

1 **APPENDIX B**

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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, minor
10 children by and through their guardians
11 MICHAEL FOSTER and MALINDA
12 BAILEY; AJI & ADONIS PIPER,
13 guardian HELAINA PIPER; WREN
14 WAGENBACH, a minor child by and
15 through her guardian MIKE
16 WAGENBACH; LARA FAIN, a minor
17 child by and through her guardian
18 MONIQUE DINH; GABRIEL
19 MANDELL, a minor child by and
20 through his guardians VALERIE and
21 RANDY MANDELL; JENNY XU, a
22 minor child by and through her
23 guardians YAN ZHANG &
24 WENFENG XU, ATHENA FAIN, a
25 minor child by and through her
26 guardian MONIQUE DINH,

Petitioners,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY; STATE OF
WASHINGTON; JAY INSLEE, in his
official capacity as Governor of
Washington,

Respondents.

No. 14-2-25295-1 SEA

PROPOSED SUPPLEMENTAL &
AMENDED PETITION FOR REVIEW
& FOR DECLARATORY
JUDGMENT & INJUNCTIVE RELIEF

1. Pursuant to RCW 34.05, the Washington Administrative Procedures Act, RCW 7.24,
the Uniform Declaratory Judgment Act, and the Washington State Constitution, Zoe and Stella

1 Foster, Aji and Adonis Piper, Wren Wagenbach, Lara Fain, Gabriel Mandell, Jenny Xu, and
2 Athena Fain, minor children by and through their respective guardians (collectively “Youth
3 Petitioners”) hereby petition this Court for judicial review of the following decisions of the
4 Washington Department of Ecology: Decision Denying Youth Petitioners’ Petition for
5 Rulemaking (August 14, 2014) (Exhibit A); Second Decision Denying Youth Petitioners’
6 Petition for Rulemaking (August 7, 2015) (Exhibit B).

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8 2. Youth Petitioners also seek declaratory and injunctive relief to protect their
9 constitutional and public trust rights, which are currently being infringed upon by the aggregate
10 actions and omissions of Respondents that permit and allow dangerous levels of carbon dioxide
11 (“CO₂”) and greenhouse gas (“GHG”) emissions to be emitted in Washington, which in turn
12 are causing catastrophic and irreversible climate impacts and ocean acidification.
13

14 I. PARTIES

15 3. Petitioners: Zoe and Stella Foster, Aji and Adonis Piper, Wren Wagenbach, Lara
16 Fain, Gabriel Mandell, Jenny Xu, and Athena Fain minor children by and through their
17 respective guardians.

18 4. Petitioners’ Attorney: Andrea Rodgers, Western Environmental Law Center, 3026
19 NW Esplanade, Seattle, WA 98117.

20 5. Action Agency: Washington Department of Ecology, P.O. Box 47600, Olympia,
21 WA 98504-7600.

22
23 6. Parties in Ecology Rulemaking Proceeding: Zoe and Stella Foster, Aji and Adonis
24 Piper, Wren Wagenbach, Lara Fain, Gabriel Mandell, Jenny Xu, and Athena Fain, minor
25 children by and through their respective guardians. WA Department of Ecology, Attn: Appeals
26 Processing Desk, P.O. Box 47608, Olympia, WA 98504-7608.

1 7. Respondent Jay Inslee is the Governor of Washington and is sued in his official
2 capacity. The Governor has a constitutional obligation to “see that the laws are faithfully
3 executed.” Wash. Const. art. III, § 5. The Governor must approve bills passed by the
4 legislature before they become law and has the authority to veto legislation. Wash. Const. art.
5 III, § 12. The Governor is the head of the executive branch of government, including the
6 Department of Ecology, and is responsible for appointing heads of departments and agencies.
7 The Governor holds cabinet meetings, communicates with other state officers, oversees budget
8 expenditures, serves as an ex-officio member on a number of boards and commissions, and has
9 the authority to issue executive orders. Governor Inslee has not used his expansive authority,
10 or directed Ecology, to initiate a comprehensive effort to prepare and implement a plan to
11 reduce Washington’s CO₂ and GHG emissions to safe levels and his ongoing actions and
12 inactions are allowing dangerous levels of CO₂ and GHGs to be emitted from Washington, thus
13 exacerbating the climate crisis.
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16 8. Respondent State of Washington is the sovereign trustee over public natural resources
17 within its domain, including air (atmosphere), water, the sea, shorelands, tidelands, and fish
18 and wildlife, and it must protect those public trust resources from substantial impairment and
19 alienation, for the benefit of present and future generations of Washingtonians. These
20 resources must be managed for the benefit of the public good and all future generations, not for
21 the benefit of private individuals. The State of Washington must refrain from performing its
22 trustee duties in a manner that results in the substantial impairment of public trust resources
23 and it also has an obligation to affirmatively act to protect and account for public trust
24 resources. In substantial part due to the State of Washington’s affirmative actions that allow
25 and promote fossil fuel development and use, as well as the State of Washington’s failure to
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1 limit and phase out fossil fuels, the concentration of CO₂ and GHGs in the atmosphere has
2 arisen to dangerous levels that constitute a breach of the State of Washington's duty to protect
3 Youth Petitioners' public trust and constitutional rights.

4 **II. AGENCY ACTION AT ISSUE**

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6 9. Washington Department of Ecology's Written Decision Denying Youth Petitioners'
7 Petition for Rulemaking (August 14, 2014) (Exhibit A).

8 10. Washington Department of Ecology's Written Decision Denying Youth Petitioners'
9 Petition for Rulemaking (contained in Ecology's Response to June 23, 2015 Court Order)
10 (August 7, 2015) (Exhibit B).

11 **III. FACTS SUPPORTING JUDICIAL REVIEW**

12 11. Youth Petitioners' Petition for Rulemaking asked the Washington Department of
13 Ecology ("Ecology") to undertake actions that are necessary, and legally required, to protect
14 the state's natural resources, and the children who depend upon them, from the injurious
15 effects of climate change and ocean acidification. Youth Petitioners' Petition (filed June 14,
16 2014) (Exhibit C). This Petition for Review appeals Ecology's decisions to reject Youth
17 Petitioners' Petition for Rulemaking and concerns the State of Washington's role and
18 sovereign responsibility, acting through the Ecology, in addressing and mitigating the climate
19 change crisis and ocean acidification.
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1 **A. The Impacts of Human-Caused Climate Change and Ocean Acidification Demand**
2 **Immediate Action by Ecology**

3 12. Global warming is occurring and adversely impacting the Earth's climate. At the same
4 time, ocean acidification threatens Earth's ocean life. The present rate of global heating is
5 occurring as a result of human activities that release heat-trapping greenhouse gases ("GHGs")
6 at a rate and to levels unprecedented over the past 800,000 years. These increased atmospheric
7 levels of GHGs intensify the Earth's natural greenhouse effect at an accelerated rate, thereby
8 changing Earth's climate.

