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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

ZOE & STELLA FOSTER, minor children by and through their guardians MICHAEL FOSTER and MALINDA BAILEY; AJI & ADONIS PIPER, minor children by and through their guardian HELAINA PIPER; WREN WAGENBACH, a minor child by and through her guardian MIKE WAGENBACH; LARA FAIN, a minor child by and through her guardian MONIQUE DINH; GABRIEL MANDELL, a minor child by and through his guardians VALERIE and RANDY MANDELL; JENNY XU, a minor child by and through her guardians YAN ZHANG & WENFENG XU,

Petitioners,

v.

WASHINGTON DEPARTMENT OF ECOLOGY,

Respondent.

No. _____

PETITION FOR REVIEW

Pursuant to RCW 34.05, the Washington Administrative Procedures Act, Zoe and Stella Foster, Aji and Adonis Piper, Wren Wagenbach, Lara Fain, Gabriel Mandell, and Jenny Xu, minor children by and through their respective guardians (collectively “Youth Petitioners”) hereby petition this Court for judicial review of the following decision of the Washington

1 Department of Ecology: Decision Denying Youth Petitioners’ Petition for Rulemaking (August
2 14, 2014) (Exhibit A).

3
4 **I. PARTIES**

5 Petitioners: Zoe and Stella Foster, Aji and Adonis Piper, Wren Wagenbach, Lara Fain, Gabriel
6 Mandell, and Jenny Xu, minor children by and through their respective guardians.

7 Petitioners’ Attorney: Andrea Rodgers Harris, Law Offices of Andrea K. Rodgers Harris, 3026
8 NW Esplanade, Seattle, WA 98117.

9 Action Agency: Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-
10 7600.

11 Parties in Ecology Rulemaking Proceeding:

12 Zoe and Stella Foster, Aji and Adonis Piper, Wren Wagenbach, Lara Fain, Gabriel Mandell,
13 Jenny Xu, minor children by and through their respective guardians.

14 WA Department of Ecology, Attn: Appeals Processing Desk, P.O. Box 47608, Olympia, WA
15 98504-7608.

16
17 **II. AGENCY ACTION AT ISSUE**

18 Washington Department of Ecology’s Written Decision Denying Youth Petitioners’ Petition
19 for Rulemaking (August 14, 2014) (Exhibit A).

20
21 **III. FACTS SUPPORTING JUDICIAL REVIEW**

22 Youth Petitioners’ Petition for Rulemaking asked the Washington Department of
23 Ecology (“Ecology”) to undertake actions that are necessary, and legally required, to protect
24 the state’s natural resources, and the children who depend upon them, from the injurious
25 effects of climate change and ocean acidification. Youth Petitioners’ Petition (filed June 14,
26 2014) (Exhibit B). This Petition for Review appeals Ecology’s decision to reject Youth

1 Petitioners' Petition for Rulemaking and concerns the State of Washington's role and
2 sovereign responsibility, acting through the Ecology, in addressing and mitigating the climate
3 change crisis and ocean acidification.
4

5 **A. The Impacts of Human-Caused Climate Change and Ocean Acidification Demand**
6 **Immediate Action by Ecology**

7 Global warming is occurring and adversely impacting the Earth's climate. At the same
8 time, ocean acidification threatens Earth's ocean life. The present rate of global heating is
9 occurring as a result of human activities that release heat-trapping greenhouse gases ("GHGs")
10 at a rate and to levels unprecedented over the past 800,000 years. These increased atmospheric
11 levels of GHGs intensify the Earth's natural greenhouse effect at an accelerated rate, thereby
12 changing Earth's climate. The increased levels of carbon dioxide ("CO₂") in the atmosphere
13 are also being absorbed by the oceans, causing them to become more acidic. This abnormal
14 climate change and ocean acidification is unequivocally human-induced, occurring now,
15 harming public health and welfare, and will continue to occur unless drastic measures are taken
16 to curtail it. GHG emissions are damaging both natural and human systems, and if
17 unrestrained, will alter the planet's habitability, especially for Youth Petitioners and future
18 generations of Washingtonians.
19

20 Human beings have benefited from living on a planet that has been remarkably
21 hospitable to our existence and has provided conditions that are just right for human life to
22 evolve, expand, and flourish. Human beings have significantly altered the chemical
23 composition of the Earth's atmosphere and its climate system by collectively engaging in
24 activities that produce or release GHGs into the atmosphere. The increase of GHG
25 concentrations resulting from historic and present human activities has outpaced their removal
26

1 through natural processes and altered the Earth’s ability to maintain the delicate balance of
2 energy it receives from the sun and that which it radiates back out into space. CO₂ is the key
3 GHG, and CO₂ emissions are largely responsible for the current warming trend.

