

1 Deborah A. Sivas (Calif. Bar No. 135446)
2 Holly D. Gordon (Calif. Bar. No. 226888)
3 Craig H. Segall (Certified Law Student)
4 Samuel Woodworth (Certified Law Student)
5 Edwin Dietrich (Certified Law Student)
6 STANFORD ENVIRONMENTAL LAW CLINIC
7 Crown Quadrangle
8 559 Nathan Abbott Way
9 Stanford, California 94305
10 Telephone: (650) 723-0325
11 Facsimile: (650) 723-4426
12 E-mail: dsivas@stanford.edu

13 Attorneys for *Amici Curiae*
14 U.S. SENATOR JOHN F. KERRY and
15 U.S. REPRESENTATIVE JAY INSLEE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,))
15 a non-profit corporation; GREENPEACE,)
16 Inc., a non-profit corporation; and FRIENDS)
17 OF THE EARTH, a non-profit corporation,)

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Plaintiffs,

v.

DR. WILLIAM BRENNAN, in his official)
20 capacity as Acting Director of the U.S.)
21 Climate Change Science Program; U.S.)
22 CLIMATE CHANGE SCIENCE)
23 PROGRAM; JOHN MARBURGER III,)
24 in his official capacity as Director of the)
25 Office of Science and Technology Policy)
26 and Chairman of the Federal Coordinating)
27 Technology; OFFICE OF SCIENCE AND)
28 TECHNOLOGY POLICY; and FEDERAL)
COORDINATING COUNCIL ON)
SCIENCE, ENGINEERING, AND)
TECHNOLOGY,)

Defendants.

Case No. C 06-7062 (SBA)

**MEMORANDUM OF *AMICI CURIAE*
JOHN F. KERRY AND JAY INSLEE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Date: April 17, 2007
Time: 1:00 p.m.
Courtroom: 3 (3rd Floor)

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I. INTRODUCTION

2 Congress passed the Global Change Research Act of 1990 (“GCRA”), 15 U.S.C. § 2921 et seq.,¹
3 to ensure that rapidly-evolving scientific information about global climate change and other international
4 environmental crises would promptly reach the public and those government policymakers in a position to
5 act upon it. The cornerstone of the GCRA is the “development and coordination of a comprehensive and
6 integrated United States research program which will assist the Nation and the world to understand, assess,
7 predict, and respond to human-induced and natural processes of global change.” 15 U.S.C. § 2931(B). This
8 research program is guided by a comprehensive National Global Change Research Plan (hereinafter
9 “Research Plan”), to be updated at least every three years. Among other things, the Research Plan (1)
10 establishes federal goals and priorities for the advancement of scientific understanding of global change that
11 will produce “usable information on which to base policy decisions” and (2) provides recommendations for
12 producing such information in a manner that is “readily usable by policymakers attempting to formulate
13 effective strategies for preventing, mitigating, and adapting to the effects of global change.” 15 U.S.C. §
14 2934. Timely dissemination of information gathered through the GCRA research program to legislators,
15 administrative agencies, and the public for use in setting future policy direction is central to the statute’s
16 purpose. That dissemination occurs principally through a comprehensive scientific assessment (hereinafter
17 “National Assessment”), to be prepared not less frequently than once every four years. The Assessment
18 must synthesize and summarize the research program’s findings. 15 U.S.C. § 2936.

21 This lawsuit challenges Defendants’ failure to prepare the now long-overdue second National
22 Assessment and to timely update the Research Plan that undergirds the entire GCRA program. *Amici*
23 *Curiae* U.S. Senator John F. Kerry and U.S. Representative Jay Inslee are Members of Congress who have
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25
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27 ¹ See Declaration of Craig Holt Segal in Support of Memorandum of Points and Authorities
28 of *Amici* (“Segall Decl.”), at Exh. 1. For the Court’s convenience, all documents cited in this
memorandum are included as exhibits to the Segall Declaration.

1 an enduring interest in proper and timely implementation of the GCRA,² Congress intended the GCRA to
2 facilitate the speedy assimilation of relevant global change science into government decisionmaking
3 processes by requiring the synthesis and frequent updating of policy-relevant scientific information and its
4 expeditious dissemination to executive agencies, lawmakers, and the larger public. Yet seven years after the
5 first and only National Assessment was prepared, Defendants – and the current Administration generally –
6 continue to evade their statutory obligation to prepare a second, vitally needed assessment. Under pressure
7 to comply with the GCRA in some manner, Defendants have jettisoned the National Assessment framework
8 and are instead preparing a series of 21 highly technical reports that the U.S. Government Accountability
9 Office already has found inadequate to satisfy the GCRA’s explicit requirements for a coherent, policy-
10 relevant document. Additionally, Defendants have now missed the congressionally-mandated deadline for
11 updating the Research Plan that guides the GCRA program, further undermining the fundamental intent of
12 the statute.
13

14 As *Amici* explain below, the history of the GCRA’s non-implementation since the issuance of the
15 first National Assessment reveals a systematic effort by key individuals within the executive branch to
16 suppress climate change science. Each day that such suppression continues is another day lost in our
17 increasingly urgent race to address the most serious environmental challenge of our time – global warming.
18 Because informed decisionmaking is the critical first step to a solution, it is imperative that the Court hold
19 Defendants accountable to the people and their duly-elected representatives by ordering prompt compliance
20 with the GCRA.
21

22 II. ARGUMENT

23 This case presents a straightforward Administrative Procedure Act (“APA”) challenge to
24 Defendants’ violation of clear mandatory deadlines imposed by Congress. See 5 U.S.C. § 706(2).
25 Underlying that violation is an obvious disdain by some within the current Administration for basic science,
26

27 ² The interests of *Amici Curiae* are set out more fully in the concurrently filed Motion for
28 Leave to File *Amici Curiae* Memorandum in Support of Plaintiffs’ Motion for Summary Judgment.

1 public process, and the proper role of the legislature. Given the potentially catastrophic implications of
2 global climate change, Defendants' subversion of the GCRA's most fundamental provisions is alarming.
3 This Court should restore the proper balance of power between the legislative and executive branches by
4 ordering Defendants to comply with the mandatory duties of the GCRA. Only then will the public and its
5 elected Members of Congress have the comprehensive, policy-relevant scientific information they need to
6 confront the specter of global warming.

7
8 **A. The GCRA Was Intended to Advance Public Understanding and Facilitate Timely
Government Policymaking on Global Climate Change.**

9 While we knew considerably less in 1990 than we do today about the pace and severe
10 consequences of global climate change, Congress understood even then that such change “may significantly
11 alter the Earth habitat within a few human generations.” 15 U.S.C. § 2931(1). In particular, it concluded
12 that global warming “could adversely affect world agricultural and marine production, coastal habitability,
13 biological diversity, human health, and global economic and social well-being.” 15 U.S.C. § 2931(2).
14 Members of Congress also understood in 1990 that the “[d]evelopment of effective policies to abate,
15 mitigate, and cope with global change will rely on greatly improved scientific understanding of global
16 environmental processes and on our ability to distinguish human-induced from natural global change” and
17 that “[n]ew developments in interdisciplinary Earth sciences, global observing systems, and computing
18 technology make possible significant advances in the scientific understanding and prediction of these global
19 changes and their effects.” *Id.* § 2931(4)-(5). Accordingly, Congress had the foresight to pass, and former
20 President George H.W. Bush had the wisdom to sign, the GCRA as a first, necessary step in tackling global
21 environmental change.
22

23 Although the GCRA was designed to address global environmental change more generally,³ it
24 focuses to a large extent on the problem of global warming. The statute expressly directs the President and
25

26 ³ The term “global change” is expressly defined by the statute to mean “changes in the
27 global environment (including alterations in climate, land productivity, oceans or other water
28 resources, atmospheric chemistry, and ecological systems) that may alter the capacity of the Earth to
sustain life.” 15 U.S.C. § 2921(3).

