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IN THE DISTRICT COURT OF THE STATE OF MINNESOTA  
IN AND FOR THE COUNTY OF RAMSEY

REEED ARONOW

Plaintiff,

vs.

STATE OF MINNESOTA; MARK DAYTON  
in his official capacity as governor of  
Minnesota; MINNESOTA POLLUTION  
CONTROL AGENCY

Defendants.

) NO.

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)  
)  
) COMPLAINT FOR DECLARATORY AND  
) INJUNCTIVE RELIEF

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**INTRODUCTION**

1. This is a civil action for declaratory and injunctive relief under the Public Trust Doctrine and the Minnesota Environmental Rights Act (“MERA”) (Minn. Stat. § 116B). Plaintiff Reed Aronow challenges the failure of Defendants the State of Minnesota, Governor Mark Dayton, and the Minnesota Pollution Control Agency to carry out their duties under the Public Trust Doctrine and MERA to adequately reduce Minnesota’s greenhouse gas (“GHG”) output and thus preserve the atmosphere for the benefit and protection of present and future generations of Minnesotans. The GHG reduction goals provided by Minn. Stat. § 216H are wholly inadequate in light of current scientific information, and Defendants have thus far failed to establish a trajectory for reaching even these inadequate goals. Consequently, Defendants are in violation of their duty to preserve and protect the atmosphere for the use of present and future generations.

2. The stability of the blanket of atmospheric gasses which surrounds our planet is what has allowed humans to exist and flourish on Earth, including here in Minnesota. However, human activity since the industrial revolution has altered the natural balance of carbon in Earth’s atmosphere. The early effects of this imbalance are already being experienced in Minnesota and elsewhere, and business as usual has us on a course for exponentially more extreme climate instability.

3. The window of time in which the balance can be restored is rapidly closing, and unless decisive action is taken the youth of Minnesota will inherit a drastically different state from the one prior generations have enjoyed. Increased global temperatures will lead not only to dangerous heat waves and droughts but to reduced air quality, increases in insect- and waterborne diseases, more frequent and severe natural disasters, crop failures and resultant food shortages, and many other problems which will greatly decrease the quality of life of Minnesotans.

1 4. The Public Trust Doctrine is a foundational aspect of sovereignty; it holds government  
2 responsible, as perpetual trustee, for the protection and preservation of resources necessary for  
3 the common welfare of all citizens, those living and those yet to be born. This duty is partially  
4 codified in this state in the form of the Minnesota Environmental Rights Act. The atmosphere,  
5 because of the climate stability it makes possible, is a necessary resource protected by the public  
6 trust. The State of Minnesota thus has a duty to preserve and protect the atmosphere for the  
7 future use of young Minnesotans and those yet to be born.  
8

9 5. To return Earth's energy balance, to protect its natural systems and to fulfill its  
10 responsibilities, Defendants must do their part to reduce annual carbon dioxide emissions and  
11 draw down atmospheric carbon dioxide to less than 350 parts per million ("350 ppm") from its  
12 current level of 390 ppm in order to limit average surface heating to 1° C (1.8° F) above pre-  
13 industrial temperatures.  
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16 **PARTIES**  
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19 6. Plaintiff Reed Aronow is a lifelong citizen of Minnesota who resides in Saint Paul. He is  
20 25 years old. In 2050 he will be 65 years old. Reed is a passionate outdoorsman and  
21 conservationist who is deeply troubled by the current and future effects on Minnesota of  
22 abnormal climate warming. Reed has traveled by bicycle across more than 700 miles of  
23 Minnesota, enjoying the beauty of the state's woods, prairies, and river valleys. Reed is acutely  
24 aware that all of these natural assets are at risk, and that many are already deteriorating, due to  
25 abnormal climate warming. Reed is being harmed currently by Defendants' failure to mitigate  
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1 abnormal climate warming, and he will be further harmed in the future unless Defendants take  
2 decisive action to restore the carbon balance of the atmosphere.

