

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

ADORA SVITAK, a minor child, by and
through her guardian, JOYCE SVITAK;
TALLYN LORD, a minor child, by and
through his guardians, JUSTIN LORD and
SARA WETSTONE; HARPER LORD, a
minor child, by and through his guardians,
JUSTIN LORD and SARA WESTONE;
ANNA IGLITZIN, a minor child, by and
through her guardians, DMITRI IGLITZIN
and EILEEN QUIGLEY; JACOB IGLITZIN,
a minor child, by and through his guardians,
DMITRI IGLITZIN and EILEEN QUIGLEY;
COLIN SACKET, a minor child, by and
through his guardians, BJ CUMMINGS and
TOM SACKETT,

Plaintiffs,

vs.

STATE OF WASHINGTON; CHRISTINE
GREGOIRE, in her official capacity as
Governor of Washington state; TED
STURDEVANT, in his official capacity as
Director of the Department of Ecology;
PETER GOLDMARK, in his official capacity
as Commissioner of Public Lands; PHIL
ANDERSON, in his official capacity as
Director of the Department of Fish & Wildlife,

Defendants

NO. 11-2-16008-4 SEA

AMENDED COMPLAINT FOR
DECLARATORY & INJUNCTIVE RELIEF

1. This is a lawsuit for declaratory relief for breach of the state’s fiduciary obligation to protect the atmosphere from the effects of climate change and to act in the best interests of Washington’s children and future generations of this state. The Plaintiffs respectfully request this Court to enter judgment declaring: (1) the State of Washington holds the atmosphere, along with the state’s navigable waters, lakes, streams, tidelands, shorelands, public lands, fish and wildlife resources, in trust for the present and future citizens of the state of Washington pursuant to the Public Trust Doctrine; (2) the state of Washington has an affirmative fiduciary duty to establish and enforce limitations on the levels of greenhouse gas (GHG) emissions necessary to protect and preserve these critical public trust resources; (3) the state of Washington’s fiduciary duty to protect public trust resources is defined by the best available science; and (4) the state of Washington has breached its fiduciary duty to protect public trust resources by failing to exercise its right of control over these critical natural resources in a manner that applies the best available science, promotes the public’s interest in these natural resources and does not substantially impair the resources. The Plaintiffs also seek injunctive relief directing the Defendants to exercise and implement their fiduciary duties to protect public trust resources, including the atmosphere, by developing a plan that promotes the public’s interest in public trust resources and does not substantially impair the resources, and that specifies and requires carbon dioxide reduction measures of at least 6% on an annual basis, based upon identification of 2012 as the year carbon emissions in Washington peak, sufficient to achieve a target of at least 350 ppm by the end of this century.

INTRODUCTION

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2 2. There is no greater duty of parents than the protection and safety of their children.
3 Likewise, there is no greater duty of our State government than the protection and safety of its
4 citizens, born and yet to be born. Our atmosphere is what allows humans to exist and flourish on
5 earth. It contains a blanket of gases that have naturally allowed the earth’s climate to remain in
6 balance so the planet is not too hot or too cold, allowing human civilization and the earth’s
7 biodiversity to develop. But, when human activity disrupts that atmospheric equilibrium,
8 jeopardizing the safe climate-zone, human life on earth is placed in grave danger. The
9 atmosphere, essential to human existence, is an asset that belongs to all people. As keeper of the
10 public trust, the state of Washington is responsible, as perpetual trustee, for the protection and
11 preservation of the atmosphere for the benefit of present and future generations. The law is clear
12 that the state may not manage the trust resource in a way that substantially impairs the public
13 interest in a healthy atmosphere.
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16 3. Today we are confronted with no less than an atmospheric emergency. Our atmosphere
17 is already out of balance and is increasingly getting worse, accelerated over the last thirty years
18 to a climate warmer than has been experienced on earth for 800,000 years. This acceleration has
19 been caused primarily by human activity and, if continued, will result in a changed world that
20 threatens destruction of nature and human existence as we know it. People of our state, the
21 United States and the world are ever increasingly being subjected to the environmental impacts
22 of a climate-changed world and are at further risk of an impending catastrophe. If our state
23 government, as a trustee of the atmosphere and other public trust resources, does not take
24 immediate extraordinary action to protect, preserve and bring the atmosphere back into balance,
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1 all of nature is at risk. It is our children and our children's children who will suffer the harms
2 and losses caused by our lack of action. It is our action that is necessary to protect life on earth.

3 4. If we want to protect and keep our state and the world safe for our children, our
4 government must accept now its fiduciary responsibility mandated by its trust obligation. Our
5 children, Plaintiffs ADORA SVITAK, TALLYN LORD, HARPER LORD, ANNA IGLITZIN,
6 JACOB IGLITZIN, and COLIN SACKETT ("Our Children") are already experiencing serious
7 environmental, economic, physical, emotional and aesthetic injuries as a result of our
8 government's actions and inactions. If our State government continues to contribute to this
9 atmospheric crisis, those injuries will intensify and expand. A failure immediately to take bold
10 action to measure up to its duty to protect and preserve Earth's safe climate-zone is causing and
11 will continue to cause irreparable harm to these plaintiffs and all citizens of this State.
12 Immediate action is imperative. Once we pass ever-nearing tipping points, feedbacks will be
13 triggered exacerbating the conditions of the already accelerated heating of the planet and we will
14 then not be able to prevent the ensuing harm. A failure to act guarantees the collapse of nature.
15 Nature has sustained our life here, but the catastrophic consequences of our changing climate can
16 result in a planet totally foreign to human civilization.

17 5. The responsibility to protect and preserve our atmosphere is the solemn duty of our
18 government. This mandate requires the government to protect and preserve that which belongs
19 to all of its citizens and to prevent uses of those assets that substantially harm and injure our
20 citizens' and our offspring's interest in public trust resources. The sovereign's fiduciary duty in
21 this instance is defined by the best available science, specifically scientists' concrete
22 prescriptions for carbon reductions. Scientists have clearly expressed the minimum carbon
23 dioxide reductions that are needed to restore the Earth's climate equilibrium, and the requisite
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1 timelines for implementation of those reductions. Defendants may not disclaim this fiduciary
2 duty, and are subject to an ongoing mandatory duty to preserve and protect these resources.

3 6. Defendants, by their ongoing actions of conducting “business as usual,” by failing to take
4 meaningful action to reduce and regulate the state of Washington’s contribution of GHG
5 emissions into Earth’s atmosphere (as defined by what is required by best available science),
6 cumulatively resulting in global heating, ocean acidification, melting icecaps and ice sheets,
7 biodiversity loss and extreme weather events, have breached their duty as trustees.

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9 7. For the past 200 years, starting with the industrial revolution, the burning of fossil fuels,
10 such as coal and oil, together with worldwide, massive deforestation have caused an enormous
11 increase in the atmospheric concentrations of heat-trapping greenhouse gases or “GHGs.” These
12 gases prevent heat from escaping to space, like the glass panels of a greenhouse. Over geologic
13 time, the extent of these gases in the atmosphere changed and fluctuated but had reached an
14 equilibrium -- Earth’s human-safe climate zone -- which is necessary to life as we know it.
15 However, as the concentrations of these gases have continued to increase in the atmosphere, the
16 Earth's temperature is climbing above Earth’s safe climate zone. According to data from the
17 National Oceanic and Atmospheric Administration (“NOAA”) and the National Aeronautics and
18 Space Administration (“NASA”), the Earth's average surface temperature has increased by about
19 .67° to .8°C (1.2 to 1.4°F) in the last 100 years. However, the acceleration of that increase has
20 intensified over the last thirty (30) years. In fact, the ten (10) warmest years on record (since
21 1850) have all occurred since 1995. Coupled with the increase in the temperature of the Earth,
22 other aspects of the climate are also changing and those changes are likewise intensifying, *e.g.*:
23 rainfall patterns, snow and ice cover, and sea levels.
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1 8. Global climate changes are currently occurring faster than even the most pessimistic
2 scenarios presented in the 2007 Intergovernmental Panel on Climate Change (“IPCC”). Several
3 respected scientific studies conclude that a further increase of average annual temperatures of 2°
4 C (3.6° F) above current levels will cause severe, widespread and irreversible impacts. If our
5 government does not accept its sovereign responsibility and duties and if immediate action is not
6 taken, the future is likely to bring increases of 3 to 11 degrees F (on average) above current
7 levels. The consequences will be the destruction of nature as known to mankind and the death of
8 many millions of people.

