

The Honorable KING COUNTY  
Thomas R. Hill  
SUPERIOR COURT CLERK  
Hearing: June 17, 2016  
E-FILED

CASE NUMBER: 14-2-25295-1 SEA

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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. 14-2-25295-1 SEA

MOTION FOR ATTORNEYS' FEES & COSTS

1 **I. RELIEF REQUESTED**

2 Petitioners respectfully request, pursuant to RCW 4.84.350, an award of its reasonable  
3 attorneys' fees, costs, and other expenses in bringing this action.

4 **II. EVIDENCE RELIED UPON**

5 This motion is supported by the attached Declarations of Andrea K. Rodgers and Julia  
6 Olson in Support of Motion for Attorneys' Fees, and the pleadings, filings, and court orders  
7 previously filed or entered herein.

8 **III. ARGUMENT**

9  
10 The Washington Equal Access to Justice Act ("WEAJA") mandates an award of  
11 attorneys' fees and costs in an amount up to \$25,000 to a "qualified party that prevails in a  
12 judicial review of an agency action . . . unless the court finds that the agency action was  
13 substantially justified or that circumstances make an award unjust." RCW 4.84.250. The  
14 Legislature enacted EAJA "to ensure citizens a better opportunity to defend themselves from  
15 inappropriate state agency actions." *Costanich v. Wash. Dep't of Social & Health Serv.*, 164  
16 Wn.2d 925, 929, 194 P.3d 988 (2008). Petitioners meet all of the requirements of the WEAJA,  
17 and are entitled to an award of attorneys' fees and costs in the amount of \$25,000 for their  
18 successful prosecution of this case.

19 **A. Petitioners Are A Qualified Party.**

20  
21 Petitioners are a "qualified party" as that term is defined in RCW 4.84.340(5).  
22  
23 Petitioners are a group of Washington youths who are members of the Plant-For-The-Planet  
24 Leadership Corps, which works to plant trees and help restore local forests as a means to  
25 mitigate against the effects of climate change. Declaration of Andrea K. Rodgers in Support of  
26 Petitioners' Motion for Attorneys' Fees ("Rodgers Decl.") at ¶ 3. The Youth, who brought this

1 lawsuit in their individual capacity, are committed to ensuring that their government  
2 representatives take action to regulate and reduce greenhouse gas emissions based upon  
3 science in order to protect their fundamental rights to a healthy planet and livable future. *Id.*  
4 The Petitioners’ net worth does “not exceed one million dollars at the time the initial petition  
5 for judicial review was filed.”” *Id.* (quoting RCW 4.84.340). Therefore, the Petitioners meet  
6 the requirements of a “qualified party” for purposes of the WEAJA.  
7

8 **B. Petitioners Are The Prevailing Party.**

9 A party is considered to prevail under WEAJA if the party ‘obtained relief on a  
10 significant issue that achieves some benefit that the qualified party sought.’” *Hunter v. Univ. of*  
11 *Wash.*, 101 Wn.App. 283, 294, 2 P.3d 1022 (2000) (quoting RCW 4.84.250(1)). There can be  
12 no dispute that Petitioners are the prevailing party in this lawsuit. As an initial matter,  
13 Governor Inslee, who oversees the Department of Ecology as Chief Executive, has publicly  
14 stated that Petitioners are the prevailing party:  
15

16 Eight courageous kids went to court to compel us adults to take  
17 action on climate change. *I’m happy to say that they won.*  
18 These eight kids know that our state can do more to fight climate  
19 change – and I do, too. Their case has been a call for action to no  
20 longer ignore our climate and our kids.

21 Rodgers Decl., Ex. 1 (emphasis added).

22 In the Court’s November 19, 2015 decision, Petitioners prevailed on nearly all of their  
23 arguments. The Court agreed with Petitioners that Ecology “does have the mandatory duty  
24 under the Clean Air Act” to regulate GHG emissions, including carbon dioxide in a manner  
25 that “[p]reserves, protect[s] and enhance[s] the air quality for the current and future  
26 generations.”” November 19, 2015 Order at 6 (quoting RCW 70.94.011). The Court agreed  
with Petitioners that “the emission standards currently adopted by Ecology do not fulfill the

1 mandate to “[p]reserve, protect and enhance the air quality for current and future generations.”  
2 *Id.* at 6 (quoting RCW 70.94.011). The Court agreed with the Petitioners that the Washington  
3 Constitution and the Public Trust Doctrine “require[] the State through its various  
4 administrative agencies, to protect trust resources under their administrative jurisdiction” and  
5 that “the State has a constitutional obligation to protect the public’s interest in natural resources  
6 held in trust for the common benefit of the people of the State.” *Id.* at 7, 8; *see also id.* at 8  
7 (“[T]he Public Trust Doctrine mandates that the State act through its designated agency to  
8 protect what it holds in trust.”). The Court rejected Ecology’s “nonsensical” attempt to  
9 narrowly apply the Public Trust Doctrine only to navigable waters and held that “current  
10 science makes clear that global warming is impacting the acidification of the oceans to  
11 alarming and dangerous levels, thus endangering the bounty of our navigable waters.” *Id.* at 8.  
12 Finally, the Court agreed with Petitioners that statutory language regarding the “fundamental  
13 and [in]alienable right of the people of the State of Washington to live in a healthful and  
14 pleasant environment” “evidence the legislature’s view as to rights retained under Article I,  
15 Section 30. *Id.* at 9.  
16  
17

