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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

NO. 14-2-25295-1

ZOE & STELLA FOSTER, minor children by and through their guardians MICHAEL FOSTER and MALINDA BAILEY; AJI & ADONIS PIPER, minor children by and through their guardian HELAINA PIPER; WREN WAGENBACH, a minor child by and through her guardian MIKE WAGENBACH; LARA FAIN, a minor child by and through her guardian MONIQUE DINH; GABRIEL MANDELL, a minor child by and through his guardians VALERIE and RANDY MITCHELL; JENNY XU, a minor child by and through her guardians YAN ZHANG & WENFENG XU,

Petitioners,

v.

WASHINGTON DEPARTMENT OF ECOLOGY,

Respondent.

ANSWER OF RESPONDENT
DEPARTMENT OF ECOLOGY TO
PETITIONERS' PETITION FOR
REVIEW

On September 14, 2014, Petitioners Foster et al. filed a Petition for Review of Respondent Washington State Department of Ecology's (Ecology's) denial of their June 18, 2014 petition for rulemaking. The Petition for Review is written in the form of a brief rather than a complaint. Nonetheless, though written as a brief, the Petition for Review cites to no

1 authority for the many factual allegations made in the document concerning climate change.

2 To the extent Petitioners cite to no authority for these allegations, Ecology denies them.

3 Ecology also provides the following more specific answer to Petitioners' Petition for
4 Review. To the extent the Petition for Review contains material allegations not expressly
5 admitted below, these allegations are denied. To the extent Petitioners' section headings
6 include allegations, these allegations are either legal conclusions that do not require a response
7 or they are undefined, incomplete, vague or overstatements, and are therefore denied.

8 I. ANSWER

9 A. Answer to Preliminary Matters

10 1. Answer to Opening Paragraph

11 Petitioners' opening paragraph does not contain any allegations and therefore requires
12 no answer.

13 B. Answer to Section I: Parties

14 Ecology agrees with Petitioners' statement of the parties to this case. Ecology also
15 agrees with Petitioners' statement of the parties in the petition for rulemaking filed with
16 Ecology.

17 C. Answer to Section II: Agency Action at Issue

18 Ecology agrees that this action concerns Petitioners' challenge to Ecology's August 14,
19 2014 response to Petitioners' Petition for Rule Making.

20 D. Answer to Section III: Facts Supporting Judicial Review

21 1. Answer to Opening Paragraph

22 The first sentence consists of legal conclusions and therefore need not be answered.
23 Ecology admits the statement in the second sentence that this Petition for Review appeals
24 Ecology's decision to reject Youth Petitioners' Petition for Rulemaking and denies the rest of
25 the second sentence.
26

1 **2. Answer to A: The Impacts of Human-Caused Climate Change and Ocean**
2 **Acidification**

3 **a. First Paragraph (p. 3)**

4 Ecology admits the following: Global warming is occurring and impacting the Earth's
5 climate. At the same time, ocean acidification has been observed. The Inter Governmental
6 Panel on Climate Change (IPCC) has determined that atmospheric concentrations of carbon
7 monoxide, methane, and nitrous oxide have increased to levels unprecedented in at least the
8 last 800,000 years. *IPCC, 2013: Summary for Policymakers in Climate Change 2013: The*
9 *Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the*
10 *Intergovernmental Panel on Climate Change* 11 (Stocker, T.F., D. Qin, G.-K. Plattner, M.
11 Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex & P.M. Midgley eds.) (Cambridge
12 Univ. Press 2013)¹ (hereinafter, "IPCC Summary"). Total radiative forcing is positive, and has
13 led to an uptake of energy by the climate system. IPCC Summary at 13. The largest
14 contribution to total radiative forcing is caused by the increase in the atmospheric
15 concentration of CO₂ since 1750. *Id.* at 13. According to the IPCC, the ocean has absorbed
16 about 30 percent of the emitted anthropogenic carbon dioxide, causing ocean acidification. *Id.*
17 at 11. Human influence on the climate system is clear. *Id.* at 15. This is evident from the
18 increased GHG concentrations in the atmosphere, positive radiative forcing, observed
19 warming, and understanding of the climate system. *Id.* at 15. Continued emissions of GHGs
20 will cause further warming and changes in all components of the climate system. *Id.* at 19.
21 The remaining allegations in this paragraph are undefined, incomplete, vague or
22 overstatements and are therefore denied.

23 **b. Second Paragraph (p. 3)**

24 Ecology admits the following: Scientists have determined that it is extremely likely
25 that human influence has been the dominant cause of the observed warming since the mid-20th

26

¹ Available at http://www.climatechange2013.org/images/report/WG1AR5_SPM_FINAL.pdf.

1 century. IPCC Summary at 17. Total radiative forcing is positive, and has led to an uptake of
2 energy by the climate system. *Id.* at 13. The largest contribution to total radiative forcing is
3 caused by the increase in the atmospheric concentration of CO₂ since 1750. *Id.* at 13. Total
4 radiative forcing is positive, and has led to an uptake of energy by the climate system. *Id.* at
5 13. Carbon dioxide is a greenhouse gas. Carbon dioxide concentrations have increased by 40
6 percent since pre-industrial times, primarily from fossil fuel emissions and secondarily from
7 net land use change emissions. *Id.* at 11. The remaining allegations in this paragraph are
8 undefined, incomplete, vague or overstatements and are therefore denied.

