

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re:)
) EPA Docket No.
Endangerment and Cause or Contribute)
Findings for Greenhouse Gases Under) EPA-HQ-OAR-2009-0171
Section 202(a) of the Clean Air Act)

PETITION FOR RECONSIDERATION OF ENDANGERMENT AND
CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES
UNDER SECTION 202(a) OF THE CLEAN AIR ACT

I. INTRODUCTION

Pursuant to Section 307 of the Clean Air Act (“CAA”), the State of Texas (“Texas” or the “State”), through its Attorney General and on behalf of its Governor, Commissioner of Agriculture, Commissioner of the General Land Office, Commission on Environmental Quality, and the Chairman of the Public Utility Commission, files this Petition for Reconsideration requesting that the Administrator of the U.S. Environmental Protection Agency (the “EPA”) reconsider her Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act (“Endangerment Finding”).¹ In support of this Petition, the State of Texas shows the following:

II. OVERVIEW

Texas has an acclaimed record of working with EPA to enforce environmental laws. Texas is also a recognized leader in using renewable energy sources. But, Texas is compelled to take action against EPA’s Endangerment Finding issued on December 15, 2009 because it will lead to unprecedented bureaucratic licensing and regulatory burdens on farmers, ranchers, small businesses, hospitals, and even schools.² Any location that

¹ See Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009) (describing procedures for requesting that the Administrator convene a proceeding for reconsideration).

² As the Texas Commission on Environmental Quality observed in its June 23, 2009 Comment on the mobile source Endangerment Finding, “The positive endangerment finding and cause or contribute findings under Section 202(a) will trigger a similar finding under provisions of Clean Air Act regulating point sources.” Letter from Mark Vickery, Executive Director, Texas Commission on Environmental Quality to Hon. Lisa Jackson, Administrator, U.S. Environmental Protection Agency (June 23, 2009), *available at* www.regulations.gov, Docket: EPA-HQ-OAR-2009-0171. That is, as the Texas Commission on Environmental Quality noted, by finding that mobile source GHG emissions—which are regulated exclusively by EPA and not by the states—constitute a danger to the public’s health and safety within the meaning of Section 202(a) of the Clean Air Act, the Administrator has essentially required that stationary source GHGs—which are regulated by the states—shall also be regulated. The Executive Director of the Texas Commission on Environmental Quality put it succinctly, “the findings that the four specific GHG[s]...emitted from motor vehicles cause or contribute to air pollution that is reasonably anticipated to endanger public health and welfare necessarily triggers regulation of [state-regulated] point sources of GHG ‘pollutants’ under Title I and Title V of the CAA.” This position is shared by the National Association of Clean Air Agencies, which represents state and local regulatory agencies that are

has a natural gas powered heater necessarily emits greenhouse gasses to warm the air. Texas farmers rely on diesel-powered tractors to plow fields and operate cotton gins. Most public universities have boilers and some even have small power plants. Virtually every sector of the Texas economy will be affected by EPA's Endangerment Finding.

Despite the Endangerment Finding's remarkably broad impact, EPA's Administrator relied on a fundamentally flawed and legally unsupported methodology to reach her decision. And although the Administrator is legally required to undertake a scientific assessment before reaching a decision that is supposed to be based on scientific conclusions, the Administrator outsourced the actual scientific study, as well as her required review of the scientific literature necessary to make that assessment. In doing so, EPA relied primarily on the conclusions of outside organizations, particularly the United Nations International Panel on Climate Change ("IPCC").

EPA's reliance on the IPCC's assessment to make a decision of this magnitude is not legally supported. Since the Endangerment Finding's public comment period ended in June, 2009, troubling revelations about the conduct, objectivity, reliability, and propriety of the IPCC's processes, assessments, and contributors have become public. Previously private email exchanges among top IPCC climatologists reveal an entrenched group of activists focused less on reaching an objective scientific conclusion than on achieving their desired outcome. These scientists worked to prevent contravening studies from being published, colluded to hide research flaws, and collaborated to obstruct the public's legal right to public information under open records laws.

In addition to the improper collusion and cover-ups revealed by the release of these emails, since the public comment period ended, some of the IPCC's methodologies and conclusions have been discredited. Not surprisingly, respected scientists and climatologists from around the globe have roundly criticized and correctly questioned the IPCC's process, while calling for programmatic reforms.

Indeed, there has been worldwide fallout from scandals enveloping the IPCC. In Britain, four separate investigations have been launched, and the British Broadcasting Corporation has convened an inquiry into the journalistic appropriateness of its IPCC coverage. India has announced that it will create its own climate change institute rather than rely exclusively on the IPCC. And the United States Department of Commerce has created a new Climate Science Institute—though it has remained noticeably silent on the scandals plaguing the IPCC.

responsible for Clean Air Act enforcement, "Once EPA has issued an endangerment and cause or contribute finding with respect to a pollutant and class of motor vehicles, section 202(a) requires it to promulgate emissions standards for that pollutant and class of motor vehicles...Most would concede that, if adopted, these proposed limitations would clearly subject the affected pollutants to 'regulation' and trigger the applicability of the PSD and Title V programs under the Act to GHG emissions." Letter from G. Vinson Hellwig, NACAA Co-President, Larry Greene, NACAA Co-President, Robert Hodanbosi, Co-Chair NACAA Permitting Committee, and Ursula Kramer, Co-Chair NACAA Permitting Committee, to U.S. Environmental Protection Agency (December 28, 2009), *available at* www.regulations.gov, Docket: EPA-HQ-OAR-2009-0517.

As a result, bipartisan legislation has been introduced in both chambers of Congress to prevent implementation of the Endangerment Finding and the related regulation of greenhouse gas emissions. Notwithstanding the multitude and scope of these responsive measures, EPA has not indicated a willingness to review allegations that have shocked and appalled policy makers, regulators, scientists, and concerned citizens worldwide. Thus, while the State of Texas remains committed to working cooperatively with EPA to protect the environment, this State must exercise its legal right to challenge a fundamentally flawed and legally unjustifiable process that will have a tremendously harmful impact on the lives of Texans and the Texas economy.

In light of the disturbing revelations detailed in the State's Petition—which strike directly at the heart of the objectivity, procedural legitimacy, and scientific validity of the assessments relied on by the Administrator—EPA should grant the State of Texas' Petition for Reconsideration, conduct the rigorous, agency-led assessment that fully complies with Office of Management and Budget (“OMB”) rules governing federal agency processes, and then rely on that scientifically—and *legally*—sound mechanism before reaching a potentially trillion-dollar decision as to whether greenhouse gases from mobile sources constitute a danger to the public health and welfare.

Thus, on behalf of the farmers and ranchers who use fossil fuels to cultivate their land and fertilize their crops; the 3,800 farms and 28,000 cattle operations that will have to undergo the costly, complicated Title V Air permitting process just to continue operating as they always have;³ the 375,000 hard-working Texans who rely on the energy sector for employment;⁴ the estimated 30,000 Texas businesses that face new regulations and increased costs because they emit greenhouse gases;⁵ the already financially strapped Texas families who face \$1,200 in increased annual living costs;⁶ and the public school systems across the State that depend on the Permanent School Fund—which earned more than \$2 billion in revenue from oil and gas leases over the last five years—for the more than \$700 million it provided for public education last year,⁷ Texas, through its Attorney General and by its Governor, Agriculture Commissioner, Land Commissioner, Commission on Environmental Quality, and the Chairman of the Public Utility Commission, hereby requests that the Administrator reconsider the Endangerment Finding.

³ Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency's Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 16 (June 23, 2009).

⁴ Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency's Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 14 (June 23, 2009)

⁵ *Id.*

⁶ Rick Perry, Governor of Texas, Speech Urging EPA to Withdraw Ruling on Danger of Carbon Dioxide (Dec. 9, 2009), available at <http://governor.state.tx.us/news/speech/14021/> (last visited Feb. 15, 2010).

⁷ Texas Education Agency, Texas Permanent School Fund Annual Report, December, 2009 at 4, available at <http://ritter.tea.state.tx.us/psf/PSFAR09.pdf>.

III. STANDARD OF REVIEW

Section 307 of the Clean Air Act directs that the Administrator “*shall* convene a proceeding for reconsideration” if two things are shown:

First, it was either “impracticable” to raise the objection during the public comment period, or the grounds for such objection arose after the period of public comment (but within the time specified for judicial review). . . .⁸ Second, the objection is of central relevance to the outcome of the rule—in this case the Endangerment Finding.⁹ The State’s Petition meets both requirements.

The information on which this Petition is based came to light after the June 23, 2009 deadline for public comment ended. The deadline for seeking judicial review of the Endangerment Finding is February 16, 2010.¹⁰ Therefore, the grounds for the objections presented in this Petition arose after the period of public comment but within the time specified for seeking judicial review.¹¹

The Endangerment Finding stipulates that “the Administrator [relied] on the major assessments of the USGCRP, IPCC, and NRC as the primary scientific and technical bases of her endangerment decision.”¹² The appropriateness of the Administrator’s misplaced reliance on those assessments is *of central relevance* to the Endangerment Finding.¹³

IV. THE STATE OF TEXAS’ COMMITMENT TO THE ENVIRONMENT

A. TEXAS’ RECORD OF ENVIRONMENTAL ENFORCEMENT

This Petition should not be misconstrued as a waning commitment by Texas to protect the environment. Rather, Texas asserts that environmental protection is best achieved when based on sound legal and scientific principles. Texas has aggressively protected air quality. The State has joined with EPA in record-setting enforcement actions and has become a national leader in renewable energy sources that have reduced greenhouse gas emissions.

Last December, the State of Texas teamed with EPA and the U.S. Department of Justice in a successful enforcement effort against the mining and refining company Asarco, LLC. As a result, Asarco will spend \$1.8 billion remediating 80 hazardous waste sites in 19

⁸ See 42 U.S.C. § 7607(d)(7)(B).

⁹ *Id.*

¹⁰ Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clear Air Act, 74 Fed. Reg. 66,496.

¹¹ See 42 U.S.C. § 7607(d)(7)(B) (providing that an objection to an agency rule under the CAA may be filed before the end of the period of judicial review if the grounds for the objection arose after the period for public comment).

¹² Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clear Air Act, 74 Fed. Reg. at 66,510.

¹³ See 42 U.S.C. § 7607(d)(7)(B) (an objection must be of “central relevance to the outcome of the rule”)

states across the country. Of that amount, \$52 million was allocated to Texas to fund the environmental remediation of a lead smelter in El Paso.¹⁴ In August, 2008, Texas obtained \$6.5 million in penalties in an enforcement action against two Lyondell Chemical Company subsidiaries that operated seven petrochemical plants along the Gulf Coast. The State's action stemmed from an EPA-led initiative that encouraged states to resolve long-standing disputes with polluters in non-attainment areas.¹⁵

And, a joint enforcement effort by Texas, EPA, and six other states led to the largest-ever federal environmental air quality settlement involving a refining company. Under its agreement with these state and federal authorities, Valero Refining, Inc., was ordered to spend \$700 million installing emission-reduction technologies at multiple refining facilities in Texas, Louisiana, Oklahoma, Colorado, New Jersey, and California.¹⁶

Currently, the Attorney General's Office is pursuing an enforcement action against BP Products North America, Inc., which was cited for 53 separate unlawful pollutant emissions at its Texas City facility.¹⁷ The State's action is built on separate criminal and civil enforcement actions brought by EPA and the Department of Justice—enforcement actions that led BP to plead guilty to felony Clean Air Act violations.¹⁸

B. TEXAS' RECORD OF REDUCING GREENHOUSE GAS EMISSIONS

Texas is successfully fostering the use of renewable energy sources. Since 2004, no other state in the nation has reduced power-sector CO₂ emissions more than Texas.¹⁹ Further, Texas has already installed more wind power than any other state—and all but four

¹⁴ Press Release, Office of the Attorney General, Asarco Pays \$52 Million to Fund Cleanup at Former El Paso Smelter (December 10, 2009), available at www.oag.state.tx.us (last visited Feb. 15, 2010). See also *id.* (noting that a separate state enforcement action from the same bankruptcy case yielded another \$29 million for remediation at an Asarco-owned state-superfund facility in southeast Texas). See also, Bob Christie, *Asarco Paying \$1.8B to Clean Up More Than 80 Sites*, ASSOCIATED PRESS, December 10, 2009.

¹⁵ Press Release, Office of the Attorney General, Attorney General Abbott Resolves Environmental Case Against Seven Gulf Coast Petrochemical Plants (August 25, 2008), available at www.oag.state.tx.us (last visited Feb. 15, 2010).

¹⁶ Press Release, Office of the Attorney General, Attorney General Wins for Texas in Largest Environmental Settlement with a Refiner (June 16, 2005) available at www.oag.state.tx.us (last visited Feb. 15, 2010). Additionally, Texas achieved another record-breaking enforcement action involving Huntsman Petrochemical Corp., which paid the largest penalty ever levied for a Texas Clean Air Act Violation. Press Release, Office of the Attorney General, Attorney General Abbott Lands Record Environmental Penalty From Huntsman (May 13, 2003), available at: www.oag.state.tx.us (last visited Feb. 15, 2010).

¹⁷ Press Release, Office of the Attorney General, BP Products North America Agrees to Temporary Injunction Ensuring Compliance with the Texas Clean Air Act (June 29, 2009), available at www.oag.state.tx.us (last visited Feb. 15, 2010).

¹⁸ Press Release, Environmental Protection Agency, BP Products to Pay Nearly \$180 Million to Settle Clean Air Violations at Texas City Refinery (February 19, 2009), available at www.epa.gov (last visited Feb. 15, 2010).

