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Electricity Consumers Council and  
7 its members

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 BP P.L.C., CHEVRON  
CORPORATION,  
15 CONOCOPHILLIPS COMPANY,  
EXXON MOBIL CORPORATION,  
16 ROYAL DUTCH SHELL, PLC, and  
DOES 1 THROUGH 10,

17 Defendants.  
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Case Nos. 3:17-cv-06011-WHA  
3:17-cv-06012-WHA

Honorable William Alsup

**NOTICE OF MOTION AND  
MOTION OF THE CONCERNED  
HOUSEHOLD ELECTRICITY  
CONSUMERS COUNCIL FOR  
ACCEPTANCE OF SUBMISSION  
AS AMICUS CURIAE**

Judge: Hon. William Alsup

Date: April 26, 2018

Time: 8:00 a.m.

Courtroom: 12, 19<sup>th</sup> Floor

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on Thursday, April 26, 2018, at 8:00 a.m., or as  
3 soon thereafter as counsel may be heard, in the courtroom of the Honorable William  
4 Alsup, of the above-captioned court, located at 450 Golden Gate Ave., San  
5 Francisco, CA 94102, The Concerned Household Electricity Consumer Council will  
6 and hereby does move this Court for leave to file a brief *amici curiae* in the above-  
7 captioned case. A copy of the proposed amicus brief is appended as an exhibit to  
8 this motion.

9 The Concerned Household Electricity Consumers Council (“CHECC”)  
10 hereby moves this Court, to accept and consider the accompanying submission in  
11 connection with the Court’s request for a “tutorial” on issues related to the effect (if  
12 any) of atmospheric CO<sub>2</sub> concentrations on the Earth’s temperature.

13 CHECC is a group of homeowners and electricity consumers who are  
14 concerned that strongly advocated policy proposals from environmentalists and  
15 others supposedly designed to ameliorate “climate risk” will in fact have the effect  
16 of causing drastic increases in the cost of energy to consumers without achieving  
17 any demonstrable or measurable effects on the climate.

18 Since its formation in 2016 CHECC has on multiple occasions presented to  
19 the U.S. EPA the work of top scientists on the subject of the effects (if any) of so-  
20 called greenhouse gases, including CO<sub>2</sub>, on the Earth’s temperature and climate,  
21 more generally. All of the work done by the members of CHECC, by the scientists  
22 whose work has been presented, and by the lawyers who have made the submissions  
23 – including the current submission -- has been fully on a pro bono basis. CHECC  
24 has no affiliation with, and receives no funding from, any of the defendants in these  
25 matters, nor from any other fossil fuel or energy interest. No party to the current  
26 matters has assisted in any way in the preparation of the accompanying *amicus*  
27 submission.

1 Recently CHECC became aware of this Court’s request for a “tutorial” on  
2 scientific issues related to claimed anthropogenic climate change, and of questions  
3 posed by the Court to the parties in a document dated March 6, 2018. The work that  
4 CHECC has previously presented to EPA contains information that is directly  
5 relevant to these questions. Therefore, we have excerpted and adapted the relevant  
6 portions of the prior submissions to EPA for presentation to this Court herewith.

7 The scientists whose work has been presented by CHECC have proceeded on  
8 the understanding that “science” is *not* a body of generally-accepted knowledge but  
9 is rather a *process* by which a falsifiable hypothesis is subjected to ongoing testing  
10 by means of the most credible empirical data available, and by that method the  
11 hypothesis is either “validated” or invalidated. Validation in this context simply  
12 means that the empirical data used in the test does not invalidate the theory.

13 In accordance with the scientific method, the CHECC-affiliated scientists  
14 conducted a series of research efforts during 2015 through 2017 designed to test the  
15 hypothesis, previously articulated by EPA, that “observed climate change” could be  
16 “attributed” to “anthropogenic activities” by means of what EPA called three “lines  
17 of evidence.” The results of those research efforts are presented and described in  
18 detail in the accompanying *amicus* submission. The conclusion of the work is that  
19 each of EPA’s “lines of evidence” has been invalidated by the best empirical  
20 evidence, and therefore the attribution of any observed climate change, including  
21 global warming, to rising atmospheric CO<sub>2</sub> concentrations has not been established.

22 This conclusion does not mean that CO<sub>2</sub> is not a “greenhouse gas,” nor that a  
23 “greenhouse effect” cannot be demonstrated in a laboratory. What it does mean is  
24 that the Earth’s climate system is far more complex than a simple theory/hypothesis  
25 that would assume that atmospheric CO<sub>2</sub> concentration is the world’s very  
26 important, if not single, temperature control knob. In fact, besides atmospheric CO<sub>2</sub>  
27 concentrations, many natural factors can be, and manifestly are, affecting the Earth’s  
28 temperature. Such natural factors include solar, volcanic, and oceanic (e.g., El Niño

1 vs. La Niña) activity. The research referenced and linked in the accompanying  
2 submission demonstrates that when the impacts on temperature of changes in these  
3 natural factors are mathematically determined, it is not possible to demonstrate *any*  
4 statistically significant effect upon world's temperature from the rapidly rising  
5 atmospheric CO<sub>2</sub> concentrations over the past 60 plus years. In other words, the  
6 Earth's atmospheric and surface temperature patterns over this period of time are  
7 frankly quite readily explained solely by changes in the natural factors.