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10 9. To return to Earth’s safe energy balance and protect its natural systems and to comply
11 with its public trust obligation, the state of Washington must reduce its portion of the United
12 States’ share of annual carbon dioxide emissions to draw down atmospheric carbon dioxide by
13 about 40 parts per million (“ppm”) by the end of this century. To limit average surface heating
14 to no more than 1° C (1.8° F) above pre-industrial temperatures (on average), concentrations of
15 atmospheric carbon dioxide must be reduced to no more than 350 ppm. Today, carbon dioxide
16 concentrations have already reached 390 ppm. Under the business as usual scenario, carbon
17 dioxide concentrations will likely exceed 400 ppm by 2016. To prevent this from happening it is
18 essential that we act now to reduce emissions and draw down carbon dioxide from the
19 atmosphere.
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22 10. If we in Washington do not immediately react to this crisis and act swiftly to reduce
23 carbon dioxide emissions into the atmosphere, the environment in which humans and other life
24 have thrived will no longer exist. If we do not act immediately to reduce carbon emissions into
25 the atmosphere, Our Children and future generations of children in this State will face a planet
26 that, in many geographical areas, may be largely uninhabitable. The law to protect Washington’s
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1 critical natural resources exists, and this court should enforce the State's public trust law where
2 the other branches of government have failed in their fiduciary responsibilities to protect the res.
3 The State of Washington is not only a significant contributor to this harming of the atmosphere,
4 but it also has the capacity and the technology to reduce emissions if we so desire. If we do not
5 act now to deal with this situation in a meaningful and substantial way, an irreversible collapse
6 of the Earth's natural systems is inevitable.
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8 **HOW WE HAVE CHANGED THE EARTH'S CLIMATE SYSTEM**

9 11. We human beings have lived on an ideal planet for the last 12,000 years, the time during
10 which human civilization has developed, i.e. the Earth's atmospheric amounts of GHGs,
11 including CO₂ and water vapor were "just right" to maintain the climate in which we have lived
12 and thrived. The Earth's atmosphere has far lower GHG levels than those of Venus, which is too
13 hot, and more than those of Mars, which is too cold. During these 12,000 years, coastlines, sea
14 levels, and global average temperatures have remained relatively constant, allowing the
15 development of ports, commerce and other elements of modern human civilization, such as
16 large-scale agriculture.
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18 12. GHGs in the atmosphere act somewhat like a blanket over the Earth that prevents some
19 of the heat emitted by the surface from escaping to space. More GHGs in the atmosphere mean
20 more heat is retained on Earth, with less radiating out to space. Without this greenhouse effect,
21 the global average surface temperature of our planet would be about 0°F (-8°C) instead of 59°F
22 (15°C). Scientists have understood this basic mechanism of global energy balance since the mid-
23 nineteenth century.
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25 13. Since the pre-industrial period, we human beings have significantly altered the chemical
26 composition of Earth's atmosphere and its climate system. We have changed the atmosphere
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1 and its climate system by engaging in activities that produce or release GHGs into the
2 atmosphere – burning fossil fuels, driving cars, raising livestock on an industrial scale, and
3 cutting down forests. Although much excess CO₂ is absorbed by the oceans and by plants
4 (chiefly forests), the increase of GHG concentrations resulting from historic and current human
5 activities has altered the Earth’s ability to maintain the delicate balance of the energy it receives
6 from the sun and radiates back into space. This human-induced global energy imbalance has
7 caused most of the global warming over the last fifty (50) years or so.

9 14. The current CO₂ concentration in our atmosphere is 390 ppm (compared to the pre-
10 industrial concentration of 280 ppm). Current atmospheric CO₂ concentrations are likely the
11 highest in at least 800,000 years.

12 15. Concentrations of other GHGs in the atmosphere have also increased from human
13 activities. Atmospheric concentrations of methane (CH₄), for example, have increased nearly
14 150% since the pre-industrial period, and they too are higher than at any time in at least the last
15 800,000 years. Concentrations of nitrous oxide (N₂O) have also increased.

16 16. These increases have to be considered in light of the lifetime of GHGs in the atmosphere.
17 In particular, a substantial portion of every ton of CO₂ emitted by humans persists in the
18 atmosphere for as long as a millennium or more. The concentrations of GHGs in the atmosphere
19 therefore are the cumulative result of historic and current emissions.

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22 **EARTH’S ATMOSPHERIC CLIMATE EMERGENCY:**
23 **WE ARE AT THE TIPPING POINT**

24 17. As the State defendants have recognized, global heating is significantly and adversely
25 impacting the Earth’s climate and inevitably our way of life. *See* Washington Executive Order
26 07-02 (Feb. 7, 2007) (“there is scientific consensus that increasing emissions of greenhouse
27 gases are causing global temperatures to rise at rates that have the potential to cause economic
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1 disruption, environmental damage, and a public health crisis.”). As indicated above, the grave
2 concern of the moment and the urgency and importance of this case is the clear acceleration in
3 the rise of GHG in the atmosphere. Driven by what we had all perceived as a better life, we have
4 permitted GHGs to intensify dramatically over earth’s most recent history. In the last thirty
5 years, that acceleration of change has intensified as the Earth has been warming at a rate three
6 times faster than that over the last hundred years. This is a known fact based on thermometer
7 readings from around the globe that date from the 1800s as well as data recently gathered by
8 satellites.
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10 18. Because of year-to-year variations in these thermometer readings, as with daily readings,
11 scientists compare temperature differences over a decade to determine patterns. Using this
12 decadal scale, the surface of the planet has warmed at a rate of roughly 0.3 to 0.4°F (0.15 to
13 0.2°C) per decade since the late 1970s. As a result of this accelerated global warming, the Earth
14 is now within 1.8°F (1°C) of its highest temperature in the past million years. In other words, we
15 humans are now experiencing a system we have never seen before, and we are heading for a
16 climate that has not existed on this planet for at least a million years, a time when human life as
17 we know it did not exist.
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20 19. There is strong evidence and grave concern that Earth’s temperature has already
21 increased to the extent that deleterious positive feedback loops or “tipping points” are now upon
22 us. Dr. James Hansen, a leading climate scientist with the NASA Goddard Institute for Space
23 Studies and Columbia University Earth Institute, together with Makiko Sato, has addressed this
24 issue as recently as January of 2011.¹ Dr. Hansen has been at the cutting edge of this science
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28 ¹ James E. Hansen & Makiko Sato, *Paleoclimate Implications for Human-Made Climate Change*
5 (January 18, 2011), available at
AMENDED COMPLAINT FOR DECLARATORY &
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1 since the late 1960s and his scientific conclusions as to expected events as a result of global
2 warming have been more accurate than anyone else alive. His conclusion now, following thirty
3 (30) years of human societies' negligent inaction, is that the earth has been taken out of
4 equilibrium by excessive CO₂ concentrations in the atmosphere.

