

KING COUNTY  
The Honorable Holly R. Hill  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 14-2-25295-1 SEA

**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 HELAÏNA 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,

WASHINGTON DEPARTMENT OF  
ECOLOGY,

Respondent.

No. 14-2-25295-1 SEA

PETITIONERS' RESPONSE TO  
COURT'S AUGUST 12, 2015  
ORDER TO SHOW CAUSE

ORAL ARGUMENT REQUESTED

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## I. INTRODUCTION

Youth Petitioners hereby submit their response to the Court's August 12, 2015 Order to Show Cause. This response is supported by the attached declarations of Andrea K. Rodgers, Dr. James Hansen, Dr. Richard Gammon, Dr. Ove Hoegh-Guldberg, and Matthew McRae.<sup>1</sup> In June 2014, the Youth Petitioners submitted a Petition for Rulemaking with the Washington Department of Ecology ("Ecology") asking the agency to promulgate a rule that recommends to the Legislature that the emissions limits set forth in RCW 70.235 be revised to comport with best available climate science and that Ecology utilize its existing legal authority to mandate reductions of statewide carbon dioxide emissions across all sectors over which they have regulatory control. Youth Petitioners sought a science-based rule for climate and ocean protection in order to protect their fundamental and inalienable constitutional rights to a healthful environment and their rights as public trust beneficiaries.

In its August 7, 2015 Response to the Court's June 23, 2015 Court Order ("Ecology Update"), Ecology affirms its denial of Youth Petitioners' Petition for Rulemaking, but notes that it is following Governor Inslee's directive to initiate a rulemaking "to set a regulatory cap on carbon dioxide emissions and to develop reductions in carbon dioxide emissions using its existing authority." Ecology Update at 2. In essence, and without admitting as much, Ecology partially grants Youth Petitioners' Petition for Rulemaking by agreeing to use some of its existing authority to regulate carbon dioxide emissions pursuant to the Washington Clean Air Act. However, Ecology denies, in significant part, the substantive components of the Petition, thereby continuing to disregard its legal obligations to use the best available

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<sup>1</sup> These declarations are being submitted because Ecology's August 7, 2015 Update to the Court directly puts at issue the science of climate change in a manner that is fundamentally incorrect. As discussed in more detail below, these declarations are admissible pursuant to RCW 34.05.562.

1 climate science and to act in a manner that will protect the fundamental rights of Youth  
2 Petitioners. Because Ecology reaffirmed the denial of the substance of Youth Petitioners'  
3 Petition, a justiciable controversy remains and the legal claims are ripe for judicial resolution  
4 in Youth Petitioners' favor. Youth Petitioners respectfully request that the Court issue an  
5 order directing Ecology to use the most current climate science when promulgating the rule  
6 regulating carbon dioxide emissions and direct Ecology to implement its legal authority in a  
7 manner that protects the rights of Youth Petitioners and future generations of Washingtonians.  
8 In addition, given the urgency of the climate crisis and Ecology's demonstrated inability to  
9 fulfill its legal obligations to put the state on a path towards climate stability, Youth  
10 Petitioners respectfully request that the Court issue an order with a timeline within which  
11 Ecology must act to promulgate a science-based carbon dioxide reduction rule.  
12  
13

## 14 II. STATEMENT OF FACTS

### 15 A. Procedural Background

16 After briefing and oral argument in this case, on June 23, 2015, the Court issued an  
17 order remanding the petition back to Ecology "for reconsideration of its denial of the Youth  
18 Petition for Rulemaking in light of both [Ecology's] December 2014 report prepared under  
19 RCW 70.235.040 and the declaration of Dr. Pushker K[h]arecha attached to Petitioner's  
20 opening Brief to this Court." Order (June 23, 2015). The Court directed Ecology to report  
21 back to the Court by July 7, 2015 as to "whether it intends to amend or affirm its decision  
22 denying the Youth's Petition for Rulemaking." *Id.* The parties agreed to extend Ecology's  
23 deadline to August 7, 2015 so that the parties could engage in settlement negotiations. *See*  
24 Amended Second Unopposed Motion to Continue Deadline for Ecology's Response to the  
25  
26

1 Court's June 23, 2015 Order (filed July 6, 2015).

2 As part of their continued advocacy, on June 29, 2015, Youth Petitioners requested to  
3 meet in person with Governor Inslee and asked that he "direct Ecology to grant our Petition  
4 and commence a rulemaking process without delay." Declaration of Andrea K. Rodgers  
5 ("Rodgers Decl.") at ¶ 3, Exh. 1. The Governor granted the request and met with Youth  
6 Petitioners and their attorney on July 17, 2015. *Id.* at ¶ 4. In the meeting that lasted  
7 approximately 1.5 hours, Youth Petitioners reiterated their request that Governor Inslee direct  
8 Ecology to promulgate a rule regulating carbon dioxide emissions in a way that protects their  
9 future and asked the Governor to take advantage of this important moment to show that  
10 Washington is leading the way in putting the state on a path towards climate stability. *Id.*  
11 After the meeting with Governor Inslee, Youth Petitioners sent a follow-up letter thanking the  
12 Governor and reiterating their request for a rule that establishes a science-based carbon dioxide  
13 emissions reduction trajectory. *Id.* at ¶ 5, Exh. 2. Specifically, Youth Petitioners explained the  
14 proposed rule contained in the original Petition for Rulemaking:  
15

17 First, we have asked that Ecology recommend to the Legislature that the  
18 emissions reductions set forth in RCW 70.235 be revised to comport with best  
19 available climate science (subsections (1)(a) and (b)). Second, and perhaps  
20 more importantly, we asked Ecology to utilize their existing legal authority to  
mandate carbon dioxide reductions across all sectors over which they have  
regulatory control (subsections (1)(c), (d) and (2)).

21 *Id.* The day before Youth Petitioners' in-person settlement meeting with Ecology, Governor  
22 Inslee made a public announcement directing Ecology "to use Ecology's existing authority to  
23 develop a rule setting a cap on carbon dioxide emissions in Washington to achieve substantive  
24 reductions in carbon emissions." *Id.* at ¶ 6; Declaration of Stuart Clark ("Clark Decl.") at ¶ 7,  
25 Exh. B. Notably, the Governor specified that "[t]he regulatory cap on carbon emissions would  
26

1 force a significant reduction in air pollution and will be the centerpiece of Inslee’s strategy to  
2 make sure the state meets its statutory emission limits set by the Legislature in 2008,” meaning  
3 the limits established in RCW 70.235.020. *Id.* The Governor did not direct Ecology to  
4 promulgate a proposed rule based upon best available climate science targeted to achieving  
5 climate stability. *Id.* Subsequently, the parties were unable to reach a settlement of the legal  
6 claims raised in this case. Rodgers Decl. at ¶ 7.