4 The impacts of CO₂ emissions on the State of Washington are severe. Changes in the
5 natural timing of water availability, sea level rise and ocean acidity, and increased forest
6 mortality, will bring significant consequences for the economy, infrastructure, natural systems,
7 and human health of the region. If immediate action is not taken, the costs of climate change
8 and ocean acidification impacts to Washington are projected at \$10 billion per year by 2020
9 from increased health costs, storm damage, coastal destruction, rising energy costs, increased
10 wildfires, drought, and other impacts. As recently as April 29, 2014, Governor Inslee instructed
11 that “Washington needs to take additional actions now” to address GHG emissions and their
12 adverse impacts.
13
14

15 **B. The Best Available Climate Science Dictates that Safe Concentrations of**
16 **Atmospheric Carbon Dioxide are 350 ppm or Lower.**

17 In order to avoid catastrophic and permanent change, it is imperative that CO₂ emission
18 reduction targets are calibrated to restore global atmospheric CO₂ levels to 350 parts per
19 million (“ppm”) by the end of the century in order to limit the long-term global temperature
20 increase to 1°C above pre-industrial temperatures. The 2007 Intergovernmental Panel on
21 Climate Change’s compilation of science from the early 2000’s is now outdated and has been
22 shown to underestimate the catastrophic impacts associated with the historic international
23 targets of 450 ppm atmospheric CO₂ concentration and warming of 2-4°C above preindustrial
24 temperatures.
25
26

1 RCW 70.235.020 does not specify a global atmospheric CO₂ standard to which its
2 emission limits tier. Nor does it define “global climate stabilization levels” of GHGs. In its
3 present form, RCW 70.235.020 sets the following floor for GHG emission limits:

- 4 (i) By 2020, reduce overall emissions of greenhouse gases in the
5 state to 1990 levels.
- 6 (ii) By 2035, reduce overall emissions of greenhouse gases in the
7 state to twenty-five percent below 1990 levels;
- 8 (iii) By 2050, the state will do its part to reach global climate
9 stabilization levels by reducing overall emissions to fifty
10 percent below 1990 levels, or seventy percent below the state’s
11 expected emissions that year.

12 RCW 70.235.020. The State’s current GHG emission limits, expressed in RCW 70.235.020,
13 are not based on current best available science, nor are they calibrated to reach global climate
14 stabilization levels or stop irreversible damage to oceans. The science is clear that RCW
15 70.235 does not protect Washington’s own essential air and water resources, which sustain the
16 lives of Youth Petitioners, their generation, and future generations. Moreover, RCW 70.235
17 does not constrain Ecology’s existing statutory responsibilities to protect air and water quantity
18 and quality.

19 Youth Petitioners’ Petition for Rulemaking did not ask Ecology to repeal this law.
20 Rather, Petitioners asked Ecology to comply with the letter and spirit of the statute, other laws
21 outlining Ecology’s regulatory authority, and the Washington Constitution, by issuing a
22 regulation establishing and recommending CO₂ emission limits based on the best available
23 science. Under the existing law, Ecology is required to “consult with the climate impacts group
24 at the University of Washington regarding the science on human-caused climate change and
25 provide a report to the legislature summarizing that science and make recommendations
26 regarding whether the greenhouse gas emissions reductions required under RCW 70.235.020

1 need to be updated.” RCW 70.235.040. Youth Petitioners asked Ecology to make its
2 statutorily-required recommendations based upon best available science through the
3 rulemaking process.

