

From: "Kavanaugh, Brett M."
To: "Ulliyot, Theodore W."
Subject: FW: Final Clearance Needed on Rebuttal
Sent: Thu, 25 Mar 2004 13:56:22 -0500
[UCS Rebuttal Doc 3.25.04 ver.14.doc](#)

[Can you review](#)

-----Original Message-----

From: Eddy, Ryan R.
Sent: Thursday, March 25, 2004 1:41 PM
To: Staff Secretary
Cc: Dale, Shana L.; Sokul, Stanley S.; Hays, Sharon L.
Subject: Final Clearance Needed on Rebuttal

Attached is the final version of the "UCS Rebuttal" that was originally staffed on 3/3 and had a subsequent restaffing of 3 paragraphs on 3/18. We have approval from all relevant EOP offices that provided significant feedback on the document. All changes have been carefully incorporated. This is the biggest piece in our puzzle and we are hoping to get this out to our supporters as soon as possible before its release next week. Thank you for all of your assistance on this daunting project! We know you have your hands full with many others. Again, please feel free to call if you have any questions.

Many thanks,

Ryan
x66009 <<...>>

Response to the Union of Concerned Scientists' Document

I. UCS' CLAIM OF "SUPPRESSION AND DISTORTION OF RESEARCH FINDINGS AT FEDERAL AGENCIES"

UCS' claims on "Distorting and Suppressing Climate Change Research"

- The UCS document claims that "the Bush administration has consistently sought to undermine the public's understanding of the view held by the vast majority of climate scientists that human-caused emissions of carbon dioxide and other heat-trapping gases are making a discernible contribution to global warming."

This statement is not true. In his June 11, 2001, Rose Garden speech on climate change, the President stated that the "[c]oncentration of greenhouse gases, especially CO₂, have increased substantially since the beginning of the Industrial Revolution. And the National Academy of Sciences indicate that the increase is due in large part to human activity ... While scientific uncertainties remain, we can now begin to address the factors that contribute to climate change." In this speech, the President cited the National Academy's Climate Change Science report that was initiated at the Administration's request, and launched a major, prioritized scientific effort to improve our understanding of global climate change.

Moreover, the President's Climate Change Science Program (CCSP) has developed its plans through an open and transparent process. In the development of its Strategic Plan, released in July 2003, the CCSP incorporated comments and advice from hundreds of scientists both from the U.S. and around the world. The CCSP Strategic Plan received a strong endorsement from the National Academy of Sciences in a February 2004 review, which commended the work of the CCSP.

- The UCS claims that the "Bush administration blatantly tampered with the integrity of scientific analysis at a Federal agency when, in June 2003, the White House tried to make a series of changes to the EPA's draft Report on the Environment."

This statement is false. In fact, the Administrator of the EPA decided not to include a short summary on climate change. An ordinary review process indicated that the complexity of climate change science was not adequately addressed in EPA's draft document. Instead, the final EPA report referred readers to the far more expansive and complete exposition of climate change knowledge, the Climate Change Science Program (CCSP) Strategic Plan.¹ The Administration chose, appropriately, to present information in a single, more expansive and far more complete format. This choice of presentation format did not influence the quality or integrity of the scientific analysis or its dissemination.

¹ The 205-page CCSP Strategic Plan was released by Secretaries Evans and Abraham on July 24, 2003. The EPA *Report on the Environment* was released on June 23, 2003. The draft EPA report had contained a four-page segment on climate change.

- The UCS quotes an unnamed EPA scientist as saying that the Administration “does not even invite the EPA into the discussion” on climate change issues, and cites a previous Clinton Administration OSTP official, Dr. Rosina Bierbaum, as claiming that the Administration excluded OSTP scientists from the climate change discussions.

These accusations are wrong. The EPA, in fact, is a key participant in the development and implementation of climate change policy in the Bush Administration. The EPA participates in the development of Administration policy on climate change through the cabinet-level Committee on Climate Science and Technology Integration, which was created in February 2002. The EPA is also a member of subsidiary bodies, such as the Interagency Working Group on Climate Change Science and Technology, the Climate Change Science Program and the Climate Change Technology Program. (A table illustrating the Bush Administration’s climate change program’s organization can be found on page 9 of the CCSP Strategic Plan (2003)). Moreover, the EPA is a co-chair of the National Science and Technology Council’s Committee on Environment and Natural Resources (CENR). CENR has oversight of and responsibility for the Subcommittee on Global Change Research. (This subcommittee holds the same membership and is functionally the same entity as the Climate Change Science Program, noted above.)

Dr. Bierbaum’s claim refers to cabinet-level discussions that led to the development of the Administration’s climate change organization described above. The cabinet-level discussions referenced by Dr. Bierbaum included numerous, respected Federal career scientists including Dr. David Evans, former Assistant Administrator for Oceanic and Atmospheric Research at NOAA, Dr. Ari Patrinos, Associate Director of the Office of Biological and Environmental Research at the Department of Energy, and Dr. Dan Albritton, Director of the Aeronomy Laboratory of Oceanic and Atmospheric Research at NOAA. Starting with these early discussions, the Bush Administration’s climate change organization has fully involved climate change experts from throughout the Federal government.

As already noted, subsequent to its initial internal discussions, the Administration submitted the draft CCSP Strategic Plan to some of the Nation’s most qualified scientists at the National Academy of Sciences for review. The Academy made numerous recommendations, which the CCSP incorporated. The CCSP then resubmitted its plans to the Academy for further review, and just recently, the NAS returned a highly favorable review. The Administration developed the climate change science strategic plan through an open, back-and-forth process.