3 7. Reed's grandfather was a miner in the Iron Range, and every year since Reed's childhood  
4 he and his family have traveled north to fish Big Sturgeon Lake and reconnect with a region that  
5 Reed treasures both as a part of his family's heritage and as a place of unparalleled natural  
6 beauty. Big Sturgeon Lake is Reed's favorite place. Reed and his family have already seen the  
7 water levels at Big Sturgeon Lake become more and more unpredictable in recent years; spring  
8 floods and summer droughts unlike anything Reed saw during his childhood have become  
9 common on Big Sturgeon Lake, disrupting plant and animal life cycles as well as traditional  
10 human uses of the lake. It is Reed's well-grounded fear that Big Sturgeon Lake will soon be  
11 unrecognizable as the lake of his childhood, should abnormal climate warming proceed  
12 unabated.  
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15 8. Reed has also observed other changes in the area around Big Sturgeon Lake over the  
16 years that he has been summering there. Reed has observed coniferous trees dying off and being  
17 replaced by deciduous trees, significantly altering the character of the woods around the lake.  
18 Reed has also noticed changes in animal behavior, with many animals common to the area  
19 during his childhood becoming more and more scarce as changes in seasonal patterns and  
20 available food drive them out of the area.  
21

22 9. Reed is a lifelong gardener, having learned horticulture from his parents. He has already seen  
23 local changes in growing patterns that have necessitated adaptation. Earlier blooming and  
24 invasive new plants are necessitating changes in the gardening practices that previously served  
25 Minnesotans well for generations. This disturbs Reed both because it interferes with his ability  
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1 to grow food and also because, like the changes to Big Sturgeon Lake, it alienates him from the  
2 Minnesota he has always known and robs him of a connection to his family's past.

3 10. As a child Reed was diagnosed with asthma. Before the age of 8, his asthma was severe enough  
4 that he required a nebulizer and regular doctor's visits. By the age of 8, Reed had outgrown his  
5 asthma and was not troubled by it for many years. However, when Reed came to Saint Paul to  
6 attend college, his asthma returned. Reed now carries an inhaler and worries about asthma  
7 attacks interrupting his day-to-day activities. Reed's asthma sometimes makes him light-headed  
8 and negatively impacts his studies. Reed notices that his breathing improves when he is outside  
9 of the Twin Cities, where the air is cleaner. Reed worries that deteriorating urban air quality in  
10 the summers, a noted effect of the more severe summer heat waves that result from abnormal  
11 climate warming, will continue to exacerbate his breathing difficulties to a greater and greater  
12 degree.  
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15 11. Reed loves Minnesota and has no desire to ever live elsewhere, but he is gravely concerned  
16 about the decrease in quality of life he and other Minnesotans are experiencing as a result of  
17 climate change. Reed believes that further decreases in his quality of life are inevitable if  
18 decisive action is not taken to re-balance the planet's carbon cycle.  
19

20 12. Defendant State of Minnesota is a sovereign state government which holds natural resources  
21 in trust for the people of Minnesota, including Reed Aronow. Defendant State of Minnesota is  
22 contributing to the deterioration of the atmospheric trust asset and is also failing to do its part to  
23 preserve and protect this vital natural resource.  
24

25 13. Defendant Governor Mark Dayton is ultimately responsible for the actions of the  
26 Executive Branch of the government of Minnesota, including the actions of the agency named  
27 below. Governor Dayton has failed to preserve and protect the atmosphere and has failed to  
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1 effectively implement and enforce the laws under his jurisdiction for this purpose, for present  
2 and future generations.

3 14. Defendant Minnesota Pollution Control Agency (“MPCA”) is a state agency the principle  
4 office of which is located in Saint Paul, Minnesota. MPCA is the principal Minnesota agency  
5 responsible for enforcing laws against pollution, and thus it is a primary guardian of Minnesota’s  
6 public trust resources. Defendant has a duty to preserve the atmosphere for the benefit and  
7 protection of present and future generations of Minnesotans. Because it has consistently allowed  
8 GHG pollution at a rate that far outpaces what the atmosphere can naturally correct for,  
9 Defendant MPCA has failed to carry out its duties under MERA and under the Public Trust  
10 Doctrine.  
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#### 14 **JURISDICTION AND VENUE**

15 15. This Court has jurisdiction pursuant to Minn. Stat., § 116B.10 Sub 1 which allows a party to  
16 bring an action for declaratory or equitable relief against the state or any agency or  
17 instrumentality thereof where the nature of the action is a challenge to an environmental quality  
18 standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued  
19 by the state or any agency or instrumentality thereof for which the applicable statutory appeal  
20 period has elapsed.  
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25 16. This case is properly venued in Ramsey County because Plaintiff is a resident of Ramsey  
26 County (116B.10 Sub 5).  
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1 17. There is a present, actual, and justiciable controversy between the parties, and a judicial  
2 determination of the matter will be final and conclusive.

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4 **FACTUAL BACKGROUND**

5  
6 HOW HUMANITY HAS CHANGED THE CLIMATE SYSTEM

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9 18. We are presently confronted with an atmospheric emergency. Abnormal climate  
10 warming is significantly and adversely impacting the Earth's climate. Although some degree of  
11 climate warming is a normal natural phenomenon, the trend of climate warming in the past  
12 several decades has occurred largely as a result of human activities. This abnormal climate  
13 warming is unequivocally human-induced, is occurring now, and will continue to occur unless  
14 drastic measures are taken to curtail it.

