

IN THE SUPREME COURT OF THE STATE OF OREGON

OLIVIA CHERNAIK, a minor and resident of Lane County, Oregon;
LISA CHERNAIK, guardian of Olivia Chernaik; **KELSEY CASCADIA**
ROSE JULIANA, a minor and resident of Lane County, Oregon; and
CATIA JULIANA, guardian of Kelsey Juliana,

*Plaintiffs-Appellants,
Petitioners on Review*

v.

KATE BROWN, in her official capacity as Governor of the State of
Oregon; and **STATE OF OREGON**,

*Defendants-Respondents,
Respondents on Review.*

Lane County Circuit Court Case No. 161109273
CA No. A159826
Supreme Court No. S066564

**BRIEF OF *AMICI CURIAE* EUGENE/SPRINGFIELD NAACP ET
AL., IN SUPPORT OF PETITIONERS' PETITION FOR REVIEW**

Review of the decision of the Court of Appeals on appeal from a judgment
of the Circuit Court for Lane County, Honorable Rasmussen, Judge.

Opinion Filed: January 9, 2019

Author of Opinion: Armstrong
Concurring Judges: Shorr, Garrett

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IDENTITY AND INTERESTS OF *AMICI CURIAE*¹

Amici curiae include:

The **Eugene/Springfield NAACP** is committed to strong environmental justice engagement and supporting climate strategy leaders. With this understanding the Eugene/Springfield NAACP supports a global view of change with a strong focus on creating meaningful partnerships and alliances on behalf African American youth to engage with people of all backgrounds to strengthen the world through advocacy and networking.

The **City of Milwaukie** is an Oregon municipal corporation. It recently adopted a Climate Action Plan designed to mitigate and adapt to the effects of climate change. On behalf of its citizens, the City supports review of the Court of Appeals' erroneous decision that the State has no affirmative duty under the public trust doctrine to protect public trust resources against the impacts of climate change.

Mayor Lucy Vinis is the Mayor of Eugene. As Mayor she advocates for reducing community-wide 2010 levels of fossil fuel use by 50% by 2030 and for achieving a 7.6% annual greenhouse gas emissions reduction across the community.

¹ On March 27, 2019, the Court's Order allowed Representative Ken Helm, Representative Pam Marsh, and Senator Jeff Golden to participate as *amici*. Due to subsequent events in the Oregon Legislature, these three *amici* have decided to seek Court permission to join a different amicus brief with other elected government officials.

Oregon Physicians for Social Responsibility (“Oregon PSR”)

guided by the values and expertise of medicine and public health, Oregon PSR works to protect human life from the gravest threats to health and survival. Oregon PSR believes that the science is clear: human-caused climate change is one of the gravest threats to health and survival currently facing our world.

The **Oregon League of Conservation Voters** is a non-partisan organization that seeks to pass laws to protect Oregon’s people and places, elect pro-environment candidates to office, and hold all of our elected officials accountable.

Earth Guardians 350 Club (“EG350”) is a student-led climate activism club at South Eugene High School. EG350 members present other youth with direct, accessible opportunities for the advocacy of climate justice, and to educate and spread awareness about the climate crisis.

Oregon Youth Legislative Initiative on Climate Justice (“OYLI”) is a youth environmental lobbying program that connects students across Oregon to the state legislators in an attempt to pass environmental legislation. OYLI constituents develop relationships with their legislators, attending lobby days and testifying before committees to voice their support for bills focused on stopping climate change.

Portland Youth Climate Council (“PYCC”) is a youth-powered

group in Portland, defending their right to a stable climate and sustainable future. PYCC members work to bring youth voices to the table to advocate for strong action when it comes to climate justice locally and globally. Members provide the City of Portland and other entities with a youth perspective on how to best meet the goals of the city's 100% Renewable Energy Resolution.

Climate Justice League is a University of Oregon student group that focuses on the intersections of climate change and social justice issues. They work towards implementing policies for climate action on campus, in Eugene, and across the Pacific Northwest.

Churchill Climate Action Club (“CAC”) is a student-organized climate justice club, representing a diversity of perspectives in regards to race, ethnicity, class, and gender in relation to the state of our climate from Churchill High School in Eugene. The CAC's purpose is taking part in school, community, and political based action in regards to climate justice. CAC members exercise their rights of free speech, press, and assembly in order to urge legislators and/or city officials to uphold youth's constitutional right to a clean and healthy climate by acting on/following through with any and all climate legislation. CAC members also work to include youth from diverse backgrounds in our community with opportunities to engage in direct action, advocacy, hands on work, and education regarding the well-

being of the climate.

The Raven Corps is a youth-powered nonprofit organization that empowers, supports, and mobilizes activists aged 14-22 who promote environmental sustainability and compassion through a plant-based diet.

The Green Energy Institute is a research center at Lewis & Clark Law School's Environmental, Natural Resources, and Energy Law Program. Their analyses and recommendations aim to hasten the energy transition by strengthening existing policies, eliminating barriers, and promoting innovative and ambitious new strategies to support renewable energy deployment across the Pacific Northwest.

The Center for Sustainable Economy ("CSE") is a 501(c)(3) non-profit based in West Linn, Oregon, engaged in environmental and economic justice advocacy throughout the state. CSE's work is heavily impacted by the Oregon Court of Appeals' interpretation of the Public Trust Doctrine.

Coconut Bliss is a Eugene, Oregon-based manufacturer of dairy-free, organic certified, coconut milk ice cream that is sold in retail stores across the U.S. and Canada. Coconut Bliss' economic well-being is dependent on the availability of ingredients, farmed domestically and beyond, that are being negatively impacted by climate change from shifting growing seasons to destructive weather events.

Hummingbird Wholesale, and the farmers with whom they work,

have already experienced some of the impacts of climate change in erratic weather patterns, greater pest pressure on farms, and a decade-long drought here in the Pacific Northwest. Hummingbird supports Petitioners because if a small, family business like Hummingbird's can take this on, why not our government or, most pointedly, why not major corporations, who have an even greater footprint and capital available for making change.

Royal Blue Organics has been committed to sourcing only fair trade, organic, and shade-grown coffee from indigenous cooperatives since 1990. The coffee used by Royal Blue Organics' coffee line, Café Mam, is grown by native Mayan farmers living in the highlands of Chiapas, Mexico. The farmers believe that by taking care of the soil, they are taking care of the entire biosystem. Café Mam coffee farmers seek to conserve and rebuild the natural environment and work toward a higher quality of life for their families and communities. Café Mam coffee is roasted in Oregon and enjoyed across the world. The operations and business interests of Royal Blue Organics are being threatened by impacts from climate change.

Indow Windows manufactures window inserts that press inside existing window frames with no mounting bracket to provide all the comfort and energy of high-end replacement windows. Indow believes that planetary heating represents extraordinary peril to our economy, society and democracy, with even the modest current levels of climate chaos already

destabilizing societies around the globe.

Eric Strid is has broadly studied the scientific opinions around climate change, the technologies necessary to reduce Oregon's climate emissions and their cost trajectories, the spending necessary to deploy those technologies, and various policies which would accelerate such deployments. Mr. Strid is the co-founder and retired CEO of Cascade Microtech, Inc. It is Mr. Strid's opinion that both the executive and legislative branches have dramatically failed to understand and communicate the climate change threats, and to understand and take effective mitigating actions.

