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Friends of the Earth, Inc., Greenpeace, Inc.
City of Boulder, CO, City of Oakland, CA
City of Arcata, CA, Santa Monica, CA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FRIENDS OF THE EARTH, INC.,)
GREENPEACE, INC.,)
CITY OF BOULDER, COLORADO,)
CITY OF OAKLAND, CALIFORNIA,)
CITY OF ARCATA, CALIFORNIA, and)
CITY OF SANTA MONICA, CALIFORNIA)

Plaintiffs,)

v.)

Civ. No. C 02 4106 JSW

PETER WATSON IN HIS OFFICIAL)
CAPACITY AS PRESIDENT AND CHIEF)
EXECUTIVE OFFICER OF THE)
OVERSEAS PRIVATE INVESTMENT)
CORPORATION, and)

PHILIP MERRILL IN HIS OFFICIAL)
CAPACITY AS PRESIDENT AND)
CHAIRMAN OF THE EXPORT-IMPORT)
BANK OF THE UNITED STATES)

Defendants.)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(SECOND AMENDED)
Administrative Procedure Act Case**

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I. Introduction.

1. The Overseas Private Investment Corporation (OPIC) and the Export-Import Bank of the United States (ExIm) are federal agencies that provide insurance, loans, and loan guarantees for overseas projects or to U.S. companies that invest in overseas projects.

2. Each year OPIC and ExIm provide loans, insurance, or other assistance for fossil fuel projects including extraction projects (oil and gas fields) and transportation projects (pipelines), processing and refining facilities and power plants (collectively “OPIC and ExIm programs and projects”) that will result in the annual emission of billions of tons of greenhouse gases (primarily, carbon dioxide) – emissions equivalent to almost two-thirds of U.S. annual domestic carbon dioxide emissions.

3. Carbon dioxide emissions cause global warming, also known as climate change. Emissions from OPIC and ExIm programs and projects contribute significantly to climate change. Climate change is already having, and will continue to have, significant adverse impacts on the environment in the United States. The Bush administration’s recent U.S. Climate Action Report – 2002, prepared under the United Nations Framework Convention on Climate Change, acknowledges that climate change is, in fact, occurring, that carbon dioxide emissions from fossil fuel combustion is its leading cause, and that climate change will cause severe socio-economic disruption and significant adverse environmental impacts.

4. The vast majority of the fossil fuels (oil and gas) that are extracted and transported through OPIC and ExIm programs and projects are bound for international markets including the United States and Europe. Although much of these fossil fuels are consumed in the United States, the impacts to the United States occur regardless of where the fossil fuel is actually burned. The Bush Administration recently recognized that “in

1 addition to internal impacts, the United States is likely to be affected, both directly and
2 indirectly, by the potential consequences of climate change on the rest of world.”

3 5. OPIC’s and ExIm’s decisions to assist these projects are made within the
4 United States and adversely affect the environment of the United States. Indeed, in its
5 October 2000 climate report entitled "Climate Change: Assessing Our Actions," OPIC
6 acknowledged that it plays a role in causing emissions of CO₂ and stated that:

7 Current forecasts indicate that, unless effective international
8 efforts to reduce CO₂ emissions are adopted, atmospheric CO₂
9 concentrations could reach twice the pre-industrial level by
10 2060, with an associated average global temperature increase
11 of 2 to 6.5 degrees F. by 2100. Even the low end of this
12 estimate would be an unprecedented rate of warming and
13 may alter patterns of precipitation and evaporation and lead
14 to more severe weather, rising sea levels and potentially
15 adverse economic, ecological and human health impacts.

16 6. OPIC’s and ExIm’s decisions to take action to assist these projects are made
17 without complying with National Environmental Policy Act (NEPA).

18 7. NEPA requires all federal agencies to conduct an environmental review of
19 programs and project-specific decisions having a significant effect on the environment. 42
20 U.S.C. § 4332(2)(C). This review requires all federal agencies to question first if an action
21 will significantly affect the environment by performing an Environmental Assessment (EA)
22 and if the answer is affirmative, to prepare an Environmental Impact Statement (EIS)
23 detailing the effects and options for alternative actions. NEPA also requires preparation of
24 an EIS to evaluate a program or group of concerted actions that implement an agency policy
25 that has a significant effect on the environment.

26 8. This suit seeks to require OPIC and ExIm to comply with NEPA.

27 **II. Jurisdiction and Venue.**

28 9. Jurisdiction of this action is based on 28 U.S.C. §1331 (federal question
jurisdiction), 28 U.S.C. §1361 (mandamus), 28 U.S.C. §§ 2201, 2202 (declaratory and further

1 relief), and 5 U.S.C. §701 *et seq.* (APA). Plaintiffs claim that defendants have not and are not
2 acting in accordance with the law. 5 U.S.C. § 706.

3 10. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(e)
4 because this is an action against an agency of the United States and at least one plaintiff
5 resides in this district.

6 **III. Parties.**

7 11. Friends of the Earth, Inc. ("FoE") is an environmental advocacy organization
8 founded in 1969 and incorporated in the District of Columbia. FoE has offices in
9 Washington, D.C., Burlington, Vermont, and Seattle, Washington with approximately 20,000
10 members across the nation. FoE's mission is to protect the planet from environmental
11 degradation; preserve biological, cultural and ethnic diversity, and to empower citizens to
12 affect the quality of their environment and their lives. One of FoE's programs is to use the
13 discipline of economics to encourage better stewardship of natural resources, including
14 reduction of greenhouse gas emissions and controlling climate change.

15 12. Greenpeace, Inc. ("Greenpeace") is a California non-profit corporation with
16 offices in San Francisco and Washington, D.C. Greenpeace is a non-violent environmental
17 organization. Its mission is to raise public awareness of environmental problems and
18 promote changes that are essential to a green and peaceful future. There are approximately
19 250,000 current Greenpeace members in the United States. For more than a decade
20 Greenpeace has been the lead international advocacy organization working to raise
21 awareness of global warming, and to pressure for serious cuts in greenhouse gas emissions
22 through local, national and global action. In the United States, Greenpeace has run
23 campaigns, using tactics from lobbying to litigation to mass mobilizations and direct actions,
24 in order to pressure government and corporate actors to stop global warming by phasing out
25 fossil fuel use and promoting renewable energy systems.
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1 13. The City of Boulder, Colorado ("Boulder") is a home rule municipal
2 corporation organized and existing pursuant to Article XX of the Constitution of the State of
3 Colorado and pursuant to Title 31 of the Colorado Revised Statutes. Boulder's authority to
4 maintain this proceeding is set forth in Article XX of the Constitution of the State of
5 Colorado and the Charter of the City of Boulder.

6 14. The City of Oakland, County of Alameda, State of California, ("Oakland") is a
7 Charter City organized and existing pursuant to the laws of the State of California.

8 15. The City of Arcata, California ("Arcata") is a general law city organized and
9 existing pursuant to Article XI, Section 2(a) of the California Constitution and pursuant to
10 the Government Code of the State of California. Arcata's authority to maintain this
11 proceeding is set forth in California Government Code section 34501.

12 16. The City of Santa Monica, County of Los Angeles, State of California, is a
13 municipal corporation and a California Charter City organized and existing pursuant to the
14 laws of the State of California.

15 17. FoE and Greenpeace members and the Cities of Boulder, CO, Oakland, CA,
16 Arcata, CA, and Santa Monica, CA suffer and will suffer the impacts of climate change.

17 18. OPIC is authorized by 22 U.S.C. §§ 2291 to 2200b, a part of the Foreign
18 Assistance Act. OPIC was created "[t]o mobilize and facilitate the participation of the United
19 States private capital and skills in the economic and social development of less developed
20 countries and areas." 22 U.S.C. §2191. Its mission is to facilitate the investment of private
21 capital from the United States to less developed countries and countries in transition to a
22 market economy in order to promote democracy and free markets in regions of the world that
23 are strategic to our national and economic security, support U.S. jobs and exports, and
24 promote stability. It does this by insuring investments overseas against political risks,
25 financing businesses overseas through loans and loan guarantees, financing private
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1 investment funds that provide equity to businesses overseas, and advocating the interests of
2 the American business community overseas.

3 19. Peter Watson is OPIC's president and Chief Executive Officer. He has
4 overall responsibility for assuring OPIC's compliance with the law.

5 20. ExIm is the official export credit agency of the United States. It offers
6 working capital guarantees, export credit insurance, direct loans and loan guarantees to
7 benefit U.S. exporters. It is governed by the Export-Import Bank Act of 1945, 12 U.S.C. §
8 635.

9 21. Philip Merrill is ExIm's President and Chairman. Defendant Merrill has
10 overall responsibility for assuring ExIm's compliance with the law.

11 **IV. Statutory Framework.**

12 **A. NEPA.**

13 22. NEPA requires all federal agencies to identify and consider the
14 environmental impacts and to consider alternatives and mitigating measures that will avoid
15 or reduce such impacts before taking action to implement a program or assisting or
16 approving a project that may significantly affect the environment. To these ends, Section
17 102(2)(C) of the Act declares:
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19 The Congress authorizes and directs that, to the fullest extent possible . . . (2)
20 all agencies of the Federal Government shall – . . . (C) include in every
21 recommendation or report on proposals for legislation and other major
22 Federal actions significantly affecting the quality of the human environment,
a detailed statement by the responsible official on – (i) the environmental
impact of the proposed action . . . ”

23 42 U.S.C. § 4332(2)(C).

24 23. This mandate is intended to inject environmental considerations into the
25 federal agency's decision-making process and to inform the public that the agency considered
26 environmental concerns in its decision-making process.

27 24. “The phrase ‘to the fullest extent possible’ in section 102 means that

1 each agency of the Federal Government shall comply with that section unless existing law
2 applicable to the agency's operations expressly prohibits or makes compliance impossible."

3 40 C.F.R. § 1500.6.