15  
16 19. Since the pre-industrial period, human beings have significantly altered the chemical  
17 composition of Earth's atmosphere and its climate system. Burning fossil fuels such as coal and  
18 oil, together with massive deforestation, has caused a substantial increase in atmospheric  
19 concentrations of heat-trapping GHGs. Much like the glass panels on a greenhouse, these gasses  
20 allow the sun's heat to pass through to the earth but prevent that heat from then escaping back  
21 into space. The quantity of these gasses in the atmosphere has fluctuated over geologic time, but  
22 for hundreds of thousands of years the atmosphere's GHG level has maintained an equilibrium  
23 that makes possible life as we know it. However, as concentrations of GHGs in the atmosphere  
24 continue to increase, this vital equilibrium is further and further eroded. Current atmospheric  
25 GHG concentrations are likely the highest in at least 800,000 years. Business as usual in  
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1 Minnesota continues to pollute the atmosphere with GHGs at a rate that outpaces their removal  
2 through natural processes. The current and projected CO<sub>2</sub> increase, for example, is about a  
3 hundred times faster than has occurred over the past 8000,000 years.

4 20. According to data from the National Oceanic and Atmospheric Administration (NOAA)  
5 and the National Aeronautics and Space Administration (NASA), the planet's average surface  
6 temperature has increased by about 0.8° Celsius (1.4° Fahrenheit) in the last 100 to 150 years.  
7 The eight warmest years on record (since 1850) have all occurred since 1998. Rainfall patterns,  
8 snow and ice cover, sea and lake levels, and many other aspects of the climate are also changing  
9 as a result of the planet's increased surface temperature. A variety of studies conclude that a  
10 further increase of average annual temperatures of 2° C (3.6° F) above current levels would cause  
11 severe, widespread and irreversible impacts. The current pace of GHG emissions is likely to  
12 result in future increases of 3 to 11 degrees F above today's levels.

15 21. Scientists, political leaders, and regulatory agencies in Minnesota and beyond recognize  
16 that GHG emissions contribute to abnormal climate warming, and that this warming is causing  
17 significant impacts to the environment and to human health. The Intergovernmental Panel on  
18 Climate Change ("IPCC"), for instance, has observed that "[w]arming of the climate system is  
19 unequivocal," and there is "very high confidence" that this warming is due to human activities."  
20 The National Academy of Sciences, the Science Academies of eleven nations, and the first  
21 Synthesis and Assessment Product of the U.S. Climate Change Science Plan all corroborate the  
22 IPCC's fundamental conclusion. According to United States Department of Interior, "climate  
23 change is affecting every corner of the American continent." As the preliminary report of  
24 Minnesota's Interagency Climate Adaptation Team notes, "[T]he general consensus is that the  
25 state of Minnesota is in the midst of a long-term warming trend."  
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1 22. While the fact of anthropomorphic climate change is well-established, the complexity of  
2 the climate system means that the pace of these oncoming changes has only recently been  
3 adequately understood. Changes in climate are occurring faster than even the most pessimistic  
4 scenarios described by the IPCC in 2007.

5  
6 23. CO<sub>2</sub> persists in the atmosphere for millenia, meaning that past carbon increases have already  
7 predetermined greater warming and more pronounced changes in weather patterns and water  
8 levels. Every passing day of business as usual brings the planet closer to the point at which these  
9 changes will be too far along to correct. If swift and decisive action is not taken to protect,  
10 preserve, and re-balance the atmosphere, Plaintiff and other youth of today, as well as  
11 generations not yet born, will continue to suffer greater and greater injury and damaging  
12 consequences.  
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15 GLOBAL EFFECTS OF ABNORMAL CLIMATE WARMING  
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18 24. Climate change is damaging natural and human systems, and, if unrestrained, will threaten the  
19 planet's habitability for humans as well as countless other species. Abnormal climate warming  
20 will detrimentally impact all aspects of our life, including not just the environment and human  
21 health and welfare, but commerce and the world economy, military security, and the stability of  
22 governments everywhere.  
23

24 25. Higher temperatures are among the most obvious results of the atmosphere's carbon imbalance.  
25 Two of the last ten years (2005 and 2010) likely rank as the warmest years since 1850, when  
26 continuous temperature measurement began to be recorded (which is called the period of  
27 instrumental records). More than a dozen nations experienced record high temperatures during  
28

1 the summer of 2010. For the first time in the period of instrumental records, Moscow, Russia  
2 experienced temperatures in excess of 100°F. Several regions of the United States experienced  
3 unusual summertime heat waves in 2010. In addition to higher extreme temperatures, spring is  
4 coming earlier to many regions and winter is coming later.