Reverend Cecil Prescod is the Minister of Faith Formation at Ainsworth United Church of Christ in Portland. Reverend Prescod notes that the faith community is committed to advocating and working for climate justice.

Reverend John Shuck is the Pastor of Southminster Presbyterian Church in Beaverton. He believes that the most important question for humankind relates to the condition of the world that our children and grandchildren inherit. Reverend Shuck argues that climate change is a religious, moral, and spiritual issue and should be the driving issue for all communities of conscience.

Ecumenical Ministries of Oregon serves hundreds of thousands of

diverse members of the faith community all across Oregon, through a membership of 15 denominations and over 150 congregations, organizations, and interfaith partners. Ecumenical Ministries of Oregon strives to improve the lives of Oregonians through community ministry programs, ecumenical and interreligious dialogue, public policy advocacy and the climate justice work of Oregon Interfaith Power & Light. Its members share a core and common belief in their obligations as God's stewards to use the resources of nature wisely and with reverence, and to preserve God's bounty for all generations to come.

Riverside Community Church, United Church of Christ, is a faith-based community in Hood River, Oregon. Riverside's diverse and multigenerational members seek to honor and protect the gifts of God's creation by taking bold action to address the devastating effects of climate change, particularly among children, youth and other vulnerable members of our communities. Riverside is an active participant in the education and advocacy efforts of the Columbia Gorge Climate Action Network, and the climate justice work of the regional and national bodies of the United Church of Christ.

Interfaith Earthkeepers is composed of members of about a dozen communities of faith in Eugene and Springfield and is committed to the care of God's creation: Mother Earth. Over the past several years, Interfaith

Earthkeepers has sought to educate the local community about threats to the environment, and in particular to the causes and consequences of climate change.

Oregon Unitarian Universalist Voices for Justice is an organization that represents Unitarian Universalists in the State of Oregon. Its mission is to educate and advocate for policies that promote respect, equity, compassion and global stewardship.

Unitarian Universalist Church of Eugene Earth Action Committee (“UU Church”) is focused on action to preserve the earth and is aware that time is running out for action on the global climate crisis. The UU Church has had its roots in Eugene, Oregon for 150 years and is a dynamically growing religious community based on respect for differences and service to the world. Respect for the individual as well as the web of all life is its guide.

Temple Beth Israel: Temple Beth Israel of Eugene, Oregon (“TBI”) is the largest synagogue in Eugene. TBI is a center for Jewish life embracing traditional wisdom with contemporary insight, including contemporary ways to fulfill our holy responsibility to engage in Tikkun Olam, or repair of the world. As part of that effort, TBI and its members are committed to environmental justice and limiting the effects of climate change for current and future generations. TBI is a member of the Jewish Reconstructionist

Movement and the Community of Welcoming Congregations.

Oregon Environmental Council has a profound interest in this case because its mission is to advance innovative, collaborative and equitable solutions to Oregon's environmental challenges for today and future generations, and its strategic plan focuses on the greatest challenge of our time—climate change.

Rogue Climate aims to empower Southern Oregon communities most impacted by climate change, including low-income, rural, youth, and communities of color, to win climate justice by organizing for clean energy, sustainable jobs, and a healthy environment.

Thrive Hood River was founded in 1977 with a mission to protect Hood River County's farms, forests, special wild places and the livability of its cities and rural communities through advocacy, education and monitoring land use processes and decision-making. The impacts of climate change such as increased temperatures, drought, and decreased snowpack effect the viability of Hood River's famous orchard lands and increase the risk of wildfires on the 240,000 acres of publicly owned forests in Hood River County.

Mount Pisgah Arboretum engages people with nature through interactive learning and stewardship and believes that the more people are inspired to learn about and engage with the natural world, the more they will

honor and preserve it for future generations. Their work requires healthy ecosystems.

Friends of the Columbia Gorge (“Friends”) is a nonprofit organization with approximately 7,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Friends has a strong interest in ensuring the protection of the resources and communities of the Columbia River Gorge from the impacts of climate change, including the impacts of increased forest fires, droughts, insect infestations, and the displacement or extinction of native plants and wildlife.

Hair on Fire Oregon is a micro-group of activist citizens working outside of constraints of bureaucracy to alert sentient humans to the clear and present danger of climate change. Hair on Fire has produced films, commissioned research papers, written op-eds, organized projects like Hike the Pipe—a 232 mile, 36 day hike along the proposed Pacific Connector Pipeline route last summer, placed ads and testified at hearings. Hair on Fire Oregon is in strong support of the youth in this case and hopes that the court recognizes the severe crisis we are in and takes action to protect all that we love.

Indivisible North Coast Oregon defends democracy and promotes progressive values, including advocacy on issues related to climate change and the environment.

ORD2 Indivisible is a collective of volunteers and Indivisible activists living in Oregon's Congressional District 2. ORD2 Indivisible organizes rallies, posts Calls-to-Action, collaborates with other groups on shared priorities, meets with our members of Congress, engages the media, and provides training, information, and other resources to strengthen our activism. ORD2 Indivisible endeavors to affect change at all levels of government, advocating for policies that support well-being and prosperity for everyone.

350 Eugene is a local affiliate of 350.org, whose mission is to educate and activate leaders and citizens to take actions that stop climate pollution and promote a just and swift transition to a renewable energy economy and democracy.

350 Corvallis is a Corvallis, Oregon based group of citizens that feel strongly about the need to take immediate action to address the problems related to climate change.

350 Deschutes is a local affiliate of 350.org, working in Central Oregon to inspire individuals and businesses to make changes, and educate themselves about policies, that ensure a sustainable, equitable, renewable energy economy and a healthy, resilient environment which will be livable for generations to come.

350PDX is an Oregon based nonprofit organization focused on

building a diverse grassroots movement to address the causes of climate disruption through justice-based solutions by inspiring, training and mobilizing people to act. Their mission necessitates that they urge strong and timely action from all institutions and agencies, including the governor and the State of Oregon, who hold the power of the public trust and who they believe have a responsibility to protect the climate for current and future generations.

Stop Fracked Gas/PDX is signing on to the amicus brief in support of the youth Petitioners. All reputable science and serious observation convinces them to encourage the Oregon Supreme Court to reexamine the decision from the Court of Appeals.

Cascadia Wildlands combats climate change by defending and restoring the wild places of the Cascadian bioregion in the forests, in the courts, and in the streets.

Cascadia Action Network is the empowered new generation dedicated to environmental and social justice. They work to create impactful and intersectional environmental change on the University of Oregon campus and in our community.

Climate Reality Project: Portland is an active group of Climate Leaders who have been trained by former Vice President Al Gore on the causes, impact and solutions to global warming. Climate Reality Project sees

the impact of climate change locally and agrees the State of Oregon has not responded appropriately to reduce greenhouse gas emissions and attempt to stop or slow the progress of climate change.

Beyond Toxics is an environmental justice organization that works on community-based grassroots organizing to ensure environmental protection and health for all communities in the State of Oregon. In the same way that Beyond Toxics works to ensure environmental protections for all communities, it would like to see public trust resources protected from catastrophic climate change.

Partners for Sustainable Schools has been working over the last 11 years in Lane County public schools. Its curriculum emphasizes the value of resource conservation and teaches students the science of climate change and its pervasive impact on ecosystems.