8 On August 7, 2015, Ecology filed its Response to the Court’s June 23, 2015 Order.  
9 Ecology Update. In this document, Ecology states that it is not granting Youth Petitioners’  
10 Petition for Rulemaking “insofar as Ecology is not adopting the specific rule Petitioners are  
11 seeking.” *Id.* at 2. Ecology avers, however, that it is “initiating a rulemaking to adopt a rule  
12 under a directive issued by Governor Inslee on July 28, 2015” using its authority under the  
13 Washington Clean Air Act. *Id.* Ecology contends that its rulemaking will “set a cap on carbon  
14 dioxide emissions in Washington that will result in substantive reductions in carbon dioxide  
15 emission.” *Id.* at 8.

17 In its Update, Ecology summarizes its December 2014 Report that “notes the  
18 internationally agreed upon need to keep the global surface temperature increase to no more  
19 than 2°C” and that the “international community has coalesced around commitments to” 2°C.  
20 *Id.* at 3. Ecology predicts that at the 21st Conference of the Parties in Paris there will be a  
21 “legally binding climate agreement to curb carbon emissions” and that “[i]t is expected that this  
22 agreement will be based on commitments by UNFCCC members to keep within the 2°C  
23 target.” *Id.* at 3-4. Ecology then contradicts itself and says that “[i]t is not known if members  
24 of the UNFCCC will pledge to keep the temperature to 2°C or to a lower level, such as the 1°C  
25 target proposed by the Petitioners.” *Id.* at 5. Ecology admits that its December 2014 “report  
26

1 notes that the Washington State emission reductions currently required by RCW 70.235.020  
2 *are not sufficient to keep the rise in surface temperature below 2°C,*” let alone put Washington  
3 on a trajectory to achieve 350 parts per million (“ppm”) atmospheric carbon dioxide by the end  
4 of the century. *Id.* at 4 (emphasis added). Yet, RCW 70.235 contains the carbon dioxide  
5 emission targets that Governor Inslee has directed Ecology to achieve in its rulemaking.  
6

7 Ecology also “reviews” Dr. Kharecha’s expert declaration filed in support of Youth  
8 Petitioners’ Opening Brief. In response to Dr. Kharecha’s testimony that the December 2014  
9 Report fails to specify the amount of temperature rise that Ecology believes will stabilize the  
10 climate, Ecology points to the UNFCCC policy decision among nations regarding the 2°C  
11 limit, but cites to nothing in the record to suggest that limiting the global temperature increase  
12 to 2°C will lead to climate stability for purposes of compliance with RCW 70.235.020. *Id.* at  
13 5. Rather, Ecology claims that “the IPCC science on different climate scenarios that are  
14 predicted to occur at different levels of carbon dioxide emissions” constitutes the “current  
15 science on climate stabilization.” *Id.* at 6. Ecology does not consider, analyze, dispute, or  
16 address in any way the content of Dr. Kharecha’s scientific conclusions regarding a safe target  
17 of temperature increase, but rather ignores them because they do not constitute a “global or  
18 national assessment of climate change science,” as defined by Ecology. *Id.* at 7. Ecology does  
19 not respond to the substance of Dr. Kharecha’s testimony that “[t]he 2°C target cannot be  
20 considered a safe target for present or future generations, and is not supported by current  
21 science.” Declaration of Pushker Kharecha (“Kharecha Decl.”) at ¶ 16.  
22  
23

24 In its Update, Ecology re-briefs its argument that it is not required to adopt  
25 recommendations to the legislature by rule and states that it is not granting the Petition for  
26 Rulemaking, but “will begin rulemaking to set a cap on carbon dioxide emissions in



1 Washington that will result in substantive reductions in carbon dioxide emissions.” *Id.* at 8.  
2 Ecology also points to two “other steps to address climate change.” *Id.* The first is that  
3 Ecology “worked extensively” with Governor Inslee on a “comprehensive suite of bills to the  
4 Legislature addressing climate change,” all of which failed to pass. *Id.* The second is the clean  
5 fuel standard, an effort that has been discontinued. *Id.* at 8-9.  
6

7 Ecology states that it “has committed to initiating the formal Administrative Procedure  
8 Act rulemaking process in 2015, and adopting a final rule by the end of 2016.” Ecology  
9 Update at 9. On August 13, 2015, the Governor announced a different timeline for  
10 development of the rule. According to the Seattle Times, “[i]n a letter Thursday [August 13] to  
11 Ecology Director Maia Bellon, the governor said he hopes she will start the rule-making  
12 process in late September and have a proposed rule out for public review by January. He said  
13 he believes a rule could be adopted by summer 2016.”<sup>2</sup> The timeline imposed by the  
14 Governor, or described by Ecology, is not mandatory or otherwise legally enforceable.  
15

16 On July 21, 2015 Youth Petitioners submitted a public records request to Ecology  
17 seeking all documents developed and received by the agency regarding Ecology’s December  
18 2014 Report. Rodgers Decl. at ¶ 8, Exh. 3. On August 20, 2015 Ecology released twenty-eight  
19 documents in response to this public records request.<sup>3</sup> *Id.* at ¶ 9. The records show “existing  
20 limits [in RCW 70.235.020] are clearly inconsistent with the current climate facts and with  
21 limits adopted by most other jurisdictions that are actively addressing climate change.” *Id.* at ¶  
22

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23  
24 <sup>2</sup> *Inslee Wants New Rule By Next Summer To Cap Carbon Emissions*, THE SEATTLE TIMES, Aug. 13, 2015, available  
25 at <http://www.seattletimes.com/seattle-news/inslee-wants-new-rule-by-next-summer-to-cap-carbon-emissions/> (last  
26 visited Aug. 23, 2015).

<sup>3</sup> Because the Court ordered Ecology to review the December 2014 Report in its June 23, 2015 order remanding the  
matter back to Ecology, the agency documents regarding the development of the report should be considered part of  
the administrative record in this case. RCW 34.05.558.

1 10. There is no information in these documents supporting Ecology's position that the 2°C  
2 target is scientifically-based or safe for Youth Petitioners and future generations. *Id.* In  
3 addition, the records show that Ecology's decision not to make a recommendation to the  
4 Legislature as to how the limits should be updated was a political, not scientific, decision. *Id.*  
5 at ¶ 10. The recommendation to "hold off on amending our limits until after Paris" came from  
6 the Governor's office, *after* Ecology had developed a draft of the report that actually contained  
7 recommendations to the Legislature. *Id.* at ¶¶ 10-11. In fact, Ecology recommended "reducing  
8 emissions by 80 percent by 2050, as scientific assessments suggest is required to avoid the  
9 worst impacts of climate change." *Id.* at ¶ 11, Exh. 6. In the final draft sent to the Legislature,  
10 however, substantive recommendations were not included.  
11  
12