1 his political appointees to consider relevant research activities of the National Climate Program in
2 developing the global change research program. 15 U.S.C. § 2938(a). The National Climate Program, in
3 turn, incorporates existing federal policy to “increase worldwide understanding of the greenhouse gas effect
4 and its environmental and health consequences” and to “identify technologies and activities to limit
5 mankind’s adverse effect on the global climate by (A) slowing the rate of increase of concentrations of
6 greenhouse gases in the atmosphere in the near term, and (B) stabilizing or reducing atmospheric
7 concentrations of greenhouse gases over the long term.” 15 U.S.C. § 2901 note (citing Global Climate
8 Protection Act of 1987). Thus, Congress anticipated that the GCRA research program would enhance and
9 accelerate implementation of emerging federal policy on global climate change.
10

11 The heart of the GCRA is the ten-year-horizon Research Plan, which guides the statute’s
12 implementation. Congress intended this Plan to serve several functions. It must establish goals and
13 priorities for providing “usable information on which to base policy decisions relating to global change” and
14 then describe research, data collection, modeling, and information management activities necessary to
15 achieve those goals and priorities. 15 U.S.C. § 2934(b)(1)-(2). It must identify the roles of relevant federal
16 agencies in the GCRA process and take account of appropriate global change studies and reports by these
17 agencies and others. Id. § 2934(b)(3)-(5). And it must include specific research elements, id. § 2934(c),
18 while providing recommendations for an “accessible” and “readily usable” information management system.
19 Id. § 2934(d). The Research Plan must be reviewed and evaluated by the National Research Council⁴ and
20 must be made available for public review and comment before being sent to Congress. Id. § 2934(e)-(f).
21

22
23 ⁴ The National Research Council was organized as part of the National Academy of
24 Sciences in 1916 to associate the broad community of science and technology with the Academy’s
25 purposes of furthering knowledge and advising the federal government. The National Academy of
26 Sciences, established in 1863, is an honorific society of distinguished scholars engaged in scientific
27 and engineering research, dedicated to the furtherance of science and technology and their use for the
28 general welfare, and is part of the larger National Academies. Today, the National Research
Council has become the principal operating agency of both the National Academy of Sciences and
the National Academy of Engineering in providing services to the government, the public, and the
scientific and engineering communities. See, e.g., <http://www.nationalacademies.org/nrc>.

1 Recognizing the rapid rate at which climate science is developing, the GCRA requires that the Research
2 Plan be updated “at least once every three years.” 15 U.S.C. 2934(a). Such timely updates are, without
3 question, vital to successful implementation of the statute.

4 Equally important is the GCRA’s mandatory requirement for regular preparation of National
5 Assessments and their periodic submission to Congress. The National Assessment must:

6 (1) integrate, evaluate, and interpret the findings of the Program and discusses the scientific
7 uncertainties associated with such findings;

8 (2) analyze the effects of global change on the natural environment, agriculture, energy production
9 and use, land and water resources, transportation, human health and welfare, human social systems,
10 and biological diversity; and

11 (3) analyze current trends in global change, both human-induced and natural, and project major
12 trends for the subsequent 25 to 100 years.

13 15 U.S.C. § 2936. The National Assessment thus communicates GCRA program findings not only to
14 Congress, but also to “(1) the Environmental Protection Agency for use in the formulation of a coordinated
15 national policy on global climate change pursuant to section 1103 of the Global Climate Protection Act of
16 1987 (15 U.S.C. 2901 note); and (2) all Federal agencies and departments for use in the formulation of
17 coordinated national policies for responding to human-induced and natural processes of global change
18 pursuant to other statutory responsibilities and obligations.” *Id.* § 2938(b). The Assessment is also an
19 important public document which, as described further below, has been broadly distributed and used by
20 citizens and constituents of *Amici* to press for improvements in national environmental policy.

21 **B. The Legislative History of the GCRA Confirms that the National Assessment Is Intended to
22 Be a Regularly-Issued, Comprehensive, Policy-Oriented Document.**

23 The legislative history of the GCRA confirms Congress’ intent that the National Assessment would
24 be a regularly-issued document providing a wide breadth of policy-relevant information to government
25 decisionmakers and the public. In particular, Congress intended that National Assessments (1) be issued at
26 least every four years and (2) serve as comprehensive, policy-oriented analyses of the effects of global
27
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1 change on the major sectors of American life, for use by Congress and the executive branch.⁵

2 **1. The Mandatory Deadlines in the GCRA Are Intended to Facilitate Ongoing Policy**
3 **Development Paralleling the Evolving Scientific Understanding.**

4 Legislative history affirms that the GCRA is designed not only to accelerate our understanding of
5 global environmental change phenomena, but also to ensure timely dissemination of this enhanced
6 knowledge to lawmakers who can take necessary and appropriate steps to act upon it. For example, in its
7 report on the legislation, the House Committee on Merchant Marine and Fisheries explained that “the
8 committee sought to develop a bill that would encourage progress in scientific understanding but would also
9 provide for a concurrent process of policy development.” H.R. Rep. No. 101-394, pt. 1, at 7 (1989)
10 (emphasis added) (Segall Decl., Exh. 2). Concurrent policy development can occur only if the Research
11 Plan is kept current and the resulting information is submitted in a timely fashion to Congress and relevant
12 federal agency decisionmakers. “[T]he authors of this legislation do not mean to imply . . . that useful
13 information and recommendations should flow from the program only after the culmination of a 10-year
14 period. Although the plan describes a 10-year research program, the results of that program should be
15 consolidated and communicated frequently.” 136 Cong. Rec. E3593 (daily ed. Oct. 27, 1990) (statement of
16 Rep. Roe) (Segall Decl., Exh. 5).

17
18 That communication takes the form of the National Assessment, which must be prepared not less
19 frequently than every four years. As Representative Roe explained, “the bill provides that the voluminous
20 amount of information produced by the program will be translated at least once every 4 years into publicly
21 available assessment documents which address the effects and long-term trends associated with global

22 _____
23 ⁵ The provision of the GCRA requiring the periodic submission of a National Assessment to
24 Congress was added by amendment in the House on the eve of the bill’s passage. See 136 Cong.
25 Rec. 24, 35140 (1990) (Segall Decl., Exh. 3). The bill was then returned to the Senate and passed
26 as amended the next day. See 136 Cong. Rec. 25, 36450 (1990) (Segall Decl., Exh. 4). As a result,
27 none of the prior committee reports address the National Assessment directly. However, as
28 discussed below, the more general legislative history of the GCRA evidences Congress’ clear desire
that the statute fulfill these information collection, synthesis, and dissemination functions. As
subsequent floor statements make clear, amendment of the GCRA just before passage to include the
National Assessment requirement was intended to codify those functions.