4 25. NEPA also created the Council on Environmental Quality ("CEQ"), which has
5 issued regulations guiding agencies' compliance with NEPA. 42 U.S.C. §4341 *et seq.*; 40
6 C.F.R. Part 1500. These regulations clearly define what constitutes agency action and the
7 process for determining whether the action or program significantly affects the quality of the
8 human environment.

9 26. CEQ regulations provide that an agency's adoption of a program or approval
10 of a group of concerted actions to implement a specific policy or executive directive is a major
11 federal action. The agency must, in compliance with NEPA, determine whether such actions
12 may have significant impact on the human environment, and if so, prepare a programmatic
13 EIS. 40 C.F.R. §1508.18(b).

14 27. CEQ regulations mandate that "while work on a required program
15 environmental impact statement is in progress and the action is not covered by an existing
16 program statement, agencies shall not undertake in the interim any major Federal action
17 covered by the program which may significantly affect the quality of the human
18 environment." 40 C.F.R. § 1506.1 (c). This regulation goes on to allow limited exceptions,
19 none of which would apply to this matter.
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21 28. CEQ regulations also provide that an agency's decision to provide federal
22 assistance to a specific project is a major federal action. The agency must, in compliance
23 with NEPA, determine whether such actions may have a significant impact on the human
24 environment, and if so, prepare an EIS. *Id.*

25 29. CEQ regulations require that an EA be prepared to determine whether a
26 program or other action may significantly affect the environment. 40 C.F.R. §§ 1501.3,
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1 1501.4, 1508.9.

2 30. In preparing an EA or EIS, an agency must consider direct and indirect, and
3 cumulative impacts. See 40 C.F.R. §§ 1502.16, 1508.8, 1508.9, 1508.27. “Cumulative
4 impact is the impact on the environment which results from the incremental impact of a
5 project when added to other past, present and reasonably foreseeable future actions
6 regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”
7 40 C.F.R. § 1508.8. Indirect impacts are those caused by the action and are later in time or
8 farther removed in distance, but are still reasonably foreseeable.

9 31. An EA or EIS must also discuss environmentally sounder alternatives to the
10 program or project -- including a “no-action” alternative -- and mitigation of any
11 environmental impacts. 40 C.F.R. §§ 1502.14, 1508.9; 1502.16.

12 32. CEQ regulations mandate that every agency comply with NEPA “unless
13 existing law applicable to the agency’s operations expressly prohibits or makes compliance
14 impossible.” 40 C.F.R. § 1500.6.

15 **B. OPIC and ExIm’s environmental mandates.**

16 33. No statute exempts either ExIm or OPIC from complying with NEPA. To the
17 contrary, ExIm’s rules require NEPA compliance when “a transaction may significantly
18 affect the quality of the human environment in the United States, its territories or
19 possessions.” 12 C.F.R. § 408.4(b)(1).

20 34. OPIC’s enabling authority complements and dovetails with NEPA. OPIC’s
21 enabling statute, 22 U.S.C. § 2199(g) mandates that “the requirements of 22 U.S.C. §
22 2151p(c) relating to environmental impact statements and environmental assessments shall
23 apply to any investment which the corporation insures, reinsures, guarantees, or finances
24 under this subpart [IV, the provisions governing OPIC] in connection with a project in a
25 country.”
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1 35. Section 2151p(c), in turn, requires the administration to “take fully into
2 account the impact of such programs and projects upon the environment and natural
3 resources of developing countries.”

4 36. In addition to requiring OPIC to assess environmental impacts abroad,
5 section 2151p(c)(1)(A) requires OPIC

6 to prepare and take fully into account an environmental impact
7 statement for any program or project under this part [I] and part
8 X of this subchapter significantly affecting the environment of the
9 global commons outside the jurisdiction of any country, *the*
environment of the United States, or other aspects of the
environment which the President may specify.

10 22 U.S.C. § 2151p(c)(1)(A) (emphasis added).

11 37. The Foreign Assistance Act requires OPIC to “[r]efuse to insure, reinsure,
12 guarantee, or finance any investment in connection with a project which the Corporation
13 determines will pose an unreasonable or major environmental, health, or safety hazard, or
14 will result in the significant degradation of national parks or similar protected areas.” 22
15 U.S.C. § 2191(k)(1).

16 38. These provisions are not a prohibition, nor do they make compliance with
17 NEPA impossible. 40 C.F.R. § 1500.6. These provisions do not alter or conflict with NEPA’s
18 mandate that federal agencies consider domestic environmental impacts before taking any
19 action, nor do they alter NEPA’s mandate to consider the environmental impacts of decisions
20 made in this country. To the contrary, these provisions assure OPIC’s and ExIm’s
21 compliance with NEPA. There is no exemption to OPIC’s and ExIm’s obligation to comply
22 with NEPA.

23 **C. Executive Order 12,114.**

24 39. Executive Order 12,114 purports to be the “exclusive and complete
25 determination of the procedural and other actions to be taken by Federal agencies to further
26 the purpose of the National Environmental Policy Act, with respect to the environment
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1 outside the United States, its territories and possessions.” Exec. Order No. 12,114, 44 Fed.
2 Reg. 1957 (1979).

3 40. The Executive Order does not affect application of NEPA with respect to the
4 environment within the United States. Actions that may have domestic environmental
5 impacts are subject to NEPA and CEQ regulations.

6 41. OPIC and ExIm’s actions described herein affect the environment of the
7 United States.

8 42. Executive Order 12,114 requires OPIC to prepare an EIS under NEPA.
9 Under Sections 2-3 and 2-4 of the Order, federal agencies must prepare an “Environmental
10 Impact Statement” for actions “significantly affecting the environment of the global commons
11 outside the jurisdiction of any nation (e.g., the oceans or Antarctica).”

12 43. Emissions from the numerous projects supported by OPIC and ExIm
13 programs are having an impact on the “global commons” and on the environment.
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V. FACTS.

A. The Impacts of Climate Change on Plaintiffs.

44. Global warming is causing widespread problems and will cause severe ecological and socio-economic disruptions, including those described below. In an effort to better understand and predict the impacts of climate change, several national governments, including the United States, formed the Intergovernmental Panel on Climate Change (IPCC). The IPCC was charged with the task of providing the best available base of scientific information relating to climate change. The IPCC was also asked to assess the vulnerability of different regions of the world to the potential impacts of climate change.

45. IPCC assessments are subjected to comprehensive international peer review. The IPCC's Climate Change 2001: Impacts, Adaptation, and Vulnerability ("IPCC 2001") forms the standard scientific reference for all those concerned with the environmental and social consequences of climate change.

46. The IPCC 2001 Report states:

Observational evidence of changes has accumulated in many physical and biological systems (e.g. glacial melting, shifts in geographic ranges of plant and animal species, and changes in plant and animal biology) that are highly consistent with warming observed in recent decades. These observations are adding to our knowledge of the sensitivity of affected systems to changes in climate and can help us to understand the vulnerability of systems to the more rapid climate changes projected for the 21st century. A number of unique systems are increasingly recognized as especially vulnerable to climate change (e.g. glaciers, coral reefs and atolls, mangroves, boreal and tropical forests, polar and alpine ecosystems, prairies wetlands, and remnant native grasslands). Potential changes in the frequency, intensity, and persistence of climate extremes (e.g. heat waves, heavy precipitation, and drought) and in climate variability (e.g. El Nino Southern Oscillation) are emerging as key determinants of future impacts and vulnerability.

47. The IPCC 2001 report goes on to conclude that: "Available observational

1 evidence indicates that regional changes in climate, particularly increases in temperature,
2 have already affected a diverse set of physical and biological systems in many parts of the
3 world.”

4 48. The Bush Administration’s May, 2002 U.S. Climate Action Report – 2002
5 Third National Communication of the United States of America Under the United Nations
6 Framework Convention on Climate Change (“U.S. Report”) also acknowledges the present
7 and projected impacts of climate change. The U.S. Report confirms that increased storm
8 surge height and diminished snow-pack are two of climate change’s several significant
9 impacts:

10 natural ecosystems appear to be the most vulnerable to
11 climate change because generally little can be done to help
12 them adapt to the projected rate and amount of change. Sea
13 level rise at mid-range rates is projected to cause additional
14 loss of coastal wetlands, particularly in areas where there are
15 obstructions to landward migration, and put coastal
16 communities at greater risk of storm surges, especially in the
17 southeastern United States. Reduced snow-pack is very
likely to alter the timing and amount of water supplies,
potentially exacerbating water shortages particularly
throughout the western United States, if current water
management practices cannot be successfully altered or
modified.

18 49. The U.S. Report acknowledges that:

19 Not surprisingly, an increased rate of global sea level rise is
20 likely to have the most dramatic impacts in regions where
21 subsidence and erosion problems already exist . . . shorelines
22 along the Atlantic and Gulf coasts are especially vulnerable.
23 Impacts on fixed structures will intensify, even in the absence
24 of an increase in storminess. However, because the slope of
these areas is so gentle, even a small rise in sea level can
produce a large shift of the shoreline. The rise will be
particularly important if the frequency or intensity of storm
surges or hurricanes increases.

25 The U.S. Report goes on to acknowledge that sea levels have already risen by 10-20 cm over
26 the last century and predicts that levels will rise by another 9-88 cm during this century.

27 50. Likewise, the IPCC 2001 Report states, “the prospect of rising sea

1 level is one of the most widely recognized potential impacts of climate change.” It goes on to
2 state:

3 Titus and Richman (2001) have developed a data set of
4 coastal land elevations by using digital-elevation models and
5 printed topographic maps to determine areas that are
6 vulnerable to sea-level rise along the U.S. Atlantic and Gulf
7 coasts. Louisiana, Florida, Texas, and North Carolina
8 account for more than 80% of the 58,000 km² that are
9 vulnerable to sea-level rise.

10 51. Other IPCC Reports acknowledge that rising sea level is likely to increase
11 flooding of low-lying coastal areas and associated human settlements and infrastructure.
12 “Many islands are at risk. The low bay sides of developed barrier islands could be inundated
13 while their relatively high ocean sides erode.” *Regional Impacts of Climate Change, An*
14 *Assessment of Vulnerability*, IPCC (1998)

15 52. The IPCC 2001 Report is consistent with the U.S. Report’s conclusions
16 regarding impacts on snow-pack and water resources. The IPCC 2001 Report states that:
17 “Where snowmelt currently is an important part of the hydrological regime . . . seasonal
18 shifts in runoff are likely, with a larger proportion of runoff occurring in winter, together
19 with possible reductions in summer flows (high confidence).”

