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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 ZOE & STELLA FOSTER, ET AL.,

10 Petitioners,

11 v.

12 WASHINGTON DEPARTMENT OF
13 ECOLOGY

14 Respondent.

No. 14-2-25295-1 SEA

ORDER DENYING MOTION FOR ORDER OF
CONTEMPT AND GRANTING SUA SPONTE
LEAVE TO FILE AMENDED PLEADING

15 This matter came before the Court on petitioners' motion for an order to show cause regarding
16 contempt. The Court has reviewed said motion and attachments, the response thereto, petitioners' reply
17 and all declarations and attachments, as well as the previous filings in this matter.

18 Being fully advised IT IS HEREBY ORDERED that petitioner's motion for order to show cause
19 for contempt is DENIED. Respondents have complied to date with the letter of this Court's orders of
20 November 19, 2015 and May 16, 2016. The Department of Ecology (Ecology) has adopted a rule limiting
21 greenhouse gas emissions (GHG) within the timeframe prescribed by the Court. The matter currently
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ORDER DENYING MOTION FOR ORDER OF
CONTEMPT AND GRANTING SUA SPONTE
LEAVE TO FILE AMENDED PLEADING - 1

Hollis R. Hill, Judge
Courtroom W-941
King County Superior Court
516 3rd Avenue
Seattle, WA 98104
206-477-3720

1 before the Court is brought pursuant to RCW 34.05, the Washington Administrative Procedures Act, for
2 review of a decision by Ecology denying a petition for rulemaking.

3 IT IS FURTHER ORDERED sua sponte that petitioners are GRANTED leave to amend their
4 petition to plead therein a complaint for declaratory judgment or other action regarding their claims that
5 respondent Ecology and/or others are violating their rights to a healthy environment as protected by
6 statute, by Article I, Section 30, Article XVII, Section 1, and Article XVII, Section 1 of the Washington
7 State Constitution and the Public Trust Doctrine embodied therein. The Court takes this action due to the
8 emergent need for coordinated science based action by the State of Washington to address climate change
9 before efforts to do so are too costly and too late.¹

10 This Court is aware that three years and eleven months ago, Division I of the Court of Appeals
11 affirmed dismissal of a complaint brought by youth living in the State of Washington for declaratory and
12 injunctive relief alleging, under the Public Trust Doctrine, a fiduciary duty on the part of State actors
13 including the Governor and the Director of Ecology, the Commissioner of Public Lands and the Director
14 of the Department of Fish and Wildlife to protect them from global warming.² Since this is an unpublished
15 case, it is not binding on this court and it has no precedential value. Rather, since it was decided after
16 March 1, 2013, it may be accorded such persuasive value as the court deems appropriate.³

17 Time has marched on since March, 2013. In October 14, 2013 the Leidos Report, commissioned
18 by the Washington State Climate Legislative and Executive Workgroup (CLEW) through the Office of
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20 ¹ Three years ago in its statutorily mandated report to the legislature on greenhouse gas (GHG) emissions, Ecology stated,
21 "Climate change is not a far off risk. It is happening now globally and the impacts are worse than previously predicted, and are
22 forecast to worsen...If we delay action by even a few years, the rate of reduction needed to stabilize the global climate would
be beyond anything achieved historically and would be more costly." Dep't. of Ecology, Washington Greenhouse Gas
Emissions Reduction Limits, Report Prepared Under RCW 70.235.040 (Dec. 2014).

23 ² *Svitak, et al, v. State of Washington, et al.*, No. 69710-2-1, Court of Appeals Div. I, filed 1/30/14.

³ GR 14.1(a).

1 Financial Management to prepare an evaluation of approaches to reduce GHG emissions in Washington,
2 reported that:

3 [T]he State will not meet its statutory reductions for 2020, 2035 and 2050 with
4 current state and federal policies. However, the State can meet its statutory 2020
5 target if near-term action is taken to implement a new comprehensive emission
6 reduction program. In 2020, for example, it is likely that Washington would meet
7 its target if a new cap and trade policy is implemented. The evaluation found,
8 however, that any combination of the policies summarized in the report *at the*
9 *implementation levels evaluated* will likely be insufficient to meet Washington's
10 targets in 2035 and 2050.⁴

11 On April 29, 2014, Governor Jay Inslee issued Executive Order 14-04 entitled Washington Carbon
12 Pollution Reduction and Clean Energy Action that commissioned a taskforce composed of representatives
13 of business, labor, public interests and public health as well as representatives of federal, tribal and local
14 governments for the purpose of providing advice and recommendations on the design and implementation
15 of carbon emission limits and market mechanisms programs for Washington, which the governor would
16 then present to the 2015 legislature. The directive to the task force required establishment of a cap on
17 carbon emissions with binding requirements to meet statutory emissions limits.⁵ To date, the legislature
18 has not acted to establish binding requirements to meet statutory emissions limits.