1 change.” 136 Cong. Rec. E3593 (daily ed. Oct. 27, 1990) (statement of Rep. Roe) (Segall Decl., Exh. 5).
2 By conveying information to Congress every four years, the National Assessment allows informed policy
3 changes even while the coordinated research under the GCRA is still ongoing: “[T]he committee wants to
4 ensure that global change research and the development of effective policies to respond to global change will
5 occur in parallel as we continuously broaden our knowledge and understanding of global change.” *Id.*
6 (statement of Rep. Roe clarifying purpose of National Assessment). Thus, failure to timely provide
7 information to Congress, the executive branch, and the larger public in periodic National Assessments
8 undermines a core objective of the GCRA.

9
10 **2. Congress Intended that the National Assessment Would Be a Comprehensive,
11 Accessible, Policy-Relevant Document of Immediate Use to the President and
Congress.**

12 The legislative history of the GCRA reveals something else – that the National Assessment is not
13 merely a series of specialized technical reports, but a comprehensive synthesis of scientific information
14 presented in a form that is accessible and readily usable by legislators in their policymaking role. Senator
15 Danforth, one of the bill’s co-sponsors, cogently explained the reason for the legislation and the need for such
16 policy-relevant information: “The first step is to diagnose the problem. Understanding the causes and effects
17 of global warming will enable us to make an informed decision about possible solutions.” 135 Cong. Rec. 1,
18 819 (1989) (Segall Decl., Exh. 6).

19 The reports of the Senate Committee on Commerce, Science, and Transportation affirm that a
20 principal goal of the GCRA was to generate policy-relevant information in a form useful to decisionmakers.
21 In its initial consideration of the GCRA, the Committee stated that “[p]olicy makers considering new laws
22 and regulations to cope with global change need better answers to these important [global change]
23 questions.” S. Rep. 100-587, at 2 (1988) (Segall Dec., Exh. 7). In forwarding the final bill for
24 consideration by the Senate, the Committee noted that the legislation’s purpose “is to provide the
25 information needed to achieve effective policies for addressing changes in the global climate and
26 environment” and explained that the Research Plan would “ensure a scientific basis for policy decisions.” S.
27
28

1 Rep. 101-40, at 1, 10 (1989) (Segall Dec., Exh. 8).

2 The House Committee on Merchant Marine and Fisheries expressed similar sentiments, noting in its
3 report that the purpose of the bill “is to provide the scientific information needed to achieve effective policies
4 for addressing changes in the global climate and environment” and that the research conducted under the
5 GCRA “will provide a basis for policy decisions related to global change.” H.R. Rep. 101-394, pt. 1, at 12
6 (1989) (Segall Dec., Exh. 2). During consideration of the bill, Representative Christopher Smith declared
7 that the GCRA would “combine and interpret data from various sources to produce information readily
8 usable by policymakers attempting to formulate effective strategies for mitigating and adapting to harmful
9 effects of global change.” 135 Cong. Rec. 18,26357 (1989) (Segall Decl., Exh. 9).

10
11 From the start, the concept of making a comprehensive “assessment” regularly available to
12 policymakers was integral to the GCRA’s framework. In its section-by-section analysis of the GCRA, the
13 House Committee on Merchant Marine and Fisheries explained the importance of what was then section
14 103 (b) (3)-(4) of the bill, requiring a regular assessment as part of the Research Plan:

15 The assessment process requires the following key components: development of an analytic
16 framework for organizing the information; identification of key technical and policy issues; explicit
17 definition of underlying assumptions; and building of consensus on the status of knowledge and its
18 policy implications. Scientific information is only one component of what policymakers must
19 consider in developing societal actions. *Assessments should provide both policy and technical
20 insights not obtainable from the numerous individual sources.*

21 H.R. Rep. No. 101-394, pt. 1, at 16 (1989) (emphasis added) (Segall Decl., Exh. 9). Although section 103
22 was subsequently removed from the legislation prior to passage and ultimately replaced with the stand-alone
23 National Assessment requirements of section 106, the Committee’s statements reflect a clear intent that the
24 Administration produce a broad, policy-relevant synthesis of research conducted under the GCRA – one that
25 Members of Congress could immediately put to use in crafting policy responses to the scientific findings.

26 **C. The First National Assessment Used a Widely-Lauded Research Framework and Produced
27 Readily Usable Information that Has Shaped Subsequent Debate on Climate Change Policy.**

28 **1. The Authors of the First National Assessment Followed a Systematic and Rigorous
Process that Produced a Readily-Usable Analysis.**

The first National Assessment, issued in 2000, was developed using a sophisticated and

1 groundbreaking structure that facilitated both high-level scientific dialogue and broad stakeholder
2 participation. See, e.g., Morgan et al., Learning from the U.S. National Assessment of Climate Change
3 Impacts, 39 *Envtl. Sci. Tech.* 9023, 9023 (2005) (hereinafter “Learning”) (Segall Decl., Exh. 10). The
4 process was initiated when Dr. John H. Gibbons, then Science Advisor to the President, asked the Global
5 Change Research Program⁶ to investigate a series of urgent questions concerning global warming as part of
6 the congressionally mandated National Assessment. See The U.S. National Climate Change Assessment:
7 Do the Climate Models Project a Useful Picture of Regional Climate? Before the H. Comm. on Energy and
8 Commerce, Subcomm. on Oversight and Investigations, 106th Cong. (2000) (hereinafter Hearing on
9 Climate Change Models) (statement of Dr. Anthony C. Janetos, Senior Fellow, Heinz Center for Science,
10 Economics, and the Environment, explaining Assessment’s genesis) (Segall Decl., Exh. 11, at 2). In
11 response, National Assessment Director Michael MacCracken created an extensive program designed both
12 “to analyze and evaluate what is known about the potential consequences of climate variability and change
13 for the U.S. in the context of other pressures on the public, the environment, and the nation’s resources” and
14 to engage in a dialogue with affected parties, including the public at large. Michael C. MacCracken, U.S.
15 National Assessment of the Potential Consequences of Climate Variability and Change (hereinafter
16 “National Assessment”) (Aug. 8, 2000), at Introduction (Segall Decl., Exh. 12).⁷

17
18 One of the critical insights gleaned during development of the first National Assessment was that
19 active involvement by and feedback from potential users would be essential throughout the process if the
20 resulting document was to be useful to decisionmakers. Learning at 9026 (Segall Decl., Exh. 10). Indeed,
21 “[o]ne of the great strengths of the National Assessment . . . was its success in bringing many individuals
22 into a complex, interdisciplinary, problem-driven assessment for the first time.” Id. at 9027. Beginning in
23

24
25 ⁶ The Global Change Research Program, a body within the National Science and
26 Technology Council, was charged with preparation of the first National Assessment. In 2002, the
27 Bush Administration established the Climate Change Science Program to incorporate the Global
28 Change Research Program and the Administration’s Climate Change Research Initiative.

⁷ Available at <http://www.usgcrp.gov/usgcrp/nacc/background/naccbackground2.htm>.

1 1997-1998, thousands of experts and non-experts, including scientists, farmers, local business people, local
2 government leaders, citizens at large, and eight federal agencies participated in 20 regional workshops that
3 produced the chapters of the Assessment. Learning at 9023.

