cement reinforcement to protect against groundwater contamination. Fracturing involves removing thousands of gallons of waters from the well which includes the fracturing fluids. Once these fluids are returned to the surface, regulations require they are treated, stored, and isolated from groundwater zones. All these processes together work to significantly reduce the risk to groundwater.

This DOE and Ground Water Protection Council report ultimately concluded that Federal regulations on fracturing would be ''costly, duplicative of State regulations, and ultimately ineffective because such regulations would be far removed from field operations.'' Equally interesting, the report also concluded—and keep in mind this is the report of the Department of Energy and the Ground Water Protection Council—the ''only alternative to fracturing in reservoirs with low permeability such as shale would be to simply have to drill more wells.'' In other words, if we are not able to get these wells to produce a lot of shale, we would have to drill a lot of wells in their place.

These findings mirror the EPA's 2004 report of hydraulic fracturing in CBM production. EPA noted that fracturing involves the removal of thousands of gallons of ground water. This removal includes the fracturing fluids and the possibility that fracturing chemicals affect ground water. EPA also concluded that the low permeability of rock where hydraulic fracturing is used acts as a barrier to any remnant of fracturing chemicals moving out of the rock formations, as has been proven.

None of these findings are new. In the 1980 amendments to the Safe Drinking Water Act, Congress acknowledged that ''32 States that regulate underground injection related to production of oil and gas believe they have programs already in place to meet the requirements of this Act. States should be able to continue these programs unencumbered with additional Federal requirements.''

We need to recognize that in considering additional Federal regulation we are experimenting with disaster. In January, the DOE released a report by Advanced Resources International, which evaluated the economic and energy supply effects on oil and gas exploration and production under a series of new regulatory scenarios. One scenario evaluated the effects from new Federal regulation of hydraulic fracturing. According to the report, the largest cost for new unconventional gas wells would be from any new Federal regulations on hydraulic fracturing. The report concluded these costs would amount to an additional $100,000 for each well in the first year alone.

Among other factors, this report concludes that increasing Federal regulations on hydraulic fracturing would reduce unconventional gas production by 50 percent over the next 25 years. Even more recently, the American Petroleum Institute released a report in June which only evaluated the effect of increased Federal regulations and the effect of eliminating the practice of hydraulic fracturing altogether. The report determined that through duplicative Federal regulations, the number of new oil and natural gas wells drilled would drop by 20 percent in the next 5 years.

Should hydraulic fracturing be eliminated, new oil and gas wells would drop by 79 percent resulting in 45 percent less domestic natural gas production and 17 percent less domestic oil production.

It would be a disaster to impose new Federal regulations. They are talking about doing that now. They talked about it a few years ago. Every report has discouraged that from happening. Again, I am not alone in this opinion. Colorado Governor Bill Ritter recognizes the value of the practice. In the Denver Business Journal, the Governor characterized the bills pending in Congress imposing new Federal regulations on hydraulic fracturing as ''a new and potentially intrusive regulatory program.'' That was Governor Bill Ritter. A Colorado newspaper recently reported a number of Colorado counties have adopted resolutions against the pending Federal bills. States are passing their own resolutions opposing new Federal regulation of hydraulic fracturing.

For example, in March the North Dakota Legislature passed a concurrent resolution—I say to the Senator from North Dakota—to not subject hydraulic fracturing to needless and new Federal regulation. North Dakota is home to the Bakken shale, where oil wells are reported to be producing thousands of barrels a day.

America has tremendous natural gas reserves. The exploration and production of these reserves using hydraulic fracturing has been regulated by the States and conducted safely for 60 years. The oil and gas industry contributes billions in State and Federal revenues each year and billions in salaries and royalty payments. The oil and gas industry employs 6 million people in the United States. When the United States is approaching 10 percent unemployment, and when we want energy security and independence from foreign energy, why would we want to go out of our way to restrict an environmentally and economically sound means to extract our own resources—a means that has demonstrated effectiveness and safety for 60 years?

The oil potential in ANWR would produce 10 billion barrels or 15 years' worth of imports from Saudi Arabia. The RAND Corporation has reported that the new potential production in just Utah, Colorado, and Wyoming would be around 1 trillion barrels of oil. That is three times Saudi Arabia's oil reserves and more oil than we are currently importing from the entire Middle East. But the Democrats will not let us produce. We are currently the only country in the world that doesn't develop its own resources. In fact, the President's budget imposes $31 billion in new taxes on oil and gas development. We must not impose any new——

The ACTING PRESIDENT pro tempore. The morning business period is closed.

Mr. INHOFE. I will finish this last sentence, if it is all right.

We must not impose new burdens. This is a procedure that is necessary for us to put ourselves in a situation where we can become energy independent, and I encourage all my colleagues to look very carefully at the one thing that is going to give us that independence, and that is this procedure called hydraulic fracturing.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is concluded.

ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 3183, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3183) making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

AMENDMENT NO. 1813

(Purpose: In the nature of a substitute)

Mr. DORGAN. Mr. President, I call up the substitute amendment to H.R. 3183, which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 1813.

Mr. DORGAN. Mr. President, I ask unanimous consent to dispense with the reading of the substitute amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DORGAN. Mr. President, this is the Energy and Water Development Appropriations Subcommittee bill that I bring to the floor this week with my colleague, Senator BENNETT, from Utah. I am chairman of the subcommittee, Senator BENNETT is the ranking member, and we have worked on the bill for some long while.

On July 9, 2009, by a vote of 30 to 0, the committee recommended the bill,

as amended, be reported to the Senate. That is, the full Appropriations Committee has recommended this bill, on a bipartisan basis, without objection, 30 to 0.

I want to thank both Chairman INOUYE and Vice Chairman COCHRAN for their support of this bill, and I want to especially thank Senator BENNETT for his work with me in developing the legislation.

Let me, perhaps as I begin rather than end, thank the staff of the subcommittee: Scott O'Malia, on the minority side; Doug Clapp, Roger Cockrell, Barry Gaffney, Franz Wuerfmannsdobler, and Molly Barackman.

There are many staff on both sides who have worked very hard. Putting legislation of this type together is not easy. We are working with limited resources, at a time when we have relatively difficult circumstances, to try to deal with Federal budget deficits and other issues, but we have put a bill together that has garnered bipartisan support.

The allocation for this bill is just under $34.3 billion. With score keeping adjustments, it comes down to about $33.75 billion. The total funding for our bill is 1.8 percent less than the President's budget request and just 1.4 percent over the regular energy and water bill of 2009. That means there is a very modest increase for the programs in this legislation.

Let me say generally this legislation deals with the energy and the water programs across the country. Energy and water are very important to this country's long-term future. What we are working to support is jobs and the economic health of our country as well as an adequate energy supply dealing. These energy challenges we face from being overly dependent on foreign oil doing something about climate change require action. We are dealing with energy accounts in this bill that are very important for the country.

We have tried to make funding determinations about them that we think move this country in the right direction and help make us less dependent on foreign sources of oil. That means that we have, in related authorizing legislation, actually expanded drilling and the determination to try to find additional supply in this country. Fossil energy from coal, oil and natural gas is going to continue to be used in the future. But we need to use them differently.

This legislation includes opportunities to do a range of activities that I believe will be in the country's best interests. Working with Senator BENNETT, we know the legislation dealing with energy and water require substantially greater resources. We have far more water projects underway in this country than we can possibly fund in the short term. I believe we have something close to $60 billion of unfunded water projects. The Corps of Engineers, and particularly the Bureau of Reclamation, especially for western America, are charged with funding these projects.

Then, on the energy side, the accounts dealing with efficiency and reliability and a wide range of energy accounts—all of those accounts understand and recognize that we do not have unlimited amounts of money. Our country has very substantial and growing budget deficits because we are in a deep recession.

My colleague from Oklahoma was speaking as I came to the Chamber. I agree with most of what he described with respect to hydraulic fracturing. He is describing something that affects our ability to continue to produce a domestic supply of oil and natural gas. My colleague should know we have had now from both the previous Presidents that we zero out the research and development in oil and gas development. The current President's budget seeks to cut the oil program. My colleague and I have restored the funding for that. One of the reasons we have done it is our country leads the world, for example, in unconventional and ultra deep water drilling. We need to retain program funding to keep that advantage.

We need to produce more here at home, and we have added the funding back. As I indicated, both the previous administration and this administration decided not to support the research and development funding for oil research and development.

The description of the shale formations that Senator INHOFE talked about earlier remind me that 5 to 10 years ago we could not drill in these formations. They are now delivering substantially new resources. That energy was not accessible to this country because we didn't have the technology and the capability. My colleague described the Bakken shale in North Dakota, which I want to describe in a moment. I think it is so important for us to have the research and development funding which current technology benefitted from in the past. With sustained investments, we might have future technology options available as well.

To go to the previous point, the Bakken shale is a formation 100 feet thick, and it is 10,000 feet underground. To drill through that 100-foot-thick seam, they have divided it into thirds—top third, middle third, and bottom third. They go down two miles with one drilling rig, 10,000 feet down, searching for the middle third of a seam of shale that is 100 feet thick. They do a big curve when they get down two miles, then they go out two miles. The same drilling rig, goes down two miles then makes a large curve and goes out two miles, following the middle third of a seam a hundred feet thick called the Bakken shale.