9 13. The increased levels of carbon dioxide ("CO₂") in the atmosphere are also being
10 absorbed by the oceans, causing them to become more acidic. This abnormal climate change
11 and ocean acidification is unequivocally human-induced, occurring now, harming public health
12 and welfare, and will continue to occur unless drastic measures are taken to curtail it. GHG
13 emissions are damaging both natural and human systems, and if unrestrained, will alter the
14 planet's habitability, especially for Youth Petitioners and future generations of
15 Washingtonians.
16

17 14. Human beings have benefited from living on a planet that has been remarkably
18 hospitable to our existence and has provided conditions that are just right for human life to
19 evolve, expand, and flourish.
20

21 15. Human beings have significantly altered the chemical composition of the Earth's
22 atmosphere and its climate system by collectively engaging in activities that produce or release
23 GHGs into the atmosphere. The increase of GHG concentrations resulting from historic and
24 present human activities has outpaced their removal through natural processes and altered the
25 Earth's ability to maintain the delicate balance of energy it receives from the sun and that
26

1 which it radiates back out into space. CO₂ is the key GHG, and CO₂ emissions are largely
2 responsible for the current warming trend.

3 16. The impacts of CO₂ emissions on the State of Washington are severe. Changes in the
4 natural timing of water availability, sea level rise and ocean acidity, and increased forest
5 mortality, will bring significant consequences for the economy, infrastructure, natural systems,
6 and human health of the region.

7
8 17. If immediate action is not taken, the costs of climate change and ocean acidification
9 impacts to Washington are projected at \$10 billion per year by 2020 from increased health
10 costs, storm damage, coastal destruction, rising energy costs, increased wildfires, drought, and
11 other impacts. As recently as April 29, 2014, Governor Inslee instructed that “Washington
12 needs to take additional actions now” to address GHG emissions and their adverse impacts.
13

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

16 18. In order to avoid catastrophic and permanent change, it is imperative that CO₂ emission
17 reduction targets are calibrated to restore global atmospheric CO₂ levels to 350 parts per
18 million (“ppm”) by the end of the century in order to limit the long-term global temperature
19 increase to 1°C above pre-industrial temperatures.

20 19. The 2007 Intergovernmental Panel on Climate Change’s compilation of science from
21 the early 2000’s is now outdated and has been shown to underestimate the catastrophic impacts
22 associated with the historic international targets of 450 ppm atmospheric CO₂ concentration
23 and warming of 2-4°C above preindustrial temperatures.
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1 20. 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.

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

20 22. Youth Petitioners’ Petition for Rulemaking did not ask Ecology to repeal this law.
21 Rather, Youth Petitioners asked Ecology to comply with the letter and spirit of the statute,
22 other laws outlining Ecology’s regulatory authority, and the Washington Constitution, by
23 issuing a regulation establishing and recommending CO₂ emission limits based on the best
24 available science.

25 23. Under the existing law, Ecology is required to “consult with the climate impacts group
26 at the University of Washington regarding the science on human-caused climate change and

1 provide a report to the legislature summarizing that science and make recommendations
2 regarding whether the greenhouse gas emissions reductions required under RCW 70.235.020
3 need to be updated.” RCW 70.235.040. Youth Petitioners asked Ecology to make its
4 statutorily-required recommendations based upon best available science through the
5 rulemaking process.
6

7 24. Considering the many effects that are manifesting much faster than most models
8 predicted, such as the rapid decline of the Arctic sea ice and Greenland and Antarctic ice sheets
9 and the increasing pace of ocean acidification, as well as substantial omissions in the modeling
10 used to determine the 2°C target, global warming must actually be limited to 1°C, meaning a
11 global CO₂ atmospheric concentration of 350 ppm or lower, in order to avoid catastrophic
12 global impacts.
13

14 25. Emission reduction targets aimed at a 450 ppm global standard, as the current limits in
15 RCW 70.235 appear to be aimed, will result in a temperature increase greater than 2°C and in
16 turn will not fulfill Washington’s responsibility to avoid the grave impacts outlined in Youth
17 Petitioners’ Petition for Rulemaking.
18

19 26. The safe level of global CO₂ for climate and oceans is at most 350 ppm, not 450 ppm as
20 world leaders previously recognized, and government action towards this safe goal of 350 ppm
21 must be taken immediately.
22

23 27. In order to avoid the compounded effects of reaching or exceeding a 2°C temperature
24 increase, it is imperative that Ecology facilitate and recommend the calibration of state
25 emission limits to put Washington on a trajectory aimed for 350 ppm and then establish a plan
26 that will put Washington on a track towards meeting these limits.

1 28. In order for the State of Washington to “do its part to reach global climate stabilization
2 levels,” Ecology must apply best available science and recommend to the legislature that the
3 State’s GHG emissions limits must reflect a global atmospheric CO₂ emissions level of 350
4 ppm.

5 29. Also in order for the State of Washington to protect oceans, its coastlines, shellfish, and
6 other marine resources, Ecology must apply best available science and recommend to the
7 legislature that the State’s GHG emissions limits must reflect a global atmospheric CO₂
8 emissions level of 350 ppm.
9

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11 **C. Ecology’s Legal Obligation To Recommend GHG Reductions Based Upon
Current & Best Available Science**

12 30. In order to prevent and mitigate the catastrophic climate change and ocean acidification
13 impacts described above and in Youth Petitioners’ Petition for Rulemaking and fulfill its legal
14 obligation, Ecology must promulgate a rule that establishes, and recommends to the legislature,
15 an update and amendment of the GHG emissions reduction requirements required by RCW
16 70.235, setting a CO₂ emission reductions trajectory to at least 8 percent per year, and achieve
17 at least a 91 percent reduction in CO₂ emissions from 1990 levels by 2050, or an equivalent
18 GHG emissions reduction trajectory in line with a 350 ppm standard for global CO₂.
19

20 31. Ecology has the following existing statutory obligation:

21 Within eighteen months of the next and each successive global or national
22 assessment of climate change science, the Department *shall* consult with the
23 climate impacts group at the University of Washington regarding the science on
24 human-caused climate change and provide a report to the legislature
25 summarizing that science and make recommendations regarding whether the
26 greenhouse gas emissions reductions required under RCW 70.235.020 need to
be updated.

RCW § 70.235.040 (2008) (emphasis added).

32. In addition, the Governor has ordered and directed Ecology to:

1 [R]eview the State’s enacted greenhouse gas emissions limits and recommend
2 any updates to the limits by July 15, 2014.

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

4 33. There is no question that Ecology’s obligation to “make recommendations [to the
5 Legislature] regarding whether the greenhouse gas emissions reductions required under RCW
6 70.235.020 need to be updated” is mandatory because the Legislature has used the term “shall”
7 in the text of the statute. *Wash. State Coal. for the Homeless v. DSHS*, 133 Wash. 2d 894, 907-
8 08, 949 P.2d 1291 (1997) (“the word ‘shall’ . . . imposes a mandatory duty.”).