4 Considering the many effects that are manifesting much faster than most models
5 predicted, such as the rapid decline of the Arctic sea ice and Greenland and Antarctic ice sheets
6 and the increasing pace of ocean acidification, as well as substantial omissions in the modeling
7 used to determine the 2°C target, global warming must actually be limited to 1°C, meaning a
8 global CO₂ atmospheric concentration of 350 ppm or lower, in order to avoid catastrophic
9 global impacts. Emission reduction targets aimed at a 450 ppm global standard, as the current
10 limits in RCW 70.235 appear to be aimed, will result in a temperature increase greater than
11 2°C and in turn will not fulfill Washington’s responsibility to avoid the grave impacts outlined
12 in Youth Petitioners’ Petition for Rulemaking.
13
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15 The safe level of global CO₂ for climate and oceans is at most 350 ppm, not 450 ppm as
16 world leaders previously recognized, and government action towards this safe goal of 350 ppm
17 must be taken immediately. In order to avoid the compounded effects of reaching or exceeding
18 a 2°C temperature increase, it is imperative that Ecology facilitate and recommend the
19 calibration of state emission limits to put Washington on a trajectory aimed for 350 ppm and
20 then establish a plan that will put Washington on a track towards meeting these limits. In order
21 for the State of Washington to “do its part to reach global climate stabilization levels,” Ecology
22 must apply best available science and recommend to the legislature that the State’s GHG
23 emissions limits must reflect a global atmospheric CO₂ emissions level of 350 ppm. Also in
24 order for the State of Washington to protect oceans, its coastlines, shellfish, and other marine
25 resources, Ecology must apply best available science and recommend to the legislature that the
26

1 State's GHG emissions limits must reflect a global atmospheric CO₂ emissions level of 350
2 ppm.

3
4 **C. Ecology's Legal Obligation To Recommend GHG Reductions Based Upon
Current & Best Available Science**

5 In order to prevent and mitigate the catastrophic climate change and ocean acidification
6 impacts described above and in Youth Petitioners' Petition for Rulemaking and fulfill its legal
7 obligation, Ecology must promulgate a rule that establishes, and recommends to the legislature,
8 an update and amendment of the GHG emissions reduction requirements required by RCW
9 70.235, setting a CO₂ emission reductions trajectory to 4 percent per year, and achieve at least
10 an 80% reduction in CO₂ emissions from 1990 levels by 2050, or an equivalent GHG
11 emissions reduction trajectory in line with a 350 ppm standard for global CO₂.

12 Ecology has the following existing statutory obligation:

13
14 Within eighteen months of the next and each successive global or national
15 assessment of climate change science, the Department *shall* consult with the
16 climate impacts group at the University of Washington regarding the science on
17 human-caused climate change and provide a report to the legislature
18 summarizing that science and make recommendations regarding whether the
19 greenhouse gas emissions reductions required under RCW 70.235.020 need to
20 be updated.

21 Wash. Rev. Code § 70.235.040 (2008) (emphasis added). In addition, the Governor has
22 ordered and directed Ecology to:

23 [R]eview the State's enacted greenhouse gas emissions limits and recommend
24 any updates to the limits by July 15, 2014.

25 Wash. Exec. Order No. 14-04 (Apr. 29, 2014) at 7.

26 There is no question that Ecology's obligation to "make recommendations [to the
Legislature] regarding whether the greenhouse gas emissions reductions required under RCW
70.235.020 need to be updated" is mandatory because the Legislature has used the term "shall"

1 in the text of the statute. *Wash. State Coal. for the Homeless v. DSHS*, 133 Wash. 2d 894, 907-
2 08, 949 P.2d 1291 (1997) (“the word ‘shall’ . . . imposes a mandatory duty.”). Because
3 Ecology’s legislative recommendations implicate Youth Petitioners’ and future generations’
4 rights to essential public trust resources, protected by the Public Trust Doctrine and the
5 Washington Constitution, it is imperative that Ecology make its recommendations through the
6 rulemaking process. Otherwise, the public has no means to inform this critical process. The
7 Legislature has found that:

9
10 (a) One of its fundamental responsibilities, to the benefit of all the citizens of
11 the state, is the protection of public health and safety, including health and
12 safety in the workplace, *and the preservation of the extraordinary natural
environment with which Washington is endowed*;

13 (b) Essential to this mission is the delegation of authority to state agencies to
14 implement the policies established by the legislature; and that the adoption of
15 administrative rules by these agencies helps assure that these policies are clearly
16 understood, fairly applied, and uniformly enforced

17 Wash. Rev. Code § 34-05-328 note (1995) (Findings- Short title- Intent) (emphasis added).

18 “Under the Washington Administrative Procedure Act (APA), chapter 34.05 RCW, any person
19 may petition an agency to adopt, amend or repeal a rule.” *Squaxin Island Tribe v. Wash. State
20 Dep’t of Ecology*, 177 Wash. App. 734, 740, 312 P.3d 766 (2013) (citing Wash. Rev. Code §
21 34.05.330(1) (1998)). Youth Petitioners filed the underlying petition for rulemaking on behalf
22 of themselves and the future generations of this State to ensure that the recommendations
23 Ecology makes to the Legislature are based on the best available science. In making their
24 recommendations to the legislature, the Governor has directed Ecology to “maximize
25 coordination and effectiveness of local and state climate initiatives” and “inform affected and
26 interested parties, and the general public . . . and solicit comments and involvement, as

1 appropriate.” Wash. Exec. Order No. 14-04 (Apr. 29, 2014) at 8. A rulemaking process is the
2 most appropriate mechanism to fulfill that directive. Wash. Rev. Code § 34.05.370 (1998)
3 (describing the rulemaking file and the contents thereof that “shall be available for public
4 inspection.”)
5

6 Only Ecology has the delegated legal obligation and authority to act to protect
7 Washington’s citizens, and the essential air and water resources they depend upon, from
8 catastrophic climate change and ocean acidification resulting from excessive CO₂ emissions,
9 and to make recommendations to the legislature to ensure that the state is put on a path to
10 achieving climate stabilization. Pursuant to RCW 43.21A.010 (Legislative declaration of state
11 policy on environment and utilization of natural resources), the Department of Ecology was
12 created because:
13

14 [It is a fundamental and inalienable right of the people of the state of
15 Washington to live in a healthful and pleasant environment and to benefit from
16 the proper development and use of its natural resources. The legislature further
17 recognizes that as the population of our state grows, the need to provide for our
18 increasing industrial, agricultural, residential, social, recreational, economic and
19 other needs will place an increasing responsibility on all segments of our society
20 to plan, coordinate, restore and regulate the utilization of our natural resources
21 in a manner that will protect and conserve our clean air, our pure and abundant
22 waters, and the natural beauty of the state.

23 Wash. Rev. Code § 43.21A.010 (1970).

24 In order to fulfill this policy, the Legislature purposefully granted Ecology a panoply of
25 powers and duties designed to protect the natural resources of the state, including “the
26 authority to manage and develop . . . air and water resources in an orderly, efficient, and
effective manner and to carry out a coordinated program of pollution control involving these
and related land resources.” Wash. Rev. Code § 43.21A.020 (1970). As a result, Ecology is the
delegated manager of many of Washington’s essential natural resources such as air and water,

1 and has vested authority “to provide for the systematic control of air pollution from air
2 contaminant sources and for the proper development of the state’s natural resources.” Wash.
3 Admin. Code § 173-490-010 (1991). The State of Washington also has a declared “public
4 policy to preserve, protect, and enhance the air quality for current and future generations.”
5 Wash. Rev. Code § 70.94.011 (1991). This policy recognizes that “air is an essential resource
6 that must be protected from harmful levels of pollution.” Wash. Rev. Code § 70.94.011 (1991).
7 Ecology also has substantial delegated authority to manage, protect and preserve the state’s
8 water resources on behalf of Youth Petitioners and future generations. RCW 90.03 (state water
9 code); RCW 90.22.010 (Ecology’s authority to establish minimum water flows or levels for
10 streams, lakes or other public waters); RCW 90.44 (regulation of public groundwater); RCW
11 90.48 (water pollution control); RCW 90.54 (Water Resources Act of 1971); RCW 90.58
12 (Shoreline Management Act); *see also NW Sportfishing Indus. Ass’n v. WA Dep’t of Ecology*,
13 172 Wash. App. 72, 100, 288 P.3d 677 (2012) (Ecology has a “duty to protect all aquatic
14 species in the rivers at issue . . .”). Without additional efforts to reduce CO₂ emissions, as
15 described in Youth Petitioners’ proposed rule, current and future generations of
16 Washingtonians will be deprived a healthy environment and the beneficial use of the State’s
17 natural resources that are under the regulatory jurisdiction of Ecology, in violation of the law.