- The UCS claims that the Administration refused the request of the Natural Resources Conservation Service (NRCS) in USDA to reprint a brochure on carbon sequestration prepared several years ago, and claims that this was censorship of government information.

This accusation is false. The USDA’s NRCS decided not to republish the brochure for appropriate reasons. The brochure had received extensive comments from within the Department that the brochure was outdated and did not reflect significant recent decisions by USDA to address greenhouse gases. For example, in June 2003, Secretary Veneman announced that for the first time, USDA would give consideration to greenhouse gas reductions and carbon sequestration in setting priorities for conservation programs. In addition, USDA is developing new accounting rules and guidelines so that farmers and landowners can register greenhouse gas

reductions and carbon sequestration activities with the Department of Energy. The Department of Energy released their accounting guidelines for greenhouse gas reporting in December 2003, and they are expected to release technical guidelines in early summer 2004. USDA is working with DOE to develop the guidelines for agriculture. The technical guidelines should include more specific information as to how farmers and ranchers could report and register greenhouse gas reductions. Once the new guidelines are available, USDA will reprint this brochure including information on how farmers can use the new guidelines.

Furthermore, there are still approximately 37,000 existing brochures available for distribution. The document is posted on the Soil and Water Conservation Society web-site: http://www.swcs.org/docs/carbon_brochure.pdf. Links to the document are found on the NRCS website: <http://www.nrcs.usda.gov/news/releases/2000/000424.html>.

UCS' claims on "Censoring Information on Air Quality"

- The UCS claims that the Administration was withholding the publication of an EPA report on children's health and the environment in order to avoid the issue of mercury emissions by coal-fired power plants. UCS also claims that the Administration suppressed and sought to manipulate government information about mercury contained in the EPA report.

This is not true. The interagency review of the EPA report on children's health and the environment occurred independently of the Administration's deliberations on mercury emissions from power plants. The interagency review process is the standard operating procedure for reports that include areas of scientific and policy importance to multiple agencies. As such, the report was reviewed by a number of scientists and analysts across Federal agencies. During this review, other agencies expressed concerns about the report. OSTP worked collaboratively with EPA staff on addressing interagency comments to make certain that the proposed indicators had a robust scientific basis and were presented in an understandable manner.

The report contained a statement that 8% of women of child-bearing age had at least 5.8 ppb of mercury in their blood in 1999-2000 and therefore children borne to these women are at some increased risk. This information was available well before the EPA report both in raw form through the CDC and in an interagency analysis (CDC's Morbidity and Mortality Weekly Review, 2001) that indicated that approximately 10% of women of child-bearing age had blood mercury levels above the EPA reference dose, as opposed to the 8% level noted in EPA's report. The updated analysis in EPA's report and later published in the scientific literature (Journal of the American Medical Association, 2003) included an additional year of data and found the level to be 8%. These updated risk levels were used by the Administration in the preparation of its two regulatory proposals to reduce mercury emissions from coal-fired power plants.²

The final report was released in February 2003, as soon as the interagency review process was completed.

² The proposed regulations include a Maximum Achievable Control Technology standard which would result in a 29% reduction by 2009, and a two-phase cap and trade program which will result in a 68% reduction when fully implemented.

- The UCS states that “the new rules the EPA has finally proposed for regulating power plants’ mercury emissions were discovered to have no fewer than 12 paragraphs lifted, sometimes verbatim, from a legal document prepared by industry lawyers.”

UCS’ implication that industry is writing government regulations is wrong. The reference here is to a preamble of a proposed EPA rule to control (for the first time) mercury emissions from power plants. The text in question is in the preamble, not the proposed rule itself. The preamble is intended to engage the public and encourage comments, including both assenting and dissenting viewpoints. All agencies, including EPA, openly seek public comment during rulemaking proceedings in order to obtain useful information and advice that is accepted or rejected or used in part.

Such direct use of submitted memoranda should not have occurred. However, the text at issue was taken from memoranda that were publicly presented to an advisory group made up of environmental activists, State officials, and industry representatives. These documents are openly available in the public docket. The UCS’ allegations are based on text that had nothing to do with the integrity of the science used by EPA.⁴

- The UCS states that the EPA has suppressed research on air pollution; specifically that the EPA evaluated a proposed measure by Senators Carper, Gregg and Chafee to control carbon dioxide in addition to sulfur dioxide, nitrogen oxides, and mercury, but withheld most of the results.

This accusation is false. EPA did, in fact, provide full information to the Senators. S. 843 was introduced by Senators Carper, Gregg, and Chafee on April 9, 2003. EPA submitted a cost analysis of the legislation to the Senators in early summer 2003, and submitted a benefits analysis in October 2003. The Energy Information Administration (EIA) has also analyzed and

³ The proposed regulations include a Maximum Achievable Control Technology standard which will result in a 29% reduction in 2008, and a two-phase cap and trade program which will result in a 68% reduction in 2018.

⁴ The background of this rulemaking and the text in question is as follows. On January 30, 2004, the EPA published a notice of proposed rulemaking to regulate mercury emissions from power plants. The language at issue, which appears in two places in the proposal’s preamble, was derived from two memoranda submitted by a law firm early in the rulemaking process (March and September, 2002). In the first instance, a section of one memorandum discusses the statutory framework of Section 112 of the Clean Air Act. Administration staff largely copied this discussion into portions of its own discussion, entitled “What is the Statutory Authority for the Proposed Section 112 Rule?” The law firm had used this discussion to argue for a regime of “system-wide compliance,” but EPA rejected that argument and did not propose such a regime. In the second instance, another memorandum argued that EPA should allow “subcategorization” within existing coal-fired units under the Maximum Achievable Control Technology (MACT) regime. This discussion did not deal with any scientific issues but explained how different types of coal are typically classified. EPA largely copied several paragraphs from this document into the preamble’s discussion of subcategorization.

compared the costs of S. 843 and S. 485 (the Administration's Clear Skies proposal), and provided the analysis to Congress in September 2003.