9
10 34. Because Ecology’s legislative recommendations implicate Youth Petitioners’ and
11 future generations’ rights to essential public trust resources, protected by the Public Trust
12 Doctrine and the Washington Constitution, it is imperative that Ecology make its
13 recommendations through the rulemaking process. Otherwise, the public has no means to
14 inform this critical process.
15

16
17 35. The Legislature has found that:

18
19 (a) One of its fundamental responsibilities, to the benefit of all the citizens of
20 the state, is the protection of public health and safety, including health and
21 safety in the workplace, *and the preservation of the extraordinary natural
environment with which Washington is endowed*;

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

26 RCW § 34.05.328 note (1995) (Findings- Short title- Intent) (emphasis added).

1 36. “Under the Washington Administrative Procedure Act (APA), chapter 34.05 RCW, any
2 person may petition an agency to adopt, amend or repeal a rule.” *Squaxin Island Tribe v. Wash.*
3 *State Dep’t of Ecology*, 177 Wash. App. 734, 740, 312 P.3d 766 (2013) (citing Wash. Rev.
4 Code § 34.05.330(1) (1998)).
5

6 37. Youth Petitioners filed the underlying petition for rulemaking on behalf of themselves
7 and the future generations of this State to ensure that the recommendations Ecology makes to
8 the Legislature are based on the best available science. In making their recommendations to
9 the legislature, the Governor has directed Ecology to “maximize coordination and effectiveness
10 of local and state climate initiatives” and “inform affected and interested parties, and the
11 general public . . . and solicit comments and involvement, as appropriate.” Wash. Exec. Order
12 No. 14-04 (Apr. 29, 2014) at 8. A rulemaking process is the most appropriate mechanism to
13 fulfill that directive. Wash. Rev. Code § 34.05.370 (1998) (describing the rulemaking file and
14 the contents thereof that “shall be available for public inspection.”)
15
16

17 38. Only Ecology has the delegated legal obligation and authority to act to protect
18 Washington’s citizens, and the essential air and water resources they depend upon, from
19 catastrophic climate change and ocean acidification resulting from excessive CO₂ emissions,
20 and to make recommendations to the legislature to ensure that the state is put on a path to
21 achieving climate stabilization.
22

23 39. Pursuant to RCW 43.21A.010 (Legislative declaration of state policy on environment
24 and utilization of natural resources), the Department of Ecology was created because:

25 [I]t is a fundamental and inalienable right of the people of the state of
26 Washington to live in a healthful and pleasant environment and to benefit from
the proper development and use of its natural resources. The legislature further
recognizes that as the population of our state grows, the need to provide for our

1 increasing industrial, agricultural, residential, social, recreational, economic and
2 other needs will place an increasing responsibility on all segments of our society
3 to plan, coordinate, restore and regulate the utilization of our natural resources
in a manner that will protect and conserve our clean air, our pure and abundant
waters, and the natural beauty of the state.

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

5 40. In order to fulfill this policy, the Legislature purposefully granted Ecology a panoply of
6 powers and duties designed to protect the natural resources of the state, including “the
7 authority to manage and develop . . . air and water resources in an orderly, efficient, and
8 effective manner and to carry out a coordinated program of pollution control involving these
9 and related land resources.” Wash. Rev. Code § 43.21A.020 (1970).

10
11 41. As a result, Ecology is the delegated manager of many of Washington’s essential
12 natural resources such as air and water, and has vested authority “to provide for the systematic
13 control of air pollution from air contaminant sources and for the proper development of the
14 state’s natural resources.” Wash. Admin. Code § 173-490-010 (1991).

15
16 42. The State of Washington also has a declared “public policy to preserve, protect, and
17 enhance the air quality for current and future generations.” RCW § 70.94.011 (1991). This
18 policy recognizes that “air is an essential resource that must be protected from harmful levels
19 of pollution.” RCW § 70.94.011 (1991).

20 43. Ecology also has substantial delegated authority to manage, protect and preserve the
21 state’s water resources on behalf of Youth Petitioners and future generations. RCW 90.03
22 (state water code); RCW 90.22.010 (Ecology’s authority to establish minimum water flows or
23 levels for streams, lakes or other public waters); RCW 90.44 (regulation of public
24 groundwater); RCW 90.48 (water pollution control); RCW 90.54 (Water Resources Act of
25 1971); RCW 90.58 (Shoreline Management Act); *see also NW Sportfishing Indus. Ass’n v. WA*
26

1 *Dep't of Ecology*, 172 Wash. App. 72, 100, 288 P.3d 677 (2012) (Ecology has a “duty to
2 protect all aquatic species in the rivers at issue . . .”).

3 44. Without additional efforts to reduce CO₂ emissions, as described in Youth Petitioners’
4 proposed rule, current and future generations of Washingtonians will be deprived a healthy
5 environment and the beneficial use of the State’s natural resources that are under the regulatory
6 jurisdiction of Ecology, in violation of the law.

7
8 45. Furthermore, the State of Washington has a constitutional obligation to protect and
9 manage its natural resources for its citizens under the Public Trust Doctrine. Through acts of
10 the legislature and delegated statutory authority to agencies, Washington must protect and
11 manage the lands, navigable waters, atmosphere, oceans, wildlife, and other resources for the
12 benefit of present and future generations.

13
14 46. The Public Trust Doctrine is an inalienable and constitutionally-based attribute of
15 sovereignty that requires all sovereign governments, including the State of Washington, to act
16 to prevent degradation of essential natural resources held in trust on behalf of present and
17 future generations. The Public Trust Doctrine holds that certain crucial natural resources, such
18 as the atmosphere and water, are the shared, common property of all citizens, cannot be subject
19 to private ownership, and must be preserved and protected by the government.

20
21 47. The Public Trust Doctrine is reiterated in state constitutional provisions across the
22 nation. In *PPL Montana, LLC v. Montana*, the United States Supreme Court recognized that
23 the Public Trust Doctrine “is of ancient origin” dating back to Roman civil law; that the Public
24 Trust Doctrine is reflected in state laws and constitutional provisions throughout our nation;
25 and that federalist principles of our nation affirm the State’s rights and duties over public trust
26 resources within their borders. 132 S. Ct. 1215, 1235-36 (2012).

1 48. The universal constitutional application of the Public Trust Doctrine is evident in that
2 citizens' rights to essential natural resources reflect "'inherent and independent rights' of
3 mankind relative to the environment." *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 947
4 (Pa. 2013) (plurality opinion). As the Pennsylvania Supreme Court decided in *Robinson*
5 *Township*, Article I, § 27 of the Pennsylvania Constitution requires government to "conserve
6 and maintain" the State's natural resources, and imposes the duty "to refrain from permitting or
7 encouraging the degradation, diminution, or depletion of public natural resources, whether
8 such degradation, diminution, or depletion would occur through direct state action or
9 indirectly, e.g., because of the state's failure to restrain the actions of private parties." *Id.* at
10 956. Government also has the duty "to act affirmatively to protect the environment" via
11 legislative or regulatory action. *Id.* at 957.

12
13
14 49. Washington has an affirmative and mandatory duty under the Public Trust Doctrine to
15 prevent substantial impairment to the State's essential natural resources. The public's right to
16 essential natural resources reflects inherent rights that are preserved, and not extinguished, by
17 the State Constitution. *See id.* at 947 n.35 (recognizing that citizens' rights to essential natural
18 resources reflect "'inherent and independent rights' of mankind relative to the environment.")
19 (stating that citizens' environmental rights codified and protected by state constitution are
20 "inherent in man's nature and preserved rather than created by the Pennsylvania
21 Constitution.").