5  
26 Consistent with the temperature increases in land surfaces, global average ocean temperatures  
6 have also increased. The mean global sea surface temperature is about 0.6°F (0.35°C) higher  
7 than the base line for the period of 1961 to 1990.  
8

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27 Another indicator that the earth is warming is the change in global precipitation patterns.  
10 Atmospheric moisture levels are expected to increase further as global warming proceeds,  
11 because warmer air generally holds more moisture. In more arid regions, however, higher  
12 temperatures generally lead to greater net evaporation, i.e., exacerbation of the aridity. These  
13 changes are observable already. In 2009 more than half of the United States received above  
14 normal precipitation; yet the southwestern United States, Arizona in particular, had one of its  
15 driest periods. In addition, the frequency and intensity of the heaviest rainfall has increased  
16 substantially in the nation over the last 50 years, most strikingly in the northeast. Based on the  
17 laws of physics and the past climate record, scientists have concluded that precipitation events  
18 will increase globally, particularly in tropical and high latitude regions, while decreasing in  
19 subtropical and mid-latitude regions, with longer periods between normal heavy rainfalls.  
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28 As expected, global sea levels have also risen. Sea levels have been rising an average rate of  
23 3.26 millimeters per year based on measurements from 1993 to present. Global average sea level  
24 have risen about 17 centimeters (6.7 inches) in the last century; within the last decade, however,  
25 that rate has nearly doubled. Rising seas, brought about by melting of polar icecaps, glaciers,  
26 and ice sheets, as well as by thermal expansion of the warming oceans, have already caused  
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1 flooding in low-lying areas. Although projections as to the amount of future sea level rise are  
2 still fairly uncertain, in a comprehensive review of studies on sea level rise in the 21<sup>st</sup> century  
3 published by the British Royal Society, researches estimated the probable sea level rise in this  
4 century at between 0.5 and 2 meters (1 ½ to 6 ½ feet), continuing to rise for several centuries  
5 after that, depending on future CO2 levels and the behavior of polar ice sheets. Worldwide  
6 hundreds of millions of people live in river deltas and vulnerable coastlines; sea level rise of 0.5  
7 meters will leave their homes either submerged or unrecognizable.

29. Melting of glaciers, ice sheets, and sea ice is another consequence of warming temperatures. The  
10 year 2009 marked the 19<sup>th</sup> consecutive year in which glaciers lost mass in both hemispheres; the  
11 retreat of mountain glaciers, decreases a vital source of freshwater for hundreds of millions of  
12 people worldwide. Today Glacier National Park in Montana has only twenty-five glaciers larger  
13 than twenty-five acres, down from 150 in 1850. Ice is melting most dramatically at the poles.  
14 Temperatures in the Arctic and Antarctic have risen substantially faster than the global average  
15 in recent decades, and this has caused massive melting of glaciers and sea ice. In August of 2010,  
16 an enormous iceberg roughly ninety-seven square miles in size, broke off from Greenland. Nine  
17 Antarctic ice shelves have collapsed into icebergs in the last fifty years, six of them since 1996.  
18 In 2002 the sudden and complete disintegration of the Larsen B Ice Shelf, which had existed for  
19 at least 11,000 years, occurred in a mere 35 days.

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24 EFFECTS WITHIN MINNESOTA OF ABNORMAL CLIMATE WARMING

26. In Minnesota the effects of climate change are already being felt (“In Minnesota, extensive  
27 weather observations recorded over decades have led scientists to conclude that the climate in  
28

1 this region is changing,” Adapting to Climate Change in Minnesota: Preliminary Report of the  
2 Interagency Climate Adaptation Team 1-2, 2009). The following trends are statistically  
3 detectable in the data of most of the state’s climate stations:

4 (1) warm winters, during which higher temperatures have been both persistent and substantial;  
5 (2) higher minimum temperatures; (3) increased episodes of high summer dew points; and (4)  
6 greater annual precipitation, most profoundly in seasonal snowfall and thunderstorm rainfall.  
7

