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

ZOE and STELLA FOSTER, minor children
by and through their guardians MICHAEL
FOSTER and MALINDA BAILEY; AJI and
ADONIS PIPER, minor children by and
through their guardian, HELAINA PIPER;
WREN WAGENBACH, a minor child by and
through her guardian MIKE WAGENBACK;
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 and
WENFENG XU,

Petitioners,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY,

Respondent.

NO. 14-2-25295-1 SEA

ORDER REMANDING
DEPARTMENT OF ECOLOGY'S
DENIAL OF PETITION FOR RULE
MAKING

I. Youth Petition

Frustrated by an historical lack of political will to respond adequately to the increasingly
urgent and dire acceleration of global warming, eight youth petitioners (the Petitioners, the

1 Youth) submitted a petition for rulemaking to the Washington State Department of Ecology
2 (Ecology, the Department). The Youth petitioned the Department to adopt a proposed rule that,
3 among other things, would recommend to the legislature limitation of greenhouse gas
4 emissions consistent with current scientific assessments of requirements to stem the tide of
5 global warming. Petitioners assert, consistent with a December 2014 report by the Department
6 to the Legislature, that prompt decisive action by Ecology is necessary to protect the state's
7 natural resources and the children who depend on them from climate change and ocean
8 acidification.
9

10 On August 14, 2014, the Department denied this petition without challenging the
11 underlying scientific bases for Petitioner's plea.
12

13 II. The Imminent Threat of Global Warming

14 The Washington State Department of Ecology is required by law to report periodically
15 to the legislature summarizing human-caused climate change and to make recommendations
16 regarding whether the greenhouse gas emissions reductions required by Washington statute
17 need to be updated. In December 2014 Ecology issued the required report which states,

18 Climate change is not a far off risk. It is happening now globally and the impacts
19 are worse than previously predicted, and are forecast to worsen... If we delay
20 action by even a few years, the rate of reduction needed to stabilize the global
21 climate would be beyond anything achieved historically and would be more
22 costly.

22 Department of Ecology, Washington Greenhouse Gas Emission Reduction Limits, Prepared
23 Under RCW 70.235.040 18 (Dec. 2014). This report also states,

24 The sea level is rising on most of Washington's coast, ocean acidification has
25 increased, and there's long-term warming. Glaciers and spring snowpack have

1 declined and the timing of stream flows has changed many rivers. And, climate
2 extremes like floods, droughts, fires and landslides are already affecting
Washington's economy and environment.

3 The effects of climate change on water supplies, public health, coastal and storm
4 damage, wildfires, and other impacts will be costly unless additional actions are
5 taken to reduce greenhouse gases.

6 *Id.* at 5.

7 Despite this urgent call to action, based on science it does not dispute, Ecology's
8 recommendation in this report is, "that no changes be made to the state's statutory emission
9 limits at this time." ¹

10 III. Motion to Strike

11 On April 29, 2014, Governor Inslee had directed Ecology to exercise its authority
12 under RCW 70.235.040 and "review the State's enacted greenhouse gas emissions limits and
13 recommend any updates to the limits by July 15, 2014. In advance of the July deadline, on June
14 17, 2014, Petitioners submitted their petition for rulemaking to Ecology asking, in part, that the
15 agency make its recommendations to the Legislature through rulemaking because Ecology's
16 action "implicate[s] youth petitioners' and future generations' rights to essential public trust
17 resources." Ecology did not meet the Governor's July 15, 2014, deadline and did not issue its
18 recommendation to the legislature until December 2014, four months after it issued its denial
19 of Youth's Petition for Rulemaking.
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22
23 ¹ Ecology suggests no change in greenhouse gas reduction standards until after an international climate conference
24 scheduled in Paris in December 2015, thus delaying action for at least a year from the date of the report or one
25 year and five months after the reports original due date. Neither in its briefing nor in oral argument of this appeal
did the Department seek to justify this suggested delay. The report itself states that after the Paris conference
Washington would be better informed how the state's limits should be adjusted.

1 Since this report was published four months after Ecology denied Youth's Petition for
2 Rulemaking the Department moved to strike it from this Court's review. The Department has
3 also moved to strike the declaration of Dr. Pushker Kharecha (which reviews the December
4 2014 report) submitted in support of Petitioner's opening brief to the Court but not considered
5 by the Department before the petition's denial. The Department argues that these documents
6 do not meet the requirements for new evidence found in RCW 34.05.562(1). It also argues that
7 its decision to deny the petition did not rely on the science discussed in these submissions and
8 therefore the Court should not consider them.

9
10 Despite the Department's contrary view, this Court finds pursuant to RCW
11 34.05.562(2)(b) that this new evidence relates to the validity of the agency action at the time it
12 was taken, that Petitioners did not know and were under no duty to discover it and could not
13 have discovered it until after the agency action, and that the interests of justice would be served
14 by remand to the agency. Therefore,

15
16 IT IS HEREBY ORDERED that this matter is REMANDED to the Department of
17 Ecology for reconsideration of its denial of the Youth Petition for Rulemaking in light of both
18 its December 2014 report prepared under RCW 70.235.040 and the declaration of Dr. Pushker
19 Karecha attached to Petitioner's opening Brief to this Court.

20
21 IT IS FURTHER ORDERED that the Department report to this Court no later than July
22 8, 2015, whether it intends to amend or affirm its decision denying the Youth's Petition for
23 Rulemaking. If the Department intends to amend its decision the Court will set a status
24 conference to determine a case schedule as needed.

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DATED this 23rd day of June, 2015.


HONORABLE HOLLIS R. HILL