioned among all of these executive bureaucracies spanning the federal, state and local levels. And under these statutes, the agencies exert nearly full dominion over nature. This hulking administrative state came to pass not so much by design or forethought, but really more by happenstance.

In retrospect, it was one big experiment, and it grew enormous power that defied standard democratic constraints. Now, if you were to picture this field of law you might imagine each statute as a very deep cavern that leads down into subterranean tunnels. There are thousands of those statutory caverns across the field of environmental law, and governmental officials and environmental advocates step into them, and many never emerge. Because the sheer regulatory complexity as my law students know, draws them deeper and deeper into a maze that veers further and further away from fundamental principles and from ecological reality. Let's not pretend that this environmental law has been protective. It clearly hasn't been. Agencies turned against the people decades ago. Communities all across the country are fighting their own government under these laws. Consider what these statutes have brought: toxic pollution, nuclear waste, clear cutting, mountaintop removal, strip mining, wetlands destruction, fracking, deep sea drilling, species extinction, dried up rivers, ocean

acidification, ocean dead zones, climate crisis and almost indescribable mutilation of landscapes across this nation.

We now have contamination of every food group, and the blood of 97% of us has the forever chemical PFAS, polyfluoroalkyl substances, which the EPA should have banned decades ago. Now granted, there were a few early successes. The rivers stopped catching fire. Lead was taken out of gasoline, smog diminished. But despite some gains, during the last half century, industries have deployed blackbelt capability towards every living system that is crucial to our survival. We can't even package our losses anymore in discrete metrics like water pollution levels, or numbers of listed species or acres of wetlands gone. These are completely eclipsed by the metastasizing environmental syndromes that tear at the web of life itself. Even the Ninth Circuit Court of Appeals has pronounced that we're nearing "the eve of destruction." We are on track for planetary heating by the end of the century that is not broadly survivable.

If you are not waking up in the middle of the night over this, you probably haven't put all these pieces together. Our environmental statutes affirmatively legalize all of this destruction. What explains this? Well, nearly every statute has this structure. It first declares a legislative purpose of protecting the environment. So far, so good. But then it delegates authority to an agency to issue permits or leases that allow the very damage that the statute was designed to prevent. Now, these permit provisions were never intended to swallow the statutes purposes. But that is in fact what happened. The overarching agency mindset is the permits are there to be granted. Every drilling project, every open pit mine, every clear cut of ancient forests goes forward under leases or permits issued by agencies under environmental law. Agencies across the country perpetrate precisely what these laws were designed to prevent. How did agency discretion come to work so viciously against the public when so many people protect the rivers, fisheries, lands and climate system?

Well, this one-word discretion kind of holds it all. The statutes give agencies in the executive branch enormous discretion. And that discretion acts as a magnet for political influence by the industries and developers, let's not forget them, who seek permits or leases under these laws. Industry puts relentless pressure on agencies to relax regulation and much of the agency decision making is hidden from the

public. And so, this alone causes some real systemic dysfunction. And the industry captains send large campaign contributions to the president and governors, who then appoint agency heads, and they send campaign contributions to the legislators who fund agency budgets. And to the county commissioners and port authorities. They target virtually everyone with environmental authority. These campaign contributions literally purchase influence, and everyone knows this. After years of this pressure, an agency falls captive to the very industry it regulates. At that point, government officials look at the industry as a client, they must serve. Professor Oliver Howe once wrote in the context of the Forest Service, that discretion fools no one. It means the timber industry gets to cut more timber. And with money politics driving decisions the worst damage often hits those with the least political power, which explains why toxic waste facilities are overwhelmingly sited near low-income communities and communities of color. So often, discretion leads right into environmental racism.