### 13 **B. Scientific Background**

14 Ecology, for the first time, takes a position on what carbon emissions targets it believes  
15 are "informed by science" and will "provid[e] generations to come with a secure climate  
16 future." Declaration of Hedia Adelsman ("Adelsman Decl.") at ¶ 5. In doing so, Ecology cites  
17 to information not contained in the original administrative record produced in this case. *See id.*  
18 Because there is no scientific support for Ecology's statements and Ecology significantly  
19 misstates the work of the Intergovernmental Panel on Climate Change ("IPCC") in its Update,  
20 Youth Petitioners submit the attached declarations of one of the world's foremost climate  
21 scientists, Dr. James Hansen, one of the world's most prominent experts on ocean acidification,  
22 Dr. Ove Hoegh-Guldberg, and one of the world's leading atmospheric scientists who co-  
23 authored the first scientific assessment by the IPCC and who is an adjunct Professor Emeritus  
24 of Atmospheric Sciences at the University of Washington, Dr. Richard Gammon, in support of  
25  
26

1 their Response. In addition, Youth Petitioners submit the declaration of Matthew McRae, a  
2 Climate and Energy Analyst to refute Ecology's unsupported factual statement that "it was  
3 impossible" for Washington to determine what its part should be in reaching global climate  
4 stabilization. Ecology Update at 4. All declarations are admissible pursuant to RCW  
5 34.05.562(1) and (2). The scientific work of Drs. Hansen and Hoegh-Guldberg was cited in  
6 Youth Petitioners' Petition for Rulemaking, but was never analyzed or addressed as part of  
7 Ecology's original or updated decisions denying the petition. Ecology's decision to submit  
8 additional testimony questioning the scientific basis for Youth Petitioners' Petition for  
9 Rulemaking and supporting the agency's decision not to grant the Youth's Petition for  
10 Rulemaking justifies the submission of these declarations in the interest of justice and to refute  
11 the misstatements of fact and science in Ecology's Update. RCW 34.05.562.  
12

13  
14 Dr. Hansen's declaration comprehensively refutes Ecology's claim that his and his  
15 colleagues' "opinions" concerning the 350 ppm target are the work of "one article" and not  
16 indicative of current climate science. Ecology Update at 7. On the contrary, Dr. Hansen's  
17 expert declaration draws on an extensive body of literature, including articles cited by the  
18 IPCC, to demonstrate that "the state of climate science, even through the year 2014, provided  
19 the State of Washington with far more than ample reason to abandon the fundamentally  
20 arbitrary 2°C mark as any guide to the formation of an adequate state program with respect to  
21 CO<sub>2</sub> emissions." Declaration of Dr. James Hansen ("Hansen Decl.") at ¶ 15-19.  
22

23 Dr. Hoegh-Gulberg's declaration similarly refutes Ecology's factual claims and adds  
24 further support to Youth Petitioners' claims in asserting that "a temperature rise of 2°C would  
25 seriously jeopardize ocean life, and the income and livelihoods of those who depend on healthy  
26 marine ecosystems." Declaration of Dr. Ove Hoegh-Guldberg (Hoegh-Guldberg Decl.") at ¶ 5.

1 Dr. Gammon's declaration offers further expert professional opinion regarding the IPCC  
2 process and further scientific testimony that a target of 2°C warming above preindustrial levels  
3 is categorically unsafe for Youth Petitioners and future generations of this state. Declaration of  
4 Richard Gammon ("Gammon Decl.") at ¶ 12. Both Dr. Hoegh-Guldberg's and Dr. Gammon's  
5 declarations point out that Ecology has fundamentally mischaracterized the IPCC's use of a  
6 2°C target. Hoegh-Guldberg Decl. at ¶ 5; Gammon Decl. at ¶ 7-8.

8 Matt McRae's declaration disputes Ecology's factual assertion that "[i]n December 19  
9 2014, when Ecology's report to the Legislature was written, it was impossible to determine  
10 what Washington's part should be." Ecology Update at 4. Mr. McRae oversaw the  
11 implementation of a carbon budget in the city of Eugene, Oregon, based on a "scientifically  
12 sound, transparent and replicable" methodology, that could easily be replicated for the State of  
13 Washington. Declaration of Matthew McRae ("McRae Decl.") at ¶ 8-9. Taken together, the  
14 attached expert declarations, as well as the scientific information contained in the Petition for  
15 Rulemaking, present clear evidence that Ecology's failure to promulgate a rule in accordance  
16 with best climate science poses grave risks to the climate, Youth Petitioners and future  
17 generations; that it is indeed possible for Ecology to calculate state-level emissions reductions  
18 targets in line with best available climate science as Youth Petitioners argue is legally required;  
19 and that Ecology's delay is folly.  
20  
21

### 22 **III. ARGUMENT**

#### 23 **A. Youth Petitioners' Legal Claims Are Still Live And Ripe For Judicial** 24 **Resolution**

25 Because Ecology's Update does not remedy the controversy or resolve Youth  
26 Petitioners' legal claims, and in fact provides further evidence of Ecology's unlawful conduct,

1 this case is poised for the Court to enter an order directing Ecology to promulgate a proposed  
2 rule regulating carbon dioxide emissions using best available climate science with a specific  
3 timeline within which to complete the rulemaking process. RCW 34.05.570(4)(b) (“A person  
4 whose rights are violated by an agency’s failure to perform a duty that is required by law to be  
5 performed may . . . seek[] an order pursuant to this subsection requiring performance.”). For  
6 the reasons set forth in Youth Petitioners’ Opening and Reply briefs previously filed with the  
7 Court, Ecology’s original and updated decision denying Youth Petitioners’ Petition for  
8 Rulemaking is unconstitutional, outside of Ecology’s statutory authority, and arbitrary and  
9 capricious. RCW 34.05.570(4)(c); *see* Youth Petitioners’ Opening Brief at 12-29; Reply Brief  
10 at 6-17. In the interest of efficiency and brevity, Youth Petitioners do not repeat those  
11 arguments, but rather incorporate them herein by reference.  
12

13  
14 For the additional reasons set forth below, Ecology’s Update confirms that Youth  
15 Petitioners’ legal rights are being, and will continue to be, impaired absent further relief from  
16 this Court. Further delay in resolving their legal claims, i.e., awaiting a final rule not based on  
17 the science of climate stability, will lock in the infringement of their rights and diminish the  
18 availability of a meaningful remedy simply because the climate system cannot afford further  
19 political maneuvering. Ecology already has violated the law; that violation is ongoing; and a  
20 judicial order, which ensures a meaningful remedy going forward, is essential given the  
21 irreversible consequences of further inadequate action not grounded in the current science.  
22

23 **1. Ecology’s Decision To Reduce Carbon Dioxide Emissions Targeted To RCW**  
24 **70.235 Is Unconstitutional, Exceeds Statutory Authority & Is Arbitrary And**  
25 **Capricious**

26 When Governor Inslee made the public announcement directing Ecology “to use

1 Ecology's existing authority to develop a rule setting a cap on carbon dioxide emissions" he  
2 specified that the rule will be designed "to make sure the state meets its statutory emission  
3 limits set by the Legislature in 2008." Clark Decl. at ¶ 7, Exh. B. Therefore, the rule that  
4 Ecology states it will promulgate is aimed to reduce carbon dioxide emissions to meet the  
5 targets set forth in RCW 70.235.020. However, Ecology admits that these targets "should be  
6 adjusted to better reflect the current science," "need to be more aggressive in order for  
7 Washington to do its part to address climate risks," and "are not sufficient to keep the rise in  
8 surface temperature below 2°C." Declaration of Andrea K. Rodgers Harris filed in Support of  
9 Youth Petitioners' Opening Brief, Exh. 1 ("Ecology's December 2014 Report") at 18; *see also*  
10 Ecology Update at 4. Ecology's decision to promulgate a rule aimed to satisfy these  
11 admittedly inadequate targets that will not protect Youth Petitioners' legal rights is  
12 unconstitutional,<sup>4</sup> outside the agency's statutory authority,<sup>5</sup> and arbitrary and capricious.  
13  
14

