

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

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

Petitioners,

v.

WASHINGTON DEPARTMENT OF ECOLOGY,

Respondent.

No. 14-2-25295-1 SEA

PETITIONERS' MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. INTRODUCTION & RELIEF REQUESTED 5

II. STATEMENT OF FACTS 5

 A. Procedural History 5

 B. Ecology’s Refusal To Fulfill Its “Duty Required By Law” 8

III. STATEMENT OF THE ISSUE 9

IV. EVIDENCE RELIED UPON 9

V. ARGUMENT 10

 A. The Court Has Jurisdiction To Enter A Show Cause Order 10

 B. Ecology Has Not Complied With The Substantive Requirements of the
 Court’s Orders 11

 C. A Court Order Directing Ecology To Reduce GHG Emissions With All
 Deliberate Speed Is Needed To Remedy Petitioners’ Legal Claims 15

VI. CONCLUSION & REQUEST FOR RELIEF 16

TABLE OF AUTHORITIES

State Cases

Blanchard v. Golden Age Brewing Co., 188 Wn. 396, 63 P.2d 397 (1936) 11

In re Marriage of Didier, 134 Wn.App. 490, 140 P.3d 607 (2006), *rev. denied*,
160 Wn.2d 1012 (2007) 11

Keller v. Keller, 52 Wn.2d 84, 323 P.2d 231 (1958) 10

Kueckelhan v. Fed. Old Line Ins. Co. (Mut.), 74 Wn.2d 304, 444 P.2d 667 (1968) 16

Rainier Nat’l Bank, 26 Wn. App. 498, 615 P.2d 469 (1980) 13

State v. Breazeale, 144 Wn.2d 829, 31 P.3d 1155 (2001) 10

Federal Cases

Brown v. Bd. of Education, 349 U.S. 294 (1955) 16

Washington Constitution

Article I, Section 30 7

Statutes

RCW 7.21.010(1)(b) 11

RCW 7.21.010(3) 11

RCW 7.21.020 11

RCW 7.21.030 16

RCW 34.05.570(2)(b)(i) 10

RCW 43.21A.010 7, 13

RCW 70.94.011 7, 13

RCW 70.94.331(2)(a), (b) 7, 13

RCW 70.235 6, 9

1 RCW 70.235.020 13, 14
2 RCW 70.235.040 8
3 **Court Rules**
4 Washington Rule of Appellate Procedure 7.2 10
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. INTRODUCTION & RELIEF REQUESTED

The Washington Department of Ecology (“Ecology”) has refused to take regulatory action to address climate change that protects the fundamental rights of young people and future generations in direct contravention of the Court’s November 19, 2015 and May 16, 2016 orders compelling them to do so. Petitioners therefore respectfully move this Court for an order to show cause (1) why Ecology should not be held in contempt of this Court’s November 19, 2015 and May 16, 2016 orders; and (2) why this Court should not enter an order directing Ecology to ensure science-based numeric reduction of greenhouse gas (“GHG”) emissions with all deliberate speed in a manner that fulfills its statutory and constitutional responsibilities as set forth in this court’s prior orders.

II. STATEMENT OF FACTS

A. Procedural Background

The urgency and severity of the climate crisis have never been in dispute in this case, as many of the facts have been admitted in earlier filings or come from Ecology’s own documents. Most recently, Ecology has acknowledged: “We generally agree with and recognize all the effects of climate change, including species degradation, ocean acidification, increased extreme weather events, and rising sea levels.” Declaration of Andrea K. Rodgers (“Rodgers Decl.”), Exh. 5 at 14. According to this court, “as Petitioners assert and this court finds, their very survival depends upon the will of their elders to act now, decisively and unequivocally, to stem the tide of global warming by accelerating the reduction of emission of GHGs before doing so becomes first too costly and then too late.” Rodgers Decl., Exh. 1 at 5. “The climate crisis presents an urgent situation that youth petitioners cannot wait on.” *Id.*, Exh. 3 at 2. Unfortunately, petitioners are still waiting.