4 To do the actual work of assembling the National Assessment, the Global Change Research
5 Program created a 13-member National Assessment Synthesis Team (hereinafter “Synthesis Team”)
6 comprised of representatives from academia, industry, government laboratories, and NGOs. Hearings on
7 Climate Change Models (statement of Anthony C. Janetos), at 2-3 (Segall Decl., Exh. 11). The Synthesis
8 Team exercised “its collective judgments through discussion and consideration” of the vast body of data
9 produced as part of the Assessment process and ultimately generated a rigorous and concise summary of the
10 relevant research for use by Congress and the public. See National Assessment Synthesis Team, Climate
11 Change Impacts on the United States: The Potential Consequences of Climate Variability and Change
12 (2000) (Segall Decl., Exh. 13). Recognizing the importance of creating a durable structure in which to
13 synthesize the large quantities of data generated at the regional level, the Synthesis Team began by
14 publishing a plan to guide the process, designed in light of the five sectors selected for analysis (agriculture,
15 water, forests, health, and coastal and marine systems). The Team ultimately organized the principal
16 analysis into a 600-page “Foundation Report” with extensive citation to the scientific literature underlying
17 the Assessment. And consistent with Congress’s desire that the results of the GCRA be “readily usable” for
18 policymakers and the general public alike, it also prepared a 120-page “Overview” that summarized and
19 integrated the findings contained in the lengthier Foundation Report.
20

21 All aspects of the Assessment were extensively reviewed. Two distinct phases allowed over 300
22 scientific and technical experts to offer detailed feedback on the reports – including a panel of experts
23 selected by a sub-panel of the President’s Council of Advisors on Science and Technology – while
24 additional review was undertaken at every stage by the Global Change Research Program’s federal agency
25 representatives. See Segall Decl., Exh. 13 at 3; National Assessment Status Update, Acclamations (Jour. of
26 the Nat’l Assessment) (May/June 2000) (Segall Decl., Exh. 14). Significant public participation also
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1 occurred between June 12 and August 11, 2000, following the release of draft National Assessment
2 documents for public comment. During that time, the Global Climate Change Program recorded 33,000
3 distinct accesses to the posting page, while 300 individuals and groups submitted comments to the record.
4 National Assessment News, *Acclimations* (Jour. of Nat'l Assessment) (Fall 2000) (Segall Decl., Exh. 15).

5 The resulting final National Assessment fulfilled the intent of the GCRA by synthesizing the state of
6 the science and providing intelligible policy-relevant information to Congress. In the context of examining
7 issues such as temperature and precipitation variability and their impact on changes in population dynamics
8 or economic trajectories, the Assessment considered ramifications for health and disease control, forest and
9 agricultural productivity, and effects on coastal settlements and resources. In the area of public health, for
10 example, the Assessment analyzed a series of relevant potential outcomes, including temperature-related
11 morbidity and mortality, health effects of extreme weather events (storms, tornadoes, hurricanes, and other
12 precipitation events), air-pollution-related health effects, water- and food-borne diseases, and vector- and
13 rodent-borne diseases. See Jonathan A. Patz et al., The Potential Health Impacts of Climate Variability and
14 Change for the United States, 64 J. Env'tl. Health 20 (2001) (Segall Decl., Exh. 16). It then concluded that
15 “[t]he future vulnerability of the US population to the health impacts of climate change depends on our
16 capacity to adapt to potential adverse changes through legislative, administrative, institutional, technological,
17 educational, and research-related measures,” such as “building codes and zoning to prevent storm or flood
18 damage, severe weather warning systems, improved disease surveillance and prevention programs, improved
19 sanitation systems, education of health professionals and the public, and research addressing key knowledge
20 gaps in climate/health relationships.” National Assessment at 452 (Segall Decl., Exh. 17). Similarly, the
21 Assessment underscored key vulnerabilities such as the likely impact of sea-level rise on coastal
22 communities (by way of increased storm surge and diminished coastal wetlands and marine habitat) or of
23 diminished mountain snowpack in Western states, with its consequences for the timing and quantity of water
24 available for water users already in considerable conflict, and noted also that such changes in the hydrologic
25 cycle were widely associated with health-related impacts such as increases in water-borne and vector-borne
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1 diseases and the flourishing of marine pathogens. National Assessment at 406, 409, 421 (Segall Decl, Exh.
2 17).

3 The scientific community received the National Assessment with approval and enthusiasm. A
4 National Academy of Sciences report stated that “[t]he U.S. National Assessment of Climate Change
5 Impacts . . . provides a basis for summarizing the potential consequences of climate change. . . [and] directly
6 addresses the importance of climate change of various magnitudes by considering climate scenarios from
7 two well-regarded models (the Hadley model of the United Kingdom and the Canadian Climate Model).”
8 National Academy of Sciences, National Research Council, Climate Change Science: An Analysis of Some
9 Key Questions at 19 (2001) (Segall Decl, Exh. 18). The Academy further concluded that “[t]he National
10 Assessment’s Overview and Foundation reports are important contributions to understanding the possible
11 consequences of climate variability and change. The processes of stakeholder engagement and transparent
12 review of the National Assessment were exemplary.” National Academy of Sciences, Implementing
13 Climate and Global Change Research: A Review of the Final U.S. Climate Change Science Program
14 Strategic Plan at 13 (2004) (hereinafter “NAS Review”) (Segall Decl., Exh. 19). Also noting the
15 importance of independent preparation and evaluation of government reports by the scientific community,
16 the report praised the National Assessment for “follow[ing] credibility assurance guidelines” for
17 independence. Id. A review of the Assessment by a committee of leading observers concluded that it was
18 successful in implementing its “design of distributed stakeholder involvement,” among other objectives.
19 Learning at 9023 (Segall Decl., Exh. 12).

21 The most current climate and impact data, furnished in a readily usable form, are critical as
22 Congress and the public evaluate the need to adjust the balance of protections embodied in our existing
23 environmental and public health laws. Indeed, “[w]ithout a permanent, non-partisan source of independent
24 scientific and technical policy analysis, Congress become[s] lost in the wealth of information provided by
25 scientists, think tanks, and interest groups.” 147 Cong. Rec. S11957 (Nov. 15, 2001) (Statement of Sen.
26 Hollings upon introduction of S. 1716, Global Climate Change Act of 2001) (Segall Decl., Exh. 20). The
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1 first National Assessment – and specifically its elaborate and intelligent mechanisms for capturing scientific
2 data and stakeholder views, and then generating a synthetic view of climate change knowledge – offered a
3 sound initial foundation for the difficult policy decisions ahead.

4 **2. As Intended, the First National Assessment Prompted Both Public Dialogue and a**
5 **Variety of Responsive Legislative Proposals.**

6 Release of the draft National Assessment for public comment in June 2000 drew widespread
7 attention to climate change issues, prompting a broad public debate soon to be taken up in Congress.

8 Compare Randy Lee Loftis, Texas Environmentalists Want Gov. Bush to Monitor Greenhouse-Gas
9 Emissions, Dallas Morning News, July 5, 2000 (noting groups’ demands, upon release of draft Assessment,
10 that then-Governor George W. Bush “launch a Texas assault on global warming, which scientists say could
11 heat up North Texas in the next century”) (Segall Decl, Exh. 21) with John J. Fialka, U.S. Study on Global
12 Warming May Overplay Dire Side, Wall Street Journal (May 26, 2000) at A24 (Segall Decl, Exh. 22).