These dynamics subsumed environmental law. They induced land use officials to allow suburban sprawl and they move state water agencies to appropriate rivers until many run dry, and they drove biological opinions to keep our iconic salmon near extinction. And they kept Oregon's Department of Forestry looking the other way as private timber companies ravaged our ancient forests. Environmental law delivered the climate emergency to your doorstep. Statutory law legalized all facets of the fossil fuel system, from the coal fire plants to the offshore drilling to the gas guzzling cars, all of it. As James Speth shows in his book, *They Knew*, administrations going back to Lyndon B. Johnson, were repeatedly warned that climate disruption would start spinning out of control around just this time, our time. These disasters you read about every day in the papers? They've come all right on schedule. You may ask, How could our leaders have knowingly put us in this peril? And it is because the fossil fuel industry holds an iron grip on American politics and has used it to steer American energy policy to serve its own ends. Nature can't take unending harm. At some point, it all adds up.

Long ago, I wondered, with all the mounting damage I was seeing I thought could there ever be a time when humanity itself would be threatened. Would the job of environmental lawyers turn into something that had such grave implications that one day we will be holding the future on our shoulders in a way prior generations had not. And at that time, I remember, I just couldn't quite banish that haunting possibility. And now, isn't that exactly where we stand today? And yet, the laws have not changed. So, if you asked me to describe our system of environmental law, I would say, it's the cane upon which humanity leans as we walk the plank towards our own destruction.

We no longer have the ability to fix environmental law through incremental reform. We don't have the time. Citizen

groups are running around doing their best to challenge government case by case but they are losing the battle by not getting at the systemic forces that drive our agencies to make devastating decisions. As Ross Gelbspan said, these groups are running around trying to put out all these fires, but nobody's going after the pyromaniac here. Well, we lawyers tend to burrow down into specific doctrines and court rulings and regulations and we miss the social frame through which these outcomes emerge. A social frame is something well beyond a legal doctrine. Social frames are powerful because they influence people's account of reality. Frames can oppress and subdue or they can empower and mobilize. Frames can legitimize massive ruin or they can demand survival, protection and recovery.

The frame controlling the past five decades of environmental statutory law is a frame of political discretion. This frame normalizes decisions based on raw political calculation. When a statute fails to protect a community we chalk it up to politics, don't we? This frame would benefit a monarchy or oligarchy. You can reform any law you want, in any way you want but if it's carried out through this frame it will justify the destruction of nature. And this is because our money-controlled politics justifies that end. When we think about the transition ahead we urgently need a frame that transforms political discretion into sovereign obligation to the people. And we must give content to that obligation and make it enforceable within the system of checks and balances that our Constitution demands.

A frame change offers a new account of what is legitimate and what is not. As George Lakoff says, reframing is changing what counts as common sense. And we better make certain that we get our framing right. And we do so before ChatGPT starts doing it for us or worse, does it for those who seek to bend discretion for their own private gain. We have an operable principle in our law that presents the very antithesis of political discretion. It's called the public trust. It came twin born with our democracy and has been recognized by our courts since the earliest days of our nation and remains embedded in our constitutional understandings. You might well wonder why environmental advocates have not often asserted it? It's good question. Because over the last half century they have been consumed with the morass of statutory law. The public trust declares a public property right in crucial natural resources and characterizes our government as trustee of those resources. You can imagine an ecological endowment with all the resources essential to our welfare and survival, including the waters, the wildlife, the air, the stream beds, our ancestors drew their life from this trust, as we do. And so must our descendants.

We share this trust with all of those species that fill us with wonder and awe, and we share it no less with the microbes and the worms and the bees and the plankton, the

full web of life. The public trust principle requires government to sustain this ecology for us and for future generations and for all of species as the people's lasting commonwealth. The trust has roots dating back to Roman law and it exists in many other democracies around the world as well. So, it has truly global reach. You can understand why. Any government that fails to protect its natural resources condemns its people to misery and keeps them subservient. This principle makes clear that our government doesn't have the power that a monarchy or dictator would. It operates as the people's restraint on government power. As Professor Jeffery Sachs said, the public trust distinguishes a society of citizens from a society of serfs.