1 This case originated as an appeal of Ecology’s denial of a petition for rulemaking
2 submitted by youth petitioners in June 2014. The petition, in part, asked Ecology to implement
3 its existing authorities (including but not limited to the WA Clean Air Act) to ensure that
4 carbon dioxide emissions are reduced consistent with what is required by best available science
5 in order to protect the fundamental rights of young people and future generations.¹

6
7 Administrative Record (“AR”) 6 (Petition for Rulemaking) at 59-60. On August 14, 2014,
8 Ecology denied the petition for rulemaking, not contesting the science presented by petitioners,
9 but citing three reasons: (1) nothing in RCW 70.235 requires Ecology to adopt different
10 emissions reductions, develop a plan to ensure those reductions, or implement the monitoring
11 requirements in the proposed rule; (2) Washington “is working to achieve the reductions” set
12 forth in RCW 70.235 and “the measures it is taking are an alternative approach to [petitioners’]
13 proposed rule;” and (3) none of the additional cited sources in the petition require Ecology to
14 adopt the proposed rule. AR 11 at 1.
15

16 On November 19, 2015, this court rejected Ecology’s claims that it was doing enough
17 to address climate change and found that the “alternative approaches” identified by Ecology
18 “indisputably cannot achieve results protecting the state’s environment from catastrophic
19 global warming.” Rodgers Decl., Exh. 1 at 3. The court acknowledged that “[t]he scientific
20 evidence is clear that the current rates of reduction mandated by Washington law cannot
21 achieve the GHG reductions necessary to protect our environment and to ensure the survival of
22 an environment in which Petitioners can grow to adulthood safely.” *Id.* at 5. In addition, the
23
24
25

26 ¹ Petitioners also asked Ecology to make a recommendation to update the existing GHG emission limits based upon best available science in accordance with RCW 70.235.040. AR 6 at 59-60.

1 court made several legal conclusions defining Ecology’s “[d]uty required by law” to address
2 climate change. *Id.* at 6. Specifically:

- 3
- 4 • Ecology has “the mandatory duty under the Clean Air Act to ‘[a]dopt rules establishing
5 air quality standards’ for GHG emissions, including carbon dioxide” and “[t]his
6 obligation must be implemented in a manner that ‘[p]reserves, protect[s] and enhances
7 the air quality for the current and future generations.’” *Id.* at 6 (quoting RCW
8 70.94.331(2)(a)(b), RCW 70.94.011).
- 9
- 10 • “[T]he Public Trust Doctrine mandates that the State act through its designated agency
11 to protect what it holds in trust. The Department of Ecology is the agency authorized
12 both to recommend changes in statutory emission standards and to establish limits that
13 are responsible.” *Id.* at 8.
- 14 • Ecology has a legal duty to protect the “‘fundamental and inalienable right of the
15 people of the State of Washington to live in a healthful and pleasant environment.’
16 RCW 43.21A.010. Although a statutory duty cannot be created from the words of the
17 enabling statute, this language does evidence the legislature’s view as to rights retained
18 under Article I, Section 30. If ever there were a time to recognize through action this
19 right to preservation of a healthful and pleasant atmosphere, the time is now”
- 20

21 The Court did not originally grant petitioners’ requested relief on the grounds that Ecology “is
22 engaging in rulemaking under the directive to establish standards for greenhouse gas
23 emissions.” *Id.* at 7.

24 After Ecology withdrew its first regulatory attempt to reduce GHG emissions, via the
25 Clean Air Rule, petitioners filed a Rule 60(b) motion for relief from judgment, seeking “an
26

1 order directing Ecology to initiate rulemaking proceedings to promulgate a rule with an
2 enforceable schedule to comply with the legal obligations outlined in the November 19, 2015
3 Final Order.” Rodgers Decl., Exh 2 at 12. The court granted that motion from the bench on
4 and unequivocally ordered Ecology to “adopt a rule to limit greenhouse gas emissions in
5 Washington state as directed by Governor Inslee in July 2015 . . . by the end of calendar year
6 2016.” Rodgers Decl., Exh. 3 at 3. In the same order, the court vacated “the portions of the
7 November 19, 2015 order that denied petitioners’ requested relief and put the matter back in
8 the hands of Ecology. *All other portions of the November 19, 2015 Order remain in full force*
9 *and effect.*”² *Id.* at 2-3 (emphasis added).