15 Arbitrary or capricious agency action is willful and unreasoning action taken without  
16 regard to attending facts or circumstances."<sup>6</sup> While the court generally gives some deference to  
17 an agency's interpretation of its own regulations, "[n]onetheless, the agency's interpretation  
18 does not bind [the court], and 'deference to an agency is inappropriate where the agency's  
19 interpretation conflicts with a statutory mandate.'" *Puget Soundkeeper Alliance v. Washington*,  
20 \_\_\_\_ Wn.2d \_\_\_\_, \_\_\_\_ P.3d \_\_\_\_, 2015 WL 4540664, at \*4 (Wash. Ct. App. July 28, 2015)  
21 (quoting *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 764, 153 P.3d 839 (2007)). An  
22

23 \_\_\_\_\_  
24 <sup>4</sup> Ecology's original and updated decisions are unconstitutional and violative of the Public Trust Doctrine for the  
25 reasons already articulated by Youth Petitioners. *See* Youth Petitioners' Opening Brief at 12-17 (fundamental right  
to a healthful and pleasant environment); 18-21 (Public Trust Doctrine); Reply Brief at 10-12 (fundamental right to a  
healthful and pleasant environment); 15-17 (Public Trust Doctrine).

26 <sup>5</sup> Ecology's original and updated decisions are outside of the agency's statutory authority for the reasons already  
articulated by Youth Petitioners. *See* Youth Petitioners' Opening Brief at 17-18; Reply Brief at 6-10.

<sup>6</sup> *Wash. Indep. Tel Ass'n v. Wash. Utils. & Transp. Comm'n*, 149 Wn.2d 17, 26, 65 P.3d 319 (2003).

1 agency's decision to move forward in direct contravention to the recommendations of its own  
2 experts is clear arbitrary and capricious decision-making. *Rios v. Dep't of Labor & Indus.*, 145  
3 Wn.2d 483, 508, 39 P.3d 961 (2002) (finding an agency's denial of a petition for rulemaking  
4 seeking a pesticide monitoring program arbitrary and capricious "because the report of its own  
5 team of technical experts had, in light of the most current research, deemed a monitoring  
6 program both necessary and doable"); *Cf. Puget Soundkeeper Alliance*, 2015 WL 4540664, at  
7 \*10 (quoting RCW 34.05.570(3)(h)) (finding that Ecology's order that is inconsistent with the  
8 agency's own rules "merits reversal unless the Department 'explains the inconsistency by  
9 stating facts and reasons to demonstrate the rational basis for inconsistency.'").  
10

11 Ecology has not presented a rational basis explaining its decision to deny Youth  
12 Petitioners' Petition for Rulemaking and instead promulgate a rule targeted to achieve  
13 compliance with the reductions set forth as a floor in RCW 70.235.020 that the agency  
14 previously found to be inadequate.<sup>7</sup> Regulating carbon dioxide to meet the minimum  
15 requirements of RCW 70.235.020 will not protect the legal rights of Youth Petitioners  
16 protected by the Washington State Constitution and Public Trust Doctrine, let alone achieve  
17 compliance with Ecology's mandate to, among other things, "preserve, protect, and enhance  
18 the air quality for current and future generations." RCW 70.94.011. Indeed, Ecology now  
19 recognizes "that the Washington State emission reductions currently required by RCW  
20  
21

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22 <sup>7</sup> As Youth Petitioners argued in its Opening Brief, "RCW 70.235 does not in any way limit Ecology's authority to  
23 promulgate the [proposed] rule; indeed, the statute only sets a floor for GHG emission limits and does not preclude  
24 Ecology from recommending [or adopting] more stringent limits pursuant to its statutory authority and constitutional  
25 obligations." Youth Petitioners' Opening Brief at 29. It would be illogical to interpret RCW 70.235 as the most  
26 stringent emission limits that Ecology can adopt. For example, would Ecology be in violation of the statute if it  
were to achieve emissions reductions of 26% below 1990 levels by 2035, instead of 25%? This would be an absurd  
result. See *Tingley v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007) (quoting *State v. J.P.*, 149 Wn.2d 444,  
450, 69 P.3d 318 (2003) ("A reading [of a statute] that produces absurd results must be avoided because 'it will not  
be presumed that the legislature intended absurd results.'") (internal quotations omitted)).

1 70.235.020 are not sufficient to keep the rise in surface temperature below 2°C,” the level  
2 Ecology contends, with no scientific support, will stabilize the climate. Ecology Update at 4,  
3 5-6. Ecology’s factual position is incorrect.

4 To protect Youth Petitioners’ legal rights, Ecology must promulgate the rule regulating  
5 carbon dioxide emissions based upon best available climate science contained in the  
6 administrative record in this case, which is not substantively contested and shows that “carbon  
7 dioxide emissions in Washington must be reduced . . . in line with a global trajectory of  
8 achieving climate stabilization and returning atmospheric carbon dioxide concentrations to  
9 approximately 350 ppm by the end of the century.” Kharecha Decl. at ¶ 11. Otherwise,  
10 Ecology is acting in violation of its legal obligations under the Washington State Constitution,  
11 Public Trust Doctrine, and statutory mandates (specifically, the Clean Air Act and RCW  
12 70.235.020 that requires Washington “to do its part to reach global climate stabilization  
13 levels”).  
14  
15

16 **2. Ecology’s Decision To Aim For The 2°C Target Is Unconstitutional, Exceeds**  
17 **Statutory Authority & Is Arbitrary And Capricious**

18 In the briefs previously filed in this case, Ecology “generally agree[d]” with the  
19 scientific allegations contained in Youth Petitioners’ Petition for Rulemaking. Ecology Resp.  
20 Br. at 20. Ecology originally proclaimed “science is not the issue in this case.” *Id.* However,  
21 Ecology’s Update makes it very clear that science is now *the* issue in this case. Ecology  
22 claims that it subscribes to the “UNFCCC assessment that the rise in average global surface  
23 temperature must be kept to less than 2°C above the preindustrial average.” Ecology Update at  
24 5-6; *see also* Adelsman Decl. at ¶ 5 (“This policy target of 2°C is informed by science and is  
25 the formally codified benchmark by which nations have agreed to measure the collective  
26