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19
20
21 Furthermore, the State of Washington has a constitutional obligation to protect and
22 manage its natural resources for its citizens under the Public Trust Doctrine. Through acts of
23 the legislature and delegated statutory authority to agencies, Washington must protect and
24 manage the lands, navigable waters, atmosphere, oceans, wildlife, and other resources for the
25 benefit of present and future generations. The Public Trust Doctrine is an inalienable and
26 constitutionally-based attribute of sovereignty that requires all sovereign governments,

1 including the State of Washington, to act to prevent degradation of essential natural resources
2 held in trust on behalf of present and future generations. The Public Trust Doctrine holds that
3 certain crucial natural resources, such as the atmosphere and water, are the shared, common
4 property of all citizens, cannot be subject to private ownership, and must be preserved and
5 protected by the government.
6

7 The Public Trust Doctrine is reiterated in state constitutional provisions across the
8 nation. In *PPL Montana, LLC v. Montana*, the United States Supreme Court recognized that
9 the Public Trust Doctrine “is of ancient origin” dating back to Roman civil law; that the Public
10 Trust Doctrine is reflected in state laws and constitutional provisions throughout our nation;
11 and that federalist principles of our nation affirm the State’s rights and duties over public trust
12 resources within their borders. 132 S. Ct. 1215, 1235-36 (2012). The universal constitutional
13 application of the Public Trust Doctrine is evident in that citizens’ rights to essential natural
14 resources reflect “inherent and independent rights’ of mankind relative to the environment.”
15 *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 947 (Pa. 2013) (plurality opinion). As the
16 Pennsylvania Supreme Court decided in *Robinson Township*, Article I, § 27 of the
17 Pennsylvania Constitution requires government to “conserve and maintain” the State’s natural
18 resources, and imposes the duty “to refrain from permitting or encouraging the degradation,
19 diminution, or depletion of public natural resources, whether such degradation, diminution, or
20 depletion would occur through direct state action or indirectly, *e.g.*, because of the state’s
21 failure to restrain the actions of private parties.” *Id.* at 956. Government also has the duty “to
22 act affirmatively to protect the environment” via legislative or regulatory action. *Id.* at 957.
23
24

25 Washington has an affirmative and mandatory duty under the Public Trust Doctrine to
26

1 prevent substantial impairment to the State’s essential natural resources. The public’s right to
2 essential natural resources reflects inherent rights that are preserved, and not extinguished, by
3 the State Constitution. *See id.* at 947 n.35 (recognizing that citizens’ rights to essential natural
4 resources reflect “inherent and independent rights’ of mankind relative to the environment.”)
5 (stating that citizens’ environmental rights codified and protected by state constitution are
6 “inherent in man’s nature and preserved rather than created by the Pennsylvania
7 Constitution.”). The Washington State Constitution expressly recognizes that “[a]ll political
8 power is inherent in the people, and governments derive their just powers from the consent of
9 the governed, and are established to protect and maintain individual rights” and that “[t]he
10 enumeration in this Constitution of certain rights shall not be construed to deny others retained
11 by the people.” Wash. Const. art. I, § 1, 30; art. XVII, § 1. Further, in express recognition of
12 the Public Trust obligation, Article XVII, § 1 of the State Constitution states: “The state of
13 Washington asserts its ownership to the beds and shores of all navigable waters in the state up
14 to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up
15 to and including the line of ordinary high water within the banks of all navigable rivers and
16 lakes.” This constitutional provision grants responsibility to manage public lands and waters to
17 the State, as a trustee of the beneficiaries, present and future generations of Washingtonians.