22
23 50. The Washington State Constitution expressly recognizes that "[a]ll political power is
24 inherent in the people, and governments derive their just powers from the consent of the
25 governed, and are established to protect and maintain individual rights" and that "[t]he
26 enumeration in this Constitution of certain rights shall not be construed to deny others retained

1 by the people.” Wash. Const. art. I, § 1, 30; art. XVII, § 1.

2 51. Further, in express recognition of the Public Trust obligation, Article XVII, § 1 of the
3 State Constitution states: “The state of Washington asserts its ownership to the beds and shores
4 of all navigable waters in the state up to and including the line of ordinary high tide, in waters
5 where the tide ebbs and flows, and up to and including the line of ordinary high water within
6 the banks of all navigable rivers and lakes.” This constitutional provision grants responsibility
7 to manage public lands and waters to the State, as a trustee of the beneficiaries, present and
8 future generations of Washingtonians.
9

10 52. Washington courts have also found that this constitutional provision explicitly requires
11 the State, through its various administrative agencies, to protect trust resources under their
12 administrative jurisdiction. In *Washington State Geoduck Harvest Ass’n v. Washington State*
13 *Dep’t of Natural Resources*, the court determined that “the public trust doctrine ensures state
14 management of public lands, in part, through our Constitution’s express reservation of “the
15 beds and shores of all navigable waters in the state” for state ownership.” 124 Wash. App. 441,
16 447-48, 101 P.3d 891 (2004).
17

18 53. The Washington Supreme Court has interpreted Article XVII, § 1, stating “that the
19 sovereignty and dominion over this state’s tidelands and shorelands, as distinguished from title,
20 always remains in the state and the state holds such dominion in trust for the public.” *Caminiti*
21 *v. Boyle*, 107 Wash. 2d 662, 669, 732 P.2d 989 (1987).
22

23 54. In addition to protecting natural resources, the State is also responsible for safeguarding
24 various public interests in those resources. Traditionally protected interests are commerce,
25 navigation, and commercial fishing. *Orion Corp. v. State*, 109 Wash. 2d 621, 640-41, 747 P.2d
26 1062 (1987). Other interests include “incidental rights of fishing, boating, swimming, water

1 skiing, and other related recreational purposes generally regarded as corollary to the right of
2 navigation and the use of public waters.” *Caminiti*, 107 Wash. 2d at 669 (quoting *Wilbour v.*
3 *Gallagher*, 77 Wash. 2d 306, 316, 462 P.2d 232 (1969)).

4 55. The Public Trust Doctrine also extends to protect the public interest in shellfish
5 embedded in the navigable water beds of state-owned lands, *Washington State Geoduck*
6 *Harvest Ass’n*, 124 Wash. App. at 451, a resource that will be heavily impacted by the effects
7 of climate change and ocean acidification.
8

9 56. Therefore, Washington has a constitutional obligation to protect the public’s interests in
10 natural resources held in trust for the common benefit of Washingtonians. The Department of
11 Ecology, in implementing its delegated statutory authority, must act to ensure that the public
12 trust resources under its regulatory jurisdiction are not substantially impaired by, and indeed
13 protected from, climate change.
14

15 **D. Ecology’s Decision Denying Youth Petitioners’ Petition for Rulemaking**

16 57. On August 14, 2014, Ecology denied Youth Petitioners’ Petition for Rulemaking
17 asking that the agency promulgate a rule to recommend and adopt carbon emissions reductions
18 based upon best available science.

19 58. Without addressing any of the scientific allegations contained in the petition or its legal
20 responsibility to manage essential natural resources such as air and water, the agency denied
21 the petition for three reasons: (1) Nothing in RCW 70.235 (Global Warming Act) requires
22 Ecology to adopt different emissions reductions, develop a plan to ensure those reductions, or
23 implement the monitoring requirements in the proposed rule; (2) Washington “is working to
24 achieve the reductions” set forth in RCW 70.235 and “the measures it is taking are an
25 alternative approach to your proposed rule;” and (3) None of the additional cited sources in the
26

1 petition (including the Public Trust Doctrine) require Ecology to adopt the proposed rule.
2 Youth Petitioners appeal Ecology’s decision for the reasons set forth below.

3 **E. Supplemental Allegations**
4

5 59. After Youth Petitioners filed the original petition for review in this Court, in December
6 2014, Ecology issued a report entitled *Washington Greenhouse Gas Emission Reduction*
7 *Limits: Report Prepared Under RCW 70.235.040*, Ecology Publication No. 14-01-006. This
8 report summarized the current climate change science and found that “[c]limate change is not a
9 far off risk. Globally, it is happening now and is worse than previously predicted, and it is
10 forecasted to get worse. We are imposing risks on future generations (causing intergenerational
11 inequities) and liability for the harm that will be caused by climate change that we are unable
12 or unwilling to avoid. Washington State’s existing statutory limits should be adjusted to better
13 reflect the current science. The limits need to be more aggressive in order for Washington to do
14 its part to address climate risks”

15
16 60. In its December 2014 Report, Ecology recommended that no changes be made to the
17 state’s statutory emission limits until after the December 2015 United Nations Framework
18 Convention on Climate Change Paris Conference. Over two years later, Ecology has still
19 failed to make recommendations to update RCW 70.235.020 after the Paris Conference, even
20 though it was directed to do so by state statute (RCW 70.235.040) and by Executive Order 14-
21 04.
22

23 61. In early 2015, Governor Inslee introduced the Carbon Pollution Accountability Act as
24 House Bill 1314 in the 2015 Washington legislature, which sought to create a program to limit
25 the amount of carbon pollution emitters may release into the air. In a policy brief developed by
26

1 the Governor’s office in support of the proposed legislation, Governor Inslee recognized that
2 “[c]urrently, polluters in Washington pay nothing for the carbon they emit into our air.”¹ The
3 proposed legislation did not pass.

4 62. In June 2015, Governor Inslee directed Ecology to abandon its efforts to develop a
5 Clean Fuel Standard designed to reduce the overall carbon intensity of transportation fuels and
6 signed into law a bill that prohibited a Clean Fuel Standard for Washington State, stating: “The
7 current bill has a poison pill that pits clean air against transit. I oppose that and have worked
8 hard to find a better alternative.”² Despite his stated opposition he still signed the bill and the
9 Clean Fuel Standard was abandoned.

10 63. On June 23, 2015, after briefing and argument by the parties, this Court remanded the
11 petition for rulemaking back to Ecology for the agency to reconsider in light of the December
12 2014 report issued by Ecology, *Washington Greenhouse Gas Emission Reduction Limits*, and a
13 declaration submitted to the Court by one of Youth Petitioners’ experts, Dr. Puskher Kharecha.

14 64. On July 28, 2015, after meeting with the Youth Petitioners in this case, Governor Inslee
15 directed Ecology to use its existing statutory authority under RCW 70.94 and 70.235 to
16 develop a rule that would cap carbon emissions in Washington and stated: “Carbon pollution
17 and the climate change it causes pose a very real existential threat to our state. Farmers in the
18 Yakima Valley know this. Shellfish growers on the coast know this. Firefighters battling
19 Eastern Washington blazes know this. And children suffering from asthma know this all too
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24 ¹ Governor Jay Inslee Policy Brief, Carbon Pollution Accountability Act of 2015 (December 2014), at
http://www.governor.wa.gov/sites/default/files/policy_briefs/pb_Carbon_market_policy.pdf (last visited
25 December 6, 2016).