¹⁹ Texas is building on that by developing new transmission lines that will move more than 18,000 megawatts across the State—almost as much as other states' current capacity combined. See Press Release, Office of the Governor, Governor Perry Urges EPA to Withdraw Ruling on Danger of Carbon Dioxide (December 9, 2009), available at www.governor.state.tx.us (last visited Feb. 15, 2010).

countries—and the State’s leadership is working to ensure adequate infrastructure to continue growth in the wind generation sector.²⁰

The Texas Public Utility Commission created Competitive Renewable Energy Zones (CREZ) and has developed a plan to construct the electricity transmission capacity necessary to deliver renewable energy to Texas consumers.²¹ As a result, the transmission infrastructure necessary to triple renewable energy capacity is expected to be in place by 2013.²²

The State’s renewable energy efforts are already yielding results for the environment. Texas saw one of the two largest “absolute declines” in greenhouse gas emissions of any state in the nation.²³ “Many northeastern states have reduced carbon dioxide emissions from electric power plants by switching from polluting (and expensive) oil to cleaner natural gas. Texas, meanwhile, has led the nation in wind energy installations, helping to stabilize emissions from its power sector.”²⁴ “On a per capita basis, emissions from electric generators in Texas fell by 4% between 2004 and 2007—the result of reduced reliance on coal and an increased share of power produced by natural gas and wind.”²⁵ These statistics—as well as others that show that industrial-source nitrogen oxide fell by 46% between 2000 and 2006, and the 22% decline in major metropolitan areas’ ozone levels between 2000 and 2008—demonstrate Texas’s commitment to the environment.

Significantly, during the same four-year period when CO₂ emissions from electric generators decreased in Texas by 4%, such emissions in the rest of the nation increased by an average of .7%.²⁶ Further, U.S. Department of Energy statistics indicate that Texas’s greenhouse gas emissions first began dropping in 2002--and that the period between 2002 and 2007 showed an even larger, 5% decline.²⁷

Texas continues to expand its commitment to renewable energy sources. In the first three months of 2009, non-hydro renewables accounted for nearly 6% of electricity produced in Texas.²⁸ One of the nation’s largest biomass power plants is currently being constructed in Nacogdoches. And in Freeport, Texas, a new high-tech facility is slated to use algae to convert CO₂ and wastewater into energy.²⁹

²⁰ *Id.*

²¹ Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 24 (June 23, 2009).

²² *Id.*

²³ Tony Dutzik, et. al., *Too Much Pollution* ENVIRONMENT TEXAS RESEARCH AND POLICY CENTER, at ES-3 (Fall 2009), available at www.environmenttexas.org (last visited Feb. 15, 2010).

²⁴ *Id.*

²⁵ *Id.* at 23.

²⁶ John McFarland, *Report: Texas Greenhouse Gas Emissions Down*, ASSOCIATED PRESS, Nov. 12, 2009, available at www.abenews.go.com/business/wirestory?id=9073610 (last visited Feb. 15, 2010).

²⁷ *Id.*

²⁸ Tony Dutzik, et. al., *Too Much Pollution* ENVIRONMENT TEXAS RESEARCH AND POLICY CENTER, Fall 2009, at 24, available at www.environmenttexas.org (last visited Feb. 15, 2010).

²⁹ Rick Perry, Governor of Texas, Speech at the Texas Renewable Energy Industries Association Conference (Nov. 9, 2009), available at www.governor.state.tx.us (last visited Feb. 15, 2010).

Texas has a demonstrated record of working with EPA to enforce environmental laws. Equally important, the State has a demonstrated record of successfully encouraging and implementing clean, renewable energy technologies that have fostered a cleaner environment.

V. THE ENDANGERMENT FINDING

The Administrator takes the position—and the State does not disagree—that the United States Supreme Court decision in *Massachusetts v. EPA* required the Administrator to: “determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.”³⁰

EPA’s Endangerment Finding explicitly acknowledges that its decision must be exclusively governed by science: “the [Supreme] [C]ourt clearly indicated that the Administrator’s decision must be a ‘scientific judgment.’ She must base her decision about endangerment on the science, and not on policy considerations about the repercussions or impact of such a finding.”³¹ Further, a federal law requires that she not base her decision on just *any* science, but rather “on the best reasonably obtainable science.”³² Also, the plain language of Section 202(a) requires that the Administrator’s decision be “*in [her] judgment...*”³³ (emphasis added). Thus, in reaching her Endangerment Finding, the Administrator is obligated to make her own, independent, ‘reasoned decision’ that is based exclusively on the best available science.

Evidence is mounting that the Administrator’s decision was (1) not well-reasoned, (2) based on faulty scientific analysis, and (3) not truly her own but instead a blind-faith acceptance of flawed scientific conclusions by third parties.

VI. THE IPCC REPORT’S CENTRAL RELEVANCE TO THE ENDANGERMENT FINDING

A. THE RELATIONSHIP BETWEEN THE ENDANGERMENT FINDING, THE IPCC AND THE CLIMATE RESEARCH UNIT AT EAST ANGLIA UNIVERSITY’S HADLEY CENTER

Established by the United Nations and the World Meteorological Organization, the IPCC is the self-proclaimed “leading body for the assessment of climate change.”³⁴ Among

³⁰ U.S. Environmental Protection Agency, Climate Change – Regulatory Initiatives, Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act, *available at* <http://www.epa.gov/climatechange/endangerment.html> (last visited Feb. 13, 2010).

³¹ Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66515.

³² Exec. Order. No. 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

³³ 42 U.S.C. § 7521.

³⁴ International Panel on Climate Change, Organization, *available at* <http://www.ipcc.ch/organization/organization.htm> (last visited February 14, 2010).

the IPCC's primary functions is the preparation and publication of assessment reports.³⁵ The reports, which are issued every six years, are divided into three separate books called Working Groups and a fourth called the Synthesis Report. The IPCC relies on a network of "[t]housands of scientists all over the world [who] contribute to the work of the IPCC on a voluntary basis as authors, contributors and reviewers" to draft the assessment reports.³⁶

The IPCC's primary governing principles are: "Comprehensiveness, objectivity, openness and transparency."³⁷ The EPA, citing principles issued by the IPCC in 2006, explained that the "role of the IPCC is to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy."³⁸ Notwithstanding those principles, key contributors to the IPCC report were anything but comprehensive, objective, open, and transparent.

According to EPA, "the IPCC features the HadCRUT global surface temperature record."³⁹ That refers to temperature data collected and maintained by the Hadley Center's Climate Research Unit ("CRU") at Great Britain's East Anglia University.⁴⁰ The IPCC's primary temperature data source is the CRU. The CRU and its scientists are virtually ubiquitous within the climate research community.

Until recently, the CRU's Director was Dr. Phil Jones, one of the world's most prominent climate scientists. Dr. Jones played a substantial role in the development of the IPCC's Fourth Assessment Report ("AR4" or the "Fourth Assessment"). In addition to serving as the lead author of AR4's high-profile *Summary for Policy Makers*, Dr. Jones was a contributing author of the *Technical Summary* and the lead author of *The Physical*

³⁵ International Panel on Climate Change, Procedures, *available at* http://www.ipcc.ch/organization/organization_procedures.htm (last visited Feb. 16, 2010).

³⁶ International Panel on Climate Change, Structure, *available at* http://www.ipcc.ch/organization/organization_structure.htm (last visited February 14, 2010).

³⁷ *Id.*

³⁸ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume I: General Approach to the Science and Other Technical Issues, at 13 (Dec. 7, 2009), *available at* <http://www.epa.gov/climatechange/endangerment.html>. *See also* International Panel on Climate Change, Structure (explaining that the IPCC's primary governing principles are: "Comprehensiveness, objectivity, openness and transparency."), *available at* <http://www.ipcc.ch/organization/organization.htm> (last visited February 14, 2010).

³⁹ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 27, (Dec. 7, 2009), *available at* <http://www.epa.gov/climatechange/endangerment.html>.

⁴⁰ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 19 (Dec. 7, 2009), *available at* <http://www.epa.gov/climatechange/endangerment.html>.

Science Basis, Chapter 3: *Observations: Atmospheric, Surface, and Climate Changes* (Chapter 3).⁴¹

But limiting a description of Dr. Jones's involvement to simply the portions of the Fourth Assessment that he personally authored does not adequately describe his influence on the report. Dr. Jones's research is cited 39 times in AR4.⁴² His work is referenced by all three of AR4's Working Groups and appears in 21 separate chapters of the report.⁴³ Further, Dr. Jones's influence within the tight-knit community of climate scientists is rooted not only in his role as lead IPCC contributor, but also in the significant influence that the Hadley Center's climate data has on the IPCC reports, which rely on CRU data. As was noted above, "IPCC features the HadCRUT global surface temperature record."⁴⁴ Further, "EPA displays Hadley global surface temperature data (i.e., the HadCRUT dataset) in Figure 4.2 in the TSD, and this figure is from IPCC."⁴⁵

Significantly, EPA also *directly* relied on the CRU's data. That is, although EPA did not conduct its own scientific assessment—instead allowing IPCC and others to serve as the "the primary scientific and technical basis for her endangerment finding"⁴⁶—the Technical Support Document ("TSD") that purports to provide the scientific bases for the Administrator's Endangerment Finding "refers to trends in three global surface temperature records."⁴⁷ The three temperature data sources cited in the TSD are: the CRU ... NOAA's global land-ocean surface temperature dataset... [and] NASA's global surface temperature analysis."⁴⁸

But according to the TSD, the CRU's temperature data "applies an urbanization adjustment"—scientific vernacular for applying a mathematical calculation to the raw temperature data which is intended to account for variables, such as the location of a particular weather station.⁴⁹ Thus, the CRU temperatures cited by both the IPCC and EPA do not reflect temperatures that were actually captured by weather station

⁴¹ IPCC Fourth Assessment Report: Climate Change 2007: Working Group I, Chapter 3, *Observations: Atmospheric, Surface, and Climate Changes*, available at http://www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html

⁴² IPCC Fourth Assessment Report: Climate Change 2007, available at http://www.ipcc.ch/publications_and_data/publications_and_data_reports.htm.

⁴³ *Id.*

⁴⁴ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 27 (Dec. 7, 2009), available at <http://www.epa.gov/climatechange/endangerment.html>.

⁴⁵ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 26 (Dec. 7, 2009), available at <http://www.epa.gov/climatechange/endangerment.html>.

⁴⁶ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,511, <http://www.epa.gov/climatechange/endangerment.html> (last visited Feb. 16, 2010).

⁴⁷ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Validity of Observed and Measured Data (U.S. Environmental Protection Agency Dec. 7, 2009) at 19, available at <http://www.epa.gov/climatechange/endangerment.html> (last visited Feb. 16, 2010).

⁴⁸ *Id.*

⁴⁹ *Id.* at 20.

thermometers, but rather temperatures that have been recalculated by the CRU for one purported scientific reason or another.

According to the TSD, EPA's other two temperature sources—the United States Commerce Department's National Oceanographic and Atmospheric Administration (“NOAA”) and the National Aeronautics and Space Administration (“NASA”) – also manipulate their raw temperature data using computer models. But importantly, the significance of CRU's modeling methodology is amplified by the fact that data from the NOAA has also been subjected to the CRU's data modeling calculations: “The NOAA global surface temperature dataset (Smith et al., 2008) employs the same methodology for addressing urbanization as is used in the HadCRUT.”⁵⁰ Thus, two of the three temperature sets that EPA relied on to reach its Endangerment Finding were homogenized based on CRU mathematical models.

Because the IPCC relied on the CRU data and modeling methodologies, the CRU's scientists must be shown to be objective and impartial arbiters of the science—or much of the world's climate data is necessarily flawed by the modelers' lack of objectivity. But Dr. Jones and his colleagues were far from objective. To the contrary, there is overwhelming evidence of outcome-oriented conduct that severely undermines the objectivity of their scientific research.

That lack of objectivity was made abundantly clear on November 13, 2009, when files from the CRU's backup server were anonymously copied and posted on the Internet.⁵¹ Those copied files contained years' worth of emails between Dr. Jones and his scientific allies from CRU and around the world. The emails do not reflect the work of objective scientists dispassionately conducting their work and zealously pursuing the truth. Rather they reveal a cadre of activist scientists colluding and scheming to advance what they *want* the science to be—even where the empirical data suggest a different outcome. The emails also reveal some of the world's most well-known climatologists demonizing those who question their climate change research. Such behavior directly contravenes the objectivity and skepticism fundamental to the scientific method.

In addition to Dr. Jones, other key figures in the emails—and therefore key figures in this Petition—are CRU climatologist Dr. Keith Briffa, former CRU Director Tom Wigley, Pennsylvania State University professor Dr. Michael Mann, Dr. Ben Santer of the Lawrence Livermore National Laboratory, NASA Climatologist Dr. Gavin Schmidt, Dr. Kevin Trenberth of the National Center of Atmospheric Research (“NCAR”), the University of Arizona's Dr. Jonathan Overpeck, NCAR's Dr. Caspar Ammann, and others. Importantly, these scientists not only surface in the CRU emails—they are also significant contributors to the Fourth Assessment. For example, Dr. Trenberth co-

⁵⁰ *Id.*

⁵¹ Fred Pearce, *Search for Hacker May Lead Police Back to East Anglia's Climate Research Unit*, THE GUARDIAN, Feb. 9, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/09/hacked-emails-police-investigation> (last visited Feb. 14, 2010).

authored the Working Group I's Chapter 3 with Dr. Jones,⁵² the CRU's Dr. Briffa and Dr. Overpeck were lead contributors to Chapter 6,⁵³ and Dr. Wigley also contributed to the report.⁵⁴

Moreover, research by the scientists named above is specifically referenced as authority in the AR4. For example, AR4 cites Dr. Jones's work 38 times in 21 chapters of two Working Groups, Mann is cited 27 times in 7 chapters of two Working Groups, Briffa is cited 23 times in 9 chapters of two Working Groups, Wigley is cited 66 times in 18 chapters of all three Working Groups, Overpeck is cited 15 times in 5 chapters of two Working Groups, Osborn is cited 30 times in 10 chapters of two Working Groups, Trenberth is cited 58 times in 18 chapters of two Working Groups, and Santer is cited 26 times in 8 chapters of two Working Groups, just to name a few.⁵⁵

Clearly the CRU, its scientists, and their colleagues wielded tremendous authority over the IPCC. Thus, to the extent their objectivity, impartiality, truthfulness, and scientific integrity are compromised or in doubt, so too is the objectivity, impartiality, truthfulness, and scientific integrity of the IPCC report, the CRU temperature data, the NOAA temperature data, and other scientific research that is shown to have relied on their compromised research.