1 success in providing generations to come with a secure climate future.”). Ecology bases its  
2 determination solely on the testimony of one Ecology employee with no indication of her  
3 qualifications or training for rendering scientific opinions or her understanding of the IPCC’s  
4 function. In so doing, Ecology misinterprets the significance of the 2°C “policy target” in  
5 IPCC reporting, and ignores the fact that current science makes it clear that aiming for the 2°C  
6 target will lead to dangerous levels of carbon dioxide in the atmosphere. The record, and  
7 scientific reality, fails to support Ecology’s statements that aiming for the 2°C target will  
8 satisfy its legal obligations in this case.  
9

10  
11 **a. Adelsman’s Testimony Regarding the 2°C Target Should Be Excluded Or  
Entitled To No Weight**

12 In the Adelsman Declaration submitted with Ecology’s Update, there is no indication  
13 that she has any training, education, or experience in the area of climate or atmospheric  
14 science. While she does testify that she formulates “statewide policy positions on climate  
15 change,” Ecology is using her testimony to support their position that the 2°C target is  
16 “informed by science” and will “provid[e] generations to come with a secure climate future.”  
17 Adelsman Decl. at ¶ 5. The Court should not give any weight to her opinions regarding an  
18 appropriate scientific target for Washington because there is nothing in the record to suggest  
19 that Ms. Adelsman is qualified to testify on what scientific target will protect the legal rights of  
20 Youth Petitioners asserted in this case or put Washington on a path to climate stability. From  
21 her testimony, it is clear that Adelsman influences state policy decisions on climate change, but  
22 the law requires that carbon dioxide emissions limits designed to protect the rights of Youth  
23 Petitioners should be informed by science, not politics. *See, e.g.,* Youth Petitioners’ Opening  
24 Brief at 27-29; RCW 70.235.020; RCW 70.94.  
25  
26

1 Under ER 702, “[i]f scientific, technical, or other specialized knowledge will assist the  
2 trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an  
3 expert by knowledge, skill, experience, training, or education, may testify thereto in the form  
4 of an opinion or otherwise.” The trial court has discretion to admit expert testimony. *State v.*  
5 *Swan*, 114 Wn.2d 613, 655, 790 P.2d 610 (1990). Both educational background and practical  
6 experience can be sufficient to qualify a witness as an expert. *State v. Jones*, 71 Wn.App. 798,  
7 814, 863 P.2d 85 (1993). Here, there is nothing in the Adelsman declaration about her  
8 educational background, let alone her practical experience, with setting science-based carbon  
9 dioxide limits. There is simply no foundation for the Court to accept Adelsman’s testimony  
10 regarding the 2°C limit, and whether this limit protects Youth Petitioners’ legal rights.  
11 Therefore, Adelsman’s testimony on the appropriate science-based carbon dioxide emissions  
12 target should either not be admitted, or given no weight. *Stedman v. Cooper*, 172 Wn.App. 9,  
13 17, 292 P.3d 764 (2012) (“Conclusory or speculative expert opinions lacking an adequate  
14 foundation will not be admitted.”); *Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 357, 333  
15 P.3d 388 (2014) (“expert opinions lacking an adequate foundation should be excluded”).  
16  
17

18 In contrast, Dr. Kharecha, Dr. Hansen, Dr. Gammon, and Dr. Hoegh-Guldberg, all  
19 internationally renowned and qualified atmospheric science and ocean acidification experts,  
20 explain that Adelsman is quite misinformed about the scientific validity of the “2°C target.”  
21 *See infra* at Section III(A)(2)(b) and (c). Thus, no evidentiary value should be given to  
22 Adelsman’s testimony regarding the scientific target that will protect the legal rights of Youth  
23 Petitioners and achieve compliance with Ecology’s legal obligations. In the absence of  
24 Adelsman’s testimony, Ecology points to no science or scientific findings in the record  
25 supporting their position.  
26

1           **b. Ecology Misinterprets The Significance Of The 2°C Target**

2           Ecology contends that there is an “internationally agreed upon need to keep the global  
3 surface temperature increase to no more than 2°C.” Ecology Update at 3. That significantly  
4 misstates, and overstates, the significance of the 2°C target. First, there is certainly a practical  
5 need to keep temperature rise to less than 2°C, just as there is a need to keep temperature rise to  
6 less than 3°, 4°, 5°, or 10°. Hansen Decl. at ¶ 15. But that is a very different question than  
7 what increase in temperature is safe for Youth Petitioners and future generations for purposes  
8 of compliance with Ecology’s legal obligations.  
9

10           To answer that question, it is important to clarify what the IPCC does in order to  
11 understand what the 2°C target actually means. “The use of a 2°C temperature rise relative to  
12 pre-industrial levels is best understood as a political commitment informed by science, not a  
13 scientific assessment of absolutely “safe” levels of global warming.” Gammon Decl. at ¶ 7.  
14 The purpose of the IPCC’s reporting is as follows:  
15

16           “Readers should note that each major IPCC assessment has examined the impacts  
17 of multiplicity of temperature changes but has left political processes to make  
18 decisions on which thresholds may be appropriate.” In short, the IPCC’s findings  
19 are “policy-relevant, but not policy-prescriptive.”

20           Gammon Decl. at ¶ 7 (citations omitted). For that reason, “[t]he IPCC itself has neither  
21 established nor endorsed a target of 2°C warming over the preindustrial period as a limit below  
22 which the climate system will be stable, notwithstanding Ecology’s impressively convoluted  
23 argument to the contrary.” Hansen Decl. at ¶ 15; *see also* Gammon Decl. at ¶ 8 (“this does not  
24 mean that 2°C of warming is universally considered ‘safe’ from either a political or scientific  
25 point of view.”). The IPCC simply will not identify a “safe” emissions target because “each  
26 major IPCC assessment has examined the impacts of [a] multiplicity of temperature changes

1 but has left [it to the] political processes to make decisions on which thresholds may be  
2 appropriate.” Hansen Decl. at ¶ 16 (quoting IPCC, 2015: Climate Change 2014: Mitigation of  
3 Climate Change, Contribution of Working Group III to the Fifth Assessment Report at 125);  
4 *see also id.* at ¶ 18 (“[T]he IPCC has not expressly stated what level of warming is too  
5 dangerous, and it likely never will . . . .”); Gammon Decl. at ¶ 6 (“Ecology is also mistaken in  
6 believing that the outcome [of the] December 2015 UNFCCC Conference of Parties (COP) in  
7 Paris will prescribe or even help determine specific reduction targets for individual nations, let  
8 alone individual states within the United States.”).

10 Second, the evidence in the record demonstrates that the 2°C target for Washington  
11 State is arbitrary and capricious because it is not supported by science, nor is it compliant with  
12 Ecology’s legal obligations to protect the rights of Youth Petitioners and put the state on a path  
13 towards climate stability. As a factual matter, “the 2°C target originated from a decision by the  
14 European Union in 1996, almost twenty years ago.” Kharecha Decl. at ¶ 16. Indeed, in its  
15 own report Ecology acknowledges that “[m]any researchers are arguing that 3.6°F/2°C no  
16 longer constitutes the threshold of dangerous climate change, given the changes already seen in  
17 the climate system with the 1.5°F (0.8°C) of warming that occurred between 1880 and 2012.”  
18 December 2014 Report at 17; *see also* Gammon Decl. at ¶ 9 (“In the ensuing years, both  
19 UNFCCC discussions have considered targets lower than 2°C on the basis of more current  
20 climate science that indicates that a 2°C temperature [increase] will fail to avoid the worst  
21 effects of global warming.”).