The leaking of a draft EPA analysis was improper and unfortunate. The report underwent a standard interagency pre-release clearance process, and an intent to release always existed. Furthermore, these types of analyses have long been available and released by the Administration once completed. In fact, EPA had also analyzed a very similar bill Senator Carper introduced in 2002 and provided it to Congress in November 2002.

UCS' claims on "Distorting Scientific Knowledge on Reproductive Health Issues"

- The UCS claims that the Administration distorted the U.S. Centers for Disease Control and Prevention's (CDC's) science-based performance measures to test whether abstinence-only programs were proving effective, and attempted to obscure the lack of efficacy of such programs.

This accusation is false. UCS mischaracterizes the program, its performance measures, and the reasons behind changes that were made to those performance measures. There were no CDC science-based performance measures associated with this program. Currently, the Federal government funds abstinence-only education programs through the Health Resources and Services Administration, not CDC. The program was never designed as a scientific study, and so even if the original performance measures had been kept, little or no scientifically useable data would be obtained. However, other independent evaluation efforts are underway that *are* intended to address questions of the effectiveness of abstinence only programs.

- The UCS claims that a CDC condom fact sheet posted on their web site was removed and replaced with a document that emphasizes condom failure rates and the effectiveness of abstinence.

This accusation is a distortion of the facts. The CDC routinely takes information off its website and replaces it with more up-to-date information. Recently updated topics include anthrax, West Nile Virus, and other health issues for which new information had become available. The condom fact sheet was removed from the website for scientific review and was subsequently updated to reflect the results of a condom effectiveness review conducted by the National Institutes of Health, as well as new research from other academic institutions. The condom information sheet was re-posted with the new information.

The "Programs That Work" website was also removed because the programs it listed were limited. CDC is exploring new and appropriate means to identify and characterize interventions that have scientifically credible evidence of effectiveness. In addition, CDC is currently working on a new initiative that is aimed at better addressing the needs of schools and communities by providing assistance in selecting health education curricula based on the best evidence available.

- The UCS alleges that information suggesting a link between abortion and breast cancer was posted on the National Cancer Institute (NCI) website despite substantial scientific study refuting the connection, and only revised after a public outcry.

This claim distorts the facts. The NCI fact sheet “Abortion and Breast Cancer” has been revised several times since it was first written in 1994. NCI temporarily removed the fact sheet from the website when it became clear that there was conflicting information in the published literature. In order to clarify the issue, in February 2003 a workshop of over 100 of the world's leading experts who study pregnancy and breast cancer risk was convened. Workshop participants reviewed existing population-based, clinical, and animal studies on the relationship between pregnancy and breast cancer risk, including studies of induced and spontaneous abortions. They concluded that having an abortion or miscarriage does not increase a woman's subsequent risk of developing breast cancer. A summary of their findings, titled *Summary Report: Early Reproductive Events and Breast Cancer Workshop*, can be found at <http://cancer.gov/cancerinfo/ere-workshop-report>. A revised fact sheet was posted on the NCI website shortly after the workshop reflecting the findings.

UCS’ claims on “Suppressing Analysis on Airborne Bacteria”

- The UCS claims that a former Agricultural Research Service (ARS) scientist at Ames, Iowa, Dr. James Zahn, was prohibited on no fewer than 11 occasions from publicizing his research on the potential hazards to human health posed by airborne bacteria resulting from farm wastes.

This accusation is not true. Dr. Zahn did not have any scientific data or expertise in the scientific area in question. Dr. Zahn’s assigned research project, as part of the Swine Odor and Manure Management Research Unit, dealt with the chemical constituency of volatiles from swine manure and ways to abate odors. In the course of this research, Dr. Zahn observed incidentally that when dust was collected from a hog feeding operation, some of the “dust” emitted from these facilities contained traces of antibiotic resistant bacteria. The recorded data were severely limited in scope and quantity, and did not represent a scientific study of human health threats.

In February 2002, Dr. Zahn was invited to speak at the Adair (Iowa) County Board of Health meeting in Greenfield, Iowa. Permission was initially granted by ARS management for Dr. Zahn to speak because it was thought that he was being invited to speak on his primary area of scientific expertise and government work, management of odors from hog operations. Permission for Dr. Zahn to speak representing the ARS at the meeting was withdrawn when it was learned that Dr. Zahn was expected to speak on health risks of hog confinement operations, an area in which Dr. Zahn did not have any scientific data or expertise.

The accusation of "no fewer than 11 occasions" of ARS denials to Dr. Zahn for him to present or publicize his research is not accurate. He was approved to report on his preliminary observations of dust borne antibiotic resistant bacteria at the 2001 meeting of the American Society of Animal Science and at a 2001 National Pork Board Symposium. He also was approved on numerous occasions to present and publish his research on volatiles and odors from swine manure. However, on five occasions he was not authorized to discuss the public health ramifications of his observations on spread of resistant bacteria because he had no data or expertise with respect to public health. Three of these occasions were local Iowa public community meetings; two others were professional scientific meetings.

- UCS also claims that the USDA has issued a directive to staff scientists to seek prior approval before publishing any research or speaking publicly on “sensitive issues.”