B. THE IPCC'S—AND THE CRU'S—EXPANDED FOOTPRINT

Under Section 202(a) of the Clean Air Act, the Administrator is to evaluate whether “*in [her] judgment...*” a pollutant presents a risk to the health or safety of the public.⁵⁶ Notwithstanding Section 202's requirements, the Endangerment Finding and the TSD acknowledge that the Administrator effectively outsourced the scientific assessment process to the IPCC, the U.S. Global Climate Research Program (the “USGCRP”), and the National Research Council (“NRC”).⁵⁷ That is, EPA's conclusion depended on summaries of existing reports that were provided by third parties rather than on an analysis that was within EPA's own quality control.⁵⁸

⁵² See IPCC Fourth Assessment: Climate Change 2007: Working Group I: The Physical Science Basis, Chapter 3, *Supplementary Materials, Observations: Surface and Atmospheric Climate Change* (listing Kevin Trenberth and Phil Jones as “Coordinating Lead Authors” of chapter 3) (last visited Feb. 16, 2010).

⁵³ See IPCC Fourth Assessment: Climate Change 2007: Working Group I: The Physical Science Basis, Chapter 6, *Supplementary Materials, Paleoclimate* (listing Jonathan Overpeck as a “Coordinating Lead Author” and Keith Briffa as a “Lead Author” of Chapter 6).

⁵⁴ See IPCC Fourth Assessment: Climate Change 2007: Working Group I: The Physical Science Basis, Annex 2 at 967 (listing Tom Wigley as a “Contributor” to the Working Group I report).

⁵⁵ See generally IPCC Fourth Assessment Report: Climate Change 2007.

⁵⁶ 42 U.S.C. § 7521 (emphasis added).

⁵⁷ See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,511 (listing the reports on which the EPA relied in drafting the Endangerment Finding).

⁵⁸ See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, EPA Response to Public Comments Volume 1 at 7 (conceding that “EPA did not develop new science as part of this action and instead summarized the existing peer-reviewed assessment literature.”).

In addition to acknowledging the Administrator’s decision to outsource her scientific assessment, the Endangerment Finding hints at a second deficiency—the *appearance* that multiple organizations are the source of information when in fact the data in question is ultimately sourced back to a single organization. This is significant because the Administrator attempts to justify outsourcing her scientific assessment by purporting to rely on three outside organizations—which creates the *appearance* of a more thorough review.

The Endangerment Finding notes that it relies on the USGCRP’s relatively recent June 2009 assessment.⁵⁹ However, the Endangerment Finding also acknowledges that the 2009 USGCRP assessment simply “incorporates a number of key findings from the 2007 IPCC Fourth Assessment Report.”⁶⁰

Attempting to further justify the Administrator’s use of these outside groups, the Endangerment Finding explicitly—and for the reasons explained below, *misleadingly*—states that “[t]he review processes of the IPCC, USGCRP, and NRC . . . provide EPA with strong assurance that this material has been well vetted by both the climate change research community and by the U.S. Government.”⁶¹ Despite EPA’s assertion to the contrary, not only were the review processes decidedly *not* “well vetted,” they were fundamentally flawed and legally unsupported.

Thus, to the extent any scientists who played a significant role in the IPCC report are discredited by improper conduct, lack of objectivity, collusive efforts to stymie alternative views, or conflicts of interest—that taint extends beyond the IPCC report and into any research or studies that cite the IPCC report.

C. THE CENTRAL RELEVANCE OF THE IPCC, USGCRP, AND THE NRC

Because “the Administrator is relying on the major assessments of the USGCRP, IPCC, and NRC as the primary scientific and technical bases of her endangerment decision[,]”⁶² the reasonableness of her reliance on those assessments is of central relevance to the Endangerment Finding.⁶³ Indeed, so important was the Administrator’s decision to rely on the IPCC, NRC, and USGCRP that she repeats her description of the Endangerment Finding’s dependence on them: “The major assessments by the U.S. Global Climate Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) serve as the primary scientific basis supporting the Administrator’s endangerment finding.”⁶⁴

⁵⁹ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,511.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 66,510.

⁶³ See 42 U.S.C. § 7607(d)(7)(B) (an objection must be of “central relevance to the outcome of the rule”)

⁶⁴ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,510.

In an attempt to justify—and legally support—its heavy reliance on the IPCC, EPA affirmed that the IPCC’s findings and conclusions had been subjected to stringent third party review: “The review processes of the IPCC, USGCRP, and NRC (explained in fuller detail in the TSD and Response to Comments document, Volume 1) provide EPA with strong assurance that this material has been well vetted by both the climate change research community and by the U.S. government.”⁶⁵

Thus, EPA states that it “has no reason to believe that the assessment reports do not represent *the best source material* to determine the state of science and the consensus view of the world’s scientific experts on the issues central to making an endangerment decision with respect to greenhouse gases.”⁶⁶ “In summary, EPA concludes that its reliance on existing and recent [IPCC] synthesis and assessment reports is entirely reasonable and allows EPA to rely on the *best available science*.”⁶⁷ Thus, the Endangerment Finding not only cites the IPCC, USGCRP and NRC, but it repeatedly states that those assessments form its very basis and explains why they do so.⁶⁸

⁶⁵ *Id.* at 66,511.

⁶⁶ *Id.*

⁶⁷ *Id.* (emphasis added).

⁶⁸ *See, e.g., id.* at 66,497 n.1 (noting that the TSD accompanying the Endangerment Finding summarizes the major assessment from the IPCC, *inter alia*); *id.* at 66,499 (“The units for greenhouse gas emissions in these findings are provided in carbon dioxide equivalent units, where carbon dioxide is the reference gas and every other greenhouse gas is converted into its carbon dioxide equivalent by using the 100-year global warming potential (as estimated by the Intergovernmental Panel on Climate Change (IPCC) assigned to each gas. . . . In accordance with UNFCCC reporting procedures, the United States quantifies greenhouse gas emissions using the 100-year time frame values for GWPs [i.e., the global warming potentials] established in the IPCC Second Assessment Report.”); *id.* At 66,512 (“EPA was also involved in review of the IPCC Fourth Assessment Report, and in particular took part in the approval of the summary for policy makers for the Working Group II Volume, *Impacts, Adaptation and Vulnerability*. . . .”) (emphasis supplied); *id.* n. 15 (noting that EPA relies on IPCC’s definitions of “adaptation” and “autonomous adaptation”); *id.* at 66,517 (noting IPCC’s description of greenhouse gases); *id.* at 66,518 (“The IPCC conclusion from 2007 has been re-confirmed by the June 2009 USGCRP assessment that most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations.”); *id.* (relying on IPCC conclusions regarding external climate forcing); *id.* at 66,519 (relying on IPCC climate model summaries); *id.* at 66,520 (citing IPCC’s acceptance of the concept of well-mixed greenhouse gases); *id.* (relying on IPCC’s conclusion about the importance of climate-forcing); *id.* at 66,525 (citing IPCC’s conclusion about reduced human mortality from cold); *id.* (citing IPCC conclusion about extreme events and human health); *id.* (citing IPCC’s conclusion that pollen would likely increase with warmer temperatures); *id.* at 66,530 (Noting that, “[t]he IPCC (Field et al., 2007) reported with very high confidence that in North America, disturbances like wildfires are increasing and are likely to intensify in a warmer future with drier soils and longer growing seasons.”); *id.* at 66,532 (providing that, “The IPCC concluded with high confidence that higher water temperatures, increased precipitation intensity, and longer periods of low flows exacerbate many forms of water pollution and can impact ecosystems, human health, and water system reliability and operating costs.”); *id.* at 66,535 n. 32 (relying on the IPCC’s analysis of the national security problems posed by climate change); *id.* at 66,536 (noting that, “Vulnerability to extended drought, according to IPCC, has been documented as already increasing across North America.”); *id.* (concluding that, “Based on the most recent IPCC assessment of the scientific literature, several recent studies confirm previous findings that temperature and precipitation changes in future decades will modify, and often limit, direct carbon dioxide effects on plants.”).

EPA misleads the public into believing that EPA has relied upon three separate and independent assessments in making its Endangerment Finding. That simplistic picture is inaccurate for two primary reasons. First, it fails to disclose that the Endangerment Finding cites and discusses the IPCC assessments far more frequently and in much greater depth than those of the USGCRP and NRC.⁶⁹ Second, the USGRP and the NRC's scientific assessments regularly cite and rely on data, resources and conclusions in IPCC reports.

Therefore, the source diversity suggested by naming three organizations is misleading because any time USGCRP or NRC is cited for a proposition that, in turn, either has cited to the IPCC, the actual source of the information is the IPCC. For example, a 2006 NRC report cited in the TSD,⁷⁰ relies heavily on several IPCC reports for its proposition regarding temperature over the past thousand years.⁷¹ Similarly, the Endangerment Finding cites a 2009 USGCRP report claiming that “[r]ecent scientific assessments find that most of the warming of the Earth’s surface over the past 50 years has been caused by human activities.”⁷² However, a review of the USGCRP’s assessment cited in the Endangerment Finding reveals that the USGRCP did not independently reach that conclusion, but rather offered the 2007 IPCC Fourth Assessment Report as its source.⁷³

Both of the aforementioned scenarios reflect a unique way in which cross-sourcing among the groups creates the misimpression that the Administrator relied on three separate and independent assessments. But the first example reveals how flawed analysis—or outright misconduct—at IPCC can impact the value of NRC’s conclusions. NRC’s 2006 report uses IPCC’s data to reach its own separate or unique conclusion. Thus, if IPCC’s conclusion is flawed, not objective, or improperly peer-reviewed, that malady infects NRC’s work—even if NRC otherwise followed proper scientific procedure.

⁶⁹ The Endangerment Finding and the accompanying responses to public comments contain hundreds more citations to and discussions of IPCC findings than those of the USGCRP and NRC. *See generally* Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 et seq.

⁷⁰ *See* Technical Support Document for Endangerment and Cause or Contribute Findings of Greenhouse Gases under Section 202(a) of the Clean Air Act at 5. (citing *Surface Temperature Reconstructions for the Last 2,000 Years*, National Research Council of the National Academies (2006) at 14 (relying on the 2001 IPCC report to reach a conclusion regarding temperatures over the past thousand years)).

⁷¹ *See Surface Reconstructions for the Last 2,000 Years* at 14 (basing its conclusions about long-term temperature variation on a 2001 IPCC report), *id.* at 27-28 (relying on a 2001 IPCC report’s conclusion about the climate-forcing effect of human-produced greenhouse gases), *id.* at 30-34 (relying on CRU temperature-anomaly data); *id.* at 111 (noting that its discussion of 1,000 year temperature trends is based on IPCC report), *id.* at 126 (relying on Hadley Center assessments on regarding the impact of climate change on agriculture).

⁷² *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,535 (citing the USGCRP report of June 2009”). *See also Global Climate Change Impacts in the United States* at 13 (noting that IPCC assessments were synthesized and integrated into the report), *id.* at 23 (using three IPCC scenarios of future carbon dioxide emissions and concentrations), *id.* at 32 (basing precipitations models on the models in the IPCC 2007 Fourth Assessment Report), *id.* at 53 (using 100-year global warming potentials from IPCC to adapt an EPA chart into a new chart showing sources of greenhouse gas emissions in 2003).

⁷³ *Id.* at 19, n. 45.

Therefore, while the Administrator attempted to justify outsourcing her scientific assessment by citing three independent organizations' assessments, the analysis above reveals that (1) both NRC and USGRP citations in the Endangerment Finding can be readily traced back—and therefore attributed to—IPCC, which undermines the claims of diversity and independence intimated by the Administrator; and worse, (2) a mistake, cover-up, or flaw within widely-cited IPCC assessments can have cascading effects that necessarily—but perhaps inconspicuously—taint other assessments. These points demonstrate the unreasonableness—and legal invalidity—of the Administrator's decision to outsource the risk assessment to three seemingly independent, but verifiably interwoven, organizations.

VII. IMPROPER CONDUCT REVEALED BY DISCLOSURE OF CRU EMAILS

A. THE LACK OF INTEGRITY OF THE IPCC'S DATA

1. THE IPCC'S MANIPULATION OF ITS CLIMATE CHANGE DATA

Since the close of the public comment period, it has come to light that much of the data that the IPCC relied upon in making its findings has been manipulated. This manipulation is evidenced in certain emails between CRU staff members. In one notable email, a CRU staff member discusses a “trick” to “hide the decline” in CRU temperature data sets from 1981-2000:⁷⁴

Dear Ray, Mike and Malcolm, Once Tim's got a diagram here we'll send that either later today or first thing tomorrow. I've just completed Mike's nature trick of adding the real temps to each series for the last 20 years (ie from 1981 onwards) and from 1961 for Keith's to hide the decline.”⁷⁵

Such emails show that the CRU did not simply gather raw temperature data, enter it into computer programs, and produce conclusions based on collated raw data. Instead, the CRU gathered temperature data and manipulated it to produce a result that was sometimes different from the result that the raw data would have produced.⁷⁶

⁷⁴ Temperatures determined from proxy reconstructions – i.e., temperature records derived from conjectural reconstructions of historical temperature data for one site that is meant to represent many sites – started falling in 1960. That drop differed from the temperature trend indicated by the instrumental temperature records, which showed a rise in temperatures after 1960. The “trick” to “hide the decline” was to add the raw temperature records to the proxy records starting in 1960 instead of continuing the proxy reconstruction for the entire period. If the proxy records had been used over the entire period, there would have been a decline in temperatures. However, because different kinds of data were used, there was no decline; there was a “trick” that managed, at least for a little while, to “hide” the decline. See Marc Sheppard *Understanding Climategate's Hidden Decline*. AMERICAN THINKER, Dec. 6, 2009, available at http://www.americanthinker.com/2009/12/understanding_climategates_hid.html (last visited Feb 16, 2010).

⁷⁵ Email from P. Jones to R. Bradley, “Diagram for WMO Statement” (Nov 16, 1999), available at <http://www.eastangliaemails.com/emails.php?eid=154&filename=942777075.txt> (last visited February 11, 2010).