And so, you won't find this principle alive in Russia or other autocracies. But the logic of democracies is this: all power accruing to government every bit of it derives from we the people, and we the people never gave our government the power to destroy what remains essential for our survival and prosperity. So as beneficiaries of the trust that people hold back and reserve public property rights and crucial ecology as an enduring trust.

The landmark decision in this country was Illinois Central Railroad decided back in 1892. And in that case, the Illinois legislature conveyed the entire Chicago shoreline of Lake Michigan to a private railroad company. Can you imagine? This was shoreline that the citizens were using for fishing and navigation and commerce. And the Supreme Court held the grant invalid because it found a shoreline had to be held in trust for the public. It said that a grant of valuable shoreline to a railroad would be a grievance which could never be long borne by a free people. And many courts since have said that the public trust is an attribute of sovereignty, part of government's very architecture that can't be destroyed except by destruction of the sovereign itself. So, it's a species of constitutional law.

The first and most basic fiduciary obligation requires government to protect our trust and not allow substantial impairment of the resources. You wouldn't put your money in a bank only for that bank to intentionally deplete it, would you? Under a trust frame protection, not destruction must become the default mode of regulation. And this is an act of duty. Trustees can't just sit idle and permit trust assets to be destroyed on their watch. But our agencies ran that substantial impairment stop sign long ago. Massive clear cuts have wrecked entire watersheds in Oregon, decimating fish bearing streams and wildlife habitat and all with the permission of forestry officials acting under statutes but in breach of their public fiduciary duty. Where the trustee allows damage it must restore the trust. Of course, private trust law doesn't just allow the trustee to walk away after pillaging the trust. Government owes us restoration all over the place.

Second duty requires the trustees to achieve the highest and best use of public resources. This only makes sense. These are our public resources. Government should manage them for the highest public benefit but statutes rarely ask the question of public purpose. Consider the matter of pollution. Our environmental agencies hand out free permits that allow industry to use our air and our waters as they're dumping grounds. Can pollution ever be the highest and best use of these resources? Most industries have never had to revamp even though many could because agencies just keep reissuing their permits to pollute. This fiduciary duty calls the entire permitting system into question.

And back to forests, how can clear cut be the highest and best use of mature or old growth forests in Oregon? It just can't be. Our West Side forests are some of the most carbon dense storehouses in the world. We have the Amazon forest of North America right in our backyard. So why would we destroy it or cut it on short rotation when we now face the prospect of runaway planetary heating. Society needs have changed abruptly. In this new world we need forests to sequester carbon and supply drinking water and biodiversity.

A third duty requires trustees to administer the trust for the people overall, rather than for the primary purpose of benefiting a private party. Well, this makes sense. We are the beneficiaries. Yet how often has this been violated? How many times have we heard port officials promote fossil fuel export facilities that would destroy fisheries and waterways and lead to massive carbon emissions in order to create a few dozen longshoremen jobs? How many times do federal agencies approve plans for cyanide to bleach gold mines on pristine public lands to benefit a foreign mining company? The Forest Service is poised to do just that in Idaho for two mines, putting a pig in the parlor right next to spectacular wilderness. The political discretion frame of statutory law blithely condones these decisions made for private parties over the broader public interest.

And a final fiduciary duty is the duty of loyalty to the citizens and the correlative duty to avoid conflicts of interest. Courts understand that trustees have immense control over property. So, in a private trust courts will void decisions tainted by bias. If we applied this standard to our public trustees, we would frontally challenge the practice of accepting campaign contributions from industries that stand to benefit from environmental decisions. Everyone knows these campaign contributions cause self-interested decision making by the people we elect to office. The problem is not that this corruption goes unrecognized but that it is become institutionalized. Citizens just don't know of any other paradigm that would yield a higher standard of ethical behavior from their government. So, enforcing the duty of loyalty could be a game changer for ecological management.

