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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

CASCADE BICYCLE CLUB, et al.,
Plaintiffs,

NO. 10-2-2228-6 SEA

DECLARATION OF JANICE ADAIR

v.

PUGET SOUND REGIONAL
COUNCIL,
Defendant.

I, JANICE ADAIR, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. I am over the age of 18, am competent to testify in a court of law, and voluntarily provide this statement from my own personal knowledge and recollection.

2. I currently serve as a Special Assistant on climate change to the Director of the Department of Ecology (Ecology). I also head the Climate Policy Group within Ecology. I have held this position for 4.5 years.

3. My responsibilities for Ecology include serving as the senior leadership position of the agency's overall strategy to address climate change including emission reductions and preparing for its impacts. I formulate policy positions for the agency and the Governor's Office and direct activities in coordination with executive agency managers to ensure the State's climate strategy is implemented and/or followed. I am the Governor's sole

1 representative on the Western Climate Initiative, a coalition of seven states and four Canadian
2 provinces that are working together to design policies to reduce greenhouse gases. I have
3 recently been appointed to the Executive Board of The Climate Registry. I also work closely
4 with the Governor's Office to develop national policy positions related to climate change,
5 clean energy, and climate impacts.

6 4. My job duties including proposing, tracking, and/or testifying on climate
7 change related bills before the Washington State Legislature. During the 2008 legislative
8 session, I was actively involved in supporting House Bill 2815, a governor-requested bill
9 related to greenhouse gas emissions. My involvement included collaborating with the
10 Governor's Office on the scope of the legislation, working with Ecology's assistant attorneys
11 general in drafting the bill, meeting with and responding to stakeholders and other interested
12 parties on the legislation and its underlying policy objectives, working with legislators,
13 testifying in support of the bill, and drafting amendments to respond to concerns expressed by
14 legislators and interested parties. The bill was passed as an Engrossed Second Substitute
15 House Bill (ESSHB) by both legislative chambers and signed into law by Governor Gregoire
16 on March 13, 2008. Parts of the bill created a new chapter, Chapter 70.235 RCW, which is
17 the subject of the current litigation.

18 5. A core purpose of ESSHB 2815 was to lay the groundwork for Washington's
19 participation in a regional cap and trade program for the reduction of greenhouse gases. For
20 example, the Department of Ecology was charged with developing a cap and trade program
21 and delivering recommendations for its implementation to the legislature by December 1,
22 2008. *See* RCW 70.235.030. The bill's legislative findings and statements of intent include
23 multiple references to the anticipated cap and trade program as a "regional multisector
24 market-based system." *See* RCW 70.235.005.

25 6. The legislative findings and intent section also contains a key statement that
26 guides implementation of ESSHB 2815: "It is the intent of the legislature that the state

1 will . . . reduce emissions *at the lowest cost* to Washington’s economy, consumers, and
2 businesses.” RCW 70.235.005(3) (emphasis added).

3 7. A cap and trade program caps the overall level of greenhouse gas emissions
4 and lets the market determine the cost of making those reductions. As a result, a cap and trade
5 program is expected to both reduce emissions to the “cap” and to do so at the lowest cost.
6 Governor Gregoire requested passage of a bill in 2009 to set an overall “cap” in the form of
7 the statutory reductions in RCW 70.235.020(1) and to authorize the State to participate in a
8 regional cap and trade program. The bill did not pass, but the statutory reductions remain on
9 the books. Ecology and other agencies have been exploring alternatives to cap and trade for
10 meeting the reductions at the “lowest cost to Washington’s economy, consumers, and
11 businesses.” In addition, other laws have passed that seek to reduce greenhouse gas emissions
12 such as the greenhouse gas tailpipe standards for passenger vehicles and the requirement that
13 state agencies reduce their carbon footprints.

14 8. An argument that RCW 70.235.020 requires proportionate reductions from
15 sources of greenhouse gases within the various sectors that produce greenhouse gases is not
16 consistent with Ecology’s understanding of what is required under the law. First, nothing in
17 the bill suggests that the legislature intended to mandate proportionate reductions from
18 individual sources or sectors. To the contrary, the bill was drafted around the expectation of a
19 cap and trade program, which is based on the market determining the lowest cost reductions
20 throughout the economy, not on proportional reductions from each individual sector.

21 9. Second, the bill directs the State to accomplish the reductions at the *lowest*
22 *possible* cost. According to studies I have reviewed, most of the lowest cost strategies to
23 reduce emissions involve improvements in residential, commercial, and industrial energy
24 efficiency while reductions from transportation and clean energy are less cost-effective.
25 Requiring all sectors to reduce emissions at the same rate will increase the cost of meeting the
26 State’s statutory reductions compared with developing policies that target the lowest cost

1 reductions, such as a cap and trade policy. Thus, proportionate reductions from each sector or
2 sources within sectors would undermine the legislative direction to achieve reductions at the
3 lowest possible cost.