13 The National Assessment proved to be the center of informed debate and a source of authority for public
14 groups wishing to influence climate policy.

15 Congress also acknowledged that the process of synthesizing climate change information in the first
16 National Assessment had taken the debate in important and useful directions. In many cases, high praise for
17 the Assessment was followed by calls for yet more research tailored to the needs of Congress. For example,
18 upon introducing the Global Change Research and Data Management Act of 2002 in the House,
19 Representative Udall noted that the Global Change Research Program “has produced excellent scientific
20 results,” but that further efforts to provide policy-relevant information “in terms of both content and format,
21 for local, state, regional, and national policymakers” would require further research funding. 148 Cong.
22 Rec. E1883, E1884 (October 17, 2002) (Segall Decl., Exh. 23). Even critics who objected to certain
23 technical aspects of the Assessment were largely in agreement that the process, if continued, would serve an
24 essential need in Congress. See, e.g., 146 Cong. Rec. S5291, S 5292 (June 16, 2000) (statement of Sen.
25 Murkowski offering critique of Assessment’s general circulation models but concluding that “the assessment
26 has been a very useful exercise” in demonstrating need for future research); id. at S5293 (concluding
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1 National Assessment “could provide a useful contribution to the climate change debate” by advancing the
2 focus on developing climate research) (Segall Decl, Exh. 24).

3 In response to the vigorous public debate following release of the first National Assessment,
4 members of the 107th Congress stepped forward with a variety of legislative proposals, ranging from efforts
5 to improve climate change research to comprehensive programs setting emissions caps for the greenhouse
6 gases that contribute to climate change. Many of these proposals flowed directly from recommendations in
7 the Assessment. Early proposals in the 107th Congress included H.R. 1335, the Clean Power Plant Act of
8 2001, proposing carbon dioxide caps with attainment standards promulgated by the Environmental
9 Protection Agency, and S. 517, the National Laboratories Partnership Improvement Act, proposing creation
10 of a comprehensive national climate change strategy and multiple new executive branch offices to
11 implement it. See Congressional Research Service, Global Climate Change (May 15, 2002, IB89005)
12 (surveying twenty-three pieces of proposed legislation in the 107th Congress to address climate change)
13 (Segall Decl., Exh. 25). The Energy Policy Act of 2002, S. 1766, focused on “develop[ing] and
14 improv[ing] methods and tools for the integrated analyses of the climate change system . . . with emphasis on
15 critical gaps in integrated assessment modeling . . .” S. 1766, 107th Cong., § 1302(b)(4) (Segall Decl.,
16 Exh. 26).

17
18 At the legislative level, the National Assessment or its basic analytic strategies became a climate
19 change baseline, with a second installment of the Assessment much awaited in Congress. Greenhouse Gas
20 Emissions: Hearings Before the S. Comm. on Env’t and Pub. Works, 107th Cong. (2002) (statement of Sen.
21 Jeffords) (insisting that “budget [of the Global Change Research Act of 1990] must keep the national
22 assessment moving without delay or censorship”) (Segall Decl, Exh. 27). Indeed, Congress’s 2003 fiscal
23 appropriations bill originally conditioned GCRA funding on a provision designed to ensure the completion
24 of a second National Assessment, directing that the Research Plan “should include a completion date for the
25 national assessment no later than September 30, 2004.” See H. Rep. No. 108-10, at 718 (2003) (Segall
26 Decl., Exh. 28).

1 Proposed legislation built upon the National Assessment in at least two additional ways. First, the
2 Assessment – in its 2000 version and expected future iterations – became the basis for more expansive
3 research programs. See, e.g., H.R. 4, 107th Cong., § 1371(c)(2) (2001) (energy bill) (“The Program shall
4 . . . build upon predictions and other information developed in the National Assessments prepared under the
5 Global Change Research Act of 1990.”) (Segall Decl., Exh. 29). Specifically, the National Assessment’s
6 groundbreaking regional approach was echoed in multiple proposals, including those of *Amicus* Senator
7 Kerry. See, e.g., Global Climate Change Act of 2001, S. 1716, 107th Cong., § 501(a) (establishing “within
8 the Department of Commerce a National Climate Vulnerability and Adaptation Program for regional
9 impacts related to increasing concentrations of greenhouse gases in the atmosphere and climate variability”);
10 id. § 502 (prescribing “regional assessments of the vulnerability of coastal areas to hazards associated with
11 climate change”) (Segall Decl, Exh. 30).

13 Additionally, post-Assessment congressional proposals emphasized the “readily usable” aspect of the
14 GCRA’s information dissemination requirements. The National Laboratories Partnership Improvement Act
15 of 2001, for example, sought to amend section 2934 of the GCRA to more specifically require that the
16 Research Plan (1) include “[m]ethods for integration information to provide predictive and other tools for
17 planning and decision making by governments, communities and the private sector” and (2) produce
18 “information relevant and readily useable by local, State, and Federal decision-makers, as well as other end-
19 users, for the formulation of effective decisions and strategies for measuring, predicting, preventing,
20 mitigating, and adapting to” climate change. S. 517, 107th Cong., § 1334(3) (proposing to amend 15
21 U.S.C. § 2934(c)) and § 1334(4) (proposing to amend 15 U.S.C. § 2934(d)) (Segall Decl., Exh. 31).

23 While the first National Assessment thus prompted a rich policy debate in Congress, it certainly was
24 not the last word on the status of climate change research and data. In the last half dozen years, much new
25 scientific research and information has become available. See, e.g., Declaration of Dr. Michael MacCracken
26 in Support of the Plaintiffs (“MacCracken Decl.”) at ¶¶ 15-20. Unfortunately, however, the present
27 Administration has failed to keep pace with our rapidly-evolving scientific understanding. In fact, as
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1 explained below, there has been an active effort by some within the executive branch to suppress the first
2 National Assessment and to avoid production of a comprehensive, updated Second Assessment that will be
3 readily usable by legislators and other policymakers.

4 **D. Defendants’ Failure to Produce a New National Assessment or Update the Research Plan Is**
5 **Part of a Larger Strategy to Suppress the Dissemination of Global Warming Science.**

6 **1. Defendants and Administration Officials Have Attempted to Chill the Free Flow of**
7 **Climate Science.**

8 Defendants’ failure to produce the second National Assessment and an updated Research Plan is not
9 attributable solely to inadvertence or neglect; it is part of a larger pattern of suppressing climate science.⁸
10 Indeed, Administration officials have gone to extraordinary lengths to block the dissemination of credible
11 scientific data on global warming. For instance, they attempted to force the ouster of the longtime Director
12 of the Intergovernmental Panel on Climate Change “after a year of urging from energy industry lobbyists”
13 and despite substantial support for the Director within the climate science community. Andrew C. Revkin,
14 Dispute Arises Over a Push to Change Climate Panel, New York Times (Apr. 2, 2002) (Segall Decl., Exh.
15 33). Similarly, they empowered a 24-year-old without even a college degree to keep renowned NASA
16 climate scientist James Hansen from speaking in public about his grave concerns over the accelerating pace
17 of climate change. Andrew C. Revkin, Climate Expert Says NASA Tried to Silence Him, New York
18 Times (Jan. 29, 2006) (Segall Decl, Exh. 34). Indeed, in virtually every corner, government climate
19 scientists are, as one journalist aptly put it, “feeling heat.” Juliet Eilerpin, Climate Researchers Feeling Heat
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21 ⁸ The Union of Concerned Scientists, a nonpartisan group of working scientists, has
22 concluded that there is an “unprecedented” and “well-established pattern of suppression and
23 distortion of scientific findings by high-ranking Bush administration political appointees across
24 numerous federal agencies. These actions have consequences for human health, public safety, and
25 community well-being.” Union of Concerned Scientists, Scientific Integrity in Policymaking: An
26 Investigation into the Bush Administration’s Misuse of Science (hereinafter “Scientific Integrity”),
27 at 2 (Mar. 2004) (Segall Decl, Exh. 32). This pattern is particularly clear in the climate change
28 context. Even as “the vast majority of climate scientists” view the mounting scientific data as
demonstrating “that human-caused emissions of carbon dioxide and other greenhouse gases are
making a discernible contribution to global warming, . . . Bush administration spokespersons
continue to contend that the uncertainties in climate projections” render policy action premature.
Scientific Integrity at 5 (Mar. 2004).