Well, you can see how this trust repositions all players in their relationship to ecology. It conceives of government officials as public trustees rather than as disloyal bureaucrats. The citizens are beneficiaries with a clear public property interest in natural resources rather than as weakened political constituents with increasingly desperate appeals to beg of their public officials. And nature is an endowment holding priceless value for future generations rather than a vague environment with intangible value. You can take any environmental issue and when you see it through this trust lens, it will shape your expectations of what you require from your government. And why is this important? Because our expectations of government form the lifeblood of democracy. The public trust is not just some claim that lawyers can assert in court cases. By far its larger potential is changing political culture which is always the product of the people's expectations. And as we enter a time of mind-blowing climate urgency and food and water scarcity, we need very clear expectations of how our government will manage and allocate our survival resources. But just think of the many thousands of officials who make decisions about our ecology every day. You know many of them. Most don't know these fiduciary instructions. They know only the regulations that were on their desk the first day they showed up for work. We need to educate them. There are many good people in agencies. So, spark change from within wherever we can.

So, operating with a public trust expectation, how do we turn course into uncharted territory? Well, I would like to offer five beacons that can guide us. And I hope this is only a start in our collective thinking. Because for us to just stay down in those deep statutory caverns seems to me to be an annihilative strategy for nature and people alike. And so, the beacons are nature's reality, fundamental rights, moral authority, system overhaul, big vision.

First and foremost, must be nature's reality. We have to understand it, come to grips with it, and start making truly strategic decisions in response. When we operate in a political frame, we view outcomes as successful. Just because they're hard fought and consensus was finally reached after years of polarized conflict. But political wins have nothing to do with nature's requirements. A few habitat conservation plans with wide stream buffers are not enough for our biodiversity crisis. Whatever chips were on the table decades ago, they vanished in the industry's onslaught over the last four decades. Nature's tattered systems are in collapse. And there's really nothing left to bargain away. And so, solutions must come from finding new economic models, pairing environmental goals with social goals and creating new types of jobs. The old ways of negotiating have run into a dead end. As part of nature's reality, here's the hard part, we need to understand carbon math. Scientists have determined that the highest safe zone for atmospheric carbon is below 350 parts per million. And yet, here we sit,

with carbon dioxide levels rising over 419 parts per million. We have clearly entered a perilous danger zone. Our destiny is now governed by climate tipping points. If we spew too much more greenhouse gases into the atmosphere, the resulting temperature increase will trigger nature's own feedback loops. And those will unleash runaway heating that we can't call back. So that is why scientists constantly warn of a threshold of no return. For example, it's just one example, we've already heated the planet so that the Arctic permafrost is beginning to melt, you can see the melt in that slide. It contains vast amounts of carbon dioxide methane. If that melt really gets going and unlocks all those greenhouse gases well that's a threshold of no return.

Scientists stress the greenhouse gas emissions must drop 45% by 2030, and the world must fully decarbonize by 2050. We need to keep a laser focus because 2030 is just seven years from now. And this 45% is not some arbitrary figure. It is an emergency brake to prevent us from going over climate tipping points and the climate cliff. I'm always shocked when reporters speak of these numbers as climate goals. They sound no more binding than a runners five-minute mile goal. They certainly don't evoke any sense that humanity's survival depends on us attaining these carbon cuts. But at least finally, we have a president who speaks of these imperatives. Just six years ago, we had President Obama with all of the above energy policy completely disconnected from any carbon map. And just four years ago, Trump's insane pledge to develop \$50 trillion worth of fossil fuels in this country hung over us like an indescribable pall. The fact of carbon math is we can't have fossil fuels and decarbonize too. As Antonio Guterres, the UN chief said just three weeks ago, excoriating the fossil fuel industry, "Your core product is our core problem."

We know renewables are gaining momentum beyond expectations. The more people who get behind that the faster it will happen. This will not be linear change, but it is an all-out race. To again, quote the UN chief. "The clock is ticking. We are in the fight of our lives. And we are losing. Greenhouse gas emissions keep growing. Global temperatures keep rising and our planet is fast approaching tipping points that will make climate chaos irreversible. We are on a highway to climate hell with our foot on the accelerator."