The Village School is a Premier-Status Green School, a participant in the BRING Recycling's ReThink Business program, a recipient of the Sustainable Oregon Schools award in 2015, and a recipient of the Golden Carrot award from Physicians Committee for Responsible Medicine. The school's charter includes the goals "to promote environmental stewardship through various curricular and community activities" and "to support the physical and nutritional health and well-being of students and staff." It supports scientific inquiry, critical thinking, and responsible action when it

comes to environmental and community issues such as Climate Change.

The Sierra Club and its Oregon Chapter: Founded in 1892, Sierra Club is the nation's oldest and largest grassroots environmental organization, with over 3.5 million members and supporters. The Sierra Club is a national nonprofit organization with 67 chapters, including an Oregon Chapter with approximately 22,000 members. For decades, Sierra Club has used the traditional tools of advocacy – organizing, lobbying, litigation, and public outreach – to support policies that limit our nation's dependence on fossil fuels and promote clean, renewable energy. Sierra Club first created a Global Warming Program in 1989 and has greatly expanded that work since then, using every means at its disposal at the federal, state, and local levels to protect the climate through such policies. The Sierra Club's Oregon Chapter is actively engaged in this work on the state level, advocating for progressive climate policies and solutions to the climate crisis.

The **above** *amici* filed a motion to appear on March 22, 2019, and simultaneously, an *amicus* brief in support of Petitioners' Petition for Review. This Court granted *amici's* motion and therefore, pursuant to ORAP 8.15(5)(d), the above *amici* submit this *amicus* brief without an accompanying motion. *See* Order Granting Application to Appear as *Amici Curiae*, *Chernaik v. Brown*, S066564 (Mar. 27, 2019).

The **following** seven *amici* were not included in the March 22, 2019

motion or brief but now wish to appear as *amici* and file their motion herewith. ORAP 8.15(3). In the interest of judicial efficiency, rather than filing a separate *amicus* brief, the following *amici* wish to join this *amicus* brief. The above *amici*, Petitioners, and Respondents do not object to the additional *amici* appearing in this *amicus* brief.

Ashland Food Co-Op (the “Co-Op”) began in 1971 as a food-buying club and is now Southern Oregon’s first and only Certified Organic Retailer, over 11,000 members strong. The Co-op has been connecting the community to healthy, local food for decades. With passion, purpose, and a whole lot of love, the Co-Op is more than just a grocery store. The Co-Op is at the center of a movement and is on a mission to change the world. The co-op places people, principles, and the planet before profit—always and is taking steps towards our four owner-driven sustainability goals for 2030: to become Zero Waste, Carbon Neutral, Eliminate Toxic Chemicals, and be a leader in Sustainable Relations.

Citizens for Renewables of Coos County advocates a transition to clean, naturally replenished energy sources in order to drastically reduce greenhouse gas emissions. This transition will allow future generations to anticipate major improvements in water and air quality and global warming, and face the future with optimism.

Clackamas Climate Action Coalition works hard to make

Clackamas County and the State of Oregon a sustainable and livable place in the face of climate chaos. The Clackamas Climate Action Coalition recognizes that it cannot push forward with a bold climate agenda without changed policies of the State.

First Unitarian Church of Portland (Rev. Dr. William G. Sinkford, Senior Minister and Dana Buhl, Director of Social Justice) is a leader in the climate movement, and considers climate change the most important moral issue of our day, or for that matter, any day. First Unitarian Church of Portland is chiefly motivated by its concern for future generations and the suffering which is sure to come, without prompt action to cut the use of fossil fuels.

The League of Women Voters of Oregon (“The League”) has been at the forefront of national efforts to protect air, land and water resources since the 1950s. The League’s social policy directs members to secure equal rights and equal opportunity for all, as well as promote social and economic justice and the health and safety of all Americans. The League believes that climate change is a serious threat facing our nation and planet and supports climate goals and policies that are consistent with the best available climate science and that will ensure a stable climate system for future generations.

Organically Grown Company (“OGC”) is the largest distributor of organic produce in the Northwest. At the core of OGC is a simple idea that

has held steady since the beginning: that organic agriculture is necessary for a healthy environment and healthy people. OGC's goal is to support organic agriculture and help it thrive by doing business in a way that is "good, clean and fair." That goes for the customers, vendors, employees, community and environment. OGC's operations and business interests are being threatened by impacts from climate change.

Willamette Riverkeeper is a 501(c)(3) nonprofit organization whose sole mission is to protect and restore the Willamette River. Willamette Riverkeeper believes that a river with good water quality, abundant natural habitat, safe for fishing and swimming is a basic public right. Climate change threatens the Willamette River's natural ecosystems, and the quality of life for Oregon communities who live and work in the watershed.

Amici are individuals and organizations that live, work, and recreate in the State of Oregon and represent a wide variety of interests, including government, communities of color, public health, youth, faith, business, conservation, and education. The individuals, organizations, members, and constituents represent hundreds of thousands of Oregonians from across the State. *Amici* have a profound interest in this case because they depend upon Oregon's public trust resources for their well-being and survival. Which natural resources are encompassed by Oregon's public trust doctrine, and whether or not Governor Brown and the State of Oregon have a fiduciary

obligation to protect those public trust resources, will impact *amici*'s organizational, spiritual, economic, recreational, and health interests.

STATEMENT OF HISTORICAL AND PROCEDURAL FACTS

Amici rely on Petitioners' statement of historical and procedural facts of the case.

QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

Amici rely on Petitioners' questions presented and proposed rules of law.

SUMMARY OF THE ARGUMENT

The Court of Appeals' opinion, *Chernaik v. Brown*, 295 Or App 584, 600, ___ P3d ___ (2019), erroneously held that Governor Brown and the State of Oregon ("Respondents") do not have a fiduciary duty to affirmatively protect Oregon's public trust resources from the effects of climate change. The Court of Appeals also declined to rule on the scope of the public trust doctrine (i.e., which of Oregon's natural resources are public trust resources), despite the issue being briefed and decided by the lower court. *Id.* at 594-95. The consequences of the Court of Appeals' decision cannot be underestimated, as the holding, if not corrected by this Court, will gravely harm Petitioners, as well as all Oregonians and the essential public trust resources that they depend on for their well-being and survival, making it legal for Respondents to continue allowing catastrophic climate change to

substantially impair Oregon’s public trust resources. Accordingly, *amici* respectfully urge this Court to reverse the Court of Appeals, and hold that Governor Brown and the State of Oregon, as trustees, have a fiduciary obligation to protect Oregon’s public trust resources, which include the atmosphere, waters of the state, fish, and wildlife, from catastrophic climate change.

Amici submit to the Court a current summary of what state and federal agencies and top experts report the climate change impacts in Oregon are today, and will be in the future, to illustrate how the Court of Appeals’ opinion is of great consequence to the public, that many people are affected, and that it will result in a serious and irreversible injustice. *Amici* also explain that Respondents have not taken adequate steps to address climate change and its effects on Oregonians despite numerous opportunities to do so, and accordingly, it is critical that this Court clarify that Respondents have an affirmative obligation to protect Oregon’s public trust assets from greenhouse gas emissions (“GHG”) and climate change, now, before it is too late.