1 from White House, Washington Post (Apr. 6, 2006) (Segall Decl., Exh. 35). “The overall environment
2 surrounding the Bush Administration and scientific research is one of conflict, controversy, and for many
3 scientists and public policy makers, deep concern that the objectivity and quality of scientific research is
4 being negatively impacted.” Robert F. Rich and Kelly R. Merrick, Uses and Misuses of Science: Global
5 Climate Change and the Bush Administration at 4, University of Illinois Institute of Government and Public
6 Affairs Working Paper # 134 (Oct. 2006) (Segall Decl., Exh. 36).

7
8 From the moment that the National Assessment was issued in 2000, it posed a threat to
9 Defendants’ policy views. The oil industry-backed Competitive Enterprise Institute (“CEI”) immediately
10 filed a lawsuit to block the release of the Assessment. Declaration of Rick S. Piltz in Support of *Amici*
11 *Curiae’s* Memorandum (“Piltz Decl.”) at ¶ 20. Shortly thereafter, the Office of Science and Technology
12 Policy, one of the Defendants in this case, demanded the deletion of references to the National Assessment in
13 the Climate Change Science Program’s annual report,⁹ even though the completion of the Assessment was
14 the centerpiece of the research program. *Id.* at ¶ 24. This deletion was prompted by Defendants’ efforts to
15 settle the CEI suit. *Id.* at ¶¶ 23-26. Ultimately, the lawsuit settled in exchange for a stipulation that the
16 Assessment did not represent government policy. *Id.* at ¶¶ 27-28.

17 This initial brush with suppression was only the beginning. After the Climate Change Science
18 Program submitted to the United Nations, in 2002, a “Climate Action Report” that relied heavily on the
19 National Assessment, CEI and industry groups again began to pressure Defendants to suppress the
20 Assessment completely. See e.g., Christopher Horner, Another Hot Shoe May Drop, Washington Times
21 (June 23, 2002) (CEI counsel calls on Administration to cease relying upon “useless” National Assessment)
22 (Segall Decl., Exh. 37). At this point, Council on Environmental Quality’s (“CEQ”) chief of staff Phil
23 Cooney, a former American Petroleum Institute lobbyist, contacted CEI director Myron Ebell. Piltz Decl. at
24 ¶¶ 33-34; White House Effect (Evidence), Harper’s Magazine (May 1, 2004) (Segall Decl., Exh. 38). Ebell
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27 ⁹ As explained in footnote 6 above, the Climate Change Science Program is the successor to
28 the Global Change Research Program that produced the first National Assessment.

1 responded with CEI's conditions: "Thanks for calling and asking for our help. . . I want to help you cool
2 things down, but after consulting with the team, I think that what we can do is limited until there is an
3 official statement from the administration repudiating the [Climate Action Report] and disavowing large
4 parts of it." Id. He explained that the "references to the National Assessment in the report are most hurtful
5 to us because we dropped our lawsuit last September 5 after receiving a written assurance that the National
6 Assessment did not represent 'policy positions or official statements of the U.S. government.'" Id. Shortly
7 thereafter, CEQ chief of staff Cooney, who had no scientific training or experience, began to edit Climate
8 Change Science Program documents to water down and remove references to the National Assessment and
9 the threat of global warming, including scrubbing the draft Research Plan (discussed below). Piltz Decl. at ¶
10 ¶ 35-39; Andrew C. Revkin, Former Bush Aide Who Edited Reports Is Hired by Exxon, New York Times
11 (June 15, 2005) (Segall Decl., Exh. 39).¹⁰

14 ¹⁰ Meanwhile, beginning in 2002, CEI prepared a second lawsuit challenging the National
15 Assessment itself, deriding the 600-page, peer-reviewed report as "junk science." Junk Science
16 Report Under the Microscope, CEI Press Release (July 25, 2002) (Segall Decl., Exh. 40). This suit
17 was based on an alleged violation of the Data Quality Act, a newly passed, industry-sponsored
18 appropriations rider requiring federal agencies to issue "Information Quality Guidelines" for their
19 reports by October 1, 2002. Pub. L. No. 106-554, § 515 App. C, 114 Stat. 2763A-153 (2000)
20 (uncodified amendment to the 1980 Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.) (Segall
21 Decl., Exh. 41). Based on the prior e-mail contacts between CEI's Ebell and CEQ's Cooney, the
22 Attorneys General of Maine and Connecticut demanded an inquiry into whether the filing was a
23 "sweetheart suit," orchestrated by Defendants to bury the National Assessment. Paul Harris, Bush
24 Covers Up Climate Research, The Observer (Sept. 21, 2003) (Segall Decl., Exh. 42). Connecticut
25 Attorney General Richard Blumenthal stated that "[i]f White House officials conspired with anti-
26 environmental interests in a court attack on its own report, as [the email] suggests, it would
27 constitute improper and possibly illegal misconduct." Liz Halloran, Federal Lawsuit Probe Sought;
28 Global Warming Report at Issue, Hartford Courant (Aug. 12, 2003) (Segall Decl., Exh. 43). No
investigation occurred, however. Instead, Defendants settled the suit with CEI, agreeing to
prominently add a disclaimer to the Assessment's website stating that it was not subject to
Information Quality Guidelines established under the Data Quality Act, a fact that was already self-
evident because the National Assessment was written before passage and implementation of the Data
Quality Act. Piltz Decl. at ¶¶ 51-52. Nevertheless, the settlement allowed CEI's Myron Ebell to
trumpet the case for exposing that the National Assessment as "propaganda, not science." White
House Acknowledges Climate Report was Not Subjected to Sound Science Law, CEI Press Release
(Nov. 6, 2003) (Segall Decl., Exh. 44).

1 At the same time, Defendants worked to suppress any other data that attested to the seriousness of
2 global warming. Under Cooney's editing, for instance, the section on global warming in EPA's annual
3 report on the environment was so diluted and inaccurate that the agency opted not to include the section at
4 all in order to avoid embarrassment. See Andrew C. Revkin, [With White House Approval, EPA Pollution](#)
5 [Report Omits Global Warming](#), New York Times (Sept. 15, 2002) (Segall Decl., Exh. 45); Duncan
6 Campbell, [White House Cuts Global Warming Report: Environmental Study Censored, Say Critics](#), The
7 Guardian (June 20, 2003) (Segall Decl., Exh. 46). But perhaps the most egregious attempt to bury relevant
8 climate science information came in the form of the 2003 updates to the Research Plan, which, as discussed
9 below, essentially made the National Assessment disappear.