We must keep this reality at the forefront of our minds. Either we continue to prop up the fossil fuel industry and doom humanity or we force rapid wind down of this dangerous industry and preserve a chance for humanity. We can't have it both ways. And we can't hand this choice over to Exxon or BP or Shell by default. The choice is ours. It falls on us as the people who just happen to be alive at this consequential moment in human history.

Where does that leave the practical role of fossil fuels in defending democracy against Putin's aggression? Well, the domestic renewable energy transition becomes all the more

urgent to compensate for soaring emissions from Putin's war. If we couple defense strategy with climate strategy, can we develop domestic renewable energy with wartime speed? I think we must. As many of you know too even full decarbonization of our energy system is not enough for there is legacy carbon up in the atmosphere that has brought well beyond the limits of 350 parts per million. All of these serial climate stressors happening now are caused not by tomorrow's emissions, but by past emissions since the Industrial Revolution. And so, as scientists make clear, we need to clean up the sky. To restore climate balance. There's no magic vacuum cleaner yet to suck carbon out of the sky. The only present way we have is from nature's own engines of carbon sequestration. Trees and soils can sequester massive amounts of carbon. That's the good news. But we've destroyed so many of these landscapes that we have essentially gummed up these natural engines of drawdown.

Techniques called natural climate solutions involve restoring these bio-carbon areas, the forests, the wetlands, the tideland, areas, grasslands, and farmlands. And these techniques are crucial also to restoring biodiversity. And they need to be greatly scaled up and accelerated to meet the urgency we face.

So, these requirements, decarbonization, drawdown and also biodiversity protection come to us as nature's laws. These are the non-negotiable laws. But when we look to the statutes of yesterday, we don't find anything in them geared towards solving our converging crises. We have to use every minute of these coming days strategically and match our planetary defense effort to the scale and urgency of the danger we face.

Well, my second beacon focuses on our fundamental rights and litigation that enforces them. In this new era, we must assert not requests but rights and government of course plays a key role in that. Recall the main takeaway lesson of fifth grade civics class. Our constitutional system rests on three not two branches of government. And the judiciary remains crucial to holding the political branches in check in enforcing the fundamental rights of citizens. Those are not statutory rights, their fundamental rights. In civil rights cases, prisoner abuse cases, treaty fishing cases, courts have forced delinquent officials to create plans to correct their systemic violations of the people's rights. Now the judges don't create these plans. That's the government's job. But courts can supervise progress. And in that way, they don't overstep their role. I know in this political climate, that many of you are wary of the judicial branch because of the recent appointments to the Supreme Court. But lower federal courts and state courts exist across the country. Those judges are enforcing rights every day. It is dangerously simplistic to think that we can just cross off one entire branch of government in any strategy. And we should not lock our vision in the past either. For example, in this very moment, we have a Democratic president who has had

109 judicial nominees confirmed by the Senate in just his first two years of office.

The pioneer in litigation that brought federal rights to environmental law in this country was spearheaded by Our Children's Trust. They bought litigation on behalf of youth asserting public trust rights to a stable atmosphere. Before that climate challenges were just statutory, like seeking ESA listing of the polar bear and Clean Air Act listing of carbon dioxide as a pollutant. In *Juliana v. United States*, filed on behalf of 21 youth plaintiffs in the federal district court of Oregon for the first time ever there was assembled hard evidence showing that the fossil fuel energy system of the United States was putting young people in existential danger. With Eugene's own Kelsey Juliana as the lead plaintiff, those youth sought a declaration of their rights and a government plan to decarbonize the energy system. And they had the evidence to show that government knowingly brought about this danger and they just wanted a plan from government to pull the nation out of danger before it would be too late. They won a historic ruling in 2015 when Judge Ann Aiken declared the words that swept across the world within hours. The right to a stable climate system, capable of sustaining human life is fundamental to a free and ordered society.