⁷⁶ And sometimes, as previously discussed, the CRU added raw data to manipulated data to produce a desired result. See Marc Sheppard *Understanding Climategate's Hidden Decline*. AMERICAN THINKER

Consequently, the British Meteorological Office (the “MET”)⁷⁷ has announced that it will reexamine 160 years of climate data, attributing the need to reexamine the data to a “*lack of public confidence based on the leaked e-mails.*”⁷⁸

Although the CRU scientists appear to have manipulated data in several parts of the world, a few instances are especially egregious. The Moscow-based Institute of Economic Analysis (IEA) issued a report discussing the possibility that the CRU has altered climate data from Russian weather stations.⁷⁹ According to a Russian newspaper, “Analysts say Russian meteorological stations cover most of the country’s territory, and that the Hadley Center had used data submitted by only 25% of such stations in its reports.”⁸⁰ The stations not included in the CRU data set tended to show less warming than those that were included.⁸¹ As a result, the data showed more warming than they would have shown had the data set included more Russian weather stations.⁸²

Similarly, the CRU adjusted 20th century raw temperature data for New Zealand in a way that showed greater warming than the raw data would have shown.⁸³ The CRU manipulated the raw data to show lower temperatures for New Zealand in the early 20th century.⁸⁴ Because the data set started with temperatures that were very low, the CRU was able to show that a relatively greater amount of warming had occurred by the end of

(Dec. 6, 2009), available at http://www.americanthinker.com/2009/12/understanding_climategates_hid.html (last visited Feb 11, 2010).

⁷⁷ The MET is roughly equivalent to the U.S. National Weather Service. It is a “Trading Fund within the Ministry of Defence, operating on a commercial basis under set targets.” See Met Office: Who we are, available at <http://www.metoffice.gov.uk/corporate/> (last visited February 14, 2010).

⁷⁸ Ben Webster, *Met Office to re-examine 160 years of climate data*. THE TIMES (Dec. 5, 2009), available at <http://www.timesonline.co.uk/tol/news/environment/article6945445.ece> (last visited Feb. 10, 2010).

⁷⁹ N.A. Pivavorova, *How Climate is Made. The case of Russia*. Institute of Economic Analysis. (2009), available at <http://climateaudit.files.wordpress.com/2009/12/iea1.pdf> (last visited Feb. 15, 2010).

⁸⁰ N.A. Pivavorova, *How Climate is Made. The case of Russia*. Institute of Economic Analysis. (2009) (last visited Feb. 15, 2010), available at <http://climateaudit.files.wordpress.com/2009/12/iea1.pdf> (last visited Feb. 15, 2010).

⁸¹ See *What the Russian Papers say*, RIANOVOSTI, (citing KOMMERSANT), available at <http://en.rian.ru/papers/20091216/157260660.html> (last visited Feb. 15, 2010).

⁸² See RIANOVOSTI, *What the Russian Papers Say* (citing KOMMERSANT), available at <http://en.rian.ru/papers/20091216/157260660.html> (reporting that “Over 40% of Russian territory was not included in global-temperature calculations for some other reasons, rather than the lack of meteorological stations and observations.”). See also Andrei Illarianov, *New Study Hadley Center and CRU Apparently Cherry-Picked Russia’s Climate Data*. CATO AT LIBERTY, available at <http://www.cato-at-liberty.org/2009/12/17/new-study-hadley-center-and-cru-apparently-cherry-picked-russias-climate-data/>. (last visited Feb. 15, 2010).

⁸³ Richard Treadgold. *Are we feeling warmer yet?* NEW ZEALAND CLIMATE SCIENCE COALITION (Nov. 25, 2009) available at http://climatescience.org.nz/images/PDFs/global_warming_nz2.pdf. (last visited Feb. 10 2010).

⁸⁴ See *Difference Between Raw and Final USHCN Data Sets*. available at http://www.ncdc.noaa.gov/img/climate/research/uschn/ts.uschn_anom25_diffs_urb-raw_pg.gif (last visited Feb. 10, 2010).

the century.⁸⁵ The raw data showed much less warming because it started with actual (i.e., non-manipulated) temperatures that were warmer than the manipulated temperatures.⁸⁶ Thus, the CRU created an exaggerated appearance of 20th century warming in New Zealand.

2. LOSS OR DESTRUCTION OF CRITICAL IPCC RECORDS

The CRU's data integrity problems consisted of more than data manipulation. CRU admitted in late November 2009 that much of their original data had been destroyed due to lack of storage space.⁸⁷ CRU claims that they retained only the "value added" data⁸⁸ – i.e., "quality controlled and homogenized" data or, put differently, data that has been manipulated and that is therefore no longer raw. Consequently, it is no longer possible to check the accuracy of whether CRU's "homogenization" – i.e., the synthesis of one set of data that appears to lead to a conclusion that would conflict with the conclusion suggested by other data of data – was appropriate.⁸⁹ However, even if CRU still has some data, it is sometimes unwilling to produce it, regardless of whether it is required to do so by law.⁹⁰

Of course, emails indicating that CRU scientists and programmers were unable to follow data does not absolve CRU: on the contrary, it is damning evidence that the IPCC and, in turn, EPA cannot rely on CRU data and analysis. As noted above, some CRU scientists manipulated data to produce their desired conclusions about the severity of anthropogenic global warming. However, revelations that CRU data was destroyed, lost, or simply withheld indicate a different, but equally serious, problem: that the data can neither confirm nor deny how quickly, how far, for how long, or even, in some cases, whether, temperatures have risen. As such, CRU data that might not be purposefully misleading could still be scientifically worthless and, therefore, of no legitimate use to EPA.

B. IPCC'S ROUTINE RELIANCE ON QUESTIONABLE SOURCE MATERIALS

1. CONCLUSIONS ON GLACIERS ADMITTEDLY WRONG

In its Fourth Assessment, the IPCC concluded that "[g]laciers in the Himalaya are receding faster than in any other part of the world. . . and, if the present rate continues, the likelihood of them disappearing by the year 2035 and perhaps sooner is very high if

⁸⁵ Richard Treadgold. *Are we feeling warmer yet?* NEW ZEALAND CLIMATE SCIENCE COALITION at 5 (Nov. 25, 2009) available at http://climatescience.org.nz/images/PDFs/global_warming_nz2.pdf. (last visited Feb. 10 2010).

⁸⁶ *Id.*

⁸⁷ Jonathan Leake. *Climate change data dumped.* THE TIMES (Nov. 29, 2009). Found at: <http://www.timesonline.co.uk/tol/news/environment/article6936328.ece> (last visited Feb. 10, 2010).

⁸⁸ CRU Data Availability. available at <http://www.cru.uea.ac.uk/cru/data/availability/>.

⁸⁹ *Id.*

⁹⁰ See, e.g., Steve McIntyre. *Willis Eschenbach's FOI Request.* CLIMATE AUDIT (Nov. 25, 2009) available at <http://www.timesonline.co.uk/tol/news/environment/article6936328.ece> (last visited Feb. 10, 2010) (discussing the experience of a scientist named Willis Eschenbach who attempted to obtain station data for average global temperature from CRU but endured a year of CRU's excuses and explanations for its failure to produce the requested information).

the Earth keeps warming at the current rate.”⁹¹ However, on January 20, 2010, the IPCC issued a statement reversing that conclusion: “[The paragraph containing the Himalayan glacier claim] refers to poorly substantiated estimates of rate of recession and date for the disappearance of Himalayan glaciers. In drafting the paragraph in question, the clear and well-established standards of evidence, required by the IPCC procedures, were not applied properly.”⁹² The story of how the Fourth Assessment came to include the disappearing-glacier claim – as well as how the IPCC came to issue a retracting statement – illustrates the degree to which the IPCC failed to follow adequate procedures.

The IPCC conclusion in 2007 that Himalayan glaciers would vanish by 2035 was ultimately based on a short telephone interview -- conducted almost 10 years before the IPCC report was released -- with Dr. Syed Hasnain, a scientist in Delhi, India.⁹³ The telephone interview was the source of a 1999 story in the popular-science magazine *The New Scientist*.⁹⁴ In turn, a 2005 World Wildlife Fund (“WWF”) report – which was not subjected to any formal scientific review⁹⁵ -- cited the *New Scientist* report for the claim that Himalayan glaciers would vanish by 2035.⁹⁶ Finally, the Fourth Assessment cited the WWF report as its source for the disappearing-glacier claim even though the WWF report did not suggest that the likelihood of the glaciers melting was “very high”.⁹⁷ Dr. Hasnain has since admitted that his claim – on which other reports, including the Fourth Assessment, were based – was merely “speculation” and was not supported by any formal research.⁹⁸

Dr. Murari Lal, who wrote the IPCC Fourth Assessment Report Working Group II chapter on Asia,⁹⁹ has admitted that he is “not an expert on glaciers and I have not visited

⁹¹ IPCC Fourth Assessment Report: Climate Change 2007: Working Group II, Section 10.6.2. *The Himalayan Glaciers*.

⁹² *IPCC statement on the melting of Himalayan glaciers*. IPCC Secretariat. Jan. 20, 2010, available at <http://www.ipcc.ch/pdf/presentations/himalaya-statement-20january2010.pdf> (last visited Feb. 15, 2010).

⁹³ Jonathan Leake and Chris Hasting, *World misled over Himalayan glacier meltdown*, THE TIMES, Jan. 17, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article6991177.ece> (last visited Feb. 15, 2010).

⁹⁴ *Id.* See also Fred Pearce, *Flooded Out*, THE NEW SCIENTIST, June 5, 1999, available at <http://www.newscientist.com/article/mg16221893.000-flooded-out.html> (last visited Feb. 15, 2010).

⁹⁵ Jonathan Leake and Chris Hasting, *World misled over Himalayan glacier meltdown*, THE TIMES, Jan. 17, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article6991177.ece> (last visited Feb. 15, 2010).

⁹⁶ Sandeep Chamling Rai, *An Overview of Glaciers, Glacier Retreat, and Subsequent Impacts in Nepal, India, and China*, WWF Nepal Program (March 2005), available at <http://assets.panda.org/downloads/himalayaglacierson2005.pdf> (last visited Feb 14, 2010).

⁹⁷ See IPCC Fourth Assessment Report: Climate Change 2007: Working Group II, Section 10.6.2. *The Himalayan Glaciers* (citing “WWF 2005”). See also *An Overview of Glaciers, Glacier Retreat, and Subsequent Impacts in Nepal, India, and China*. WWF Nepal Program, March 2005, 2 (quoting Dr. Hasnain without describing his claims as “very likely” to be correct).

⁹⁸ Jonathan Leake and Chris Hasting, *World misled over Himalayan glacier meltdown*, THE TIMES, Jan. 17, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article6991177.ece> (last visited Feb. 15, 2010).

⁹⁹ See IPCC Fourth Assessment Report: Climate Change 2007: Working Group II: Technical Summary. (listing Dr. Lal as one of the “Lead Authors”). Available at http://www.ipcc.ch/publications_and_data/ar4/wg2/en/ts.html.

the region so I have to rely on credible published research. The comments in the WWF report were made by a respected Indian scientist and it was reasonable to assume he knew what he was talking about.”¹⁰⁰

Dr. Lal has admitted that the chapter on Asia – the one that contained the disappearing-glacier conclusion – “related to several countries in this region and their water sources. We thought that if we can highlight it, it will impact policy-makers and politicians and encourage them to take some concrete action.”¹⁰¹ Lal stated that, “It had importance for the region, so we thought we should put it in.”¹⁰² Dr Rajendra K. Pachauri, Chairman of the IPCC Bureau, has blamed Dr. Lal for the error, alleging that he did not follow IPCC procedures in compiling his report. Dr. Lal has defended himself from that allegation: “We as authors followed them to the letter Had we received information that undermined the claim, we would have included it.”¹⁰³

Dr. Pauchari has since acknowledged that the IPCC claim was an error,¹⁰⁴ but he had previously criticized a report issued by the Indian Minister of State for the Environment and Forests, Jairam Ramesh, which concluded that IPCC’s disappearing-glacier claim was incorrect, as “voodoo science.”

Dr. Pauchari has also claimed that, “I became aware of [accusations challenging the disappearing-glacier claim] when it was reported in the media about ten days ago [i.e. 10 days before January 22, 2010, the day Dr. Pauchari was quoted in a January 30, 2010 news article]. Before that, it was really not made known. Nobody brought it to my attention. There were statements, but we never looked at this 2035 number.”¹⁰⁵ In response to allegations that he knew about the error but did nothing to correct it because he wanted to avoid unfavorable publicity during the Copenhagen climate change summit, Dr. Pauchari said that the allegations were “ridiculous. . . . It never came to my attention before the Copenhagen summit. It wasn’t in the public sphere.”¹⁰⁶ Nevertheless, Pallava Bagla, who writes for the journal *Science*, said he had asked Dr Pachauri about the now-discredited claim about glaciers in November of 2008 and that Dr Pachauri had answered: “I don’t have anything to add on glaciers.”¹⁰⁷

¹⁰⁰ Jonathan Leake and Chris Hasting, *World misled over Himalayan glacier meltdown*, THE TIMES, Jan. 17, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article6991177.ece> (last visited Feb. 15, 2010).

¹⁰¹ David Rose, *Glacier scientist: I knew data hadn’t been verified*, DAILY MAIL, Jan. 24, 2010, available at <http://www.dailymail.co.uk/news/article-1245636/Glacier-scientists-says-knew-data-verified.html>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Aarti Dhar, *Government Contention Vindicated: Jairam Ramesh*, THE HINDU, Jan. 18, 2010, available at <http://beta.thehindu.com/news/national/article82160.ece> (last visited Feb. 15, 2010).