A few years ago I asked the U.S. Geological Survey to do an assessment of what is recoverable in the Bakken shale. They came back with their estimate after a 2-year study, saying there are 4.3 billion barrels of recoverable oil using today's technology. It is the largest assessment of recoverable oil in the lower 48 States ever made in the history of our country.

None of that was available to us a decade ago. It was there, but it was not available to us. How do we get that oil? When they drill down with a drilling rig, it takes about 35 days to drill that hole, then fracture it under high pressure—hydraulic fracture, they call it. After that, they tear down that rig and move it away a ways and drill another hole—every 35 days. The hydraulic fracture allows that rock formation to be fractured so that the oil drips and then is extracted from the well. They are pulling up oil out of those wells, in some cases 2,000 barrels a day. The key to that is, No. 1, have they carried out the research and development so that we lead the world in the ability to do that kind of very sophisticated exploration. We continue to put that funding in this bill and have always had it in this legislation. That is what has opened up this unbelievable opportunity.

The second half of it, as my colleague described, is not something we are doing in this bill, but the ability to continue hydraulic fracturing, decade after decade, I think for nearly 50 years, I am not aware of any evidence that there is any contamination of groundwater with hydraulic fracturing when companies have followed the appropriate guidelines and regulations.

I have been describing one small part of what Senator BENNETT and I have done with respect to increasing our domestic energy needs in this bill.

We also want to encourage the development of renewable energy. We have done a lot of things in this legislation to do that. We want to encourage the ability to use our most abundant resources, such as coal, but we must use them differently. That means, if you are going to have a lower carbon future you have to decarbonize the use of coal. So we need to make substantial investments to be able to decarbonize the use of coal.

I think we can do that. Some say let's give up on it. I say let's find a way to use our most abundant resource by decarbonizing it so that we can move to a low carbon future to protect our planet.

We are doing a lot of things in this legislation that I think move this country in the right direction for a better and a more secure energy future. When I talk about energy and say that nearly 70 percent of our oil now comes from outside of our country, I think most people would look at that and say that makes us vulnerable. That is an energy security issue. It is also a national security issue. If, God forbid, somehow, some way, someday, someone shuts off the supply of foreign oil to our country, this economy of ours would be flat on its back. So I think everyone—the previous administration, this administration—believes we must be less dependent on foreign energy.

The other thing that is important to understand is, although about 70 percent of our oil comes from outside our country, nearly 70 percent of the oil is used in our transportation fleet. We are doing things in this appropriations bill that moves us toward a different kind of transportation fleet, an electric-drive fleet, for example. If we are using 70 percent of our oil for transportation in this country, how do we make us less dependent on foreign oil? Convert; move to something else.

We have funding in this legislation and we had funding in the Economic Recovery Program for battery technology and for a whole series of things that help accelerate the movement toward an electronic transportation system.

All of these things are things we can do. It is only a matter of establishing public policy that encourages it, public policy that is supportive of the direction we want to go.

I am going to be describing in some detail some of the accounts. I have talked about the energy piece of this a bit. We have programs in here for electricity, fossil energy, energy efficiency and renewable energy—small little things that people don't think much about.

Energy efficiency: Almost everything we use these days—a refrigerator, a dishwasher, an air conditioner—all of the appliances are much more efficient than they have ever been. I recall some years ago when I was supporting and pushing something called a SEER 13 standard for air conditioners—a SEER 13 standard. You would have thought we were trying to bankrupt the country by insisting on a much higher standard of energy efficiency for air conditioners. We have gotten to SEER 13 and are looking beyond that now, but we have pushed standards so that when you put a new refrigerator in your kitchen these days it uses so much less electricity because it is so much more efficient.

I recognize—someone told me this a while back—yes, we are putting these unbelievably efficient refrigerators in kitchens, and then they take the old refrigerator and put it in the garage to store beer and soda. I recognize we need to get rid of those old refrigerators, perhaps, but it is people's right to move them into the garage.

My point is, these smaller issues we are funding, energy efficiency standards for appliances are very important. When we get up in the morning we flick a switch and a light goes on. We turn on an electric razor and never think much about what makes it go. We plug it into a wall. We go down and put something in the toaster and the bread toasts because there is electricity. We put a key in the automobile, and we drive off to work.

As Dr. CHU says, 2,000 years ago, normally when you would go look for food someplace, 2000 years ago you would get on one horse and go look for something to eat. Now, of course, we get in modern conveniences and we take 240 horses to go to the 7–Eleven or grocery store. That is the way our engines work and use energy.

But we are required now to be smarter and use energy in a different way. For a wide range of accounts, my colleague Senator BENNETT and I will begin describing some of these accounts in more detail in between other presentations. With the funding in this legislation, we are trying to change the way we use energy: Develop a more abundant supply of energy, including changing the way our vehicle fleet is powered. One issue with respect to the transportation fleet is moving toward a hydrogen and fuel cell future, I think a future beyond electric drive. Still, hydrogen is everywhere; it is ubiquitous. I believe a hydrogen fuel cell future is something our children and grandchildren will likely see realized and will be very important to this country.

The administration, in its budget request for this fiscal year to the Congress decided it would zero out 189 existing contracts in hydrogen and fuel cell program. We included the money again because we don't think that is wise to cut ongoing work.

I agree in the short term we are going to move toward an electric drive transportation system, but, in the longer term, we need to continue the research toward hydrogen and fuel cells, and we included that money in this bill.

Let me turn for a moment—I am going to come back to some energy issues a little later, after Senator BENNETT talks about this bill as well. I want to talk about water, because this bill, after all, is also about water. As all of us who have studied history know, water is the subject of great controversy. Water is very important. So many things related to development and jobs in this country relates to accessible water.

We have issues in this bill dealing with the Corps of Engineers and the Interior Department's Bureau of Reclamation with respect to water. These address storing water, moving water, dredging water in ports and channels so that commerce can occur, and much more. In some cases, we must address not having enough water or too much water. We have a lot of issues.

As I indicated earlier, we have far more water projects than we can possibly fund. Senator BENNETT and I decided we simply could not fund what are called new starts in construction and investigations this year. We hope to do that next year, but we could not do it this year. We didn't have the money. We think it is far better to continue funding for existing projects and try to complete some of the projects underway and then proceed with new starts next year. We had 92 requests for new projects starts. We have a $60 billion backlog and 92 requests, some of which came from the President. We believed we could not do it. I wish we could, but we could not do it.

I also want to make a point that there are, in this legislation especially, legislatively-directed proposals, that is the Congress itself directs certain funding. The President sent us proposals, particularly on water projects—energy projects as well, but especially water projects. He requested earmarked funding. In other words, the President says, all right, here is what I want you to have for water. These are my Presidential earmarks and how I believe you should spend the water money.

Some of them made a lot of sense. Some of them did not. Senator BENNETT and I also included, in this legislation perhaps more than other legislation, legislative-directed funding on the amount of funding we believed should go to projects.

Because, frankly, I think perhaps Members of Congress have a much better idea of what are the water needs more than the Corps of Engineers, the Bureau of Reclamation, Office of Management and Budget, or the White House. They know which projects will benefit their State's commerce.

So this subcommittee, going back many decades, has had a tradition of legislatively-directed funding toward the highest priorities, particularly in water projects. That makes a lot of sense to me. I assume we may well have some folks come and decide that some of them do not have merit.

It is important to discuss the individual programs for individual legislatively-directed amounts, and we will do that when necessary. But I did wish to say once again that we received a lot of recommendations from the President for earmarking the funding for various projects, and we have included many of these. We have also included projects that were recommended by the Members of Congress that were well underway.

I have other things to discuss, but let me yield the floor because I know my colleague, Senator BENNETT, will want to describe some of this bill as well.

Let me close as I opened by saying it is a pleasure to work with Senator BENNETT on these issues. These do represent investments in our country. Some things are spent and you never get it back, it is just spending. But when you build water projects or invest in the energy further such as through this bill, then it represents investments in the country's future that will provide very substantial dividends for the country for a long time to come.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. BENNETT. Mr. President, I appreciate the remarks of my chairman, Senator DORGAN. Even more, I appreciate the hard work he has put in. The level of cooperation between the two of us and between our two staffs is as he has described it. This is a truly bipartisan effort, aimed at trying to solve the problems we face. One demonstration of the fact is that we have, in a bipartisan fashion, come in with a number significantly below that which the

President requested. If it had been a single partisan effort, I am assuming it would have been responsive entirely to the President's request.

As Senator DORGAN has indicated, we have a number of Member-directed items of spending. When people say: Well, where do you get the money for that? The answer is, we have canceled the President's directed orders of spending.

I agree with Senator DORGAN that Members in these areas are closer to the people, closer to the problems, and understand them a little better than the folks downtown.

I recommend passage of the bill to my colleagues. I am delighted with the prospect that it is highly likely this will be done prior to October 1, the start of the fiscal year. That is a goal that has not been achieved in decades and a further tribute to the leadership of Senator DORGAN that we are on that path.