20 53. The U.S. Report also predicts “a significant northward shift in prevailing
21 forest types. For example, the maple-beech-birch forest type is projected to shift north into
22 Canada and no longer be dominant in the late 21st century in the northeastern United
23 States.” The U.S. Report goes on to predict that climate change is likely to increase the rate
24 of forest disturbances such as insect infestations, disease or forest fire.

25 These changes in disturbances regimes are a natural part of
26 all ecosystems. However, as a consequence of climate change,
27 forests may soon be facing more rapid alterations in the
28 nature of these disturbances. For example, unless there is a
large increase in precipitation, the seasonal severity of fire
hazard is projected to increase during the 21st century over
much of the country, particularly in the Southeast and Alaska
. . . If the rate and type of disturbances in New England do
not increase, for example, a smooth transition from the

1 present maple, beech, and birch tree species to oak and
2 hickory may occur. Where the frequency or intensity of
3 disturbances increases, however, transitions are likely to
4 occur more rapidly.

5 54. The IPCC 2001 Report predicts that insects will be a dominating climate-
6 change-induced disturbance factor and that climate change already appears to be
7 accelerating seasonal development of some insects. Other IPCC reports are also consistent
8 with the U.S. Report's predictions regarding shifts in forest ecosystems. The IPCC also notes
9 that forests cannot move northward as rapidly as climate is predicted to change and predicts
10 significant forest decline or dieback.

11 55. Such disturbances are already well under way in Alaska. Rising
12 temperatures allow spruce bark beetles that eat spruce trees to reproduce at twice their
13 normal rate. As a result, a four-million-acre spruce forest on the Kenai Peninsula has been
14 killed (approximately 38 million dead trees) by the beetles. This is the largest loss of trees to
15 insects known to have occurred in North America. Forests on the Anchorage hillside are also
16 dead or dying because of the spruce bark beetle. The dead trees pose a significant fire risk
17 and ruin the forests' aesthetic value.

18 56. The U.S. Report further details global warming impacts on Alaska: "Sharp
19 winter and springtime temperature increases are very likely to cause continued melting of
20 sea ice and thawing of permafrost, further disrupting ecosystems, infrastructure, and
21 communities." The IPCC 2001 Report states that: "Changes in climate that have already
22 taken place are manifested in the decrease in extent and thickness of Artic sea ice." It also
23 states that: "Natural systems in polar regions are highly vulnerable to climate change" and
24 that "climate change in polar regions is expected to be among the largest and most rapid of
25 any region on the Earth and will cause major physical, ecological, sociological, and economic
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1 impacts especially in the Artic, Antarctic Peninsula, and southern ocean (high confidence).”

2 57. The U.S. Report also acknowledges that climate change is contributing to the
3 decline of coral reefs and that “the demise or continued demise of reefs could have profound
4 implications for the United States.” “The last few years have seen unprecedented declines in
5 the health of coral reefs . . . In some regions, as much as 70% of the coral may have died in a
6 single season.”

7 **1. Dr. Phillip Dustan**

8 58. Dr. Phillip Dustan is a full professor in the Biology Department of the College
9 of Charleston in Charleston, South Carolina. He is a member of Friends of the Earth.

10 59. Dr. Dustan teaches ecology, marine ecology, coral reef ecology. He also
11 researches and studies the ecology and physiology of corals and coral reef communities. Dr.
12 Dustan also worked as principal scientist on the Calypso on and off from 1974 to 1983. The
13 Cousteau Society funded his work on the Calypso. His research has also been funded by the
14 National Science Foundation, Smithsonian Institution and Harbor Branch Foundation,
15 National Aeronautics and Space Administration, National Oceanic and Atmospheric
16 Administration, and the US Environmental Protection Agency. In 1995, Dr. Dustan was
17 asked to be a principal investigator on the USEPA Florida Keys Coral Monitoring Project
18 (CRMP).
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20 60. Dr. Dustan started his study of coral reefs in 1969. Much of his work has
21 focused on coral reefs off of the Florida Keys. In 1974, he established long term reef
22 monitoring sites in the present-day Key Largo National Marine Sanctuary. This site is the
23 oldest permanently marked coral reef study site in the Western Atlantic/Caribbean area. He
24 is still monitoring that site and has published papers detailing his findings.

25 61. This research group documented, between 1996 and 2000, an overall 38% loss
26 of living coral cover in the Florida Keys National Marine Sanctuary between Key Largo and
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1 Key West and the Carysfort Reef in the northern Florida Keys. These reefs have lost 75%
2 coral cover between 1996 and 2000. Combined with earlier studies dating from 1974, the
3 Carysfort Reef has lost over 90% of its living coral cover. This reef is in a hastened state of
4 ecological collapse.

5 62. Climate change is a significant factor responsible for this loss of coral.
6 Climate change harms Dr. Dustan because its effects contribute to diminished opportunities
7 for fundamental biological research and his ability to pursue his profession. Dr. Dustan
8 states that the impacts on coral reefs are “tantamount to going to Sequoia National Forest
9 and finding every 90 out of 100 trees dead or on the ground. I cannot keep my head in the
10 sand and keep studying the pure physiology and evolutionary biology of corals. I have to
11 speak up.”

12 63. Dr. Dustan’s recreational interests are also harmed by climate change. He is
13 a scuba diver. He has and will continue to scuba dive in reefs affected by climate change
14 including reefs off of the Florida Keys. These reefs are no longer healthy. They are very
15 small with only few individual colonies. There are far fewer fish. His enjoyment of the reefs,
16 and his ability to share the reefs with family and friends has been diminished.

17 64. Dr. Dustan and his family also own land and are building a home on John’s
18 Island, approximately 10 miles southwest of Charleston, SC. Their home is being built on
19 the shore of an estuary known as the Stono River, approximately 5.5 miles from the ocean
20 and on land eight feet above sea level.

21 65. Climate change is causing rising sea levels and increasing storm surge
22 frequency and heights. An increase in the severity of hurricanes is also predicted. Because
23 of this, Dr. Dustan is building his home higher and stronger than required by current code,
24 even though the home is over five miles from the ocean. This is costing him a significant
25 amount of money. Additionally, his insurance rates for the new home will increase over
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1 time. Dr. Dustan believes that the higher insurance costs are attributable to the effects of
2 climate change.

3 66. OPIC's and ExIm's actions increase the risk that Dr. Dustan's interests are
4 and will continue to be harmed by climate change.

5 **2. Pam and Jesse Williford.**

6 67. Pam and Jesse Williford live in Raleigh, North Carolina. Mrs. Williford
7 works at home. Mr. Williford is retired from a career with IBM and now teaches math at
8 Wake Technical Community College. Mr. and Mrs. Williford are members of Greenpeace
9 and Friends of the Earth.

10 68. Mr. and Mrs. Williford bought a building lot on Emerald Isle on North
11 Carolina's outer banks approximately twenty-five years ago. They hope to build a home and
12 retire there within the next couple of years. The lot is located in the middle of the western
13 side of the island approximately 1,000 feet from the ocean side of the island. The lot has an
14 approximate elevation of five to eleven feet.

15 69. Mr. and Mrs. Williford are concerned about the rising ocean levels, increased
16 storm surge, the increased frequency and severity of storms, and increased erosion resulting
17 from climate change. They may not have bought the lot if, twenty-five years ago, they had
18 known the dangers of climate change. If the Willifords build, they will have to design and
19 build their home at substantial additional cost to account for rising ocean levels, the
20 resulting erosion, increased storm frequency and severity, and storm surge. The Willifords
21 are also concerned about Emerald Isle's vegetation. The storms and storm surge will
22 adversely affect the trees and vegetation and the island's aesthetic value. Additionally, there
23 is concern about the effects on the water supply and sewage systems. Mr. Williford states
24 that "I did not think that in our lifetime or our kids' lifetime that a house in the middle of
25 Emerald Isle would be so affected, but now we know otherwise."
26

1 70. OPIC's and ExIm's actions increase the risk that Pam and Jesse Williford's
2 interests are and will continue to be harmed by climate change.

3 **3. Arthur Berndt.**

4 71. Arthur and Anne Berndt own and operate Maverick Farm in Sharon,
5 Vermont. They have owned Maverick Farm since 1988. They are members of Greenpeace
6 and Friends of the Earth.

7 72. Maverick Farm is a maple sugarbush on approximately 430 acres owned by
8 Maverick Farm and an additional 150 acres leased by the Farm. Maple syrup is produced
9 from sap drawn from approximately 15,000 – 16,000 sugar maple trees. Maverick Farm is
10 one of the largest maple syrup producers in Vermont.

11 73. Over the last few years, Mr. Berndt has noticed that the regeneration rate for
12 the sugar maple trees appears lower, although the trees' production of seeds has been
13 unusually and exceedingly heavy. The seeds sprout but the trees die while they are still
14 small saplings. Maple trees produce heavy seed crops when they are stressed.

15 74. He has also noticed that the maple-sugaring season starts and ends earlier.
16 This year, the season started in mid-February. Generally, the season has advanced two to
17 three weeks, to well before Town Meeting—the traditional start of the season. Town Meeting
18 Day in Vermont is the first Tuesday in March. He has also noticed that they receive more
19 rain and less snow during the winter and that swings in the weather are more dramatic and
20 that low temperatures are now warmer. Low temperatures below freezing are necessary to
21 maple syrup production.
22

23 75. Arthur and Anne Berndt plan to continue operating Maverick Farm for at
24 least the next twenty years. They will either pass the farm on to their children or conserve
25 the land when they retire.

