



CENTER FOR BIOLOGICAL DIVERSITY

BECAUSE LIFE IS GOOD.

November 2, 2006

Via Facsimile and Certified Mail Return Receipt Requested

Condoleezza Rice
Secretary of State
U.S. Department of State
2201 C Street NW, 7th Floor
Washington, DC 20520
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Re: Overdue Fourth U.S. Climate Action Report Under the United Nations Framework Convention on Climate Change

Dear Secretary Rice:

The Center for Biological Diversity, Friends of the Earth, and Greenpeace are writing to request that you promptly issue the overdue Fourth U.S. Climate Action Report as required by the United Nations Framework Convention on Climate Change (UNFCCC). Our organizations collectively represent over 300,000 Americans committed to avoiding dangerous climate change.

On April 8, 2005, the State Department issued a Notice of Preparation of the Fourth U.S. Climate Action Report.¹ While the Notice of Preparation stated that “the U.S. will release the draft text of the fourth CAR for review and comment in the summer of 2005” with a short public review period “[b]ecause of the tight time constraints on completing and printing the final text,”² no draft Fourth U.S. Climate Action Report has yet been issued. The UNFCCC deadline for the final Fourth U.S. Climate Action Report was January 1, 2006, approximately 11 months ago. Based on the delay already witnessed, the twelfth session of the Conference of the Parties to the UNFCCC will take place in Nairobi, Kenya from November 6-17, 2006 without the required Fourth U.S. Climate Action Report.

Given the U.S.’s position as the world’s largest emitter of greenhouse gases and a non-party to the Kyoto Protocol to the UNFCCC, the refusal of the U.S. to meet even its relatively modest commitments under the UNFCCC itself is simply unacceptable. In the face of the ever-increasing scientific and economic literature supporting the urgency of immediately addressing climate change through emissions reductions, it is ever more critical that the U.S. take a leading role in the international effort to combat global climate change. Issuance of the overdue Fourth U.S. Climate Action Report can hardly be said to be the type of visionary leadership on climate change that the U.S. desperately needs at the federal level, but it is a start and an existing obligation. The Center for Biological Diversity, Friends

¹ 70 Fed.Reg. 18,066 (April 8, 2005).

² 70 Fed.Reg. at 18,067.

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of the Earth, and Greenpeace hereby request that you immediately issue the overdue Fourth U.S. Climate Action Report.³

The United States is a Party to the UNFCCC, which entered into force on March 21, 1994. As set forth in Article 2 of the UNFCCC,

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Article 4 contains additional substantive requirements for the U.S. and other Annex I Parties to further the ultimate objective announced in Article 2 of the UNFCCC. For example, Article 4.1(b) requires the U.S. to:

[f]ormulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change.

Article 4.2(a) of the UNFCCC requires the U.S. to adopt “national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs.” The stated purpose of these policies and measures is to demonstrate that developed countries are taking the lead in returning to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. While not the focus of this letter, the U.S. is in violation of these substantive commitments of the UNFCCC as well as its obligation to issue the Fourth U.S. Climate Action Report.

UNFCCC provisions and subsequent implementing guidelines and decisions set forth “national communication” requirements related to the Convention’s substantive requirements, met by the U.S. through its periodic “Climate Action Report.”⁴ Pursuant to Articles 4.2(b) and 12, each Party must communicate “detailed information on its policies and measures.” Article 12(5) specifies that the “frequency of subsequent communications by all Parties shall be determined by the Conference of the

³ To the extent any of the violations of law described in this letter require affirmative action by the State Department, please consider this letter a formal petition for such action pursuant to 5 U.S.C. § 553(e).

⁴ See http://unfccc.int/national_reports/annex_i_natcom/items/1095.php.

Parties.” Decision 4/CP.8 of the Conference of the Parties requested that Parties included in Annex I to the Convention submit to the secretariat a fourth national communication by January 1, 2006.⁵

U.S. law designates the State Department as the lead agency for U.S. compliance with its international obligations related to climate change. The Global Climate Protection Act of 1987 clarified that the Secretary of State “shall be responsible to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations.”⁶

The U.S. completed its First Climate Action Report in 1994,⁷ its Second Climate Action Report in 1997,⁸ and its Third Climate Action Report in 2001. The initial notice of preparation for the Third Climate Action Report was issued in March 2001, with the notice of availability of the draft Report for public comment issued eight months later in November 2001.⁹ The draft Third Climate Action Report was available for public review for thirty days. The final Third U.S. Climate Action Report was issued in May 2002, approximately six months after the public review period closed and six months after the U.N. deadline for submission.

The April 8, 2005 Notice of Preparation for the Fourth U.S. Climate Action Report stated that the “U.S. Government is currently preparing its fourth national communication, which is due to the UNFCCC secretariat no later than January 1, 2006.”¹⁰ The notice anticipated that “the U.S. will release the draft text of the fourth CAR for review and comment in the summer of 2005. Comments on that document will be due within 30 days of release. Because of the tight time constraints on completing and printing the final text, a longer review period will not be possible.”¹¹ In contrast to the relatively fluid drafting timeline of the Third U.S. Climate Action Report and the anticipated timeline for the Fourth U.S. Climate Action Report, the process has stalled.

Eighteen months after the notice of preparation for the Fourth U.S. Climate Action Report, there is still no sign of a draft for public review. The U.N. deadline for submission of the final Fourth U.S. Climate Action Report was January 1, 2006. We therefore consider the State Department’s failure to issue the overdue Fourth U.S. Climate Action Report agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706(1).

⁵ Decision 4/CP.8 of the Conference of the Parties, *National communications from Parties included in Annex I to the Convention*, FCCC/CP/2002/7/Add.1 (1 November 2002).

⁶ § 1103(c), Pub. L. 100–204, title XI, Dec. 22, 1987, 101 Stat. 1407, as amended by Pub. L. 103–199, title VI, § 603(1), Dec. 17, 1993, 107 Stat. 2327.

⁷ See, e.g. *Notice of availability of U.S. Climate Action Report*, 59 Fed. Reg. 54,022 (October 27, 1994).

⁸ See, e.g. *Notice of Preparation of Second U.S. Climate Action Report*, 61 Fed.Reg. 66,341 (December 17, 1996); *Notice of Availability of Second U.S. Climate Action Report*, 62 Fed.Reg. 25,988 (May 12, 1997).

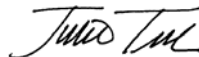
⁹ See, e.g. *Notice of Preparation of Third U.S. Climate Action Report*, 66 Fed.Reg. 15,470 (March 19, 2001); *Notice of Availability of Draft Third U.S. Climate Action Report*, 66 Fed.Reg. 57,456 (November 15, 2001); available at <http://www.gcrio.org/CAR2002/>.

¹⁰ 70 Fed.Reg. at 18,066.

¹¹ 70 Fed.Reg. at 18,067.

We look forward to your prompt response to this letter setting forth a timeline for compliance with the obligations of the UNFCCC and release of the Fourth U.S. Climate Action Report.

Sincerely,



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