minnow, nor does it further jeopardize the existence of that species. The Court's decision, however, disregards these facts and erroneously directs the Bureau of Reclamation to reduce water deliveries to project contractors such as the cities of Albuquerque and Santa Fe, if necessary to meet the needs of endangered species. This result is not consistent with the intent of section 7(a)(2) of the ESA, and therefore unreasonably creates an uncertain water supply situation for a number of communities in New Mexico.

This situation needs correction and the intent of section 204 is to do just that. It eliminates reclamation's discretion to unilaterally take water from San Juan-Chama contractors and reallocate it for ESA purposes. Section 205, however, preserves voluntary transactions by which Reclamation can meet the needs of the endangered fish. This is how business has been done since 1996, and that process is allowed to continue.

Section 205 also includes a subsection that legislates the sufficiency of the ten-year biological opinion addressing water operations in the Middle Rio Grande. I understand that protecting a biological opinion through Federal legislation is not insignificant. Nonetheless, there are several reasons why I believe this approach is appropriate in this content. First, there has been an endless cycle of litigation over water operations in the Middle Rio Grande. We simply need some level of certainty for water users if we are to proceed to address the long-term requirements of the ESA. Second, it is important to keep in mind that compliance with the biological opinion not only ensures compliance with the ESA, but should serve to improve water-supply and habitat conditions in the Middle Rio Grande. The Biological Opinion contains a reasonable and prudent alternative, or ''RPA'', that emphasizes a broad approach to conserving endangered species in the Middle Rio Grande. It requires minimum river flows based on the annual available water supply, and includes spring releases to trigger silvery minnow spawning activity. The RPA also contains No. 1, requirements for significant habitat improvements, including fish passage at the San Acacia diversion dam; No. 2, population enhancement activity; and No. 3, water quality improvements in the basin.

As a fall-back, to ensure continued survival of the silvery minnow if the RPA does not significantly improve its status, the legal coverage provided by the biological opinion lapses if minnow mortality exceeds the limits defined in the opinion's incidental take statement. In that event, the Federal agencies will need to re-consult with the U.S. Fish & Wildlife Service to ensure that the survival of endangered species is not jeopardized.

As a final matter, although I believe that the approach in Section 205 will maintain progress in recovering the minnow, mere compliance with the biological opinion is not the end of the story. I also expect that the Secretary of the Interior will aggressively pursue other actions to promote the recovery of endangered species in the Middle Rio Grande, including support for the efforts of the Middle Rio Grande ESA Collaborative Program. The Collaborative Program has been very successful in bringing together a diverse group of parties to work towards common restoration goals in the Middle Rio Grande. It will continue to be key to the recovery effort and I will continue to support funding its work.

Before yielding the floor, I want to specifically address some ongoing concerns with Section 205. First, Governor Richardson in New Mexico has been working with all the parties to the ongoing litigation to try and develop a comprehensive settlement to the difficult issues in the Middle Rio Grande. That settlement, while not yet secured, is within reach. If finalized, it will likely address a broader range of issues than the approach in Section 205. The concern being expressed is whether the Section 205 could be modified to accommodate legislation associated with any potential settlement. I want to ensure Governor Richardson and the parties at the table that I will remain open to consider any settlement proposal that may be developed as part of that process. A more comprehensive solution, particularly one developed by all the parties together, is a preferred approach that deserves substantial attention and consideration.

The Middle Rio Grande Pueblos have also expressed concern that their water supplies are not protected in Section 205. On this point, I think it is clear that the Tenth Circuit's decision does not provide any basis for the Secretary of the Interior to assert discretion over the Pueblos' available water supply and unilaterally reallocate such water for endangered species purposes. The Pueblos' legal status is different from the project contractors covered by the Tenth Circuit's decision. In fact, it is highly questionable whether any provision of law gives the Secretary discretion over the Pueblos water similar to that determined by the Tenth Circuit. Nonetheless, it is premature to conclusively address that issue at this time. I will, however, continue to work with the Pueblos, as well as Senator DOMENICI on this issue, to determine if a modification to this legislation should be considered.

I hope this statement provides a clear explanation on why I am supporting the legislative approach set forth in Section 205.I believe that it is a reasonable response to the issues confronting my state—and one that should avoid being the basis for an Endangered Species Act fight. I thank Senator DOMENICI for working with me on this provision and I urge my colleagues to support this language.

