

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

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

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

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

As a final matter, although I believe that the approach in Section 205 will maintain progress in recovering the minnow, mere compliance with the bio-

logical opinion is not the end of the story. I also expect that the Secretary of the Interior will aggressively pursue other actions to promote the recovery of endangered species in the Middle Rio Grande, including support for the efforts of the Middle Rio Grande ESA Collaborative Program. The Collaborative Program has been very successful in bringing together a diverse group of parties to work towards common restoration goals in the Middle Rio Grande. It will continue to be key to the recovery effort and I will continue to support funding its work.

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

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

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

I yield the floor.

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

EXTENSION OF CHAPTER 12 OF THE BANKRUPTCY CODE

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

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

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

PASSAGE OF THE ENERGY BILL

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

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

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