This is not true. USDA-ARS headquarters has had a long-standing, routine practice (at least 20 years) that has spanned several Administrations to require review of research reports of high-visibility topics (called the “List of Sensitive Issues”). ARS headquarters review, when required, do not censor, or otherwise deny publication of, the research findings, but may aid in the interpretation and communication of the results, including providing advance alert to others. The purpose of this review is to keep ARS Headquarters officials informed before publication and in an otherwise timely way of new developments on cutting-edge research, controversial subjects, or other matters of potential special interest to the Secretary’s Office, Office of Communications, USDA agency heads (particularly those other agencies in USDA that depend on ARS for the scientific basis for policy development and program operations), scientific collaborators, the news media, and/or the general public. This practice deals with research reporting only and does not relate to the initial research priority setting process or to determining which studies will be undertaken. To the contrary, the “special issues” are mostly high-priority items and receive considerable research attention.

UCS’ claims on “Misrepresenting Evidence on Iraq’s Aluminum Tubes”

- The UCS claims that the Administration was aware of disagreement among experts on the purpose of aluminum tubes that Iraq attempted to acquire and that the Administration knowingly disregarded scientific analysis of intelligence data.

Director of Central Intelligence George Tenet addressed this issue directly in his February 5, 2004, speech at Georgetown University:

“Regarding prohibited aluminum tubes -- a debate laid out extensively in the [National Intelligence] Estimate, and one that experts still argue over -- were they for uranium enrichment or conventional weapons? We have additional data to collect and more sources to question. Moreover, none of the tubes found in Iraq so far match the high-specification tubes Baghdad sought and may never have received the amounts needed. Our aggressive interdiction efforts may have prevented Iraq from receiving all but a few of these prohibited items.

”My provisional bottom line today: Saddam did not have a nuclear weapon; he still wanted one; and Iraq intended to reconstitute a nuclear program at some point. But we have not yet found clear evidence that the dual-use items Iraq sought were for nuclear reconstitution. We do not yet know if any reconstitution efforts had begun, but we may have overestimated the progress Saddam was making.”

UCS’ claims on “Manipulation of Science Regarding the Endangered Species Act”

- The UCS claims that the Administration is attempting to weaken the Endangered Species Act.

This accusation is false. The current listing situation results from Fish and Wildlife Service (FWS) practices in place *before the Bush Administration took office*. The FWS listing budget is

currently consumed by court-ordered listings and critical habitat designations. These court orders result from pre-2001 FWS decisions to list endangered species but not to designate associated critical habitat as required by the Act as well as to ignore pending petitions to list species. This practice resulted in a flood of litigation forcing FWS to act on petitions that had been languishing for years as well as to designate critical habitat for already listed species. Fulfilling the resulting court mandates expends all of FWS's listing budget (the Administration has taken steps to redirect additional funds to this budget account, and the President's FY05 Budget requests an increase of more than 50 percent). With respect to the critical habitat designations, officials from both the current and prior administrations have said that these lawsuits prevent FWS from taking higher priority actions such as listing new species.⁵ Moreover, without regard to the current court-driven budgetary situation, the number of new species listed as endangered during a particular time period varies over time for numerous reasons, and as such is not an appropriate measure of the success of the Act.

This Administration is committed to working in partnership with States, local governments, tribes, landowners, conservation groups, and others to conserve species through voluntary agreements and grant programs in addition to ESA procedures. For FY 2005, the President's proposed budget includes more than \$260 million in the Interior Department budget alone for cooperative conservation programs for endangered species and other wildlife. The President created the new Landowner Incentive Program and the Private Stewardship Initiative grant programs to help private landowners conserve endangered species habitat on their property. In early March 2004, for example, Secretary Norton announced \$25.8 million in cost-share grants to help private landowners conserve and restore the habitat of endangered species and other at-risk plants and animals. These grants are going to support projects in 40 states and the Virgin Islands.

Because the large majority of threatened and endangered species depend on habitat on private lands, this Administration believes it is vitally important that the Federal government provide incentives for landowners to engage in conservation efforts. The incentive programs implemented during this Administration have shown returns in the form of voluntary

⁵ "In 25 years of implementing the ESA, we have found that designation of official critical habitat provides little additional protection to most listed species, while it consumes significant amounts of scarce conservation resources," Jamie Rappaport Clark, Director, U.S. Fish and Wildlife Service during the Clinton Administration, before the Senate Environment and Public Works Subcommittee on Fisheries, Wildlife, and Drinking Water. May 27, 1999.

"These lawsuits [forcing the Service to designate critical habitat] necessitate the diversion of scarce Federal resources from imperiled but unlisted species which do not yet benefit from the protections of the ESA." Jamie Rappaport Clark, Senate Testimony, May 27, 1999.

"Struggling to keep up with these court orders, the Fish and Wildlife Service has diverted its best scientists and much of its budget for the Endangered Species Act away from more important tasks like evaluating candidates for listing and providing other protections for species on the brink of extinction." former Interior Secretary Bruce Babbitt, *New York Times* op-ed, April 15, 2001.

"The best alternative is to amend the Endangered Species Act, giving biologists the unequivocal discretion to prepare maps when the scientific surveys are complete. Only then can we make meaningful judgments about what habitat should receive protection." Bruce Babbitt, *New York Times*, April 15, 2001.

contributions of time and effort by landowners. These contributions provide far more to species conservation than the government could ever compel through regulatory action. This Administration is focusing on enhancing and restoring habitats of threatened and candidate species populations – thus keeping them off the list by preventing these species from becoming threatened in the first place.

- The UCS claims that the FWS inappropriately established a new “SWAT” team to swiftly revise an earlier 2000 Biological Opinion on the Missouri River rather than allow that opinion to take effect in 2003.