¹⁰⁵ Ben Webster, *Climate chief was told of false glacier claims before Copenhagen*, THE TIMES, Jan. 30, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article7009081.ece>, (last visited Feb. 15, 2010).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

2. FINDINGS ON CHINESE WEATHER TAINTED BY ALLEGATIONS

The discredited glacier-claim is not the only error in the IPCC report that demonstrates the IPCC's failure to follow adequate scientific procedures. Newspaper reports indicate that temperature data produced at Chinese weather stations were "seriously flawed" and that the CRU could not produce documents relating to them.¹⁰⁸ Even so, the Fourth Assessment Report cited a 1990 paper in *Nature* which discussed the warming supposedly measured at the Chinese stations.¹⁰⁹ The history of where the weather stations were sited was central to the 1990 paper because it concluded that the warmer temperatures in China were caused by climate change rather than the heat-island effect of growing cities.¹¹⁰ The authors of that 1990 paper were Phil Jones and Wei-Chyung Wang of the State University of New York at Albany.¹¹¹ The Fourth Assessment relied on the Jones-Wang study to support the conclusion that "any urban-related trend" in global temperatures was "an order of magnitude smaller" than other trends.¹¹²

However, an amateur climate analyst, Doug Keenan, has been able to show that 49 of the Chinese meteorological stations had no histories of their location or other details.¹¹³ The 49 stations included 40 of the 42 rural stations cited in the study.¹¹⁴ Keenan demanded that Dr. Jones retract his claims about the Chinese data: "I ask you to retract your GRL paper, in full, and to retract the claims made in *Nature* about the Chinese data, If you do not do so, I intend to publicly submit an allegation of research misconduct to your university at Albany."¹¹⁵ In August 2007, Keenan submitted a formal complaint about Wang to the State University of New York at Albany after Wang refused to retract the claim.¹¹⁶ Although the university found "evidence of the alleged fabrication of results," it exonerated Wang. Ironically, Phil Jones submitted a report to the Journal of Geophysical Research re-examining temperatures in eastern China. His report concluded that not only was the urban heat effect not "negligible" it could account for 40% of the warming shown in the study.

¹⁰⁸ Fred Pearce, *Leaked climate change emails scientist 'hid' data flaws*, THE GUARDIAN, Feb. 1, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/01/leaked-emails-climate-jones-chinese>. (last visited Feb. 15, 2010).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² IPCC Fourth Assessment Report: Climate Change 2007: Working Group I: The Physical Science Basis. 3.2.2.2 *Urban Heat Islands and Land Use Effects*.

¹¹³ Fred Pearce, *Strange case of moving weather posts and a scientist under siege*, THE GUARDIAN, Feb. 1, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/01/dispute-weather-fraud> (last visited Feb. 10, 2010).

¹¹⁴ *Id.*

¹¹⁵ Email of Doug Keenan to Dr. Wei-Chyung Wang and Phil Jones, April 20, 2007, available at <http://www.guardian.co.uk/environment/2010/feb/01/dispute-weather-fraud> (last visited Feb. 15, 2010).

¹¹⁶ Fred Pearce, *Strange case of moving weather posts and a scientist under siege*. THE GUARDIAN. (Feb. 1, 2010) available at <http://www.guardian.co.uk/environment/2010/feb/01/dispute-weather-fraud>. (last visited Feb. 10, 2010).

Similarly, the Fourth Assessment erroneously claimed that “[t]he Netherlands is an example of a country highly susceptible to both sea-level rise and river flooding because 55% of its territory is below sea level where 60% of its population lives and 65% of its Gross National Product (GNP) is produced.”¹¹⁷ The Dutch government has asked for a correction to that claim, noting that only 26 percent of the country is below sea level.¹¹⁸ Trimo Vallaart, the Dutch environment ministry spokesman, said he regretted the fact that proper procedure was not followed, and added that it should not be left to politicians to check the IPCC's numbers.¹¹⁹ He also said that the Dutch government “will order a review of the report to see if it contains any more errors.”¹²⁰

3. RAIN FOREST CONCLUSIONS BASED ON NON-PEER REVIEWED SOURCES

As with the errors regarding Himalayan glaciers, rural Chinese weather stations, and Dutch land, the Fourth Assessment contains an improperly sourced and unverifiable claim about the Amazon rainforest. In the Fourth Assessment, the IPCC cited a WWF report¹²¹ claiming that, due to climate change, “[u]p to 40% of the Amazonian forests could react drastically to even a slight reduction in precipitation”¹²² The WWF report’s authors claimed their findings were based on an article in *Nature*,¹²³ but the sentence in the *Nature* piece that the WWF report relied on was about how logging, rather than climate change, affected the forest.¹²⁴ Similarly, the IPCC’s Fourth Assessment cited an article published in a popular magazine for climbers which was based on anecdotal evidence from mountaineers about the changes they saw while climbing.¹²⁵ The Fourth Assessment also cited¹²⁶ a geography student’s master’s

¹¹⁷ IPCC Fourth Assessment: Climate Change 2007: Working Group II: Impacts, Adaption and Vulnerability, Section 12.2.3, *Current adaptation and adaptive capacity*.

¹¹⁸ Alister Doyle, *U.N. Climate panel reviews Dutch sea level glitch*, REUTERS, Feb. 5, 2010, available at <http://www.reuters.com/article/idUSTRE6141VU20100205> (last visited Feb. 15, 2010).

¹¹⁹ *Dutch Point Out New Mistakes in U.N. Climate Report*, Feb. 5, 2010, available at <http://www.foxnews.com/scitech/2010/02/05/dutch-point-new-mistakes-climate-report/> (last visited Feb. 15, 2010).

¹²⁰ *Id.*

¹²¹ Andy Rowell and Peter Moore, *Global Review of Forest Fires: A WWF/IUCN Report*, July 27, 2000, available at

http://www.panda.org/what_we_do/how_we_work/conservation/forests/publications/?3596/Global-Review-of-Forest-Fires-A-WWF-IUCN-Report (last visited Feb. 15, 2010).

¹²² IPCC Fourth Assessment Report: Climate Change 2007: Working Group II: Impacts, Adaption and Vulnerability, Summary of Expected Key Future Impacts and Vulnerabilities, Section 13.4.1, *Natural ecosystems*.

¹²³ Daniel C. Nepstadt et al., *Large-scale impoverishment of Amazonian forests by logging and fire*. NATURE vol. 398 at 505 et seq., April 8, 1999, available at

http://www.whrc.org/resources/published_literature/pdf/NepstadNature.99.pdf (last visited Feb. 15, 2010) (noting that, “[l]ogging companies in Amazonia kill or damage 10±40% of the living biomass of forests through the harvest process.”).

¹²⁴ Christopher Booker, *Amazongate: new evidence of the IPCC’s failures*, DAILY TELEGRAPH, Jan. 30, 2010, available at

<http://www.telegraph.co.uk/comment/columnists/christopherbooker/7113582/Amazongate-new-evidence-of-the-IPCCs-failures.html>, (last visited Feb. 15, 2010).

¹²⁵ IPCC Fourth Assessment: Climate Change 2007: Working Group II: Impacts, Adaption and Vulnerability, Section 1.3.1.1 *Observed effects due to changes in the cryosphere*.

dissertation that quoted interviews with mountain guides in the Alps.¹²⁷ But perhaps most egregious was the Fourth Assessment's citation¹²⁸ to a boot cleaning manual.¹²⁹ Citations to these non-peer reviewed sources¹³⁰ and others like them refute EPA's claim that it could rely on the IPCC assessment reports because they contained peer reviewed scientific studies.

¹²⁶ IPCC Fourth Assessment: Climate Change 2007: Working Group II: Impacts, Adaption and Vulnerability, Section 1.3.1.1 *Observed effects due to changes in the cryosphere*. Table 1.2 (identifying "Loss of ice climbs" as one of several "Selected observed effects due to changes in the cryosphere produced by warming").

¹²⁷ Richard Grey and Rebecca Lefort, *UN climate change panel based claims on student dissertation and magazine article*, THE DAILY TELEGRAPH. Jan. 30, 2010, available at <http://www.telegraph.co.uk/earth/environment/climatechange/7111525/UN-climate-change-panel-based-claims-on-student-dissertation-and-magazine-article.html> (last visited Feb. 10, 2010).

¹²⁸ IPCC Fourth Assessment: Climate Change 2007: Working Group II: Impacts, Adaption and Vulnerability, Section 15.7.2., *Economic impact and sustainability in Antarctica* (citing to "IAATO, 2005").

¹²⁹ International Association of Antarctic Tour Operators, *Boot, Clothing, and Equipment Decontamination Guidelines for Small Boat Operators*, available at http://www.iaato.org/docs/Boot_Washing07.pdf (last visited Feb. 15, 2010).

¹³⁰ Other non-peer reviewed sources that the Fourth Assessment cites include the following: Marris, E., 2005: *First tests show flood waters high in bacteria and lead*. NEWS@NATURE, 437, 301-3011; Dey, P., 2006: *Climate change devastating Latin America frogs*. University of Alberta; Butler, A., 2002: *Tourism burned: visits to parks down drastically, even away from flames*. ROCKY MOUNTAIN NEWS. July 15, 2002; Kesmodel, D., 2002: *Low and dry: Drought chokes off Durango rafting business*. ROCKY MOUNTAIN NEWS, 25 June 2002; Wilgoren, J. and K.R. Roane, 1999: *Cold Showers, Rotting Food, the Lights, Then Dancing*. NEW YORK TIMES, A1. July 8, 1999; Welch, C., 2006: *Sweeping change reshapes Arctic*. THE SEATTLE TIMES. Jan. 1 2006; Stiger, R.W., 2001: *Alaska DOT deals with permafrost thaws*. Better Roads. June, 30-31. [Accessed 12.02.07; Business Week, 2005: *A Second Look at Katrina's Cost*. BUSINESS WEEK; September 13, 2005. [Accessed 09.02.07; Associated Press, 2002: *Rough year for rafters*. September 3, 2002; COLOMBIA TRADE NEWS, 2006: *Illegal crops damage Colombia's environmental resources*. Colombian Government Trade Bureau; FAO, 2004b: *La participación de las comunidades en la gestión forestal es decisiva para reducir los incendios (Involving local communities to prevent and control forest fires)*. FAO Newsroom FAO, 2005: *Cattle ranching is encroaching on forests in Latin America*. FAO NEWSROOM ENVIRONMENT NEWS SERVICE, 2002: *Hungry Cambodians at the mercy of climate change*. Phnom Penh, 26 November 2002. Accessed 16.05.07: <http://www.ens-newswire.com/ens/nov2002/2002-11-26-02.asp>; Balint-Kurti, D., 2005: *Tin trade fuels Congo War*. NEWS24, 07/03/2005.FAO, 2004: *Locust crisis to hit northwest Africa again: situation deteriorating in the Sahel*. FAO News Release, 17 September 2004; Sparks, T.H., H. Heyen, O. Braslavskaja and E. Lehtikoinen, 1999: *Are European birds migrating earlier?* \pard cs12BTO NEWS, 223, 8; Benedick, R., 2001: *Striking a new deal on climate change*. Science and Technology Online, Fall 2001; Schelling, T.C., 2002: *What makes greenhouse sense?* FOREIGN AFFAIRS, May/June COM/ENV/EPOC/IEA/SLT(2005)6 32; Schelling, T.C., 1997: *The cost of combating global warming, facing the tradeoffs*. Foreign Affairs, November/December Cowan, J., E. Eidinow, Laura Likely, 2000: *A scenario-planning process for the new millennium*. Deeper News, 9(1); THE ECONOMIST, 2000: *Sins of the secular missionaries*. January 29, 2000; Speth, J.G., 2002: *Recycling Environmentalism*. Foreign Policy, July/August, pp. 74-76. Shashank, J., 2004: *Energy conservation in the industrial sector: A special report on energy conservation day*. New Delhi, ECONOMIC TIMES; Nippon Steel, 2002: *Advanced technology of Nippon Steel contributes to ULSAB-AVC Program*. NIPPON STEEL NEWS, 295, September 2002; Shorrock, T., 2002: *Enron's Asia misadventure*. Asia Times 29 January, accessed 02/07/07; ISNA, 2004: *From wood to coal in an effort to stop deforestation*. Inter Services news agency (IPS), Rome; IRIN, 2004: *Angola: frustration as oil windfall spending neglects the poor*. United Nations Integrated Regional Information Networks; *WNA report forecasts three scenarios for nuclear's growth*. NUCLEAR NEWS, November 2005: pp. 60-62, 69.

C. THE LACK OF OBJECTIVITY & THE SUPPRESSION OF DISSENT

1. THE ABUSE OF THE PEER REVIEW PROCESS

In response to public concerns that the IPCC's authors "all share the same views . . . and that alternative perspectives were not incorporated into the process,"¹³¹ EPA claimed that "there is no evidence provided that supports the claim that collaboration among a small number of authors prevented the incorporation of a range of perspectives and alternative views or biased the conclusions."¹³² Since the comment period for the Endangerment Finding concluded,¹³³ it has been revealed that the tight-knit group of scientists who oversaw and authored the IPCC's climate-related work were involved in a calculated effort to undermine core tenants of scientific objectivity, impartiality, transparency, and accuracy. These revelations disprove EPA's previous claim that there was no evidence of bias among IPCC contributors.

One particularly striking email exchange revealed how Dr. Jones used the peer review process to prevent a manuscript from being published that questioned the CRU's research. In an email to Michael Mann, Dr. Jones wrote: "recently rejected two papers [one for the Journal of Geophysical Research and one for Geophysical Research Letters] from people saying CRU has it wrong over Siberia. Went to town in both reviews, hopefully successfully. If either appears I will be very surprised . . ." ¹³⁴ The rejected paper analyzed temperature readings from Siberian weather stations and concluded that there was much less warming than Dr. Jones predicted—even though both researchers analyzed much of the same data.¹³⁵

2. SUPPRESSING DISSENT

An email exchange between Professor Mann and Dr. Jones illustrates attempts to suppress any dissenting opinion regarding climate change. First, Dr. Jones indicates that he will no longer be associated with a particular scientific research journal, *Climate Research*, unless an editor, who Dr. Jones believed was responsible for allowing contravening research to be printed, was removed: "I will be emailing the journal to tell them I'm having nothing more to do with it until they rid themselves of this troublesome editor."¹³⁶

¹³¹ (Vol I, Comment 1-20)

¹³² (Vol I, Response 1-20)

¹³³ 74 Fed. Reg. 66,500 (Dec. 15, 2009)

¹³⁴ Email from Phil Jones to Michael E. Mann, March 31, 2004, available at <http://www.eastangliaemails.com/emails.php?eid=407&filename=1080742144.txt> (last visited Feb. 16, 2010).

