

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”

Filed by

**United States Representative John Linder (GA-7th District), U.S. Representative Dana Rohrabacher (CA-46th District), U.S. Representative John Shimkus (IL-19th District), U.S. Representative Phil Gingrey (GA-11th District), U.S. Representative Lynn Westmoreland (GA-3rd District), U.S. Representative Tom Price (GA-6th District), U.S. Representative Paul Broun (GA-10th District), U.S. Representative Steve King (IA-5th District), U.S. Representative Nathan Deal (GA-9th District),
by and through Southeastern Legal Foundation Inc.**

Shannon L. Goessling
Executive Director & Chief Legal Counsel
Southeastern Legal Foundation Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, Georgia 30328
(404) 257-9667

Edward A. Kazmarek
Counsel to Southeastern Legal Foundation Inc.
Kazmarek Geiger & Laseter LLP
3490 Piedmont Road, Suite 201
Atlanta, GA 30305
404-812-0840

Harry W. MacDougald
Counsel to Southeastern Legal Foundation Inc.
Caldwell & Watson LLP
5825 Glenridge Dr., N.E.
Building Two, Suite 200
Atlanta, GA 30328-5579
(404) 843-1956

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TABLE OF CONTENTS

I. Introduction	1
II. Legal Standard.....	3
III. Manipulation Of The “Scientific” Basis For The Endangerment Finding.....	5
A. Climategate reveals a serious lack of integrity in the underlying data and models, such that it is doubtful that any process can be trusted until the data and models are validated and their integrity assured.	7
1. Climategate reveals that the computer code for the climate models was defective and manipulated, without any meaningful oversight or controls.....	7
2. Climategate reveals the systematic manipulation of data as necessary to produce a pre-determined result.	11
a. “Hide the Decline”	11
b. Smoking Gun At Darwin, Australia.....	12
c. Data Manipulation in Russia.....	14
d. Other manipulations of climate data.	15
3. The Climategate cabal tried to conceal their data from researchers, especially those likely to reach contrary conclusions.	15
4. E-mails were apparently altered or deleted to cover up wrongdoing.	17
5. Summary.....	18
B. Climategate shows that the processes of peer review, consensus building, and scientific evaluation were fundamentally corrupted to the point that EPA should reconsider its reliance on the reports and analyses that led to the Endangerment Finding.	18
1. Suppression of Dissenting Views.	19
2. Persecution and black-balling of journals, editors, and reviewers.....	19
3. The contents of reports, including the IPCC reports, were altered to eliminate any suggestion of any non-consensus on key points.	21
4. Summary.....	22
C. The Climategate e-mails reveal a systematic effort by self-proclaimed “gatekeepers” to enforce scientific orthodoxy.	23
IV. The Need For Reconsideration.....	24
V. Conclusion.....	25

I. INTRODUCTION

Pursuant to Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d), United States Representative John Linder (GA–7th District), U.S. Representative Dana Rohrabacher (CA-46th District), U.S. Representative John Shimkus (IL–19th District), U.S. Representative Phil Gingrey (GA–11th District), U.S. Representative Lynn Westmoreland (GA–3rd District), U.S. Representative Tom Price (GA–6th District), U.S. Representative Paul Broun (GA–10th District), U.S. Representative Steve King (IA–5th District), U.S. Representative Nathan Deal (GA–9th District), by and through Southeastern Legal Foundation Inc. (“SLF”), hereby petition the U.S. Environmental Protection Agency (“EPA” or “the Agency”) to convene a proceeding for reconsideration of the “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act” published by the Agency on December 15, 2009 (74 F.R. 66496, Dec. 15, 2009) (“the Endangerment Finding”).

As is more fully shown below, newly revealed information, in what is being referred to as “Climategate¹,” indicates that the purportedly “scientific” information on which the Agency relied was the subject of a number of systematic manipulations, including collusion to withhold scientific information, deletion of e-mails and raw data to prevent discovery of key facts,

¹ “Climategate” (some commentators refer to it as the “Watergate” of climate science) refers to the release of some 1000 e-mails, 2000 documents, and some computer code, all pertaining to climate research over the period from 1996 to 2009. The controversy centered around a few individuals at several universities, although the implications extend to several journals, the content of various government reports, and the reliability of several important sets of data. In an interview with *The Guardian*, Mr. Phil Jones, one of the principals in the controversy, confirmed that the e-mails sparking most of the controversy appear to be genuine. “Climate scientist at centre of leaked email row dismisses conspiracy claims: Phil Jones of the University of East Anglia denies emails provide evidence of collusion by climatologists to fix data.” *The Guardian* (Nov. 24, 2009), found at: <http://www.guardian.co.uk/environment/2009/nov/24/climate-professor-leaked-emails-uea> (last visited Dec. 22, 2009) As of December 1, 2009, the University of East Anglia announced that Mr. Jones was to stand aside as director of CRU while a review was conducted to examine e-mail exchanges to determine whether there is evidence of suppression or manipulation of data. “Climate research chief Phil Jones stands down pending inquiry into leaked emails: Director denies conspiracy claims and stands by scientists' findings on global warming.” *The Guardian* (Dec. 1, 2009), found at: <http://www.guardian.co.uk/uk/2009/dec/01/climate-change-scientist-steps-down> (last visited Dec. 23, 2009).

manipulation of data and computer code to create false impressions, and concerted efforts to boycott key journals and exclude disagreement.² Although some of the participants have attempted to brush aside the incident, describing it variously as a “smear campaign” or “a tempest in a teapot” or “a misunderstanding of normal scientific give-and-take,” in fact the “Climategate” incident goes to the very heart of the scientific theories on which EPA relies in the Endangerment Finding.

Because the full extent of the corruption of scientific processes was not known during the public comment period, obviously it was impracticable to raise these objections at that time. In addition, these objections are plainly of central relevance to the Endangerment Finding. As is more fully shown below, EPA relies expressly and extensively on the integrity of the scientific processes, the credibility of which is gravely undermined by Climategate. Whatever one may think of how Climategate may ultimately affect the content of the Endangerment Finding, it is beyond any reasonable dispute that EPA must convene a proceeding to consider the question. To refuse to do so would be irrational, arbitrary, and obstinate.

The sections that follow further explain the basis for this Petition as follows: Section II sets out the legal standard governing consideration of this Petition; Section III details the nature and extent of the manipulation of the underlying climate data and “scientific” literature, and shows how these manipulations call into question the bases for the Endangerment Finding; and Section IV explains why EPA should convene a proceeding to consider the effect of the Climategate revelations on the Endangerment Finding.

² The full breadth of the “Climategate” scandal is continuing to unfold and the main sources of information are various news sources, mostly online. Where appropriate, such references are provided below.