UCS distorted the facts. UCS failed to mention several vital facts and mischaracterized subsequent events. First, after its issuance, the terms and conditions of the 2000 Biological Opinion were in effect already. Pursuant to that Biological Opinion, a spring rise in water levels was to occur every three years if reservoir levels were sufficiently high. Due to the prevailing and serious drought conditions, a 2003 water rise would not have occurred under the 2000 Biological Opinion.

Second, the development of an amended Biological Opinion was triggered by the Corps noting new information⁶ and submitting new proposed updates to its Master Water Control Manual for the Missouri River. As such, the subsequent consultation process with FWS was mandatory, not discretionary.

Third, FWS’s swift action derived from court mandates imposed on the Corps. Due to various court orders the Corps had an obligation to ensure finalization of its Master Manual and compliance with the Endangered Species Act by Spring 2004. To meet that requirement, the Corp requested consultations with FWS under Section 7 of the ESA in Fall 2003 regarding its proposed management of the river system. In order to allow the Corps time to implement FWS’s recommendations by Spring 2004, the FWS had to accelerate the consultations. This resulted in the FWS having 45 days, rather than the usual 135 days, to complete the 2003 amended Biological Opinion. To meet this accelerated timeframe, a team of 15 Fish and Wildlife Service experts (including 7 from the 2000 team) with a collective 300 years of experience was assembled.

Fourth, the 2003 amended Biological Opinion on the Corps’ new management proposal determined that jeopardy still existed for one of the three species that were in jeopardy under the 2000 Biological Opinion (the pallid sturgeon), and included specific biological and habitat development targets that must be met to protect all three species. The 2003 amended Biological Opinion thus presented a new reasonable and prudent alternative that includes a number of steps the Corps must take, which not only built on measures recommended in a National Academy of Sciences’ review of the 2000 Biological Opinion, but also included the vast majority of the measures included in the 2000 Biological Opinion.

⁶ Among this new information was that, since the 2000 Biological Opinion, two of the endangered species population levels had improved significantly: Piping plover numbers had increase 460 percent within the Missouri River basin since 1997, with pair counts now exceeding recovery goals; and the least terns’ estimated population of 12,000 exceeded the recovery goal by 5,000 terns, although the goal of 2,100 terns for the Missouri River itself had not been met.

Finally, it is important to note that this team operated independently and reached a consensus biological opinion based upon the best and latest scientific information available. In fact, in an unsolicited and unprecedented action, the two career Federal officials leading the process noted in their cover memorandum transmitting the 2003 amended Biological Opinion, that the 2003 amended Biological Opinion process followed a mandate to go “where the science leads us.” They noted they had not been contacted by their superiors, and that they were unhindered in pursuing a project with “only one focus: the pursuit of science and the well-being of the species.”⁷

UCS’ claims on “Manipulating the Scientific Process on Forest Management”

- The UCS claims that the USDA manipulated the scientific process on forest management, and used a “Review Team” made up primarily of non-scientists to “overrule” an existing forest management plan.

This claim is false. This case actually highlights how aggressive the Administration has been in using input from the scientific community to inform its forest management decisions. The UCS claim demonstrates a lack of understanding of the NEPA processes used to update the Sierra Nevada Forest Plan Amendment (SNFPA) Record of Decision. In fact, the Forest Service received over 200 appeals of the SNFPA and had to review and respond to them. To address these appeals, the Regional Forester (Region Five – California) established the five-person Review Team to evaluate any needed changes to the SNFPA Record of Decision. One scientist provided scientific support to this team. Once the Review Team completed its work, a Draft Supplemental EIS (DSEIS) was completed. This was developed using an interdisciplinary team of 31 people, which included four individuals with PhDs and nine additional individuals with master’s degrees in scientific fields.

A Science Consistency Review (SCR) was conducted to assess the DSEIS from a scientific perspective. The Forest Service uses the SCR process infrequently and only when the additional level of thoroughness is judged necessary to ensure that decisions are consistent with the best available science. Controversy is not a consideration in the SCR process. The SCR is accomplished by judging whether scientific information of appropriate content, rigor, and applicability has been considered, evaluated, and synthesized in the draft documents that underlie and implement land management decisions. This SCR included 13 members, with 11 being scientists, nine external to the Forest Service and seven of these external to the government, including those from universities, the Nature Conservancy, and an independent firm. The results of the SCR were provided to a group of Forest Service professionals (including those experienced in NEPA, science, writing, and resource management) who prepared the final NEPA documents.

It would be highly unusual for all SCR comments to be reflected in the final NEPA documents, since these are prepared in the face of significant scientific uncertainty and a diversity of values. Nevertheless, the draft documents, the science consistency review, the response to the science consistency review, the responses to public comments, and the final SEIS are all available on the

⁷ Memorandum to the Assistant Secretary for Fish, Wildlife and Parks, from the Directors of the Great Lakes-Big Rivers Region and the Southwest Region (December 17, 2003).

web so that scientific information used and the process that utilized this information is transparent. How uncertainty and risk are handled in the decision have both scientific and policy elements. In addition, a paper discussing the risk and uncertainty issues around the decision was developed by four additional university scientists. These documents are all available at <http://www.fs.fed.us/r5/snfpa/>.

UCS' claims on "OMB Rulemaking on 'Peer Review'"

- The UCS claims that OMB has proposed a "rulemaking" on peer review that would centralize control of review of scientific information within the Administration, prohibit most scientists who receive funding from government agencies from serving as peer reviewers and "have dramatic effects" upon the promulgation of new government regulations, "even though OMB fails to identify any inherent flaws in the review processes now being used at these agencies."