ARGUMENT

I. Climate Change is Already Impacting Oregon and the Impacts Will Get Dramatically Worse in the Future Without Immediate Action to Reduce GHG Emissions

The best available climate science says that in order to prevent the

worst impacts of climate change, impacts that would be irreversible on a timescale relevant to humans (for example sea level rise and species extinctions), the concentration of carbon dioxide (“CO₂”) in the atmosphere must be reduced to no more 350 parts per million (“ppm”) by 2100. A concentration of CO₂ in the atmosphere exceeding 350 ppm constitutes substantial impairment to the atmosphere and other public trust resources. The current atmospheric CO₂ concentration is over 410 ppm, well above the substantial impairment threshold.² To date, Oregon does not have a plan to ensure the State does its part to return the CO₂ concentration in the atmosphere to 350 ppm by the end of the century. Petitioners’ lawsuit seeks to force Respondents to address its concerns.

Respondents have never disputed that atmospheric concentrations of CO₂ must be reduced to 350 ppm, that they do not have a plan to ensure that the State protects public trust resources, or that climate change has already substantially impaired Oregon’s public trust resources. For example, in their Answer to the Complaint, which Respondents filed in 2014, Respondents admitted that:

- “Plaintiffs are children and their families who live in Oregon, and that their personal and economic well-being is dependent upon the health of natural resources in this State including water resources, submerged and submersible lands, coastal

² National Oceanic and Atmospheric Administration, Trends in Atmospheric Carbon Dioxide (last visited Mar. 18, 2019), *available at* <https://www.esrl.noaa.gov/gmd/ccgg/trends/index.html>.

- lands, forests, and wildlife. . . . Defendants further admit that these natural resources are currently threatened by the impacts of global climate change.” Excerpt of Record (“ER”) 26.
- “Defendants admit that global climate change is likely to result in some changes in water availability, drought, pests, rising temperatures, and weather changes” ER 27.
 - “[G]lobal climate change is causing, and is likely to continue to cause, significant adverse effects such as disruption of natural ecosystems, displacement or disappearance of some animal species, increases in the frequency and intensity of storms and other extreme weather events, increases in the frequency and severity of droughts in some areas, warmer and more frequent periods of intense heat, rising sea levels, decreased agricultural productivity in some areas, sea level rise and coastal erosion.” ER 30-31.
 - “Human-caused fossil fuel burning and the resulting climate change are already contributing to numerous adverse impacts to public health, including increased rates of asthma, cancer, cardiovascular disease and stroke, heat-related morbidity and mortality, food borne diseases, and neurological diseases and disorders.” ER 31.
 - “If the atmosphere passes certain thresholds or tipping points of energy imbalance and planetary heating, the existing climatic conditions that exist today cannot be restored.” ER 31.

More recent climate change reports prepared by Oregon and the federal government confirm what Respondents already admitted, and strengthen Petitioners’ claims. Oregon’s mean temperature has already warmed 2.2°F since 1895, with the warming trend accelerating since the 1970s.³ The most recent science predicts that, even with concerted action,

³ Oregon Climate Change Research Institute, *The Third Oregon Climate Assessment Report* 6 (2017) (hereinafter “OCCRI, *Third Oregon Climate Assessment Report*”); U.S. Global Change Research Program (“USGCRP”), *Northwest, in Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* 1041 (2018) (hereinafter “USGCRP, *Northwest*”).

average temperature increases between 4.6°F and 8.2°F by 2080 (only sixty years from now) can be expected.⁴ Extreme heat events are expected to increase in frequency, duration, and intensity, with hotter temperatures both in the summer and winter.⁵ According to one recent report, by the middle of the 21st century (2036-2065) the number of days with heat indices exceeding 100°F and 105°F will double and triple, respectively (compared to 1971-2000 baseline).⁶ As described below, rising temperatures are already dramatically altering Oregon's landscape and natural resources and, without the State's swift and strong action, will continue to fundamentally change the character and economy in our state.⁷ According to one report, the costs of climate change will be \$15,000 per household per year in the near future.⁸

⁴ OCCRI, *Third Oregon Climate Assessment Report* at 8.

⁵ *Id.*

⁶ Kristina Dahl et al., *Increased frequency of and population exposure to extreme heat index days in the United States during the 21st century*, Environmental Research Communications, 1 (2019).

⁷ In 2019, the *Fourth Oregon Climate Assessment Report* was released. Oregon Climate Change Research Institute, *Fourth Oregon Climate Assessment Report: State of the Science: 2019* (2019). That report provides minimal updates to the *Third Oregon Climate Assessment Report* and incorporates in full the Northwest chapter of the *Fourth National Climate Assessment*. Unless otherwise indicated, *amici's* brief relies on the more detailed *Third Oregon Climate Assessment Report* and the original *Fourth National Climate Assessment*.

⁸ Natural Resources Economics, *Paying for Oregon's Future: Costs Climate Change will Impose on Oregon's Households* 12 (2018), available at <http://oregon-stream-protection-coalition.com/wp-content/uploads/2018/08/climate-costs-natural-reource-economics.pdf>.

A. Altered Precipitation Patterns, Reduced Snowpack, Reduced Stream flows, and Increasing Drought

Climate change is altering Oregon's precipitation patterns, with winter, spring, and fall becoming wetter, and summer becoming drier.⁹ Additionally, more of Oregon's winter precipitation is falling as rain, not snow, which is problematic because a robust winter snowpack in the Cascades is crucial for Oregon's rivers and summertime water supply. Between 1950 and 2000, the level of snowpack on April 1st of each year has been declining and by 2080 (sixty years from now), almost all of Oregon is expected to become rain-dominant (with the sole exception being parts of the Blue Mountains).¹⁰ In 2015, Oregon's snowpack in April was at record lows across the State, which led to significant adverse impacts across the State during the summer of 2015.¹¹ Peak snowpack in the Cascades has shifted to earlier in the year, increasing stream flows in March and reducing stream flows in June and the rest of the summer.¹² Oregon's snowpack is essential for storing water that is then used throughout the summer. One recent study found that since 1915, the snowpack in the Western United States has declined 21%, which is equivalent to losing more than all the

⁹ OCCRI, *Third Oregon Climate Assessment Report* at 9, 11.

¹⁰ *Id.* at 12, 18.

¹¹ *Id.* at 12.

¹² *Id.*

water stored in the largest reservoir in the West, Lake Mead.¹³ This same study noted that it is impossible to increase reservoir capacity at the rate necessary to keep up with the declining snowpack.¹⁴ Declining snowpack and stream flows have a direct impact on Oregon's outdoor recreation industry, which in 2017, supported 451,000 jobs and generated \$51 billion.¹⁵

Rising temperatures, combined with declining snowpack and stream flows, are already increasing drought conditions in the summer months.¹⁶ The impact on hydropower operations is that production may increase slightly in the winter months when flows are higher, but will decrease in the summer months and be at its lowest between July and September, when seasonal air conditioning load usage is at its peak. Drought conditions and rising temperatures are also impacting Oregon's agriculture.¹⁷ Roughly 42% of Oregon's farms are irrigated, but with declining snowpack and increasing water demand, water scarcity is becoming a problem.¹⁸ Farms that do not rely on irrigation face problems associated with declining summer precipitation and increasing drought conditions.¹⁹ If Oregon experiences the predicted warming of 4.6°F to 8.2°F by 2080 our state's irrigation demands

¹³ Philip W. Mote et al., *Dramatic Declines in Snowpack in the Western US*, *Climate and Atmospheric Science*, 1:2 (2018).