5 20. The "tipping point" concept is that climate can reach a point where, without any
6 additional forcing (e.g., additional releases of CO₂ into the atmosphere) rapid changes will
7 proceed practically out of our control. Dr. Hansen points to two areas of great concern today
8 involving the Arctic Sea Ice and the West Antarctic Ice Sheet. Arctic sea ice loss is magnified
9 by the positive feedback of increased absorption of sunlight, as global warming initiates sea ice
10 retreat. The West Antarctic ice loss can be accelerated by several feedbacks, once ice loss is
11 substantial. Importantly, there are two definitions within the term "tipping point." First, the
12 *tipping level* is the global climate forcing that, if long maintained, gives rise to a specific
13 consequence; and second, *the point of no return*, is a state beyond which the consequence is
14 inevitable, even if climate-forcing mechanisms are reduced. A point of no return can be avoided,
15 even if the tipping level is temporarily exceeded. But, climate forcing must be returned below
16 the tipping level before irreversible changes occur.²

17 21. Dr. Hansen concludes that Earth today, with global temperature having returned to at
18 least the Holocene Maximum (about 8000 years ago) is poised to experience strong amplifying
19 polar feedbacks in response to even modest additional global mean warming:

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Continued growth of greenhouse gas emissions, for just another decade,
practically eliminates the possibility of near-term return of atmospheric
composition beneath the tipping level for catastrophic effect.³

http://www.columbia.edu/~jeh1/mailings/2011/20110118_MilankovicPaper.pdf (last visited
April 10, 2011).

² *Id.* at p. 10.

³ *Id.* at p. 13.

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2 22. Dr. Hansen further concludes that present levels of CO₂ in the atmosphere, with the
3 existing warming in the pipeline, are already deleterious.⁴ Sea level rise as a result will already
4 be at least several meters, which is potentially devastating to many of Washington's coastal
5 communities. Today's accelerating mass losses from Greenland and West Antarctica heightens
6 concern of their stability.⁵

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8 23. To avoid the consequences of *the point of no return*, and to preserve the climate, requires
9 that most remaining fossil fuel carbon on this planet is never emitted into the atmosphere, even if
10 it is available for human use and consumption.⁶ Dr. Hansen suggests an initial target of 350 ppm
11 of CO₂ in the atmosphere by the end of the century. This target however, has to be reassessed on
12 a regular basis as the effects of ongoing warmth on ice sheet mass are observed.⁷

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14 24. Another cause for concern, as Dr. Hansen points out,⁸ is the methane contained in
15 permafrost. It is like a sleeping giant that has been asleep for tens of millions of years, but the
16 rising temperatures are causing it to awaken. Because much of the Arctic permafrost overlays
17 old peat bogs, scientists conclude that thawing of the permafrost will release vast amounts of
18 CO₂ into the atmosphere that will further increase global warming to even more dangerous
19 levels. The methane contained in that permafrost is estimated to be twice the amount of methane
20 in the atmosphere today. Like the polar feedback accelerating mass losses of ice from Greenland
21 and West Antarctica, the permafrost carbon feedback (PCF) amplifies surface warming due to
22 the release into the atmosphere of carbon currently frozen in permafrost.
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26 ⁴ *Id.* at p. 11.

27 ⁵ *Id.* at p. 11.

28 ⁶ *Id.* at p. 11.

⁷ *Id.* at p. 13.

⁸ *Id.* at p. 4.

CLIMATE CHANGE IN WASHINGTON STATE

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2 25. As Defendant Gregoire has proclaimed, “the effects of climate change are already being
3 felt in the state of Washington in the form of average yearly temperatures rising faster over the
4 20th Century than the global average, mountain glaciers in the North Cascades losing up to a
5 third of their area since 1950, snow pack in the Cascades declining by 35%, peak spring river
6 runoff occurring ten to thirty days earlier and the proportion of stream flow that arrives in
7 summer decreasing as much as 34% in sensitive river basins.”⁹ Defendant Gregoire has declared
8 that “Washington is particularly vulnerable to the impacts of climate change, and without
9 additional action to reduce carbon emissions, the severity of the impacts will negatively affect
10 nearly every part of Washington’s economy and environment.”¹⁰ The Washington Department
11 of Ecology (“Ecology”) has warned that “the science is clear that we must move forward quickly
12 to reduce greenhouse gas (GHG) emissions in order to mitigate its effects. Without action,
13 climate change will negatively affect nearly every part of Washington’s economy through
14 changes in temperature, sea level, and water availability.”¹¹

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17 26. To date, in spite of this recognition of the severity of the climate crisis, as recent as
18 December 2010, defendant Ecology concluded that “total GHG emissions in Washington for
19 2008 were 101.1 million metric tons carbon dioxide equivalent (CO₂e), 9 percent more than 1990
20 emissions. Ecology projects that the policies the state has already implemented to reduce GHG
21 emissions will result in relatively constant emissions between now and 2020.” *Id.* Allowing the
22 state to proceed under this “business as usual” scenario of constant, or minimally reduced, GHG
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25 ⁹ Washington Executive Order 07-02 (Feb. 7, 2007).

26 ¹⁰ Washington Executive Order 09-05 (May 21, 2009).

27 ¹¹ Department of Ecology Climate Policy Group, *Path to a Low Carbon Economy: An Interim*
28 *Plan to Address Washington’s Greenhouse Gas Emissions*, available at
www.ecy.wa.gov/biblio/1001011.html (December 2010) (last visited April 30, 2011) (hereafter
“*Path to a Low Carbon Economy*”).

1 emissions is causing the destruction of the state’s critical natural resources in violation of its
2 public trust obligation.

3 27. Washington is particularly vulnerable to climate change and thus the state must take bold
4 action to protect the state’s public trust resources on behalf of its citizens. The Governor has
5 acknowledged, “effective and immediate action to reduce greenhouse gas emissions – preferably
6 at the federal level but at the regional or state level as necessary – is essential to the future well
7 being of all Washingtonians.”¹² The Public Trust Doctrine requires the State to take immediate
8 and swift action to protect the critical natural resources of this State.
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10 28. The predicted environmental and human impacts of climate change in Washington are
11 severe and well documented. The University of Washington Climate Impacts Group estimates
12 that temperatures in the Pacific Northwest will increase by 3.2°F by 2040.¹³ Consequences of
13 increased temperatures include decreased snow pack, decreased water availability for agriculture,
14 and reduced freshwater salmon habitat due to increased stream temperatures.¹⁴ Hotter
15 temperatures coupled with decreased precipitation will increase wildfire danger, threatening the
16 state’s forests, delicate ecosystems, and rural populations.¹⁵ Shifting rainfall patterns and
17 temperatures may adversely affect forest productivity, water availability, and food availability
18 for migratory birds.¹⁶ Warmer winters are already altering bird migration and scientists warn
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24 ¹² Washington Executive Order 09-05 (May 21, 2009).

25 ¹³ See University of Washington Climate Impacts Group, *Washington Climate Change Impacts*
26 *Assessment 1* (2009), available at <http://cses.washington.edu/db/pdf/wacciareport681.pdf> (last
visited May 3, 2011).

27 ¹⁴ *Id.*

28 ¹⁵ *Id.*

¹⁶ See Washington Dep’t of Ecology, *What is Climate Change*, available at
<http://www.ecy.wa.gov/climatechange/whatis.htm> (last visited April 17, 2011).

1 that climate change may lead to the extinction of many bird species.¹⁷

2 29. Rising temperatures have the potential to cause a public health crisis.¹⁸ The Climate
3 Impacts Group predicts that higher summer temperatures will increase the number of heat-related
4 deaths in Washington, especially among those over age 65.¹⁹ Under a moderate warming
5 scenario, the greater Seattle area will experience 101 excess heat-related deaths in 2025 and 156
6 excess heat-related deaths annually by 2045.²⁰ Reduced air quality due to climate change will
7 cause an estimated 132 additional deaths annually by 2050.²¹

8 30. The environmental and public health impacts of climate change cannot be separated from
9 the impacts on Washington's economy.²² A 2006 report by Ecology, *Impacts of Climate Change*
10 *on Washington's Economy: A Preliminary Assessment of Risks and Opportunities*, indicates that
11 climate change will likely cause increased water prices, decreased dairy revenue, and increased
12 State expenditures to fight wildfires.²³ Additionally, the report projects that decreased snowpack
13 will decrease Seattle's available water supply by millions of gallons per day unless the City
14 spends millions of dollars on conservation projects.²⁴ Either option will significantly impact
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19 ¹⁷ National Audubon Society, *Bird Movements Reveal Global Warming Threat in Action*,
20 Audubon Magazine (February 2009), available at <http://www.audubon.org/newsroom/press-releases/2009/birds-movements-reveal-global-warming-threat-action> (last visited April 17, 2011).