9 **c. Third Paragraph (p. 4)**

10 Ecology admits the following: Emissions of CO₂ will have an impact on the state of
11 Washington. Projected future impacts of climate change on the state of Washington include
12 changes in the natural timing of water availability, sea level rise, increases in ocean acidity and
13 increasing area burned by wildfire. Ecology is without knowledge sufficient to form a belief
14 about the truth of the allegations concerning the costs to the state of Washington due to
15 possible impacts of climate change. Governor Inslee's Executive Order 14-04 speaks for itself
16 and need not be answered. The remaining allegations in this paragraph are undefined,
17 incomplete, vague or overstatements and are therefore denied.

18 **3. Answer to B: Safe Concentrations of Atmospheric Carbon Dioxide**

19 **a. First Paragraph (p. 4)**

20 Ecology admits that Dr. James Hansen and co-authors² have argued that to limit
21 average surface heating to no more than 1 degree Celsius (1.8 degrees Fahrenheit) above pre-
22 industrial temperatures (on average), concentrations of atmospheric carbon dioxide globally
23 must be reduced to no more than 350 ppm; however, Ecology is without knowledge sufficient
24

25 ² James E. Hansen & Makiko Sato, *Paleoclimate Implications for Human-Made Climate Change* 5
26 (Jan. 18, 2011), available at http://www.columbia.edu/~jeh1/mailings/2011/20110118_MilankovicPaper.pdf (last visited Oct. 3, 2014).

1 to form a belief about the truth of the allegations. Ecology admits that some aspects of the
2 earth's climate and natural systems have been observed to be changing faster than projected by
3 the IPCC in 2007, including reductions in summer Arctic sea ice, and increases in Greenland
4 margin melt rates and atmospheric CO₂ increases. Ecology also admits that IPCC 2007
5 projections were for an increase of 2 to 11.5 degrees Fahrenheit in global average surface air
6 temperatures for 2090-2099 relative to 1980-1999 under six emission scenarios, which would
7 have impacts that could include increased mortality of vulnerable human populations and
8 alterations to natural systems. The remaining allegations in this paragraph are undefined,
9 incomplete, vague or overstatements and are therefore denied.

10 **b. Second Paragraph (p. 5)**

11 The statute quoted in sentences 1, 2, and 3 of this paragraph (RCW 70.235.020) speaks
12 for itself and therefore does not require a response. The allegations in sentences 4 and 5 of this
13 paragraph are undefined, incomplete, vague or overstatements and are therefore denied. The
14 rest of this paragraph consists of legal conclusions and therefore need not be answered.

15 **c. Third Paragraph (p. 5)**

16 Ecology admits that Youth Petitioners' Petition for Rulemaking did not ask Ecology to
17 repeal RCW 70.235. The statute quoted in RCW 70.235.040 speaks for itself and requires no
18 answer. Ecology admits the allegations in the last sentence of this paragraph. The rest of this
19 paragraph contains legal conclusions and therefore requires no answer.

20 **d. Fourth Paragraph (p. 6)**

21 Ecology admits that Dr. James Hansen and co-authors have argued that to limit average
22 surface heating to no more than 1 degree Celsius (1.8 degrees Fahrenheit) above pre-industrial
23 temperatures (on average), concentrations of atmospheric carbon dioxide globally must be
24 reduced to no more than 350 ppm; however, Ecology is without knowledge sufficient to form a
25 belief about the truth of the allegations in the first sentence of this paragraph. The rest of this
26 paragraph contains legal conclusions that require no answer.

1
2 **e. Fifth Paragraph (p. 6)**

3 Ecology admits that Dr. James Hansen and co-authors have argued that to limit average
4 surface heating to no more than 1 degree Celsius (1.8 degrees Fahrenheit) above pre-industrial
5 temperatures (on average), concentrations of atmospheric carbon dioxide globally must be
6 reduced to no more than 350 ppm; however, Ecology is without knowledge sufficient to form a
7 belief about the truth of the allegations in the first sentence of this paragraph. The remainder
8 of this paragraph consists of legal conclusions that require no response.

9 **4. Answer to C: Recommend GHG Reductions**

10 **a. First Paragraph (p. 7)**

11 This paragraph consists of legal conclusions that require no response.

12 **b. Second Paragraph (p. 7)**

13 This paragraph consists of quotations from RCW 70.235.040 and Governor Inslee's
14 April 29, 2014 executive order. These documents speak for themselves and require no answer.

15 **c. Third Paragraph (p. 7)**

16 Sentences 1-5 of this paragraph consist of legal conclusions that require no answer.
17 Ecology admits the allegation in the sixth sentence that Youth Petitioners filed the petition for
18 rulemaking on behalf of themselves and future generations. Ecology denies the other
19 allegations in the sixth sentence of this paragraph. The seventh sentence of this paragraph
20 quotes Governor Inslee's April 29, 2014 executive order, which speaks for itself and therefore
21 needs no response. The eighth sentence of this paragraph consists of legal conclusions that
22 need not be answered.