8       The work of the CHECC-affiliated scientists is fully replicable, and, like all  
9 real science, is subject to invalidation if anyone can demonstrate a flaw. However,  
10 that has not occurred. Thus, as of now, the hypothesis that observed increases in the  
11 Earth's so called Global Average Surface Temperature (GAST) data must be  
12 attributed to the rapidly rising atmospheric CO<sub>2</sub> concentrations based on the most  
13 relevant empirical data stands as invalidated. (Another proof of the old adage that  
14 "correlation does not prove causality," it is simply a necessary, but not a sufficient,  
15 condition for a proof of casualty.)

16       Moreover, there is another critical point about which this court must become  
17 fully aware. It involves the officially reported GAST data that has been used in  
18 recent years to support claims of continued record setting GAST data. The CHECC-  
19 affiliated scientists have further demonstrated in additional peer reviewed research  
20 discussed in the attached *amicus* submission that recent claims of *record setting*  
21 *warming* have been made possible by making substantial downward alterations to  
22 previously reported official GAST data over roughly the period 1880 to 1980. These  
23 very significant adjustments to previously-published official data have been  
24 substantiated. Furthermore, it has been demonstrated beyond any reasonable doubt  
25 that the currently-reported GAST data have been so substantially altered as to no  
26 longer represent a reasonable depiction of reality.

27       CHECC, as its name implies, is concerned that policies intended to reduce  
28 CO<sub>2</sub> emissions by increasing reliance on so-called "renewable" solar and wind

1 energy drive up electricity prices. Experience shows that electricity prices go up  
2 dramatically with increased renewables penetration, as discussed at pp. 22-29 of  
3 CHECC's recent Comment submitted to EPA on its request for comments on State  
4 Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating  
5 Units.<sup>1</sup> CHECC has also filed an administrative petition with the EPA to reconsider  
6 on scientific grounds EPA's "Endangerment and Cause or Contribute Findings for  
7 Greenhouse Gases Under Section 202(a) of the Clean Air Act" (74 F.R. 66496, Dec.  
8 15, 2009) (the "2009 EF"). In the above-referenced Comment, CHECC also argues  
9 that the Endangerment Finding is unlawful for failure to comply with the  
10 requirements of the Data Quality Act for highly influential scientific assessments.  
11 *See* Comment, pp. 7-9.

12       We trust that the Court will appreciate the significance of these results to its  
13 current inquiry. We therefore respectfully request the Court to accept and consider  
14 the accompanying submission by CHECC as *amicus curiae*.

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28       <sup>1</sup> CHECC's comment is available at available at  
<https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0545-0244>.

Respectfully submitted, this 20th day of March, 2018.

LAW OFFICE OF FRANCIS  
MENTON

/s/ Francis Menton  
FRANCIS MENTON  
(Pro Hac Vice Application to be filed)

CALDWELL PROPST & DELOACH  
LLP

/s/ Harry W. MacDougald  
HARRY W. MACDOUGALD  
(Pro Hac Vice Application to be filed)

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4845-2099-1327.1

# **Exhibit A**

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18 CORPORATION,  
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20 EXXON MOBIL CORPORATION,  
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Honorable William Alsup

**BRIEF OF AMICUS CURIAE  
CONCERNED HOUSEHOLD  
ELECTRICITY CONSUMERS  
COUNCIL ON CLIMATE  
SCIENCE**



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1 **I. THE ATTRIBUTION OF GLOBAL WARMING TO HUMAN**  
 2 **GREENHOUSE GAS EMISSIONS HAS BEEN INVALIDATED.**

3 The Environmental Protection Agency's "Endangerment and Cause or  
 4 Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air  
 5 Act" (74 F.R. 66496, Dec. 15, 2009) (the "2009 EF"). At page 66,518 EPA sets forth  
 6 the three "lines of evidence" upon which it attributed "observed climate change" to  
 7 "anthropogenic activities," thus providing the basis for its finding that human GHG  
 8 emissions endanger human health and welfare:

9 The attribution of observed climate change to anthropogenic activities  
 10 is based on multiple lines of evidence. The **first line of evidence** arises  
 11 from our basic physical understanding of the effects of changing  
 12 concentrations of greenhouse gases, natural factors, and other human  
 13 impacts on the climate system. The **second line of evidence** arises  
 14 from indirect, historical estimates of past climate changes that the  
 15 changes in global surface temperature over the last several decades are  
 16 unusual. The **third line of evidence** arises from the use of computer-  
 based climate models to simulate the likely patterns of response of the  
 climate system to different forcing mechanisms (both natural and  
 anthropogenic).

17 (Emphasis added). This finding is the formal conclusion of the U.S. Government that  
 18 human emissions of greenhouse gases, principally CO<sub>2</sub>, cause global warming of the  
 19 Earth's surface. The 2009 EF embodies and represents the so-called scientific  
 20 consensus on the question of global warming.

21 More information about the nature of each of the three "lines of evidence" can  
 22 be gleaned from EPA's further elaboration in the Endangerment Finding itself and  
 23 the associated Technical Support Document.