11 **B. Ecology’s Refusal To Fulfill Its “Duty Required By Law”**

12 On June 1, 2016 Ecology released an updated draft of the Clean Air Rule. Rodgers
13 Decl. at ¶ 6. On July 22, 2016, Petitioners submitted detailed comments on the proposed rule
14 showing how it was inconsistent with the court’s orders in this case. Rodgers Decl., Exh. 4.
15 Petitioners explained that because the rule only mandated modest reductions in carbon dioxide
16 emissions, and thereby allowed unsafe levels of emissions to continue, the draft rule did not
17 “preserve, protect, and enhance the air quality for current and future generations,” did not
18 fulfill Ecology’s responsibility to protect common natural resources under the public trust
19 doctrine, and impaired petitioners retained constitutional rights to a healthful and pleasant
20 environment. *Id.* at 2-6. In support of their comments, Petitioners submitted declarations from
21 climate scientists and policy experts opining that the most current climate science mandates
22
23

24 _____
25 ² The court also ordered Ecology to “provide a recommendation to the 2017 legislature on greenhouse gas limits
26 for the state of Washington as provided in RCW 70.235.040.” Rodgers Decl., Exh. 3 at 3. At this time,
petitioners are not alleging that Ecology has failed to fulfill this requirement, as the 2017 legislative session has
not begun.

1 reducing atmospheric CO₂ concentrations to 350 ppm or lower by the end of the century to
2 protect young people and future generations. *Id.* at 13-20. That would require long-term
3 emission reductions of approximately 8% per year, if commenced in 2017. *Id.* at 19-20.
4 Petitioners also submitted declarations from experts testifying that it was technically and
5 economically feasible to reduce emissions in Washington to meet the 350 ppm scientific
6 prescription. *Id.* at 32, 44-46; Rodgers Decl., Exh. 8 (Declaration of Dr. Mark Jacobson, ¶¶ 5-
7 12). Some of the petitioners also submitted oral testimony at one of the public hearings on the
8 proposed rule that was held in Olympia, Washington on July 14, 2016. Rodgers Decl. at ¶ 8.

9
10 On September 16, 2016 Ecology finalized the Clean Air Rule. Rodgers Decl. at ¶ 9. In
11 its response to comments, Ecology publicly acknowledged that the Clean Air Rule does not put
12 Washington on track to meet the minimal GHG reduction limits set forth in RCW 70.235, let
13 alone the “more aggressive” limits that Ecology has said are needed to avoid “imposing risks
14 on future generations (causing intergenerational inequities) and liability for the harm that will
15 be caused by climate change that we are unable or unwilling to avoid.” Rodgers Dec., Exh. 5
16 at 20; Exh. 6 at 18. Under the Clean Air Rule, covered parties, responsible for two-thirds of
17 the state’s GHG emissions, must only reduce emissions by 1.7 percent per year, far below what
18 is needed to achieve compliance with this court’s prior orders. Rodgers Decl., Exh. 5 at 20.

21 III. STATEMENT OF THE ISSUE

22 Whether the court should issue an Order to Show Cause (1) why Ecology should not be
23 held in contempt of this court’s November 19, 2015 and May 16, 2016 court orders; and (2)
24 why this court should not enter an order directing Ecology to ensure science-based numeric
25 reductions of GHG emissions with all deliberate speed in a manner that fulfills its statutory and
26

1 constitutional responsibilities as set forth in this court’s November 19, 2015 and May 16, 2016
2 orders.