18 As extensively briefed and argued as part of the Rule 60(b) motion, even though the  
19 Court agreed with the vast majority of Petitioners’ legal arguments, it initially did not grant  
20 Petitioners’ requested relief because Ecology had commenced rulemaking to establish GHG  
21 emission standards and limitations. *Id.* at 10. That changed when the Court granted Petitioners’  
22 Rule 60(b) motion, vacated portions of the November 19, 2015 Order that denied Petitioners’  
23 requested relief, and ordered Ecology to complete the rulemaking process by the end of 2016  
24 and recommend to the legislature updates to RCW 70.235 for the 2017 legislative session.  
25  
26 Petitioners have now obtained their requested relief, thereby conferring upon Petitioners

1 prevailing party status.

2 **C. Ecology’s Position Was Not Substantially Justified.**

3 Ecology was not “substantially justified” in denying Petitioners’ petition for  
4 rulemaking. “Substantially justified means justified to a degree that would satisfy a reasonable  
5 person.” *Moen v. Spokane City Police Dep’t*, 110 Wn.App. 714, 721, 42 P.3d 456 (2002).  
6 “The State must show that its position has a reasonable basis in law and fact.” *Puget Sound*  
7 *Harvesters Ass’n v. Wash. State Dep’t of Fish & Wildlife*, 157 Wn. App. 935, 952, 239 P.3d  
8 1140 (2010). The agency has the burden to prove its action was “substantially justified”  
9 because it is an affirmative defense. *Hunter*, 101 Wn.App. at 294. An agency’s actions are not  
10 substantially justified if the court finds the actions arbitrary and capricious. *Puget Sound*  
11 *Harvesters Ass’n*, 157 Wn. App. at 952.  
12

13 Here, Ecology’s actions were not substantially justified. Ecology never questioned its  
14 legal authority to take action to regulate GHG emissions, but it argued it was not statutorily  
15 required to do so, in contravention of the plain language of the Clean Air Act, and undisputed  
16 facts in the record (many in Ecology’s own reports) that additional actions are needed to stem  
17 the tide of global warming. November 19, 2015, Order at 3. The Court explicitly found that  
18 Ecology’s existing efforts to address climate change were inadequate. *Id.* at 7.  
19

20 Finally, there are no circumstances that would make an award of fees unjust. Petitioners  
21 have devoted a significant amount of time on this matter for the last two years of their lives,  
22 taking time off from school to attend arguments and meetings with Governor Inslee and  
23 Ecology staff, and communicating the science and need for action to media outlets all over the  
24 world. Against all odds, Petitioners prevailed in forcing their sovereign government to take  
25 action to protect their fundamental rights from climate change. According to Governor Inslee,  
26

1 “[i]t’s a powerful statement that these kids took legal action to fight for the future of our planet  
2 - - for their future. I’m grateful that they did. Their generation has so much more at stake when  
3 it comes to climate change.” Rodgers Decl. Exh. 1. An award of fees under these  
4 circumstances would not be unjust.

5  
6 **D. Petitioners Are Entitled To Enhanced Rates.**

7 RCW 4.84.350 caps attorneys’ fees to an hourly rate of \$150.00, but authorizes the  
8 Court to increase rates if it determines there has been an increase in the cost of living, or there  
9 is a special factor that justifies a higher fee. RCW 4.84.340. Here, both conditions justify  
10 enhanced hourly rates of \$400.00 for Attorney Rodgers and \$450.00 for Attorney Olson for the  
11 work performed in this case. There has been a substantial increase in the cost of living in the  
12 Puget Sound region since 1995. Rodgers Decl. ¶ 5, Ex.2. Further, Petitioners’ counsel are  
13 entitled to enhanced rates, given their extensive background in environmental law, and the fact  
14 their expertise was needed in this case. *See* Rodgers Decl. ¶¶ 7-8; Olson Decl. ¶¶ 5-9.  
15 Enhanced rates of \$400.00 and \$450.00 are reasonable and consistent with RCW 4.84.350.  
16 Petitioners have incurred far more fees and costs than the statutorily-capped limit. Rodgers  
17 Decl., Ex. 3; Olson Decl., Exh. 2.

18  
19 **V. CONCLUSION & REQUEST FOR RELIEF**

20 For the reasons set forth herein, Petitioners respectfully request that the Court award  
21 them reasonable attorneys’ fees and costs in the amount of \$25,000.

22 Respectfully submitted this 26<sup>th</sup> day of May, 2016,

23  
24 s/ Andrea K. Rodgers  
25 Andrea K. Rodgers, WSBA #38683  
26 Western Environmental Law Center  
3026 NW Esplanade  
Seattle, WA 98117