26 76. However, he understands that, as a result of global warming, there will be a
27

1 significant northward shift in the prevailing forest types. The maple-beech-birch forest type
2 is projected to shift north into Canada and no longer be dominant in the northeastern United
3 States by the late 21st century. The diminished population of sugar maples will cause loss of
4 syrup production in northern New York and New England. He also understands that, at
5 current rates of warming, this shift is likely to occur within the next ten to twenty years, and
6 possibly sooner if the warming is accompanied by outbreaks of pests or disease.

7 77. "We all feel nervous about climate change," says Arthur Berndt. "From
8 greater fluctuations in weather to migration of the maple forest, heavy rains, higher winds,
9 and more extreme weather, the outlook seems ominous. If we have no maples we have no
10 farm income and the aesthetic value of the land will also be devastated. This would
11 adversely affect the economic and conservation value of my farm."

12 78. "If climate change will have the predicted impacts, we should start culling
13 trees now as the timber market will become saturated rather quickly once maples start
14 disappearing in large numbers. However, like many people, we are in denial because it is too
15 depressing to consider the loss of Maverick Farm's long-term value."

16 79. OPIC's and ExIm's actions increase the risk that Arthur Berndt's interests
17 are and will continue to be harmed by climate change.

18
19 **4. Melanie Duchin.**

20 80. Melanie Duchin lives and works in Anchorage, Alaska. She is a member of
21 Greenpeace. She is also employed by Greenpeace.

22 81. Ms Duchin currently lives in downtown Anchorage and would like to buy a
23 house on the Anchorage hillside. However, she is afraid to invest in a home on the
24 Anchorage hillside because of fire danger. Global warming is contributing to a spruce bark
25 beetle outbreak that has decimated the forests of southcentral Alaska. Many forests and
26 trees are dead or dying, creating a significant fire danger. Warmer temperatures and drier
27

1 weather over the last several years also contribute to this fire danger.

2 82. The dying spruce trees also harm Ms Duchin's recreational interests in
3 southcentral Alaska. She lives fifteen minutes from hiking trails in the Chugach mountains
4 which form a perimeter around the south and east sides of Anchorage. She regularly hikes
5 and runs in the Chugach Mountains. She also travels to the Matanuska-Susitna Valley,
6 Prince William Sound and the Kenai Peninsula several times every summer to visit friends,
7 hike and run in the mountains, kayak, and sail. The fire danger in these areas diminishes
8 her enjoyment of these areas. Dead and dying spruce are everywhere. Her wilderness and
9 recreational activities are diminished by concern and worry about the threat of fire. The dead
10 and dying forests also have dramatic and adverse impact on Alaska's aesthetic beauty, also
11 diminishing her enjoyment of these areas.

12 83. Ms Duchin spends time in the Alaskan Arctic for personal recreation. The
13 Arctic is her favorite place in the world because of its unique beauty and the distinctive
14 Arctic species of flora and fauna that live there. She did a whitewater rafting trip down the
15 Hula Hula River in June of 2000. The trip started in the Brooks Range and ended at the
16 Beaufort Sea. The entire trip was in the Arctic and in environments of permafrost, glacially-
17 fed rivers and the Beaufort Sea. Each of these environments is affected by global warming.
18 She intends to continue to travel in the Arctic for recreational purposes, and as such, her
19 recreational and aesthetic enjoyment will be adversely affected by global warming. She loves
20 to bird watch, see mammals such as musk ox, caribou, grizzly bears, wolves, seals, polar
21 bears, and whales. It is very important to her that the Arctic environment not melt down,
22 and that all of its distinctive Arctic species and ecosystems remain intact. She intends to
23 return to the Arctic in coming years to pursue her interests. She is planning an Arctic river
24 trip for the summer of 2003 and will be on the ice with her dog in the spring of 2003. She
25 also intends to return to the arctic in the spring/summer of 2004 and subsequent years.
26
27

1 84. Her Labrador retriever has been trained to track ringed seals for biologists
2 studying this Arctic species on the ice. She is continuing his training and intends to travel to
3 the Arctic to work with him and a team of biologists conducting research on ringed seals.
4 The shrinking and receding pack ice makes the Arctic environment more dangerous for her
5 and her dog. Early spring break-up, early flooding of rivers and unstable ice are hazards that
6 are linked with and exacerbated by global warming.

7 85. OPIC's and ExIm's actions increase the risk that Melanie Duchin's interests
8 are and will continue to be harmed by climate change.

9 **5. City of Boulder, Colorado.**

10 86. Global warming represents a serious threat to Boulder's natural resources,
11 economy and its ability to provide drinking water to its customers.

12 87. The City of Boulder is extremely vulnerable to the effects of global warming.
13 Its primary water source for the supply of drinking water to its citizens and other customers
14 is from mountain snow-pack. Readings taken the week of April 29th, 2002 showed that
15 snow-pack at the lower mountain elevations had completely evaporated, a condition never
16 seen in the many decades of record keeping at this site. The city's upper snow-pack is at 25
17 percent of the average readings over the past decades.
18

19 88. According to the US 2002 Climate Action Report, "Rising temperatures are
20 very likely to affect snowfall and increase snowmelt conditions in much of the western and
21 northern portions of the country that depend on winter snow-pack for runoff. This is
22 particularly important because snow-pack provides a natural reservoir for water storage in
23 mountainous areas, gradually releasing its water in spring and even summer under current
24 climate conditions. Model simulations project that snow-pack in western mountain regions is
25 likely to decrease as U.S. climate warms." It goes on to say the following startling fact:

26 These reductions are projected, despite an overall increase in
27 precipitation, because (1) a larger fraction of precipitation will
28 fall as rain, rather than snow; and (2) the snowpack is

1 likely to develop later and melt earlier. The resulting changes
2 in the amount and timing of runoff are very likely to have
3 significant implications in some basins for water
4 management, flood protection, power production, water
5 quality, and the availability of water resources for irrigation,
6 hydropower, communities, industry, and the sustainability of
7 natural habitats and species.

8 89. Global warming is predicted to increase rainfall intensities in the Boulder
9 region leading to greater flood frequencies and intensities.

10 90. Boulder is particularly vulnerable to flash floods and has the greatest
11 potential for loss of life from a flash flood of any community in Colorado. This is due largely
12 to the city's location at the mouth of Boulder Canyon and the number of people who live and
13 work in the Boulder Creek floodplain. Further, drought conditions cause the soil to compact
14 and reduce its ability to absorb water, thus increasing the risk of flooding should rain occur.

15 91. Boulder is presently suffering, and will continue to suffer, these
16 consequences.

17 92. OPIC's and ExIm's actions increase the risk that Boulder's interests are and
18 will continue to be harmed by climate change.

19 **6. City of Oakland, California.**

20 93. Global warming represents a serious threat to Oakland's natural resources,
21 economy, the availability of drinking water for its residents and municipal use, and the
22 health of its residents and employees.

23 94. The City of Oakland's drinking water is provided by the East Bay Municipal
24 Utility District (EBMUD). EBMUD's primary source of drinking water is from the
25 Mokelumne River Basin, which is dependent on the snow pack of Alpine, Amador, and
26 Calaveras Counties. All city facilities, including water for drinking, sanitation, fire
27 protection, and irrigation are served by EBMUD water. Any water shortage or price increase
28 will have a direct adverse impact on Oakland and its fiscal resources.

1 95. According to the US 2002 Climate Action Report, “Rising temperatures are
2 very likely to affect snowfall and increase snowmelt conditions in much of the western and
3 northern portions of the country that depend on winter snow-pack for runoff. This is
4 particularly important because snow-pack provides a natural reservoir for water storage in
5 mountainous areas, gradually releasing its water in spring and even summer under current
6 climate conditions. Model simulations project that snow-pack in western mountain regions is
7 likely to decrease as U.S. climate warms.” It goes on to say the following startling fact:

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9 precipitation, because (1) a larger fraction of precipitation will
10 fall as rain, rather than snow; and (2) the snowpack is likely
11 to develop later and melt earlier. The resulting changes in the
12 amount and timing of runoff are very likely to have
13 significant implications in some basins for water
14 management, flood protection, power production, water
15 quality, and the availability of water resources for irrigation,
16 hydropower, communities, industry, and the sustainability of
17 natural habitats and species.

14 96. These projections are entirely consistent with the 2001 Intergovernmental
15 Panel on Climate Change Third Assessment Report conclusions for North America that
16 project more winter rainfall and less snowfall for the Pacific Coast states of North America.

17 97. More recent studies confirm that the disappearance or diminution of snow-
18 pack is creating severe problems for Western cities (including Oakland) that depend directly
19 or indirectly on snow-pack as their source of drinking water.

20 98. Global warming is predicted to increase rainfall intensities in the Oakland
21 region leading to greater drought and flood frequencies and intensities. Over the period 1880
22 - 2000, temperatures monitored at the nearest long-term site to Oakland at Berkeley have
23 increased by about 2°F. Over a similar period rainfall has increased 1%. Climate models
24 indicate warming of 5°F (range 2 - 9°F) in the winter and summer, and slightly less in spring
25 and fall. Precipitation is projected to increase, particularly in winter, with little change in
26
27

1 summer. The amount of precipitation on extreme wet days is most likely to increase,
2 especially in winter and fall. Models show the 1 in 20 year extreme daily rainfall increasing
3 by 11%, with a decrease in the return period of a 1 in 20 year event to 1 in 10 years for a 5°F
4 temperature increase. El Nino/Southern Oscillation (ENSO) events increase winter rainfall,
5 and these are expected to become more extreme.

6 99. Increased rainstorm intensities would seriously strain the City of Oakland's
7 current storm drainage infrastructure. The system is currently operating beyond full
8 capacity and would require increases in response to emergencies, maintenance and
9 replacement of much of the current infrastructure in order to meet the additional capacity
10 demands created by higher intensity rainstorms. Increase in storm intensities will
11 exacerbate the damage to storm drainage infrastructure thereby increasing the City's costs
12 for that damage. Increased storm intensities and flood frequencies would damage low-lying
13 City-owned properties. Increased storm intensities would cause increased erosion and
14 pollution runoff to Oakland's waterways, Lake Merritt, the Estuary and the Bay. Increased
15 and more intense rainfall will also increase soil saturation that, in turn, could lead to
16 increased frequency of slumping or landslides, affecting City-owned property and
17 infrastructure. This impact would also require Oakland to expend funds to clean up, rebuild,
18 and stabilize City property and infrastructure.