26 ² Washington State Wire, “Inslee Drops Fuel Standard, To Propel Transpo Budget Deal,” at
<http://washingtonstatewire.com/inslee-drops-fuel-standard-propel-transpo-budget-deal/> (last visited December 5,
2016).

1 well and are right to question why Washington hasn't acted to protect them." The Governor did
2 not direct Ecology to promulgate a rule based upon best available climate science targeted to
3 achieving climate stability, but rather directed the rule be targeted to achieving GHG emission
4 limits contained in RCW 70.235.020, limits Ecology admits are not based on current science
5 and need to be more aggressive. The Governor also did not direct Ecology to develop a
6 comprehensive plan or strategy to reduce GHG emissions as called for by best available
7 science.
8

9 65. On August 7, 2015, Ecology issued a second denial to the petition for rulemaking, this
10 time adding that it would begin a rulemaking process to cap Washington's CO₂ emissions,
11 after which the Court entered a show cause order directing Youth Petitioners to explain to the
12 Court why its petition should not be denied.
13

14 66. On August 25, 2015, Youth Petitioners filed a response to this Court's show cause
15 order, along with supporting declarations by some of the world's leading climate change and
16 ocean acidification experts, Dr. James Hansen, Dr. Richard Gammon, and Dr. Ove Hough-
17 Guldburg. Youth Petitioners argued that Ecology's updated decision to deny the rulemaking
18 petition, notwithstanding the pledge to initiate rulemaking, did not resolve the legal claims,
19 provides further evidence of Ecology's unlawful conduct, and continues to violate their
20 constitutional rights.
21

22 67. On November 19, 2015, this Court issued an order affirming Ecology's denial of the
23 petition for rulemaking.

24 68. In that order, this Court acknowledged that Ecology's actions to date were insufficient
25 under the law and ruled "the State has a constitutional obligation to protect the public's interest
26 in natural resources held in trust for the common benefit of the people of the State," and stated

1 “[i]f ever there were a time to recognize through action this right to preservation of a healthful
2 and pleasant atmosphere, the time is now” The Court acknowledged Ecology’s
3 “mandatory duty under the Clean Air Act to ‘[a]dopt rules establishing air quality standards’
4 for GHG emissions, including carbon dioxide” and stated “[t]his obligation must be
5 implemented in a manner that ‘[p]reserves, protect[s] and enhances the air quality for the
6 current and future generations.’” Finally, the Court stated Ecology has a legal duty to protect
7 the “‘fundamental and inalienable right of the people of the State of Washington to live in a
8 healthful and pleasant environment.’ RCW 43.21A.010. Although a statutory duty cannot be
9 created from the words of the enabling statute, this language does evidence the legislature’s
10 view as to rights retained under Article I, Section 30. If ever there were a time to recognize
11 through action this right to preservation of a healthful and pleasant atmosphere, the time is now
12”
13”
14

15 69. On January 5, 2016, Ecology released its first proposed Clean Air Rule. On February
16 26, 2016, Ecology withdrew its proposed Clean Air Rule.

17 70. After Ecology withdrew its first regulatory attempt to reduce GHG emissions, via the
18 Clean Air Rule, Youth Petitioners filed a Rule 60(b) motion for relief from judgment, seeking
19 “an order directing Ecology to initiate rulemaking proceedings to promulgate a rule with an
20 enforceable schedule to comply with the legal obligations outlined in the November 19, 2015
21 Final Order.” The Court granted that motion from the bench on April 29, 2016, and on May 16,
22 2016, unequivocally ordered Ecology to “adopt a rule to limit greenhouse gas emissions in
23 Washington state as directed by Governor Inslee in July 2015 . . . by the end of calendar year
24 2016.” The Court also vacated “the portions of the November 19, 2015 order that denied
25
26

1 petitioners' requested relief and put the matter back in the hands of Ecology. *All other*
2 *portions of the November 19, 2015 Order remain in full force and effect.*"

3 71. A modified Clean Air Rule was proposed on June 1, 2016. After soliciting both written
4 and oral comments, the final version of the Clean Air rule was released on September 16,
5 2016.

6
7 72. Respondents' historic and ongoing affirmative aggregate actions continuing to
8 authorize, promote and permit dangerous levels of CO₂ and GHG emissions is a systemic
9 problem that Respondents are perpetuating. Respondents have allowed private parties to treat
10 the atmosphere as a dump for their CO₂ and GHG emissions. The systematic and aggregate
11 acts and omissions of Respondents have legalized dangerous and unlawful levels of GHG
12 emissions and are insufficient to protect the fundamental rights of young people and
13 Washington's public trust resources. The following are examples of some of the affirmative
14 actions Respondents have taken that show they are violating the fundamental and public trust
15 rights of young people:
16

17 (a) Under the Clean Air Rule, covered parties, responsible for two-thirds of the state's
18 GHG emissions, must reduce emissions by an average of only 1.7 percent per year. Ecology
19 has publicly acknowledged that the Clean Air Rule does not put Washington on track to meet
20 even the minimal GHG reduction limits set forth in RCW 70.235, let alone the "more
21 aggressive" limits that Ecology says are needed to avoid "imposing risks on future generations
22 (causing intergenerational inequities) and liability for the harm that will be caused by climate
23 change that we are unable or unwilling to avoid."

24
25 (b) Ecology issued, and continues to issue, permits under the Washington Clean Air Act
26 and other laws allowing private parties to conduct business in a manner that emits substantial

1 levels of GHG pollution into the atmosphere. Some of the companies that have received the
2 permits have also been designated as exempt from the requirements of the Clean Air Rule.

3 (c) Ecology issued, and continues to issue, permits to allow private parties to burn large
4 areas of land, releasing significant quantities of GHG pollution into the atmosphere.

5 (d) Ecology certified, and continues to certify, hydroelectric projects as compliant with the
6 Clean Water Act and other requirements of state law even though many of the projects have
7 reservoirs that are likely to emit significant quantities of methane, a highly potent GHG gas.

8 (e) Ecology issued, and continues to issue, permits allowing private parties to discharge
9 large quantities of nutrients into the waters of Washington that exacerbates localized effects of
10 ocean acidification.

11 (f) Respondent State of Washington has enacted GHG emission performance standards for
12 baseload power plants that legalize dangerous levels of GHG emissions and do not put
13 Washington on a path towards climate stability. RCW 80.80.040.

14 (g) Respondent State of Washington has enacted renewable energy portfolio standards that
15 legalize dangerous levels of GHG emissions and do not put Washington on a path towards
16 climate stability. RCW 19.285.

17 (h) Respondent Ecology has adopted GHG emission standards for petroleum refineries that
18 legalize dangerous levels of GHG emissions and do not put Washington on a path towards
19 climate stability. WAC 173-485.