II. LEGAL STANDARD

Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B), states in relevant part:

If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such an objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

Thus, EPA is required to convene a proceeding for reconsideration upon a showing of two conditions precedent: (1) the information arose after the period for public comment on the Endangerment Finding and (2) the objection is of “central relevance to the outcome of the rule.”

The first element is easily met. The public comment period for the proposed Endangerment Finding closed on June 23, 2009. The Climategate scandal first surfaced in late November 2009.³ (Note, although the most common description of the incident is that the release of the e-mails in question was caused by “hackers,” to date these supposed “hackers” have never been identified, and it remains an open question as to whether the release of revealing e-mails should be attributed to “hackers” or “whistleblowers,” i.e. insiders motivated by a legitimate desire to shed light on the scandalous goings-on of the culpable parties.)⁴

The second element is also clearly met. The Climategate documents and their implications are of central relevance to the Endangerment Finding because they go to the core requirements of Section 202, including the public’s opportunity to comment on those provisions

³ “Hackers target leading climate research unit.” BBC News, 20 November 2009, found at: <http://news.bbc.co.uk/2/hi/8370282.stm> (last visited 20 December 2009).

⁴ For a technical computer networking analysis concluding that it was likely a leak, *see* Levsin, Lance. “Comprehensive network analysis shows Climategate likely to be a leak.” Found at: <http://wattsupwiththat.com/2009/12/07/comprhensive-network-analysis-shows-climategate-likely-to-be-a-leak/> (last visited Dec. 23, 2009)

under 307(d)(3), and the consistency of those provisions with the Act and with fundamental standards of reasoned agency decisionmaking. This challenged error, as discussed in detail below, is “so serious” that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made. See 42 U.S.C. 7607 (d)(8), (d)(9)(D)(iii). See e.g., *NRDC v. Herrington*, 768 F.2d 1355, 1421 (D.C.Cir. 1985) (holding that agencies are obliged to produce substantial evidence for major assumptions in rulemaking). The information revealed by Climategate directly impeaches the validity and reliability of the purported scientific consensus on which EPA relies, the factual data upon which the Endangerment Finding is based, and the validity and reliability of the methodology used in determining and analyzing said data. Under Section 307(d)(3), EPA is clearly required to include this information in the docket and receive public for comment prior to final promulgation of the rule.

Since this new information is of “central relevance” to the outcome of the rule, and arose after the mandatory public comment period, it would be an abuse of discretion not to give the public the opportunity to comment on said information. As stated above, Section 307(d)(3) requires that this information is published for public comment. Moreover, courts have held that “meaningful public comment” is essential to both the structure and the spirit of section 307. See *Sierra Club v. Costle*, 657 F.2d 298, 398 (D.C.Cir. 1981), *rev’d on other grounds*, *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983)(finding that if documents upon which EPA intended to rely had been entered on the docket too late for any meaningful public comment such that the structure and the spirit of section 307 would have been violated).

In summary, therefore, the central question for the Administrator’s determination in response to this Petition is whether the Climategate information is of central relevance to the

“outcome” of the rule, i.e. its ultimate finding that “six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.” As shown in Section III, below, SLF submits that the answer is a resounding “Yes.”

III. MANIPULATION OF THE “SCIENTIFIC” BASIS FOR THE ENDANGERMENT FINDING

As widely noted, the “global warming” debate sometimes has more the hallmarks of political or religious polemics than rational consideration of impartial scientific analysis.⁵ Indeed, it has even been suggested that EPA’s Endangerment Finding was foreordained by political considerations, predetermined long before any “consideration” of the merits of scientific debate.⁶ For purposes of this Petition, however, SLF assumes only that, whatever the course of events leading to EPA’s Endangerment Finding, the Agency should now fairly consider the nature of the Climategate scandal in considering whether to convene a proceeding to permit additional public input.

The Endangerment Finding states that EPA relied in large part on a number of purportedly “scientific” reports, principally those of the Intergovernmental Panel on Climate Change (“IPCC”), the U.S. Climate Change Science Program (“CCSP”) and U.S. Global Change Research Program (“GCRP”), and the National Research Council (“NRC”). *See* Technical

⁵ For example, Venezuelan Marxist Dictator Hugo Chavez received a standing ovation at the recent climate conference in Copenhagen, Denmark when he said, “Our revolution seeks to help all people...socialism, the other ghost that is probably wandering around this room, that’s the way to save the planet, capitalism is the road to hell...let’s fight against capitalism and make it obey us.” Taylor, Lenore. “Penny Wong jeered, Hugo Chavez cheered.” The Australian (Dec. 17, 2009). Found at: <http://www.theaustralian.com.au/politics/penny-wong-jeered-hugo-chavez-cheered/story-e6frgczf-1225811179614> (last visited Dec. 23, 2009).

⁶ EPA acknowledged but rejected this allegation, noting it had been suggested. “that the President’s and Administrator Jackson’s announcement indicated that the endangerment rulemaking was but a formality and that a final endangerment finding was a *fait accompli*. Commenters argue that this means the result of this rulemaking has been preordained and the merits of the issues have been prejudged.” Endangerment Finding at p.66502. Consideration of the Climategate fiasco should not be dictated by political considerations, but by a fair evaluation of what those materials indicate about the underlying “science.”

Support Document for “Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act” (December 7, 2009) (the “TSD”), pp. 4-5. These

sources were relied upon because:

[T]hey 1) are very recent and represent the current state of knowledge on GHG [greenhouse gas] emissions, climate change science, vulnerabilities, and potential impacts; 2) have assessed numerous individual, peer-reviewed studies in order to draw general conclusions about the state of science; 3) have been reviewed and formally accepted, commissioned, or in some cases authored by U.S. government agencies and individual government scientists; and 4) they reflect and convey the consensus conclusions of expert authors.

TSD, p.5. Throughout the TSD, the Agency expressly and impliedly assumes that the scientific data and reports on which the Endangerment Finding is based reflect impartial, reasoned analysis. For example, EPA relies on the IPCC “*Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report*” to conclude that there is “*very high confidence*” (i.e. a 9/10 chance, TSD p.23 at n.24) that the “global average net effect of human activities since 1750 has been one of warming, with a radiative forcing of +1.6 (+0.6 to +2.4) W/m².” TSD p. 23. Other examples abound, as shown below.

The Climategate scandal is relevant, therefore, on three grounds. First, Climategate reveals a serious lack of integrity in the underlying data and models, such that it is doubtful that any process can be trusted until the data and models are validated and their integrity assured. Second, Climategate shows that the processes of peer review, consensus building, and scientific

evaluation were fundamentally corrupted to the point that EPA should reconsider its reliance on the reports and analyses that led to the Endangerment Finding. Third, Climategate reveals a disturbing, anti-scientific compulsion for mandatory orthodoxy. Each of these points is discussed below.