20 100. Drought is a great concern for the City of Oakland due to the increased fire
21 risk that droughts pose. More frequent and longer duration droughts will increase the risk of
22 fires in Oakland, which would threaten many properties and endanger lives. Increased fire
23 risk increases costs to Oakland and damage to its property and infrastructure.

24 101. Higher snowlines resulting from global warming will increase the mountain
25 rain and decrease mountain snow. This will lead to increased winter runoff, and in summer,
26 decreased stream flows into San Francisco Bay area and increased drought. This will
27

1 increase the risk of flooding during winter bringing larger sediment inflows into San
2 Francisco Bay. Less freshwater inflow into the Bay in summer will also increase the salinity
3 altering all levels of the food chain from algae to fish in complex ways.

4 102. Oakland is also vulnerable to rising sea levels caused by global warming.
5 During the 20th century, sea level has risen by about 8 inches in the San Francisco Bay area.
6 Sea level is projected to rise by between 3.5 and 35 inches between 1990 and 2100. A twelve-
7 inch rise in sea level would mean that the current 100-year high tide peak would become
8 instead the 10-year high, thus a rare event would become common. ENSO events also
9 elevate sea levels by up to 12 inches or more off coastal California. High tides coupled with
10 ENSO events and storm surges will increase significantly the hourly maximum high tide
11 peak.

12 103. Increased sea levels coupled with increased storm intensities and flood
13 frequencies will cause increased groundwater elevations in the low laying areas of Oakland.
14 The increased occurrence of higher sea levels and higher surface runoff would increase the
15 dispersion of toxic plumes from the soil into the Bay and sensitive marsh and mud flat
16 habitats. This would constitute a threat to public health, habitat quality, endangered
17 species, and would cause significant cost to City for cleanup and related matters.

18 104. The Bay Area contains extensive salt marshes, some of which are on Oakland
19 City property. Sea level rise is moving the existing salt marshes to nearby lowlands and
20 freshwater marshes. This will also affect the groundwater aquifers, and increase the
21 intrusion of salt water. The salinity in the Bay will increase, especially in summer
22 enhancing the risk of salt-water contamination at water supply intakes, and the habitat for
23 native species. Sewage systems could be overwhelmed by storm runoff and high tides,
24 especially in winter. In particular, the sewage system in the Lake Merritt watershed could
25 overflow during flood conditions. Such overflows to the City owned Lake Merritt would
26

1 constitute a public health threat and habitat quality threat due to fecal coliform
2 contamination. Additionally, the Lake serves as a detention basin protecting against a 25-
3 year flood event. The increase in frequency of flood events that exceed the current 25-year
4 event could result in significant economic damage to both public and private property and
5 business.

6 105. Oakland International Airport, built on a former wetland at about 10 feet
7 above sea level, will be susceptible to flooding from extreme tides coupled with flood
8 conditions and storm surges. Oakland International Airport is owned and operated by the
9 Port of Oakland, a department of the City of Oakland pursuant to section 700 of the Oakland
10 City Charter. Other low-lying parts of Oakland not protected from storm surges face
11 possible inundation. High intensity rainfall in winter may cause local flooding in the City of
12 Oakland coupled with sewage system overflows.

13 106. Global warming is also having an adverse effect on human health in
14 Oakland. In the Bay Area, assuming no other changes in weather or any increase in air
15 pollution emissions, warming by 7°F would increase ozone concentrations by 20% and almost
16 double the size of the area not meeting national health standards for air quality, thus
17 aggravating existing respiratory illness such as asthma, reduce lung function and induce
18 respiratory inflammation. Higher temperatures and increased frequency of heat waves may
19 increase the number of heat-related deaths and the incidence of heat related illness.
20

21 107. Oakland is presently suffering, and will continue to suffer, these
22 consequences.

23 108. OPIC's and ExIm's actions increase the risk that Oakland's interests are and
24 will continue to be harmed by climate change.

25 **7. City of Arcata, California**

26 109. Over the period 1887-2000, temperatures monitored at the nearest long-term
27

1 site to Arcata located approximately five miles to the south in the city of Eureka have
2 increased by about 2.1°F. Annual rainfall amounts have decreased by about 10% over the
3 period 1857-2000. Climate models indicate warming of 5°F (range 2 – 9°F) in the winter and
4 summer, and slightly less in spring and fall. Precipitation is projected to increase,
5 particularly in winter (possibly up to 25%), with little change in summer. The amount of
6 precipitation on extreme wet days is most likely to increase, especially in winter and fall.
7 Models show the 1 in 20 year extreme daily rainfall increasing by 11%, with a decrease in the
8 return period of a 1 in 20 year event to 1 in 10 years for a 5°F temperature increase.

9 110. Since 1850, sea level has risen by about 4 inches along the coast of California.
10 Sea level is projected to rise further up to 3.5-35 inches between 1990 and 2100. A 12-inch
11 rise in sea level would mean that the current 100-year high tide peak would become instead
12 the 10-year high, thus a rare event would become common. El Niño Southern Oscillation
13 (ENSO) events also elevate sea levels by up to 12 inches or more off coastal California. High
14 tides coupled with ENSO events and storm surges will increase significantly the hourly
15 maximum high tide peak.

16 111. The City of Arcata owns approximately 170 acres of marsh land, known as
17 the Arcata Marsh and Wildlife Sanctuary, which serves as wildlife habitat and is an integral
18 and required component of the City's adjacently located wastewater treatment facility as it
19 provides tertiary treatment to all of the City's wastewater. This Marsh is located on the
20 Arcata Bay, the tidelands of which have been legislatively conveyed to ownership by the City
21 of Arcata. The Marsh and Wildlife Sanctuary and wastewater treatment facility could be
22 overwhelmed from increased high tide peaks and storm events. Such flooding would
23 interfere with and prevent the proper treatment of the City's wastewater.

24 112. Adjacent to the Arcata Marsh and Wildlife Sanctuary, and also fringing the
25 Arcata Bay, the City of Arcata owns 8 acres on which it has located its only corporation yard.
26

1 This corporation yard contains the City's wastewater treatment facility including chlorine
2 needed for wastewater treatment, and is the location where the City stores and maintains
3 the City owned motor vehicle pool as well as the City buses used for the City's transit
4 system. All of this property would be destroyed by increased sea levels, high tide peaks and
5 storm events.

6 113. The City owns nearly 300 acres of low lying agricultural land that is used for
7 grazing, wildlife habitat, storm water management and open space. This property would
8 become salt water marsh and thus unsuitable for agricultural purposes with a sea level
9 increase of 12 inches and in crease in rainfall intensity.

10 114. With warming, higher snowlines will increase the fraction of precipitation as
11 rain in the mountain, rather than snow. This will lead to increased winter runoff, and in
12 summer decreased stream flows into Arcata coastal area and increased drought. This will
13 increase the risk of flooding during winter bringing larger sediment inflows to the Arcata
14 Bay altering all levels of the food chain from algae to fish in complex ways. ENSO events
15 will also increase rainfall amounts in winter and fall, and increase the extremeness of the
16 rainfall events, resulting in increased flood risk.

17 115. Other low-lying parts of Arcata, including public roads, not protected from
18 storm surges face possible inundation. High intensity rainfall in winter may cause local
19 flooding in the City of Arcata, damaging the City's wastewater and stormwater
20 infrastructure and causing sewer system overflows. City services including staff time and use
21 of equipment necessary to correct these infrastructure failures will be extensive.

22 116. Increased ocean temperatures may threaten marine wildlife and
23 consequently human marine activities, in the area. Warmer waters will alter the distribution
24 of coastal fishes, requiring commercial fishing to travel farther or change to different
25 fisheries. California supports the southern-most populations of some salmon and steelhead
26

1 species that require cold water. As waters warm and stream flows fluctuate, these species
2 could decline drastically or become extinct.

3 117. The City of Arcata owns and operates under contract with the California
4 State University System, Humboldt State University, an anadromous fish aquaculture
5 facility in the Arcata Bay, which would be impacted by changes in ocean temperature and
6 toxic algal blooms encouraged by ENSO events.

7 118. Arcata is presently suffering, and will continue to suffer, these consequences.

8 119. OPIC's and ExIm's actions increase the risk that Arcata's interests are and
9 will continue to be harmed by climate change.

10 **8. City of Santa Monica, California**

11 120. Global warming is predicted to significantly affect Santa Monica's climate
12 and weather. Over the period from 1903 to 2000, annual mean temperatures monitored from
13 historical climate stations at three sites with reliable records (Santa Barbara, Pasadena and
14 Newport Beach) have increased by about 2.85°F. This is a significant increase over the
15 Santa Monica mean temperature of about 61.5°F.

16 121. Climate models indicate warming of 5°F (range 2 – 9°F) in the winter
17 and summer, and slightly less in spring and fall.

18 122. Over the period from 1903-2000, annual rainfall has decreased at
19 these three sites by 1 inch, a significant decrease for the mean of 12.5 inches.

20 123. While reducing overall rainfall, climate change is predicted to increase the
21 intensity of rainfall. The IPCC projects precipitation intensity to increase by 2100,
22 particularly in winter, with little change in summer. The amount of precipitation on extreme
23 wet days is most likely to increase, especially in winter and fall. Models show the 1 in 20
24 year extreme daily rainfall increasing by 11%, with a decrease in the return period of a 1 in
25 20 year event to 1 in 10 years based on a 5°F temperature increase. El Nino/Southern
26

1 Oscillation (ENSO) events increase winter rainfall, and these are expected to become more
2 extreme. The Los Angeles area has recorded its highest annual rainfall during ENSO years.

