

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

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.<sup>55</sup>

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.<sup>56</sup> 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”).<sup>57</sup> 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.<sup>58</sup>

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<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> 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).

<sup>55</sup> See generally IPCC Fourth Assessment Report: Climate Change 2007.

<sup>56</sup> 42 U.S.C. § 7521 (emphasis added).

<sup>57</sup> 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).

<sup>58</sup> 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.<sup>59</sup> 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.”<sup>60</sup>

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.”<sup>61</sup> 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[,]”<sup>62</sup> the reasonableness of her reliance on those assessments is of central relevance to the Endangerment Finding.<sup>63</sup> 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.”<sup>64</sup>

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

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 66,510.

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

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