20 (i) Respondent State of Washington has adopted GHG emission standards for motor
21 vehicles that legalize dangerous levels of GHG emissions and do not put Washington on a path
22 towards climate stability. RCW 70.120A.

1 (j) Respondent State of Washington has adopted renewable fuel standards that legalize
2 dangerous levels of GHG emissions and do not put Washington on a path towards climate
3 stability. RCW 19.112.

4 (k) Respondent State of Washington has adopted statewide goals to reduce annual per
5 capita vehicle miles traveled by 2050 and other laws regarding transportation that legalize
6 dangerous levels of GHG emissions and do not put Washington on a path towards climate
7 stability. RCW 47.01.440; RCW 47.01.078(4); RCW 47.01.440; RCW 47.08.023(1); and
8 RCW 47.38.070.

9
10 (l) Ecology issued, and continues to issue, environmental impact statements, pursuant to
11 the State Environmental Policy Act, RCW 43.21C, that do not adequately characterize,
12 quantify and require mitigation for GHG pollution associated with proposed projects.

13
14 73. After issuance of the Clean Air Rule, Youth Petitioners filed a motion for order to show
15 cause, arguing that in spite of issuance of the Clean Air Rule, Ecology remains out of
16 compliance with the substantive requirements of Court's previous orders and has not taken
17 actions necessary to address climate change and protect the fundamental rights of young
18 people and future generations as required by the Court.

19 74. A hearing on the motion for order to show cause was held on November 22, 2016.

20
21 75. To date, Respondent Ecology has refused to provide recommendations to the legislature
22 to update the State's statutory GHG emissions limits and implement science-based emission
23 limits to put Washington on the global climate stabilization trajectory. Respondent State of
24 Washington has not independently acted to update the limits contained in RCW 70.235.020.

1 76. Respondents continue to take affirmative, systematic actions and omissions that violate
2 the fundamental and inalienable constitutional and public trust rights of Youth Petitioners and
3 lock in dangerous GHG emissions.

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

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

6
7 77. Pursuant to RCW 34.05.530, Youth Petitioners have standing to obtain judicial review
8 of Ecology's decisions because Youth Petitioners are aggrieved and adversely affected by
9 Ecology's decisions denying the petition for rulemaking. Ecology's two denials of the Youth
10 Petitioners' request to protect their inherent and constitutional rights by making CO₂ emissions
11 reduction recommendations and rules based upon public input and the best available climate
12 science is a specific and concrete injury that harms Youth Petitioners' protected interests.
13 Furthermore, a judgment in favor of Youth Petitioners would substantially eliminate or redress
14 the prejudice caused by the underlying agency action. RCW 34.05.530(3).

15 **Supplemental Standing Allegations**

16
17 78. As described in the original Petition for Rulemaking, all Youth Petitioners are residents
18 of the State of Washington and beneficiaries of the essential public trust resources managed by
19 Respondents. Respondents have caused psychological and emotional harm to Youth
20 Petitioners as a result of their fear of a changing climate, their knowledge of how climate
21 change will impair their ability to pursue their hopes, dreams and enjoyment of the natural
22 resources on which they depend and with which they have grown up, and their knowledge that
23 Respondents are continuing to facilitate harms that threaten their lives and wellbeing.
24 Additionally, Youth Petitioners' health, recreational, cultural, educational, aesthetic and other
25 interests are being, and will continue to be, adversely and irreparably injured by Respondents'
26

1 actions and omissions. As a result of the affirmative acts and omissions of Respondents,
2 Youth Petitioners believe that they will not be able to continue to do many of the activities they
3 currently enjoy and depend upon, nor will they be able to share those experiences with their
4 children and grandchildren, without a remedy from this Court.

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

6
7 79. Ecology erred as a matter of law by declining to adopt the proposed rule based upon its
8 statutory responsibility to manage essential natural resources such as air and water and the Public
9 Trust Doctrine. Ecology fails to address Youth Petitioners' claims that the agency has
10 substantial delegated authority, above and beyond RCW 70.235, to manage and protect the
11 state's natural resources and misstates and misapplies current public trust law. Finally, Ecology
12 fails to recognize Ecology's obligation to fulfill the State's public trust mandate by complying
13 with code provisions designed to protect the public interest.

14
15 80. Ecology claims "nothing in RCW 70.235 requires Ecology to adopt different emissions
16 reductions, develop a plan to ensure those reductions, or implement the monitoring
17 requirements in the proposed rule." Ecology Decision at 1. Further, Ecology claims that no
18 other cited sources of legal authority require Ecology to take the requested action. *Id.*
19 However, Ecology fails to recognize numerous sources of law requiring Ecology to act as the
20 trustee of natural resources, such as air and water, under its jurisdiction and to prevent
21 substantial impairment of those resources.

22
23 81. Ecology points to five workgroups and a short list of statutes that are an "alternative
24 approach" to the proposed rule, but the agency fails to describe how the alternative approach
25 puts Washington on the global path towards climate stability, ocean protection, or maintaining
26 essential natural resources for future generations. Ecology does not dispute that they have not

1 put Washington on that path. Ecology does not dispute that the current emission reduction
2 limits are not consistent with climate stability or ocean protection. Those statutory emission
3 limits act as a floor, but do not limit Ecology’s authority to act to further reduce GHG
4 emissions in order to protect the State’s public trust resources.

5
6 82. Existing sources of law also require Ecology to provide a report and recommend to the
7 Legislature whether the existing GHG reductions should be updated based upon current best
8 available science, a deadline that Ecology failed to meet. RCW 70.235.040; Wash. Exec.
9 Order No. 14-04 (Apr. 29, 2014) (directing Ecology “to review the State’s enacted greenhouse
10 gas emissions limits and recommend any updates to the limits by July 15, 2014.”).

11 83. Ecology has failed to meet this deadline and instead contends, “Ecology is currently
12 reviewing the state’s greenhouse gas emission reductions in consultation with the Climate
13 Impacts Group to formulate recommendations on whether those reductions should be updated.”
14 Ecology Decision at 2. In its decision, Ecology did not explain why it failed to act in
15 accordance with the deadline set by the Governor to comply with RCW 70.235.040, which is
16 significant in light of the fact that climate change is an urgent crisis that needs to be addressed
17 immediately.
18

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

21 84. Ecology’s decision is arbitrary and capricious and not supported by substantial
22 evidence due to the agency’s deliberate and unreasoned disregard of facts and circumstances as
23 presented in the Petition. Ecology does not provide any substantive justification, let alone
24 substantial evidence, for why it denies the rulemaking request to update and recommend GHG
25 emission reductions consistent with current best available science.
26

1 85. Ecology does not provide any substantive reasons as to why it denies the rulemaking
2 request to adopt new emission targets based on the science, as presented in the Petition.
3 Specifically, in conclusively stating that it has an “alternative approach” to address climate
4 change, which includes a list of five working groups, statutes and one regulation, Ecology fails
5 to explain how their alternative approach is consistent with its statutory obligations to ensure
6 adequate emission reductions and its constitutional and statutory obligation to protect public
7 trust resources.
8