21 ¹⁸ Exec. Order No. 07-02 (2007).

22 ¹⁹ See *Washington Climate Change Impacts Assessment 1*, *supra* note 13.

23 ²⁰ *Id.* at 2.

24 ²¹ *Id.*

25 ²² See Dep't of Ecology & Dep't of Comm'y, Trade & Econ. Dev., *Growing Washington's*
26 *Economy in a Carbon-Constrained World* (December 2008), available at
27 <http://www.ecy.wa.gov/pubs/0801025.pdf> (last visited May 3, 2011) (describing climate change
28 as "the economic and environmental issue of our lifetime").

²³ Dep't of Ecology and Dep't of Community, Trade and Economic Development, *Impacts of*
Climate Change on Washington's Economy: A Preliminary Assessment of Risks and
Opportunities (November 2006), available at <http://www.ecy.wa.gov/pubs/0701010.pdf> (last
visited May 3, 2011).

²⁴ *Id.* at 41.

1 Seattle and its residents. Rising sea levels due to melting glaciers and related effects on local
2 substrates will likely adversely affect low-lying agricultural areas such as the Skagit River Delta
3 and communities such as Tacoma and Olympia that sit just above sea level.²⁵ For example,
4 Tacoma could experience a rise in sea level of two feet within fifty years.²⁶ These rising waters
5 will impact commerce flowing through the port as well as recreational activities.²⁷ While
6 climate change may bring some new economic opportunities to the area,²⁸ current projections
7 indicate that the negative environmental, health and economic impacts will outweigh the
8 positive. As the Legislature recognized, “emissions must be reduced significantly below current
9 levels to avert catastrophic climate change.”²⁹
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11 **CLIMATE CHANGE IS PRESENTLY DAMAGING THE PUBLIC WELFARE AND**
12 **WILL RESULT IN UNIMAGINABLE CONSEQUENCES**

13 31. The Earth will continue to warm in reaction to concentrations of CO₂ from past emissions
14 as well as future emissions. Warming already in the pipeline is mostly attributable to climate
15 mechanisms that slowly heat the Earth climate system in response to atmospheric CO₂. This lag
16 between GHG increases and climate warming, along with the very long lifetime of CO₂ in the
17 atmosphere, demands that emissions reductions begin immediately in order to minimize future
18 human-induced warming.
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20 32. Paleoclimate (Earth history) data provide evidence that major climate change can occur
21 in decades, and that the consequences would be much more severe, and even disastrous, if a 2°C
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25 ²⁵ *Id.* at 63.

26 ²⁶ *Id.* at 65.

27 ²⁷ *Id.*

28 ²⁸ *See Id.* at 7; *see also Growing Washington’s Economy in a Carbon-Constrained World 5,*
29 *supra note 22* (emphasizing that a strong climate change policy can create a strong green
30 business climate).

²⁹ RCW 80.80.005(1)(b).

1 (3.6°F) change above preindustrial temperatures occurs over decades rather than hundreds of
2 years.

3 33. There are at least three reasons the present, human-induced global warming is
4 particularly significant. First, past global warming/cooling of a similar magnitude occurred
5 before human civilization. Second, global warming is happening far more rapidly than in many
6 past times, giving both humans and other forms of life only short and therefore infeasible time to
7 adapt to the changes. Human civilization and the crops and foods on which it depends have
8 developed within a very narrow set of climatic conditions. With the human population so large,
9 with civilization so complex, centered on coastal cities and dependent on water supplies fed by
10 distant ice and snow melt, and with the great disparities in wealth between and within countries
11 and regions, we will find it nearly impossible to adapt to all of the climate change impacts in the
12 quick time-frame in which they will occur.

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15 34. Third, and perhaps most important, the climate change we are now experiencing is
16 caused largely by human activity. This means that unlike past climate change events, humans
17 can act to mitigate or even reverse this warming before it causes catastrophic and irreversible
18 effects. Stopping, or at least greatly curtailing, the activities that discharge greenhouse gases,
19 primarily burning of fossil fuels and deforestation, and encouraging activities such as
20 reforestation that remove CO₂ from the atmosphere, can greatly reduce global warming and its
21 accompanying consequences within the lifetimes of today's children.
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24 **WASHINGTON'S PUBLIC TRUST OBLIGATION.**

25 35. Plaintiffs bring this action to enforce the Defendants' mandatory obligation under the
26 public trust doctrine, which requires the Defendants to hold vital natural resources in "trust" for
27 present and future generations of its citizens.
28

1 [T]he sovereign’s duty to manage its natural resources recognized in the public
2 trust doctrine is not time limited, and the primary beneficiaries of the sovereign’s
3 exercise of its public trust are those who have not yet been born or who are too
4 young to vote. Thus, the sovereign authority to regulate natural resources is
5 circumscribed by its duty to manage natural resources well for the benefit of
6 *future* generations. And when the sovereign exercises this authority, by executive
7 order, legislative enactment or public initiative, the tenets of the public trust
8 doctrine must be satisfied.

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10 *Citizens for Responsible Wildlife Mgmt. v. State*, 124 Wash. App. 566, 577, 103 P.3d 203, 208
11 (2004) (concurring opinion, C.J. Quinn-Brintnall). These public trust resources, including the
12 atmosphere, are so vital to the well-being of our people that they must be protected by
13 distinctive, long-standing judicial principles. The Washington Supreme Court has defined the
14 public trust doctrine as the principle “that the sovereignty and dominion over this state’s
15 tidelands and shorelands, as distinguished from title, always remains in the state and the state
16 holds such dominion in trust for the public.” *Caminiti v. Boyle*, 107 Wash.2d 662, 669-70, 732
17 P.2d 989 (1987). The State Supreme Court has also acknowledged that the public trust
18 principles that have always existed in Washington law can be traced back to the Code of
19 Justinian, the English common law, and the common law of the United States.³⁰ *Id.* at 998, 668-
20 69; *see also Rettkowski v. Dept. of Ecology*, 122 Wash.2d 219, 858 P.2d 232, 239-40 (1993)
21 (dissenting opinion, Guy, J.) (“The [public trust] doctrine has been recognized since ancient

22 ³⁰ “The theory underlying [the public trust] doctrine can be traced from Roman Law through
23 Magna Carta to present day decisions.” *Montana Coalition for Stream Access, Inc. v. Curran*,
24 210 Mont. 38, 47, 682 P.2d 163, 167 (1984). The Romans recognized: “The things which are
25 naturally everybody’s are: air, flowing water, the sea, and the sea-shore.” Caesar Flavius
26 Justinian, *The Institutes of Justinian*, Book II, Title I, Of the Different Kind of Things (533).
27 Likewise, under English common law, “There are some few things which . . . must still
28 unavoidably remain in common . . . Such (among others) are the elements of light, air, and water
29 . . .” *Geer v. State of Connecticut*, 161 U.S. 519, 668 (1896) (citing William Blackstone, 2 BL
30 Comm. 14). The public trust doctrine was incorporated into the colonial charters when the
31 American colonies were first established. *Martin v. Waddell*, 41 U.S. 367, 413 (1842).
32 Following the American Revolution, the doctrine was likewise adopted into the American
33 common law.