3 **IV. EVIDENCE RELIED UPON**

4 Petitioners rely upon the declaration of Andrea K. Rodgers, the exhibits attached
5 thereto, and the balance of the pleadings and other documents on file in this action.
6

7 **V. ARGUMENT**

8 **A. This Court Has Jurisdiction To Enter A Show Cause Order.**

9 To be clear, Petitioners are not asking the court to review the parameters of the final
10 Clean Air Rule under the Washington Administrative Procedures Act. RCW
11 34.05.570(2)(b)(i). Rather, petitioners seek to enforce this court’s existing orders because
12 despite the Clean Air Rule, Ecology still has not taken steps to fulfill its mandatory legal duties
13 as outlined by the court in its two prior orders. In essence, the Clean Air Rule is at best yet
14 another “alternative approach” to petitioners’ proposed rule that fails to satisfy the legal
15 requirements enunciated by the court in its prior orders and fails to remedy petitioners’ legal
16 claims.³

17
18 “Civil show cause procedures are an appropriate means of securing compliance with a
19 court order.” *State v. Breazeale*, 144 Wn.2d 829, 842, 31 P.3d 1155 (2001). The court has the
20 inherent authority “(1) to punish summarily contemptuous conduct occurring in the presence of
21 the court, (2) to enforce orders or judgments in aid of the court's jurisdiction, and (3) to punish
22

23
24 ³ Ecology has appealed “the timing requirement of the court’s order,” Rodgers Decl., Exh. 5 at 4, but
25 notwithstanding that appeal, this court retains its inherent and statutory “authority to enforce any decision of the
26 trial court”³ RAP 7.2(c); *See also* RAP 7.2(e) (“If the trial court determination will change a decision then
being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal
entry of the trial court decision.”). Here, petitioners are not asking the court to modify its prior orders, only that
they be enforced.

1 violations of orders or judgments.” *Keller v. Keller*, 52 Wn.2d 84, 86, 323 P.2d 231 (1958);
2 *State v. Breazeale*, 144 Wn.2d at 841 (“The power to censure contemptuous behavior flows
3 from both statute and the inherent power of the courts.”). The court’s inherent authority to
4 enforce its orders has been described as follows:

5
6 The power of a court, created by the Constitution, to punish for contempt for
7 disobedience of its mandates, is inherent. The power comes into being upon
8 the very creation of such a court and remains with it as long as the court
exists. Without such power, the court could ill exercise any other power, for it
would then be nothing more than a mere advisory body.

9 *Blanchard v. Golden Age Brewing Co.*, 188 Wn. 396, 423, 63 P.2d 397 (1936).

10 Disobedience of any valid court order constitutes contempt. RCW 7.21.010(1)(b). “If
11 the court finds that the person has failed or refused to perform an act that is yet within the
12 person’s power to perform, the court may find the person in contempt of court and impose a
13 sanction,” including “an order designed to ensure compliance with a prior order of the court.”
14 RCW 7.21.030(2)(c). Therefore, this court has ample authority to issue a show cause order
15 directing Ecology to explain why a remedial sanction coercing it to comply with the
16 requirements of its two prior court orders is not needed. RCW 7.21.010(3); RCW 7.21.020; *In*
17 *re Marriage of Didier*, 134 Wn. App. 490, 501, 140 P.3d 607 (2006), *rev. denied*, 160 Wn.2d
18 1012 (2007).

19
20
21 **B. Ecology Has Not Complied With The Substantive Requirements of the Court’s
Orders.**

22 While Ecology has issued a final Clean Air Rule prior to the end of 2016, Ecology
23 remains out of compliance with the *substantive* requirements of this court’s orders. Ecology’s
24 public statements and final rulemaking documents make it clear that it has deliberately ignored
25

1 those portions of the court’s prior orders defining Ecology’s mandatory legal duties to address
2 climate change in a manner that protects the rights of petitioners.