8  
9 31. Between 1895 and 2006 Minnesota’s average annual surface temperature increased by  
10 1.8° F. According to page 4 of the report of the Interagency Climate Adaptation Team (“ICAT  
11 Report”), “The warming over Minnesota since 1895 is possibly the most intense in the region,  
12 perhaps twice or even three times the rate of warming in other Midwestern states.” Winter  
13 surface temperatures have changed even more dramatically. Based on the analysis developed by  
14 the Midwestern Regional Climatic Center, Minnesota winter surface temperature may be three  
15 degrees Fahrenheit warmer now than in 1900, and may be warming at a rate perhaps double or  
16 triple that for Midwestern states to our east or south.” (ICAT Report, p 5)  
17

18 32. According to the ICAT report, likely results in the state of Minnesota if abnormal  
19 climate warming continues unabated include but are not limited to: more spring flooding events;  
20 more frequent flash flooding events; increased threat of waterborne disease due to more  
21 overflows from coupled sanitary and storm sewer systems; more invasive species, with  
22 accompanying impacts to ecosystems and economy (e.g. agriculture, tourism); accelerating  
23 extinction or extirpation (i.e., no longer found locally) of plant and animal species; increased  
24 impacts on respiratory illness associated with aero-allergens; chemical and biological changes to  
25 lakes and streams; increased periods of drought; more wildfire events; more extreme heat events,  
26 increasing the potential for heat-related illness or death; changing spatial patterns and incidence  
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1 of vector-borne and zoonotic diseases (e.g. Lyme disease); possible emergence of new disease  
2 vectors; changes in established outdoor recreational opportunities; lower average water levels  
3 and changing shorelines; and degradation in air quality and visibility, with possible increased  
4 illness and death due to increased ambient fine-particle and ozone concentrations.

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8 REMEDYING PLAINTIFF'S INJURIES BY RESTORING THE ATMOSPHERE AND  
9 EARTH'S NATURAL SYSTEMS  
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11 31. The climate system continues to be harmed at an alarming rate, to the detriment of  
12 Minnesota and the rest of Earth as we know it. The atmosphere already contains excessive  
13 concentrations of GHGs. Any sovereign government, including Defendant, which does not  
14 significantly curb GHG pollution, will continue to waste this commonly held asset.  
15

16 32. The best available science shows that to protect Earth's natural systems, average global  
17 peak surface heating must not exceed 1°C this century. To prevent global heating greater than  
18 1°C, concentrations of atmospheric CO2 must decline to less than 350 ppm within this century.  
19

20 33. The best available science also concludes that to protect Earth's oceans – an essential harbor  
21 of countless life forms and absorber of GHGs – atmospheric CO2 levels must be reduced to  
22 350ppm or lower.  
23

24 34. Atmospheric CO2 levels are currently on a path to reach over 400 ppm by 2020. Absent  
25 immediate action to reduce CO2 emissions, atmospheric CO2 could reach levels as high as about  
26 1000 ppm and a temperature increase of up to 5°C by 2100. Life as we know it is unsustainable  
27 at these levels.  
28

1 35. To restore Earth's energy balance and protect its natural systems, Minnesota must do its  
2 part to reduce annual carbon dioxide emissions. The best available science shows that if the  
3 planet once again sends as much energy into space as it absorbs from the sun, this will restore the  
4 planet's climate equilibrium. Scientists have accurately calculated how Earth's energy balance  
5 will change if we reduce long-lived GHGs such as carbon dioxide. Humans are currently  
6 causing a planetary energy imbalance of approximately one-half watt. We must reduce carbon  
7 dioxide by 35 to 40 ppm to increase Earth's heat radiation to space by one-half watt, if other  
8 long-lived gasses stay the same as today. That reduction would make atmospheric carbon  
9 dioxide about 350 ppm.  
10

11 36. Promises to begin reducing carbon emissions years from now are useless; decisive action  
12 must be taken immediately, because delay exponentially increases the difficulty of re-balancing  
13 the atmosphere. If global CO2 emissions continue to grow at the rate of the past decade (about  
14 2% per year) up until the time that emissions are terminated, and the termination does not occur  
15 until 2030, when CO2 levels will have reached over 450 ppm, CO2 would not return to 350 ppm  
16 until about 2250. With a 40-year delay (to 2040), CO2 levels would surpass 500 ppm, and  
17 would not return to 350 ppm until after the year 3000. Failure to act promptly to reduce CO2  
18 emissions will not only increase the costs of future reductions, it will have irreversible adverse  
19 effects on Plaintiff and all future generations.  
20

21 37. Fossil fuel emissions must decrease rapidly if atmospheric CO2 is to be returned to a safe  
22 level in this century. Improved forestry and agricultural practices can provide a net drawdown of  
23 atmospheric CO2, primarily via reforestation of degraded lands that are of little or no value for  
24 agricultural purposes, returning the atmosphere to 350 ppm somewhat sooner. However,  
25 reforestation alone will not be sufficient and must be accompanied by a phase down of fossil fuel  
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emissions.