10
11 **2. Defendants Edited the Research Plan to Remove References to the National
Assessment.**

12 While the CEI lawsuit was pending, Defendants worked to expunge the National Assessment from
13 the Climate Change Science Program's activities. CEQ chief of staff Cooney, the former oil industry
14 lobbyist, reviewed all publications prior to release. Piltz Decl. at ¶ 38. Cooney filled documents with
15 hedged language, conveying a false impression that significant uncertainties remained in basic science of
16 climate change. Andrew C. Revkin, [Bush Aide Edited Climate Reports](#), New York Times (June 8, 2005)
17 (Segall Decl., Exh. 47). Most notably, he edited the GCRA's Research Plan to remove references to the
18 National Assessment. Piltz Decl. at ¶¶ 38-42.

19 This editing had serious consequences. The draft Plan was so poorly written that the National
20 Academy panel reviewing it found that it was simply "not a coherent strategic plan." National Research
21 Council of the National Academies, [Planning Climate and Global Change Research: A Review of the Draft](#)
22 [U.S. Climate Change Science Program Strategic Plan](#) at 14 (2003) (Segall Decl., Exh. 48). Among the
23 Plan's defects was a wholesale failure to build upon or even reference the National Assessment, although
24 that document was the crowning achievement of U.S. climate science at the time:
25

26 The draft plan deals with many issues that were addressed in the U.S. National Assessment, but the
27 document is not referenced, nor is it used fully in the human dimensions and decision support
28 sections of the draft plan (e.g., scenario development). No matter what the evaluation of the U.S.

1 National Assessment, there were many valuable lessons learned from it in terms of regional impact
2 studies and interactions with stakeholders. These lessons should not be ignored in the CCSP
strategic plan.

3 Id. at 27. In other places, the edited Research Plan proposed research into areas where significant
4 uncertainties no longer existed. Andrew C. Revkin, Panel of Experts Faults Bush Plan to Study Climate,
5 New York Times (Feb. 26, 2003) (quoting Dean of the Nicholas School of the Environment at Duke
6 University as saying: “In some areas, it’s as if these people were not cognizant of the existing science. Stuff
7 that would have been cutting edge in 1980 is listed as a priority for the future.”) (Segall Decl., Exh. 49).

8
9 Although some of these flaws were corrected in the final draft, the failure to build upon the strong
10 foundations of the National Assessment remained. Although the Climate Change Science Program took
11 many comments into consideration, the National Academy reviewers noted that one “notable exception” was
12 “the fact that the revised plan does not acknowledge the substantive and procedural contributions of the
13 [National Assessment], a major focus of the Global Change Research Program in the late 1990s.” NAS
14 Review at 29-30 (Segall Decl., Exh. 19). In particular, the reviewers explained, while “[m]any participants
15 at the December workshop criticized how the draft strategic plan treated the National Assessment, as did this
16 committee in its first report . . . [t]he revised plan does not reflect an attempt to address these concerns, and
17 no rationale for this decision has been provided.” Id. at 30.

18
19 According to Rick Piltz, a former senior associate at the program who resigned in protest over the
20 political interference he experienced, the Climate Change Science Program had attempted to address these
21 concerns, originally including 12 references to the National Assessment in the March 31, 2003 draft of the
22 Research Plan. Piltz Decl. at ¶ 41. But with editing by Defendants, the number of references to the
23 National Assessment was reduced to only eight in the June 2, 2003 draft. Id. By September 2003, only one
24 reference to the National Assessment remained in the Research Plan (and even that did not name the
25 Assessment directly). Id. In essence, “[t]here was no description of the structure, process, scope, purpose or
26 contents of the National Assessment. The National Assessment did not appear in the bibliography of the
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1 plan. . . . No information was given to suggest how copies might be obtained. In effect, the National
2 Assessment had almost completely vanished from the” Research Plan. Id.¹¹

3 **E. Defendants Continue to Suppress Global Warming Science in Various Ways, Including by**
4 **Their Refusal to Comply with the Strict, Mandatory Deadlines in the GCRA.**

5 Defendants and other members of the administration continue to embargo pressing climate science
6 information and to threaten and intimidate the scientists themselves, even as researchers grow increasingly
7 alarmed by the evolving data on global warming.¹² The first National Assessment was released in October
8 2000, requiring a second Assessment by October 2004. The last updates to the Research Plan were released
9 in July 2003, requiring another update by July 2006. These statutorily-mandated deadlines are not mere
10 paperwork exercises. As the first Assessment itself explained, “[m]uch more information is needed about all
11 of these issues in order to determine appropriate national and local response strategies. The regional and
12 national discussion on climate change that provided a foundation for this first Assessment should continue
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14 ¹¹ When Cooney resigned after Piltz exposed his editorial efforts, the White House
15 commended him for a “great job” and thanked him for his “public service.” Andrew C. Revkin,
16 Former Bush Aide Who Edited Reports Is Hired by Exxon, *New York Times* (June 15, 2005)
(Segall Decl., Exh. 39).

17 ¹² Attempts to squelch climate science go well beyond the National Assessment. For
18 example, in the wake of Hurricane Katrina, which many scientists believe strengthened due to
19 unnaturally warm waters in the Gulf of Mexico, the Administration rushed to suppress researchers
20 working to demonstrate links between hurricanes and global warming. Juliet Eilperin, Climate
21 Researchers Feeling Heat from White House, *Washington Post* (Apr. 6, 2006) (Segall Decl., Exh.
22 35); Paul D. Thacker, Climate-Controlled White House, *Salon.com* (Sept. 19, 2006) (Segall Decl.,
23 Exh. 51). One researcher described government policy as a “gag order.” Peter B. Lord, NOAA
24 Hiding Truth About Hurricanes, Scientists Say, *Providence Journal* (Mar. 26, 2006) (Segall Decl.,
25 Exh. 52). Similarly, as evidence of intensified melting in the Arctic became available, the
26 Administration stepped in to suppress a major scientific report on Arctic warming, stripping away its
27 policy recommendations. Jeff Nesmith, Scientist: Feds Blocked Report on Arctic Policy, *Atlanta*
28 *Journal-Constitution* (Nov. 17, 2004) (Segall Decl., Exh. 53). Distinguished scientists, including 20
Nobel Laureates, have condemned Defendants and the administration for distorting scientific facts
for political cover. James Glanz, Scientists Say Administration Distorts Facts, *New York Times*
(Feb, 19, 2004) (Segall Decl., Exh. 54). The former-Chair of the House Science Committee
likewise decried these practices, correctly noting that “[g]ood science cannot long persist in an
atmosphere of intimidation.” Andrew C. Revkin, Lawmaker Condemns NASA Over Scientist’s
Accusations of Censorship, *New York Times* (Jan. 31, 2006) (Segall Decl., Exh. 50).

1 and be advanced . . . [and t]he next phase of the assessment should begin immediately.” Segall Decl., Exh.
2 13 at 122. Assessment Director Michael MacCracken agreed: “Quite clearly, many important questions
3 and issues remain to be addressed. Given the initial nature and limited scope of the assessment, it was also
4 not recognized that uncertainties, including possible surprises, are also likely. For this reason, it is expected
5 that assessment activities will become an ongoing part of the” research program. Segall Decl., Exh. 12.