¹⁴ *Id.*

¹⁵ USGCRP, *Northwest* at 1043.

¹⁶ OCCRI, *Third Oregon Climate Assessment Report* at 19.

¹⁷ *Id.* at 64.

¹⁸ *Id.* at 65.

¹⁹ *Id.*

will skyrocket, and farms not reliant on irrigation will face dire circumstances, which would have devastating economic impacts on our farmers and our economy as a whole.

Oregon's agriculture, forestry, and fishing sectors are key components of Oregon's economy, collectively accounting for over 256,000 jobs and \$48.5 billion in sales revenues in 2015.²⁰ In 2012, the agriculture industry alone generated nearly \$4.9 billion in gross agricultural products and was linked to 14% of Oregon's jobs.²¹ However, growing zones for certain agricultural products and trees are already shifting with a warming climate. For instance, climate change is already impacting the growing season for grape growers and if temperatures continue to rise, wine growers in Oregon may need to move north, or to higher elevations, to continue their robust contribution to our state's economy.²² As warming continues, the lack of winter dormancy could also cause problems for Oregon's perennial crops like fruit orchards, as it has already done in California, where the number of "chilling hours" of winter have declined, causing the demise of certain orchard crops.²³ Oregon's beef, dairy, fruit, vegetable, and grain industries

²⁰ USGCRP, *Northwest* at 1043.

²¹ OCCRI, *Third Oregon Climate Assessment Report* at 64.

²² *Id.* at 69; USGCRP, *Northwest* at 1046.

²³ OCCRI, *Third Oregon Climate Assessment Report* at 68-9.

are also vulnerable to the impacts of climate change.²⁴

B. Impacts to Forests: Wildfires, Pests, and Disease

While wildfires are a natural part of forest ecosystem health, wildfires are exacerbated by climate change, as are the presence of forest pests, such as the mountain pine beetle.²⁵ Climate change is causing warmer and drier summer conditions (which increases fuel aridity) and has led to larger fires, increased the total area burned, and led to a longer fire season.²⁶ The length of the fire season has increased fully *five times* its historical length from 23 days in the 1970s to 116 days in the 2000s.²⁷ Fuel aridity is expected to increase in the coming decades, increasing the annual burn area by a staggering 140% in the 21st century compared to the 20th century.²⁸ According to the Oregon Department of Forestry, Oregon's firefighting costs between 2013-2018 have averaged almost \$40 million a year, *five times* the average from the preceding five years.²⁹ Wildfires also cost Oregon

²⁴ *Id.* at 67-70.

²⁵ USGCRP, *Northwest* at 1045; OCCRI, *Third Oregon Climate Assessment Report* at 46-50; *see also* OCCRI, *Climate Change in the Northwest: Implications for our Landscapes, Waters, and Communities* 110-135 (2013).

²⁶ OCCRI, *Third Oregon Climate Assessment Report* at 46; *see also* Oregon Global Warming Commission, *2018 Biennial Report to the Legislature 5* (2018) (hereinafter "OGWC, 2018 Biennial Report").

²⁷ OCCRI, *Third Oregon Climate Assessment Report* at 46-50.

²⁸ *Id.* at 47.

²⁹ OGWC, *2018 Biennial Report* at 15.

roughly \$51 million in lost tourism revenue in 2017 alone.³⁰

Additionally, rising temperatures and more frequent drought conditions are making trees more vulnerable to insects and pathogens, including the mountain pine beetle and western spruce budworm.³¹ Oregon's trees are also having direct physiological responses to climate change, including drought and rising temperatures, which impacts the growth of trees, causes trees stress, and can lead to tree mortality.³²

C. Climate Change and Ocean Acidification: Impacts to Marine Life

Ocean warming and ocean acidification are already having a significant impact on Northwest fisheries and marine life.³³ The tandem impacts of ocean warming and acidification not only affect shellfish, but the entire food web, including birds that prey on shellfish and other animals that use abandoned shells for homes.³⁴ Warming off the Oregon coast is also contributing to harmful algal blooms, which has repeated adverse impacts on the Dungeness crab fishing season (worth \$70 million annually), salmon, and other marine life.³⁵

The *Fourth National Climate Assessment* warns that ocean warming,

³⁰ *Id.* at 30.

³¹ OCCRI, *Third Oregon Climate Assessment Report* at 49-51.

³² *Id.* at 51-3.

³³ USGCRP, *Northwest* at 1048; OCCRI, *Third Oregon Climate Assessment Report* at 31, 35.

³⁴ USGCRP, *Northwest* at 1048.

³⁵ OGWC, *2018 Biennial Report* at 28.

acidification, and algal blooms are expected to increase and could result in “extensive fisheries closures . . . with severe economic and cultural effects on commercial and subsistence shellfish industries.”³⁶ Importantly, ocean acidification is not a distant threat, in fact, “the West Coast has already reached a threshold and negative impacts are already evident, such as dissolved shells in pteropod populations . . . and impaired oyster hatchery . . .”³⁷ At current rates of CO₂ emissions, the average acidity of the ocean’s surface is expected to double by the end of the century compared with pre-industrial levels.³⁸ One 2016 study found that about half of the West Coast shellfish industry has already experienced negative impacts of ocean acidification.³⁹

Climate change and ocean acidification also affect salmon populations in all their life stages, including their journeys through streams, estuaries, and the ocean.⁴⁰ The climate change induced alterations in stream flow water levels, increasing temperatures of Oregon streams, and warmer ocean temperatures are reducing the extent and quality of salmon habitat, causing thermal stress, making salmon more susceptible to disease and predation,

³⁶ USGCRP, *Northwest* at 1045.

³⁷ OCCRI, *Third Oregon Climate Assessment Report* at 36, 40.

³⁸ *Id.* at 35.

³⁹ Mabarby B., et al., *The U.S. West Coast Shellfish Industry’s Perception of and Response to Ocean Acidification* (2016), available at <https://seagrant.oregonstate.edu/sgpubs/us-west-coast-shellfish-industrys-perception-and-response-ocean-acidification>.

⁴⁰ OCCRI, *Third Oregon Climate Assessment Report* at 23-6.

and disrupting their food supplies.⁴¹ Even under low human CO₂ emissions scenarios, the prospects for many Pacific Northwest salmon stocks look dismal.⁴² Indeed, in September, 2018, the U.S. Secretary of Commerce declared a fishery disaster for West Coast salmon, noting that between 2015 and 2017 there were commercial fishery failures for salmon in Oregon, Washington, and California.⁴³ Commercial fishing in Oregon accounted for over \$614 million in sales in 2013 and disruptions to the fishing industry due to ocean warming and ocean acidification have significant impacts on Oregon's jobs and economy.⁴⁴

D. Sea Level Rise and Coastal Erosion

Sea levels are rising as a result of ocean thermal expansion (as the ocean warms, the water expands) and due to the melting of glaciers and ice sheets.⁴⁵ On the Oregon coast, seas have already been rising and are expected to rise by at least another 2 to 4 feet this century.⁴⁶ These sea level rise estimates are conservative and without immediate action to reduce GHG emissions, current science suggests upwards of 40 feet of sea level rise will

⁴¹ *Id.* at 38-9.