9 86. Indeed, in its denial, Ecology never states or provides evidence as to what GHG
10 emissions reductions are required by current best available science, a fundamental flaw in its
11 ultimate conclusion that it is engaged in an “alternative approach” to Youth Petitioners’
12 proposed rule. Ecology does not provide any substantial evidence as to the impact on emission
13 reductions of Ecology’s “alternative approach.”
14

15 87. A simple listing of existing statutes and workgroups (none of which have the authority
16 to make laws or regulations) does not suffice as a rational explanation as to how this
17 “alternative approach” justifies denial of the petition for rulemaking. *Id.* There is no analysis
18 that the “alternative approach” will achieve the scientifically-required carbon emissions limits,
19 or even the existing statutory limits. None of the alternative approach mechanisms listed
20 include substantive measures that will put Washington on a path towards achieving the GHG
21 emissions reductions set forth in RCW 70.235, let alone 350 ppm by the end of the century.
22

23 88. Nowhere in the decision does Ecology address any of the science raised in the Petition.
24 The agency does not dispute that urgent action is required, nor does it dispute that Youth
25 Petitioners’ proposed carbon emissions trajectory is based upon best available science. In
26 essence, the agency contends that it has no substantive role in protecting the natural resources

1 under its jurisdiction from harm due to climate change, a decision that is arbitrary, capricious
2 and contrary to law. Youth Petitioners challenge this reckless and illegal conclusion.

3 89. Ecology acted arbitrarily and capriciously in deciding to take no action to set GHG
4 emissions limits or recommend GHG emissions limits based on current best available science,
5 despite Ecology's admission that the state is not on track to meet the existing limits set in
6 RCW 70.235.
7

8 90. Furthermore, the best available science shows the detrimental effects on all public trust
9 resources, including those under the management responsibility of Ecology, if global
10 atmospheric concentration of CO₂ is not brought back down to 350 ppm by the end of the
11 century, and in Ecology's expertise, they do not dispute any of that scientific evidence
12 provided by Youth Petitioners.
13

14 91. By basing its decision on its alleged "alternative approach," Ecology acted arbitrarily
15 and capriciously since the "alternative approach" has been shown not to achieve existing GHG
16 emissions limits, let alone those limits required by best available science in order to protect the
17 State's public trust resources and Youth Petitioners. It is arbitrary and capricious to deny a
18 petition based upon an alternative approach that is plainly inadequate to comply with
19 Ecology's statutory responsibilities, and not supported by substantial evidence.
20

21 92. Finally, Ecology's decision not to make its statutorily-required recommendations to the
22 legislature through the rulemaking process is arbitrary and capricious. Under Ecology's
23 approach, the public will have no opportunity to inform and/or contest Ecology's factual
24 determinations as to what GHG emissions limits are required by current science. Furthermore,
25 Ecology's recommendation will significantly affect Youth Petitioners' and future generations'
26 enjoyment of benefits or privileges conferred by the law as citizen beneficiaries. Therefore, it

1 was arbitrary and capricious for the agency to conclude that a rulemaking process is not
2 required under these circumstances.

3 **D. Supplemental Legal Basis For Review: Ecology, the State & Governor Inslee Are**
4 **Violating Article I, Section 3 and Article I, section 30 of the Washington State**
5 **Constitution.**

6 93. Youth Petitioners hereby re-allege and incorporate by reference each allegation set
7 forth above.

8 94. “The ultimate power to interpret, construe and enforce the constitution of this State
9 belongs to the judiciary.” *Seattle School Dist. v. State*, 90 Wn.2d 476, 496, 585 P.2d 71
10 (1978).

11 95. Indeed, “the judiciary has the ultimate power and the duty to interpret, construe and
12 give meaning to words, sections and articles of the constitution. It is emphatically the province
13 and duty of the judicial department to say what the law is. This duty must be exercised even
14 when an interpretation serves as a check on the activities of another branch of government or is
15 contrary to the view of the constitution taken by another branch.” *Id.* at 503-04 (internal
16 citations omitted).

17 96. The legislature has recognized that “it is a fundamental and inalienable right of the
18 people of the State of Washington to live in a healthful and pleasant environment.” RCW
19 43.21A.010.
20

21 97. This fundamental right is constitutionally reserved through article I, section 30 of the
22 Washington Constitution, which provides, “[t]he enumeration in this Constitution of Certain
23 rights shall not be construed to deny others retained by the people.” Wash. Const. art. I, § 30.
24 This section “is apparently the expression that the declaration of certain fundamental rights
25 belonging to all individuals and made in the Bill of Rights shall not be construed to mean the
26

1 abandonment of others not expressed, which inherently exist in all civilized and free states.
2 Those expressly declared were evidently such as the history and experience of our people had
3 shown were most frequently invaded by arbitrary power, and they were defined and asserted
4 affirmatively. Consistently with the affirmative declaration of such rights, it has been
5 universally recognized by the profoundest jurists and statesmen that certain fundamental,
6 inalienable rights under the laws of God and Nature are immutable, and cannot be violated by
7 any authority founded in right.” *State of Washington v. Clark*, 30 Wash. 439, 443-44 (1902).

9 98. Among the fundamental and inalienable rights protected by Article I, Section 30 of the
10 Washington Constitution is the fundamental and inalienable right to a healthful and pleasant
11 environment and atmosphere, which includes a stable climate system capable of sustaining
12 human life. A stable climate system means an atmosphere and oceans that are free from
13 dangerous levels of anthropogenic CO₂ and GHGs. *Juliana et al. v. United States*, No. 6:15-
14 cv-01517-TC, 2016 WL 6661146, at *15 (D. Or. Nov. 10, 2016) (internal citations omitted)
15 (“Exercising my ‘reasoned judgment,’ I have no doubt that the right to a climate system
16 capable of sustaining human life is fundamental to a free and ordered society. Just as marriage
17 is the ‘foundation of the family,’ a stable climate system is quite literally the foundation ‘of
18 society, without which there would be neither civilization nor progress.’”).

21 99. Article I, Section 3 of the Washington Constitution provides, “[no person shall be
22 deprived of life, liberty, or property without due process of law.”

23 100. “Substantive due process forbids the government from interfering with a fundamental
24 right unless the infringement is narrowly tailored to serve a compelling state interest.” *In re*
25 *Detention of Morgan*, 180 Wn.2d 312, 324, 330 P.3d 774 (2014). “Substantive due process
26 protects against arbitrary and capricious government action even when the decision to take

1 action is pursuant to constitutionally adequate procedures.” *Amunrud v. Bd. of Appeals*, 158
2 Wn.2d 208, 218-19, 143 P.3d 571 (2006).

3 101. Our state’s climate system, including the atmosphere, shorelands and tidelands, is
4 critical to Youth Petitioners’ fundamental rights to life, liberty, and property, which includes
5 the fundamental right to a healthful and pleasant environment. Our state’s climate system has
6 been and continues to be harmed by the aggregate actions and inactions of Respondents.

7
8 102. The State, Governor Inslee and Ecology have enacted climate change response laws
9 and policies that legalize dangerous levels of GHG emissions and have failed to implement
10 their full authority to develop a state-wide climate response strategy and plan that mandates
11 and ensure science-based reductions of GHG emissions within the state of Washington,
12 thereby depriving Youth Petitioners of their fundamental right to live in a healthful and
13 pleasant environment and to a stable climate system capable of sustaining human life.