18
19
20 Washington courts have also found that this constitutional provision explicitly requires
21 the State, through its various administrative agencies, to protect trust resources under their
22 administrative jurisdiction. In *Washington State Geoduck Harvest Ass’n v. Washington State*
23 *Dep’t of Natural Resources*, the court determined that “the public trust doctrine ensures state
24 management of public lands, in part, through our Constitution’s express reservation of “the
25 beds and shores of all navigable waters in the state” for state ownership.” 124 Wash. App. 441,
26

1 447-48, 101 P.3d 891 (2004). The Washington Supreme Court has interpreted Article XVII, §
2 1, stating “that the sovereignty and dominion over this state’s tidelands and shorelands, as
3 distinguished from title, always remains in the state and the state holds such dominion in trust
4 for the public.” *Caminiti v. Boyle*, 107 Wash. 2d 662, 669, 732 P.2d 989 (1987).

5
6 In addition to protecting natural resources, the State is also responsible for
7 safeguarding various public interests in those resources. Traditionally protected interests are
8 commerce, navigation, and commercial fishing. *Orion Corp. v. State*, 109 Wash. 2d 621, 640-
9 41, 747 P.2d 1062 (1987). Other interests include “incidental rights of fishing, boating,
10 swimming, water skiing, and other related recreational purposes generally regarded as
11 corollary to the right of navigation and the use of public waters.” *Caminiti*, 107 Wash. 2d at
12 669 (quoting *Wilbour v. Gallagher*, 77 Wash. 2d 306, 316, 462 P.2d 232 (1969)). The Public
13 Trust Doctrine also extends to protect the public interest in shellfish embedded in the navigable
14 water beds of state-owned lands, *Washington State Geoduck Harvest Ass’n*, 124 Wash. App. at
15 451, a resource that will be heavily impacted by the effects of climate change and ocean
16 acidification. Therefore, Washington has a constitutional obligation to protect the public’s
17 interests in natural resources held in trust for the common benefit of Washingtonians. The
18 Department of Ecology, in implementing its delegated statutory authority, must act to ensure
19 that the public trust resources under its regulatory jurisdiction are not substantially impaired
20 by, and indeed protected from, climate change.

21
22
23 **D. Ecology’s Decision Denying Youth Petitioners’ Petition for Rulemaking**

24 On August 14, 2014, Ecology denied Youth Petitioners’ Petition for Rulemaking
25 asking that the agency promulgate a rule to recommend and adopt carbon emissions reductions
26 based upon best available science. Without addressing any of the scientific allegations

1 contained in the petition or its legal responsibility to manage essential natural resources such as
2 air and water, the agency denied the petition for three reasons: (1) Nothing in RCW 70.235
3 (Global Warming Act) requires Ecology to adopt different emissions reductions, develop a
4 plan to ensure those reductions, or implement the monitoring requirements in the proposed
5 rule; (2) Washington “is working to achieve the reductions” set forth in RCW 70.235 and “the
6 measures it is taking are an alternative approach to your proposed rule;” and (3) None of the
7 additional cited sources in the petition (including the Public Trust Doctrine) require Ecology to
8 adopt the proposed rule. Youth Petitioners appeal Ecology’s decision for the reasons set forth
9 below.
10

11 **IV. LEGAL BASIS FOR JUDICIAL REVIEW**

12 **A. Youth Petitioners Have Standing to Bring this Appeal**

13 Pursuant to RCW 34.05.530, Youth Petitioners have standing to obtain judicial review
14 of Ecology’s decision because Youth Petitioners are aggrieved and adversely affected by
15 Ecology’s decision denying the petition for rulemaking. Ecology’s denial of the Youth
16 Petitioners’ request to protect their inherent and constitutional rights by making CO₂ emissions
17 reduction recommendations and rules based upon public input and the best available climate
18 science is a specific and concrete injury that harms Youth Petitioners’ protected interests.
19 Furthermore, a judgment in favor of Youth Petitioners would substantially eliminate or redress
20 the prejudice caused by the underlying agency action. RCW 34.05.530(3).
21