3 124. Santa Monica is also vulnerable to rising sea levels caused by global
4 warming. During the 20th century, sea level has risen by about 3 inches in the Los Angeles
5 area. Sea level is projected to rise by between 3.5 and 35 inches between 1990 and 2100. A
6 12-inch rise in sea level would mean that the current 100-year high tide peak would become
7 the 10-year high, thus a rare event will become common. ENSO events also elevate sea
8 levels by up to 12 inches or more off coastal California. High tides coupled with ENSO
9 events and storm surges will increase significantly the hourly maximum high tide peak.

10 125. Santa Monica is an extremely popular destination for tourists worldwide, as
11 well as from the Los Angeles area. Despite a population of only 86,000, Santa Monica
12 attracts 3.8 million visitors per year according to the most recent statistics. These visitors
13 spend some \$788 million annually in Santa Monica. Tourism directly feeds Santa Monica's
14 economy through many sources including hotel bed taxes (\$18.9 million annually), visitor
15 sales tax revenue (\$5 million), business license taxes, and parking revenue. The tourism
16 industry in 2000 employed approximately 11,000 people in Santa Monica. Santa Monica and
17 its unusually moderate weather attract a great number of visitors from throughout Los
18 Angeles County year-round.

19
20 126. Santa Monica's primary tourist attractions are its beaches and Pier. The
21 coastal beaches in Santa Monica are owned by the State of California. The City of Santa
22 Monica maintains and operates the beaches pursuant to an Operating Agreement with the
23 State. Santa Monica's extensive beaches are especially vulnerable to the effects of sea level
24 rise. Stormy seas coupled with the occasional higher intense rainfall under existing climate
25 conditions is known to cause accelerated erosion. Increased storm activity, more ENSO
26 conditions, and sea-level rise will cause more beach erosion and loss of sand. It will also
27

1 increase the occasions when ocean debris is strewn along the beaches, making the beaches
2 less desirable for tourists and increasing the City's cleanup costs. It will also cause increased
3 damage to the beach infrastructure owned by Santa Monica, which includes parking lots,
4 rest rooms, recreational facilities and a maintenance yard.

5 127. The Santa Monica Pier, located on the coast, is a historic landmark owned by
6 Santa Monica. The Pier is a unique, major year-round center of recreation for local residents
7 and tourists alike. The Pier is designed based on known risk factors including the predicted
8 frequency and severity of storms. The increased sea levels, storm intensities, and storm
9 surges caused by global warming will result in more frequent and severe damage to the Pier
10 with resultant increased repair and rebuilding costs to Santa Monica as well as decreased
11 use and appeal as a tourist destination.

12 128. Santa Monica' will be directly harmed by global warming through its effects
13 on the City's fisc, weather, beaches and Pier as described above.

14 129. Increased rainstorm intensities would seriously strain the City of Santa
15 Monica's current storm drainage infrastructure. The system is currently operating at or near
16 full capacity. Much of the current infrastructure will have to be replaced to meet the
17 additional capacity demands created by higher intensity rainstorms. A major current
18 problem in Santa Monica is the City's potential liability for private and public property
19 damage due to existing storm drainage infrastructure problems. Increase in storm intensities
20 will exacerbate the damage caused by storm drainage infrastructure likely increasing the
21 City's liability and costs for that damage. Increased storm intensities and flood frequencies
22 will damage low lying City-owned properties. Increased storm intensities will cause
23 increased erosion and pollution runoff into Santa Monica Bay.
24

25 130. Santa Monica owns and operates the Santa Monica Urban Runoff Recycling
26 Facility ("SMURRF"), which was established in 2001. SMURRF is the only facility of its kind
27

1 in the country and serves as a prototype for similar projects in other cities. It is located
2 adjacent to the Santa Monica Pier at the Pacific coast and treats the water from the city's
3 two highest-volume storm drains. These two storm drains are responsible for conveying
4 approximately 90 percent of the total flow of the city's storm drain system. The city then sells
5 the treated product to others as irrigation water. SMURRF thus represents both a source of
6 income for Santa Monica and a model of environmentally sound storm drainage treatment.

7 131. The facility cannot accept salt water and shuts down when salt water enters
8 the intake pipe. This results in a loss of revenue to Santa Monica. Global warming will harm
9 SMURRF's operation in two ways. SMURRF was built in accordance with historic sea level
10 statistics. As sea levels rise with increased global warming, the surface tidal flow migrates
11 further inland, so SMURRF's intake pipes will take in salt water. This problem also happens
12 during serious storms. The increased severity of storms, increased frequency of ENSO
13 events, and rising sea levels resulting from global warming will increase the number of
14 occasions when SMURRF shuts down, causing damage and lost revenue for Santa Monica.

15 132. The rise in sea level caused by global warming could also affect the
16 groundwater aquifers, and increase the intrusion of salt water. Sewerage systems could be
17 overwhelmed by the occasional storm runoff and high tides with the slightly higher
18 likelihood of flash flooding.

19 133. The increase in more intense storms and rainfall will also increase soil
20 saturation that, in turn, lead to increased frequency of slumping or landslides, affecting both
21 private and city-owned property and infrastructure, and endangering lives. This will
22 damage city-owned property and will require Santa Monica to expend funds to clean up,
23 rebuild, and stabilize city property and infrastructure.

24 134. Santa Monica's historic Palisades Bluffs are 35-40 feet high and extend a
25 length of 1.6 miles adjacent to the Pacific coast. The bluffs are bordered along the northeast
26

1 by Palisades Park, a large public park owned and maintained by Santa Monica, and on the
2 southwest by the Pacific Coast Highway. Both sites are heavily used by the public. Increased
3 severity of storms will result in accelerated erosion of the bluffs as well as more frequent and
4 more serious land slumps. These in turn pose a serious hazard to human safety in both
5 Palisades Park and Pacific Coast Highway; and an increase in cost to Santa Monica for
6 prevention, repair, and liability.

7 135. Global warming represents a serious threat to Santa Monica's water supply
8 for its residents and municipal use, natural resources, built infrastructure, economy, and the
9 health of its residents and employees.

10 136. Santa Monica's water supply is primarily purchased from the Metropolitan
11 Water District and imported into Santa Monica from Northern California via the California
12 Aqueduct. The California Aqueduct watershed has a significant winter snowpack that will
13 experience major changes in the timing and intensity of runoff as average temperatures rise.
14 Rising temperatures will cause reductions in spring and summer runoff and will increase
15 winter runoff and earlier peak runoff.

16 137. According to the US 2002 Climate Action Report, "Rising temperatures are
17 very likely to affect snowfall and alter snow melt conditions in much of the western and
18 northern portions of the country that depend on winter snow-pack for runoff. This is
19 particularly important because snow-pack provides a natural reservoir for water storage in
20 mountainous areas, gradually releasing its water in spring and even summer under current
21 climate conditions. Model simulations project that snow-pack in western mountain regions is
22 likely to decrease as U.S. climate warms." It goes on to provide the following startling fact:

23
24 These reductions are projected, despite an overall
25 increase in precipitation, because (1) a larger fraction of precipitation
26 will fall as rain, rather than snow; and (2) the snowpack is likely to
27 develop later and melt earlier. The resulting changes in the amount
28 and timing of runoff are very likely to have significant implications in
some basins for water management, flood protection, power
production, water quality, and the availability of water

1 resources for irrigation, hydropower, communities, industry, and the
2 sustainability of natural habitats and species.

3 138. These projections are entirely consistent with the 2001 Intergovernmental Panel on
4 Climate Change Third Assessment Report conclusions for North America that project more winter rainfall
5 and less snowfall for the Pacific Coast states of North America. Precipitation changes for 2071 –
6 2100 for the mountainous areas of California indicate increases in winter precipitation of 0 to
7 35%, with summer changes of –10 to +10. Runoff scenarios show a decrease in the summer
8 season for all scenarios, whereas winter runoff increased in all scenarios where precipitation
9 was held constant or increased. Additionally, the United States Global Change Research
10 Program California Regional Assessment of climate change (2002) indicates with a 7°F
11 temperature rise and an increase in precipitation of 20%, the winter runoff rose by 75%, and
12 the summer runoff decreased by about 50%. Models also show about a 50% decline in
13 snowpack in the Sierra Nevada Mountains.

14
15 139. Recent studies confirm that the disappearance or diminution of snow-pack is
16 creating severe problems for Western cities (including Santa Monica) that depend directly or
17 indirectly on snow-pack as their source of drinking water.

18 140. It is anticipated that greenhouse gas-induced temperature increases will
19 increase the percentage of precipitation that occurs in the Sierra Nevada Mountains as rain
20 rather than snow, thereby decreasing the annual snowpack and its inherent natural storage
21 capacity throughout spring and summer. The impacts of such changes on water resources will most
22 likely to increase winter runoff in the Sierra Nevadas of northern California with earlier peak flows as more
23 precipitation falls as rain, but to decrease the spring and summer runoff because of increased evaporation
24 because of higher temperatures. This shift could be problematic because the existing reservoirs and water
25 distribution system in the Sierra Nevada Mountains do not have sufficient capacity to manage the increased
26 winter flows for later distribution in the drier summer months. During the twentieth century
27

1 snowmelt runoff has come increasingly earlier in the water year, and there has been a
2 marked decline in flows during the critical April to July period.

3
4 141. These changes will have an adverse impact on Santa Monica because City-owned
5 facilities (and Santa Monica's residents) receive a large amount of their water from this and other snow-
6 pack dependent sources. This will be especially true in the summer time when water resource demand is
7 high.