38. To reduce CO<sub>2</sub> in the atmosphere to 350 ppm by the end of the century, the best available science concludes that CO<sub>2</sub> emissions must not increase and must begin to decline at a global average of at least 6% each year, beginning in 2013, continuing through 2050. After 2050, CO<sub>2</sub> emissions could safely decline at 5% per year. In addition, over the course of the century reforestation and soil protection measures must sequester an additional 100 gigatons of carbon. All of these changes combined are necessary to draw down the excessive carbon from the atmosphere. Without extensive reforestation efforts, larger annual emissions reductions would be necessary.

39. Defendants are committed, through the Next Generation Energy Act of 2007 (Minn. Stat. §216H.02), to a 15% reduction in Minnesota’s GHG emissions by 2015. This falls far short of the reductions necessary to reduce atmospheric carbon to 350 ppm by the end of the century. Further, the Biennial Greenhouse Gas Emissions Reduction Report (“BGGER Report”) submitted to the Minnesota Legislature by Defendant MPCA in January of 2011 reports only a 1.2% reduction achieved by 2008, the most recent year for which data is available (BGGER Report, p1). The report concedes only that “the state *may* need to increase its efforts to reduce GHG emissions to reach the first target in 2015 of a 15 percent reduction” (BGGER Report, p2, emphasis added). The programs and legislative proposals contained within the report do not lay out a realistic path for achieving either the inadequate reductions mandated by §216H.02 or the far greater reductions best available science tells us are necessary to achieve climate stability. The state of Minnesota has not adequately discharged its public trust duty through enactment and enforcement of §216H.02.

40. It is the judiciary that can and must recognize Defendants’ fiduciary duty and mandate the

1 preservation and protection of the atmospheric trust by requiring government action. The Public  
2 Trust Doctrine requires Defendants to hold vital natural resources in trust for present and future  
3 generations of its citizens. The atmosphere obeys no political boundaries, making all  
4 governments co-trustees of this resource which is essential to the survival and prosperity of all  
5 human life. There are many viable routes to climate stability; the Public Trust Doctrine does not  
6 dictate which actions must be taken, only that a swift and realistic course must be charted toward  
7 350 ppm carbon in Earth's atmosphere by 2100. Minnesota has the means, the authority, and the  
8 duty to do its part.  
9

## 10 11 **LEGAL FRAMEWORK**

### 12 13 THE PUBLIC TRUST DOCTRINE AS A LEGAL DUTY AND AN ASPECT OF 14 15 SOVEREIGNTY 16

17  
18 41. The Public Trust Doctrine is a common law principle under which the State of Minnesota  
19 and all sovereign governments must hold vital natural resources in trust on behalf of the people.  
20 The Public Trust Doctrine is a basic attribute of sovereignty, and the State may not abrogate its  
21 obligation to safeguard public trust resources. In order to fulfill its mandatory public trust  
22 responsibilities, Minnesota must take all necessary steps to stop the wasting and degradation of  
23 the atmosphere caused by excessive GHG pollution.  
24

25 42. As noted in Article I, Section I of the Minnesota Constitution "Government is instituted for  
26 the security, benefit and protection of the people, in whom all political power is inherent,  
27 together with the right to alter, modify or reform government whenever required by the public  
28



1 good.” This is not a symbolic or hortatory opening, but rather an affirmation of the basic nature  
2 of legitimate government: as steward of the people’s power, subject to the requirements of the  
3 public good.

4 43. This relationship between the people and their government is at the core of the Public Trust  
5 Doctrine, a doctrine well-established in American law, with roots reaching back many centuries.  
6 Certain resources are too vital to citizens’ collective prosperity for them to be monetized; these  
7 must be held in trust by the government, used only in the collective best interest of the people,  
8 and never wasted or depleted. In ancient Rome, despite the sweeping authority he held as  
9 Emperor, Justinian wrote, “The things which are naturally everybody’s are: air, flowing water,  
10 the sea, and the sea-shore.” Caesar Flavius Justinian, *The Institutes of Justinian*, Book II, Title I,  
11 Of the Different Kinds of Things (533). Likewise, under English common law, “There are some  
12 few things which . . . must still unavoidably remain in common . . . Such (among others) are the  
13 elements of light, air, and water . . .” *Geer v. State of Connecticut*, 161 U.S. 519, 668 (1896)  
14 (citing William Blackstone, 2 BL Comm. 14).