22 **B. Ecology Erroneously Interpreted and Applied the Law.**

23 Ecology erred as a matter of law by declining to adopt the proposed rule based upon
24 its statutory responsibility to manage essential natural resources such as air and water and the
25
26

1 Public Trust Doctrine. Ecology fails to address Youth Petitioners’ claims that the agency has
2 substantial delegated authority, above and beyond RCW 70.235, to manage and protect the
3 state’s natural resources and misstates and misapplies current public trust law. Finally, Ecology
4 fails to recognize Ecology’s obligation to fulfill the State’s public trust mandate by complying
5 with code provisions designed to protect the public interest.
6

7 Ecology claims “nothing in RCW 70.235 requires Ecology to adopt different emissions
8 reductions, develop a plan to ensure those reductions, or implement the monitoring
9 requirements in the proposed rule.” Ecology Decision at 1. Further, Ecology claims that no
10 other cited sources of legal authority require Ecology to take the requested action. *Id.*
11 However, Ecology fails to recognize numerous sources of law requiring Ecology to act as the
12 trustee of natural resources, such as air and water, under its jurisdiction and to prevent
13 substantial impairment of those resources. Ecology points to five workgroups and a short list
14 of statutes that are an “alternative approach” to the proposed rule, but the agency fails to
15 describe how the alternative approach puts Washington on the global path towards climate
16 stability, ocean protection, or maintaining essential natural resources for future generations.
17 Ecology does not dispute that they have not put Washington on that path. Ecology does not
18 dispute that the current emission reduction limits are not consistent with climate stability or
19 ocean protection. Those statutory emission limits act as a floor, but do not limit Ecology’s
20 authority to act to further reduce GHG emissions in order to protect the State’s public trust
21 resources.
22
23

24 Existing sources of law also require Ecology to provide a report and recommend to the
25 Legislature whether the existing GHG reductions should be updated based upon current best
26 available science, a deadline that Ecology failed to meet. RCW 70.235.040; Wash. Exec.

1 Order No. 14-04 (Apr. 29, 2014) (directing Ecology “to review the State’s enacted greenhouse
2 gas emissions limits and recommend any updates to the limits by July 15, 2014.”). Ecology
3 has failed to meet this deadline and instead contends, “Ecology is currently reviewing the
4 state’s greenhouse gas emission reductions in consultation with the Climate Impacts Group to
5 formulate recommendations on whether those reductions should be updated.” Ecology
6
7 Decision at 2. In its decision, Ecology did not explain why it failed to act in accordance with
8 the deadline set by the Governor to comply with RCW 70.235.040, which is significant in light
9 of the fact that climate change is an urgent crisis that needs to be addressed immediately.

10 **C. Ecology’s Decision is Arbitrary and Capricious and Not**
11 **Supported by Substantial Evidence**

12 Ecology’s decision is arbitrary and capricious and not supported by substantial
13 evidence due to the agency’s deliberate and unreasoned disregard of facts and circumstances as
14 presented in the Petition. Ecology does not provide any substantive justification, let alone
15 substantial evidence, for why it denies the rulemaking request to update and recommend GHG
16 emission reductions consistent with current best available science.
17

18 Ecology does not provide any substantive reasons as to why it denies the rulemaking
19 request to adopt new emission targets based on the science, as presented in the Petition.
20 Specifically, in conclusively stating that it has an “alternative approach” to address climate
21 change, which includes a list of five working groups, statutes and one regulation, Ecology fails
22 to explain how their alternative approach is consistent with its statutory obligations to ensure
23 adequate emission reductions and its constitutional and statutory obligation to protect public
24 trust resources. Indeed, in its denial, Ecology never states or provides evidence as to what
25 GHG emissions reductions are required by current best available science, a fundamental flaw
26

1 in its ultimate conclusion that it is engaged in an “alternative approach” to Youth Petitioners’
2 proposed rule. Ecology does not provide any substantial evidence as to the impact on emission
3 reductions of Ecology’s “alternative approach.”