8 142. As the reliability of distant water supplies, such as the Northern California
9 source area of the California Aqueduct, is diminished due to the impacts of global climate
10 change, Santa Monica and other water suppliers in Southern California will be forced to rely
11 more heavily on local groundwater sources. California's groundwater supplies are likely to
12 be affected by climate change as well. Unless precipitation actually increases, the increase
13 evaporation that would accompany the higher temperatures would reduce groundwater
14 supplies. Santa Monica owns and operates a number of wells that provide ground water to
15 City-owned facilities and residents. Santa Monica sells this water to its residents. This
16 increased reliance by others in the Southern California coastal sub-basin would have direct
17 and deleterious impacts on Santa Monica's water production from local aquifers due to the
18 interconnected nature of the region's aquifers. The result of such a condition would be the
19 diminished recharge of the production aquifers owned by the City and the subsequent
20 reduction in the sustainable yield from those aquifers. . Today, with very real limits to
21 California's water system, and every major source being reduced, the state's systems may be
22 fairly said to be stressed. Every major water supply source in California is currently beyond
23 the physical or legal capacity to be sustained, and is over-allocated Climate change and
24 variability will very likely increase stresses to the water system as well as its quality and
25 uses.
26

1 143. The Los Angeles area, including Santa Monica, experiences heat waves under
2 very hot, dry Santa Ana conditions. Higher temperatures and increased frequency of heat
3 waves may increase the number of heat-related illnesses. One study estimates that a 3°F
4 warming could almost double heat-related deaths in the Los Angeles area from the current
5 70 to 125. The elderly, and those living alone are at highest risk. Santa Monica City
6 employees are also at risk.

7 144. Santa Monica is presently suffering, and will continue to suffer, these
8 consequences.

9 145. OPIC's and ExIm's actions increase the risk that Santa Monica's interests are
10 and will continue to be harmed by climate change.

11
12 **B. OPIC and ExIm's actions.**

13 146 Carbon dioxide emissions cause global warming. Fossil fuel combustion is
14 the source of 75% of recent carbon dioxide emissions.

15 147. Carbon dioxide is one of the leading "greenhouse" gases implicated in causing
16 global warming.

17 148. OPIC and ExIm, combined, have approved over \$32 billion in fossil fuel
18 projects worldwide over the past 10 years. These projects include many of the largest new oil
19 field developments in South America, Mexico, Russia, the Caspian region, southeast Asia,
20 and west Africa, and related infrastructure like pipelines, gas processing plants and oil
21 refineries.
22

23 149. Combined, OPIC's and ExIm's actions ultimately will result in over 32 billion
24 tons of carbon dioxide emissions over the lifetimes of the various projects. Over 80% of these
25 emissions will be released by the eventual burning of fuel that is being exported from the
26 projects' host countries to the global market place, primarily the United States, Western
27

1 Europe, and Japan.

2 150. Put into perspective, OPIC's and ExIm's combined support for fossil fuel
3 proliferation is approximately \$10 billion higher than that extended by the World Bank
4 Group in the same time frame. In the past 10 years, their spending on fossil fuels has
5 outpaced spending on renewable energy sources by a ratio of almost 25 to 1 (\$32.1 billion for
6 fossil fuels, \$1.3 billion for renewable energy sources).

7 151. OPIC's and ExIm's contributions to carbon dioxide loading of the earth's
8 atmosphere are staggering. The estimated amount of carbon dioxide attributable to, or that
9 will be directly released by, the projects supported by OPIC and ExIm is much higher than
10 the entire amount of CO₂ that was released from the *worldwide* consumption of petroleum,
11 natural gas, coal, and the flaring of natural gas in the year 2000 (32.1 billion tons versus 23.5
12 billion tons).

13 152. OPIC and ExIm agree that they bear some responsibility for the release of
14 carbon dioxide from power plants that they support and that their actions contribute to
15 climate change or global warming. However, they do not account for or assess the direct,
16 indirect and cumulative environmental effects of the fossil fuel reserves that they help to
17 extract and deliver to market.

18 153. OPIC has never complied with NEPA. ExIm has assessed at least one project
19 on the U.S. – Mexico border under NEPA, but has never complied with NEPA in determining
20 whether the direct, indirect or cumulative impacts of its actions contribute to climate change.
21

22 **1. OPIC's and ExIm's Energy Programs.**

23 154. OPIC and ExIm have long-standing, specific policies to develop foreign
24 sources of energy. One aim of these policies is to assure supplies of fossil fuel for U.S.
25 consumption.

26 155. OPIC's and ExIm's energy development policies have been recently
27

1 strengthened. On May 17, 2001, Vice President Cheney, on behalf of the Bush
2 Administration, released an energy policy entitled “Reliable Affordable and Environmentally
3 Sound Energy for America’s Future” (Bush/Cheney Energy Policy). Chapter 8 of the
4 Bush/Cheney Energy Policy is entitled “Strengthening Global Alliances.” That chapter’s
5 overarching goal is to diversify and support overseas sources of oil and gas. U.S. export
6 credit and finance agencies (such as OPIC and ExIm) are identified as tools critical to
7 implementation of this policy.

8 156. The Bush/Cheney Energy Policy recognizes that “[t]he trend towards opening
9 new areas around the globe for exploration and development have yielded significant
10 dividends” and that “[w]e need to strengthen our trade alliances, to deepen our dialogue
11 with major oil producers, and to work for greater oil production in the Western Hemisphere,
12 Africa, the Caspian and other regions with abundant oil resources.”

13 157. The Bush/Cheney Energy Policy establishes a specific policy or executive
14 directive.

15 158. OPIC has taken a group of concerted actions that, in fact, implement its own
16 and the Bush/Cheney energy policies.

17 159. ExIm has taken a group of concerted actions that, in fact, implement its and
18 the Bush/Cheney energy policies.

19 160. OPIC’s and ExIm’s implementation of these policies, either individually or
20 together, constitute a “program” under NEPA.

21 161. Neither OPIC, nor ExIm complied with NEPA before implementing these
22 programs or are they complying with NEPA in continuing to implement these programs.
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2. Particular projects.

162. OPIC and ExIm have taken numerous actions to assist particular projects that contribute to climate change without first complying with NEPA. Each project has a significant impact on the environment of the United States (and the world). The following projects are illustrative of OPIC's and ExIm's actions.

a. Chad-Cameroon Oil Pipeline.

163. On August 1, 2000, ExIm's Board approved a \$200 million loan guarantee in support of the Chad-Cameroon crude oil development. The Board supported ABN-Amro North America Inc.'s application for a guarantee of its loan to the Tchad Oil Transportation Company for the purpose of procuring equipment and services from Willbros Engineers, Fluor Daniel, and unspecified additional suppliers, for the installation of a pipeline. Previously, on June 14, 2000, the Board gave its preliminary approval to this project, and ExIm announced this decision in a press release. Both actions on June 14, 2000, named Willbros Engineers, Fluor Daniel, Kellogg Brown & Root (a subsidiary of Halliburton) and IWL Communications as suppliers for this project. The August 1, 2000, board minutes, however, dropped any reference to Kellogg Brown & Root and IWL Communications. Kellogg Brown & Root is a known primary contractor to ExxonMobil in this development.

164. The Chad-Cameroon project involves the exploitation of oil fields in southern Chad and the construction of a 1,070-kilometer crude oil pipeline from Doba, Chad, to the port of Kribi, Cameroon. The project is operated by ExxonMobil (U.S.) which has a 40 percent share, Malaysian state oil firm Petronas with a 35 percent stake and ChevronTexaco (U.S.) with 25 percent.

165. Pride International, Inc., headquartered in Houston, Texas, sought, and on May 23, 2002, OPIC's Board approved, up to \$250 million in political risk insurance coverage

1 for its contract to provide oil field drilling services to ExxonMobil's subsidiary, Esso
2 Exploration and Production Chad, Inc. Pride is deploying five mobile rigs in Chad's
3 southwestern Doba Oil Basin, comprising the Miandoum, Bolobo, and Komé oil fields, which
4 will feed oil into the Chad-Cameroon pipeline.

5 166. According to ExxonMobil, the Chad-Cameroon project will develop several
6 oilfields in southern Chad. To export the crude oil to world markets from the landlocked
7 oilfields, the oil will be transported by a 30" underground pipeline, a distance of 650 miles to
8 a marine terminal off the coast of Cameroon. Approximately one billion barrels of oil will be
9 produced over the 25-30 year life of the Chad-Cameroon project.

10 167. The project schedule anticipates start-up in 2003. The pipeline is currently
11 under construction.

12 168. The oil from this project will be shipped to international markets including
13 the United States. Historically, the United States has been the leading consumer of West
14 African oil.

15 169. Combustion of this oil will result in estimated emissions of 424.7 million
16 metric tons of CO₂.

17 170. ExIm and OPIC did not comply with NEPA before taking this action.

18 **b. Cantarell Oil Fields in Mexico**

19 20 21 22 23 24 25 26 27
20 171. In June of 1998, January of 2000, and October 2001 ExIm's Board of
21 Directors approved: loans of \$847.6 million, a \$400 million loan guarantee, and a \$300
22 million loan guarantee, respectively, in support of the oil and gas extraction in the Cantarell
23 oil fields of Mexico. The 1998 loan guarantee financed an \$847.6 million contract in which
24 Solar Turbines Inc. provided drilling services to Petroleos Mexicanos for "oil field production
25 enhancement" at Cantarell. The 2000 loan supported the sale of equipment and services
26 from Rolls-Royce Energy Systems, Solar Turbines Inc, Baroid Drilling Fluids, Bechtel

1 International Inc., and PrinSup. The 2001 loan guarantee of \$300 million supported
2 equipment and services sales by U.S. suppliers including Halliburton subsidiary Kellogg
3 Brown & Root, Inc., Bechtel International, Horizon, LLC, Pride Offshore, Schlumberger Well
4 Services, and ABS Integrated Services.

5 172. The Cantarell oil and gas field contains an estimated 13.8 billion barrels of
6 oil and 15 trillion cubic feet of gas. ExIm guaranteed loans for the express purpose of
7 supporting sales and equipment and services with the intention of increasing the amount of
8 oil and gas extracted from the Cantarell oil field. The 1998 action allowed production
9 enhancement by financing a nitrogen injection process estimated to boost production from
10 1.1 million to 1.4 million barrels per day over a fifteen-year period. The 2000 action was
11 designed to boost production by 150,000 million barrels of oil per day. The financing
12 approved in 2001 supported the "Cantarell Oil Field Optimization Project" which will also
13 boost production. In total, these actions will allow for recovery of at least 2.5 billion barrels
14 of oil and 2.7 trillion cubic feet of gas with associated peak annual production of 400 million
15 barrels and 438 billion cubic feet of gas.