- A. CLIMATEGATE REVEALS A SERIOUS LACK OF INTEGRITY IN THE UNDERLYING DATA AND MODELS, SUCH THAT IT IS DOUBTFUL THAT ANY PROCESS CAN BE TRUSTED UNTIL THE DATA AND MODELS ARE VALIDATED AND THEIR INTEGRITY ASSURED.

By way of background, EPA should not underestimate the importance of the CRU data nor the extent to which Climategate reveals the deliberate manipulation of that data.

The Climate Research Unit (“CRU”) at the University of East Anglia is one of only two available sets of data for worldwide surface temperatures. The CRU dataset constitutes one of the most important sets of information on which all analyses of anthropogenic global warming (“AGW”) are based. In addition, the models used by CRU formed the basis for IPCC’s models of future global warming. EPA itself relies on IPCC’s analyses in formulating its conclusion in the Endangerment Finding.

Accordingly, evidence of tampering with the CRU data and models must be taken very seriously. The Climategate revelations show such tampering in scandalous terms.

1. CLIMATEGATE REVEALS THAT THE COMPUTER CODE FOR THE CLIMATE MODELS WAS DEFECTIVE AND MANIPULATED, WITHOUT ANY MEANINGFUL OVERSIGHT OR CONTROLS.

Included within the Climategate files are a number of very revealing documents, but one in particular is very disturbing, the “HARRY_READ_ME.txt” file.⁷ What this file reveals is an appalling series of manipulations of the data and the code, with no provisions for review, no

⁷ A printout of the HARRY_READ_ME.txt file is submitted in conjunction with this Petition for Reconsideration (hereinafter referred to “ReadMe.txt”). References to page numbers in the file refer to page numbers in the submitted printout.

QA/QC on the data or the code, no double-check on data integrity. As has been noted by several commentators, the HARRY_READ_ME.txt file really is the “smoking gun” of the AGW argument.

You can't imagine what this has cost me - to actually allow the operator to assign false WMO codes!! But what else is there in such situations? Especially when dealing with a 'Master' database of dubious provenance (which, er, they all are and always will be).

False codes will be obtained by multiplying the legitimate code (5 digits) by 100, then adding 1 at a time until a number is found with no matches in the database. THIS IS NOT PERFECT but as there is no central repository for WMO codes - especially made-up ones - we'll have to chance duplicating one that's present in one of the other databases. In any case, anyone comparing WMO codes between databases - something I've studiously avoided doing except for tmin/tmax where I had to - will be treating the false codes with suspicion anyway. Hopefully.

Of course, option 3 cannot be offered for CLIMAT bulletins, there being no metadata with which to form a new station.

This still meant an awful lot of encounters with naughty Master stations, when really I suspect nobody else gives a hoot about. So with a somewhat cynical shrug, I added the nuclear option - to match every WMO possible, and turn the rest into new stations (er, CLIMAT excepted). In other words, what CRU usually do. It will allow bad databases to pass unnoticed, and good databases to become bad, but I really don't think people care enough to fix 'em, and it's the main reason the project is nearly a year late.⁸

(Emphasis added).

Discovered that WMO codes are still a pain in the arse. And that I'd forgotten to match Australian updates by BOM code (last field in header) instead of WMO code - so I had to modify newmergedbauto.

Also found that running fixwmos.for was less than successful on VAP, because it's already screwed:

...

I am seriously close to giving up, again. The history of this is so complex that I can't get far Enough into it before my head hurts and I have to stop. Each parameter has a tortuous history of manual and semi-automated interventions that I simply cannot just go back to early versions and run the update prog.

I could be throwing away all kinds of corrections - to lat/lons, to WMOs (yes!), and more.

⁸ ReadMe.txt, p.105.

So what the hell can I do about all these duplicate stations? Well, how about fixdupes. for? That would be perfect - except that I never finished it, I was diverted off to fight some other fire. Aarrgghhh.

I - need - a - database - cleaner. What about the ones I used for the CRUTEM3 work with Phil Brohan? Can't find the bugger!! Looked everywhere, Matlab scripts aplenty but not the one that produced the plots I used in my CRU presentation in 2005.

Oh, FUCK IT. Sorry. I will have to WRITE a program to find potential duplicates. It can show me pairs of headers, and correlations between the data, and I can say 'yay' or 'nay'. There is the finddupes.for program, though I think the comment for *this* program sums it up nicely:

```
' program postprocdupes2
c Further post-processing of the duplicates file - just to show how crap the
c program that produced it was! Well - not so much that but that once it was
c running, it took 2 days to finish so I couldn't really reset it to improve
c things. Anyway, *this* version does the following useful stuff:
c (1) Removes and squirrels away all segments where dates don't match;
c (2) Marks segments >5 where dates don't match;
c (3) Groups segments from the same pair of stations;
c (4) Sorts based on total segment length for each station pair'
```

You see how messy it gets when you actually examine the problem?⁹

(Emphasis added.)

Then - comparing the two candidate spc databases:

```
spc.0312221624.dtb
spc.94-00.0312221624.dtb
```

I find that they are broadly similar, except the normals lines (which both start with '6190') are very different. I was expecting that maybe the latter contained 94-00 normals, what I wasn't expecting was that they are in % x10 not %! Unbelievable - even here the conventions have not been followed. It's botch after botch after botch. Modified the conversion program to process either kind of normals line.¹⁰

(Emphasis added.)

OH FUCK THIS. It's Sunday evening, I've worked all weekend, and just when I thought it was done I'm hitting yet another problem that's based on the hopeless

⁹ ReadMe.txt, pp. 270, 297.

¹⁰ ReadMe.txt, p.19.

*state of our databases. There is no uniform data integrity, it's just a catalogue of issues that continues to grow as they're found.*¹¹

*Wrote 'makedtr.for' to tackle the thorny problem of the tmin and tmax databases not being kept in step. Sounds familiar, if worrying. am I the first person to attempt to get the CRU databases in working order?!!*¹²

(Emphasis added.)

*Well, dtr2cld is not the world's most complicated program. Whereas cloudreg is, and I immediately found a mistake! Scanning forward to 1951 was done with a loop that, for completely unfathomable reasons, didn't include months! So we read 50 grids instead of 600!!! That may have had something to do with it. I also noticed, as I was correcting THAT, that I reopened the DTR and CLD data files when I should have been opening the bloody station files!!*¹³

(Emphasis added.)

*Back to the gridding. I am seriously worried that our flagship gridded data product is produced by Delaunay triangulation - apparently linear as well. As far as I can see, this renders the station counts totally meaningless. It also means that we cannot say exactly how the gridded data is arrived at from a statistical perspective - since we're using an off-the-shelf product that isn't documented sufficiently to say that. Why this wasn't coded up in Fortran I don't know - time pressures perhaps? Was too much effort expended on homogenisation, that there wasn't enough time to write a gridding procedure? Of course, it's too late for me to fix it too. Meh*¹⁴

(Emphasis added.)