I yield the floor.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

EXTENSION OF CHAPTER 12 OF THE BANKRUPTCY CODE

• Mr. FEINGOLD. Mr. President, I am pleased that the majority has finally cleared H.R. 2465, to extend Chapter 12 of the Bankruptcy Code for another six months. As a consponsor of companion legislation, S. 1323, I have been working to get this done ever since the House passed its bill on June 23 by a vote 379–3. Chapter 12 expired at the end of June. It is unfortunate that it took an entire month for the Senate to take up this simple bill that keeps in place special simplified bankruptcy provisions for family matters. But with the harvest season just around the corner in many of our States. I am pleased that the Senate has taken this action. We have helped many farmers who are in difficult financial straits. That is a good thing.

It is high time that the Congress made chapter 12 permanent. It has been in place since the mid-1980s and has worked well. Along with the Senator from Iowa, Mr. GRASSLEY, I have championed taking this step along with the number of important improvements to chapter 12, including adjusting the income limitations for inflation, which has never been done. The major bankruptcy bill that has been before the Congress for a number of years includes those improvements. I oppose the overall bankruptcy bill, but I believe that the provisions dealing with chapter 12 can and should be passed independently. Family farmers in difficult financial situations deserve our support. I applaud the Senate for finally passing this short extension, and I hope we will make chapter 12 permanent before the end of the year, when another extension will be necessary.•

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

PASSAGE OF THE ENERGY BILL

• Mr. KERRY. Although I was not present to vote on the Energy bill passed last night, I would like the Record to reflect my opposition to the bill and the process by which it was passed.

I voted for the Democratic Energy bill, H.R. 4, last Congress. When the same bill came up for a vote last night as S. 14, I was announced against it. The reason is that debate on the Energy bill was closed down prematurely before consideration of important provisions such as renewable portfolio standards, clean air standards, and climate change could even take place.

Furthermore, there is no indication that the Senate and House conference committee is going to lead to any type of meaningful bipartisan negotiations. In fact, the Republican leadership has already boasted they will do little if anything to defend the Senate position.

Instead, they have announced that intention to rewrite the bill in conference. Apparently the Senate process has little meaning in this regard. It was just a ticket to a conference committee and a free hand in drafting a partisan bill.

The Nation needs a progressive, forward-looking energy policy that strengthens our national energy security, safeguards consumers and taxpayers, and protects the environment. Unfortunately, I believe passage of this legislation has put us on a fast track towards creation of an extreme Energy bill in conference that abandons each and every one of those core principles.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

OUR DEMOCRACY, OUR AIRWAVES ACT

● Mr. DURBIN. Mr. President, I am pleased to join my colleagues, Senators JOHN MCCAIN and RUSS FEINGOLD, in introducing S. 1497, the Our Democracy, Our Airwaves Act of 2003. This legislation complements the reforms accomplished through the Bipartisan Campaign Reform Act of 2002 by addressing an essential element omitted from the law: the demand side of fundraising.

As I emphasized during the Senate debate two years ago, simply dealing with the supply side of political campaigns—the sources of campaign contributions—misses the point. If we truly want to reform political campaigns in America, we must address the role of television. Television was once a tiny part of political campaigns, but it has grown exponentially.

Spending on television in political campaigns has skyrocketed. The $1 billion spent in 2002 by candidates, parties, and issue groups for political spots set a record for any campaign year and doubled the amount spent in the 1998 midterm election. It represented a four-fold increase in what was spent in 1982, even adjusting for inflation. What we are witnessing is ever more intensive efforts by candidates of both political parties to raise money for television and radio stations to deliver their messages to the American people.

What is often overlooked in this discussion is that the airwaves belong to the American people. Broadcasting stations are trustees of the lucrative electromagnetic spectrum. Broadcasters pay nothing for their exclusive licenses and are allowed to use the publicly-owned airwaves on one condition: that they serve the public interest.

Since 1971, Federal law has required that in the 45 days preceding a primary election and the 60 days prior to a general election, candidates are entitled to the lowest unit charge for broadcast media rates for the same class and amount of time for the same period. But for all practical purposes, this mandate has been meaningless. In order to secure their preferred time slots and guarantee that their ads are not bumped to a less desirable time, many candidates in competitive races end up paying premium prices instead of the lowest unit charge.