As I have said, the bill provides $643 million below the President's request. This is the number Senator DORGAN cited, the $34.271 billion, but it is $476 million above current year levels. One of the things we did that helps us come in below the President's request was focus on the fact that the stimulus package that passed earlier this year put a great deal of money into these accounts. We did not want to ignore the fact that they had that money from the stimulus bill in coming up with our own figures.

The committee, as Senator DORGAN said, has said no new starts for the Corps of Engineers. I repeat that and reemphasize that because many of the complaints that I think we are going to get on the floor about Member-directed spending are for projects in the Corps of Engineers.

They will say: Well, you are calling for earmarks. You use the dread word for this project and that project. Because we have no new starts, every project we are calling for is an ongoing project. So that if we were to cancel it, it would undoubtedly end up costing more money rather than would be saved if the earmark were to be struck down.

For the Bureau of Reclamation, we are $55 million below fiscal 2009 levels. Pardon me. The request is $55 million below the fiscal 2009 level. The committee provides an additional $110 million to the Bureau. As Senator DORGAN has said, this is the tremendous backlog of underfunded projects. Let us take a sober lesson from what happens when we do not proceed with the proper maintenance in this area.

In my own State of Utah, a privately owned irrigation canal broke and flooded the community of Logan, UT, and tragically, in the process, took the lives of two young children and their mother who were overwhelmed as a result. This is a reminder to us that we have a responsibility to keep this fund going because the human cost can be significant.

These types of accidents are only avoidable if we are vigilant in maintaining the infrastructure and making the appropriate investments. With respect to the Department of Energy, the committee recommends $27.4 billion which is $1 billion below the President's request.

Again, this is a demonstration of the fact that we are attempting to be good stewards, that we are paying attention to the fact that the Department of Energy was already the beneficiary of over $45 billion in supplemental and stimulus funding in fiscal 2009.

Not all of that will be spent in this fiscal year, so that is a little bit of an overstatement of how much they will have to offset. But looking at the amount they had from the stimulus package, we felt we were appropriate in coming in $1 billion below the President's request.

We do recommend an additional $100 million for Nuclear Power 2010 in order to complete this project. The bill restores $50 million funding for the Integrated University Program and Research and Reactor Facilities account to support nuclear engineering and research and training.

That was eliminated in the budget request. I do that partly because I believe in it. I am joined with Senator DORGAN in doing it and also because, in my new assignment, I am taking the place of Senator Domenici, and he will come back and haunt us both if we are not appropriately supportive of nuclear power. His great work in that area is something I think we should carry on.

There are other issues the Senator from North Dakota has already mentioned that I will not touch on as we go along because I do not want to be redundant. We do provide an increase in funding for the Office of Science, $127 million over the current year levels. I think that is essential to a sustained investment in important scientific facilities that we have throughout the country.

Let's talk about cleanup. There are many Members of the Senate in States that support a strong environmental cleanup program, and the request reduced cleanup funding by over $200 million from current year levels. Well, we believe the faster we can move on cleanup, the cheaper it will be over the long term because contractors are out of work now. They are anxious to get back to work and they will make low bids and take advantage of that situation.

We recommend $350 million in additional funding for both defense and nondefense cleanups. Again, there is such an activity going on in my State, and I know that moving ahead and having the funding available now will save us significant amounts long term. So funding has been added for cleanup activities at DOE facilities located in South Carolina, Idaho, Washington, New York, Illinois, Kentucky, New Mexico, and California.

The committee has also restored critical funding in our national security sites, which was reduced in the President's budget request. An additional $83 million was added to the weapons account to invest in critical infrastructure and science facilities.

We are attempting to highlight what I consider to be the failure of this administration to address fully spent nuclear fuel and defense waste inventory in this country. Consistent with the President's request, a minimum level of funding has been provided to sustain the NRC license review process of the Yucca Mountain Project.

The Secretary of Energy has determined he will convene a blue ribbon panel of advisers to recommend other disposal options. But while the administration is considering these options, ratepayers across the country are required to pay $800 million annually to the nuclear waste fund to address spent fuel solutions.

CBO estimates that by the end of the year the unspent balance in this trust fund will be $23.8 billion. The committee has included language directing the Secretary to conduct an evaluation of the sufficiency of the fund and suspend the annual collection from ratepayers until he has a strategy to address the issue of spent fuel inventory.

Another problem that has arisen that we have dealt with has to do with the funding of pensions. We have provided the Secretary the authority to transfer funding within the Department to mitigate the impact to specific programs. The environmental cleanup mission has been hardest hit by pension shortfalls. The committee has not included any of the proposed budget gimmicks included in the request, and we have rejected a new tax on uranium fuel to pay for the cleanup.

With that, I think I have covered the highlights. I am sure there is more the chairman will talk about. I will listen to what he has to say. If there is any pet project I think needs to be highlighted, I will rise to my feet again. But I wish to summarize that the committee has not included funding for new starts for either Members of this body or for the President. The funding is dedicated to the completion of ongoing projects. We have reduced the amount of Member-directed spending by 8 percent from previous years as we hear the complaint some people have with respect to that process.

We have worked hard to rebalance the administration's request to ensure that investment in the water infrastructure is sufficient. We recognize that we could not accommodate all the needs across the country, so we focused our effort on ongoing projects and forgoing new starts.

I believe this budget strikes an appropriate balance and I recommend its adoption.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, today the Senate begins consideration of its third appropriations bill for fiscal year

2010. The bill before the Senate provides funding for the Department of Energy, the Army Corps of Engineers and for related agencies. The funding in the bill totals $33.75 billion. This is nearly $650 million lower than the administration requested.

As we begin our debate on this bill, I urge my colleagues not to delay action on this measure. The Senate will only be in session for 2 more weeks prior to the August recess. The Appropriations Committee has reported seven bills which have already passed the House and are awaiting Senate action. We need to get this bill passed so that we can move on to the other appropriations bills that are ready for consideration. Passing appropriations bills and providing the funding essential to run our Federal Government is one of the most important duties of this Senate. We need to act responsibly and move this legislation.

All Senators should have an interest in seeing this bill passed. It provides critical funding for our nation's waterways, for safeguarding our nuclear power industry, and for programs to improve energy usage, conservation and discovery. I know of very little controversy associated with this measure. I would ask any Member who is interested in amending this bill to come to the floor today to offer any amendment.

I am very grateful to Chairman DORGAN and Ranking Member BENNETT for their hard work on this measure. The committee strongly endorsed the recommendations in this bill and passed the measure unanimously. I believe this bill deserves the support of all my colleagues. I urge all Members of the Senate to work with the managers and help us attain quick passage.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from North Dakota.

Mr. DORGAN. Madam President, a couple of additional points:

No. 1, the administration's budget to the Congress for this year did recommend an increase in Corps of Engineers funding for water issues. They should be complimented for that. That is a step forward. We have seen relatively flat and underfunded budgets for the Corps of Engineers in recent years. It is encouraging. We added to it, of course, but the investment needed in major water projects to be completed is very important. I appreciate the administration's decision to increase, at long last, the recommendations there.

No. 2, my colleague, Senator BENNETT, mentioned Yucca Mountain. I expect that will be mentioned more than once during this discussion in the next day or so. We are going to see the building of some additional nuclear power plants in this country. The reason is pretty obvious: Once built, nuclear power plants do not emit CO_2 and therefore do not contribute to the warming of the planet. We are beginning to see additional activity. Companies are preparing license applications now.

Senator BENNETT described the issue of Yucca Mountain. I do want to make a point about that because it is important. I didn't come to the Congress with a strong feeling about building additional nuclear power plants. I have, with my colleague, increased some funding for loan guarantees for nuclear power plants in a previous appropriations bill because I come down on the side of doing everything, and doing it as best we can, to address this country's energy challenges. They are significant and require building some additional nuclear power capacity.

This President campaigned last year against opening Yucca Mountain. It was not a surprise to the American people that he would at this juncture take the position that Yucca is not the place for a permanent repository for high level waste materials. The Secretary of Energy and the administration have recognized that, not proceeding with opening Yucca Mountain, does not mean we don't need an intellectual framework for nuclear waste. They have indicated and committed themselves to that, the development of an alternative framework for how we address the issue of waste. We have to do that because, in order to build plants, we have to establish waste confidence. I am convinced the administration is doing the right thing in the sense that they have said we don't want to open Yucca, but they are saying there has to be an alternative. We are committed to trying to find a solution and explore the alternatives with a blue ribbon commission.

I wish to mention the National Laboratories. This bill funds our national science, energy, and weapons laboratories. These laboratories are the crown jewels of our country's research capability. We used to have the Bell Labs, and we had laboratories that were world renowned, world class, that didn't have anything comparable in the world. The Bell Labs largely don't exist at this point. Much of our capability in science for research and technology exists in these science labs we fund in this bill. I am determined to find ways to make certain those best and brightest scientists and engineers working on the future of tomorrow and the new technologies for tomorrow at the national science laboratories have some feeling of security about their future. The last thing we should want is to see the roller-coaster approach to jobs at our National Laboratories and our science labs.