24 Ecology anticipates that “the 2015 Paris Conference will include scientific debates on  
25 whether the 2°C temperature increase is an appropriate threshold to avoid dangerous climate  
26 change.” Ecology Update at 4. But this policy debate has been occurring for years, and will

likely continue. “For example, at the 2009 UNFCCC Conference of Parties the Alliance of Small Island States (AOSIS)—comprising largely of pacific nations such as Tuvalu and Micronesia, those most immediately impacted by climate change impacts such as sea level rise—explicitly rejected a 2°C target as posing an existential threat to their member nations (the ALBA group of Latin American countries supported an even more ambitious limit of 1°C).” Gammon Decl. at ¶ 8. Youth Petitioners do not ignore this ongoing policy debate, but it cannot be used to support Ecology’s erroneous legal position that aiming emissions reductions to achieving the 2°C target, or even worse, the targets in RCW 70.235.020, will protect the legal rights of Youth Petitioners given the undisputed science presented in this case.

Third, “the most recent IPCC synthesis of climate science strongly confirms that additional warming of 1°C (we are now at approximately 0.9°C above the preindustrial average) jeopardizes unique and threatened systems, including ecosystems and cultures, with certain natural systems and species of limited adaptive capacity considered ‘at very high risk.’” Hansen Decl. at ¶ 17 (quoting IPCC: 2014: Summary for Policymakers), Figure 1; *see also* Hoegh-Guldberg Decl. at ¶ 5 (discussing “the scientific consensus that we are already facing considerable and serious risk to a wide range of important ocean ecosystems at a temperature rise of approximately 0.9°C.”). Put simply, *any* additional warming causes increased levels of risk due to climate change. AR 12 at 5-1 (“Lower emissions of greenhouse gases will result in less warming.”). According to Dr. Hansen, “2°C warming will be very dangerous, and . . . if maintained (or exceeded) even for decades, will produce calamitous effects to human and natural systems alike.” Hansen Decl. at ¶ 18; *see also* Kharecha Decl. at ¶ 16 (“The 2°C target cannot be considered a safe target for present or future generations, and is not supported by current science.”); *id.* at ¶ 17 (“Earth’s paleoclimate history demonstrates that climate impacts

1 accompanying global warming of 2°C or more would be highly deleterious.”). According to  
2 Dr. Ove Hoegh-Guldberg, a world’s leading expert on ocean acidification and Lead Author for  
3 the oceans chapter for the Fifth Assessment Report of the IPCC, “[i]t is also clear from the  
4 heavily reviewed scientific consensus of the Fifth Assessment Report of the Intergovernmental  
5 Panel on Climate Change that it did not conclude that 450 ppm or 2°C warming are safe for  
6 ocean life, including calcifying organisms such as corals.” Hoegh-Guldberg Decl. at ¶ 5.  
7 “Allowing a temperature rise of up to 2°C would seriously jeopardize ocean life, and the  
8 income and livelihoods of those who depend on healthy marine ecosystems.” *Id.* Because  
9 there is nothing in the record to contradict Youth Petitioners’ experts’ scientific conclusions  
10 that a 2°C target will not protect Youth Petitioners’ rights and that more aggressive emissions  
11 reductions are required, Ecology’s decision cannot be upheld.  
12

13  
14 It is important to note that the scientific basis for the 350 ppm target proposed by Youth  
15 Petitioners in their Petition for Rulemaking is not simply “one article,” as Ecology suggests.  
16 Ecology Update at 7. Rather, the scientific prescription encapsulated in the Petition for  
17 Rulemaking “derives not only from the *Dangerous* study . . . but from much other work as well  
18 concerning climate sensitivity to various forcings, ocean mixing, impacts on natural and human  
19 systems, earth’s energy imbalance.” Hansen Decl. ¶ 10; Gammon Decl. at ¶ 11 (“the most  
20 current climate science mandates reducing atmospheric CO2 concentration to 350 ppm or  
21 below by the end of the century in order to avoid catastrophic harm to the planet.”).  
22 Furthermore, Ecology does not have the luxury to ignore best available climate science simply  
23 because it does not fit within the agency’s narrow reading of a “global or national assessment  
24 of climate science” in RCW 70.235.040. In fact, Ecology’s reading ignores the rest of that  
25 section that directs the agency to “consult with the climate impacts group at the University of  
26

1 Washington regarding *the science* on human-caused climate change . . . .” RCW 70.235.040  
2 (emphasis added). Ecology does not, nor can it, rationally conclude that the scientific basis for  
3 Youth Petitioners’ Petition for Rulemaking, and the scientific information submitted therein,  
4 does not qualify as “science on human-caused climate change.” *Id.*

5  
6 It is simply illegal for Ecology to aim its rule towards a 2°C target that the science  
7 shows “will produce calamitous effects to human and natural systems alike.” Hansen Decl. at  
8 ¶ 18. Ecology has a legal obligation to implement its delegated statutory authority in a fashion  
9 that protects, and does not violate, the laws of Washington. Ecology’s legal obligations in this  
10 case not only include its obligations to promulgate a rule regulating carbon dioxide emissions  
11 pursuant to the Clean Air Act,<sup>8</sup> but to implement its authority in a manner that protects Youth  
12 Petitioners’ fundamental and inalienable rights to a healthful and pleasant environment and to  
13 continued access to public trust resources. Because Governor Inslee has publicly proclaimed  
14 that Ecology’s rule to regulate carbon dioxide emissions using the Washington Clean Air Act  
15 will aim to achieve targets that do not even fulfill the 2°C target, i.e., RCW 70.235.020, let  
16 alone most current climate science, it is appropriate for this Court to enter an order directing  
17 Ecology to promulgate the proposed rule based upon best available, current climate science  
18 that has been presented to this Court. RCW 34.05.570(4).  
19  
20

21 **c. The Science To At Least Return To 350 ppm By The End Of the Century Is**  
22 **Undisputed**

23 What is perhaps most remarkable about this case is the information that is NOT

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24 <sup>8</sup> Indeed, evidence in the administrative record suggests, “Ecology cannot directly regulate all GHG emissions in the  
25 state under the Washington Clean Air Act through permits. For example, such an approach does not apply to the  
26 nearly half of Washington’s GHG emissions which are generated by transportation sources. Certain in-use,  
operational standards may provide other options for reducing GHG emissions from these sources.” AR 14 at 70.  
“In summary, though not ideal, the state’s Clean Air Act would provide a way for the state to reduce GHG  
emissions in *some* parts of the economy.” *Id.* (emphasis added).