Television stations have taken this law, intended to benefit public discourse and to ensure that candidates are not penalized prior to an election, and have turned it upside down. Candidates end up paying dramatically more than the lowest unit rate. And as the costs to campaigns balloon, candidates, incumbents and challengers alike, must scramble for funds so they can give them right back to the television stations.

A $200,000 media program buys a few 30-second slivers of time to deliver ideas and views on the public airwaves. It takes just a moment to broadcast it, and if a viewer-voter gets up to get a sandwich in the kitchen when it airs, they miss it. But raising the funds to pay for the ill-fated spot still requires asking 4,000 people to make a $50 campaign contribution. As former Senator Bill Bradley observed several years ago: Today's political campaigns are collection agencies for broadcasters. You simply transfer money from contributors to television stations.

And as time ticks down to election day and the demand for television ads goes up, the stations raise their rates dramatically. Not only are rate costs for political ads inflated, stations are not covering the campaigns in their news segments in any significant way. Last week, findings from two instructive studies were published, which amplify these problems and underscore why enacting the Our Democracy, Our Airwaves Act is so important.

A study published by the Alliance for Better Campaigns based on a survey of more than 37,000 political ads on 39 local television stations in 19 states found that the average price of a candidate ad rose by 53 percent from the end of August through the end of October of last year. According to findings in another nationwide survey released last week by the Lear Center Local News Archive, a collaboration between the University of Southern California Annenberg School's Norman Lear Center and the Wisconsin NewsLab at the University of Wisconsin-Madison, viewers looking for campaign news during the height of the election season last year were four times more likely, while watching their top rated local newscast, to see a political ad rather than a political story. At the same time, those stations took in record-breaking amounts of political advertising revenue.

The Our Democracy, Our Airwaves Act addresses these concerns in three ways. First, it requires that television and radio stations, as part of the public interest obligation they incur when they receive a free broadcast license, air at least two hours a week of candidate-centered or issue-centered programming during the period before elections. Second, it enables qualifying federal candidates and national parties to earn limited ad time by raising funds in small donations. Up to $750 million worth of broadcast vouchers would be made available to be used to place political advertisements on television and radio stations in each two-year election cycle. As conceived in our bill, this system will be financed by a spectrum use fee of not more than one percent of the gross annual revenues of broadcast license holders. And third, it closes loopholes in the ''lowest unit rate'' statute in order to ensure that candidates receive non-preemptible time at the same advertising rates that stations give to their high-volume, year-round advertisers.

Until we get to the heart of what is driving up the cost of political campaigns, we cannot achieve real campaign finance reform. And at the heart of skyrocketing campaign costs is the cost of television. Our legislation will help reduce the amount of money in politics by making the public airwaves more accessible for political speech. The airwaves belong to America and to the taxpayers, and the network stations simply must give time back to challengers and incumbents across the United States if we're going to succeed in putting a stop to the money chase and the millions of dollars being spent on campaigns.

Only by providing candidates an opportunity to purchase time at affordable rates and imposing a modest and reasonable obligation on broadcasters to air at least two hours per week of candidate or issue-centered programming in the weeks before election day can we hope to return Our Democracy, Our Airwaves to the American people.●

NOMINATION OF DANIEL BRYANT

Mr. GRASSLEY. Mr. President, I rise today to state before this body that I object to proceeding to the consideration of Daniel Bryant, executive nominee to the Department of Justice. Mr. Bryant is nominated to be Assistant Attorney General, Office of Legal Policy at DOJ. I have placed a hold on this individual because I have numerous outstanding issues that have yet to be resolved by the Department of Justice. More specifically, I have several outstanding written requests before the Department of Justice. Some of these requests are more that 6 months overdue. In addition, I am presently working with the Department of Justice to overcome a number of procedural issues directly affecting my ability, as a member of the Judiciary Committee to, among other things, conduct oversight of the Department of Justice, and the Federal Bureau of Investigations.

ADDITIONAL STATEMENTS

J. MARC WHEAT

● Mr. LEAHY. Mr. President, I rise today to pay tribute to Marc Wheat, who is leaving the State Department's Bureau of Legislative Affairs after 2