I view this as the leading front of environmental American law with profound importance for our survival and our democracy. But we saw in a later stage of the Juliana case that some judges will write themselves out of our constitutional democracy at the time we need them most. On a premature appeal of this Juliana case in 2020 Judge Hurwitz began the majority opinion stating that the government's fossil fuel policy was "hastening an environmental apocalypse." That's a direct quote. And you would have thought reading that that this judge would certainly use his judicial authority to restrain government from consummating the apocalypse. But instead, he went on to say that courts can grant no conceivable remedy. He punted the matter entirely to the political branches. Can you see that this judge gives full loyalty to that political discretion frame that brought us this climate emergency? His vision of an enfeebled judiciary would represent a titanic shift in the balance of power in this country. Don't expect that fundamental rights to last if courts won't enforce them in any meaningful way. Another judge on the panel, Judge Staton wrote a dissent. She challenged the political discretion frame in near disbelief. She said government insists that it has the absolute unreviewable power to destroy this nation. And that my colleagues throw up their hands in response. She found the government instead has a clear duty to preserve the nation and the courts provide the ultimate backstop.

And know this, while the Ninth Circuit denied a remedy, the court did not question the constitutional right that Judge Aiken announced, the right to a climate system capable of

sustaining human life that right is yours. And so, voice it everywhere you can. And let's not forget this. Throughout our history judges have enforced the public trust rights of the people. Remember that lodestar Illinois Central case involving the Chicago shoreline? Well, the justices back then said, it would not be listened to that the control and management of the harbor of that great city, a subject of concern to the whole people of the state, should be placed in the hands of a private corporation. Can't you practically hear those justices saying today, it would not be listened to. The government would let fossil fuel corporations pollute our air, heat up our atmosphere threaten our children's future and destroy the habitability of this nation and the entire planet. It would not be listened to.

A third beacon I will offer is moral authority. Moral authority resides within each of us. And when we voice it, we move an unjust world towards justice. Moral authority gathers momentum from a righteous core. It reveals stark truths that can dislodge even long held beliefs. Moral outrage taps an irrepressible urge in people to do something. We see it rising all around us in calls for police reform and economic equality. Whenever we talk about climate bring in the youth. They hold the most powerful moral authority, having done nothing to create a crisis that they will have to deal with their entire lives. Asserting moral authority doesn't have to be hard or time consuming. It can be done in fact best done in everyday conversations and encounters with strangers. It can be displayed on billboards and bumper stickers and signs held by youth marching in the streets. And they have asked you to join them.

Industry lobbyists would love it instead if the public would just stay down in those deep statutory caverns because those never really galvanize moral outrage over this proposal. Those statutes use a blather of incomprehensible acronyms and techno-jargon to permit deplorable destruction. So though environmental law houses a den of thieves, the public often perceives no theft. When we limit ourselves to statutory law, we focus on things like the lack of cumulative effects analysis, or improper categorical exclusions or missed notice requirements. Yet, we have to mention those things to hang arguments on legal hooks. I totally agree. But let's not limit ourselves to the faint and muffled complaints from the bottom of those statutory caverns. One person who is not muffled is the UN chief. Here's what he recently told the world: "Humanity has a choice: cooperate or perish. It is either a climate solidarity pact or a collective suicide pact. No more bottomless greed of the fossil fuel industry and its enablers."