⁴² USGCRP, *Northwest* at 1049.

⁴³ NOAA, U.S. Secretary of Commerce Declares Commercial Fishery Disasters for West Coast Salmon and Sardines (Sept. 25, 2018), *available at* <https://www.fisheries.noaa.gov/media-release/us-secretary-commerce-declares-commercial-fishery-disasters-west-coast-salmon-and>.

⁴⁴ OCCRI, *Third Oregon Climate Assessment Report* at 37.

⁴⁵ *Id.* at 31.

⁴⁶ *Id.* at 32.

become locked in.⁴⁷ Rising seas, combined with greater storm intensity, are resulting in greater coastal erosion, flooding, loss of beach areas and elevation, loss of coastal wetlands, and inundation and damage of coastal infrastructure.⁴⁸ The financial cost of responding to the impacts of sea level rise in Oregon is, moderately estimated to be \$1.5 billion through 2100.⁴⁹ By taking action now to stop GHG emissions and curb the effects of decades of GHG emissions, Oregon may be able to minimize the devastating impacts of rising sea levels and protect Oregon's magnificent beaches and dunes, one of our greatest public resources.

E. Human Health Impacts

Climate change is already impacting the health of Oregonians in various ways, but current science confirms the impacts will get much worse without immediate steps to address the climate crisis. Doctors have called climate change a “health emergency” and noted that the “effects of climate disruption are fundamentally health issues, and they pose existential risks to all of us.”⁵⁰ The Oregon Health Authority published the *Oregon Climate Health Profile Report* in 2014, and in 2018 published *Climate Change and Public Health in Oregon*, both of which sound the alarm on the impacts of

⁴⁷ *Id.*

⁴⁸ *Id.* at 31, 33-34, 39.

⁴⁹ OGWC, *2018 Biennial Report* at 26.

⁵⁰ Solomon, C. G. & LaRocque R. C., *Climate Change – A Health Emergency*, N. Engl. J. Med. 380:3 (2019); *see also* OCCRI, *Third Oregon Climate Assessment Report* at 74-82.

climate change on the health of Oregonians.⁵¹ The impacts include: heat related death, respiratory illness from worsening air quality and wildfires, physical harm from landslides and flooding, and increases in food-borne diseases and vector-borne diseases (see **Figure 1** below).⁵² In addition to physical harm, climate impacts can cause mental health impacts, ranging from stress to suicide, due to displacement, loss of income, chronic stress, and other impacts of climate change.⁵³

During Oregon's abnormally hot 2015 summer, emergency room visits for heat-related medical conditions spiked, and during the summer of 2017, there was a 29% increase in emergency room visits for people with respiratory symptoms during the Eagle Creek fire.⁵⁴ Importantly, even under a low emissions scenario, airborne particulate levels from wildfires are expected to increase by 160% by 2050.⁵⁵ Health risks from climate change affect those who are already most vulnerable, including children, the elderly,

⁵¹ Oregon Health Authority, *Oregon Climate and Healthy Profile Report* (2014), available at <https://public.health.oregon.gov/climatechange/Documents/oregon-climate-and-health-profile-report.pdf>; Oregon Health Authority, *Climate Change and Public Health in Oregon* (2018), available at <https://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/CLIMATECHANGE/Documents/2018/2018-OHA-Climate-and-Health-Policy-Paper.pdf>.

⁵² *Id.*

⁵³ *Id.*; see also OCCRI, *Third Oregon Climate Assessment Report* at 74-80.

⁵⁴ OGWC, *2018 Biennial Report* at 21; see also USGCRP, *Northwest* at 1058.

⁵⁵ USGCRP, *Northwest* at 1059.

people with pre-existing health conditions, low-income Oregonians, people with disabilities, refugees, and communities already exposed to environmental health threats.⁵⁶ Children in particular are vulnerable because they will experience “cumulative physical and mental health effects of climate change over their lifetimes” from extreme weather events (e.g., heat waves) and increased toxic exposure (e.g., polluted air).⁵⁷ Research indicates that exposure to trauma and pollution at a young age influences health and socio-economic status in later years.⁵⁸ The chart below outlines and summarizes the connections between climate change and public health.

⁵⁶ OCCRI, *Third Oregon Climate Assessment Report* at 79-81.

⁵⁷ USGCRP, *Northwest* at 1059.

⁵⁸ *Id.*

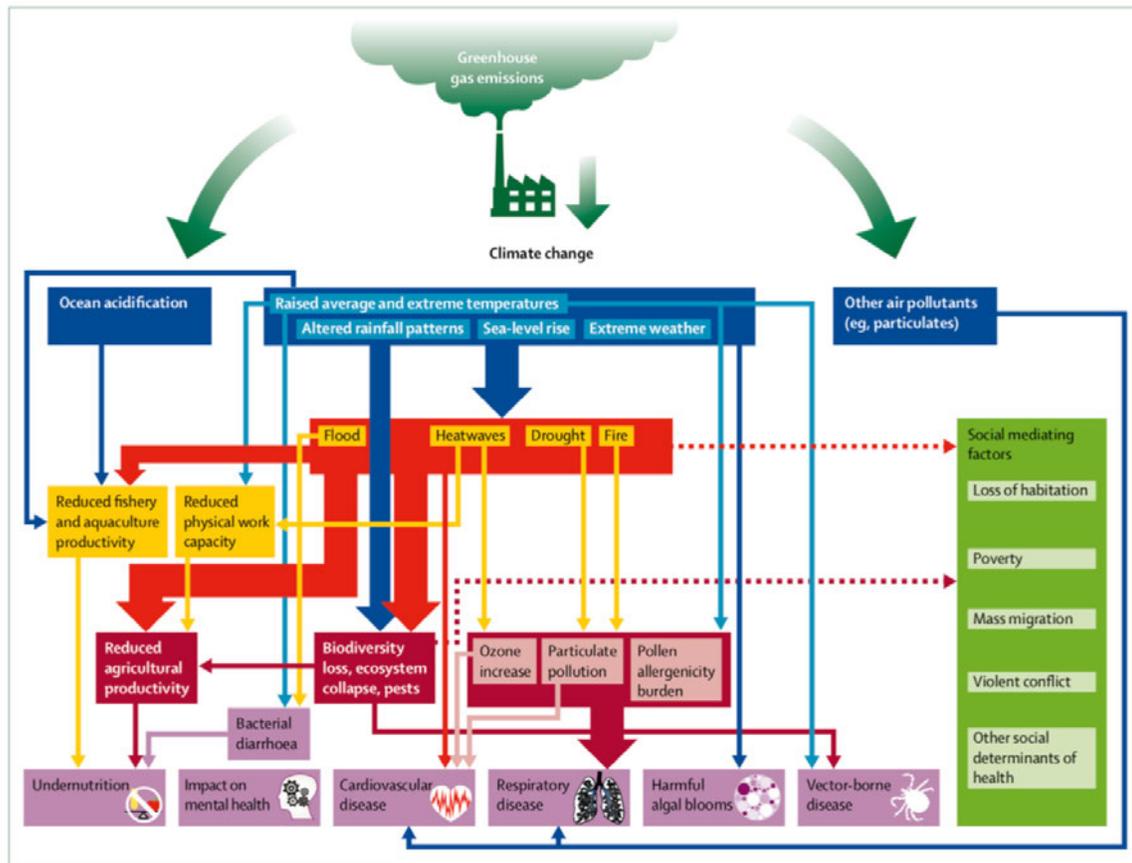


Figure 1: The pathways linking climate change and public health effects.⁵⁹

F. Tribal and Cultural Impacts

Native Tribes in particular are dependent on natural resources, and accordingly, when climate change degrades or harms such natural resources, it can threaten their culture and subsistence way of life.⁶⁰ In Oregon, 62% of tribal reservations are forested, making them vulnerable to the impacts of

⁵⁹ Watts, N., et al., *The 2018 report of the Lancet Countdown on health and climate change: shaping the health of nations for centuries to come* 2482, *Lancet*, Vol. 392 (2018).