3 Ecology has said, “nothing in the court orders bind Ecology to specific substantive
4 requirements in developing the CAR.” Rodgers Decl., Exh. 4 at 17. While this court did not
5 dictate the precise content of the Clean Air Rule, the court did order the legal benchmarks
6 Ecology must fulfill to remedy petitioners’ legal claims, whether through the adoption of the
7 Clean Air Rule or otherwise. The court made it clear in the May 16, 2016 order that “[a]ll
8 other portions of the November 19, 2015 Order remain in full force and effect,” including the
9 court’s legal findings regarding Ecology’s mandatory legal duty to act to address climate
10 change. Rodgers Decl., Exh. 3 at 3. Ecology has an enforceable legal obligation to ensure the
11 administrative action it pursues to remedy petitioners’ legal claims, whether through the Clean
12 Air Rule or some other regulatory approach, satisfies its mandatory legal duties defined by the
13 court. This it failed to do.

14
15
16 To illustrate, Ecology summarized the court orders as follows:

17 Specifically, the Court found that Ecology has a mandatory duty to adopt
18 rules establishing emission standards for GHGs under the Washington
19 CAA. The Court further found that “Ecology is not failing to fulfill this
20 obligation given that it is engaging in rulemaking under the directive to
21 establish standards for greenhouse gas emissions” issued by Governor
22 Inslee on July 28, 2015. The Court further recognized that it “does not
23 have the authority to exclude non-science related considerations from this
24 ongoing rulemaking” and specifically denied the Foster petitioners’ appeal
25 seeking a rule based on “current science.” The Court later affirmed
26 Ecology’s duty to develop a rule to reduce GHG emissions, ordering
Ecology to continue the rulemaking per Governor Inslee’s July 2015
directive and to issue that rule by the end of 2016. Ecology’s CAR [Clean
Air Rule] satisfies the Court’s directives by establishing emission standards
for GHGs and doing so prior to the end of the year.

1 Rodgers Decl., Exh. 5 at 16. Not only does Ecology quote a portion of the November 19, 2015
2 order that was subsequently vacated,⁴ Ecology entirely ignores its “mandatory duty under the
3 Clean Air Act to ‘[a]dopt rules establishing air quality standards’ for GHG emissions,
4 including carbon dioxide,” “in a manner that ‘[p]reserves, protect[s] and enhances the air
5 quality for the current and future generations.”” Rodgers Decl., Exh. 1 at 6 (quoting RCW
6 70.94.331(2)(a)(b), RCW 70.94.011). Ecology does not even suggest, nor could it, that its
7 Clean Air Rule requires GHG emission reductions that would preserve, protect and enhance air
8 quality for current and future generations, as required by the court. Indeed, in its response to
9 comments Ecology states, “it is not clear to Ecology that there is a scientific consensus
10 regarding the annual percentage reduction that Washington State must meet in order to address
11 climate change.” Rodgers Decl., Exh. 5 at 88. Ecology cannot continue to kick the can down
12 the road on this issue. Ecology has the mandatory legal duty to ascertain what reductions are
13 needed to preserve, protect and enhance air quality for current and future generations. RCW
14 70.235.040. Petitioners have supplied Ecology with the best *available* science, Ecology does
15 not contest that science, and unless and until Ecology comes forward with an alternative
16 science-based emissions reduction pathway that fulfills its legal responsibilities, it must utilize
17 the scientific prescription provided by petitioners’ experts in this case.
18
19
20

21 Ecology also ignores its legal duties to protect resources under the Public Trust
22 Doctrine⁵ and to protect the “fundamental and inalienable right of the people of the State of

23 ⁴ The court’s May order granting the Rule 60(b) motion vacated “the portions of the November 19, 2015 order
24 that denied petitioners’ requested relief and put the matter back in the hands of Ecology.” Rodgers Decl., Exh. 3
at 2-3. The first sentence Ecology quotes is clearly one of those vacated parts of the court’s order.

