

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, USGRCP, 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 USGRP 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