⁶⁰ USGCRP, *Northwest* at 1041, 1048, 1051, 1062-63; see also OCCRI, *Climate Change in the Northwest: Implications for our Landscapes, Waters, and Communities* 207-225 (2013).

climate change on forests discussed above.⁶¹ Disruption to forest ecosystems can impact tribal subsistence and ceremonial practices.⁶² As the *Oregon Climate Assessment Report* observed, “[c]limate change may lead to loss of native species and fundamental shifts in ecosystems that have guided and formed the culture of many tribal communities, linking future generations and their ancestors.”⁶³ The loss of culturally important species and ecosystems will likely translate into economic and functionality losses.⁶⁴

Additionally, indigenous fishing communities are vulnerable to the impacts of climate change and ocean acidification, which disrupt their traditional harvest of marine resources for their economic and cultural livelihood.⁶⁵ Coastal tribes also risk water inundation and the loss of Oregon’s coastline to sea-level rise, which could damage burial sites and tribal infrastructure.⁶⁶

Many of the resource impacts described above have special significance to Native Tribes, like the increased risk of losing salmon populations or the decline of other wildlife adversely impacted by reduced stream flows and ocean acidification. One writer describing this situation observed that, “[t]he harvest of salmon in the Pacific Northwest, the cultural

⁶¹ OCCRI, *Third Oregon Climate Assessment Report* at 58.

⁶² *Id.*

⁶³ OCCRI, *Oregon Climate Assessment Report* 401 (2010) (hereinafter “OCCRI, 2010 Oregon Climate Assessment Report”).

⁶⁴ *Id.*

⁶⁵ OCCRI, *Third Oregon Climate Assessment Report* at 39.

⁶⁶ OCCRI, *2010 Oregon Climate Assessment Report* at 401.

lifeblood of numerous regional tribes, has declined as much as 90 percent over the past few decades. The plunge has resulted from a variety of human impacts, all of them aggravated by climate change.”⁶⁷

II. Respondents Have Not Taken Sufficient Actions to Prevent the Substantial Impairment of Oregon’s Public Trust Resources, Despite Having Ample Opportunity to do so

In 2007, Oregon adopted aspirational GHG reduction targets. The goals, as set by House Bill 3543, were to stabilize emissions in 2010, reduce emissions 10% below 1990 levels by 2020, and at least 75% below 1990 levels by 2050. These goals are now outdated and not in line with the best available climate science for the reductions actually needed to avoid the worst impacts of climate change. Nor have the goals been updated since 2007 despite significant climate science and reports published since HB 3543’s passage. Furthermore, Respondents’ Answer admits that the State has not taken sufficient action to meet even these inadequate goals:

Oregon is likely to fall well short of the targets set by its greenhouse gas reduction and mitigation plan. Defendants admit that in the 2009 report to the legislature, the Oregon Global Warming Commission reported that ‘even if all the actions now ‘in progress’ are completed by 2020, the State will likely fall well short of meeting its 2020 emission reduction goal, and, by extrapolation, clearly is not on track to meet its 2050 goal.’ ER 34-35.

The Oregon Global Warming Commission’s *2018 Biennial Report to the*

⁶⁷ Dennis Wall, *Tribal Climate Change Profile: Fisheries Impacts* 1 (2008), available at http://www7.nau.edu/itep/main/tcc/docs/tribes/tribes_FisheriesImpacts.pdf.

Legislature affirmed as much, noting that Oregon’s GHG emissions actually *increased* from 2016 to 2017.⁶⁸ The 2018 Report also projects that Oregon’s emissions in 2050 will be roughly 60 million metric tons of carbon dioxide equivalent (“MMTCO₂e”), more than *four times greater* the HB 3543 goal of 14 MMTCO₂e (see **Figure 2**).⁶⁹

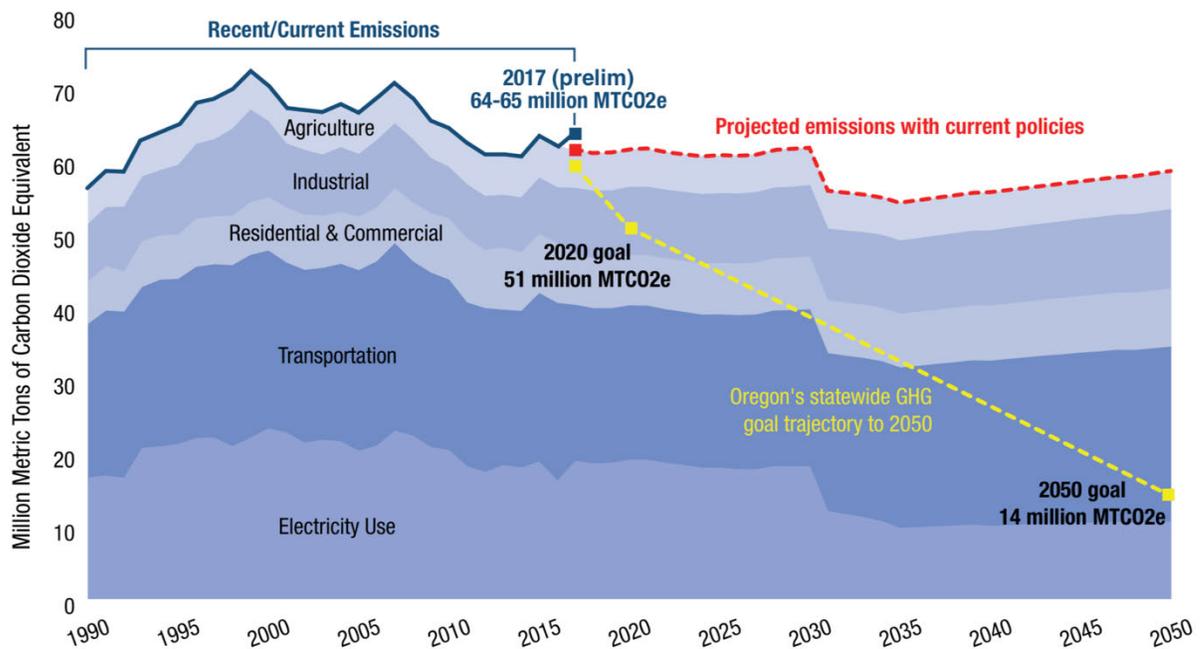


Figure 2: Oregon’s past and projected GHG emissions compared to goals.⁷⁰

According to Governor Kate Brown, “[c]limate change threatens Oregon’s economy, contributes to raging wildfires, and threatens our Oregon way of life.”⁷¹ At her 2019 inaugural address, Governor Brown said, “[i]t is extremely painful to watch the effects of climate change on our

⁶⁸ OGWC, *2018 Biennial Report* at 5.