This UCS claim is wrong on many levels. First, OMB did not propose a new government-wide rule, but rather proposed a new Bulletin or guidance document under the Information Quality Act (IQA) and other authorities. To improve its proposed peer review Bulletin, OMB established a 90-day public comment period, which ended December 15, 2003. OMB received 187 public comments, all of which are available on OMB's web site. OMB also sought broad input on its proposal by commissioning an open workshop at the National Academy of Sciences to discuss its draft. OMB is now in the process of revising the Bulletin based on the comments received. It should be noted that while such entities as the National Academy of Sciences, the American Association for the Advancement of Science, the Association of American Medical Colleges, the Federation of American Scientists, the American Chemistry Council, the Center for Regulatory Effectiveness, and the National Resources Defense Council all submitted comments, the Union of Concerned Scientists did not.

Second, the proposed Bulletin did not prohibit most scientists who receive funding from government agencies from serving as peer reviewers, nor would it exclude those who are most qualified. While the draft Bulletin cites government research funds as one factor that agencies should consider when determining which scientists should be selected, the listed factors are those "relevant to" the decision, not criteria that automatically exclude participation. Moreover, the proposed Bulletin noted in a variety of places that concerns also exist about potential conflicts of interest for those affiliated with the regulated community. OMB specifically asked for comments on how members of peer review panels should be selected, and will address these comments in crafting the final bulletin.

Third, OMB explained the reasons for its proposal: OMB was (1) responding to a new statutory requirement (the IQA) to improve the quality of information produced by agencies; (2) seeking to improve the Federal government's practice of peer review so that it is applied consistently across the Executive Branch to ensure the highest quality scientific information possible; and (3) seeking greater transparency of the peer review process.

Fourth, the proposed OMB Bulletin's peer review requirements should not slow down agency regulatory proceedings. A well-conducted peer review process can accelerate the rulemaking process by reducing controversy and protecting any resultant rules against legal and political

attack. When done in an open, transparent manner, independent peer review improves both the quality of science disseminated and the public's confidence in the integrity of science.

Finally, the UCS description of the proposed Bulletin concludes with a quote from the Pharmaceutical Research Manufacturers of America (PhRMA) that implies that PhRMA thinks the Bulletin would contribute little value and lead to obstruction and delay. This quote is taken completely out of context. The PhRMA letter *applauds* OMB for its proposed Bulletin, and discusses how OMB's proposed procedures are already being effectively incorporated into many of FDA's regulatory activities. They conclude that the terms of OMB's proposed Bulletin, especially its exemption for adjudications, is good policy. The quoted sentence is used to articulate why OMB should not change the proposed Bulletin's exemption for adjudications.

II. UCS' CLAIM OF "UNDERMINING THE QUALITY AND INTEGRITY OF THE APPOINTMENT PROCESS"

Suggestions of a political litmus test for membership on technical advisory panels are contradicted by numerous cases of Democrats appointed to panels at all levels, including Presidentially appointed panels such as the President's Information Technology Advisory Council, the National Science Board, and the nominating panel for the President's Committee on the National Medal of Science.

It is unfortunate that the Union of Concerned Scientists would attack specific individuals who have agreed to serve their country. Every individual who serves on one of these committees undergoes extensive review, background checks, and is recognized by peers for their contributions and expertise. Panels are viewed from a broad perspective to ensure diversity; this may include gender, ethnicity, professional affiliations, geographical location, and perspectives.

To put this issue in perspective, note that this Administration has over 600 scientific advisory committees. HHS alone has 258 advisory committees. The UCS accusations involve instances explained below, representing rare events among a large number of panels.

UCS' claims on "Industry Influence on Lead Poisoning Prevention Panel"

- UCS claims that industry influence on the lead poisoning prevention panel led to interference with an action to toughen the lead poisoning standard. UCS also takes issue with the HHS Office of the Secretary appointing individuals for the Advisory Committee, rather than making the appointments at a lower level.

This claim distorts deliberations on the complex issue of lead poisoning. First, there was no link between appointments and consideration of toughening the guidelines. The appointments were made in October 2002 and the subcommittee workgroup was not considering the lead poisoning guidelines at that time. In October 2003, a subcommittee workgroup of the Childhood Lead Advisory Committee reported their review of scientific evidence to determine whether there was

sufficient evidence of adverse health effects on children with blood lead levels less than 10 micrograms per deciliter of blood.⁸ The workgroup had ongoing discussions with CDC about their work, which indicated that while there are adverse health effects in children at blood lead levels less than 10 micrograms, the possibility of confounding by other factors leaves some uncertainty as to the size of the effect. These discussions led to the conclusion that more emphasis needed to be placed on primary prevention. This conclusion was reached for a variety of reasons, including: (1) there are no clinical interventions (treatments) to reduce blood lead levels that are in the range of 1-10 micrograms;⁹ (2) it is extremely hard to classify sources of exposure for lead poisoning at blood lead levels below 10 micrograms;¹⁰ (3) error rates in lab testing make it extremely difficult to classify a blood lead level below 10 micrograms;¹¹ and (4) there is no evidence of a threshold below which adverse effects are not experienced. Thus, there was a renewed emphasis on preventing children's exposure to lead in the first place while continuing the critical work of identifying and intervening on behalf of children with higher blood lead levels.

For all of these reasons CDC concluded that it did not make sense to change the guidelines. CDC advised that studies provide a strong rationale to emphasize preventing exposure of children to lead. The two essential elements are focusing on systematic reduction of lead paint in housing and restricting or eliminating non-essential uses of lead paint in toys, eating and drinking utensils, cosmetics, etc. Eleven of the twelve Advisory Committee members were receptive to CDC's recommended approach.