24 By the first "line of evidence," ("our basic physical understanding of the  
 25 effects of changing concentrations of greenhouse gases, natural factors, and other  
 26 human impacts on the climate system"), EPA is referring to its "greenhouse gas  
 27 fingerprint" or "tropical hot spot" ("Hot Spot") theory, which is that in the tropics,  
 28 the upper troposphere is warming faster than the lower troposphere which is

1 warming faster than the surface, all due to rising atmospheric greenhouse gas  
2 concentrations blocking heat transfer into outer space. By this mechanism,  
3 increasing greenhouse gas concentration is claimed to increase surface temperatures.

4 The second “line of evidence” (“indirect, historical estimates of past climate  
5 changes that suggest that the changes in global surface temperature over the last  
6 several decades are unusual”) refers to EPA’s claim that global average surface  
7 temperatures have been rising in a dangerous fashion over the last fifty plus years.

8 The third “line of evidence” (“use of computer-based climate models to  
9 simulate the likely patterns of response of the climate system to different forcing  
10 mechanisms (both natural and anthropogenic)”) relies on climate models (not  
11 actually “evidence”) that assume that greenhouse gases are a key determinant of  
12 climate change. EPA, reflecting climate science orthodoxy, uses climate models for  
13 two purposes: to “attribute” warming to human GHG emissions, and to set  
14 regulatory policy for such emissions based on their modeled impact on global  
15 temperatures.

16 As shown below, recent research has shown that the first line of evidence, the  
17 claimed basic physical understanding of the climate system, is invalidated by  
18 empirical data showing that a core premise and prediction of that understanding –  
19 the existence of a characteristic “Hot Spot” in the tropical upper troposphere –  
20 simply does not exist in nature.

21 It has been contended by some that invalidation of the Hot Spot has no  
22 particular significance because it was not expressly identified in EPA’s enumeration  
23 of the three lines of evidence. This is incorrect because even though the Hot Spot  
24 was not specifically mentioned as one of the three lines of evidence, it is  
25 unquestionably a critical and necessary component of the “physical understanding”  
26 of climate that EPA claims as the foundational line of evidence supporting the  
27 Endangerment Finding. The dependence of the canonical “physical understanding of  
28 climate” line of evidence on the validity of the Hot Spot is amply documented in the

1 so-called assessment literature, as demonstrated in detail in CHECC’s original  
 2 administrative Petition for Reconsideration of the EPA’s 2009 Endangerment  
 3 Finding for Greenhouse Gases, at pp. 10-13. *See*  
 4 [https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-](https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-ef-final-1.pdf)  
 5 [ef-final-1.pdf](https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-ef-final-1.pdf), which is incorporated herein by reference.

6 EPA itself previously acknowledged in the Technical Support Document  
 7 (“TSD”) for the 2009 EF that if the Hot Spot were missing it would be “an  
 8 important inconsistency.” TSD p. 50.<sup>1</sup>

9 The U.S. Government’s Climate Change Science Program, Synthesis and  
 10 Assessment Product 1.1, on which EPA placed heavy reliance for the 2009 EF,  
 11 likewise conceded that if the Hot Spot were missing it would be a “*potentially*  
 12 *serious inconsistency*.” *See* S.A.P. 1.1, p. 11.  
 13 <https://downloads.globalchange.gov/sap/sap1-1/sap1-1-final-all.pdf>.

14 Both EPA and the SAP report concluded there was no serious discrepancy  
 15 between theory and observations. However, the research discussed below proves  
 16 that a fatal inconsistency between Hot Spot theory and observations has in fact been  
 17 demonstrated.

18 **II. NEW RESEARCH FINDINGS MAKE IT ALL BUT CERTAIN THAT**  
 19 **CO<sub>2</sub> IS NOT A POLLUTANT BUT RATHER A BENEFICIAL GAS**  
 20 **THAT SHOULD NOT BE REGULATED.**

21 On January 20, 2017, CHECC submitted a Petition to EPA, (*See*:  
 22 [https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-](https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-ef-final-1.pdf)  
 23 [ef-final-1.pdf](https://thsresearch.files.wordpress.com/2017/04/ef-epa-petitionforreconsiderationof-ef-final-1.pdf)OCW ) requesting that it revisit and revoke the Endangerment Finding  
 24 because that Finding had been scientifically invalidated.

25 The Council Petition to EPA was based in part on the September 21, 2016  
 26 Research Report by James Wallace, John Christy and Joseph D’Aleo. That Report

27  
 28 <sup>1</sup> The TSD is available at [https://www.epa.gov/ghgemissions/technical-](https://www.epa.gov/ghgemissions/technical-support-document-endangerment-and-cause-or-contribute-findings-greenhouse)  
[support-document-endangerment-and-cause-or-contribute-findings-greenhouse](https://www.epa.gov/ghgemissions/technical-support-document-endangerment-and-cause-or-contribute-findings-greenhouse).

1 demonstrated by clear scientific proof the invalidation of each of the three lines of  
 2 evidence on which EPA relied in the Endangerment Finding to attribute global  
 3 warming to human emissions of greenhouse gases. The Research Report can be  
 4 found at:

5 [https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-](https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-ths-paper-ex-sum-090516v2.pdf)  
 6 [ths-paper-ex-sum-090516v2.pdf](https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-ths-paper-ex-sum-090516v2.pdf).