We had a hearing some while ago in our subcommittee on the issue of how to continue to use coal in the future. That leads to the question of carbon capture and sequestration. I held a hearing in our subcommittee on carbon capture and beneficial use. One of the witnesses from one of our laboratories, Margie Tatro from Sandia National Laboratory, talked about what they are working on. It was breathtaking. We have this giant problem related to using coal, but it is not an insurmountable problem. She talked about the work they are doing with respect to concentrated solar power to be used in a heat engine to take CO_2 in on one side of the engine and water in on the other side. They fracture the molecules and, through thermal chemical dynamics, they create methane gas from the air. I don't know exactly where all this goes.

Deep in our laboratories are some of the brightest people working on these issues. We will solve some very vexing and challenging energy issues through research and development programs. I look at what we are doing in those areas for energy efficiency and renewable energy such as for hydrogen, biomass and biorefineries, solar energy, wind energy, geothermal energy, vehicle technologies, building technologies, industrial technology, weatherization, State energy programs, advanced battery manufacturing, and more.

All of these issues are investments in the country's future and will, no doubt in my mind, unlock the mysteries of science to give us the capability to do things we did not dream possible. That opens up the opportunity to find new sources of energy, to move us way from this unbelievable dependence on foreign oil, to move toward different constructs in building efficiency, appliances, and new vehicles. That solves a number of things, allowing us to produce more energy, more renewable energy, more fossil energy, but it also allows us to conserve much more because we are prodigious wasters of energy.

I didn't mention one other area of electricity—and it goes with conservation—incorporating smart grid technologies. We will in the future see substantial amounts of smart metering in homes that allows people to change very substantially the way they use electricity in their homes. They have not had, up until this point, that capability, but the capability, because of the research going on and the demonstration programs, some of which we are funding, can increase all across the country in the future. That, too, will invest in making us less dependent on foreign oil.

All of these things play a role in what we are trying to do.

In the electric delivery and energy reliability portion of our bill, we have programs for clean energy transmission and reliability, smart grid, cyber-security for energy delivery systems. They are examples of a wide range of investments in all of these areas that will make this a better country and advance our energy and water interests.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN MEMORIAM: WILLIAM PROCTOR JONES

Mr. DORGAN. Madam President, I rise to make a statement in honor and in memory of William Proctor Jones. He died three weeks ago on July 7, the day before we actually wrote and marked up this bill in subcommittee.

Proctor Jones was a longtime staff director of this subcommittee. His death is a great sorrow for our members and staff who worked with him. His life was a great blessing for this country.

He first came to work in the Senate in April of 1961. He went to work for his home State senator, Richard Russell of Georgia. Proctor moved to the Appropriations Committee in 1970 and worked there 27 years until 1997. Since 1973 and beyond and for the majority of his time on the committee, Proctor served as staff director of the Energy and Water Subcommittee.

For decades, as this bill was brought to the floor of the Senate, Proctor Jones was sitting on the floor knowing that he played a very significant role in putting together the investments this country was making in the critical areas of energy and water. Proctor became a very close adviser and close personal friend of Senator Bennett Johnston, the Energy and Water Subcommittee's longtime chairman.

For those of us who knew Proctor and relied upon him, he defined the very best of the term ''public servant.'' He was tireless in his work. He was a master of the budget and the appropriations process and an expert in many policy fields this subcommittee has dealt with over the years. His service made this country a much better place.

This country moves forward because a lot of people do a lot of good things in common cause to make judgments about what will strengthen America. It is often the case that those of us who are elected and serve have our names on a piece of legislation or our names on a report of a subcommittee such as this, but it is also often the case that some very key people who have devoted their lives to good public service played a major role in making good legislation happen. William Proctor Jones is one of those.

Today, as we take up the piece of legislation from a subcommittee he spent decades working on, I honor his memory and thank him and his family in this time of sorrow and thank Proctor Jones for all of the work he did for his country.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, I associate myself and those of all minority Members with the comments of the chairman about Proctor Jones. I didn't have the opportunity to work with him as closely as others have, but the legacy the chairman has described is genuine and real. All of us in the Senate, regardless of party, wish to acknowledge that.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Madam President, the Senator from Utah and I would ask of Senators who have amendments to this legislation that if they wish to come now, we would very much like to have amendments offered. Certainly the majority leader has wanted to bring appropriations bills to the floor of the Senate. The chairman of the Appropriations Committee described appropriately, a few minutes ago, the importance of trying to get these appropriations bills completed. So working through the full committee we are winding our way through.

Now Senator REID is bringing them to the floor, and I deeply appreciate his determination to do that. It is a marked departure from what we were able to do previously. We would like to get individual appropriations bills done, get them to conference, have a conference with the House, and get them to the President for his signature. That is the way the Congress is supposed to work. It is the way appropriations bills are supposed to be done.

We will have amendments, I am sure. We were told someone has prepared nearly 20 amendments. But, look, they ought to have that opportunity. In the past couple years they did not have that opportunity. That is what Senator REID is doing now, to say: Bring these to the floor. Give people an opportunity to take a look at what the Appropriations Committee has done. If they disagree, come to the floor with amendments, have a discussion, and vote on the amendments. It is exactly what we should do.

It is a problem, however, that we do not have unlimited time. My hope is—and I think Senator BENNETT's hope is—we could have people come over, offer amendments, and we could finish this bill in the next couple of days. It would be great to finish it late tomorrow night or perhaps Wednesday at the latest. But in order to do that, we would need some cooperation. We would very much ask people to tell us what their amendments are, come over and file amendments, and come and debate the amendments. The point is, we are here and ready, and we very much want to get this piece of legislation completed.

I have described in some respects the urgency of our energy policies in this country. Well, the fact is, passing this legislation, and doing so now, will give us the opportunity early in the fiscal year to have the Department of Energy and the administration develop energy strategy based on these investments. For the first time in a long time, we will know where we are headed.

I have always felt we ought to be saying: Look, here is where America is headed on energy. Here is what we are going to do on renewable energy. Here is what we are going to do on carbon capture and storage. Here is where we are headed. You can invest in it. You can count on it, believe in it, because this is America's policy. Part of that policy is developed through the authorization committees, and no small part is developed in what we fund in the Department of Energy. Exactly the same is true with respect to water policy.

Let me make this point as well. This country had an economy that fell off a cliff in the first part of October of last year, and we still are in a deep recession. In the middle of a very deep recession, a piece of legislation that is going to provide the funding, hopefully by October 1, to proceed ahead building and creating water projects and other things puts people to work. It invests in the country's economy in a way that puts people to work and provides jobs. That is very important.

For a lot of reasons, again, I commend the majority leader for bringing this to the floor. We will hope for some cooperation. We want amendments, if they want to bring amendments to the floor. We want them today or beginning in the morning. Senator BENNETT and I wish to work with our colleagues to try to review amendments. We wish to work with them. Perhaps they have some ideas we did not think of. We could add to this bill by consent, or others perhaps we can debate and have a vote on.

We want to make that known to our colleagues. We are looking forward to completing this bill in the early part or at least no later than midweek.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—S. 370

Mr. INHOFE. Madam President, I want to spend a little time on a bill that has to do with one of the three major interests we are going to have during the recess. One of the issues is one I feel very strongly about; that is, what is happening right now at Guantanamo Bay. Some refer to it as Gitmo. I have some very strong feelings about that.

I do not know why our President has this obsession that he is going to turn loose or bring these detainees, these terrorist detainees, back to the United States. If you do that, either to try them or to bring them back here, they become magnets for terrorist activity.

We have detained about 800 al-Qaida and Taliban combatants at Gitmo. We have to understand that a terrorist combatant is someone different than you would normally—we are not talking about criminals here. We are not talking about even people who represent countries. We are talking about terrorist combatants. To date, over 540 have been transferred or released, leaving approximately 230 at Gitmo.

Here is the problem we have. If I were making this talk, as I was, about a month ago, I would say we had about 280 detainees at Gitmo. The problem is, you cannot get rid of them by asking some country to take them because the countries will not do it. You do not want to bring them back to the United States because, as I said, that becomes a magnet.

So our President has been, one by one, trying to bring these back, putting them in our system for trial here in the United States. It is important to understand the rules of evidence are different. If you are in a military tribunal, you can dispose of these people. But you cannot do it—for example, hearsay evidence is not admissible in the courts in the United States. So it would not fit in our Federal system.

President Obama has ordered the Guantanamo facility be closed. He has recently given an extension to that.

In 2007, the Senate voted 94 to 3 on a nonbinding resolution to block detainees from being transferred to the United States. It said: Detainees housed at Guantanamo Bay should not be released into the American society nor should they be transferred stateside into facilities in American communities and neighborhoods.

Well, that is very specific. In fact, I had the amendment to do that on the Defense authorization bill only last week. Quite frankly, it was blocked by the Democratic majority.