Regarding the suggestion that two appointees had ties to the industry, every candidate is put through a rigorous ethics process that includes a conflicts of interest analysis. All of the appointments on the Childhood Lead Advisory Committee were cleared through this process.

Regarding the issue of appointment of advisory committee members, the members in question replaced outgoing members who had served several terms and others had permissibly served beyond the expiration of their present terms. Therefore, it was part of the normal advisory committee process to identify new members.

⁸ In 1991, the federal standard for lead poisoning was set at 10 micrograms per deciliter of blood.

⁹ There are no clinical interventions to reduce blood lead levels that are in the range of 1-10 micrograms. No drugs or other methods have been identified that either lower the blood lead levels for children to the levels in the range under discussion (1-10 micrograms) or reduce the risk for adverse developmental effects. Should a child have an elevated blood lead level, a lead inspection would be conducted to determine the source of lead including looking at paint, soil, and house dust. Should these sources result in negative readings, other sources would then be reviewed with the ultimate goal of removing as much of the source as possible. For a blood lead level of 45 micrograms or higher, chelation therapy would be used to reduce, as much as possible, the lead level in the blood and tissue. At a level of 15-45 micrograms, the course of action would be to remove external sources of lead such as lead paint. At a level below 15 micrograms, the course of action would be to educate parents or caregivers about hazards and how to reduce access to hazards. But there are no good methods to intervene and bring a blood lead level of, for example, 8 micrograms down to 4 micrograms.

¹⁰ Sources of exposure for lead poisoning are very difficult to determine at a blood lead level below 10 micrograms. The higher the blood lead level, the easier it is to find the source or sources during a lead inspection. But at blood lead levels below 10 micrograms, the source or sources can be virtually impossible to determine because multiple sources can contribute and each source is additive.

¹¹ As with all lab tests, there is a certain amount of random error that is unavoidable. In blood lead testing, the typical error rate is + or - 2 micrograms. At a very high blood lead level, this error rate is not of great consequence but at a low blood lead level, the error rate is too great to ensure that children are properly classified.

Under the HHS General Administration Manual, the Secretary of HHS is required to approve the appointment of Federal Advisory Committee members except those members who are appointed by the President. CDC and the Office of the Secretary worked to find a balanced slate of individuals to serve on the Childhood Lead Advisory Committee who would reflect a diverse set of opinions, including those from industry, and produce a comprehensive and thoughtful discussion in service of the public's health.

UCS' claims on "Political Litmus Tests on Workplace Safety"

- UCS claims that "circumstances strongly indicate a politically motivated intervention" for dismissing 3 experts on ergonomics from a narrowly focused peer review panel at the National Institute for Occupational Safety and Health (NIOSH), implying that at least 2 were removed because of their support for a workplace ergonomics standard. Another prospective member of the study section charged publicly that someone from Secretary Thompson's staff, while vetting her nomination, had asked politically motivated questions such as whether she would be an advocate on ergonomic issues.

The claim of politically motivated intervention is not true. In contrast to the NIH, where emphasis panels, peer review groups, and study sections do not come under the purview of Secretarial oversight, CDC's study sections are appropriately under the review of the Office of the Secretary. Agencies typically review many individuals to serve on advisory panels and they may be rejected for a variety of reasons. In this instance, one of the scientists that UCS mentions was actually selected to be appointed to the committee.

UCS' claims on "Non-Scientist in Senior Advisory Role to the President"

- UCS asserts that Richard M. Russell is not qualified by his experience to serve in a senior scientific capacity as a Deputy Director of OSTP.

¹² In 1991, the federal standard for lead poisoning was set at 10 micrograms per deciliter of blood.

¹³ There are no clinical interventions to reduce blood lead levels that are in the range of 1-10 micrograms. No drugs or other methods have been identified that either lower the blood lead levels for children to the levels in the range under discussion (1-10 micrograms) or reduce the risk for adverse developmental effects. Should a child have an elevated blood lead level, a lead inspection would be conducted to determine the source of lead including looking at paint, soil, and house dust. Should these sources result in negative readings, other sources would then be reviewed with the ultimate goal of removing as much of the source as possible. For a blood lead level of 45 micrograms or higher, chelation therapy would be used to reduce, as much as possible, the lead level in the blood and tissue. At a level of 15-45 micrograms, the course of action would be to remove external sources of lead such as lead paint. At a level below 15 micrograms, the course of action would be to educate parents or caregivers about hazards and how to reduce access to hazards. But there are no good methods to intervene and bring a blood lead level of, for example, 8 micrograms down to 4 micrograms.

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¹⁵ As with all lab tests, there is a certain amount of random error that is unavoidable. In blood lead testing, the typical error rate is + or - 2 micrograms. At a very high blood lead level, this error rate is not of great consequence but at a low blood lead level, the error rate is too great to ensure that children are properly classified.

The notion that Richard Russell's policy experience is insufficient for him to lead the Technology Policy division at OSTP is one of the most offensive statements contained in the UCS document. Mr. Russell has as strong if not stronger policy experience than many of his predecessors. He has worked in both the U.S. House of Representatives and in the United States Senate and for two Committees of the House of Representatives. Most recently, Richard Russell served on the House Science Committee. He not only was a professional staff member, as the report states, but was also Staff Director of the Technology Subcommittee and then Deputy Chief of Staff for the full Committee.

Senior positions within OSTP are defined by the Director, who in this Administration has significantly reorganized the office to strengthen coordination with other relevant policy offices and congressional committees. Mr. Russell possesses superior qualifications for the functions he performs in this organization.