16 173. Canterrell is now the largest producing oil field in Mexico.

17 174. A significant portion (approximately 40%) of the oil from the Cantarell field
18 will be shipped to the United States.

19 175. Cumulative greenhouse gas emissions from these loan guarantees will be an
20 estimated 1.360 billion metric tons of carbon dioxide.

21 176. ExIm did not comply with NEPA before taking these actions.

22 **c. Hamaca project.**

23 177. In June of 2001, ExIm approved a \$627 million loan guarantee toward the
24 Hamaca oil development in Venezuela. Morgan Stanley & Co. applied for this guarantee to
25 support loans by Barclays Bank PLC and Westduetsche Landesbank toward sales of
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1 equipment and services for the “Hamaca Heavy Oil Upgrading” project. Suppliers named in
2 the ExIm Board minutes include Fluor Enterprises, Morgan Stanley, and unspecified
3 additional suppliers.

4 178. ExIm’s financing package is now closed. This financing supported contracts
5 valued at \$1.011 billion awarded in August, 2000 (two months after ExIm’s Board approved
6 the package) by the Hamaca ownership consortium (which consists of Phillips Petroleum
7 (40%), ChevronTexaco (30%), and PDVSA (30%)) to Fluor Daniel Corp. and Inelectra Parsons
8 for crude oil upgrading to be completed in 2003, after which it will produce 190,000 barrels of
9 oil per day.

10 179. The project will result in the extraction of 2.1 billion barrels of oil or 287.7
11 million metric tons of oil, which will release an estimated 891.2 million metric tons of CO₂
12 when combusted over the project’s lifetime.

13 180. Approximately 57% of Venezuelan oil is exported to the United States. Much
14 of the oil from the Hamaca project will also be exported to the United States.

15 181. ExIm did not comply with the National Environmental Policy Act before
16 taking these actions.

17
18 **d. Sakhalin Oil Field.**

19 182. In 1997, OPIC’s Board approved a \$116 million loan guaranty to Sakhalin
20 Energy Investment Company, Ltd, in which Houston-based Marathon Oil held a 37.5%
21 interest. The guarantee was in support of the development of an oil and gas field off
22 Sakhalin Island, Russia, known as the “Sakhalin II” block. This project is one of the largest
23 offshore oilfield developments in history. It is being undertaken by several consortia of
24 multinational companies.

25 183. Sakhalin II is the first major Russian oil investment being developed under
26 Russia’s new production sharing agreement law, and according to OPIC press releases, “it
27

1 opens the door for other American companies interested in participating in future oil
2 production sharing ventures slated for development in the country.”

3 184. Subsequent to the issuance of OPIC’s loan guarantee, Marathon withdrew its
4 interest Sakhalin II. However, the OPIC guarantee to Sakhalin Energy Investment
5 Company remains active for the project.

6 185. This project is designed to extract estimated reserves of one billion barrels of
7 oil in the Piltun Astokhshoye field and 14 trillion cubic feet of gas in the Lunskeye field. The
8 consumption or atmospheric release of these fossil fuels will result in the emissions of *over*
9 *1.1* billion metric tons of CO₂.

10 186. The U.S. Department of Energy in April 2002 stated that the Sakhalin Island
11 projects and other developments in Eastern Siberia may lead to the export of oil from Russia
12 to the United States. Further, in July 2002, an official with Russia’s oil pipeline company,
13 Transneft, said that refineries on the United States west coast may import Sakhalin crude.

14 187. Sakhalin II started to produce oil in 1999.

15 188. OPIC did not comply with NEPA before taking this action.

16 **e. West Seno I and II Oil and Gas Field.**

17 189. On January 31, 2002, OPIC’s Board approved financing of up to a \$300
18 million loan for the West Seno I oil and gas development and production project in East
19 Kalimantan, Indonesia. Unocal Corporation is developing this oil and gas development.

20 190. Also on January 31, 2002, OPIC’s Board approved financing of up to a \$50
21 million loan for the West Seno II oil and gas development and production project in East
22 Kalimantan, Indonesia.

23 191. The loans support development of the West Seno offshore crude oil and
24 natural gas fields in the Makassar Straits off East Kalimantan.

25 192. The West Seno I project includes the drilling of more than 20 production
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1 wells, construction of a deep-water production platform, a floating processing unit, and two
2 60-kilometer oil and gas pipelines from the platform to an existing terminal at Santan.

3 193. The West Seno II project will involve construction of a second deep-water
4 drilling platform and the drilling of an additional twenty or more production wells.

5 194. OPIC has stated its actions will result in extraction of an estimated 145
6 million barrels of oil.

7 195. Drilling is expected to commence in January, 2003.

8 196. Combustion of fossil fuels from the West Seno I and II projects will result in
9 the release of an estimated 47 million metric tons of carbon dioxide over the projects'
10 lifetimes.

11 196. Historically, the United States is the second leading importer of Indonesian
12 oil.

13 198. OPIC did not comply with NEPA before taking this action.

14 **f. Dezhou Coal-fired Power Plant.**

15 199. On December 3, 1998, the ExIm Board approved a \$76 million loan guarantee
16 toward the expansion of the Dezhou coal-fired power plant in China. ExIm guaranteed a loan
17 by Citibank International to the applicant, China Construction Bank, for the "Dezhou III"
18 project.
19

20 200. This financing supported sales of equipment and services, including two 660-
21 megawatts steam turbine generator sets, from General Electric Company to Shandong
22 Huaneng Power Development Company Ltd.

23 201. In 2001, the plant developers reported "the construction work of the 2 x
24 660MW coal-fired generating units of Dezhou Phase III is progressing smoothly."

25 202. Once complete, the ExIm-supported expansion will result in the estimated
26 emission of 177.5 million tons of carbon dioxide over a 20-year period.
27

1 203. ExIm did not comply with NEPA prior to approving this project.

2 **g. Other power projects.**

3 204. OPIC and ExIm have supported numerous other fossil-fuel-fired power plants
4 around the world. Both agencies have calculated carbon dioxide
5 emissions produced directly by these projects.

6 205. According to OPIC, between 1990 and 2000, it "supported 52
7 power projects with a total capacity of 16,775 MW.... Cumulative annual CO₂ emissions from
8 these projects are approximately 56.4 million tons." ("Climate Change: Assessing Our
9 Actions," OPIC, October 2000, pp. 15-16).

10 206. In addition to the projects cited in its October 2000 report, OPIC has since
11 supported at least nine fossil fuel power plants that will produce an estimated 23.3 million
12 tons of CO₂ per year. OPIC thus supports 61 fossil fuel-fired power projects which will
13 release an estimated 1.6 billion tons of carbon dioxide over a 20 year period. This is more
14 than the combined carbon dioxide emissions from the consumption and flaring of fossil fuels
15 in Canada, Mexico, Brazil, Venezuela, and Belgium in the year 2000.

16 207. According to ExIm, "from the beginning of FY 1987 to the end of June 1999,
17 the Ex-Im Bank has approved a total of 86 transactions... for foreign fossil fuel power plant
18 projects . . . [I]t is predicted, through extrapolation, that ExIm Bank supported thermal
19 power projects will produce up to 425 million tons of CO₂ per year by the year 2012 and
20 beyond." ("Ex-Im Bank's Role in Greenhouse Gas Emissions and Climate Change," Export-
21 Import Bank of the United States, rev. August 31, 1999).

22 208. In addition to the projects cited in its August 1999 report,
23 ExIm has since supported at least 15 fossil fuel power plants that will produce an estimated
24 27.8 million tonnes of CO₂ per year. ExIm thus supports 101 fossil fuel-fired power projects
25 that will release an estimated 9.1 billion tonnes of CO₂ over a 20-year period. This is more
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1 than the combined carbon dioxide emissions from the consumption and flaring of fossil fuels
2 in North, Central and South America in the year 2000.

3 209. The world total of carbon dioxide emissions from the consumption and flaring
4 of fossil fuels was 23.6 billion tons of carbon dioxide. ExIm's 101 power projects will release
5 an average of 455 million tons of carbon dioxide, which represents 1.93% global annual
6 emissions (in 2000). OPIC's 61 projects will release an average of 80 million tons of carbon
7 dioxide, representing 0.3% annual emissions. Combined, these agencies' power projects
8 represent over 2% of worldwide carbon dioxide emissions from the consumption and flaring
9 of fossil fuels.

10 210. These emissions contribute to climate change and the impacts of climate
11 change to the United States.

12 211. Neither OPIC nor ExIm complied with NEPA before approving any of these
13 numerous projects.

14 **COUNT 1**

15 212. OPIC and ExIm violated and continue to violate NEPA by not preparing an
16 environmental assessment to determine if its program supporting energy projects may have
17 a significant effect on the human environment in the United States.

18 **COUNT 2**

19 213. OPIC and ExIm violated and continue to violate NEPA by not preparing and
20 environmental assessment to determine whether individual projects may have a significant
21 effect on the human environment in the United States.

22 **COUNT 3**

23 214. OPIC and ExIm violated and continue to violate the Administrative
24 Procedure Act by failing to comply with NEPA.

25 **REQUEST FOR RELIEF**

1 WHEREFORE, plaintiffs request the following relief:

2 A. a declaration that:

3 (i) defendants violated and are in violation of NEPA and the APA for failing
4 to comply with NEPA; and

5 (ii) defendants' programs of financing projects that directly or indirectly emit
6 CO₂, and each financing decision for particular projects that directly or indirectly
7 emit CO₂ are subject to NEPA; and

8 B. injunctive relief including:

9 (i) an order requiring the defendants to fully comply with NEPA;

10 (ii) an order requiring defendants to prepare programmatic
11 environmental assessments of its support of energy projects; and

12 (iii) an order requiring defendants to prepare environmental assessments
13 for each of its fossil fuel related projects including, but not limited to fossil fuel
14 extraction projects and pipelines;

15 C. an award of costs, fees, and reasonable attorneys' fees; and,

16 D. such other legal and equitable relief as the court deems just.

17
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