The entire HARRY_READ_ME.txt file is so riddled with such damning admissions that there's really little point in highlighting them all. The key conclusion is inescapable: no reasonable person can conclude that the models that CRU produced, and the datasets on which they were based, meet basic scientific standards for reliability, and therefore the IPCC analyses and projections cannot be said to be reliable, and therefore EPA's incorporation of IPCC's

¹¹ ReadMe.txt, p.269.

¹² ReadMe.txt, p.50.

¹³ ReadMe.txt, p.249

¹⁴ ReadMe.txt, p.60

findings and conclusions must be reconsidered. Put differently, there is zero chance that CRU's work could survive a *Daubert* challenge¹⁵ that was armed with the Climategate documents. Since CRU's work would be inadmissible in federal court as junk science, it should not be relied upon by the EPA as the foundation of the most far-reaching and consequential action in its history.

2. CLIMATEGATE REVEALS THE SYSTEMATIC MANIPULATION OF DATA AS NECESSARY TO PRODUCE A PRE-DETERMINED RESULT.

a. "Hide the Decline"

A very disturbing revelation in the Climategate scandal is the degree to which participants were willing to manipulate data so as to exaggerate or create an impression of global warming. Consider, for example, the infamous "hide the decline" e-mail from Phil Jones:

*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 in the real temps to each series for the last 20 years (ie from 1981 onwards) and (sic) from 1961 for Keith's to hide the decline...*¹⁶

Responses to this startling text have varied from claims that the text is being misinterpreted, to it reflects ordinary scientific "tricks of the trade" to supplement data, to the disturbing conclusion that the e-mail means what it says: an attempt to cook the books to conceal the fact that the famous "hockey stick" drawing is a manipulated, misleading barrel of scientific nonsense. What seems to be undeniable, however, is that proxy temperature reconstructions began to decline in approximately 1960, and thus diverged from the instrumental temperature record, which showed increases after 1960. The "trick" to "hide the decline" was grafting the

¹⁵ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993).

¹⁶ E-mail from P. Jones to R. Bradley, "Diagram for WMO Statement" (Nov 16, 1999). Found at: <http://www.eastangliaemails.com/emails.php?eid=154&filename=942777075.txt> (last visited: Dec 23, 2009).

instrumental record onto the proxy record commencing in about 1960 instead of continuing the proxy reconstruction to the present with its full divergence.

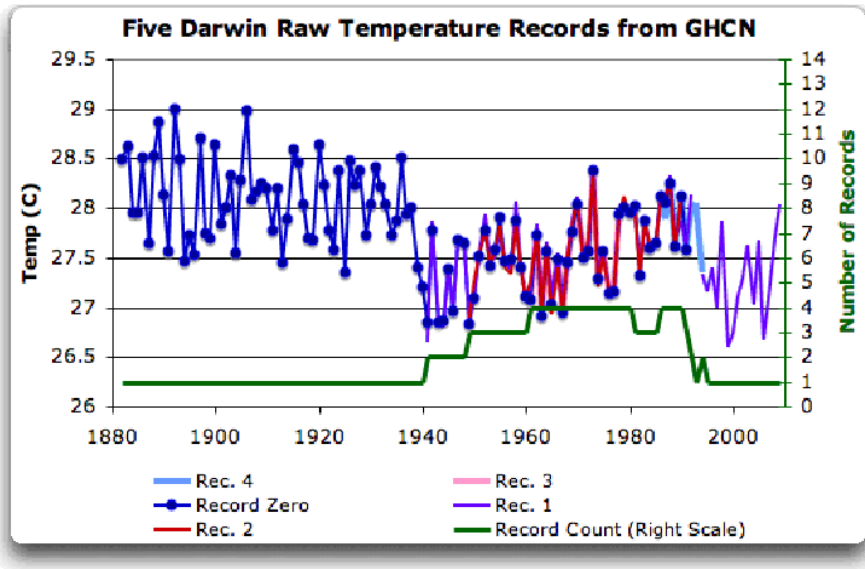
The post-1960 decline in the proxy reconstructions while instrumental records showed an increase fatally impeached the validity and reliability of proxy reconstructions over all time periods.¹⁷ By “hiding the decline” the CRU scientists made their proxy reconstruction seem “more skilful than it really is.” The importance of these proxy reconstructions to the AGW conjecture can hardly be overstated. Since the Climategate documents gravely impeach the validity and reliability of these reconstructions, they are obviously of central relevance to the Endangerment Finding. The documents compel EPA to convene a proceeding and take public comment on the crucial significance of Climategate.

b. Smoking Gun At Darwin, Australia

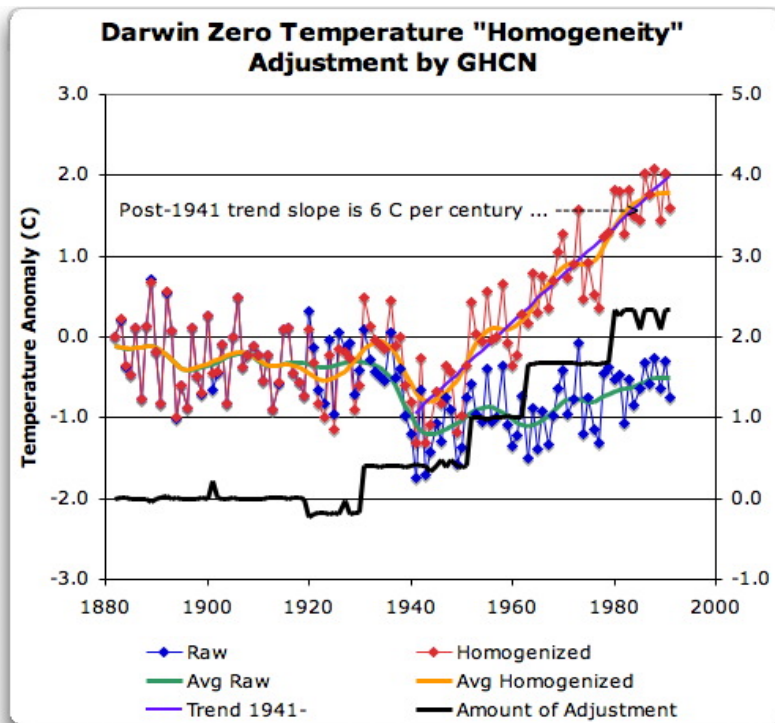
A similar instance of chicanery arose with the manipulation of the Australian climate data. The HARRY_READ_ME.txt file makes numerous references to manipulating the Australian data, but one must examine the data itself to fully understand what the Climategate crew was doing. While it concerns a single location, the adjustments to data from Darwin, Australia, admit no legitimate explanation. The raw, unadjusted records showed a slight cooling trend, as shown below:¹⁸

¹⁷ Sheppard, Marc. “Understanding Climategate’s Hidden Decline.” *American Thinker* (Dec. 6, 2009). Found at: http://www.americanthinker.com/2009/12/understanding_climategates_hid.html (last visited Dec. 23, 2009).