¹³⁵ Fred Pearce, *Climate Change Emails Between Scientists Reveal Flaws in Peer Reviews*, THE GUARDIAN (February 2, 2010), available at <http://www.guardian.co.uk/environment/2010/feb/02/hacked-climate-emails-flaws-peer-review> (last visited Feb. 16, 2010).

¹³⁶ Email from Phil Jones to Michael Mann, March 11, 2004 available at <http://www.eastangliaemails.com/emails.php?eid=295&filename=1047388489.txt> (last visited Feb. 16, 2010).

The root of the climate scientists' concern with *Climate Research*'s decision to publish contravening research was two-fold. First, they opposed any research that did not comport with their views and were concerned that publishing alternative views would only give global warming skeptics greater traction. Dr. Jones wrote: "I think the skeptics will use this paper to their own ends and it will set paleo [climate science] back a number of years if it goes unchallenged."¹³⁷ Second, they had long maligned their skeptical opponents' positions by arguing that the opposition's research had not been published by a peer-reviewed journal—and could therefore not be trusted.

Thus, when the group learned that *Climate Research* planned to publish so-called skeptical literature, the climatologists responded less like objective scientists eager to let the science determine the answer, and more like activists working to advance their preferred result. In response to Dr. Jones's email, Professor Mann not only attacked the scientists with whom he disagreed—he attacked the journal's itself: "The skeptics appear to have staged a 'coup' at 'Climate Research' (it was a mediocre journal to begin with, but now its a mediocre journal with a definite 'purpose')."¹³⁸

Then, in an email to Dr. Jones, Professor Keith Briffa, and others, Professor Mann proposed a more aggressive stance—a plan to have his fellow scientists harm *Climate Research* by refusing to submit their articles to the journal: "I think we have to stop considering 'Climate Research' as a legitimate peer-reviewed journal. Perhaps we should encourage our colleagues in the climate research community to no longer submit to, or cite papers in, this journal. We would also need to consider what we tell or request of our more reasonable colleagues who currently sit on the editorial board."¹³⁹

Importantly, because of Dr. Jones's and Mann's influence and renown in their field, they had the influence to orchestrate the desired boycott. According to a former University of Virginia environmental scientist, professor Patrick J. Michaels, "After Messrs. Jones and Mann threatened a boycott of publications and reviews, half the editorial board of *Climate Research* resigned."¹⁴⁰

The aforementioned exchange and others like it reflect a concerted effort to advance a specific scientific theory—or perhaps more appropriately a scientific *cause*—rather than to reach the objective truth. That is, the emails that have been released indicate that the

¹³⁷ Email from Phil Jones to Michael Mann, Keith Briffa, et. al., March 11, 2004, *available at* <http://www.eastangliaemails.com/emails.php?eid=295&filename=1047388489.txt> (last visited Feb. 16, 2010).

¹³⁸ Email from Michael Mann to Phil Jones, Keith Briffa et. al., March 11, 2004, *available at* <http://www.eastangliaemails.com/emails.php?eid=295&filename=1047388489.txt> (last visited Feb. 16, 2010).

¹³⁹ Email from Michael E. Mann to Phil Jones, March 11, 2003, *available at* <http://www.eastangliaemails.com/emails.php?eid=295&filename=1047388489.txt> (last visited Feb. 16, 2010).

¹⁴⁰ Patrick J. Micaels, *How to Manufacture Climate Consensus*, WALL STREET JOURNAL December 17, 2009.

scientists were more concerned with advancing their agenda than with obtaining the objective results required by the OMB and EPA guidelines.

The scientists' language reflects an 'us versus them' attitude more commonly associated with legal advocacy or team sports than the scientific method. For example, waxing adversarial in a manner more commonplace in courtroom or in a sports arena, Professor Mann suggested that his team was *losing* a journal called *Global Research Letters* to the so-called 'skeptics' whom he opposed: "What a shame that would be. It's one thing to lose 'Climate Research'. [sic] We can't afford to lose GRL."¹⁴¹

Earlier in the same email exchange, Professors Mann and Wigley explain the circumstances that led Mann to posit that they were "*losing*" GRL. Steve McIntyre, a prominent climate change skeptic and author of the blog ClimateAudit.org, had submitted a manuscript to GRL—and the journal agreed to publish McIntyre's work, which was largely critical of Mann's research.

In response, Mann contacted GRL's editorial staff in an effort to prevent McIntyre's submission from getting published. However, Mann's efforts to exert pressure were rejected by GRL's Editor-in-Chief, who explained that McIntyre's submission would be published because it had been subjected to an "extensive and thorough review...from 3 knowledgeable scientists [and] [a]ll three reviews recommended publication."¹⁴²

After learning that GRL nonetheless planned to publish McIntyre's manuscript over his objections, Mann emailed several colleagues informing them about the upcoming publication and, citing the editor who initially approved McIntyre's piece for publication, proclaimed that "the contrarians now have an 'in' with GRL."¹⁴³

But perhaps the most troubling—and enlightening comment—was one from Professor Tom Wigley. In an email to his colleagues on January 20, 2005, Professor Wigley suggested they contact the GRL's publisher, the American Geophysical Union ("AGU") in an effort to have an editor fired: "This is truly awful. GRL has gone downhill rapidly in recent years. . . Proving bad behavior here is very difficult. If you think that [the objectionable editor] is in the greenhouse skeptics camp, then, if we can find documentary evidence of this, we could go through official AGU channels to get him ousted."¹⁴⁴

Within a year it appears that Professor Wigley's goal of removing the editor who agreed to publish so-called skeptics' research was successful. On November 15, 2005, Michael Mann sent an email to Dr. Jones and Tim Osborn boasting that: "*the GRL leak may have*

¹⁴¹ Email from Michael Mann to Tom Wigley, January 20, 2005, available at <http://www.eastangliaemails.com/emails.php?eid=484> (last visited Feb. 16, 2010).

¹⁴² Email from Steve Mackwell, Editor-in-Chief, Global Research Letters, to Michael E. Mann, January 20, 2005, available at <http://www.eastangliaemails.com/emails.php?eid=484> (last visited Feb. 16, 2010)

¹⁴³ Email from Michael E. Mann to Tom Wigley, Phil Jones, Keith Briffa, et. al., January 20, 2005, available at <http://www.eastangliaemails.com/emails.php?eid=484> (last visited Feb. 16, 2010).

¹⁴⁴ Email from Tom Wigley to Michael E. Mann, Tom Wigley, Phil Jones, Keith Briffa, et. al., January 20, 2005, available at <http://www.eastangliaemails.com/emails.php?eid=484> (last visited Feb. 16, 2010).

been plugged up now w/ new editorial leadership there.”¹⁴⁵ According to Professor Michaels, the offending editor was Yale University’s James Saiers, whose departure from the journal coincided with Mann, Wigley, and Dr. Jones’s plan to ‘get him ousted.’¹⁴⁶

Clearly, these scientists’ efforts to exclude so-called skeptics’ studies from journal publication are indicative of a serious breach of objectivity and scientific propriety. And an email from Dr. Jones to Michael Mann unquestionably reveals that their improper conduct spilled over into their involvement with the IPCC and unquestionably tainted the IPCC report. Shortly after Dr. Jones and Kevin Trenberth of the National Center for Atmospheric Research were named joint lead author’s of IPCC’s Working Group I, Chapter 3, Dr. Jones emailed Mann about two Canadian researchers who questioned the veracity of man-made global warming. In that email, Dr. Jones wrote: “I can’t see either of these papers being in the next IPCC report.” Further, he said: “Kevin and I will keep them out somehow—even if we have to redefine what the peer-review literature is!”¹⁴⁷

D. CONFLICTS OF INTEREST BETWEEN THE IPCC AND SOME WHO PROFIT FROM ITS CLIMATE CHANGE CONCLUSIONS

In response to public comments suggesting that the Administrator should have included studies that disagreed with the Endangerment Finding, EPA notes that “IPCC, USGCRP/CCSP, and NRC make considerable effort to ensure that their assessment reports reflect a balance of perspectives regarding the state of the science.”¹⁴⁸ To support that response, EPA quotes a National Academies report noting that the NRC screens all “provisional committee members . . . in writing and in a confidential group discussion about possible conflicts of interest. . . .[N]o individual can be appointed to serve (or continue to serve) on a committee of the institution used in the development of reports if the individual has a conflict of interest that is relevant to the functions to be performed.”¹⁴⁹ Thus, EPA identifies the National Academies’ prohibition on conflicts of interest as a means of ensuring that the Endangerment Finding is balanced and unbiased.

The Chair of the IPCC probably has, and certainly appears to have, several conflicts of interest.¹⁵⁰ For example, Dr. Pachauri is the director of The Energy and Resources

¹⁴⁵ Email from Michael Mann to Phil Jones and Phil Osborn, November 15, 2005, available at: <http://www.eastangliaemails.com/emails.php?eid=591&filename=1132094873.txt> (last visited Feb. 16, 2010).

¹⁴⁶ See Patrick J. Michaels, *How to Manufacture Climate Consensus*, WALL STREET JOURNAL (December 17, 2009).

¹⁴⁷ Email from Phil Jones to Michael E. Mann, July 8, 2004, available at: <http://www.eastangliaemails.com/emails.php?eid=419&filename=1089318616.txt> (last visited Feb. 16, 2010).

¹⁴⁸ *Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act: EPA’s Response to Public Comments*, Volume I at 3.

¹⁴⁹ *Id.* (quoting *Our Study Process: Ensuring an Objective Voice*, National Academies, 2006 at 3).

¹⁵⁰ In a 2009 meeting of the IPCC Bureau (the governing body of the IPCC that provides guidance during the preparation of the IPCC assessment reports), the Chair of the IPCC, Dr. Rajendra Pachauri, “recalled the role of IPCC procedures in guaranteeing a proper code of conduct in IPCC activities. Any possible conflict of interest should be made clear at the outset of the process.” Report of the 39th Session of the

Institute (“TERI”), an organization that was awarded over \$4 million in grants for research on the melting of glaciers; that research was premised on an inaccurate claim that the Endangerment Finding cited and endorsed, and which was made by TERI’s head of glaciology.¹⁵¹ Furthermore, Dr. Pachauri serves on a number of boards and maintains business interests in industries that are or will be affected by policies that are based on IPCC conclusions about climate change. TERI gained a financial interest in GloriOil, a Texas firm specializing in oil extraction technology that extends the useful life of an oil field, by granting GloriOil permission to use an oil-extraction method developed at TERI.¹⁵² Perhaps even more egregious is Dr. Pachauri’s employment as President of TERI-NA, a non-profit firm funded by the UN, Amoco, American defense contractors, Monsanto, and carbon traders to lobby “sensitive decision-makers in North America to developing countries’ concerns about energy and the environment.”¹⁵³ Dr. Pachauri is also on the board of Siderian, a venture capital firm investing in sustainable technologies. He is also an adviser on renewable and sustainable energy to Credit Suisse bank and the Rockefeller Foundation.¹⁵⁴ Among his other private activities related to his work as IPCC chair, Dr. Pachauri has earned hundreds of thousands of dollars in consulting fees (paid to TERI) from Deutsche Bank, Credit Suisse, and Yale University.¹⁵⁵

These conflicts of interest violate the standards of conduct that the Dr. Pachauri himself has prescribed for the IPCC. In so doing, Dr. Pachauri’s conflicts of interest weaken the Endangerment Finding. Dr. Pachauri’s conflicts of interest indicate that the IPCC is being led toward a conclusion that climate change is a dire threat to the planet that must be reversed; a conclusion that would enrich Dr. Pachauri and the entities that employ him. Consequently, EPA has relied on an assessment that ensures bias and imbalance, a result that EPA claims to want to avoid.

IPCC Bureau (2009) at 10, available at <http://www.ipcc.ch/meetings/bureau-sessions/bureau39rep.pdf> (last visited February 16, 2010).

¹⁵¹ Christopher Booker and Dean Nelson *UN climate chief’s research institute won grants after flawed predictions on glaciers*, DAILY TELEGRAPH, Jan. 25, 2010, available at <http://www.telegraph.co.uk/earth/environment/climatechange/7078565/UN-climate-chiefs-research-institute-won-grants-after-flawed-predictions-on-glaciers.html>. (last visited February 16, 2010).

¹⁵² Elisabeth Rosenthal, *Skeptics Find Fault with U.N. Climate Pane*, NEW YORK TIMES, February 8, 2010, available at <http://www.nytimes.com/2010/02/09/science/earth/09climate.html>. (last visited February 16, 2010).

¹⁵³ Christopher Booker and Richard Northwhite. *Questions over business deals of UN climate change guru Dr. Rajendra Pachauri*, DAILY TELEGRAPH, Dec. 20, 2009, available at <http://www.telegraph.co.uk/news/6847227/Questions-over-business-deals-of-UN-climate-change-guru-Dr-Rajendra-Pachauri.html> (last visited February 16, 2010).

¹⁵⁴ Bradley Fike, *Rajendra Kumar Pachauri is More Equal than You*, NC TIMES.COM BLOGS, December 14, 2009, available at <http://www.nctimes.com/app/blogs/wp/?p=5870> (last visited Feb. 15, 2010).

¹⁵⁵ Elisabeth Rosenthal, *Skeptics Find Fault with U.N. Climate Pane*, NEW YORK TIMES, February 8, 2010, available at <http://www.nytimes.com/2010/02/09/science/earth/09climate.html>. (last visited February 16, 2010).

E. LACK OF TRANSPARENCY AT IPCC POINTS TO A RESULT-ORIENTED PROCESS

Despite the broad and sweeping implications of the Administrator's Endangerment Finding, EPA has shown little regard for more than a perfunctory level of transparency and public disclosure. By electing to outsource the agency's scientific assessment into the causal relationship between greenhouse gases and the earth's temperature, the Administrator also dramatically limited the public's access to information about her decision-making process and the information supporting her decision.