25 ⁵ Ecology has publicly acknowledged that the Clean Air Rule is not designed to address ocean acidification or
26 fulfill its public trust duties: “addressing water quality standards or regulatory mechanisms to address ocean
acidification are beyond the scope of [the Clean Air] rule, which is to establish emission standards for GHG
emissions in Washington.” Rodgers Decl., Exh. 5 at 22. This statement defies the November 19, 2015 order,

1 Washington to live in a healthful and pleasant environment.” *Id.* at 9 (quoting RCW
2 43.21A.010). This court did not merely require Ecology to promulgate *any* rule, even one that
3 does not achieve the outdated and inadequate legislative targets in RCW 70.235.020. The
4 court required full compliance with the law to protect our children in the face of life-
5 threatening climate pollution.
6

7 It is up to Ecology now to explain how 1.7 percent emission reductions from only two-
8 thirds of Washington’s GHG emitters constitutes compliance with this court’s prior orders.
9 Absent a court order to show cause, Ecology will continue to pretend that its legal
10 responsibilities do not exist. *See Rainier Nat’l Bank*, 26 Wn. App. 498, 516, 615 P.2d 469
11 (1980) (finding that to “exalt the contemners by refusing to do anything about their persistent
12 refusal to comply with lawful court orders in supplemental proceeding . . . would, in effect,
13 declare them above the law”).
14

15 Ecology’s incomplete and inaccurate description of the court’s prior orders is evidence
16 of the agency’s intentional disregard of its mandatory duties required by law, sufficient to
17 justify the issuance of a show cause order in this case. Furthermore, other evidence
18 demonstrates that Ecology, despite its adoption of the Clean Air Rule, has not fulfilled its
19 substantive legal responsibilities outlined by the court. For example, Ecology does not dispute
20 that adoption of the Clean Air Rule will not achieve the minimum emission limits contained in
21 RCW 70.235.020, let alone the heretofore unidentified limits that “need to be more aggressive
22 in order for Washington to do its part to address climate risks and to align our limits with other
23

24 _____
25 which stated: “The navigable waters and the atmosphere are intertwined and to argue a separation of the two, or to
26 argue that GHG emissions do not affect navigable waters is nonsensical. Therefore, the Public Trust Doctrine
mandates that the State act through its designated agency to protect what it holds in trust. *Rodgers Decl.*, Exh. 1
at 8.

1 jurisdictions that are taking responsibility to address these risks.” Rodgers Decl., Exh. 6 at vi.

2 Specifically, Ecology claims:

3 The 1.7 percent annual reduction for covered parties will achieve
4 about two-thirds of the 2035 limit, resulting in a projected savings of
5 just under 20 million metric tons of CO₂e per year in 2035 compared
6 to business as usual.

7 Ecology agrees that we are not restricted by the reduction limits in
8 RCW 70.235.020 in achieving emission reductions under the CAR.
9 However, we have concluded that basing the emission reductions on
10 the limits that are currently in law is a reasonable first step for our
11 initial economy-wide regulation capping GHG emissions.

12 Rodgers Decl., Exh. 5 at 20. Yet Ecology has failed to identify any additional *subsequent* next
13 steps it will implement in addition to the Clean Air Rule that will ensure the reduction of GHG
14 emissions in a manner that meets the outdated, minimum limits in RCW 70.235.020, let alone
15 that fulfills its legal obligations described by this court. To this day, not only has Ecology
16 failed to take a science-based position and tell the public the extent to which GHG emissions
17 need to be reduced to stabilize the climate system, the agency has failed to implement its
18 existing authorities in a way that protects the fundamental, constitutionally-reserved rights of
19 young people and future generations.

20 **C. A Court Order Directing Ecology To Reduce GHG Emissions With All Deliberate
21 Speed Is Needed To Remedy Petitioners’ Legal Claims**

22 The petitioners in this case find themselves where they were when they initially filed
23 their petition for rulemaking over two years ago. Ecology has still not identified any concrete,
24 regulatory measures that are designed to fulfill its constitutional and statutory obligations, as
25 described and defined by this court, to protect the rights of young people and future
26 generations from the perils of climate change. By adopting the Clean Air Rule, Ecology has
simply added to the list of feckless “alternative approaches” that do not come close to fulfilling

1 Ecology’s legal responsibilities. These young people are entitled to a court order that coerces
2 Ecology into fulfilling their fundamental legal duties as trustee of the natural resources in this
3 state for present and future generations.

