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## Fax Cover Sheet

To: Ted Bolling

Fax Number: 202-456-0753

From: Brian Dunkiel

Date: December 1, 2005

Re: FOIA Request

No. of Pages: 5, including cover

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# SHEMS DUNKIEL KASSEL & SAUNDERS PLLC

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December 1, 2005

Mr. Ted Bolling  
Freedom of Information Officer  
Council on Environmental Quality  
Executive Office of the President  
722 Jackson Place NW.  
Washington, DC 20503

Via E-mail, Facsimile and FedEx

Re: FOIA Request

Dear Mr. Bolling:

Friends of the Earth ("FoE") and Greenpeace request the records described below pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 *et. seq.* and Council on Environmental Quality's (CEQ) implementing regulations, 40 C.F.R. §1515.

FoE and Greenpeace seek these records in an expedited manner, and requests CEQ's cooperation in responding to this request **by December 10, 2005.**

I have discussed this with you and Mr. William Perhatch in CEQ's offices, and FoE and Greenpeace have accordingly crafted a narrow request seeking specific records to facilitate an expedited response. The organizations welcome other suggestions by CEQ officials on how to facilitate the expedited review and response, including staggering the review and response based on chronology. While the organizations would prefer to reach an agreement with CEQ on how to best acquire the records sought, an alternative option available to the groups is to seek the records by subpoena.

**Please produce:**

1. Any and all records relating in any manner whatsoever to whether OPIC is statutorily or otherwise exempt from NEPA in regards to impacts OPIC's actions may have on the domestic (United States) environment.
2. Any and all records relating in any manner whatsoever to whether OPIC is statutorily or otherwise exempt from NEPA in regards to impacts OPIC's actions may have on the "global commons" (as that term is used in E.O 12114).
3. Any and all records relating to OPIC's compliance with NEPA in regards to any OPIC action(s) that may have an impact on the domestic (United States) environment.
4. Any and all records relating to OPIC's compliance with NEPA in regards to any OPIC(s) actions that may have an impact on the global commons.

Not included in this request are documents falling strictly within the attorney-client or work-product privileges in *FoE et al. v. Watson*, No 02-4106 (Ca.N.D.).

Please search for responsive records regardless of format, medium, or physical characteristics. Please include daily calendars, briefing papers, descriptions of research methods and procedures, meeting notes, memorandum or correspondence related to these requests. FoE seeks records of any kind, including electronic records, audiotapes, videotapes and photographs.

There is no basis for claiming that the records requested herein are exempt from immediate disclosure under FOIA. Each of these records is described by 5 U.S.C. §552(a)(2) as information an agency is required to make available to the public and the United States Attorney General has indicated that the Justice Department will only defend a decision not to disclose documents where a "sound legal basis" for non-disclosure exists. Memorandum from Attorney General John Ashcroft to Heads of Departments and Agencies on the Freedom of Information Act, October 12, 2001.

If, however, it is your position that any portion of the requested records is exempt from disclosure, FoE requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). A Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the

sought-after information." King v. U.S. Dep't of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" Id. at 224 (citing Mead Data Central v. U.S. Dept. of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event that some portions of the requested documents are properly exempt from disclosure, please disclose any reasonably segregable nonexempt portions of the requested documents. See 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. . ."); see also Schiller v. National Labor Relations Board, 964 F.2d 1205, 1209 (D.C. Cir. 1992); 15 C.F.R. §4.6. If it is your position that a document contains non-exempt segments but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed throughout the document. Mead Data Central, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

### **Fee Waiver Request**

FoE and Greenpeace further request that CEQ waive all charges for search and review associated with this request, as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and CEQ's regulations, 40 C.F.R. 1515.15. FoE and Greenpeace satisfy CEQ's tests for a waiver of fees. However, in the event that CEQ deems that at least one of the organizations does not qualify for a complete fee waiver, Friends of the Earth and Greenpeace is willing to pay up to a total of \$100 in fees associated with fulfilling this Freedom of Information Act request.

### **Public Interest**

The disclosure of the information requested by FoE and Greenpeace will advance the understanding of the general public as distinguished from a "narrow segment of interested persons". FoE is a national environmental organization, dedicated to preserving the health and diversity of the planet and empowering citizens to have an influential voice in decisions affecting their environment and their health. Greenpeace works to promote solutions that are essential for a green and peaceful future.

The subject matter of the requested records concerns the operations or activities of the federal government and is likely to contribute to a greater

public understanding of federal government operations or activities. Specifically, these records are likely to contribute to the public's understanding the government's role and actions related global climate change.

FoE and Greenpeace have already proven its intention and ability to disseminate widely related information that the organizations obtain pursuant to requests such as this one. In fact, as a public policy research and environmental organization, FoE routinely employs a host of methods to publicly release information received through FOIA requests. The means of distribution include websites ([www.foe.org](http://www.foe.org)), email updates to our membership and activists, our Friends of the Earth Magazine, press releases, and press conferences. FoE intends to use one or more of these means to educate the public about these issues. Production of the requested records to FoE would thus bring enhanced understanding of an important government activity and information to the public at large that is not accessible to the public via other means. In addition, FoE and Greenpeace jointly manage and operate the www site: [www.climatelawsuit.org](http://www.climatelawsuit.org).

Moreover, the request is for non-commercial purposes. FoE and Greenpeace are registered §501(C)(3) Corporations, and the release of the requested information is not in FoE or Greenpeace's commercial interest. The organizations will analyze the information responsive to this request, and will likely share its analysis with members and the public either through memorandums or reports, often made available on the Internet site: <http://www.foe.org/> or [www.climatelawsuit.org](http://www.climatelawsuit.org). Under these circumstances, Friends of the Earth and Greenpeace fully satisfy the criteria for a fee waiver.

Please contact me if you have any questions.

Sincerely,



Brian Dunkiel  
SHEMS DUNKIEL KASSEL & SAUNDERS PLLC  
*Attorneys for Friends of the Earth and Greenpeace*

cc: Dinah Bear (Via Facsimile)  
William Perhatch (Via E-mail)