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Teaching old laws new tricks on climate front

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What responsibility do governments have to prevent runaway climate disruption? Do federal, state and local governments have a legal obligation to protect their citizens from harm by cutting greenhouse gas emissions? A number of recent court decisions suggest the answer is yes.

In March, a group of distinguished lawyers, professors, and judges from every region of the world released the Oslo Principles on Global Climate Change Obligations. They state that an international agreement to cut climate-damaging greenhouse gas emissions — while extremely important — is not needed to compel governments to slash emissions. Existing human rights, environmental and tort laws all require governments to reduce emissions, because the failure to do so will cause grave harm to their citizens and the planet.

This theme is beginning to play out here and abroad. Last month, King County Superior Court Judge Hollis Hill ordered the Washington Department of Ecology to reconsider a petition that eight young people filed in 2014 requesting that it promulgate rules to limit carbon dioxide emissions to protect the climate and their fundamental right to a healthy environment.

Led by the Eugene group Our Children's Trust, this is the first time that a U.S. court has decided that a state has a legal obligation to protect the climate by considering the best available science when setting emission reduction goals.

The state Clean Air Act is the primary legal instrument used in Washington. Similar to the federal law, the state act gives the Department of Ecology the authority — and responsibility — to protect air quality.

Andrea Rodgers of the Western Environmental Law Center in Eugene told me that the Department of Ecology has not disputed that it has this responsibility. Nor has it disagreed with the need to greatly reduce emissions. It has simply failed to fulfill its legal obligations, which Judge Hill said was unacceptable.

The public trust doctrine, according to Elizabeth Brown, legal coordinator for Our Children's Trust, is one of the overarching legal instruments used in this and similar legal challenges her organization is pursuing. This doctrine holds that every government has a responsibility to hold in trust for current and future generations

certain common resources — such as water and air — that are essential for the survival and well-being of its citizens.

According to Brown, the legal challenges her organization has supported have resulted in important precedents that advance the application of the public trust doctrine to climate recovery.

In June 2014, the Oregon Court of Appeals reversed the trial court and ruled that the judiciary, not the Legislature, is responsible for deciding whether the public trust doctrine is being applied responsibly. Last March, the New Mexico Court of Appeals said the atmosphere is entitled to public trust protection.

The Washington decision goes even further, ruling that the state has no justification in waiting for an international climate agreement. Instead, it said the Department of Ecology has a legal obligation to consider the best available science to establish lower emissions limits now.

A day after the Washington decision was announced, the district court in The Hague ordered the Dutch government to cut the nation's emissions by more than is required under current policy. The court was responding to a class action lawsuit filed by the Urgenda Foundation, a Dutch nonprofit group, and 900 co-plaintiffs. This is the first time a court has ordered a national government to act to prevent climate disruption.

Tort law was used in the Netherlands to compel the government to act. A tort is a civil wrong that unfairly causes someone else to suffer. For example, tort law says your neighbor has a responsibility to trim or remove a diseased tree that might fall on your house. Dennis Van Berkel, legal counsel for Urgenda, told me this common-sense principle was employed to make the case that the national government has a legal responsibility to protect its citizens from the harm caused by climate change. The court agreed.

These successes indicate that groups in different parts of the world are beginning to find ways to use existing legal principles and laws to compel governments to cut emissions. Further legal challenges are certain. For instance, Brown told me that young people represented by her organization are planning to file another case against the federal government.

Federal, state and even local governments such as those of Eugene, Springfield and Lane County should not wait for court orders to cut emissions to levels deemed necessary by the best science. But if they fail to do so, it looks increasingly likely that the courts will compel them to act.

Bob Doppelt of Eugene, executive director of The Resource Innovation Group, writes a monthly column on issues related to climate change for The Register-Guard.