¹⁸ Eschenbach, Willis. “The Smoking Gun at Darwin Zero.” *American Thinker* (Dec. 8, 2009). Found at: <http://wattsupwiththat.com/2009/12/08/the-smoking-gun-at-darwin-zero/> (last visited Dec. 23, 2009).



Admittedly, there are processes employed to “homogenize” the data to account for anomalies, and those are sometimes legitimate. But what we have learned from the Climategate materials is that CRU “homogenized” the data to make it look like this:¹⁹



¹⁹ *Id.*

As Mr. Eschenbach said of this “homogenization”:

Those, dear friends, are the clumsy fingerprints of someone messing with the data Egyptian style ... they are indisputable evidence that the “homogenized” data has been changed to fit someone’s preconceptions about whether the earth is warming. One thing is clear from this. People who say that “Climategate was only about scientists behaving badly, but the data [are] OK” are wrong. At least one part of the data is bad, too. The Smoking Gun for that statement is at Darwin Zero.²⁰

c. Data Manipulation in Russia

Analysts in other countries have already reached the same conclusion. For example, this report came from a Russian source:

Climategate has already affected Russia. On Tuesday, the Moscow-based Institute of Economic Analysis (IEA) issued a report claiming that the Hadley Center for Climate Change based at the headquarters of the British Meteorological Office in Exeter (Devon, England) had probably tampered with Russian-climate data. The IEA believes that Russian meteorological-station data did not substantiate the anthropogenic global-warming theory. 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. 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. The data of stations located in areas not listed in the Hadley Climate Research Unit Temperature UK (HadCRUT) survey often does not show any substantial warming in the late 20th century and the early 21st century.²¹

Likewise, based on the Climategate scandal, MET 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.²²

²⁰ *Id.*

²¹ McIntyre, Steve. “IEA: Hadley Center probably tampered with Russian climate data.” Found at: <http://climateaudit.org/2009/12/16/iearussia-hadley-center-probably-tampered-with-russian-climate-data/> (last visited Dec. 23, 2009)

²² Webster, Ben. “Met Office to re-examine 160 years of climate data.” *TimesOnline* (Dec. 5, 2009). Found at: <http://www.timesonline.co.uk/tol/news/environment/article6945445.ece> (last visited Dec. 23, 2009).

d. Other manipulations of climate data.

Other instances of such data manipulation are also beginning to surface. For example, new information published November 25, 2009 also shows an eerily similar pattern of “adjustments” was made to raw temperature data in New Zealand – downward adjustments in the early 20th century and upward adjustments from the middle of the 20th century onward.²³ While the information on the New Zealand temperature adjustments was not part of Climategate, it is new, and it adds to the pattern of similar manipulations - downward adjustments in the first part of the 20th century and upward adjustments in the latter half - yielding a warming trend over the last century that is almost entirely fictitious. EPA should evaluate this controversy to determine whether these recently revealed “adjustments,” like those of Climategate, indicate more of the same collusion, manipulations, and chicanery.²⁴

3. THE CLIMATEGATE CABAL TRIED TO CONCEAL THEIR DATA FROM RESEARCHERS, ESPECIALLY THOSE LIKELY TO REACH CONTRARY CONCLUSIONS.

Phil Jones, the Director of the CRU, orchestrated a years’ long effort to conceal CRU data from scientists they feared might be critical of their work. In an e-mail sharing strategies for obstructing responses to FOIA requests, he said:

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 CA 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

²³ Treadgold, Richard (New Zealand Climate Science Coalition). “Are we feeling warmer yet?” (Nov. 25, 2009). Found at: http://www.climatescience.org.nz/images/PDFs/global_warming_nz2.pdf (last visited Dec. 23, 2009)

²⁴ Without belaboring the point, yet another curious manipulation occurs in the context of the USHCN data set. See “Difference Between Raw and Final USHCN Data Sets,” found at: http://www.ncdc.noaa.gov/img/climate/research/ushcn/ts.ushcn_anom25_diffs_urb-raw_pg.gif (last visited December 23, 2009). Absent Climategate, one might assume the adjustments were legitimate. In light of the extensive (and ever expanding) evidence of improper manipulations, however, one must wonder.

*Environmental Sciences school - the head of school and a few others) became very supportive.*²⁵

Again, from Phil Jones:

Yes, we've learned [our] lesson about FTP. We're going to be very careful in the future what gets put there. Scott really screwed up big time when he established that directory so that Tim could access the data.

Yeah, there is a freedom of information act in the U.S., and the contrarians are going to try to use it for all its worth. But there are also intellectual property rights issues, so it isn't clear how these sorts of things will play out ultimately in the U.S.

...

*The two MMs have been after the CRU data for years. If they ever hear there is a Freedom of Information Act now in the U.K., I think I'll delete the file rather than send to anyone. ... We also have a data protection act, which I will hide behind.*²⁶

(The “two MMs” are probably Stephen McIntyre and Ross McKittrick, two Canadians who have spent years fact-checking the published data and conclusions.)²⁷ Shortly after the Climategate documents became public, CRU was forced to admit on or about November 29, 2009 that much of their original data has been destroyed, allegedly because they did not have room to store it all.²⁸ This means that other scientists will not be able to check the accuracy of CRU’s “homogenization” of data. Oblivious to the irony, CRU said in a statement on its website that

²⁵ E-mail from P. Jones to “santer1” and T. Wigley (Dec. 3, 2008). Found at: <http://www.eastangliaemails.com/emails.php?eid=940&filename=1228330629.txt> (last visited Dec. 23, 2009).

²⁶ E-mail from P. Jones to M. Mann (Feb. 3, 2005) (and related e-mail string). Found at: <http://www.eastangliaemails.com/emails.php?eid=490&filename=1107454306.txt> (last visited Dec. 23, 2009).

²⁷ The reference to “deleting” the data, although such deletion may not have occurred, does raise a legal consideration: We request that EPA request that the Department of Justice to send a “litigation hold” letter to all agencies and personnel involved in U.S. sponsored climate research that have or are relying upon the CRU dataset. See *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309 (S.D.N.Y. 2003) and subsequent proceedings.

²⁸ Leake, Jonathan. “Climate change data dumped.” *TimesOnline* (Nov. 29, 2009). Found at: <http://www.timesonline.co.uk/tol/news/environment/article6936328.ece> (last visited Dec. 23, 2009)

“We do not hold the original raw data but only the *value-added (quality controlled and homogenised)* data.”²⁹ (Emphasis added).