4 A simple listing of existing statutes and workgroups (none of which have the authority
5 to make laws or regulations) does not suffice as a rational explanation as to how this
6 “alternative approach” justifies denial of the petition for rulemaking. *Id.* There is no analysis
7 that the “alternative approach” will achieve the scientifically-required carbon emissions limits,
8 or even the existing statutory limits. None of the alternative approach mechanisms listed
9 include substantive measures that will put Washington on a path towards achieving the GHG
10 emissions reductions set forth in RCW 70.235, let alone 350 ppm by the end of the century.
11

12 Nowhere in the decision does Ecology address any of the science raised in the Petition.
13 The agency does not dispute that urgent action is required, nor does it dispute that Youth
14 Petitioners’ proposed carbon emissions trajectory is based upon best available science. In
15 essence, the agency contends that it has no substantive role in protecting the natural resources
16 under its jurisdiction from harm due to climate change, a decision that is arbitrary, capricious
17 and contrary to law. Youth Petitioners challenge this reckless and illegal conclusion.
18

19 Ecology acted arbitrarily and capriciously in deciding to take no action to set GHG
20 emissions limits or recommend GHG emissions limits based on current best available science,
21 despite Ecology’s admission that the state is not on track to meet the existing limits set in
22 RCW 70.235. Furthermore, the best available science shows the detrimental effects on all
23 public trust resources, including those under the management responsibility of Ecology, if
24 global atmospheric concentration of CO₂ is not brought back down to 350 ppm by the end of
25 the century, and in Ecology’s expertise, they do not dispute any of that scientific evidence
26

1 provided by Youth Petitioners. By basing its decision on its alleged “alternative approach,”
2 Ecology acted arbitrarily and capriciously since the “alternative approach” has been shown not
3 to achieve existing GHG emissions limits, let alone those limits required by best available
4 science in order to protect the State’s public trust resources and Youth Petitioners. It is
5 arbitrary and capricious to deny a petition based upon an alternative approach that is plainly
6 inadequate to comply with Ecology’s statutory responsibilities, and not supported by
7 substantial evidence.
8

9 Finally, Ecology’s decision not to make its statutorily-required recommendations to the
10 legislature through the rulemaking process is arbitrary and capricious. Under Ecology’s
11 approach, the public will have no opportunity to inform and/or contest Ecology’s factual
12 determinations as to what GHG emissions limits are required by current science. Furthermore,
13 Ecology’s recommendation will significantly affect Youth Petitioners’ and future generations’
14 enjoyment of benefits or privileges conferred by the law as citizen beneficiaries. Therefore, it
15 was arbitrary and capricious for the agency to conclude that a rulemaking process is not
16 required under these circumstances.
17

18 **V. JURISDICTION & VENUE**

19 This Court has jurisdiction over this matter pursuant to RCW 34.05.510. Venue is
20 proper in this Court pursuant to RCW 34.05.514(1).
21

22 **VI. BASIS FOR GRANTING RELIEF**

23 The Youth Petitioners are entitled to relief in this matter pursuant to RCW
24 34.05.570(3) for the following reasons, as discussed in more detail above:

- 25 (a) Ecology erroneously interpreted and applied the law;
- 26 (b) Ecology’s decision is not supported by substantial evidence; and

1 (c) Ecology’s decision is arbitrary, capricious and otherwise contrary to law.

2 **VII. REQUEST FOR RELIEF**

3 For the reasons set forth herein, the Youth Petitioners respectfully request that the
4 Court vacate and set aside Ecology’s decision denying Youth Petitioners’ Petition for
5 Rulemaking as contrary to law, not supported by substantial evidence, and arbitrary and
6 capricious, and remand the matter for further proceedings consistent with all applicable law. In
7 addition, Youth Petitioners respectfully request that the Court grant such other relief as this
8 Court deems appropriate. RCW 34.05.574. Finally, Youth Petitioners request that fees and
9 costs be awarded pursuant to RCW 4.84.350 and other applicable law.
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11
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13

14 Respectfully submitted this 15th day of September 2014,

16 

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2014 I caused to be served one true and correct copy of the foregoing Petition for Review on the following individuals via personal service:

Washington Attorney General
2425 Bristol Court SW, 2nd Floor
Olympia, WA 98502

WA Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503



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