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

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26 45. *Illinois Central Railroad v Illinois*, 146 U.S. 387 (1892) is considered the first full  
27 articulation of the Public Trust Doctrine in modern American law. The Supreme Court of the  
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1 United States invalidated the Illinois legislature’s sale of a portion of the bed of Lake Michigan,  
2 finding that the state had no authority to alienate a public trust asset. Because private ownership  
3 of a portion of the lake would impede public access to the water for fishing and navigation, the  
4 lake was “a subject of public concern to the whole people of the state,” and must be held in trust  
5 perpetually by the government, *Illinois Central* 146 U.S. at 455. While the modern line of  
6 public trust jurisprudence following *Illinois Central* has largely concerned water resources, its  
7 earlier articulations make it clear that the doctrine’s utility has never been limited to water.  
8

9 46. The continued evolution of the Public Trust Doctrine is highlighted in *Just v Marinette*  
10 *County*, 201 N.W.2d. 751 (1972) in which the Wisconsin Supreme Court upheld a shoreland  
11 zoning ordinance prohibiting landowners from filling wetland abutting Lake Noquebay. The  
12 court observed that while wetlands were once considered undesirable wasteland, modern human  
13 understanding of the interconnectedness of natural systems reveals that they serve “a vital role in  
14 nature, are part of the balance of nature and are essential to the purity of the water in our lakes  
15 and streams” *Just*, 758.  
16

17 47. In 2000 the Hawaii Supreme Court became the first to hold the public trust applicable to  
18 groundwater, finding that the purposes and uses of the trust “have evolved with changing public  
19 values and needs,” (*In re Water Use Permit Applications*, 9 P.3d 409, 448 Haw. 2000) and that  
20 “[m]odern science and technology have discredited the surface-ground dichotomy. (Id. at 447)”  
21 The court went on to reason that in determining the scope of public trust resources, “we see little  
22 sense in adhering to artificial distinctions neither recognized by the ancient system nor borne out  
23 in the present practical realities of this state.” (Id.)  
24

25 48. The Public Trust Doctrine applies to the atmosphere. The atmosphere unquestionably is “a  
26 subject of public concern to the whole people of the state.” *Illinois Central*, 146 U.S. at 455.  
27  
28

1 Modern understanding of the fragility of Earth’s climate system makes it clear that the  
2 atmosphere is a vital resource that must be protected. The applicability of the public trust  
3 doctrine to air generally is recognized in *National Audubon Society v. Superior Court of Alpine*  
4 *County*, 658 P.2d 709, 720 (1983); *Her Majesty v. City of Detroit*, 874 F.2d 332, 337 (6<sup>th</sup> Cir.  
5 1989); Haw. Const. art. XI, §1; La. Const. art. IX, §1; and Pa. Const. art. I, §27.

6  
7 49. Modern understanding of the hydrologic cycle further makes it clear that what effects the  
8 atmosphere necessarily effects the lakes, rivers, and groundwater. Indeed, “[t]he entire  
9 ecological system supporting the waterways is an integral part of them (the waterways) and must  
10 necessarily be included within the purview of the trust” *People of Town of Smithtown v.*  
11 *Poveromo*, 336 NYS 2d 764 at 775. Abnormal climate warming threatens all natural systems on  
12 which the people of Minnesota depend for their continued prosperity, including but not limited to  
13 the lakes and other water bodies which are intrinsic to the identity of this state.

14  
15 50. These trustee obligations of the State of Minnesota to protect the public trust run to all three  
16 branches of the government, and cannot be abdicated by any branch. *Illinois Central*, 146 U.S.  
17 at 460. “Just as private trustees are judicially accountable to their beneficiaries for dispositions  
18 of the res, so the legislative and executive branches are judicially accountable for their  
19 dispositions of the public trust.” *Ariz. Center for Law in the Pub. Interest*, 837 P.2d at 169. The  
20 duty to protect has been defined as: “the duty to ensure the continued availability and existence  
21 of [trust] resources for present and future generations,” and “incorporates the duty to promote the  
22 development and utilization of [trust] resources in a manner consistent with their conservation  
23 and in furtherance of the self-sufficiency of the state.” *Kelly v. 1250 Oceanside Partners*, 140  
24 P.3d 985, 1003 (Haw. 2006). Thus the Public Trust Doctrine obligates Defendants to do what is  
25 necessary to reduce the imbalance of GHGs which threatens these public trust assets.  
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28