4 10. Third, greenhouse gas emissions are unique in that they mix uniformly in the
5 atmosphere thus any reduction wherever it is made will reduce the overall concentration of
6 these gases. This is why a cap and trade program has been considered an appropriate
7 reduction strategy.

8 11. It is well understood that making reductions in the transportation sector will
9 take time. Vehicle miles traveled, vehicle technology, and fuel types are the three major
10 contributors to emissions from this sector. Making changes to vehicle miles traveled will
11 require increased transit, land use changes, and other community improvements, not to
12 mention behavioral changes. Changes to vehicle technology also require considerable time.

13 12. Rather than focusing on proportionate reductions, Ecology and other state
14 agencies are working to identify strategies that are most likely to cost effectively achieve the
15 statutory reductions. For example, Ecology, the Department of Commerce, and the
16 Governor's Office have been negotiating with the owners of the State's only coal plant
17 (TransAlta), and the biggest single source of greenhouse gas emissions, to transition off of
18 coal energy by 2025. In fact, the Governor's Office, TransAlta, environmental groups, labor
19 unions, and utilities recently reached an agreement to accomplish this transition. The
20 agreement is reflected in Engrossed Second Substitute Senate Bill (ESSSB) 5769,¹ which has
21 passed the Senate, and if enacted into law, will result in a sizable decrease to the State's total
22 emissions. For an example within the transportation sector, Ecology did an economic analysis
23 of a low carbon fuel standard and identified it as a reasonable means to achieve near-term
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25 ¹ The current proposed legislation (ESSSB 5769) and status of the bill is available at
26 <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5769&year=2011>.

1 emission reductions. Other strategies are included in a report available on Ecology's website
2 at <http://www.ecy.wa.gov/climatechange/2010CompPlan.htm>.

3 13. On January 30, 2008, Ecology's former director Jay Manning submitted a letter
4 to the Puget Sound Regional Council (PSRC) during the scoping process for the updated
5 transportation plan. The letter stated that the updated plan should "ensure that the region's
6 proportional share of ghg emissions from the transportation sector will be reduced, consistent
7 with the state's ghg reduction goals." Ecology made a similar statement in 2009 in its
8 comments on the draft environmental impact statement (EIS): "Ecology believes it is
9 critically important for PSRC to develop a plan that ensures GHG emissions consistent with
10 the region's proportional share of the transportation sectors [sic] GHG emissions reductions."

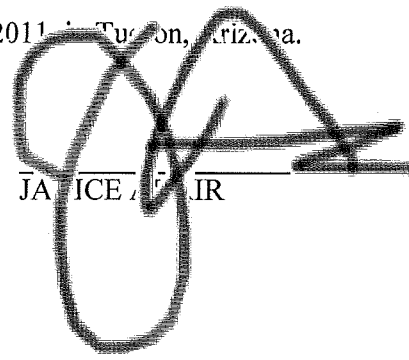
11 14. At the time that Ecology made these statements, the agency's understanding of
12 state law was that it did not mandate transportation plans to meet proportional transportation
13 reductions. However, Ecology did want to urge PSRC to analyze the concept of proportional
14 reduction to ensure that PSRC gave a hard look at the reductions when doing its planning.
15 After evaluating PSRC's Transportation 2040 plan, I had follow-up conversations with PSRC
16 staff where I stated that Ecology was pleased with PSRC's work on the transportation plan
17 and that the concept of proportional reductions was not a requirement. Nonetheless, Ecology
18 continues to believe that the statutory greenhouse gas reductions present a useful starting point
19 for planning purposes. Ecology would like planners to be mindful of the State's statutory
20 reductions and to prefer alternatives that reduce or limit emissions in order to assist the State
21 in achieving the reductions.

22 15. Although Ecology does not believe that state law requires planning entities to
23 limit themselves to alternatives that meet sector-specific proportionate reductions, we do
24 believe that the State Environmental Policy Act requires planners to do a robust analysis of
25 climate change impacts that will result from non-project decisions. This analysis should
26 include discussion of baseline emissions and statutory reductions and should also measure

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various alternatives for their potential to reduce emissions. In this regard, PSRC's Final EIS deserves high marks. In fact, Ecology has posted the PSRC plan on its website and holds it out as an example of how to properly analyze greenhouse gases and climate change in a non-project EIS.

DATED this 24 day of March, 2011 in Tucson, Arizona.



JANICE ADAIR