On May 20, 2009, the Senate voted 90 to 6—that was my and Senator INOUYE's language; it was a bipartisan amendment—to prohibit funding for the transfer of Gitmo detainees to the United States. We are hitting them two different ways. One is, we are saying you cannot bring them over here. Second, you cannot try them over here. And now, thirdly, we are not going to pay for any relocation of these people.

Unfortunately, the supplemental appropriations conference deleted that provision. That was a provision that passed 90 to 6, authored by me, INHOFE, and Senator INOUYE, the senior Senator from Hawaii. But they took it out. So that means it is not there right now for trials. But the law does block funding for permanently transferred detainees from Gitmo to the United States for the 2009 budget year, which ends on September 30.

The House Appropriations Committee will vote this week on language contained in a manager's amendment proposed by Representative JERRY LEWIS of California prohibiting the administration from spending any money to move prisoners to U.S. soil. Last Thursday, the Senate Democrats again blocked an attempt to consider an amendment that would have permanently prevented the detainees from being transferred from Gitmo. That was my amendment. It was part of the Defense authorization bill. When President Barack Obama took office, there was one free bed at the supermax prison in Colorado, with a typically long waiting list to move high-security prisoners into supermax.

To understand what this is, the supermax prison is one with the very highest level of security, a place where they might argue that you could put a terrorist there and that terrorist, regardless of how serious he was, is one who would be secure. The problem they are overlooking is, if they are located in the United States, they become a magnet for terrorism.

I know President Obama, at one time, was proposing some 17 sites in America where we could put these Gitmo detainees. One of those happened to be in Fort Sill, in my State of Oklahoma. I went down to Fort Sill to look at our prison facility down there. There is a master sergeant—no, I am sorry, Sergeant Major Carter was her name. She was in charge of the prison. That prison was set up as a normal military prison but certainly not suitable for detainees, not suitable for terrorists. It happens that Sergeant Major Carter—you can call her and ask her about this. She had two tours at Gitmo, and she said: Why in the world are you guys in Washington and this President trying to close Gitmo? It is an asset we need. It is a place where they can be secure. It is a place where they have treated them humanely over the years. Well, anyway, so when you look at what we have here, there are no places that are appropriate.

Assistant Attorney General David Kris testified at the same hearing of the House Armed Services Committee that both civilian and federal jails and military prisons are being considered for potential future incarceration for prisoners facing criminal prosecution, military tribunals or long-term detention without trial, more than 50 have been cleared for release, and an administration task force is sorting through the remaining 229 prisoners to determine their fate. What we are saying is we have already picked the low-hanging fruit. We have already taken care of the problem of those individuals who either a country won't take back or you can find someplace to put them. But the remainder are the real tough guys, the bad guys whom we don't want in our society. Government lawyers in both the Obama and the Bush administrations have said that an unspecified number of detainees should continue to be held without trial, stating that some of the evidence against them will be classified or thin, and the government fears these most dangerous detainees could be released should they be given their day in court; that is, their day in court in the United States.

If you look at the facility they have down there, it is made for this type of detainee. It is one that will allow the security of evidence so it doesn't threaten other people, and it is something that cannot take place in this country.

Johnson also said the Obama administration has not yet determined where it will hold newly captured al-Qaida and Taliban prisoners for extended detention after the Guantanamo Bay prison closes, if it should close. Of course, my effort is to keep it open. So far the only Guantanamo Bay detainee brought to face trial in a U.S. criminal court is Ahmed Ghailani. He is the Tanzanian whom we sent to New York and faces charges in conjunction with the two bombings. We remember the two bombings in Tanzania and Kenya. Federal prosecutors said last Friday they no longer plan to hold Mohammed Jawad, who threw a grenade at a U.S. convoy in 2002, as a wartime prisoner, a signal that the Obama administration intends to bring him to the United States before a criminal court.

Last week, Democratic Members in the House and the Senate said Michigan prisons set to close because of the State budget crunch could take the high-profile prisoners from Gitmo, creating jobs lost in the auto industry.

Let's stop and think that one through. These are elected representatives from the State of Michigan, the two Senators and Representative STUPAK, who are suggesting that we could put those prisoners, these high-level, high-security terrorist detainees in prisons in Michigan and that would cause them to have to go through there and provide jobs to update the prisons. Let's stop and think that one through. Why not just go ahead and do something with the individuals who are there, leaving them where they are right now, and get into a public works program where at least they could be spending that money on roads and highways.

Let me do this. I have almost given up—in fact, I did give up—trying to put the language in the Senate Armed Services Committee's Defense authorization bill to preclude the President from putting these individuals into the United States. There is only one vehicle left. That is my Senate bill 370, S. 370. It is a one-page bill. I have 22 cosponsors. It merely says we cannot pay to transfer any of these detainees to the United States, and we are not going to be able to try them here. So it is the final answer to this matter.

Madam President, at this time, I ask unanimous consent that S. 370 be brought up for immediate consideration.

The PRESIDING OFFICER. Is there objection?

The Senator from North Dakota.

Mr. DORGAN. Madam President, reserving the right to object, and I will object, the Senator from Oklahoma knows that such a unanimous consent cannot be entertained at this point. He

has not consulted with the majority leader who is in charge of scheduling legislative matters to come to the floor of the Senate. So on behalf of the majority leader, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Oklahoma.

Mr. INHOFE. Madam President, I would only respond to my very good friend from North Dakota—in fact, we were recently talking about how in agreement we were on some of these things, the potential we have to explore in the United States. I have talked to the leadership to try to bring this up and have not been able to do it. I guess you get to the point where you are frustrated and you know that two-thirds of the American people want to set something in place to keep these terrorists from coming into the United States. All I ask is to get my bill up. I will be trying to do that in the future.

I wish to ask the manager of the current bill on the floor, the minority manager, if he desires to have the floor for the purpose of the consideration of the bill.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, the Senator from Oklahoma had asked to speak in morning business. Senator BENNETT and I have no objection to that. We are waiting for amendments to be offered. If someone were to come and offer an amendment, we would hope the Senator would relinquish the floor.

Mr. INHOFE. I thank the Senator from North Dakota and I assure him that if someone comes down with an amendment, I will cease and yield to them.

CAP AND TRADE

In the meantime, there is another subject I wish to speak about. I have been doing this now for 10 years every week.

It is safe to say that at 3:09 a.m., on June 26, most of America was asleep. While they slept, Democratic leaders in the House were creating a nightmare. In the early morning hours, Speaker PELOSI and her deputies were pushing the largest tax increase in American history.

In the dead of night, with no one watching, they engaged in full-scale arm twisting, back-room dealing, and outright pork-barreling to garner support for a massive bill few, if any, had actually read or understood. You have to keep in mind there are about 400 pages of this bill that weren't printed until 3 o'clock in the morning of the morning the bill was voted on.

When America awoke, they found Democrats talking about green jobs and the new clean green energy economy. They spoke of free markets and innovation and energy independence. All of it sounded so appealing. Yet none of it was true. That is because Waxman-Markey is full of regulations, mandates, bureaucracy, and big government programs. Waxman-Markey is, to quote JOHN DINGELL, ''a tax, and a great big one'' on small businesses, families, and consumers.

I don't blame the Democrats for selling cap and trade as something it is not. This is a political imperative for them because the American people now know what cap and trade is and they don't like it.

According to independent political analyst Charlie Cook:

> Many Democrats getting back to Washington from Independence Day recess reported getting an earful from their constituents over the 'energy tax hike' . . .

Further, Cook noted—and I am quoting Charlie Cook right now:

> The perception is that this is a huge tax increase at a time when people can ill afford one. Hence, Democrats, whether they supported the bill or not, are getting battered, increasing their blood pressure.

Let me say this. This is an issue we are going to be talking about. I have been on the Environment and Public Works Committee since I came to the Senate in 1994. I was the chairman of that committee back when the Kyoto treaty was considered. At that time, as everyone else, I assumed manmade gases, anthropogenic gases, CO_2, methane, were causing global warming. Now people are careful to say climate change and not global warming since we are in about the ninth year of a cooling period. But at that time I assumed it was true. That is all everybody talked about. Until the Wharton School did a study and the question was posed: If the United States were to pass and ratify the Kyoto treaty and live by its emissions requirements, how much would it cost? The range was between $300 billion and $330 billion a year. It was at that point that I decided it would be a good time to look at the science behind that and see if, in fact, the science was there.

We are talking about 10 years ago. After looking at it and studying it, we found scientist after scientist who was coming out of the closet and saying this thing was started by the United Nations, the Intergovernmental Panel on Climate Change, and the reports they give are not reports from scientists; they are reports that are from policymakers. Consequently, on my Web site, the Web site inhofe.senate.gov, I have listed over 700 scientists who were on the other side of this issue and now are on the side saying: Wait a minute. This is something that is not real, and it certainly is not worth the largest tax increase in history.

I remember when Vice President Al Gore was in office, the Clinton-Gore administration, and at that time they decided they wanted to come out with a report, in order to sell the idea of ratifying the Kyoto treaty, that they would come up with a report to say how much good could be done, how much the temperature could be lowered over a 50-year period of time if all developed countries, all developed nations ratified and lived by the emissions requirements, how much would it reduce the temperature. The results—and the man's name was Tom Quigley. Tom Quigley was the foremost scientist at that time. He said it would reduce the temperature over a 50-year period by .07 of 1 degree Celsius in 50 years. That is not even measurable.