A scientist named Willis Eschenbach attempted to obtain station data for the HadCRUt3 global temperature average from CRU, and was met with a years’ long pattern of stonewalling and obstruction. The Climategate documents prove that the conspiracy to obstruct his requests went to the highest levels of climate science.³⁰

4. E-MAILS WERE APPARENTLY ALTERED OR DELETED TO COVER UP WRONGDOING.

Phil Jones, in an e-mail to Eugene Wahl of NOAA and Caspar Amman of the National Center for Atmospheric Research urged them to alter their e-mail records:

*[T]ry and change the Received date. Don’t give those skeptics something to amuse themselves with.*³¹

In another now infamous e-mail, Phil Jones urged Michael E. Mann to delete e-mails that were subject to a pending FOIA request:

*From: Phil Jones
To: “Michael E. Mann”
Subject: IPCC & FOI
Date: Thu May 29 11:04:11 2008
Mike,
Can you delete any emails you may have had with Keith re AR4? Keith will do likewise. He’s not in at the moment – minor family crisis. Can you also email Gene and get him to do the same? I don’t have his new email address. We will be getting Caspar to do likewise. I see that CA claim they discovered the 1945 problem in the Nature paper!!
Cheers
Phil
Prof. Phil Jones
Climatic Research Unit Telephone +44 (0) **** 592090³²*

²⁹ *Id.*

³⁰ McIntyre, Steve. “Willis Eschenbach’s FOI Request.” *ClimateAudit* (Nov. 25, 2009). Found at: <http://climateaudit.org/2009/11/25/willis-eschenbachs-foi-request/> (last visited Dec. 23, 2009).

³¹ Quoted in “Global Warming With the Lid Off.” *Wall Street Journal / Opinion Journal* (Nov. 24, 2009). Found at: <http://online.wsj.com/article/SB10001424052748704888404574547730924988354.html> (last visited Dec. 23, 2009).

Michael Mann, the recipient of this e-mail, wrote an op-ed that was published in the Washington Post on December 19, 2009 in which he claimed there was “no evidence” that e-mails were deleted in response to this request.³³ Whether he deleted the e-mails or not, he did respond: “I’ll contact Gene about this ASAP. His new email is: generwahl@xxxxxxxxxxx.xxx”³⁴ And, in any event, the apparent willingness of these parties to destroy evidence³⁵ speaks volumes about their work should be relied upon by EPA.

5. SUMMARY.

Data integrity is the cornerstone of scientific method. As a result, evidence of sloppiness, ad hoc “adjustments,” concealment, and outright manipulation demand an immediate and complete reexamination of the CRU processes and all of the “scientific” analyses that depend thereon.

B. CLIMATEGATE SHOWS THAT THE PROCESSES OF PEER REVIEW, CONSENSUS BUILDING, AND SCIENTIFIC EVALUATION WERE FUNDAMENTALLY CORRUPTED TO THE POINT THAT EPA SHOULD RECONSIDER ITS RELIANCE ON THE REPORTS AND ANALYSES THAT LED TO THE ENDANGERMENT FINDING.

EPA relies heavily on its assumption that there exists a legitimate, objective “consensus” regarding Anthropogenic Global Warming. For example, in the Endangerment Finding, EPA states, “The USGCRP, IPCC, and NRC assessments synthesize literally thousands of individual studies and convey the consensus conclusions on what the body of scientific literature tells us

³² Responding to P. Jones e-mail, found in E-mail from M. Mann to P. Jones. “Re: IPCC and FOI.” Found at: <http://www.eastangliaemails.com/emails.php?eid=891&filename=1212063122.txt> (last visited Dec. 23, 2009).

³³ Mann, Michael E. “E-mail furor doesn’t alter evidence for climate change.” *Washington Post* (Dec. 18, 2009). Found at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/17/AR2009121703682.html> (last visited Dec. 23, 2009).

³⁴ E-mail from M. Mann to P. Jones. “Re: IPCC and FOI.” Found at: <http://www.eastangliaemails.com/emails.php?eid=891&filename=1212063122.txt> (last visited Dec. 23, 2009)

³⁵ See Note 29, *supra*, regarding the need for an immediate “litigation hold” directive to prevent destruction of files.

[emphasis added].”³⁶ Likewise, in the TSD, EPA states that the IPCC, CCSP, GCRP, and NRC reports, “reflect and convey the consensus conclusions of expert authors [emphasis added].”³⁷

In fact, Climategate makes it clear that no such consensus exists. The normal processes of peer review and objective scientific evaluation that might ordinarily lead to “consensus” have been shown to be so fundamentally degraded by collusion, intimidation, and deception that no one can seriously contend that any consensus exists at this time. To this point, SLF directs the Agency’s attention to the following specific items.

1. SUPPRESSION OF DISSENTING VIEWS.

The Climategate participants established a concerted effort to purge dissenting views from the scientific literature:

*I think we have to stop considering ‘Climate Research’ as a legitimate peer-reviewed journal. We would also need to consider what we tell or request of our more reasonable colleagues who currently sit on the editorial board. Perhaps we should encourage our colleagues in the climate research community to no longer submit to, or cite papers in, this journal.*³⁸

2. PERSECUTION AND BLACK-BALLING OF JOURNALS, EDITORS, AND REVIEWERS.

The Climategate cabal manipulated the scientific literature to purge any and all contrary opinions. For example, this group orchestrated the ousting of a journal editor who sought to present a viewpoint that would have deviated from the “consensus” mantra. From Tom Wigley in 2003:

PS Re CR, I do not know the best way to handle the specifics of the editing. Hans von Storch is partly to blame—he encourages the publication of crap science ‘in order to

³⁶ Endangerment Finding, 74 FR at 66511.

³⁷ TSD at p. 5.

³⁸ E-mail from M. Mann to P. Jones. “Re: Fwd: Soon & Baliunas” (Mar 11, 2003). Found at: <http://www.eastangliaemails.com/emails.php?eid=295&filename=1047388489.txt> (last visited Dec. 23, 2009).

*stimulate debate'. One approach is to go direct to the publishers and point out the fact that their journal is perceived as being a medium for disseminating misinformation under the guise of refereed work. I use the word 'perceived' here, since whether it is true or not is not what the publishers care about—it is how the journal is seen by the community that counts. I think we could get a large group of highly credentialed scientists to sign such a letter—50+ people. Note that I am copying this view only to Mike Hulme and Phil Jones. Mike's idea to get editorial board members to resign will probably not work—must get rid of von Storch too, otherwise holes will eventually fill up with people like Legates, Balling, Lindzen, Michaels, Singer, etc. I have heard that the publishers are not happy with von Storch, so the above approach might remove that hurdle too.*³⁹

A similar approach was taken to oust Yale's James Saiers, causing Jones to remark: "*The GRL leak may have been plugged up now w/ new editorial leadership there.*"⁴⁰

As Dr. John Christy has phrased it: "The CRU emails have revealed how the normal conventions of the peer review process appear to have been compromised by a team of global warming scientists, with the willing cooperation of the editor of the International Journal of Climatology (IJC), Glenn McGregor."⁴¹

Note, this suppression of dissenting views affects not only the publications of the those orchestrating the ouster, it affects the totality of scientific literature for two reasons: there is no reason to believe that other editors would not likewise quickly apprehend the risk to their careers from being too "fair minded" in the presentation of the debate,⁴² and the "peer reviewed" literature was obviously manipulated to keep dissenting peers out of the literature. As

³⁹ E-mail from T. Wigley to T. Carter. "Re: Java Climate Model" (Apr. 24, 2003). Found at: <http://www.eastangliaemails.com/emails.php?eid=307&filename=1051190249.txt> (last visited Dec. 23, 2009).