1 times. The Institutes of Justinian, a compilation and restatement of the Roman law first published
2 in 533 A.D., states: “[T]he following things are by natural law common to all -- the air, running
3 water, the sea and consequently the seashore.” J. Inst. 2.1.1 (J. Moyle trans. 3d ed. 1896”).

4 36. The atmosphere, including the air, is one of the most crucial assets of the public trust.
5 Original American public trust doctrine cases focused on navigable waters and submersible
6 lands. However, as society industrialized, the doctrine expanded accordingly to different
7 geographic and other modern concerns. Indeed, courts, in this state and elsewhere, have
8 emphasized the flexibility of the doctrine to meet changing societal concerns. “Since as early as
9 1821, the public trust doctrine has been applied throughout the United States ‘as a flexible
10 method for judicial protection of public interests’” *Weden v. San Juan County*, 135 Wash.2d
11 678, 698, 958 P.2d 273 (1998) (internal citations omitted); *see also Orion Corp. v. State*, 109
12 Wash.2d 621, 641, 747 P.2d 1062 (1987) (quoting *Wilbour v. Gallagher*, 77 Wash.2d 306, 316,
13 462 P.2d 232 (1969) (“Recognizing modern science’s ability to identify the public need, state
14 courts have extended the doctrine beyond its navigational aspects. We have had occasion to
15 extend the doctrine beyond navigational and commercial fishing rights to include ‘incidental
16 rights of fishing, boating, swimming, water skiing, and other related recreational purposes . . .
17 .’”).

18 37. The atmosphere is “a subject of public concern to the whole people of the state.” *Illinois*
19 *Central*, 146 U.S. at 455. Other jurisdictions have already recognized the applicability of the
20 public trust doctrine to air generally. *National Audubon Society v. Superior Court of Alpine*
21 *County*, 658 P.2d 709, 720 (1983); *Majesty v. City of Detroit*, 874 F.2d 332, 337 (6th Cir. 1989);
22 Haw. Const. art. XI, §1; La. Const. art. IX, §1; *State ex rel. Town of Westerly v. Bradley*, 877
23 A.2d 601, 606 (R.I. 2005)); Pa. Const. art. I, §27. And in Washington, our constitution, and the
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1 decisions of the Washington Supreme Court referencing the Code of Justinian which recognized
2 air as a public trust resource basis, indicate that the atmosphere is necessarily, squarely within
3 the ambit of the public trust.

4 **THE STATE'S FIDUCIARY OBLIGATION TO PROTECT THE ATMOSPHERE IS**
5 **DEFINED BY BEST AVAILABLE SCIENCE**

6 38. To protect Earth's climate for these Plaintiffs, for Our Children and other children, we
7 must restore Earth's energy balance. The best available science shows that if the planet once
8 again sends as much energy into space as it absorbs from the sun, this will restore the planet's
9 climate equilibrium.

10
11 39. Scientists have accurately calculated how Earth's energy balance will change if we
12 reduce long-lived greenhouse gases such as carbon dioxide. Humans are currently causing a
13 planetary energy imbalance of approximately six-tenths of one watt. We would need to reduce
14 CO₂ emissions by about 40 ppm to increase Earth's heat radiation to space by six-tenths of one
15 watt, if the net non-CO₂ forcing continues to be roughly zero. That reduction would bring the
16 atmospheric carbon dioxide amount back to about 350 ppm.

17
18 40. The best available science also shows that to protect Earth's natural systems, average
19 global peak surface temperature must not exceed 1° C above pre-industrial temperatures this
20 century. To prevent global heating greater than 1° C and to protect Earth's oceans (an essential
21 harbor of countless life forms and absorber of GHGs), concentrations of atmospheric CO₂ must
22 decline to less than 350 ppm by the end of this century. However, today's atmospheric CO₂
23 levels exceed 390 ppm and are steadily rising.

24
25 41. Even if global CO₂ emissions were instantaneously halted – i.e., if fossil fuel emissions
26 and deforestation were abruptly terminated in 2011 -- it would still take until around 2060 before
27 CO₂ levels would decline to below 350 ppm. If global fossil fuel CO₂ emissions continue to
28

1 grow at the rate of the past decade (about two percent per year) up until the time that emissions
2 are terminated, and termination does not occur until 2030, when CO₂ levels have reached about
3 450 ppm, CO₂ would not return to 350 ppm until about 2250, even if emissions were halted in
4 2010. With a 40-year delay (to 2050), CO₂ levels would surpass 500 ppm, and would not return
5 to 350 ppm until around year 3000.

6
7 42. Even restoring the planet's energy balance will not immediately stop warming and sea
8 level rise that is already in the pipeline, but it would help keep those rises relatively under
9 control, and subject to the control of human investment and ingenuity. It would also prevent
10 climate change from becoming a huge force for species extinction and ecosystem collapse.

11
12 43. Fossil fuel emissions must decrease rapidly if atmospheric CO₂ is to be returned to a safe
13 level (below 350 ppm) in this century. Improved forestry and agricultural practices, for example,
14 can provide a net drawdown of atmospheric CO₂, primarily via reforestation of degraded lands
15 that are of little or no value for agricultural purposes, helping to return us to 350 ppm.

16
17 44. To have the best chance of reducing the concentration of CO₂ in the atmosphere to 350
18 ppm by the end of the century and avoid heating more than 1 degree Celsius over pre-industrial
19 temperatures, the best available science concludes that atmospheric carbon dioxide emissions
20 need to peak in 2012 and then begin to decline at a global average of 6% per year through 2050
21 and 5% per year through 2100. In addition, carbon sequestering forests and soils must be
22 preserved and replanted to sequester an additional 100 gigatons of carbon through the end of the
23 century. These reductions are necessary to draw down the excessive CO₂ from the atmosphere
24 and to fulfill the state's public trust responsibilities.
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HOW THE STATE IS BREACHING ITS FIDUCIARY DUTY

1
2 45. In 2008, the Washington State Legislature enacted RCW Ch. 70.235, in which the
3 Legislature found that Washington State should be a leader in climate change policy and
4 mandated limitation and reduction of GHG by specified amounts. RCW 70.235.005. RCW
5 70.235.020(1)(a) establishes the following GHG limits and reductions: by 2020, reduce overall
6 emissions of GHG in the state to 1990 levels; by 2035, reduce overall GHG emissions to twenty-
7 five percent below 1990 levels; and by 2050, reduce overall GHG emissions to fifty percent
8 below 1990 levels, or “seventy percent below the state’s expected emissions that year.”
9

10 46. The best available science illustrates that the GHG emissions limits and reductions
11 established by RCW 70.235.020(1)(a) are inadequate to protect the atmosphere and other public
12 trust resources. First, RCW 70.235.020 does not specify the year of peak emissions, which is a
13 critical component of any meaningful CO₂ emission reduction strategy. Second, even assuming
14 emissions peak in the next few years, although RCW 70.235.020 may lead to emissions levels in
15 2020 that are approximately 15% higher than what is required by best available science, the
16 levels in 2035 and 2050 would be over twice and 3.5 times higher, respectively, than what is
17 required by best available science. Furthermore, Ecology has already recognized that the
18 strategies detailed in the plan adopted by the state pursuant to RCW 70.235.020(1)(b) are both
19 inadequate to achieve these statutory targets and/or not being implemented.³¹
20
21

22 47. In December 2010, Defendant Ecology reported to the Legislature that “Ecology projects
23 that the policies the state has already implemented to reduce GHG emissions will result in
24 relatively constant emissions between now and 2020. Unfortunately, this means that the state is
25
26
27

28 ³¹ *See Path to a Low Carbon Economy.*
AMENDED COMPLAINT FOR DECLARATORY &
INJUNCTIVE RELIEF

1 not on track to meet its statutory reduction limit for 2020 and beyond.”³² Allowing business as
2 usual emissions will cumulatively add to atmospheric carbon dioxide concentrations at a time
3 when declining emissions are critical to avoid tipping points.