1 contained in the administrative record nor in any of Ecology's legal briefs: what do scientists  
2 say is the safe level of carbon dioxide in the atmosphere that will protect the legal rights of  
3 Youth Petitioners and future generations? Ecology now states that the safe target is 2°C  
4 (Adelsman Decl. at ¶ 5), but as discussed above, this is a political "guiderail," not a  
5 scientifically-based target. Gammon Decl. at ¶ 9 ("more current climate science [] indicates  
6 that a 2°C temperature [increase] will fail to avoid the worst effects of global warming."). The  
7 only *science* on a safe level contained in the administrative record is the science provided by  
8 Youth Petitioners in their Petition for Rulemaking and briefs filed in this case. Dr. Kharecha  
9 has testified that "[u]nless action is undertaken without further delay to return the atmospheric  
10 concentration of CO2 to 350 ppm by 2100, Earth's climate system will be pressed toward and  
11 past points of no return." Kharecha Decl. at ¶ 10. Evidence in the record suggests that "there  
12 are several key reasons to reduce CO2 concentrations to 350 ppm by the end of this century."  
13 *Id.* at ¶ 15.

16 First, the human-caused atmospheric CO2 increase over the Industrial era (from  
17 280 ppm to 399 ppm) represents the single largest driving factor of global climate  
18 change over the last 50+ years. Second, a substantial share of any additional  
19 infusion of CO2 remains in the atmosphere for millennia (and while there,  
20 continuously acts to further heat the planet). Accordingly, Earth's temperature  
21 response to the enhanced greenhouse effect of the higher atmospheric CO2  
22 concentration is a function of not only recent emissions but the persisting share of  
23 prior emissions. Third, as a consequence of the long-lived nature of CO2 and the  
24 fact that human-derived emissions have already caused a substantial overshoot of  
25 the long-term safe atmospheric concentration, any substantial delay in  
26 undertaking effective action would render it effectively impossible to return the  
atmospheric CO2 concentration to 350 ppm within this century.

Kharecha Decl. at ¶ 15. According to Dr. Hansen, "we now find that *any* additional warming  
above present risks melting some of Greenland and much of Antarctica." Hansen Decl. at ¶ 21.  
The consequences of this additional warming are dire:



1 These developments – unless soon arrested through concerted, effective, and rapid  
2 climate action – may implicate the continuing viability of cities along the eastern  
3 seaboard, as well as much of coastal Washington and low-lying areas across the  
4 globe. These may be submerged, perhaps as soon as several decades from now –  
and thus lost irretrievably, at least for millennia, absent serious action to phase out  
fossil fuel emissions. The ensuing risk of economic and social breakdown is  
manifest.

5  
6 Hansen Decl. at ¶ 21. The science is clear on what must be done: “restore earth’s energy  
7 balance.” *Id.* at ¶ 24.

8 If atmospheric CO<sub>2</sub> is constrained and reduced to below 350 ppm, then,  
9 eventually, the rise in ambient temperature, should slow hopefully, the melting of  
10 the planet’s major ice sheets may cease. Restoration of lower atmospheric CO<sub>2</sub> in  
turn, require at this stage a rapid phase-out of fossil fuel emissions, among other  
important tasks.

11 *Id.* at ¶24; *see also* Gammon Decl. at ¶ 13 (“In my professional opinion, the emissions  
12 reduction plan set out in Dr. Hansen and his colleagues’ paper offers the most credible plan of  
13 preserving a safe climate and habitable planet for future generations.”).

14  
15 The need to keep carbon dioxide concentrations to 350 ppm by the end of the century is  
16 perhaps most pronounced in the context of ocean acidification. “[C]ritically important ocean  
17 ecosystems such as coral reefs are already severely threatened by present day carbon dioxide  
18 levels (400 ppm), and [] it is vitally important that atmospheric carbon dioxide levels are  
19 reduced to below 350 ppm.” Hoegh-Guldberg Decl. at ¶ 4. “Indeed, the best science available  
20 suggests that coral dominated reefs will *completely disappear* if carbon dioxide concentrations  
21 exceed much more than today’s concentrations.” *Id.* at ¶ 5 (emphasis added). Ecology does  
22 not, nor can it, contradict the science that Youth Petitioners have submitted in their Petition for  
23 Rulemaking. Ecology summarily claims that “[t]his policy target of 2°C is informed by  
24 science and is the formally codified benchmark by which nations have agreed to measure the  
25 collective success in providing generations to come with a secure climate future.” Adelsman  
26

Decl. at ¶ 5. But Ecology’s failure to include or reference in the administrative record the scientific underpinning for its conclusion that a 2°C target is safe is a fatal flaw and cannot be used as a reasoned basis to support its continued denial of Youth Petitioners’ Petition for Rulemaking.

**3. Ecology’s Decision To Defer To The IPCC Political Compromise Is Unconstitutional, Exceeds Statutory Authority & Is Arbitrary And Capricious**

Ecology has illegally deferred to the IPCC “to determine what Washington’s part in reaching global stabilization levels should be . . . .” Ecology Update at 5. This is both a procedural and substantive problem. First, under RCW 70.235.020 and .040, Ecology has the mandatory statutory duty to make recommendations to the Legislature as to what GHG emissions will put Washington on a track “to reach global climate stabilization levels” based on current climate science. RCW 70.235.020. Ecology also has delegated statutory authority to “preserve, protect, and enhance the air quality for current and future generations,” RCW 70.94.011, and implement its authority in a way that does not infringe upon citizens’ rights to a healthful and pleasant environment. *Puget Soundkeeper Alliance*, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.3d \_\_\_, 2015 WL 4540664 (Wash. Ct. App. July 28, 2015). Ecology cannot continue to evade its constitutional and statutory responsibilities to protect present and future generations of this state from climate change and assume that the IPCC will tell it what to do. Hansen Decl. at ¶ 18 (“[T]he IPCC has not expressly stated what level of warming is too dangerous, and it likely never will . . . .”); Gammon Decl. at ¶ 10 (“The State of Washington therefore has nothing to gain, except for further delay, from waiting for the outcome of the Paris Conference with respect to its statutory and constitutional obligations to protect the climate for future

1 generations.”). That kind of wishful thinking does not constitute legal compliance; rather it is  
2 “willful and unreasoning action taken without regard to attending facts or circumstances.”<sup>9</sup>

3 Second, Ecology stated “[i]n December 2014, when Ecology’s report to the Legislature  
4 was written, it was impossible to determine what Washington’s part should be.” Ecology  
5 Update at 4. That statement is contradicted by evidence in the record. Indeed, Ecology  
6 documents regarding the development of the December 2014 report show that in an earlier  
7 draft dated August 13, 2014 Ecology actually did make recommendations as to how RCW  
8 70.235 should be updated (80% reductions by 2015), but those recommendations were  
9 deleted. Rodgers Decl. at ¶ 11, Exh.6. An email sent from the Governor’s office commenting  
10 on the August 13 draft that contained the recommendations instructed Ecology that “we  
11 should hold off on amending our limits until after Paris . . . .” *Id.* at ¶ 10. Furthermore, Youth  
12 Petitioners’ Petition for Rulemaking, which was available to Ecology as of June 2014,  
13 contains the most current climate science detailing how to put Washington on a path towards  
14 climate stability. AR 7 at 60-63. Dr. Kharecha testimony confirms that carbon dioxide  
15 emissions in Washington must be reduced “in line with a global trajectory of achieving  
16 climate stabilization and returning atmospheric CO<sub>2</sub> concentrations to approximately 350 ppm  
17 by the end of the century.” Kharecha Decl. at ¶ 11; *see also* Hansen Decl. at ¶ 27.  
18  
19  
20

21 Indeed, other jurisdictions have embraced the scientific prescription to return  
22 atmospheric concentrations of carbon dioxide to 350 ppm by the end of the century. “On the  
23 opening day of the Copenhagen Conference, Grenada on behalf of AOSIS unequivocally  
24 advanced “a limit to temperature rise to no more than 1.5 degrees Celsius above pre-industrial  
25

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26 <sup>9</sup> *Wash. Indep. Tel Ass’n*, 149 Wn.2d at 26.