7 The Research Report was peer-reviewed by seven eminent and highly  
 8 qualified scientists, engineers and economists, all of whom agreed with its  
 9 conclusion. *Id.* at p. 2; *see also* p. 69. Those conclusions are definitive and  
 10 unequivocal. As stated in the Research Report itself, “[T]his analysis failed to find  
 11 that the steadily rising atmospheric CO<sub>2</sub> concentrations have had a statistically  
 12 significant impact on any of the 13 critically important temperature time series data  
 13 analyzed.”

14 On May 8, 2017, based on more new information, CHECC filed a  
 15 Supplement to its January 20, 2017 Petition. This Supplement may be found at:

16 [https://thsresearch.files.wordpress.com/2017/05/ef-checc-suppl-pfr-of-](https://thsresearch.files.wordpress.com/2017/05/ef-checc-suppl-pfr-of-ef-050817-final.pdf)  
 17 [ef-050817-final.pdf](https://thsresearch.files.wordpress.com/2017/05/ef-checc-suppl-pfr-of-ef-050817-final.pdf).

18 This first Supplement to the Petition brought to the attention of EPA a new  
 19 extensively peer reviewed April 2017 Research Report, also from Wallace, Christy  
 20 and D’Aleo (Wallace 2017). Wallace (2017) can be found at:

21 [https://thsresearch.files.wordpress.com/2017/04/ef-data-research-](https://thsresearch.files.wordpress.com/2017/04/ef-data-research-report-second-editionfinal041717-1.pdf)  
 22 [report-second-editionfinal041717-1.pdf](https://thsresearch.files.wordpress.com/2017/04/ef-data-research-report-second-editionfinal041717-1.pdf).

23 Wallace (2017) takes a totally different analytical approach than Wallace  
 24 (2016), and specifically estimates the impacts of the key natural factors, including  
 25 solar, volcanic and oceanic/ENSO<sup>2</sup> activity, on tropical and global temperatures. It  
 26 concludes that once these natural factor impacts on temperature data are accounted

27  
 28 <sup>2</sup> El Niño Southern Oscillation (“ENSO”).

1 for, there is no “natural factor-adjusted” warming remaining to be attributed to rising  
2 atmospheric CO<sub>2</sub> levels.

3 That is, these natural factor impacts fully explain the trends in all relevant  
4 temperature data sets over the last 50 or more years. This research, like Wallace  
5 (2016), found that rising atmospheric concentrations did not have a statistically  
6 significant impact on any of the (14) temperature data sets that were analyzed.  
7 Wallace 2017 concludes that, “at this point, there is no statistically valid proof that  
8 past increases in atmospheric CO<sub>2</sub> concentrations have caused what have been  
9 officially reported as rising, or even record setting, temperatures.” *Id.* at pp. 4, 71.

10 The first Supplement to the Petition also points out the improper use of  
11 climate models relied upon by EPA in the attribution of warming to human-related  
12 CO<sub>2</sub> emissions. As extensively documented in the first Supplement with citations to  
13 the assessment literature and the TSD, the scientific premise of using climate  
14 models in attribution is that such models are properly validated, provide reliable  
15 forecasts, and are unable to reproduce observed warming without the additional  
16 forcing from anthropogenic GHGs. *See* First Supplement, pp. 3-5

17 Wallace (2016) and Wallace (2017) both independently demonstrate that this  
18 premise is false. Both reports show that natural factors alone explain all the  
19 warming. Conversely, climate models show a pattern of warming in the tropical  
20 troposphere that simply does not exist in nature – the missing tropical Hot Spot.  
21 Thus, the climate models have been invalidated and cannot be relied upon by EPA  
22 for attribution analysis in its Endangerment Finding.<sup>3</sup> Therefore, simple but insistent  
23

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24 <sup>3</sup> It should be noted here that Wallace 2017, p. 14 states the following:  
25 “Unlike some research in this area, this research does not attempt to evaluate the  
26 existence of the THS [Tropical Hot Spot] in the real world by using the climate  
27 models. This would constitute a well-known error in mathematics and econometrics  
28 in that such climate models obviously must include all relevant theories, possibly  
including some not even known today; many, if not all, of which could impact  
tropical temperatures. Thus, it is never mathematically proper to attempt to validate

1 logic precludes the use of invalidated climate models to attribute warming to human  
2 emissions of GHGs.

3 The first Supplement to the Petition also puts in the record before EPA  
4 information from the March 29, 2017 testimony of John Christy before Congress  
5 which also dealt with the missing tropical Hot Spot issue. Dr. Christy's testimony  
6 can be found at:

7 [https://science.house.gov/sites/republicans.science.house.gov/files/doc  
8 uments/HHRG-115-SY-WState-JChristy-20170329.pdf](https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-115-SY-WState-JChristy-20170329.pdf)

9 Dr. Christy's Congressional testimony showed that the temperature trend, simulated  
10 by climate models on which EPA relies, differs from the actual trend of observations  
11 in the tropical troposphere at the 99% confidence level. *Id.*, at pp. 9-10. Thus, the  
12 models used by EPA to conclude that greenhouse gases pose a "danger" to human  
13 health and welfare have failed a simple "scientific method" test. They have been  
14 invalidated. This means that they should not be relied upon to set regulatory policy  
15 for GHG emissions based on their modeled impact on global temperatures.