14
15 103. The entirety of the climate response strategy of the State, the Governor and Ecology
16 allow dangerous levels of GHG emissions that violate the Youth Petitioners’ fundamental
17 rights.

18 104. By continuing to deny Youth Petitioners’ petition for rulemaking and by taking
19 affirmative actions and omissions that legalize dangerous levels of GHG emissions, the
20 Respondents are endangering Youth Petitioners’ lives, liberties and property and are not
21 complying with their constitutional duties to protect the fundamental right of the people of the
22 State of Washington to live in a healthful and pleasant environment.
23
24
25
26

1 **F. Supplemental Legal Basis For Review: The State, Governor Inslee and Ecology**
2 **Are Violating The Public Trust Doctrine.**

3 105. Youth Petitioners hereby re-allege and incorporate by reference each allegation set
4 forth above.

5 106. Youth Petitioners are beneficiaries of rights under the Public Trust Doctrine, rights that
6 are secured by Article I, §§ 3 and 30, and Article XVII, § 1 of the Washington State
7 Constitution. These rights protect the rights of present and future generations to those essential
8 natural resources that are of public concern to the citizens of our nation. These vital natural
9 resources include at least the air (atmosphere), water, tidelands, shorelands, and wildlife. The
10 overarching trust resource is our state’s life-sustaining climate system, which encompasses our
11 atmosphere, waters, oceans, and biosphere. Respondents must take affirmative steps to protect
12 these resources.
13

14 107. As sovereign trustees, Respondents have a duty to refrain from “substantial
15 impairment” of these essential natural resources. The affirmative aggregate acts and omissions
16 of Respondents have unconstitutionally caused, and continue to cause, substantial impairment
17 to the essential public trust resources. Respondents have failed in their duty of care to
18 safeguard the interests of Youth Petitioners as the present and future beneficiaries of the public
19 trust. Such abrogation of duty impairs the ability of succeeding members of the Executive and
20 Legislative branches to provide for the survival and welfare of our citizens and to promote the
21 endurance of our state.
22

23 108. As sovereign trustees, the affirmative aggregate actions and inactions of Respondents
24 are unconstitutional and violate their duty to hold the atmosphere and other public trust
25 resources in trust for the present and future generations of this state. Respondents have
26

1 alienated substantial portions of the climate system in favor of the interests of private parties so
2 that these private parties can treat our state’s atmosphere as a dump for their GHG emissions.
3 Respondents have failed in their duty of care as trustees to manage the atmosphere and other
4 public trust resources in the best interests of the present and future beneficiaries of the trust
5 property, including, but not limited to, Youth Petitioners. Such abdication of duty abrogates
6 the sovereign powers of succeeding members of the Executive and Legislative branches of the
7 state to provide for the survival and welfare of Washingtonians and to promote the endurance
8 of our state.
9

10 **V. JURISDICTION & VENUE**

11 109. This Court has jurisdiction over this matter pursuant to RCW 34.05.510. Venue is
12 proper in this Court pursuant to RCW 34.05.514(1).
13

14 **A. Supplemental Basis For Jurisdiction & Venue**

15 110. This Court has jurisdiction to issue a declaration that the State, the Governor and
16 Ecology are, or are not, complying with the State’s Constitutional mandates pursuant to the
17 Uniform Declaratory Judgment Act (“UDJA”), RCW 7.24.

18 111. This Court has jurisdiction to enforce fundamental rights contained in and reserved
19 by the Washington State Constitution. Wash. Const., Art. IV, § 6; RCW 7.24; RCW 7.40.

20 112. Venue for this action properly lies in this Court. RCW 4.08.050; 7.24.

21 113. Youth Petitioners have no alternative adequate remedy at law.
22

23 **VI. BASIS FOR GRANTING RELIEF**

24 114. Youth Petitioners hereby re-allege and incorporate by reference each allegation set
25 forth above.
26

1 115. For Ecology’s decisions denying the Youth Petitioners rulemaking petition, the
2 Youth Petitioners are entitled to relief in this matter pursuant to RCW 34.05.570(4) for the
3 following reasons, as discussed in more detail above:

- 4 (a) Ecology erroneously interpreted and applied the law;
- 5 (b) Ecology’s decisions are not supported by substantial evidence;
- 6 (c) Ecology’s decisions are arbitrary, capricious and otherwise contrary to law;
- 7 (d) Ecology’s decisions are outside of its statutory authority and the authority conferred by
8 a provision of law; and
- 9 (e) Ecology’s decisions are unconstitutional.

10
11 **A. Supplemental Basis For Granting Relief**

12 116. Youth Petitioners hereby re-allege and incorporate by reference each allegation set
13 forth above.

14
15 117. The Youth Petitioners are entitled to relief in this matter pursuant to RCW 7.24, 7.40
16 and the Washington Constitution for the following reasons, discussed in more detail above:

- 17 (a) The systematic and aggregate acts and omissions of Respondents violate the
18 Washington Constitution and the Public Trust Doctrine.

19
20 **VII. REQUEST FOR RELIEF**

21 For the reasons set forth herein, Youth Petitioners respectfully request that the Court
22 vacate and set aside Ecology’s decisions denying Youth Petitioners’ Petition for Rulemaking
23 as contrary to law, not supported by substantial evidence, arbitrary and capricious, and remand
24 the matter for further proceedings consistent with all applicable law. In addition, Youth
25 Petitioners respectfully request that the Court grant such other relief as this Court deems
26

1 appropriate. RCW 34.05.574. Finally, Youth Petitioners request that fees and costs be
2 awarded pursuant to RCW 4.84.350 and other applicable law.

3 **A. Supplemental Request For Relief**

4 Youth Petitioners also respectfully request that the Court:

5
6 1. Declare that Respondents have violated and are violating Youth Petitioners'
7 fundamental constitutional rights to life, liberty, and property and the Public Trust
8 Doctrine by substantially causing or contributing to dangerous concentrations of
9 GHGs in the atmosphere, and that, in so doing, Respondents dangerously interfere
10 with a stable climate system required by our state and Youth Petitioners.

11 2. Enjoin Respondents from further violations of the Constitution underlying
12 each claim for relief.

13
14 3. Order Respondents to prepare a consumption-based inventory of
15 Washington GHG emissions.

16 4. Order Respondents to develop and submit to the Court by a date certain an
17 enforceable state remedial plan to implement and achieve science-based numeric
18 reductions of GHG emissions in Washington based on a 350 ppm by 2100 target to
19 keep long-term global heating to no more than 1°C, with a maximum short-lived peak
20 of 1.5°C, until such time as the state determines that different science-based numeric
21 limits are supported by the best available science. Present annual emission reductions
22 must be at least 8 percent.

23
24 5. Retain jurisdiction over this action to approve, monitor and enforce
25 compliance with Respondents' state remedial plan and all associated orders of this
26 Court; and

1 6. Grant such other and further relief as the Court deems just and proper.

2 7. Award Youth Petitioners their reasonable attorneys fees and costs.

3
4 Respectfully submitted this 6th day of December 2016,

5
6 s/ Andrea K. Rodgers

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