I wish to inquire if the Senator from Florida wishes to speak as in morning business or on this bill?

Mr. NELSON of Florida. Madam President, morning business.

Mr. INHOFE. Morning business. Well, I am going to be awhile.

Anyway, what I would suggest doing is going back and looking at what has happened since the Kyoto treaty was considered. In 2005, we had the McCain-Lieberman bill. The McCain-Lieberman bill was very similar to the Kyoto treaty. It was cap and trade. It was very similar to the Warner-Lieberman bill and very similar to what we are looking at today, the cap-and-trade bill, which is the Waxman-Markey bill. They are essentially the same thing; that is, cap and trade, a very sophisticated way to try to regulate greenhouse gases or primarily CO_2.

I would suggest that many of the people who were talking about doing this in the very beginning were people who were saying: Well, why don't you pass a tax on CO_2? I would say: If you want to get rid of CO_2 and be honest and straightforward, go ahead and pass a tax and get rid of it. As it turned out, they didn't want to do that because that way people would know how much they are being taxed. If you have a cap and trade, that is government picking winners and losers, and you might be able to make people think they are actually not getting a tax increase.

I wish to quote a few of the people who have weighed in on this issue. If you don't believe what I am saying about cap and trade, listen to some of the past quotes from members of the Obama administration and other proponents of cap and trade. They speak for themselves.

This is what President Obama said prior to the time he was President. He said:

> Under my plan of a cap and trade system, electricity prices would necessarily skyrocket . . . Because I'm capping greenhouse gases, coal, power plants, natural gas—you name it—whatever the plants were, whatever the industry was, they would have to retrofit their operations. That will cost money. They will pass that money on to consumers.

JOHN DINGELL:

> Nobody in this country realizes that cap and trade is a tax, and it's a great big one.

CHARLIE RANGEL said this not too long ago, speaking on cap and trade:

> Whether you call it a tax, everyone agrees that it's going to increase the cost to the consumer.

Then Peter Orszag, former CBO Director and current White House OMB Director, said:

> Under a cap and trade program, firms would not ultimately bear most of the costs of the allowances, but instead would pass

them along to their customers in the form of higher prices.

That is the appointed OMB Director, Peter Orszag, saying that.

Continuing his quote:

Such price increases stem from the restriction on emissions and would occur regardless of whether the government sold emission allowances or gave them away. Indeed, the price increases would be essential to the success of a cap and trade program, because they would be the most important mechanism through which businesses and households would be encouraged to make investments and behavioral changes that reduced CO_2 emissions.

He said further:

The government could either raise $100 by selling allowances and then give that amount in cash to particular businesses and individuals, or it could simply give $100 worth of allowances to those businesses and individuals, who could immediately and easily transform the allowances into cash through the secondary market.

He said further:

If you didn't auction the [CO_2] permits, it would represent the largest corporate welfare program that has ever been enacted in the history of the United States. All of the evidence is that what would occur is that corporate profits would increase by approximately the value of the permits.

Further, although the direct economic effects of a cap-and-trade program described in the previous section would fall disproportionately on some industries, on some regions of the country, and on low-income households, we had several people testify before the Senate Environment and Public Works Committee—and you saw the most notorious one speak 2 weeks ago, representing the U.S. Black Chamber of Commerce. He was testifying how regressive this cap-and-trade tax would be. If you stop and think about it, sure, it is true, if you raise necessarily, as they have to do, under the House-passed Waxman-Markey cap-and-trade bill—if you raise the cost, it is going to be the cost of energy. So you have poor families on fixed incomes who still have to heat their homes in the winter, so the percentage of their expendible income they use in heating their homes would be far greater. So it is regressive. That is why he got so emotional when he was here talking about what the cost would be to the poor people of America.

Douglas Elmendorf, Director of the CBO, said that some of the effects of a CO_2 cap would be similar to those of raising such taxes. The higher prices caused by the cap would reduce real wages and real returns on capital, which would be like raising marginal tax rates on those sources of income.

All of these people are experts. They work in the government, and they work—most of them—in the Obama administration. They are saying this would be the largest tax increase in history on the American people.

I think that during the recess—if we ever get to it—which is supposed to take place a week from Friday, we will be in a position to talk about three major issues. We have already talked about efforts to pass some kind of a government-operated health system. I talked about Gitmo, the closing of that, which I think there is no justification for whatsoever. The other thing is that it is the largest tax increase in the history of this country.

In an interview with Michael Jackson, AutoNation CEO, he said:

We need more expensive gasoline to change consumer behavior.

Otherwise, Americans will continue to favor big vehicles no matter what kinds of fuel economy standards the government imposes on automakers. He added that $4 a gallon ''is a good start.''

These are people who do want to increase the cost of fuel for an agenda, which will not help the environment.

Alan Mulally, CEO of Ford Motor Company, said:

Until the consumer is involved, we are not going to make progress in reducing the amount of oil the United States consumes.

On and on, we have people—I plan to spend time on the floor talking about the problems with this because I fear that if you don't do anything, we are going to end up passing the largest tax increase in the history of America.

Even the Secretary of Energy, Steven Chu, said:

Coal is my worst nightmare.

He also said:

Somehow we have to figure out how to boost the price of gasoline to the levels in Europe.

That is the Secretary of Energy for the Obama administration who said that.

He also said:

What the American family does not want is to pay an increasing fraction of their budget, their precious dollars, for energy costs.

He said further:

A cap and trade bill will likely increase the costs of electricity. . . .

This is the Secretary of Energy under President Obama. He said:

These costs will be passed on to the consumers. But the issue is, how does it actually—how do we interact in terms with the rest of the world? If other countries don't impose a cost on carbon, then we would be at a disadvantage. . . .We should look at considering duties that would offset that cost.

Then, of course, the chairman of our committee, Senator BOXER, said:

The biggest priority is softening the blow on our trade-sensitive industries and our consumers. I just want you to know that that's the goal.

I am glad she is saying that is a goal.

Senator MCCASKILL weighed in—and I agree with her—saying:

We need to be a leader in the world, but we don't want to be a sucker.

That is a good statement.

And if we go too far with this, all we're going to do is chase more jobs to China and India, where they've been putting up coal-fired plants every 10 minutes.

That was Senator MCCASKILL from Missouri. She is a Democrat. Yet she has very strong feelings that this would chase off our jobs to foreign countries. She mentioned China and India. They are cranking out two new coal-fired plants every week in China.

Let me do this. Three weeks ago, in our Committee on Environment and Public Works—I want to commend the Director of the Environmental Protection Agency, Lisa Jackson—I asked her this on the record, on TV: If we pass the Waxman-Markey bill as it is written right now, as it came over from the House, and it were signed into law by the President, what would be the result of that in terms of reducing the amount of CO_2 in the atmosphere?

She thought for a minute, and then she said something that surprised me: It wouldn't reduce emissions at all.

In other words, even if we pass this largest tax increase in American history on the people, we are still not going to reduce the amount of CO_2 that goes into the atmosphere. In fact, you could argue—and it has been argued—that it would increase it because it would chase the manufacturing jobs to other countries. They are estimating 9.5 percent of the manufacturing jobs would be sent to China and other countries, where they have no emission restrictions, and that would have a net increase of CO_2.

With that, I see several colleagues coming to the floor. In deference to them, I will yield, but before I yield the floor, let me make one last request. I want to do this. I have been concerned—and I don't know that the Senator from Florida was here when we were talking about Gitmo. I was frustrated when we were unable to get my amendment on the Defense authorization bill that would have the effect of keeping Gitmo open. The only thing left for me is S. 370.

At this time, I ask unanimous consent that the Senate proceed to the consideration of S. 370.

The PRESIDING OFFICER. Is there objection?

Mr. NELSON of Florida. Madam President, on behalf of the majority leader, Senator REID, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Florida is recognized.

Mr. NELSON of Florida. Madam President, I ask unanimous consent that I might speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TOURISM IN FLORIDA

Mr. NELSON of Florida. Madam President, most people know that tourism is certainly a vital part of my State's economy. I know that many of our Florida cities, just like so many cities elsewhere around the country, offer some of the finest and most competitive prices on hotels and conference facilities. So you can imagine that I was absolutely floored when I found out that some Federal agencies are blacklisting Florida cities and other cities in the country for travel

and conferences because they are looked at as a vacation or resort destination.

The hotel industry in Florida is already reeling, it is facing a significant decline because of the recession. Orlando hotels are filling only about 64 percent of their rooms. That is a drop of 8 percent from last year. So you can imagine that I was stunned when I found out that in a Wall Street Journal article last week they had listed Orlando and Las Vegas as cities mentioned in e-mails from the Department of Agriculture and the Department of Justice as no-go-to destinations.