16 **III. ADJUSTMENTS BY GOVERNMENT AGENCIES TO THE GLOBAL**  
17 **AVERAGE SURFACE TEMPERATURE RECORD RENDER THAT**  
18 **RECORD TOTALLY INCONSISTENT WITH PUBLISHED CREDIBLE**  
19 **TEMPERATURE DATA SETS AND USELESS FOR ANY POLICY**  
20 **ANALYSIS PURPOSE.**

21 On July 6, 2017, CHECC filed with EPA a Second Supplement to the its  
22 January 20, 2017 Petition. The Second Supplement to Petition may be found at:

23 [https://thsresearch.files.wordpress.com/2017/07/ef-gast-data-  
24 secondsupplementtopetitionfinal.pdf](https://thsresearch.files.wordpress.com/2017/07/ef-gast-data-secondsupplementtopetitionfinal.pdf).

25 The Second Supplement to the Petition relied on a third new major peer-  
26 reviewed scientific paper from James Wallace, Joseph D'Aleo and Craig Idso,

27 any theory embedded in a model using the model itself. Each such theory needs to  
28 be tested outside of the model construct." In short, EPA's approach to attribution  
analysis is itself fundamentally flawed.



published in June 2017 (Wallace 2017B). Wallace 2017B can be found at:

<https://thsresearch.files.wordpress.com/2017/05/ef-gast-data-research-report-062817.pdf>.

Wallace 2017B analyzed the Global Average Surface Temperature (“GAST”) data issued by U.S. agencies NASA and NOAA, as well as British group Hadley CRU. In this research report, past changes in the previously reported historical data were quantified. It was found that each new version of GAST had nearly always exhibited a steeper warming linear trend over its entire history. And, this result was nearly always accomplished by each entity systematically removing the previously existing cyclical temperature pattern. This was true for all three entities providing GAST data measurement, NOAA, NASA and Hadley CRU.

The Second Supplement to Petition states: “Adjustments that impart an ever-steeper upward trend in the data by removing the natural cyclical temperature patterns present in the data deprive the GAST products from NOAA, NASA and Hadley CRU of the credibility required for policymaking or climate modeling, particularly when they are relied on to drive trillions of dollars in expenditures.”

The invalidation of the adjusted GAST data knocks yet another essential pillar out from under the lines of evidence that are the claimed foundation of the Endangerment Finding. Obviously, invalidated GAST data cannot be used to substantiate a claim of record setting global warming. As the Second Supplement to Petition further states: “It is therefore inescapable that if the official GAST data from NOAA, NASA and Hadley CRU are invalid, then both the ‘basic physical understanding’ of climate and the climate models will also be invalid.” Second Supplement, p. 2. In short, if the GAST data is invalid, then each of EPA’s three Lines of Evidence is invalid.

#### **IV. TEN FREQUENT CLIMATE ALARMISTS’ CLAIMS HAVE EACH BEEN REBUTTED BY TRUE EXPERTS IN EACH FIELD BY SIMPLY**



**CITING THE MOST RELEVANT AND CREDIBLE EMPIRICAL DATA.**

On February 9, 2018, CHECC submitted a Fifth Supplement to their Petition to provide additional new highly relevant and credible information. (*See* <https://thsresearch.files.wordpress.com/2018/03/ef-cpp-fifth-supplement-to-petition-for-recon-final0d0a-020518-3.pdf>). It relates to “Other State Variables” of the Earth’s Climate System, that is, variables other than temperature.

This Fifth Supplement to the CHECC Petition provides new highly relevant information that invalidates oft-repeated alarmist claims that human emissions of Greenhouse Gases (“GHGs”) will cause calamitous changes in other state variables of the climate system such as sea level, ocean acidification, and extreme events.

As demonstrated in CHECC’s original Petition and its first two supplements, each of the three lines of evidence upon which EPA relies to attribute global warming to human GHG emissions has been invalidated. As a result, EPA has no proof whatsoever, and no scientist has devised an empirically validated theory, that CO<sub>2</sub> has had a statistically significant impact on global temperatures.

If the causal link between higher atmospheric CO<sub>2</sub> concentrations and higher global average surface temperature (“GAST”) is broken by invalidating each of EPA’s three lines of evidence, then EPA’s assertions that higher CO<sub>2</sub> concentrations also cause loss of Arctic ice<sup>4</sup>, sea-level increases<sup>5</sup> and more frequent severe