For example, Volume I of EPA's Response to Public Comments about the Endangerment Finding contains a response to a commenter who complained about the unavailability of raw data, computer models, and other information that was presumably used to reach the conclusion that man-made greenhouse gases affect the Earth's temperature. In response, EPA simply claimed that core scientific information need not be included in the record because "the Administrator is reasonably relying on major assessments by the USGCRP, IPCC, and NRC as the *primary scientific and technical basis for her endangerment decision.*"¹⁵⁶

If EPA's ability to be fully transparent about the information that forms the basis of its Endangerment Finding rests on its own lack of access to that information, then little confidence can be had (1) that EPA was truly grounded in its decision and (2) that the Administrator's decision was truly her own.

EPA gains nothing by passing the transparency buck to the entities upon which it relied for scientific information because those entities have been the antithesis of transparent. Even a cursory review of the IPCC contributors' record on this front quickly reveals not only a total disregard for open government—but worse, affirmative disdain for transparency and utter contempt for citizens who exercise their right to obtain public information.

Emails disclosed since the conclusion of the comment period reveal that contributors actually cited their IPCC involvement as a purported method of *circumventing* freedom of information laws—including the United States Freedom of Information Act ("FOIA"). In an email to NASA Climatologist Gavin Schmidt, Dr. Jones explained that he and others had agreed on a plan that they believed would render the open records laws inapplicable to their information: "The FOI line we're all using is this. IPCC is exempt from any countries FOI – the skeptics have been told this. Even though we...possibly hold relevant info, the IPCC is not part of our remit (mission statement, aims etc) therefore we don't have an obligation to pass it on."¹⁵⁷

¹⁵⁶ *Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments*, Volume I, Response 1-62.

¹⁵⁷ Email from Phil Jones to Gavin Schmidt, August 20, 2008, available at <http://www.eastangliaemails.com/emails.php?eid=914&filename=1219239172.txt> (last visited Feb. 16, 2010).

Unlike the United States, where the Freedom of Information Act was enacted in 1966¹⁵⁸, Britain did not enact its Act until 2000. Notwithstanding the fact that CRU is publicly funded by the British taxpayers, the emails reveal a certain amount of surprise—which was quickly overtaken by disdain—that the law would apply to CRU scientists.

An email to former CRU Chief Tom Wigley indicates Dr. Jones initially hoped that university officials and potential requestors might be unaware of his country's open records law: "I wouldn't tell anybody about the FOI Act in Britain. I don't think [the university] really knows what's involved. . . I think it is supposed to mainly apply to issues of personal information - references for jobs etc."¹⁵⁹ The following month, in an email to Pennsylvania State University's Michael Mann, Dr. Jones expressed a willingness to simply—and illegally—delete information rather than comply with the law and disclose it: "*If they ever hear there is a Freedom of Information Act now in the UK, I think I'll delete the file rather than send to anyone.*"¹⁶⁰

Later, as Dr. Jones explained in an email to Ben Santer of the Lawrence Livermore National Library in California, university officials initially attempted to enforce the law but Dr. Jones convinced them otherwise: "When the FOI requests began here, the FOI person said we had to abide by the requests. It took a couple of half hour sessions - one at a screen, to convince them otherwise showing them what [Steve McIntyre's ClimateAudit] was all about. Once they became aware of the types of people we were dealing with, everyone at UEA (in the registry and in the Environmental Sciences school—the head of school and a few others) became very supportive."¹⁶¹ In other words, because Dr. Jones did not like the individual requesting public information, he simply worked to thwart that requestor's access to it. But, merely denying access was not enough—in the same email Dr. Jones later boasted that he destroyed information in order to avoid the possibility of having to produce it: "If he pays 10 pounds (which he hasn't yet) I am supposed to go through my emails and he can get anything I've written about him. About 2 months ago I deleted loads of emails, so have very little - if anything at all."¹⁶²

The following email exchange between Dr. Jones, CRU colleague Tim Osborn, CRU Deputy Chief Keith Briffa, and Caspar Amman of the National Center for Atmospheric Research in Colorado is illustrative of the scientists' general (dis)regard for transparency. In the first exchange, Amman receives a forwarded email from an individual complaining about his inability to obtain information about the scientists' work on the IPCC report:

¹⁵⁸ Freedom of Information Act (1966), Public Law 89-554, 80 Stat. 383

¹⁵⁹ Email from Phil Jones to Tom Wigley, January 21, 2005, *available at* <http://www.eastangliaemails.com/emails.php?page=1&pp=25&kw=foi> (last visited Feb. 16, 2010).

¹⁶⁰ Email from Phil Jones to Michael E. Mann, February 2, 2005 (emphasis added), *available at* <http://www.eastangliaemails.com/emails.php?eid=490&filename=1107454306.txt> (last visited Feb. 16, 2010).

¹⁶¹ Email from Phil Jones to Ben Santer and Tom Wigley, December 3, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=940&filename=1228330629.txt> (last visited Feb. 16, 2010).

¹⁶² *Id.*

“I have read correspondence on web about your letter to the in relation [sic] to expert comments on IPCC chapter 6 sent directly by you to Keith Briffa, sent outside the formal review process. The refusal to give these documents tends to discredit you and the IPCC in the eyes of the public.”¹⁶³

Next, Ammann sends the complaint email to Dr. Jones, Briffa, and Osborn. Dr. Jones is the first to respond with a short email that says:

“It doesn't discredit IPCC!”¹⁶⁴

Osborn responds by recommending that Ammann simply ignore the email.

“I'd ignore this guy's request anyway. If we aren't consistent in keeping our discussions out of the public domain, then it might be argued that none of them can be kept private. Apparently, consistency of our actions is important”¹⁶⁵

At no time in the exchange did any of them suggest what state or federal laws might have governed how the request needed to be treated. Professor Briffa weighed in last with a response that undoubtedly conveyed the group's respect for transparency in government:

“I have been of the opinion right from the start of these FOI requests, that our private, inter-collegial discussion is just that—PRIVATE. Your communication with individual colleagues was on the same basis as that for any other person and it discredits the IPCC process not one iota not to reveal the details. On the contrary, submitting to these "demands" undermines the wider scientific expectation of personal confidentiality. It is for this reason, and not because we have or have not got anything to hide, that I believe none of us should submit to these 'requests'.”¹⁶⁶

In another exchange, Dr. Jones again responded with flippant disregard for open government:

“You can delete this attachment if you want. Keep this quiet also, but this is the person who is putting in FOI requests for all emails Keith and Tim have written and received re Ch 6 of AR4. We think we've

¹⁶³ Email from Bryan Lynch to Caspar Amman, June 21, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

¹⁶⁴ Email from Phil Jones to Caspar Amman, June 23, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

¹⁶⁵ Email from Osborn to Keith Briffa, Phil Jones, and Caspare Amman, June 23, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

¹⁶⁶ Email from Keith Briffa to Tim Osborn, Phil Jones, and Caspare Amman, June 23, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=906&filename=1214228874.txt> (last visited Feb. 16, 2010).

found a way around this...This message will self destruct in 10 seconds!”¹⁶⁷

And just as Briffa and Osborn recommended that Ammann ignore the open records request again without contemplating what the law might have been in Colorado or the greater United States—Dr. Jones similarly urged a colleague in Australia to disregard requests for information: “Had an email from David Jones of BMRC, Melbourne. He said they are ignoring anybody who has dealings with [ClimateAudit], as there are threads on it about Australian sites.”¹⁶⁸

NASA’s Gavin Schmidt took the climate scientists’ disdain for citizens who file open records requests to a whole new level. In an email to the Lawrence Livermore Laboratory’s Ben Santer, Schmidt complains that global warming skeptics who use open records laws to obtain climatologists data are “like Somali pirates.”¹⁶⁹ It is ironic that Schmidt compared the records requestors to law-breaking pirates—because it was actually those who were depriving others of their right to access public information who may have been violating the law.

On January 22, 2010, the British Information Office revealed that the CRU scientists’ criminally violated Freedom of Information Act. Britain’s Deputy Commissioner of Information indicated that the CRU scientists violated the nation’s open government laws: “requests under the Freedoms of Information Act were not dealt with as they should have been under the legislation. Section 77 of the Freedom of Information Act makes it an offence for public authorities to act so as to prevent intentionally the disclosure of requested information.”¹⁷⁰

Professor John Beddington, Chief Scientific Advisor to the British Government said, “I don’t think it’s healthy to dismiss proper scepticism. Science grows and improves in the light of criticism. There is a fundamental uncertainty about climate change prediction that can’t be changed.”¹⁷¹

¹⁶⁷ Email from Phil Jones to Michael Mann and Raymond S. Bradley, May 9, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=877&filename=1210341221.txt> (last visited Feb. 16, 2010).

¹⁶⁸ Email from Phil Jones to Tom Wigley and Wei-Chyung Wang, June 19, 2007, *available at* <http://www.eastangliaemails.com/emails.php?page=1&pp=25&kw=foi> (last visited Feb. 16, 2010).

¹⁶⁹ Email from Gavin Schmidt to Ben Santer, December 2, 2008, *available at* <http://www.eastangliaemails.com/emails.php?eid=939&filename=1228258714.txt> (last visited Feb. 16, 2010).

¹⁷⁰ Email from the Information Commissioner’s Office Press Office to Jonathan Leake, The Times of London, January 22, 2010, *available at* <http://www.docstoc.com/docs/23993708/Climate-Email> (last visited Feb. 16, 2010).

¹⁷¹ Ben Webster, *Science Chief John Beddington Calls for Honesty on Climate Change*, THE TIMES OF LONDON, January 27, 2010, *available at* <http://www.timesonline.co.uk/tol/news/environment/article7003622.ece?&EMC-Bln=99KCH2F> (last visited Feb. 16, 2010).

VIII. HARM TO TEXAS

A. FARMING AND RANCHING

With exports totaling \$5 billion, Texas ranks third in the nation in total agriculture exports.¹⁷² In 2007, cash receipts from the agriculture sector exceeded \$19 billion, which in turn had a \$100 billion impact on the Texas economy.¹⁷³ More than 1.7 million Texans work for farms and farm-related employers—which means 16.6 percent of Texans rely on farming and ranching for their livelihood.¹⁷⁴

Texas is a state where land is primarily owned by private citizens—which means stewardship and conservation of precious natural resources is necessarily the responsibility of those who own the land. And with 250,000 farms and ranches covering more than 129 million acres, Texas depends on farmers and ranchers to help preserve the land, protect habitat, and conserve natural resources. As Texas' Agriculture Commissioner noted in his June 23, 2009 comment on the Endangerment Finding, "Farmers and ranchers prioritize conservation of our natural resources."¹⁷⁵

Thus, Texas relies on its farmers and ranchers both to preserve the land and to contribute meaningfully to the State's economy. The Endangerment Finding would negatively impact Texas farmers and ranchers in several ways, all of which were mentioned in formal comments last summer.¹⁷⁶ Therefore, here we highlight only two of the myriad ways Texas farmers and ranchers would be harmed by the Endangerment Finding—and if farmers and ranchers are hurting, Texas is hurting.

As the National Association of State Departments of Agriculture ("NASDA") explained in its June 23, 2009, comment on the Endangerment Finding: "Hydrocarbons and greenhouse gases are intimately connected to agricultural production from methane gas expelled by livestock, diesel-powered farm machinery, and the petroleum byproducts in fertilizer. NASDA is concerned that EPA's endangerment finding could leave agricultural producers vulnerable to litigation over the greenhouse gas emissions resulting from traditional agricultural production practices." Thus, the Endangerment Finding will increase agriculture production costs directly—through increased fuel and fertilizer costs—and indirectly—through regulation and litigation.

From the regulatory perspective, the Secretary of Agriculture captured the Endangerment Finding's potential impact on both large and small farm operations:

¹⁷² Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency's Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 16 (June 23, 2009).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Letter from Hon. Todd Staples to Hon. Lisa Jackson (June 23, 2009), *available at* www.regulation.gov, Docket No. EPA-HQ-OAR-2009-0171 - 3530.1.

¹⁷⁶ *Id.*

“If GHG emissions from agricultural sources are regulated under the CAA, numerous farming operations that currently are not subject to the costly and time-consuming Title V permitting process would, for the first time, become covered entities. Even very small agricultural operations would meet [the CAA’s] 100-tons-per-year emissions threshold. For example, dairy facilities with over 25 cows, beef cattle operations of over 50 cattle, swine operations with over 200 hogs, and farms with over 500 acres of corn may need to get a Title V permit. It is neither efficient nor practical to require permitting and reporting of GHG emissions from farms of this size. Excluding only the 200,000 largest commercial farms, our agricultural landscape is comprised of 1.9 million farms with an average value of production of \$25,589 on 271 acres. These operations simply could not bear the regulatory compliance costs that would be involved.”¹⁷⁷

B. REVENUE FROM MINERAL INTERESTS

Since the Constitution of 1876’s enactment over one-hundred and thirty years ago, the Permanent School Fund (“PSF”) has been a significant source of funding for public schools in the State of Texas.¹⁷⁸ Today, the PSF relies upon royalty revenue from its significant oil and gas holdings to help fund education. According to financial information provided by the Governor’s Budget, Policy and Planning Office, the PSF earned more than \$380 million in royalty and bonus payments from its mineral interests last year, alone. During the same period, the PSF provided more than \$700 million in funding to Texas public schools.¹⁷⁹

The State also relies on mineral interests to fund higher education. The Permanent University Fund (“PUF”), which exclusively benefits the University of Texas System and Texas A&M University System schools, earned more than \$300 million from its oil and gas holdings last year. In the previous five years, earnings exceed \$1.4 billion. Texas A&M is also the beneficiary of its own Special Mineral Fund—which earned more than \$15.5 million in the last five years.

There are multiple other ways that the State of Texas benefits from oil and gas royalties. The Parks & Wildlife Department’s State Parks fund earned more than \$24 million from oil and gas-related revenues in the last five years. During the same period, the Texas Department of Transportation’s State Highway Fund earned over \$20 million. Altogether, the State of Texas has earned over \$3.6 billion from its mineral interests in the last five years.