Well, what they ought to be looking at is what is most cost-effective for the government if it is going to an out-of-town location from wherever that particular agency is to have a conference. When you compare, for example—I could be talking about any city in Florida and many other cities in this country, but let me take Orlando, for example. When you compare the cost of a hotel room in Orlando during the season with the cost of a hotel room, let's say, in Washington, DC, during the season, you will find that the Orlando hotels on average are $100 less per night than the other city in that comparison. Likewise, if you look at the cost of airfare as a destination, you will find that the round-trip airfare to a place such as Orlando is considerably less. But some agencies in the Federal Government, because Orlando is looked upon as a resort or vacation destination, have gotten so sensitized to the fact that we saw the Wall Street bigwigs going haywire, with all their perks and all of their extra emoluments, that they want to avoid the perception of going to a resort destination.

I wish it hadn't come to this, but I have had to draft legislation to make it illegal for the Federal Government agencies to design travel policies that blacklist certain U.S. cities simply because they are looked at as destination cities for a lot of tourism. Talk about a double whammy in tough economic times when we have seen tourism and business travel dropping like a rock.

It is one thing to avoid nonessential trips for the government to save taxpayers money, but it is taking it a little far when it is another thing that if it is legitimate travel and you then avoid certain cities just because they are where they are.

My Senate colleague, Senator MARTINEZ, is helping me with this issue, and working together we ought to be able to put an end to any such practice.

I certainly hope it is not going to take me having to push through this legislation. I am asking the head of the Department of Justice, the Attorney General, and the head of the Department of Agriculture, the Secretary of Agriculture, if they will dig down into the bowels of their organizations and root out this kind of narrow thinking that is going on and expressed in those e-mails as reported by the Wall Street Journal last Wednesday.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

SOTOMAYOR NOMINATION

Mr. SESSIONS. Madam President, tomorrow the Senate Judiciary Committee will vote on the nomination of Judge Sonia Sotomayor to serve as Associate Justice of the U.S. Supreme Court.

I thank the nominee and the members of the committee, including our Democratic colleagues, and Chairman LEAHY, for their efforts throughout the process. I appreciate Judge Sotomayor's kind words to us about how well the hearings went and her expression of gratitude for the kindness and respect she was shown. She is a good person with experience, the kind of experience one desires in a nominee, and her personal story is certainly inspiring.

However, based on her record as a judge and her judicial philosophy, I have concluded that she should not be confirmed to our Nation's highest Court. While differences in style and background are to be welcomed on the Court, no one should sit on the Supreme Court, or any court, who is not committed to setting aside their personal opinions and biases when they render opinions and who is not committed faithfully to following the law, whether they like the law or not. Impartiality is the ideal of American law. Judges take an oath to pursue it, and the American people rightly expect it.

Judge Sotomayor's speeches and extrajudicial writings represent dramatic expressions of an activist view of judging that is contrary to that ideal. Judge Sotomayor made speech after speech, year after year, setting forth a fully formed judicial philosophy that conflicts with the great American tradition of blind justice and fidelity to the law as written.

These speeches also contradict the oath that judges take to ''do equal right to the poor and the rich'' and to do so ''impartially'' ''without respect to persons.'' Under the law, under the Constitution and laws of the United States, judges are subordinate to our Constitution and laws. This ideal is a high one indeed, and it requires a firm personal commitment to objective truth and a belief in the meaning of words.

It has been suggested repeatedly that Judge Sotomayor's words and speeches are being taken out of context. I have read her speeches in their entirety. Her words are not taken out of context. In fact, when one reads the entire speeches, the context makes them worse, not better.

My criticism also should not be considered as a personal attack on her as a person because there are a number of intellectuals, judges, and legal writers who believe in just such a new way of judging. It is quite fashionable among some—those who think they are more realistic than naive American citizens, judges, and lawyers who, they believe, delude themselves when they think a judge will or can find true facts and apply them fairly to the law as written.

Most Americans and most Senators have heard about Judge Sotomayor's speeches, which are clearly outside the mainstream. She has repeatedly said, among other things, that judges must judge when ''opinions, sympathies and prejudices are appropriate.''

She accepts that who she is will ''affect the facts I choose to see as a judge.''

It is her belief that ''a Wise Latina woman, with the richness of her experiences, would more often than not reach a better conclusion than a white male.''

That there is ''no neutrality'' in judging, just a ''series of perspectives.'' She has also said the appellate courts are where policy is made.

These matters have been discussed in some detail by my colleagues and at the hearing. Her testimony at the hearing was that these speeches do not reflect her philosophy of judging. It is hard for me to accept that her words, expressed over a decade in these speeches, do not reflect what she actually believes. Indeed, it is an odd position in which to find oneself to be at a hearing and say you don't believe what you have been saying over the years.

But Judge Sotomayor has asked, and her supporters have asked, that we look at her judicial record which proves, she and her supporters say, she is unbiased, and shows that she does not allow personal politics and views to influence her decisions. They cite over 3,000 cases she has decided, most without controversy.

They have gone to some length to discuss and defend the process by which she decides cases. Indeed, in her opening statement, Judge Sotomayor explained: ''[t]he process of judging is enhanced when the arguments and concerns of the parties to the litigation are understood and acknowledged.''

She did follow this style in many of the cases that came before her, going into detail and even being criticized by some in a Washington Post article for ''uncommon detail'' that risked ''overstepping'' the bounds of an appellate judge.

But there is more to the story. Most cases before the courts of appeals are fact based and routine and do not raise the kind of serious constitutional issues that the Supreme Court hears and decides on a regular basis.

I have reviewed carefully three cases—two decided in the last year, and one 3 years ago—that are the kinds of cases the Supreme Court deals with regularly. Unfortunately, Judge Sotomayor's handling of these cases was not good. They show, first of all, an apparent lack of recognition of the importance of the issues raised in these three cases.

In each case, the decisions were extremely short and lacking any real legal analysis. These three cases also

reached erroneous conclusions. They ignore the plain words of the Constitution, and they provide a direct look at how the nominee will decide many important cases that will come before the Court, if she is confirmed, in the decades to come.

The case of Ricci v. DeStefano came to her three-judge panel of the U.S. Court of Appeals for the Second Circuit as an appeal by 18 firefighters. They had passed a promotion exam, but the exam had been thrown out by the city of New Haven because the city thought not enough of one group passed. The test was thrown out not because it was an unfair test. Indeed, the Supreme Court, when the case got there, found that ''there is no genuine dispute that the examinations were job-related and consistent with business necessity.'' Instead, the city threw out the test because the city did not like the racial results. Thus, the city discriminated against the firefighters who passed the exam because of their race.

This case is a sensitive case, it is an important case, and we need to analyze it carefully. It is noteworthy because the court failed to adhere to the simple but plain words of the Constitution.

In Ricci, Judge Sotomayor's opinion violated the plain constitutional command that no one shall be denied ''the equal protection of the laws'' because of their race.

Additionally, the case is subject to criticism because of the manner in which it was handled. I want to talk about that a minute. Judge Sotomayor did not deal with this important constitutional issue—a very important constitutional issue—in a thorough, open, and honest way. Without justification and in violation of the rules of the Second Circuit, Judge Sotomayor and the panel initially dismissed the case by summary order; that is, without any published opinion, without even adopting the trial court's opinion. No opinion, no explanation.

The effect of this summary order was to deal with the case in a way that would not require the opinion to be published or even circulated among the other judges on the circuit. This was not justifiable. The circuit court rule states that summary orders are only appropriate where a ''decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion. . . .''

This is a huge constitutional question in this matter. If it were not, the Supreme Court would never have taken it up, and it almost slipped by. But by chance, other judges on the Second Circuit apparently found out about it through news accounts, apparently, and began to ask about this case that seemed to be of significant import. This resulted in a request by one of the judges—quite unusual when you are dealing with a simple summary order—to rehear the case before all of the circuit judges. It created a notable dustup. The result was a split court with half of the judges asking for a rehearing of the case, half against rehearing it, with the deciding vote not to hear the case, not to reconsider any of the precedent that may have existed, being cast by Judge Sotomayor herself.

In effect, this was a vote to avoid the full and complete analysis this case cried out for from the beginning. It was only during this challenge that Judge Sotomayor's panel agreed to decide the case then by a per curium opinion, an unsigned opinion, which at least then adopted for the first time the lower court's opinion which, frankly, I don't think was a very fine opinion for this kind of important case. But that became the opinion she adopted.

Still, the firefighters didn't give up hope. They then sought a review by the Supreme Court. Against long odds, the Supreme Court agreed to hear their plea. The Court found the ruling erroneous. They reversed the Sotomayor court's opinion and rendered a judgment in favor of the firefighters. They held that what the city of New Haven did, which Judge Sotomayor had approved, was simply wrong.

At the Judiciary Committee hearing, firefighters Frank Ricci and Ben Vargas beautifully described what it meant for them to go from a summary dismissal in the Sotomayor court, to a summary judgment victory in the Supreme Court. Five years of personal cost, stress, and strain suffered by the firefighters were vindicated by an important victory for equal justice in the Supreme Court.

But nothing can erase either the flawed result of Judge Sotomayor's panel decision or her panel's apparent attempt to sweep the case under the rug.