⁴⁰ Quoted in Michaels, Patrick J.: "How to Manufacture a Climate Consensus." Wall Street Journal / Opinion Journal (Dec. 17, 2009). Found at: <http://online.wsj.com/article/SB10001424052748704398304574598230426037244.html> (last visited Dec. 23, 2009).

⁴¹ Douglass, David H. and John R. Christy. "A Climatology Conspiracy?" American Thinker (Dec. 20, 2009). Found at: http://www.americanthinker.com/2009/12/a_climatology_conspiracy.html (last visited Dec. 23, 2009).

⁴² After Mr. Messrs. Jones and Mann threatened a boycott of publications and reviews, half of the editorial board of Climate Research resigned. Michaels, Patrick J. "How to Manufacture a Climate Consensus," Wall Street Journal (December 17, 2009).

Dr. Michaels noted, “Mr. Wigley repeatedly tells news reporters not to listen to ‘skeptics’ (or even nonskeptics like me), because they didn’t publish enough in the peer-reviewed literature—even as he and his friends sought to make it difficult or impossible to do so.”⁴³

Dr. Michaels elsewhere makes a similar point in even more compelling terms:

When scientists make putative compendia of that literature, such as is done by the U.N. climate change panel every six years, the writers assume that the peer-reviewed literature is a true and unbiased sample of the state of climate science. That can no longer be the case. The alliance of scientists at East Anglia, Penn State, and the University Corporation for Atmospheric Research (in Boulder, Colo.) has done its best to bias it.⁴⁴

Or, even more pointedly, “EPA claimed to rely solely upon compendia of the refereed literature such as the IPCC reports, in order to make its finding of endangerment from carbon dioxide.

Now that we know that literature was biased by the heavy-handed tactics of the East Anglia mob, the EPA has lost the basis for its finding.”⁴⁵ (Emphasis added).

3. THE CONTENTS OF REPORTS, INCLUDING THE IPCC REPORTS, WERE ALTERED TO ELIMINATE ANY SUGGESTION OF ANY NON-CONSENSUS ON KEY POINTS.

For example, consider the following from Phil Jones, head of the University of East Anglia Climate Research Unit:

*The other paper by MM is just garbage – as you knew. De Freitas again. Pielke is also losing all credibility as well by replying to the mad Finn as well – frequently as I see it. I can’t see either of these papers being in the next IPCC report. K and I will keep them out somehow – even if we have to redefine what the peer-review literature is!*⁴⁶

⁴³ Michaels, Patrick J.: “How to Manufacture a Climate Consensus.” Wall Street Journal / Opinion Journal (Dec. 17, 2009). Found at: <http://online.wsj.com/article/SB10001424052748704398304574598230426037244.html> (last visited Dec. 23, 2009).

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ E-mail from P. Jones to M. Mann. “HIGHLY CONFIDENTIAL” (July 8, 2004). Found at: <http://www.eastangliaemails.com/emails.php?eid=419&filename=1089318616.txt> (last visited Dec. 23, 2009).

(“K” is probably Kevin Trenberth, one of Jones’s fellow IPCC authors.) This is a very serious allegation. Dr. Peter Kelemen, professor of geochemistry at Columbia University, has said that “If scientists attempted to exclude critics’ peer-reviewed papers from IPCC reports, this was unethical in my view.”⁴⁷

Similarly, one of the most baffling aspects of the IPCC reports, until now, was how seemingly reliable reports by well-respected scientists were systematically excluded without persuasive explanation. The Climategate revelations explain exactly why that was happening, and why EPA should now reexamine the underlying reports and documentation free from IPCC’s corrupting bias.⁴⁸ As Dr. Pielke says, “The challenge to the IPCC community, now that their duplicity has been exposed, is to communicate to all of us why the peer-reviewed papers that we documented, and that were available in time for the IPCC review process, were considered “bad papers” and thus ignored in the IPCC report.”⁴⁹ We doubt that IPCC will take Dr. Pielke up on his suggestion, which is all the more reason why EPA should.

4. SUMMARY.

What these aspects of Climategate reveal is that the so-called “science” of global warming has been conducted in an ideologically charged environment, such that any possibility of giving due regard to dissenting views was foreclosed at the outset. Thus, the conclusions of organizing bodies, especially IPCC, cannot be said to reflect scientific “consensus” in any

⁴⁷ Kelemen, Peter. “What East Anglia’s E-mails Really Tell Us About Climate Change.” Popular Mechanics (Dec. 1, 2009). Found at: <http://www.webcitation.org/5m33oK4QQ> (last visited Dec. 23, 2009).

⁴⁸ SLF maintains that EPA’s process of relying on syntheses of scientific reports (such as the IPCC reports), rather than the underlying reports themselves, is a violation of the Administrator’s duty to exercise “judgment” under Section 202. That is all the more true where, as here, the syntheses reflect a political agenda and, as we now know, deliberate bias in the selection and evaluation of the science.

⁴⁹ Pielke Sr., Roger. “Comment On The Hacking Of The CRU Website.” Found at: <http://pielkeclimatesci.wordpress.com/2009/11/20/comment-on-the-hacking-of-the-cru-website/> (last visited Dec. 23, 2009)

meaningful sense of that word. Instead, they reflect a political movement that has commandeered science to the service of its agenda. This is “post-normal science”: the long-dreaded arrival of deconstructionism to the natural sciences, according to which scientific quality is determined not by its fidelity to truth, but by its fidelity to the political agenda.⁵⁰ A leading climate scientists and contributor to the IPCC, Mike Hulme,⁵¹ has called the IPCC “a classic example” of “post normal science”

Philosophers and practitioners of science have identified this particular mode of scientific activity as one that occurs ... where values are embedded in the way science is done and spoken. It has been labelled “post-normal” science. Climate change seems to fall in this category. Disputes in post-normal science focus ... on the process of science – who gets funded, who evaluates quality, who has the ear of policy. ... The IPCC is a classic example of a post-normal scientific activity.⁵²

The law of the United States requires that the EPA’s endangerment findings be based on real science, not the “post-normal science” laid bare by Climategate.