4 **JURISDICTION AND VENUE**

5 48. Plaintiffs have a right to bring this action pursuant to the Uniform Declaratory Judgment
6 Act (“UDJA”), RCW 7.24.

7
8 49. This Court has jurisdiction over this matter under the UDJA, RCW 7.24 and under RCW
9 7.40 for the issuance of injunctive relief under the grant of jurisdiction to superior courts through
10 Article IV, Section 6 of the Washington Constitution.

11 50. The relief requested is authorized pursuant to RCW 7.24 (declaratory relief) and RCW
12 7.40 (injunctive relief).

13
14 51. There is a present, actual, and justiciable controversy between the parties, and a judicial
15 determination of the matter will be final and conclusive.

16 52. Venue lies in this county by virtue of RCW 7.24 and 4.08.050. The atmospheric trust is
17 located in this county and the Plaintiffs reside in this county.

18
19 53. The time is ripe for the judiciary to compel the state of Washington, *et al.*, to take
20 adequate and affirmative measures to protect our atmosphere and life on earth.

21 54. Plaintiffs have no adequate remedy at law.

22 **PARTIES**

23 **Plaintiffs**

24
25 55. Plaintiffs are Washington children of diverse backgrounds and residences who bring this
26 action because their personal and economic well-being is directly and uniquely dependent upon
27

28 ³² *Id.* at 1.

1 clean air, water, land, wilderness, fish and wildlife, and public lands; and is threatened with
2 injury from climate change due to increasing temperatures and excessive heat, rising sea levels,
3 loss of water resources, diseases and pests, loss of agricultural productivity, wild fire, changes in
4 precipitation patterns, extreme weather events, flooding, and the other consequences of climate
5 change described herein.

6
7 56. Plaintiff ADORA SVITAK is a citizen of the United States who resides in Redmond,
8 Washington. She is 13 years old. She is a beneficiary of the atmospheric trust and is owed a
9 fiduciary duty to protect public trust resources, including the atmosphere, by the State of
10 Washington. Adora's early passion for reading inspired a love for writing and set the stage for
11 her future work as a youth activist. Adora works passionately to inspire kids and adults to love
12 learning, writing and thinking, through her immense desire to know and understand history and
13 human nature. Adora's ultimate goal is to help others. She has published several books and has
14 dedicated her young life to teaching and serving others. Adora travels immensely to spread her
15 vision and wish for humans to live in peace and harmony with each other and the planet Earth.
16 Adora is concerned about the effects of global warming on her interests and those of her fellow
17 citizens.
18

19
20 57. Plaintiffs TALLYN and HARPER LORD are citizens of the United States who resides in
21 Seattle, Washington. They are three and two years old, respectively. They are beneficiaries of
22 the atmospheric trust and are owed a fiduciary duty to protect public trust resources, including
23 the atmosphere, by the State of Washington. Tallyn's and Harper's guardians are bringing the
24 foregoing action on their childrens' behalf to protect their right to a clean and healthful
25 environment, their future quality of life, and their economic opportunities in Washington. The
26 children engage in outdoor activities year around and will increasingly experience dead and
27
28

1 dying forests, low flows and restricted recreation in warmer rivers, diminished fish and wildlife
2 populations within the state, drought and lower snow accumulations, as well as potential social
3 and economic upheaval – all as a result of climate change. Their guardians are concerned that
4 this will impact the quality of the Washington environment in which Tallyn and Harper live, as
5 well as the quality of their life in general. Plaintiffs TALLYN and HARPER LORD represent
6 the youngest living generation of public trust beneficiaries and who have a profound interest in
7 ensuring that the climate remains stable enough to ensure their rights to a livable future. A
8 livable future includes the opportunity to drink clean water and abate thirst, to grow food that
9 will abate hunger, to be free from imminent property damage caused by extreme weather events,
10 and to enjoy the abundant and rich biodiversity of Washington.
11

12
13 58. Plaintiff ANNA IGLITZIN is a 16-year-old female citizen of the United States living in
14 Seattle, Washington. She is a beneficiary of the Atmospheric Trust and is owed a fiduciary duty
15 by the State of Washington to protect her environment. She is devoted to changing the world
16 that she lives in, and that includes the air that she breathes. She believes that it is hard to take
17 substantial action when one has only an idea, but that ideas are the source of all change. Anna
18 hopes to implement her ideas to change the world, particularly to reverse the threat of global
19 climate disruption. She knows that often people who have great ideas, like children, are not
20 given their say or recognition for the part they can play in making a difference. However, Anna
21 is dedicated to changing this common perception and taking action so that others can do the
22 same.
23

24
25 59. Taking small steps as Community Service Coordinator of the Evergreen Chapter of the
26 National Honor Society, Anna knows it is of primary importance to help the community that she
27 lives in. Anna has volunteered at countless food banks, donated her possessions to those less
28

1 fortunate then she, and participated in funding for research to help prevent cancer through the
2 Relay for Life. Anna hopes to be able to make a significant change someday, but recognizes the
3 importance of forcing change by using a step-by-step process. Because she recognizes the
4 privileges that she has, Anna thinks it is all the more important that she make a difference. There
5 are so many people in the world who need help, and Anna believes it takes the commitment of
6 everyone on a daily basis to even start to hope to improve those lives.
7

8 60. Anna wishes to act to protect the atmospheric trust so that her generation can live in a
9 better world and this includes a healthy environment to thrive in. Anna knows the importance of
10 the environment that she lives in, and recognizes the devastating effects that global climate
11 change is having, and will have, on our world. It is important to her that people take the actions
12 that they can, even if they seem small, to improve their lives and those of others who maybe
13 don't have a say. Anna knows that she is affected by what the government has, up until this
14 point, not been acting on. She believes that it is the responsibility of local and national
15 governments to take steps toward the prevention of climate change. Based on the public trust
16 doctrine, Anna knows that her generation deserves a better environment than the one that is
17 slowly being destroyed. Anna is bringing this lawsuit in the interest of the environment she lives
18 in, so that her generation and those to come will thrive in perpetuity.
19
20

21 61. Plaintiff JACOB IGLITZIN is a 14-year-old citizen of the United States who lives in
22 Seattle, Washington. An 8th grader at University Prep, Jacob has spent much of his teenage life
23 dedicated to dealing with the unmistakable dangers of climate change. He is currently preparing
24 to lead a discussion seminar in his science class about the various opinions on climate change
25 and how the amount of greenhouse gas emissions can be reduced. Jacob spear-headed a
26 recycling initiative at his elementary school, Bertschi School. That activity resulted in his being
27
28

1 chosen to participate in a presentation made to Defendant Governor Gregoire at the
2 groundbreaking ceremony for a new building at the school, which was the first elementary
3 school in Washington to achieve LEED Gold certification from the U.S. Green Building Council
4 (USGBC), and which is one of the most environmentally-conscious schools in the country.
5 Before his graduation, Jacob was an active member in the Bertschi School's energy-saving
6 programs, and participated in making the school a winner of the 2008 "What Makes It Green?"
7 competition, the Green Piece Gold, High Tech Bronze, and Student's Love It Bronze awards, and
8 a Seattle Green Power grant from Seattle City Light. Outside of school, his community service
9 activities include picking up garbage in the Ravenna and Cowen Park area in the Ravenna
10 neighborhood of Seattle. Ravenna Creek, which runs through that neighborhood, has been
11 subject to projects that include daylighting portions of the creek (partly with the goal of restoring
12 native fish runs), building and maintaining trails, and restoring riparian habitat, all of which
13 pleased Jacob, who was thrilled to see his home bettered environmentally. Jacob believes that it
14 is the right of citizens—particularly members of the younger generation—to take it upon
15 themselves to develop clean energy initiatives and to tenaciously pursue the goal of a better,
16 more sustainable world, for however long it takes.