Secondly, Judge Sotomayor's treatment of critically important second amendment issues that have come before her is equally troubling, for the same reasons. She simply got the text of the Constitution wrong and did so in such a cursory way that her actions seemed designed to hide the significance of the case and the significance of her ruling.

Last year, in a case of great importance, the Supreme Court held in the Heller case that the second amendment, which protects the right of ''the people to keep and bear Arms,'' provides an individual right—which I think it clearly does—and that, therefore, the Federal city of Washington, DC could not ban its residents from having a handgun in their homes for protection. In a footnote, the Supreme Court left open the question, not raised in the case, of whether the second amendment would bind the States. The question is simple and of fundamental importance to the second amendment: Does the Constitution bar States and cities from denying their residents the right of gun ownership? Pretty big question. Huge question.

On January 28 of this year, in Maloney v. Cuomo, Judge Sotomayor issued an opinion on this very issue. And in this opinion, Judge Sotomayor again failed to follow the text of the Constitution. The Constitution is plain and simple on this issue: ''. . . the right of the people to keep and bear Arms, shall not be infringed.'' And when you are talking about the people, you are talking about the right not just as it is applied to the Federal Government, I would submit, but also to the States and cities. So the Sotomayor panel looked at this text and decided that a State or local government may infringe, even deny your right.

Some argue that Judge Sotomayor was bound by precedent in her decision and there was old case law that her decision followed. But we have looked at this closely and tried to think it through. I would note that the situation the court found itself in shortly after the well-known, tremendously important Heller case had changed, and the Ninth Circuit panel, facing the very same issue, disagreed with Judge Sotomayor. It found that the second amendment does apply to the States. The Seventh Circuit, in a very thorough and carefully written opinion, and at its final conclusion, agreed with Judge Sotomayor's panel's decision, but it did so in such a way that it demonstrated its recognition of the importance of this right and the new situation created by the Supreme Court in Heller. This recognition was utterly lacking in Judge Sotomayor's very brief opinion.

While it is argued that Judge Sotomayor relied on precedent, the precedent she cited was from the 1800s and does not use the modern test for incorporation that the Supreme Court employs in deciding whether rights apply to States, something that has been going on for nearly 100 years. Not only that, but even after the watershed decision by the Supreme Court in Heller, she held that it was ''settled law'' that the second amendment did not apply to the States and that the right to keep and bear arms is not a ''fundamental right.''

When these points were brought to the Judge's attention during the confirmation hearings, she declined to explain herself, claiming that she had not recently read the cases on which she so recently relied. This is not the level of analysis that the Judiciary Committee has the right to expect from a nominee to the U.S. Supreme Court.

Make no mistake, the effect of this ruling, if not reversed, if it stands, will be to eviscerate the second amendment by allowing States and cities to ban all guns, as the District of Columbia had basically done before the Supreme Court reversed that in Heller. In simple terms, in a case of great constitutional importance, Judge Sotomayor, once again in an unjustifiably brief opinion, measured in mere paragraphs of analysis, gave short shrift to the plain words of the Constitution.

I will say also that after the Supreme Court rendered its ruling in Heller, it had a footnote that said since this is a Federal cities case, we don't decide the

application of the second amendment to the States. But in that footnote, the Court made it quite clear that the prior old cases were decided before it had adopted a different approach to incorporating constitutional rights against the States. It is pretty clear from that they have left this matter open. The judge on the Ninth Circuit found that the question was an open question after Heller.

To say it is ''settled law'' that the second amendment does not apply to the States is not good, in my view. It is not settled law. I would certainly hope, and millions of Americans will be hoping, that the Supreme Court will not rewrite the Constitution; rather, they hope they will declare that the second amendment does apply to the States.

Further, she said it was not a fundamental right. That was not a phrase used by the other two courts which considered this question, and it is gratuitous, in my opinion. The combination of saying it is not a fundamental right, which is important to the ultimate analysis, and her statement that it is ''settled law'' that the second amendment does not apply to the States indicates a lack of appreciation for the importance of the second amendment right and a hostility toward the second amendment.

And similarly troubling were the judge's equivocations as to whether she would appropriately recuse herself from considering this issue that will surely come before her on the Supreme Court. She declined to commit to recusing herself if the Seventh or Ninth Circuit cases came to the Court, even though those cases raise exactly the same issue as the one she decided against gun rights. I would note also that even the Heller case—breathtaking to me—decided by a narrow vote of 5–4 that a right to keep and bear arms provided in the Constitution explicitly applies to bar the city of Washington, DC, from banning all firearms, basically.

In addition to the firefighters case and the second amendment case, both of which involve important issues of constitutional law, Judge Sotomayor handled, in a similarly cursory manner, a very important private property rights case which some have called the most egregious property rights decision in this area since the Supreme Court's infamous decision in the Kelo case a few years ago.

Just 3 years ago, after Kelo was decided, which caused quite a storm of controversy and a great deal of academic writing, Judge Sotomayor's court issued an opinion in which a private property owner found his property, on which he planned to build a CVS pharmacy, taken by condemnation by the city so that another private developer could build a Walgreen's on the same property. The way this condemnation came about should send chills down the spines of ordinary Americans, because the Walgreen developer, who was pursuing a redevelopment plan supported by the city, told the landowner that he could keep his land and build a CVS and they wouldn't condemn it. All he had to do was fork over $800,000 or half ownership in his business. I look at that and I can understand why the landowner thought he was being blackmailed. Judge Sotomayor looked at that and called it business as usual—a simple negotiation. But it is no negotiation when one party possesses the power through the city to take your property, whether you agree or not.

In another curiously short 2-page opinion, Judge Sotomayor's court rejected the landowner's claims, holding that the courtroom doors were closed to the landowner because he had brought his claim too late. The logic was that the landowner had to bring his claim to court months before the extortion occurred. The effect was to violate the Constitution. The Constitution plainly states that property ''shall not be taken for public use without just compensation.'' The Supreme Court has been quite clear that means you can't take private property except for public use.

At Judge Sotomayor's hearing, Professor Ilya Somin, who has written extensively on property matters, said this case was the most anti-property rights case since the infamous Kelo decision decided by a split Court a few years ago. Again, plain constitutional protections were ignored to the detriment of an individual American citizen who was standing up for his constitutional rights.

So in three cases, contrary to the plain text of the Constitution, Judge Sotomayor has ruled against the individual and in favor of the State in the face of seemingly clear provisions of the Constitution, furthering what can be fairly said to be, in each case, a more liberal agenda in America. A liberal or a conservative political belief, a Republican or Democratic political belief does not disqualify someone from serving on the Supreme Court. What does disqualify is when a judge allows such beliefs or ideology or opinions to impact decisions that they make in cases.

Anyone with more than a casual acquaintance with the law would instantly know that each of these three cases presented issues of great legal importance, and each deserved to be treated with great thoughtfulness. Judge Sotomayor surely understood that fact. Yet in each instance her decisions were unacceptably short. It seemed to me the only consistency in them was that the result favored a more liberal approach to government.

So I have come to announce, regretfully, that I cannot support Judge Sotomayor's elevation to our highest Court. She also now sits in a lifetime appointment on the Nation's second highest court, the Court of Appeals. Her experience, however well rounded, and background, however inspirational, are not enough. What matters is her record on the bench and her stated judicial philosophy.

I hope I am wrong, but my best judgment, my decision is that a Sotomayor vote on the Court—the Supreme Court—will be another vote for the new kind of ideological judging, not the kind of objectivity and restraint that have served our legal system in our Nation so well. Thus, I am unable to give my consent to this nomination.

Madam President, I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

MORNING BUSINESS

Mr. HARKIN. Madam President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICANS WITH DISABILITIES ACT

Mr. HARKIN. Madam President, yesterday, July 26, marked the 19th anniversary of the signing of the Americans with Disabilities Act by President George Herbert Walker Bush, on July 26, 1990. Passage of that law was a great national achievement. I remember being there. I was the chief sponsor of the bill. I was at the White House when it was signed. It was a beautiful sunny day. More people were on the White House lawn for the signing of that bill than for the signing of any bill in the history of this country. It was huge. It was a wonderful day. It was one of the landmark civil rights bills of our generation—of the 20th century.

Passage of the original Americans with Disabilities Act was a bipartisan evident. As the chief sponsor of that bill, I worked very closely with Senator Dole. Of others on the other side of the aisle, two come to mind: Senator Orrin Hatch, who worked very closely with us to get it through, and also Senator Lowell Weicker, of Connecticut. Senator Weicker was the first proponent of the Americans with Disabilities Act, but by the time we were able to get it passed, he was no longer in the Senate. But Senator Weicker did yeoman's work in getting it going and pulling everything together before he left the Senate.

We received invaluable support from President Bush and key members of his administration. I mention, in particular, White House Counsel Boyden Gray, Attorney General Richard Thornburgh, and Transportation Secretary Samuel Skinner.

We look back, after 19 years, and what do we see? We see amazing progress. Thanks to the Americans with Disabilities Act, or the ADA as we call it, streets, buildings, and transportation are more accessible for people with physical impairments. Information is offered in alternative formats so