People are rising in civil disobedience all over the world in moral outrage against fossil fuels, scaling coal fired plants, and they're blocking oil trains and protesting at Dakota Access Pipeline. They are asserting their moral authority through peaceful civil disruption. And yes, they get arrested. In fact, they intend too. Eugene's own Civil

Liberties Defense Center, Lauren Regan helped gain remarkable judicial victories establishing the climate necessity defense in some of these criminal trials. Many thought it couldn't be done just few years ago. But that defense flips the focus because it asks whether the activists' peaceful disruption was justified to avert a much greater harm caused by burning fossil fuels. Do you see how this defense can put the fossil fuel industry on trial in the trials of these defendants? This is a legal front that criminal lawyers are taking forward premised on the moral authority to peacefully disrupt systems that threaten human civilization as we know it. And it is the role of the broader community, those who don't risk arrest to support them and demand the freedom that entitles their peaceful disruption.

The fourth beacon leads us towards system overhaul. Remember, for the last 50 years, we've confronted environmental problems through our statutory permit systems alone. And even when a proposal is defeated, industry throws more permit applications, one right after the other and defeating them becomes the public's game of Whac-a-Mole. We need to break out of that cycle. We can't solve problems with the same thinking that created them, as Albert Einstein would say. Those harmful proposals will just keep on coming because our industrial society invites them. And our statutory law offers no economic alternative. Environmental law never thought of a way to offer gentle living on this planet. The statutes passed a half century ago don't really connect to any economic reality and they lack basic mechanisms to rebuild systems. I've never heard of a football team, using only defense as a strategy. Games are won by moving the ball down the field to the goal. So, let's apply this to environmental law. We can't just have a Just Say No approach without an alternative vision.

Our public agencies need to stop spending our taxpayer money legalizing damage and stop wasting all of our time fighting these endless permits and turn their staff time and programs towards building a regenerative economy. Reconfiguring systems requires tools beyond mere regulation, tools like subsidies, taxes and conservation easements. We need to throw as much money as we can to actually decarbonize society and not just regulate towards that end. And we have a robust start with the Inflation Reduction Act, which authorizes \$369 billion to invest in new systems for climate recovery. That is great. We now need to make sure that money is spent wisely because you and I both know, there's going to be one big money grab going on.

So, while statutory lawyers hold the line of defense, another league of lawyers must dive into the business of creating new systems dealing with energy, food, transportation, housing, waste, and if those systems are in fact sustainable, the need for regulation retreats. These environmental lawyers will be highly transactional, making

deals, finding partners, engage in other disciplines, forming vision and strategy, solidifying commitments

The last beacon I will introduce to you is one called big vision. So, if statutory law shoves people down into caverns, big visions, lift them out. They connect and they inspire. When we fight for the environment using whatever laws we can let us realize that our individual battle is never the end game. The threat you are fighting is part of an onslaught of similar threats all over the place. If we don't connect the innumerable battles going on to save our ecology and our communities, we forfeit that unique power and leverage that comes from calling out systemic injustice.

In the Pacific Northwest, we've witnessed the power of what I would call connective action. Our region sits squarely between the vast coal and oil and gas deposits of interior America and the expanding energy markets of Asia. And several years ago, a dangerous axis of multinational corporations targeted our region to serve as this global gateway for fossil fuel exports to Asia. It pummeled Oregon and Washington within a couple of years with 26 proposals for major export facilities, including what would have been North America's largest oil terminal in Vancouver. And a coal export terminal at the Lummi nation's ancient treaty fishing site on the Salish Sea and the Jordan Cove liquefied natural gas facility in Coos Bay, along with a pipeline that would snake across the entire state of Oregon and 23 more proposals. And these were all approved, initially by local officials, which is so often the case.

Do you have any idea of the carbon bomb these would carry to the climate system and the incalculable destruction they'd bring into our glorious region? If you were fighting one of those, you knew it. But then can you also see the stunning leverage that this region holds over the ruinous ambitions of this industry by connecting all 26 proposals in one single vision? If you were fighting one of those, I'll bet you can see that too. This region became a front line against climate destruction.