17
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20 62. Plaintiff COLIN SACKETT is a citizen of the United States of America who lives in
21 Seattle, Washington. He is 12 years old. He is a beneficiary of the atmospheric trust and is
22 owed a fiduciary duty to protect public trust resources, including the atmosphere, by the State of
23 Washington. He has traveled the world and has seen the beautiful natural places that could be
24 destroyed by global warming. He is also worried about the effects global warming will have on
25 the diverse ecology of today's world, and the consequences to the health of the planet, and
26 subsequently the health of himself and other humans of his generation if global warming is
27
28

1 allowed to continue unchecked. The worst effects are estimated to occur in 2050. He will be 52
2 then. He hopes to be healthy and active then, but that won't happen if we don't start taking steps
3 to fix the problem now. There will be fewer trees, which means even more carbon dioxide in the
4 atmosphere. Also, the obvious effects of climate change could lead to political and social
5 upheaval which could destroy the life he is entitled to. He will stand up for his rights, as well as
6 the rights of his peers.
7

8 63. The coastlines of the State of Washington, and those around the world, should resemble
9 the coastlines enjoyed by the Plaintiffs' parents and grandparents. The air quality of this state,
10 and around the world, should be the same quality as enjoyed by Plaintiffs' parents and
11 grandparents. The threat and likelihood of wildfires, disease, drought and extinction of species
12 in Washington, and around the world, should not be the result of our failure to address non-
13 natural CO₂ emissions.
14

15 64. The above-described health, recreational, scientific, cultural, inspirational, educational,
16 and aesthetic and other interests of Plaintiffs will be adversely and irreparably injured by
17 Defendants' failure to protect the atmosphere as a public trust resource, including establishing
18 and enforcing limitations on the levels of GHG emissions as necessary to reduce the level of CO₂
19 concentrations in the atmosphere to provide a livable future for these Plaintiffs and future
20 generations of this state.
21

22 65. The ongoing breach of the duty to preserve and protect the atmosphere for present and
23 future beneficiaries, which has not been abated or properly mitigated, will continue to adversely
24 and irreparably injure the Plaintiffs unless the relief requested here is granted. These are actual,
25 concrete injuries to Plaintiffs that would be redressed by the relief sought.
26
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1 66. Plaintiffs, as beneficiaries of public trust resources held by the State, have standing to
2 bring this action based on the public trust doctrine.

3 **Defendants**

4 67. Defendant State of Washington is a sovereign state of the United States and trustee of
5 trust resources pursuant to the public trust doctrine. The State, as trustee, has the duty to protect
6 and manage public trust resources for the benefit of its people, including future generations.
7 Defendant State of Washington has failed to implement our State's existing laws or mandate
8 additional laws for the benefit of the people of the state of Washington, including Our Children,
9 and to affirmatively protect the vital public trust resources of this state. It is our judiciary that
10 can and must enforce the law as dictated by this fiduciary responsibility and mandate the
11 preservation and protection of our Children and the public trust by requiring government action.
12

13
14 68. Defendant Governor Christine Gregoire is sued in her official capacity as the governor of
15 the State of Washington, who in her executive capacity is the highest ranking elected official in
16 the State, charged with overseeing State actions, including the State's implementation of its
17 public trust duties. Governor Gregoire has failed to preserve and protect the atmosphere and has
18 failed to implement effectively and enforce the laws under her jurisdiction for this purpose, for
19 present and future generations.
20

21 69. Defendant Ted Sturdevant is the Director of the Washington Department of Ecology.
22 Ecology is the state administrative agency charged with the regulatory oversight of ten major
23 environmental programs, all of which impact the protection and management of public trust
24 resources, including air quality; environmental assessment; hazardous waste and toxic reduction;
25 nuclear waste; shorelands and environmental assistance; spill prevention, preparedness and
26 response; toxics cleanup; waste reduction; water quality and water resources. Defendant
27
28

1 Sturdevant has failed to preserve and protect the atmosphere and has failed to implement
2 effectively and enforce the laws under his jurisdiction for this purpose, for present and future
3 generations.

4 70. Defendant Peter Goldmark is the Department of Natural Resources' ("DNR")
5 Commissioner of Public Lands. The DNR is the state administrative agency charged with
6 management of 5.6 million acres of state-owned land, including forest, agricultural, aquatic and
7 commercial lands. Washington courts have recognized that to implement its public trust duties,
8 the State has delegated authority to DNR to manage state-owned aquatic lands and resources for
9 the benefit of the public in accordance with the public trust doctrine. *Lake Union Drydock v.*
10 *Dep't of Nat. Resources*, 143 Wash. App. 644, 658 (2008). "Under the public trust doctrine,
11 DNR must protect various public interests in state-owned tidelands, shore lands and navigable
12 water beds." *Washington State Geoduck Harvest Ass'n v. Washington State Dept. of Natural*
13 *Resources*, 124 Wash.App. 441, 448, 101 P.3d 891, 895 (2004). Defendant Goldmark has failed
14 to preserve and protect the state-owned tidelands, shore lands and navigable water beds, and has
15 failed to implement effectively and enforce the laws under his jurisdiction for this purpose, for
16 present and future generations of this State in accordance with the public trust doctrine.
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20 71. Defendant Phil Anderson is the Director of the Department of Fish and Wildlife
21 ("DFW"), the state administrative agency charged with protecting, restoring and enhancing fish
22 and wildlife and their habitats while maintaining recreational and commercial opportunities
23 associated with fish and wildlife found in the state. "Title to animals *ferae naturae* belongs to
24 the state in its sovereign capacity and the state holds this title in trust for the peoples' use and
25 benefit." *Citizens for Responsible Wildlife Mgmt. v. State*, 124 Wash. App. 566, 569, 103 P.3d
26 203, 205 (2004). Defendant Anderson has failed to preserve and protect the state-owned fish and
27
28

1 wildlife, and has failed to implement effectively and enforce the laws under his jurisdiction for
2 this purpose, for present and future generations of this State in accordance with the public trust
3 doctrine.

4 **FIRST CLAIM FOR RELIEF:**
5 **DECLARATORY JUDGMENT –**
6 **THE ATMOSPHERE IS A PUBLIC TRUST RESOURCE**

7 72. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs
8 as though fully set forth herein.

9 73. Based upon the foregoing allegations, there exists between the parties an actual, present,
10 and justiciable controversy sufficient to warrant declaratory relief under pursuant to RCW 7.24
11 that the Defendants, as public trustees, have the affirmative obligation to protect and preserve the
12 atmosphere and other public trust resources (including but not limited to the air, waters,
13 submerged lands, fish and wildlife in the State of Washington) on behalf of the Plaintiffs as
14 beneficiaries of public trust resources.
15

16 74. The atmosphere is a resource common to all and intrinsically important to these Plaintiffs
17 and all citizens of Washington.

18 75. The quality of the atmospheric trust resource has a direct effect on other traditional public
19 trust resources such as waters, lands and wildlife in the State of Washington, as well as an effect
20 on the quality of life of the people of the State of Washington.
21

22 76. Plaintiffs seek a judicial determination on the current controversy existing between
23 Plaintiffs and Defendants, and a declaration that the atmosphere is a public trust resource and
24 requiring Washington to protect and manage the atmosphere as a public trust resource for the
25 present and future citizens of this State.
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1 77. Such a declaration is necessary and appropriate at this time so that Plaintiffs may
2 ascertain the right to have Defendants act in accordance with the public trust doctrine for the
3 atmosphere.

4 78. There is no adequate remedy at law for this injury to public trust resources.

5 79. Unless restrained by this Court, Defendants will continue to act as if the atmosphere is
6 not a public trust resource. Absent a declaration from this Court, Defendants approach to climate
7 change is likely to lead to repetitive litigation and a waste of public resources. Thus, Plaintiffs
8 seek declaratory relief that the atmosphere is a public trust resource and requiring Washington to
9 protect and preserve the atmosphere as a public trust resource for the present and future
10 generations of this State.
11

12
13 **SECOND CLAIM FOR RELIEF:**
14 **DECLARATORY JUDGMENT- THE STATE'S PUBLIC TRUST OBLIGATION**

15 80. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs
16 as though fully set forth herein.