C. THE CLIMATEGATE E-MAILS REVEAL A SYSTEMATIC EFFORT BY SELF-PROCLAIMED “GATEKEEPERS” TO ENFORCE SCIENTIFIC ORTHODOXY.

One of the reasons EPA should convene a proceeding to sort through all of this is that it can be difficult to distinguish “consensus” from enforced doctrinal orthodoxy. The Climategate

⁵⁰ Post-normal science was defined by Eva Kunseler, in her paper “Towards a new paradigm of Science” as follows: A new concept of science was introduced by Funtowicz and Ravetz during the 1990s...The concept of post-normal science goes beyond the traditional assumptions that science is both certain and value-free...The exercise of scholarly activities is defined by the dominance of goal orientation where scientific goals are controlled by political or societal actors...Scientists’ integrity lies not in disinterestedness but in their behaviour as stakeholders.

Found at: <http://www.nusap.net/downloads/KunselerEssay2007.pdf> (last visited Dec. 23, 2009)

⁵¹ Mike Hulme, founding director of the Tyndall Centre, and Professor of Climate Change at the University of East Anglia (UEA), prepared climate scenarios and reports for the UK Government (including the UKCIP98 and UKCIP02 scenarios, and reviewer for UKCP09), the European Commission, UNEP, UNDP, WWF-International and the IPCC, and was co-ordinating Lead Author for the chapter on ‘Climate scenario development’ for the Third Assessment Report of the IPCC, as well as a contributing author for several other chapters

⁵² Hulme, Mike. “The Appliance of Science.” *The Guardian* (Mar. 14, 2007). Found at: <http://www.guardian.co.uk/society/2007/mar/14/scienceofclimatechange.climatechange> (last visited Dec. 23, 2009).

scandal reveals an approach among the priesthood of AGW proponents toward dissenters not unlike that of the guardians of religious orthodoxy towards heresy.

As Dr. Christy says,

These people act in concert to diminish, reject, and otherwise denigrate findings with which they do not agree -- and they are able to do so because of their "establishment" positions. This is the preservation of "group think" at its most serious level.... The group represented by the bulk of these emails does indeed have a message to defend. Those of us who see problems with that message are aware of how the data are manufactured and interpreted to support that message -- and worse, how these establishment scientists act as gatekeepers for the "consensus" reports to suppress alternative findings."⁵³

IV. THE NEED FOR RECONSIDERATION.

Given the substantial, credible evidence that at least some of the data, publications, and reports relied upon by EPA were the subject of systematic manipulations to create a false sense of consensus, stifle scientific debate, and alter the content of the published literature, EPA really has only two options: ignore the controversy and proceed with the Endangerment Finding as if nothing happened, or convene a proceeding to allow the public to comment on the situation.

It is an undeniable fact that many prominent accomplished, published and well-respected scientists have spoken out loud and clear to say that the Climategate has exposed the greatest scientific fraud in history.⁵⁴ Such is the condition of the explicit premise of the EPA's Endangerment Finding.

⁵³ Hake, Tony. The Columbia Examiner: "Climategate email scientists feeling the heat" (Dec. 13, 2009). Found at: <http://www.examiner.com/x-25061-Climate-Change-Examiner~y2009m12d13-Climategate-email-scandal-scientists-feeling-the-heat> (last visited Dec. 23, 2009).

⁵⁴ It is worth noting some of the reactions of prominent scientists to the Climategate scandal:

- Princeton University's Robert Austin: "I view it as science fraud, pure and simple." Quoted in: McCullagh, Declan. "Physicists Stick to Warming Claim Post-Climategate," CBS News (Dec, 8, 2009). Found at: http://www.cbsnews.com/blogs/2009/12/08/taking_liberties/entry5933353.shtml (last visited Dec. 23, 2009).
- Robert Austin (Princeton), Will Happer (Princeton) and Hal Lewis (UC Santa Barbara) "ClimateGate, which was and is an international scientific fraud, the worst any of us have seen." *Ibid.*
- Don Easterbrook: "Legitimate scientists do not doctor data, delete data they don't like, hide data they don't want seen, hijack the peer review process, personally attack other scientists whose views differ from theirs,


Petitioners respectfully suggest that whether these scientists are right or not is not the question before EPA. EPA may well decide that the science, taken as a whole, survives the Climategate scandal.⁵⁵ But the public, and other members of the scientific community who have a contrary view, have a right to weigh in on that issue. This is not an issue on which the public previously commented, and therefore it is not one that EPA has responded to, and, were EPA's evaluation to conclude that some or all of the data and reports are not reliable, the outcome of the Finding could very well be different. Accordingly, in all fairness EPA must convene a proceeding to allow public comment on these issues.

V. CONCLUSION

For all of the foregoing reasons, EPA should convene a proceeding to reconsider the Endangerment Finding.

Respectfully submitted this 23rd day of December 2009.

Attorneys for Petitioners



Shannon L. Goessling
Executive Director & Chief Legal Counsel
Southeastern Legal Foundation Inc.


send fraudulent data to the IPCC that is used to perpetuate the greatest hoax in the history of science, provide false data to further legislation on climate change that will result in huge profits for corrupt lobbyists and politicians, and tell outright lies about scientific data." Found at:

<http://www.climatedepot.com/a/4140/Geologist-appalled-at-NYTs-Krugman-Legitimate-scientists-do-not-doctor-data-hack-peer-reviews-send-fraudulent-data-to-UN-that-is-used-to-perpetuate-greatest-hoax-in-the-history-of-science> (Nov. 29, 2009) (last visited Dec. 23, 2009).

- Ian Plimer "If you have to argue your science by using fraud, your science is not valid." Quoted in "Climate Change Fraud." *Daily Express* (Dec. 2, 2009). Found at: <http://www.express.co.uk/posts/view/143573/Climate-change-rocked-> (last visited Dec. 23, 2009).

⁵⁵ SLF has already taken the position that EPA's Endangerment Finding is fundamentally flawed based on the pre-Climategate science. Indeed, SLF has already commented that EPA was relying too heavily on a manufactured "consensus" and altered data. While SLF has tried to resist the urge to say, "I told you so," the Climategate scandal lends considerable support to SLF's prior statements.

Southeastern Legal Foundation Inc.
6100 Lake Forrest Drive, Suite 520
Atlanta, Georgia 30328
(404) 257-9667
Fax: (404) 257-0049



Edward A. Kazmarek

Kazmarek Geiger & Laseter LLP
3490 Piedmont Road NE, Suite 201
Atlanta, GA 30305
(404) 812-0840
Fax: (404) 812-0845
E-mail: skazmarek@kglattorneys.com



Harry W. MacDougald

Caldwell & Watson LLP
5825 Glenridge Dr., N.E.
Building Two, Suite 200
Atlanta, GA 30328-5579
(404) 843-1956
Fax: (404) 843-2737
E-mail: hmacdougald@cwlaw.org