1 levels, which then requires greenhouse gas concentrations to be returned to 350 parts per  
2 million.” Gammon Decl. at ¶ 8. After determining based on the best current science that 350  
3 ppm was the top safe level of atmospheric carbon dioxide, the City of Eugene began preparing  
4 a community-wide carbon budget and emission reduction trajectory to put Eugene on the 350  
5 ppm trajectory. McRae Decl. at ¶¶ 5-8. The city’s peer-reviewed work, which is readily  
6 available for duplication at other local, state or national levels, can certainly be applied in the  
7 State of Washington, and does not depend upon any decisions by the IPCC or the 21st  
8 Conference of the Parties. *Id.* at ¶ 9. Therefore, it is arbitrary and capricious for Ecology to  
9 defer to the IPCC on the grounds that it was somehow unable to figure out how to determine  
10 what Washington’s path towards climate stabilization should be. Ecology’s approach simply  
11 sanctions more delay and exacerbates the legal violations asserted in this case.  
12  
13

14 **B. Ecology’s Updated Decision Continues To Violate Youth Petitioners’**  
15 **Fundamental Rights To A Healthful And Pleasant Environment**

16 A recent Washington Court of Appeals decision supports Youth Petitioners’ legal  
17 argument that Ecology has a legal responsibility to act in a manner that is consistent with the  
18 State Environmental Policy Act (“SEPA”). Specifically, the Court of Appeals ruled:

19 The Department’s interpretation of its rules and statutes is also inconsistent with  
20 its responsibility under the State Environmental Policy Act (SEPA), chapter  
21 43.21C RCW. SEPA “directs that, to the fullest extent possible: (1) The policies,  
22 regulations, and laws of the state of Washington shall be interpreted and  
23 administered in accordance with the policies set forth in this chapter.” RCW  
24 43.21C.030. Among those policies is the recognition of “the responsibilities of  
25 each generation as trustee of the environment for succeeding generations,” RCW  
26 43.21C.020(2)(a), and the recognition that “each person has a fundamental and  
inalienable right to a healthful environment and that each person has a  
responsibility to contribute to the preservation and enhancement of the  
environment.” RCW 43.21C.020(3). *Although these policies apply to the State  
generally, they speak with an insistent voice to the Department of Ecology. See,  
e.g., RCW 43.21A.010. By condoning violations of its own standards through this*

1        *permit, the Department has not acted in keeping with this trust.*

2        *Puget Soundkeeper Alliance*, 2015 WL 4540664, at \*10 (emphasis added). Similarly here, by  
3 declining to initiate rulemaking consistent with Youth Petitioners’ Petition for Rulemaking and  
4 disregarding best available climate science, Ecology has failed to fulfill its statutory  
5 responsibilities. Ecology’s decision to use its existing statutory authority to regulate carbon  
6 dioxide emissions under the Clean Air Act does not redress this violation because the rule will  
7 be targeted to achieve the admittedly inadequate emissions limits set forth in RCW 70.235.020  
8 and, according to Ecology, “will not apply to the nearly half of Washington’s GHG emissions  
9 which are generated by transportation sources.” AR 14 at 70. The evidence in the record  
10 overwhelmingly demonstrates that pursuing this path will not fulfill Ecology’s responsibilities  
11 “as trustee of the environment for succeeding generations,” RCW 43.21C.020(2)(a), and will  
12 abridge Youth Petitioners’ “fundamental and inalienable right[s] to a healthful environment . . .  
13 .” RCW 43.21C.020(3). Youth Petitioners need not wait a year for yet another decision by  
14 Ecology, one already destined to violate their legal rights. Without a court order now, that is  
15 precisely where Youth Petitioners will end up a year from now, causing judicial and regulatory  
16 inefficiency and further threatening their rights to a stable climate system and healthy oceans,  
17 and indeed their ability to ever obtain a meaningful remedy from their government.  
18  
19  
20

#### 21                    **IV.      CONCLUSION & REQUEST FOR RELIEF**

22                For the reasons set forth herein, Youth Petitioners respectfully request that the Court  
23 rule on these critical legal claims regarding the fundamental, inalienable rights of Youth  
24 Petitioners, vacate and set aside Ecology’s decisions denying the Petition for Rulemaking, and  
25 direct Ecology to initiate rulemaking on scientifically-based carbon dioxide emission limits for  
26

1 the state of Washington. Youth Petitioners have no other remedy at law for the irreversible  
2 threats to their inalienable rights as young citizens and should not be forced to wait until the  
3 rulemaking process ends to get a legal declaration regarding those rights. In addition, Youth  
4 Petitioners respectfully request that the Court grant such other relief as this Court deems  
5 appropriate, including but not limited to a timeline within which Ecology must act to  
6 promulgate the proposed rule.<sup>10</sup> Finally, Youth Petitioners request that fees and costs be  
7 awarded pursuant to RCW 4.84.350 and other applicable law.  
8

9 Respectfully submitted this 25<sup>th</sup> day of August, 2015.  
10

11 s/ Andrea K. Rodgers

12 Andrea K. Rodgers, WSBA #38683  
13 Western Environmental Law Center  
14 3026 NW Esplanade  
15 Seattle, WA 98117  
16 T: (206) 696-2851  
17 Email: [rodgers@westernlaw.org](mailto:rodgers@westernlaw.org)  
18 Attorney for Youth Petitioners  
19  
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23 <sup>10</sup> RCW 34.05.574. A court-imposed timeline is critical in this case given Ecology's historic inability to take action  
24 to address climate change. Since at least December 2008, nearly seven years ago, Ecology has been considering  
25 regulating GHG emissions using the Washington Clean Air Act. AR 14 at 70. It was not until Youth Petitioners  
26 filed their Petition for Rulemaking and this Court issued its June 23, 2015 Order that the Governor directed Ecology  
to act. Furthermore, after a significant investment of agency time and resources, Ecology voluntarily stopped work  
on the clean fuel standard, one means to limit GHG emissions from the transportation sector. Clark Decl. at ¶ 5-6.  
Therefore, there is no basis to believe that the rule that Ecology claims it will promulgate will ever come to fruition.