17 81. The Defendants have an affirmative duty to protect and preserve the atmospheric trust as
18 a public trust resource, including establishing and enforcing limitations on the levels of GHG
19 emissions necessary to significantly slow the rate and magnitude of global warming so as to
20 prevent climate change from denying these Plaintiffs and future generations a livable future.
21

22 82. Plaintiffs seek a judicial determination on the current controversy existing between
23 Plaintiffs and Defendants, and a declaration that the State of Washington has an affirmative and
24 ongoing duty to protect and preserve the atmospheric trust as a public trust resource.

25 83. Such a declaration is necessary and appropriate at this time in order that Plaintiffs may
26 ascertain the right to have Defendants act in accordance with the public trust doctrine for the
27 atmosphere.
28

1 84. There is no adequate remedy at law for this injury to public trust resources. Defendants
2 will continue to fail to fulfill their public trust duties to protect atmospheric trust resources unless
3 a Court finds that they have such a duty.

4 85. Absent a declaration from this Court, Defendant's approach to climate change is likely to
5 lead to repetitive litigation and a waste of public resources. Plaintiffs seek declaratory relief that
6 Defendants' failure to exercise their affirmative obligation to protect and preserve the
7 atmosphere as a public trust resource is unlawful.
8

9 **THIRD CLAIM FOR RELIEF:**
10 **DECLARATORY JUDGMENT –**
11 **THE DEFENDANTS' FIDUCIARY OBLIGATION IS DEFINED BY**
12 **BEST AVAILABLE SCIENCE**

13 86. Plaintiffs incorporate by reference all of the allegations contained in the previous
14 paragraphs as though fully set forth herein.

15 87. The Defendants have a fiduciary duty defined by the best available science to protect and
16 preserve these critical public trust resources.

17 88. Plaintiffs seek a judicial determination on the current controversy existing between
18 Plaintiffs and Defendants, and a declaration that the State of Washington's public trust obligation
19 is defined by best available science.
20

21 89. Such a declaration is necessary and appropriate at this time in order that Plaintiffs may
22 ascertain the right to have Defendants act in accordance with the public trust doctrine for the
23 atmosphere and other public trust resources.

24 90. There is no adequate remedy at law for this injury to public trust resources. Defendants
25 will continue to fail to fulfill their public trust duties to protect atmospheric trust resources by
26 using best available science unless a Court finds that they have such a duty.
27
28

1 91. Absent a declaration from this Court, Defendants’ approach to climate change is likely to
2 lead to repetitive litigation and a waste of public resources. Plaintiffs seek declaratory relief that
3 Defendants’ failure to exercise their affirmative obligation to protect and preserve the
4 atmosphere as a public trust resource in a manner that complies with best available science is
5 unlawful.

6
7 **FOURTH CLAIM FOR RELIEF:**
8 **DECLARATORY JUDGMENT –**
9 **DEFENDANTS HAVE BREACHED THEIR FIDUCIARY DUTY TO PROTECT**
10 **PUBLIC TRUST RESOURCES FROM CLIMATE CHANGE**

11 92. Plaintiffs incorporate by reference all of the allegations contained in the previous
12 paragraphs as though fully set forth herein.

13 93. The Defendants have breached their fiduciary duty to protect public trust resources by
14 failing to exercise and by abdicating its sovereign right of control over these critical natural
15 resources in a manner that promotes the public’s interest in these natural resources and does not
16 substantially impair the resources.

17 94. Plaintiffs seek a judicial determination on the current controversy existing between
18 Plaintiffs and Defendants, and a declaration that the Defendants have breached their fiduciary
19 duty to protect and preserve public trust resources by failing to establish and enforce limitations
20 on the levels of GHG emissions as required by best available science to slow significantly the
21 rate and magnitude of global warming so as to prevent climate change from denying these
22 Plaintiffs and future generations of Washington citizens a livable future.

23 95. Such a declaration is necessary and appropriate at this time in order that Plaintiffs may
24 ascertain the right to have Defendants act in accordance with the public trust doctrine for the
25 atmosphere and other public trust resources.
26
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1 96. There is no adequate remedy at law for this injury to public trust resources. Defendants
2 will continue to fail to exercise its sovereign right of control over these critical natural resources
3 in a manner that promotes the public's interest in these natural resources and does not
4 substantially impair the resources.

5 97. Absent a declaration from this Court, Defendants' approach to climate change is likely to
6 lead to repetitive litigation and a waste of public resources. Plaintiffs seek declaratory relief that
7 Defendants' have breached their fiduciary duty to protect public trust resources.
8

9 98. Because the state defendants' failure to act to protect public trust resources violates the
10 Public Trust Doctrine, and it's constitutional, statutory and common law underpinnings, the
11 Plaintiffs are entitled to a judgment declaring such actions in violation of the law.
12

13 **FIFTH CLAIM FOR RELIEF:**
14 **INJUNCTIVE RELIEF**

15 99. Plaintiffs incorporate by reference all of the allegations contained in the previous
16 paragraphs as though fully set forth herein.

17 100. The Defendants failure to treat the atmosphere as a public trust resource is causing
18 irreparable harm to the Plaintiffs and the people of the State of Washington.

19 101. Plaintiffs seek a judicial order directing the Defendants to exercise and implement their
20 fiduciary duties to protect public trust resources, including the atmosphere, by developing a plan
21 that promotes the public's interest in public trust resources and does not substantially impair the
22 resources, and that identifies and requires carbon reduction measures of at least 6% on an annual
23 basis, based upon identification of 2012 as the year carbon emissions in Washington peak,
24 sufficient to achieve a target of at least 350 ppm by the end of this century.
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1 102. There is no adequate remedy at law for this injury to public trust resources. Defendants
2 will continue to neglect its public trust duties unless ordered otherwise.

3 103. Unless Plaintiffs are granted relief as set forth herein, they will suffer irreparable harm in
4 that Defendants' failures are injuring public trust resources to the detriment of the Plaintiffs, to
5 the resources themselves, and to the people of the State, including Plaintiffs and future
6 generations of this State.
7

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request declaratory and injunctive relief as
10 follows:

- 11 A. Declare that the atmosphere is a public trust resource.
- 12 B. Declare that the Defendants have a fiduciary obligation as public trustees of the
13 atmosphere to take affirmative action to protect the atmosphere and other public trust
14 resources from the impacts associated with climate change.
- 15 C. Declare that the Defendants' fiduciary obligation is what the best available science
16 defines as necessary to protect the atmospheric trust.
- 17 D. Declare that the Defendants' have violated their fiduciary obligation under the public
18 trust doctrine by failing to exercise its right of control over these critical natural
19 resources in a manner that promotes the public's interest in these natural resources
20 and does not substantially impair the resources.
- 21 E. Direct the Defendants to exercise and implement their fiduciary duties to protect
22 public trust resources, including the atmosphere, by developing a plan that promotes
23 the public's interest in public trust resources and does not substantially impair the
24 resources, and that identifies and requires carbon reduction measures of at least 6%
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1 on an annual basis, based upon identification of 2012 as the year carbon emissions in
2 Washington peak, sufficient to achieve a target of at least 350 ppm by the end of this
3 century.

4 F. Award Plaintiffs the costs associated with bringing this action, including reasonable
5 attorneys' and experts' fees.

6 G. Retain continuing jurisdiction over this matter and enforcement of its orders;

7 H. Award such other relief as the Court may deem just and proper in the face of this
8 atmospheric emergency.
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13 RESPECTFULLY SUBMITTED this 18th day of May, 2011,
14

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