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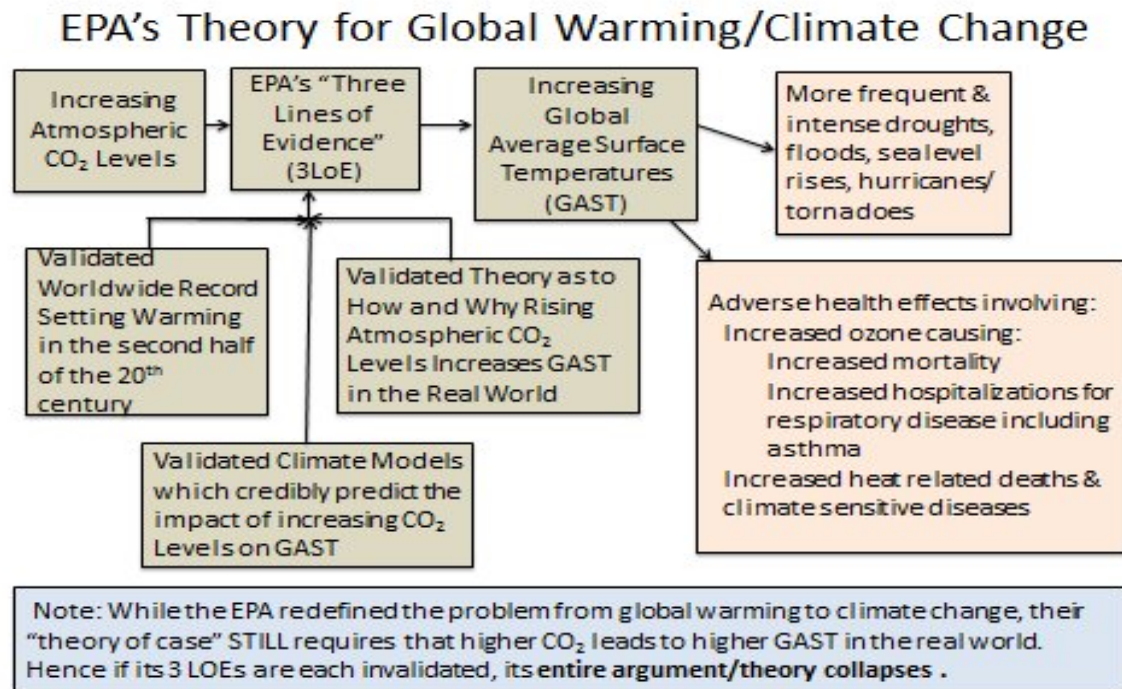
<sup>4</sup> Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (“TSD”), pp. ES-4 (“Sea ice extent is projected to shrink in the Arctic under all IPCC emissions scenarios”) *See also id.* at pp. 52; 73

<sup>5</sup> *Id.* at p. ES-4 (“By the end of the century, global average sea level is projected by IPCC to rise between 7.1 and 23 inches.”); *See also id.* at 52,73.

temperatures,<sup>6</sup> storms,<sup>7</sup> floods,<sup>8</sup> and droughts<sup>9</sup> are also necessarily disproved.

EPA's faulty chain of reasoning is depicted in Figure 1:

**Figure 1**



Such causality assertions require a validated theory that higher atmospheric CO<sub>2</sub> concentrations cause increases in GAST and in turn cause these other phenomena. Lacking such a validated theory, EPA's conclusions cannot stand. In

<sup>6</sup> *Id.* at pp. ES-4 ("It is very likely that heat waves will become more intense, more frequent, and longer lasting in a future warm climate, whereas cold episodes are projected to decrease significantly."); *See also id.* at pp. 44-45; 73-74.

<sup>7</sup> *Id.* at ES-4 ("It is likely that hurricanes will become more intense").

<sup>8</sup> *Id.* at ES-4 ("Intensity of precipitation events is projected to increase in the United States and other regions of the world. More intense precipitation is expected to increase the risk of flooding.")

<sup>9</sup> *Id.* at p. ES-6 (Reduced snowpack, earlier spring snowmelt, and increased likelihood of seasonal summer droughts are projected in the Northeast, Northwest, and Alaska. More severe, sustained droughts and water scarcity are projected in the Southeast, Great Plains, and Southwest."); 45-46; 73-74.

1 science, credible empirical data always trump proposed theories, even if those  
2 theories are claimed to (or actually do) represent the current consensus.

3 The Fifth Supplement presents a series of rebuttals of typical climate  
4 alarmists' claims regarding other state variables of the climate system, such as those  
5 mentioned above and those made in the recently released Fourth National Climate  
6 Assessment Report.<sup>10</sup> The authors of these rebuttals are all recognized experts in the  
7 relevant scientific fields. The rebuttals demonstrate the falsity of EPA's claims  
8 merely by citing the most credible empirical data on the topic.

9 For each alarmist claim, the Fifth Supplement shows a Summary of Rebuttal  
10 along with a link to the full text of the rebuttal and a list of the credentials of the  
11 Rebuttal's authors. The most pertinent of these to this case is no. 7, on sea level rise.

12 The ten alarmist claims and links to this information are as follows:

13  
14 **1. Claim: Heat Waves are increasing at an alarming rate and heat kills.**

15 Detailed Rebuttal and Authors: [EF\\_RRT\\_AC - Heat Waves](#)

16  
17 **2. Claim: Global warming is causing more hurricanes and stronger hurricanes.**

18 Detailed Rebuttal and Authors: : [EF\\_RRT\\_AC - Hurricanes](#)

19  
20 **3. Claim: Global warming is causing more and stronger tornadoes.**

21 Detailed Rebuttal and Authors: : [EF\\_RRT\\_CA - Tornadoes](#)

22  
23 **4. Claim: Global warming is increasing the magnitude and frequency of droughts and floods.**

24 Detailed Rebuttal and Authors: [EF\\_RRT\\_AC - Droughts and Floods](#)

25  
26 **5. Claim: Global Warming has increased U.S. Wildfires.**

27  
28 <sup>10</sup> <https://science2017.globalchange.gov>.