4 Absent enforcement of this court’s prior orders, Ecology will continue to abdicate their
5 mandatory duties under the law and the youth will be forced to go back to where they were in
6 2014 seeking 4% reductions per year, but instead, because of administrative recalcitrance, must
7 now seek, only two years later, emission reductions of at least 8% per year, which best
8 available science now shows are needed.⁶ The youth may soon find themselves in a position
9 where it is simply infeasible for Ecology to facilitate GHG reductions fast enough to protect
10 the fundamental rights of the young and future generations. Ecology has failed to heed its own
11 warning: “If we delay action by even a few years, the rate of reduction needed to stabilize the
12 global climate would be beyond anything achieved historically and would be more costly.”
13
14 Rodgers Decl., Exh. 6 at vi. That is an injustice that should not be sanctioned by this court.

16 **V. CONCLUSION & REQUEST FOR RELIEF**

17 For the reasons set forth above, Petitioners respectfully request that the Court enter an
18 order to show cause (1) why Ecology should not be held in contempt of this Court’s November
19 19, 2015 and May 16, 2016 court orders; and (2) why this court should not enter an order
20 directing Ecology to regulate greenhouse gas (“GHG”) emissions in a manner that fulfills its
21 statutory and constitutional responsibilities as set forth in this court’s November 19, 2015 and
22 May 16, 2016 orders. We also ask that the court retain continuing jurisdiction over this matter
23 to ensure that Ecology makes progress towards reducing GHG emissions in a manner that
24 fulfills its statutory and constitutional responsibilities. Petitioners are not asking for the court
25

26 ⁶ Rodgers Decl., Exh. 6 at 19-20.

1 to dictate the specific parameters of what rules and policies Ecology implements, simply to
2 require science-based, numeric emission reductions be achieved with all deliberate speed.⁷
3 Petitioners further request that the court issue an order directing Ecology to pay the attorneys'
4 fees and costs incurred in bringing this motion.⁸
5
6

7 I certify that this memorandum contains 4079 words, in compliance with the Local
8 Civil Rules. Respectfully submitted this 18th day of October, 2016.
9

10 s/ Andrea K. Rodgers
11 Andrea K. Rodgers, WSBA #38683
12 Western Environmental Law Center
13 3026 NW Esplanade
14 Seattle, WA 98117
15 T: (206) 696-2851
16 Email: rodgers@westernlaw.org
17 Attorney for Youth Petitioners
18
19
20
21

22 ⁷ Courts in Washington have previously ordered parties to act with “all deliberate speed,” when appropriate under
23 the circumstances. *See, e.g., Kueckelhan v. Fed. Old Line Ins. Co. (Mut.)*, 74 Wn.2d 304, 444 P.2d 667 (1968).
24 The term “all deliberate speed” was coined by the U.S. Supreme Court in *Brown v. Bd. of Education*, 349 U.S.
25 294, 300 (1955), which acknowledged the urgency and complexity associated with requiring school boards to
26 transition to a racially nondiscriminatory school system to protect fundamental rights. Similarly here, the court,
having previously acknowledged the urgency of the climate crisis, should order Ecology to take action to reduce
GHG emissions with all deliberate speed. *See also* Rodgers Decl. Ex. 9 (*Juliana v. U.S.*, 6:15-cv-01517-TC (D.
Or. Sept. 13, 2016) (Transcript of Proceedings)) at 12-16 (noting the need for the U.S government to use “all
deliberate speed” to avoid damage and injury due to climate change).

⁸ RCW 7.21.030(2)(a) and 7.21.030(3).

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 18th day of October, 2016 I served one true and correct copy
3 of the foregoing Petitioners’ Motion for Order to Show Cause on the parties via electronic
4 service in accordance with the parties’ electronic service agreement.
5

6
7
8 s/ Andrea K. Rodgers
9 Andrea K. Rodgers
10 Western Environmental Law Center
11 Attorney for Youth Petitioners
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26