⁶⁹ *Id.*

⁷⁰ *Id.* at 38.

⁷¹ Kate Our Governor, Environment, *available at* <https://katebrownfororegon.com/environment> (last visited Mar. 11 2019).

communities,” and discussed the impacts of wildfires, drought, and rising temperatures.⁷²

However, despite acknowledging the threats posed by climate change, and the need to do something, Respondents have consistently failed to adequately respond to Oregon’s dangerous level of GHG emissions and climate change. For example, in 2009, Senate Bill 80 would have required state agencies to develop and implement plans to meet the 2020 greenhouse gas emissions reduction goal but was never presented for vote in either chamber.⁷³ In 2015, House Bill 3470 (the Climate Stability and Justice Act) would have required the Environmental Quality Commission to adopt by rule statewide greenhouse gas emissions limits based on the best available science for years 2020 and 2050 and to adopt interim statewide GHG emission limits for every five years. The bill was never presented for a floor vote.⁷⁴ In 2016 the legislature considered Senate Bill 1574 (the Healthy Climate Act) to require the Environmental Quality Commission to adopt by rule statewide a GHG emissions goal for 2025, and limits for years 2035 and

⁷² Governor Kate Brown Inaugural Address 2019 (Jan. 14, 2019), *available at* <https://www.oregon.gov/gov/media/Pages/speeches/Governor-Kate-Brown-Inaugural-Address-2019.aspx>.

⁷³ Oregon Legislative Information System (“OLIS”), 2009 Regular Session, SB 80, Measure History, *available at* <https://olis.leg.state.or.us/liz/2009R1/Measures/Overview/SB80>.

⁷⁴ OLIS, 2015 Regular Session, HB 3470, Measure History, *available at* <https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB3470>.

2050. The bill was never presented for a floor vote.⁷⁵ In 2017, Senate Bill 557 (the Clean Energy Jobs Bill), and House Bill 2135 (the House's counterpart) were introduced but neither was presented for a floor vote.⁷⁶ In 2018, the Clean Energy Jobs Bill was re-introduced as Senate Bill 1507 and House Bill 4001, but despite having several hearings, the bill was never presented for a floor vote.⁷⁷

Most recently, during the 2019 legislative session, the legislature notoriously failed to pass House Bill 2020.⁷⁸ After the bill passed through the House and headed to the Senate for a vote, the entire Republican caucus fled the State in order to prohibit the full Senate from voting on the bill. The Republican boycott lasted nine days.⁷⁹ Even after the Republicans eventually returned, the bill never received a vote and was sent back to committee,

⁷⁵ OLIS, 2016 Regular Session, SB 1574, Measure History, *available at* <https://olis.leg.state.or.us/liz/2016R1/Measures/Overview/SB1574>.

⁷⁶ OLIS, 2017 Regular Session, SB 557, Measure History, *available at* <https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/SB557>; OLIS, 2017 Regular Session, HB 2135, Measure History, *available at* <https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/HB2135>.

⁷⁷ OLIS, 2018 Regular Session, SB 1507, Measure History, *available at* <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/SB1507>; OLIS, 2018 Regular Session, HB 4001, Measure History, *available at* <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/HB4001>.

⁷⁸ OLIS, 2019 Regular Session, HB 2020, Measure History, *available at* <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2020>.

⁷⁹ Connor Radnovich, *Republican Walkout Came During Perfect Storm, Sets Stage for New Political Era*, Statesman Journal, (July 15, 2019), *available at* <https://www.statesmanjournal.com/story/news/2019/07/15/oregon-senate-republican-walkout-new-political-era-salem-cap-and-trade/1703127001/>.

ending any chance of it passing. Indeed, the legislative session has since concluded and the bill never received a vote before the Senate.⁸⁰

None of these bills alone would have been adequate to fulfill Oregon's fiduciary obligations to protect public trust resources, but they are an indication of the failure of the political branches of government in attempting to fulfill their fiduciary obligations to Oregonians and highlight how critical it is for judicial intervention. The political theatrics surrounding HB 2020 in particular are illustrative of how a small group of individuals can thwart the political process and obstruct progress on a critical issue such as climate change. In times like these, the role of the judicial branch, as an independent third branch of government, is critical to a functioning democracy and is necessary to ensure that the natural resources that Oregonians depend on for their health, safety, welfare, and lives are protected from catastrophic and irreversible climate change.

Oregon's governors and executive agencies have been equally remiss in taking the requisite steps to address climate change, as evidenced by Oregon's history of dangerously high levels of GHG emissions, the fact that Oregon's emissions increased from 2016 to 2017, and that Oregon's GHG emissions are projected to remain dangerously high until 2050 and beyond (see **Figure 2** above). Given that there is uncontroverted evidence in this

⁸⁰ OLIS, 2019 Regular Session, HB 2020, Measure History, *available at* <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2020>.

case that Oregon's public trust resources are *already substantially impaired* and that Respondents, despite ample opportunity, have failed to take sufficient actions to protect public trust resources, it is imperative that the judicial branch step in to fulfill its constitutional obligations to act as a check on the political branches of government and to protect the legal rights of Petitioners, and public trust beneficiaries.

Even if the legislature were to, belatedly, attempt to address the climate crisis, this Court's review is still critical to ensure that the State complies with its ongoing and future trustee obligations. If this Court does not correct the Court of Appeals' opinion, we can expect that the State will continue to fail to adequately protect Oregon's public trust resources as it has done for decades. Moreover, under the Court of Appeals' interpretation of the public trust doctrine, the State could pass legislation that would allow for continued impairment of public trust resources but that would not be reviewable by the courts. "It is emphatically the province and duty of the judicial department to say what the law is," and here, it is the duty of the courts to determine whether the State is meeting, or violating, its fiduciary obligation to protect Oregon's public trust assets. *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

CONCLUSION

As the Oregon Global Warming Commission stated in its *2018*

Biennial Report to the Legislature:

[C]limate change is occurring in real time. Its effects are being felt, in Oregon and around the world, today and not in some distant and uncertain future. . . . Our children, and theirs, will be living for decades with the worsening consequences of our failure to take timely action when we knew we should. Bad as that is, further delay only makes it worse. . . . [W]e have only begun to sense the change that our children will be called upon to cope with.⁸¹

If not corrected, the Court of Appeals' opinion means that Respondents have no obligation to act to protect Oregon's public trust resources from the grave impacts of climate change. Because the consequences of that decision, as described above, impact all Oregonians and will result in serious and irreversible injustices, *amici* respectfully request that this Court reverse the erroneous opinion of the Court of Appeals and hold that Respondents have a fiduciary obligation to protect Oregon's public trust resources, including the atmosphere, waters of the state, fish, and wildlife, from climate change.

DATED this 31st day of July, 2019.

Respectfully submitted,

s/ Elisabeth A. Holmes

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⁸¹ OGWC, 2018 *Biennial Report* at 32.

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Dated this 31st day of July, 2019.

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