¹⁷⁷ Letter from Hon. Ed Schafer, Secretary of the U.S. Department of Agriculture, Hon. Carlos Gutierrez, Secretary of the U.S. Department of Commerce, Hon. Mary E. Peters, U.S. Secretary of Transportation, and Hon. Samuel W. Bodman, to Hon. Susan Dudley, Administrator, Office of Information & Regulatory Affairs, Office of Management & Budget (July 9, 2008), *available at* <http://www.epa.gov/climatechange/emissions/downloads/ANPRPreamble4.pdf> (last visited Feb. 16, 2010).

¹⁷⁸ Handbook of Texas Online, Permanent School Fund *available at* (last visited Feb. 16, 2010).

¹⁷⁹ Texas Education Agency, Texas Permanent School Fund Annual Report, December, 2009 at 4, *available at* <http://ritter.tea.state.tx.us/psf/PSFAR09.pdf> (last visited Feb. 16, 2010).

C. OIL & GAS SECTOR

More than 30,000 Texas businesses are in industries that are identified as greenhouse gas emitting.¹⁸⁰ In 2006, the energy sector employed nearly 375,000 Texans who earned more than \$35 billion in wages.¹⁸¹ Of those, 312,000—3.1% of the State’s work force—were employed directly in the oil and gas business.¹⁸² According the Comptroller of Public Accounts, the oil and gas sector contributed \$159 billion to—nearly 15% of—the State’s Gross Domestic Product.¹⁸³

More than 17% of the State’s revenue is derived from oil and gas taxes, income on mineral interests, and related payments.¹⁸⁴ In 2006, the State’s annual oil production tax revenue was \$444,124,979 and its natural gas tax revenue was \$160,024,732, which combined for a total of more than \$604 million.¹⁸⁵ That direct positive fiscal impact is in addition to the more than \$6 billion in annual indirect economic benefit that the State enjoys from severance, ad valorem, and indirect taxes that are levied on oil and gas production.

The refining side of the energy sector also contributes significantly to the Texas economy. In 2008, the petroleum refining sector produced shipments worth over \$62 billion.¹⁸⁶ Texas-based chemical refiners produced shipments that exceeded \$70 billion in value.¹⁸⁷

IX. FALLOUT

Since the Administrator’s Endangerment Finding was made final on December 15, 2009, both chambers of Congress have responded with bipartisan efforts to prevent EPA from regulating greenhouse gasses. In the House of Representatives, House Agriculture Committee Chairman Collin Peterson (D-Minnesota) and Armed Services Committee Chairman Ike Skelton (D-Missouri)—both appointed to their chairmanships by House Speaker Nancy Pelosi—along with Congresswoman Jo Ann Emerson (R-Missouri), have authored a bill that would statutorily prevent EPA from regulating greenhouse gas emissions. That is, House Resolution 4572 would amend the Clean Air Act to include the following: “The term ‘air pollutant’ shall not include any of the following solely on the basis of its effect on global climate change: (1) Carbon dioxide, (2) Methane, (3)

¹⁸⁰Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 14 (June 23, 2009).

¹⁸¹ *Id.*

¹⁸² *Id.* at 18.

¹⁸³ Hon. Susan Combs, American Clean Energy and Security Act, *available at* <http://www.window.state.tx.us/finances/captrade/perspective.html> (last visited Feb. 16, 2010).

¹⁸⁴ Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 19 (June 23, 2009).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 27.

¹⁸⁷ *Id.*

Nitrous oxide, (4) Hydrofluorocarbons, (5) Perfluorocarbons, “(6) Sulfur hexafluoride.”¹⁸⁸

A separate, bipartisan effort is underway in the United States Senate, where Senator Lisa Murkowski (R-Alaska) has authored legislation with Sen. Mary Landrieu (D-Louisiana), Sen. Ben Nelson (D-Nebraska), Sen. Blanche Lincoln (D-Arkansas), and thirty-five other senators finding that “Congress disapproves the rule submitted by the Environmental Protection Agency relating to the endangerment finding.”¹⁸⁹ This bipartisan action in both chambers of Congress reflects broad concern over EPA’s handling of the Endangerment Finding.

Further, the Small Business Administration’s Office of Advocacy has also expressed concern over the Endangerment Finding. In a December 23 letter to EPA, the Office of Advocacy wrote: “it is clear that EPA’s Clean Air Act greenhouse gas rules will significantly affect a large number of small entities. . . . These small entities are concerned that EPA has not adequately considered regulatory alternatives that could achieve greenhouse gas emission reductions without imposing heavy new compliance burdens on large numbers of small entities.”¹⁹⁰

In light of these federal officials’ concerns with the implementation and impact of the Endangerment Finding—which the State of Texas shares—the Administrator’s improper handling of the scientific assessment process takes on even greater meaning. Without the IPCC’s flawed scientific assessment relied upon by the Administrator, there could be no Endangerment Finding because, as the Administrator acknowledged: “The major assessments by the U.S. Global Climate Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) serve as the primary scientific basis supporting the Administrator’s endangerment finding.”¹⁹¹

This Petition has shown multiple examples of improper conduct by key scientists who coordinated, drafted, and contributed to the IPCC—and for the reasons explained above, therefore also to the NRC and USGRP—assessments. Importantly, the State of Texas is not alone in expressing concern about the practices and conduct that have been revealed since the CRU emails were released last November.

Many well-respected scientists who have said that human activity is to blame for global warming have nonetheless been highly critical of the conduct revealed in the CRU. For example, Professor John Beddington, Chief Scientific Advisor to the British Government, said: “I don’t think it’s healthy to dismiss proper skepticism. Science grows and improves

¹⁸⁸ H.R. 4572, 111th Cong. (2010).

¹⁸⁹ S.J.R. 26, 111th Cong. (2010).

¹⁹⁰ Letter from Susan M. Walthall, Acting Chief Counsel of Advocacy, to Hon. Lisa Jackson, Administrator, U.S. Environmental Protection Agency (December 23, 2009), available at www.regulations.gov, docket #: EPA-HQ-OAR-2009-0171.

¹⁹¹ 74 F.R. 66497.

in the light of criticism.”¹⁹² Sir David King, former chief scientist to the British Government, said of the CRU: “The emails from scientists at the University of East Anglia suggest that certain members of the IPCC felt that consensus was so precious that some external challenges had to be kept outside the discussion. That is clearly not acceptable.”¹⁹³

Dr. William Sprigg, who oversaw the IPCC’s first assessment report, recently commented at a climate change conference: “The IPCC is biased, conflicted, [and] pushing political agendas. We need to stick to our scientific principles. We need to improve our peer review process, and expand the stakeholders’ role to keep us all honest.”¹⁹⁴

Even a CRU scientist, Professor Mike Hulme, has criticized the IPCC: “Many of its pronouncements have been used by political advocates to justify their political prescriptions...not everything written by the IPCC—or declared by its senior spokesperson—is true...[T]he rules must be revised, especially regarding the use of non-peer-reviewed sources and the way reviewers comments are handled.”¹⁹⁵

The President of the National Academy of Scientists also commented on the negative impact of the CRU emails, saying that they “raised concern about the standards of science.”¹⁹⁶ And the Director of Greenpeace’s British operation has called for the IPCC Chairman’s replacement in light of the organization’s lost credibility: “The IPCC needs to regain credibility. Is that going to happen with Pachuari? I don’t think so. . . . If we get a new person in with an open mind, prepared to fundamentally review how the IPCC works, we would regain the confidence of the organization.”¹⁹⁷

And the British newspaper, *The Guardian*, which favors greenhouse gas emissions regulations, has opined: “[W]e have uncovered an abject failure to ensure essential records were kept on Chinese weather stations, determined maneuvering to exclude critics from leading journals and international reports, and suggestions of deleting

¹⁹² Ben Webster, *Science Chief John Beddington Calls for Honesty on Climate Change*, THE TIMES OF LONDON, January 27, 2010 available at <http://www.timesonline.co.uk/tol/news/environment/article7003622.ece?&EMC-Bln=99KCH2F> (last visited on Feb. 16, 2010).

¹⁹³ David King, *IPCC runs against the spirit of science*, THE TELEGRAPH, February 6, 2010, available at <http://www.telegraph.co.uk/earth/environment/climatechange/7170299/Sir-David-King-IPCC-runs-against-the-spirit-of-science.html> (last visited on Feb. 16, 2010).

¹⁹⁴ Insert cite and confirm Sprigg’s exact title from IPCC Vol. I (Source = #138)

¹⁹⁵ Mike Hulme, *The IPCC’s problems have been compounded by its imperious attitude*, THE GUARDIAN, Feb. 5, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/05/rajendra-pachauri-hacked-climate-science-emails>

¹⁹⁶ Andrew C. Revkin, *Signs of Damage to Public Trust in Climate Findings*, NYT’S DOT EARTH BLOG, Feb. 5, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/05/rajendra-pachauri-hacked-climate-science-emails> (last visited on Feb. 16, 2010).

¹⁹⁷ Ben Webster, *IPCC Chief Rajendra Pachuari Under Pressure Over Glacier Claim*, THE TIMES, February 4, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article7014203.ece> (last visited on Feb. 16, 2010).

potentially embarrassing correspondence with a view to evading the Freedom of Information Act.”¹⁹⁸

Governments around the world are also reacting to the release of the CRU emails and the multitude of errors in the IPCC report. Lü Xuedu, Deputy Director General of China’s National Climate Center and a Chinese delegate to the IPCC has called for reforms within the organization and has been quoted saying: “Some scientists take a political stance and wear colored glasses, which means they do not look at issues in a comprehensive way. The managing institute, authors, and contributors of the assessment reports should be more objective in order to be more convincing.”¹⁹⁹

Britain’s MET Office—an agency of the Defense Ministry that serves as the country’s official weather service—has opened a formal inquiry and plans to reexamine 160 years of temperature data.²⁰⁰ The MET’s review of the climate data is expected to take three years to complete.²⁰¹

The British House of Commons is also investigating the matter. On December 2, 2009, Science and Technology Committee Chairman Phil Willis wrote to the Vice Chancellor of East Anglia University asking for an explanation of CRU’s conduct and expressing concern about allegations that CRU “data may have been manipulated or deleted in order to produce evidence on global warming.”²⁰²

Similarly, Dutch Environment Minister Jacqueline Cramer has ordered a thorough investigation into the quality of climate reports that she relies upon to develop public policy.²⁰³ This decision was made shortly after it was learned that the IPCC had incorrectly reported that 55% of the Netherlands is under sea level; a claim which is simply not true.

Finally, a separate inquiry by East Anglia University will investigate multiple items, including “CRU’s policies and practices for acquiring, assembling, subjecting to peer review, and disseminating data and research findings.”²⁰⁴ All of the aforementioned

¹⁹⁸ Editorial, *Climate science: Truth and tribalism*, THE GUARDIAN, February 6, 2010, available at <http://www.guardian.co.uk/commentisfree/2010/feb/06/climate-science-truth-and-tribalism> (last visited on Feb. 16, 2010).

¹⁹⁹ Jonathan Watts, *Senior Chinese Climatologist Calls for Reform of IPCC*, THE GUARDIAN, February 9, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/09/chinese-climatologist-ipcc-reform> (last visited on Feb. 16, 2010).

²⁰⁰ Ben Webster, *Met Office to Re-Examine 160 Years of Climate Data*, THE TIMES, December 5, 2009, available at <http://www.timesonline.co.uk/tol/news/environment/article6945445.ece> (last visited on Feb. 16, 2010).

²⁰¹ *Id.*

²⁰² Letter from Hon. Phil Willis, Chairman, Science & Technology Committee, House of Commons, to Edward Acton, Vice-Chancellor, East Anglia University (December 7, 2009), available at: http://www.parliament.uk/parliamentary_committees/science_technology/s_t_pn04_091207.cfm

²⁰³ Rob Kievit, *Sea level blunder enrages Dutch minister*, Radio NETHERLANDS WORLDWIDE, February 4, 2010, available at <http://www.rnw.nl/english/article/error-dutch-polder-data-undermines-trust-ipcc> (last visited Feb. 16, 2010).

²⁰⁴ Mark Kinver, *Climategate E-Mails Inquiry Under Way*, BRITISH BROADCASTING CORPORATION (February 11, 2010).


investigations are in addition to what the British Information Commissioner's Office (ICO) has already publicly said: "requests under the Freedom of Information Act were not dealt with as they should have been under the legislation. Section 77 of the Freedom of Information Act makes it an offence for public authorities to act so as to prevent intentionally the disclosure of requested information."²⁰⁵ But the ICO's inquiry continues because the commissioner is reviewing whether the British Freedom of Information Act needs to be revised in light of the CRU's refusal to disclose public information.²⁰⁶

X. CONCLUSION

Since the CRU emails first appeared on the Internet in November, 2009, there has been a parade of controversies as new examples of improprieties and erroneous information are revealed to the public. Because the Administrator chose to rely on assessments by the IPCC, USGCRP, and the NRC—the latter two of which this petition has shown relied on the IPCC—as the primary scientific and technical basis for her Endangerment Finding, the Administrator's decision is of central relevance to the Endangerment Finding within the meaning of Chapter 307 of the Clean Air Act. Thus, in light of the serious misconduct the State has demonstrated—data manipulation, loss or destruction of information, reliance on questionable source materials, abuse of the peer review process, suppression of dissent, conflicts of interest, and failure to comply with freedom of information laws—the EPA should grant this petition and reconsider the Endangerment Finding. Granting this petition would be consistent with actions taken by governments worldwide to assess problems afflicting the IPCC and it would further allow the agency to conduct its own scientific assessment, independently consider the available scientific information, and then, in the *Administrator's own judgment*, make a determination that is supported by the law and facts.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas


C. ANDREW WEBER
First Assistant Attorney General
Post Office Box 12548
Austin, Texas 78711-2548
(512) 463-2191 (Telephone)
(512) 936-0545 (Facsimile)
Andrew.Weber@oag.state.tx.us
ATTORNEYS FOR PETITIONERS

²⁰⁵ Email from the Information Commissioner's Office Press Office to Jonathan Leake, The Times of London, January 22, 2010, available at <http://www.docstoc.com/docs/23993708/Climate-Email> (last visited Feb. 16, 2010).

²⁰⁶ *Id.*