The American Association of Engineering Societies (AAES), the umbrella organization for Engineering Societies which represents over one million engineers, endorsed Mr. Russell's candidacy. In a letter to the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Science, Technology, and Space the Chairman of AAES wrote: "Mr. Russell's experience on Capitol Hill and his strong understanding of Federal science and technology policy make him well suited to lead the Technology Division of OSTP... We are very pleased with Mr. Russell's nomination, because his professional accomplishments indicate that he appreciates the important role Federal research policy can play in the economic and national security of our Nation." The Senate concurred with AAES' assessment and confirmed Mr. Russell by unanimous consent.

UCS' claims on "Underqualified Candidates in Health Advisory Roles"

- UCS claims that the Administration's candidates for health advisory roles "have so lacked qualifications or held such extreme views that they have caused a public outcry." Two cases cited are the appointment of Dr. W. David Hager to the U.S. Food and Drug Administration's (FDA) Reproductive Health Advisory Committee, and the appointment of Dr. Joseph McIlhenny to the Presidential Advisory Council on HIV/AIDS.

This accusation is offensive and wrong. Both the individuals alleged to be underqualified are in fact well qualified. Their CV's are widely available and it is not necessary to repeat them here.

UCS' claims on Litmus Tests for Scientific Appointees

- UCS asserts that a political litmus test was the reason why Dr. William Miller was denied an appointment on the National Institute for Drug Abuse (NIDA) advisory panel.

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- The UCS document suggests that a nominee to the Army Science Board was rejected because he had contributed to the presidential campaign of Senator John McCain.

This contention is without support. Nominees for standing membership are approved at several levels within the Army and the Office of the Secretary of Defense, and some may be turned down during this process for various reasons. Some may later be reevaluated and included, depending on the current composition of the Board (with a goal to achieve a wide variety of expertise and balance between experienced Board members and new voices). Mr. Howard, the individual identified by UCS, has expertise relevant to defense issues, and his technical advice has been sought on Army Science Board, Air Force Science Advisory Board, and Defense Science Board studies as a consultant during the current Administration.

UCS' claims on Dismissal of Nuclear Weapons and Arms Control Panels

- The UCS document suggests that the Nuclear Weapons and Arms Control Panels of the National Nuclear Security Administration (NNSA) were “summarily abolished.”

This contention distorts the facts. The NNSA Advisory Committee was established in June 2001, not by Congress, but by the Department of Energy to advise the NNSA Administrator on a wide range of issues affecting the newly established NNSA, including technology, policy, and operations, not just science. As is the case with most advisory committees, the NNSA committee was established for a period not to exceed two years. The charter expired in June of 2003 and was not renewed. The committee had fulfilled its mission. The expiration of the Advisory Committee’s charter does not preclude the NNSA Administrator from initiating other advisory groups when warranted. NNSA gets input from the U.S. Strategic Command Strategic Advisory Group, the Defense Science Board, the Secretary of Energy Advisory Board, and the National Academy of Sciences. The NNSA has always had ample independent oversight and analysis requested by DOE or Congress. The Advisory Committee had no oversight responsibilities.

- The UCS document claims that the arms control panel that advised the State Department on technical matters was dismissed, and that a promised new committee to take its place has not been formed.

The Arms Control and Nonproliferation Advisory Group had reached the end of its two-year charter (as set forth in the Federal Advisory Committee Act (5 U.S.C. Appendix 2)), as is the case with most advisory committees. In order to be reconstituted, the charter and composition was examined for any required revision (cf. Section 14 of FACA).

The Arms Control and Nonproliferation Advisory Group has been reauthorized by Under Secretary of State for Management Grant Green as of November 2003. The specific membership is currently under consideration.

III. UCS' CLAIMS OF "AN UNPRECEDENTED PATTERN OF BEHAVIOR"

UCS' claims on "Disseminating Research from Federal Agencies"

Part III closes the UCS "investigation" and contains two sections – one on "Disseminating Research from Federal Agencies" and one on "Irregularities in Appointments to Scientific Advisory Panels." Here, the UCS does not provide a single instance of an actual suppression of agency research or an appointment irregularity occurring. Both sections consist entirely of quotations from various individuals and one organization.

Individual opinions are not actual events whose facts can be determined. With no context, one must assume these opinions are based upon the type of misinformation presented throughout the UCS document.

The stated opinions do not reflect the views of many outstanding scientists who have worked with this Administration. In particular, the National Academy of Sciences has been closely involved in various aspects of the Bush Administration's science policies. The Academy of Sciences has graciously accepted numerous requests to conduct research program reviews, and have gained first-hand knowledge of the Administration's commitment to independent scientific advice, a commitment that extends to all areas of science under Federal support. The most prominent example is the National Academy's review of the Climate Change Science Program's recently released Strategic Plan. If there has ever been an area of contention about this Administration's commitment to science, climate change science is it. Yet the Academy says about the Strategic Plan that:

"The Strategic Plan for the U.S. Climate Change Science Program articulates a guiding vision, is appropriately ambitious, and is broad in scope. It encompasses activities related to areas of long-standing importance, together with new or enhanced cross-disciplinary efforts. It appropriately plans for close integration with the complementary Climate Change Technology Program. The CCSP has responded constructively to the National Academies review and other community input in revising the strategic plan. In fact, the approaches taken by the CCSP to receive and respond to comments from a large and broad group of scientists and stakeholders, including a two-stage independent review of the plan, set a high standard for government research programs. As a result, the revised strategic plan is much improved over its November 2002 draft, and now includes the elements of a strategic management framework that could permit it to effectively guide research on climate and associated global changes over the next decades ... Advancing science on all fronts identified by the program will be of vital importance to the nation."