19 Then, in December, 2014, three years ago, Ecology issued the clarion call referred to in footnote
20 one, stating also:

21 Washington and the Pacific Northwest have experienced long-term warming, a
22 lengthening of the frost-free season, and more frequent nighttime heat waves. Sea
23 level is rising on most of Washington's coast. Coastal ocean acidity has increased.
Glacial area and spring snowpack have declined, and peak stream flows in many
rivers have shifted earlier. In addition, climate extremes (floods, droughts, fires and
landslides) are already costly to Washington's State. All scenarios indicate
continued warming.⁶

⁴ Evaluation of Approaches to Reduce Greenhouse Gas Emissions in Washington State- Final Report (October 14, 2013), pp.
1-2. Administrative Record (AR), Ex. 21.

⁵ AR, Ex. 22.

⁶ AR, Ex. 21, at 11-12.

1 In that report, Ecology recommended that nothing be done until after the Paris Climate conference
2 scheduled to occur one year later. That conference is now a year past.

3 Also, since 2013 courts have recognized the role of the third branch of government in protecting
4 the earth's resources that it holds in trust. Most recently, in *Juliana, et al. v. United States of America, et*
5 *al.* (2016), Judge Aiken of the U.S. District Court of Oregon denied a motion to dismiss thereby allowing
6 youth plaintiffs to go forward in their civil rights claims challenging the policies, acts and omissions of
7 the President of the United States and numerous federal agencies.⁷ The questions before the court were
8 whether defendants are responsible for some of the harm caused by climate change, whether plaintiffs
9 may challenge defendants' climate change policy in court and whether the Court can direct defendants to
10 change their policy without running afoul of the separation of powers doctrine. Judge Aiken concluded
11 that the case raised a justiciable question and that plaintiffs have standing. In deciding that plaintiffs
12 asserted fundamental liberty rights, the Court held:

13 [T]hat where a complaint alleges governmental action is affirmatively and
14 substantially damaging the climate system in a way that will cause human
15 deaths, shorten human lifespans, result in widespread damage to property,
threaten human food sources, and dramatically alter the planet's ecosystem, it
states a claim for due process violation.⁸

16 Finally, in deciding that plaintiffs' federal public trust claims are cognizable in federal court, Judge Aiken
17 discussed the history of the doctrine, noting that although the government contended the doctrine applied
18 only to the states, it was applicable both to the federal and state governments.

19 In the recommendations adopted by Judge Aiken in the *Juliana* case, Magistrate Judge Coffin
20 stated, "[t]he debate about climate change and its impact has been before various political bodies for some
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22 ⁷ *Juliana, et al. v. United States of America, et al.*, 2016 WL 6661146 (D. Or. 2016).

23 ⁸ *Id.*, at 16 (2016).

1 time now... the intractability of the debates before Congress and state legislatures and the alleged valuing
2 of short term economic interest despite the cost to human life, necessitates a need for courts to evaluate
3 the constitutional parameters of the actions or inactions taken by the government.”⁹¹⁰

4 Thus, considering the alleged emergent and accelerating need for science based response to climate
5 change and the governmental actions and inactions since Division I decided the *Svitak* case, this Court
6 does not find that case persuasive. It is time for these youth to have the opportunity to address their
7 concerns in a court of law, concerns raised under statute and under the state and federal constitutions.
8 They have argued their petition for a rule limiting GHG emissions based on best available science. A rule
9 has now been adopted, which Ecology agreed during oral arguments on 11/22/16, is not intended to
10 achieve the requirements of RCW 70.235.020.

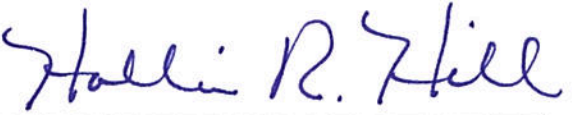
11 In their motion for an order to show cause for contempt, petitioners do not seek to have the Court
12 direct Ecology to issue a different rule. Rather, they have asked the Court to retain jurisdiction of their
13 claims so they can show evidence and argue that their government has failed and continues to fail to
14 protect them from global warming. This Court gives them leave to amend their claim so as to have their
15 day in Court.

16 Because this Court is fully advised in the matter thus far it retains jurisdiction to implement this
17 ruling and proceed as expeditiously as possible.

21 ⁹ *Ibid.*, at 27 (2016).

22 ¹⁰ See also, *Urgenda Foundation v. The State of the Netherlands* The Hague District Court, Chamber of Commercial Affairs,
23 Case No. C/09/456689/HA ZA 13-1396 (June 24, 2015) (<http://www.globalhealthrights.org/wp-content/uploads/2016/03/Urgenda-Foundation-v-State-of-Netherlands.pdf>) wherein the Court ordered a reduction of greenhouse gas emissions nationwide.

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2 DATED this 19th day of December, 2016.
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