6 The desire of Congress for regular updating of the assessment, and the admonitions of the Synthesis
7 Team that such updating should begin immediately, have proved prescient. Dr. MacCracken has explained
8 that it “was recognized by Congress in the GCRA and by [the agencies preparing the first Assessment] that
9 the National Assessment would require updating and refining on an ongoing basis.” MacCracken Decl. at ¶
10 17. Since the preparation of the first National Assessment, the climate crisis has intensified, with sea levels
11 rising, ice caps melting, and droughts and fires increasing at faster rates than were anticipated even in 2000.
12 Id. at ¶ 15. 2006 was the hottest year on record, and 2007 is predicted to be hotter yet. See Marc Kaufman,
13 Climate Experts Worry as 2006 is Hottest Year on Record in U.S., The Washington Post (Jan. 10, 2007)
14 (Segall Decl., Exh. 55); Raphael G. Satter, Scientists Say 2007 May be the Hottest Yet, FOX News (Jan. 9,
15 2007) (Segall Decl., Exh. 56).

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17 In the face of this gathering crisis, urgent updates to the science in the first National Assessment
18 remain unaddressed. While the first National Assessment relied on the only two computer climate models
19 then available, more than twenty models are now available, vastly increasing the reliability and predictive
20 ability of modern researchers. See MacCracken Decl. at ¶ 18. Environmental managers from across the
21 country are in dire need of new, usable policy information that can now be generated, id. at ¶ 21, but will
22 not find it in the highly technical reports offered by Defendants as a substitute for the second National
23 Assessment. By failing to produce a new Assessment to track critical advances in scientific understanding,
24 Defendants are “squandering the tremendous opportunity of building on the 2000 Assessment effort” and
25 “likely postponing adaptive response that could limit and ameliorate the early stages of climate change.” Id.
26 at ¶ 21.

1 At the request of GCRA co-sponsors Senators John Kerry, Ernest Hollings, and John McCain, the
2 U.S. Government Accountability Office (“GAO”) investigated this matter and found unequivocally that the
3 Climate Change Science Program “did not submit a scientific assessment in November 2004, 4 years after
4 the previous assessment, as required by GCRA.” GAO, Climate Change Assessment: Administration Did
5 Not Meet Reporting Deadline (“GAO Report”) at 2 (Apr. 14, 2005) (Segall Decl., Exh. 57). Instead, the
6 agency that now oversees GCRA implementation plans to issue “21 shorter reports between 2005 and
7 2007,” GAO Report at 2, some of which themselves are now overdue. The GAO found that it was
8 “unclear how the 21 reports proposed” by the Climate Change Science Program “will address all three of
9 the components of the assessment.” Id. at 3. For instance, the reports do not assess “the effects of global
10 change on the eight areas enumerated in the act: the natural environment, agriculture, energy production and
11 use, land and water resources, transportation, human health and welfare, human social systems, and
12 biological diversity.” Id. at 3-4. The absence of this critical analysis and the fragmentary nature of the
13 planned reports, strung out over three years, led the GAO to conclude that it could “be difficult for the
14 Congress and others to use this information effectively as the basis for making decisions on climate policy.”
15 Id. at 4.¹³ For the same reason, *Amicus* Senator Kerry and others have repeatedly asked Defendants for the
16 preparation of a proper National Assessment with all possible speed. See, e.g., Letter from Senators John
17 Kerry and Ernest Hollings to David M. Walker, Comptroller of the United States (Nov., 13, 2002) (Segall
18 Decl., Exh. 58); Letter from Senator John F. Kerry to Dr. John Marburger III, Executive Director, Office of
19 Science and Technology Policy (Aug. 16, 2003) (Segall Decl., Exh. 59); Letter from Senators John Kerry
20 and John McCain to David M. Walker, Comptroller of the United States (Mar. 8, 2004) (Segall Decl., Exh.
21 60); Letter from Rep. Inslee and 23 other representatives to William Brennan (Dec. 11, 2006) (Segall Decl.,
22 Exh. 61).
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27 ¹³ Indeed, former Climate Change Science program Director James R. Mahoney
28 acknowledged, in several meetings, that the reports were inadequate and that a second National
Assessment would have to be performed. Piltz Dec., at ¶¶ 69-70, 77.

1 By ignoring the emerging science and refusing to prepare a new National Assessment, Defendants
2 are in clear violation of the law. Connecticut v. American Electric Power, 406 F. Supp. 2d 265, 269
3 (S.D.N.Y. 2005) (noting that the GCRA “provided for scientific assessments every four years”). “When
4 Congress has explicitly set an absolute deadline, congressional intent is clear.” Delaney v. E.P.A., 898 F.2d
5 687, 691 (9th Cir. 1990), superseded by statute on other grounds, Ober v. E.P.A., 84 F.3d 304, 311-12 (9th
6 Cir. 1996). If an agency “fails to comply with a statutorily imposed absolute deadline, it has unlawfully
7 withheld agency action.” Biodiversity Legal Foundation v. Badgley, 309 F.3d 1166, 1176 (9th Cir. 2002).
8 Because Congress envisioned that the National Assessment would be an integral part of “an ongoing,
9 periodic review and revision process” designed to keep abreast of “rapid scientific and technological
10 developments,” Defendants here have not “merely missed a deadline” in failing to prepare a second
11 Assessment; they “have nullified the congressional scheme for a fixed internal review and revision process.”
12 American Lung Ass’n v. Browner, 884 F. Supp. 345, 348 (D. Ariz.1994) (decrying seven-year delay in
13 required revision and update). Such a patent violation of an unambiguous statutory deadline cannot
14 withstand judicial scrutiny. Center for Biological Diversity v. Abraham, 218 F. Supp. 2d 1143 1162 (N.D.
15 Cal. 2002) (holding that a “genuine failure to make . . . reports available and accessible to the public in the
16 manner required by Congress” cannot stand); Brower v. Daley, 93 F. Supp. 2d 1071, 1084, 1087 (N.D.
17 Cal. 2000) (finding that agency failure to comply with such “mandatory and direct” congressional
18 requirements for scientific studies “violates Congress’ clear intent, and thus can not withstand scrutiny, even
19 under the narrow standards of the APA”).
20

21 **III. CONCLUSION**

22 Congress has recognized that time is of the essence in the struggle to combat global climate change:
23 “[I]t is clear that some action is essential. Waiting for certainty could well commit the world to climate
24 changes at a rate and extent that are unprecedented, and with social and environmental consequences that are
25 unacceptable.” H.R. Rep. No. 101-394, at 3 (1989) (Segall Decl., Exh. 9). We can no longer afford to
26 make policy in the dark on questions whose resolution will profoundly affect all aspects of American life.
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1 Accordingly, *Amici* respectfully request that this Court grant Plaintiffs' motion for summary judgment and
2 require expeditious preparation of a second National Assessment and an updated Research Plan.

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4 Dated: February 7, 2007

Respectfully submitted,

5 STANFORD ENVIRONMENTAL LAW CLINIC

6 By: /s/ Deborah A. Sivas

DEBORAH A. SIVAS

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8 Attorneys for *Amici Curiae*
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