23 **d. Fourth Paragraph (p. 9)**

24 This paragraph consists of legal conclusions that require no answer and a quotation
25 from RCW 43.21A.010 that speaks for itself and likewise needs no answer.
26

1 **e. Fifth Paragraph (p. 9)**

2 This paragraph consists of legal conclusions that need no answer.

3 **f. Sixth Paragraph (p. 10)**

4 This paragraph consists of legal conclusions that need no answer.

5 **g. Seventh Paragraph (p. 11)**

6 This paragraph consists of legal conclusions that need no answer.

7 **h. Eighth Paragraph (p. 11)**

8 This paragraph consists of legal conclusions that need no answer.

9 **i. Ninth Paragraph (p. 12)**

10 This paragraph consists of legal conclusions that need no answer.

11 **j. Tenth Paragraph (p. 13)**

12 This paragraph consists of legal conclusions that need no answer.

13 **5. Answer to D: Ecology's Decision Denying Youth Petitioners' Petition for**
14 **Rulemaking**

15 Ecology admits that on August 14, 2014, Ecology denied Youth Petitioners' Petition
16 for Rulemaking. Ecology admits that the denial was based on the fact that neither RCW
17 70.235 nor any other provision cited by Petitioners requires Ecology to adopt the type of rule
18 they are seeking. Ecology also admits that its denial includes measures Ecology is taking to
19 work to achieve the reductions set forth in RCW 70.235. Ecology denies the other allegations
20 in this paragraph.

21 **E. Answer to Section IV: Legal Basis for Judicial Review**

22 Section IV consists entirely of legal argument and legal conclusions, and therefore does
23 not require an answer. Ecology notes, however, that Petitioners' claims are without merit, and
24 Ecology has no duty to adopt the rules Petitioners are seeking.

1 **F. Answer to Section V: Jurisdiction and Venue**

2 The allegations in this paragraph consist of legal conclusions, and therefore require no
3 answer.

4 **G. Answer to Section VI: Basis for Granting Relief**

5 The allegations in this paragraph consist of legal conclusions, and therefore require no
6 answer.

7 **H. Answer to Section VII: Request for Relief**

8 The allegations in this paragraph consist of legal conclusions, and therefore require no
9 answer.

10 **II. AFFIRMATIVE DEFENSES**

11 Ecology alleges the following affirmative defenses:

- 12 1. Petitioner has failed to state a claim upon which relief can be granted.
- 13 2. Ecology reserves the right to supplement these affirmative defenses as new
14 defenses may be revealed during the course of the proceedings.

15 **III. REQUESTS FOR RELIEF**

16 In consideration of the responses provided above, Respondents request that judgment
17 be entered as follows:

18 1. Denying Petitioners' petition with prejudice and without award of costs and fees
19 to Petitioners.

20 2. Awarding Respondents their statutory costs and fees.

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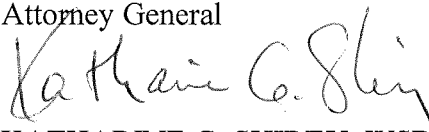
25 //

26 //

1 3. For such other and further relief as the court deems just and equitable.

2 DATED this 6th day of October 2014.

3
4 ROBERT W. FERGUSON
Attorney General

5 
6 KATHARINE G. SHIREY, WSBA #35736
7 Assistant Attorney General
8 Attorneys for Respondent
9 (360) 586-6769

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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

NO. 14-2-25295-1

CERTIFICATE OF SERVICE

ZOE & STELLA FOSTER, minor children by and through their guardians MICHAEL FOSTER and MALINDA BAILEY; AJI & ADONIS PIPER, minor children by and through their guardian HELAINA PIPER; WREN WAGENBACH, a minor child by and through her guardian MIKE WAGENBACH; LARA FAIN, a minor child by and through her guardian MONIQUE DINH; GABRIEL MANDELL, a minor child by and through his guardians VALERIE and RANDY MITCHELL; JENNY XU, a minor child by and through her guardians YAN ZHANG & WENFENG XU,

Petitioners,

v.

WASHINGTON DEPARTMENT OF ECOLOGY,

Respondent.

Pursuant to RCW 9A.72.085, I certify that on the 6th day of October 2014, I caused to be served Respondent's Answer in the above-captioned matter upon the parties herein as indicated below:

1 ANDREA K. RODGERS HARRIS
2 LAW OFFICES OF ANDREA K. RODGERS HARRIS
3 3026 NW ESPLANADE
4 SEATTLE, WA 98117

U.S. Mail
 Hand Delivered
 Overnight Express
 By Fax
 By Email:
akrogersharris@yahoo.com

5 the foregoing being the last known address.

6 I certify under penalty of perjury under the laws of the state of Washington that the
7 foregoing is true and correct.

8 DATED this 6th day of October 2014, in Olympia, Washington.

9
10 
11 _____
12 TERESA L. TRIPPEL, Legal Assistant
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