Detailed Rebuttal and Authors: : [EF RRT AC - Wildfires](#)

**6. Claim: Global warming is causing snow to disappear.**

Detailed Rebuttal and Authors: [EF RRT CA - Snow](#)

**7. Claim: Global warming is resulting in rising sea levels as seen in both tide gauge and satellite technology.**

Detailed Rebuttal and Authors: : [EF RRT CA - Sea Level](#)

**8. Claim: Arctic, Antarctic and Greenland ice loss is accelerating due to global warming.**

Detailed Rebuttal and Authors: : [EF RRT AC - Arctic, Antarctic, Greenland 123117](#)

**9. Claim: Rising atmospheric CO<sub>2</sub> concentrations are causing ocean acidification, which is catastrophically harming marine life.**

Detailed Rebuttal and Author: [EF RRT CA - Ocean pH](#)

**10. Claim: Carbon pollution is a health hazard.**

Detailed Rebuttal and Authors: : [EF RRT AC - Health](#)

Readily available empirical data presented in the Rebuttals show that none of these frequently-repeated claims is true.

The invalidation of the three lines of evidence upon which EPA attributes global warming to human GHG emissions breaks the causal link between human GHG emissions and global warming. This in turn necessarily breaks the causal chain between human GHG emissions and the alleged knock-on effects of global warming, such as loss of Arctic ice, increased sea level, and increased heat waves, floods, droughts, hurricanes, tornadoes, etc.

These alleged downstream effects are constantly cited to whip up alarm and create demands for ever tighter regulation of GHG emissions. EPA explicitly relied

1 on predicted increases in such events to justify the 2009 EF<sup>11</sup>. Plaintiff in this case  
 2 explicitly relies upon projected substantial increases in sea level. But there is no  
 3 evidence to support such claims, and copious empirical evidence that refutes them.

4 **V. NUMEROUS DISTINGUISHED CLIMATE SCIENTISTS “ARE**  
 5 **CONVINCED THAT THE 2009 GHG ENDANGERMENT FINDING IS**  
 6 **FUNDAMENTALLY FLAWED AND THAT AN HONEST, UNBIASED**  
 7 **RECONSIDERATION IS IN ORDER.”**

8 Consistent with the new scientific findings outlined above, on October 16,  
 9 2017 and on February 5, 2018, a total of over eighty-five (85) highly credentialed  
 10 scientists sent a letter to EPA Administrator Scott Pruitt. *See*:

11 ([https://thsresearch.files.wordpress.com/2017/10/letter-to-pruitt-signed-final-](https://thsresearch.files.wordpress.com/2017/10/letter-to-pruitt-signed-final-101617.pdf)  
 12 [101617.pdf](https://thsresearch.files.wordpress.com/2018/02/ef-cpp-2nd-lt-pruitt-scientists-final020518.pdf) and [https://thsresearch.files.wordpress.com/2018/02/ef-cpp-2nd-lt-](https://thsresearch.files.wordpress.com/2018/02/ef-cpp-2nd-lt-pruitt-scientists-final020518.pdf)  
 13 [pruitt-scientists-final020518.pdf](https://thsresearch.files.wordpress.com/2018/02/ef-cpp-2nd-lt-pruitt-scientists-final020518.pdf)). The letter to the EPA Administrator begins by  
 14 stating that:

15 “You have pending before you two science-based petitions for reconsideration  
 16 of the 2009 Endangerment Finding for Greenhouse Gases, one filed by the  
 17 Concerned Household Electricity Consumers Council, and one filed jointly by the  
 18 Competitive Enterprise Institute and the Science and Environmental Policy Project.”  
 19 The letter immediately continues with:

20 “We the undersigned are individuals who have technical skills and knowledge  
 21 relevant to climate science and the GHG Endangerment Finding. We each are  
 22 convinced that the 2009 GHG Endangerment Finding is fundamentally flawed and  
 23 that an honest, unbiased reconsideration is in order.”

24 The letter states further that: “If such a reconsideration is granted, each of us  
 25 will assist in a new Endangerment Finding assessment that is carried out in a fashion  
 26 that is legally consistent with the relevant statute and case law. We see this as a very  
 27 urgent matter ...”

28 <sup>11</sup> *See* notes 4 - 9, above.