I like to tell the public, you can think of every one of those statutory permit schemes as setting up a different playing field of environmental law. Each permit requirement, there's usually about dozen for every big project, sets up a different playing field. In the vast majority of cases, the public doesn't even show up. So, industry dominates those playing fields and those permits fall into place like a row of dominoes. But if the public comes out in strong numbers, things can go the other way. And consider this, any large project requires about a dozen permits. The public only needs to win on one playing field, whereas the industry proponent needs to win on all. Well, this none shall pass uprising turned the tide on those playing fields and agencies started denying permits. It was amazing and nearly every one of those projects died on different playing fields by different agencies using different laws, local, state and federal.

This onslaught is not over. But the thin green line still holds today and if this region asserts its power through connective action, those fossil fuels destined for Asia will stay in the ground. This is how to use environmental statutory law. No matter what kind of permit or process we face, connect our action to a broader and more encompassing vision and bring in people who you don't yet know. Because big visions create momentum. And they embolden leaders and courts. So, let's not talk about defeating just one pipeline. Let's talk about leaving fossil fuels in the ground. And let's not stop just one clear cut. While we're out, let's leave forests in the ground. And let's not talk about fish passage. Let's talk about dam decommissioning. And while we're at it, let's talk about restoration in all its forms: rewilding land back, environmental justice, decarbonization, sky cleanup. These are among the intrepid fronts leading the transition.

To gain the clearest vision forward, we might look to those with the longest vision back. Those with ancestral memory going back to time immemorial on this landscape. It is the tribes who are bringing cultural burning as an alternative to the industrial fire complex. It is the tribes who introduced gravel to gravel management of the Pacific salmon, a species that has sustained them for 10,000 years. It is the tribes who call for bringing down the dams and who do much of the hard work to actually accomplish that. And it is the tribal elders, who sing the sacred songs of rivers, beckoning those salmons return once again, to their natal waters.

So, as we look into the future, we can see a transition already happening across the land. As sure as a farmer somewhere is dousing Roundup across the field, there is just as surely somewhere else, a young farmer who says to her grandfather, let's try cover crops instead. And while somewhere developer bulldozes native grassland, there is somewhere else a land trust planting habitat for migrating birds. While somewhere a well is pumping fracked gas, somewhere else a person is installing solar panels. And while the Dalles Dam still silences the roar of Sahalie Falls, the Klamath dams are coming down and the elowa and the white salmon now flow free. And it is sad that tribal people who knew Sahalie Falls as children still smells its mist and hear its roar. Isn't that enough for a vision? Restoration is powerful because it leads us in the right direction. After a century and a half of momentum in exactly the wrong direction with our laws, legalizing assaults against nature everywhere. Finally, the minds of people all over the world are turning to a better way.

The youth and children of this world have inherited unspeakable ecological threats and there will be incalculable losses to come. But if they know that their society is turning towards recovery. If they know we are serious about giving them the best chance to survive and thrive on this planet, they will enter this severe climate

transition with a resolve that is buoyed by a vision of a better future.

I will close by saying that the transition ahead will be unprecedented and uncertain. Environmental laws we define in the future will either organize society's final assaults on nature, or it will catalyze a planetary defense of nature. It will either fuel a final tyranny or it will breathe new life into democracy. As we think of how to reframe environmental law to serve us in the future. Let us not put the responsibility or the honor of that on just those of us in this room. We must enlist everyone we can to join. Nature's laws govern everyone. We all have fundamental rights to bring. We all hear the call of moral authority that tells us what we bear on our shoulders for the future of humanity. And all of our talents are needed to rebuild the systems necessary to support life on this planet. It will take all of us in this living generation to rise to this moment. We did not live a hundred years ago when people could not even imagine this climate emergency. And we will not live a hundred years forward when it will be too late. In fact, if we wait even 10 years, it will be too late. This moment belongs to us alive right now. We can't throw it all away. Let us claim our moment by asserting not the power of life but the trust of life. And if there are still birds in the sky and fish in the sea, and trees on the land, and gardens bearing food a hundred years from now, our descendants will know in their hearts that we stood to claim our moment to secure this vital natural endowment for all generations to come.

Thank you.

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