1  
2 THE MINNESOTA ENVIRONMENTAL RIGHTS ACT AS CODIFICATION OF THE  
3 STATE’S PUBLIC TRUST DUTY  
4

5 50. In addition to the well-established common law duty to protect public trust resources,  
6 Minnesota’s public trust obligation is codified in the Minnesota Environmental Rights Act  
7 (MERA) (Minn. Stat. § 116B) MERA states its purpose as follows:  
8

9  
10 The legislature finds and declares that each person is entitled by  
11 right to the protection, preservation, and enhancement of air, water,  
12 land, and other natural resources located within the state and that  
13 each person has the responsibility to contribute to the protection,  
14 preservation, and enhancement thereof. The legislature further  
15 declares its policy to create and maintain within the state  
16 conditions under which human beings and nature can exist in  
17 productive harmony in order that present and future generations  
18 may enjoy clean air and water, productive land, and other natural  
19 resources with which this state has been endowed. Accordingly, it  
20 is in the public interest to provide an adequate civil remedy to  
21 protect air, water, land and other natural resources located within  
22 the state from pollution, impairment, or destruction. (Minn. Stat. §  
23 116B.01)

24 51. MERA was written to substantially mirror the Michigan Environmental Policy Act (Mich.  
25 Comp. Laws Ann. §§ 324.1701–.1706), which was drafted in part by Dr Joseph Sax and based  
26 on his 1970 article advocating for broad usage of the Public Trust Doctrine for protection of  
27 natural resources.  
28

52. MERA is violated when a plaintiff can show that the conduct at issue “materially adversely  
effects or is likely to materially adversely effect the environment” § 116B.02(5).

1 53. Minnesota courts have expansively interpreted MERA. Citizens have successfully  
2 challenged state, local, and private actions affecting birds and the trees in which they nest (*State*  
3 *ex rel. Wacouta Twp. v. Brunkow Hardwood Corp.*, 510 N.W.2d 27, 30 (Minn. Ct. App. 1993),  
4 the views from state parks and the experience of wilderness within those parks (*State ex rel.*  
5 *Drabik v. Martz*, 451 N.W.2d 893, 896–98 (Minn. Ct. App. 1990)), wildlife areas including  
6 wetlands (*State ex rel. Shakopee Mdwakanton Sioux Cmty. v. City of Prior Lake*, Case No. C-01-  
7 05286 (Scott County Dist. Ct., Nov. 22, 2002)), drinking water wells (*Id.*), and quietude in  
8 residential areas (*Citizens for a Safe Grant v. Lone Oak Sportsmen’s Club*, 624 N.W.2d 796, 806  
9 (Minn. Ct. App. 2001).  
10

11 54. Together with the State’s common law duty under the Public Trust Doctrine, MERA  
12 compels the State of Minnesota, through Defendants, to safeguard the atmosphere for the future  
13 enjoyment of Minnesotans including Plaintiff. Reductions in the State’s carbon dioxide  
14 emissions of at least 6% per year, beginning immediately, are necessary in order to stabilize the  
15 climate and uphold the State’s public trust duty to present and future Minnesotans.  
16  
17

18  
19 **CLAIMS FOR RELIEF**

20  
21 **PUBLIC TRUST DOCTRINE**

22  
23  
24 55. Plaintiffs incorporate by reference all preceding paragraphs.

25 56. Defendants ongoing failure to take the necessary steps to reduce the State’s carbon dioxide  
26 output by at least 6% per year, beginning immediately, in order to help stabilize and eventually  
27 reduce the amount of carbon dioxide in the atmosphere, violates the Public Trust Doctrine.  
28

1  
2 MINNESOTA ENVIRONMENTAL RIGHTS ACT  
3

4 57. Plaintiffs incorporate by reference all preceding paragraphs.

5 59. Defendants ongoing failure to adequately reduce the State's carbon dioxide output, in order  
6 to help stabilize and eventually reduce the amount of carbon dioxide in the atmosphere, violates  
7 MERA.  
8

9  
10 **RELIEF REQUESTED**  
11

12  
13 A. Declare that the atmosphere is protected by the Public Trust Doctrine.  
14

15 B. Declare that Defendants have violated and are in violation of the Public Trust Doctrine.  
16

17 C. Declare that Defendants have violated and are in violation of MERA.  
18

19 D. Compel Defendants to take the necessary steps to reduce the State's carbon dioxide  
20 output by at least 6% per year, from 2013 to 2050, in order to help stabilize and eventually  
21 reduce the amount of carbon dioxide in the atmosphere.  
22

23  
24 E. An award of reasonable attorneys' fees and costs of this suit.  
25

26 F. Any other relief that the Court deems necessary and appropriate.  
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28