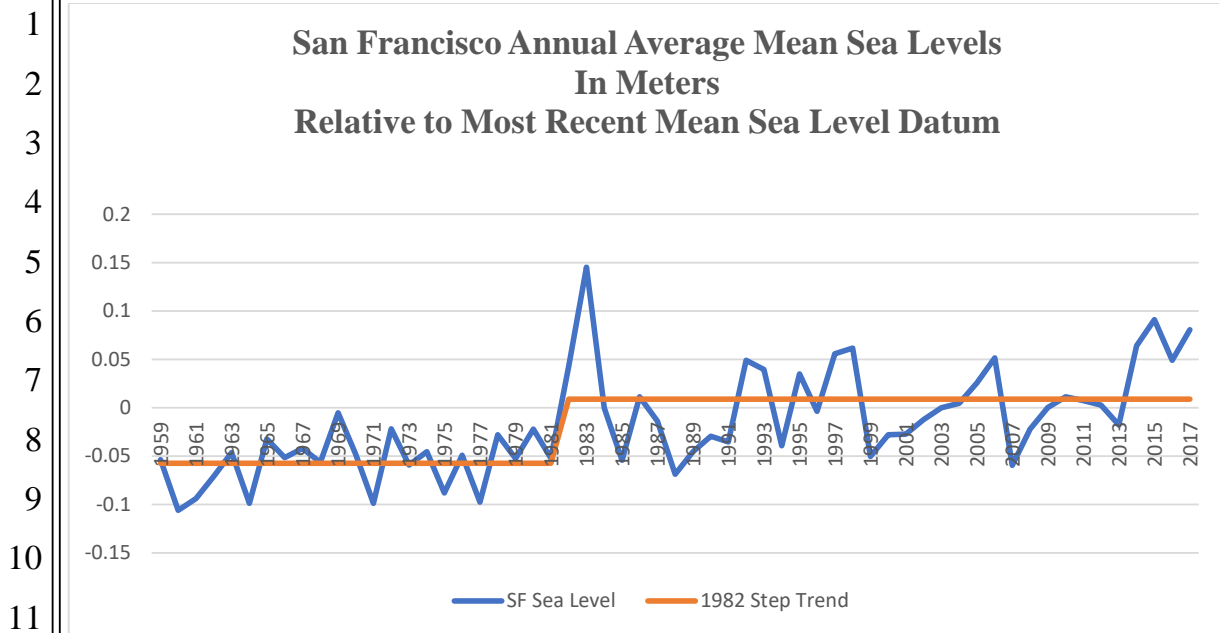
1 **VI. TIDE GAUGE DATA FOR SAN FRANCISCO BAY**

2 The nuisance of which Plaintiff complains consists almost entirely of rising  
3 sea level, requiring costly abatement projects, allegedly proximately caused by  
4 emissions from the combustion of fuel sold by the Defendants. *See* Complaint,  
5 *passim*; and prayer for relief.

6 Since this case is brought by the City of San Francisco on behalf of the people  
7 of California, it is relevant to consider the long-term trend in sea level data shown  
8 by tide gauges in San Francisco Bay. Putting aside the endless controversies over the  
9 details of climate science, the acid test of Plaintiff's nuisance claim is the empirical  
10 measurement of sea level trends in San Francisco Bay. Claim no. 7 above is that:  
11 Global warming is resulting in rising sea levels as seen in both tide gauge and  
12 satellite technology. The Rebuttal to this claim begins:

13 This claim is demonstrably false. It really hinges on this statement --  
14 "Tide gauges and satellites agree with the model projections." The  
15 models project a rapid acceleration of sea level rise over the next 30 to  
16 70 years. However, while the models may project acceleration, the  
tide gauges clearly do not.

17 The Figure below shows the best fit trend to the San Francisco annual average  
18 tide gauge sea level data from NOAA from 1959 to the present, which turns out to  
19 be a Step Trend in 1982. Over the period 1982 to 2017 atmospheric CO<sub>2</sub>  
20 concentrations rose by over 19% which hardly supports an argument for GHG  
21 causation of a flat trend in the Sea level over this period.



12 Source: [https://tidesandcurrents.noaa.gov/sltrends/data/9414290\\_meantrend.txt](https://tidesandcurrents.noaa.gov/sltrends/data/9414290_meantrend.txt).

13 It is immediately apparent from this chart that there has been no effect  
14 whatsoever on sea level in the City of San Francisco from anthropogenic global  
15 warming, human GHG emissions, or anything that any defendant did or failed to do  
16 at any time, ever. The claim that Defendants are causing the sea to engulf San  
17 Francisco is ludicrous and false.

## 18 VII. CONCLUSION

19 Recent research has definitively shown that once certain natural factor (i.e.,  
20 solar, volcanic and oceanic/ENSO activity) impacts on temperature data are  
21 accounted for, there is no “natural factor-adjusted” warming remaining to be  
22 attributed to rising atmospheric CO<sub>2</sub> levels. That is, these natural factor impacts fully  
23 explain the trends in all relevant temperature data sets over the last 50 or more years.  
24 At this point, there is no statistically valid proof that past increases in atmospheric  
25 CO<sub>2</sub> concentrations have caused what have been officially reported as rising, or even  
26 record setting, global average surface temperatures (GAST.)

27 Moreover, additional new research findings demonstrate that adjustments by  
28 government agencies to the GAST record render that record totally inconsistent with



published credible temperature data sets and therefore useless for any policy analysis purpose. These new results conclusively invalidate the claims based on GAST data of “record warming” in recent years, and thereby also invalidate the so-called “lines of evidence” on which EPA claimed to base its 2009 CO<sub>2</sub> Endangerment Finding.

In addition, 10 typical climate alarmist claims have each been invalidated by specialists in each of the areas simply relying on the most credible, relevant empirical data.

Respectfully submitted, this 20th day of March, 2018.

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