Banking Committee for almost 25 years. As recently as 1997 and 1999, the Senate Banking Committee reported PUHCA repeal bills out of committee. As chairman of the Banking Committee, I have been pleased to work with the Chairman of the Energy Committee to ensure that PUHCA repeal was included as part of a comprehensive Energy bill.

I congratulate the chairman for reporting a bill out of Committee that includes PUHCA repeal. Nevertheless, I have concerns that the expanded merger review authority for FERC provided for in the Electricity title undermines the important policy goals behind PUHCA repeal. It is widely understood that PUHCA has served its purpose and is outdated. Now, PUHCA acts as a barrier to interstate capital flows, and other Federal laws make the PUHCA regime redundant.

The purpose of PUHCA repeal legislation is to eliminate these duplicative and unnecessary regulatory burdens. I am concerned that PUHCA repeal is undermined by legislation providing FERC with enhanced merger review authority over utility companies. I do not believe that Congress should repeal PUHCA, only to replace it with a burdensome regulatory framework administered by FERC. But I am afraid that may be exactly what we are doing in the Electricity title of this bill. I do not believe that Congress should require enhanced FERC merger authority as a prerequisite for PUHCA repeal.

I would ask the chairman to consult with me during conference to ensure against this result. As the Senate Banking Committee has done recently, I think it is important that we repeal PUHCA without creating additional regulatory burdens.

Mr. DOMENICI. I thank the Senator from Alabama for his remarks, and I share his concern regarding additional FERC merger review authority. I look forward to working with him in conference to ensure that PUHCA repeal is not accompanied by the grant of unnecessary merger review authority to FERC.

Mr. SHELBY. Thank you, Mr. chairman.

ELECTRIC TRANSMISSION PROPERTY DEPRECIATION

Mr. THOMAS. Mr. President, I would like to speak about an amendment I filed to the tax title of this bill on electric transmission property depreciation and engage Mr. GRASSLEY in a colloquy on this important issue if I may.

I did not push this issue to a vote during the committee markup, and I don't intend to do so on the floor either since I understand the provision is included in the House version of the bill and enjoys broad support in both the House and the Senate.

That said, I felt it was important to underscore the importance of energy infrastructure in the United States. It is completely irrelevant how much we have in the area of energy-producing resources if we can't transport that energy to where it's needed.

And electric transmission capacity is a prime example.

There are a number of barriers to building additional transmission capacity, among them being stringent regulations at the federal, state, and local levels; NIMBY-ism, in other words, those who want it, but not in their backyard; and high capital cost.

My amendment—which would have incorporated my bill, S. 815, into the tax title—addresses the substantial investment required to build additional capacity.

I thank Senators SNOWE, BINGAMAN, BUNNING, and SMITH for cosponsoring both the bill and the amendment.

The provision would shorten the depreciation life of electric transmission property from the current 20 years to 15 years, thereby substantially reducing the cost.

I understand Chairman GRASSLEY's hesitancy to include provisions in the Senate package that are already covered in the House bill. However, I am asking for the Chairman's commitment to ensure this important provision is included in a final energy package.

Mr. GRASSLEY. I agree that energy infrastructure, particularly electric transmission capacity, is a critical component of our domestic energy policy, and I am committed to helping you ensure that it is included in the final energy bill.

SEC. 261, HYDROELECTRIC RELICENSING REFORM

Ms. CANTWELL. Mr. President, Section 261 of the underlying bill contains provisions designed to reform the hydroelectric relicensing process. These provisions are the result of a hard-won compromise, and I thank the chairman and ranking member, along with Senators CRAIG, SMITH and FEINSTEIN for their leadership on this issue. In particular, these provisions significantly differ from previous House- and Senate-passed versions, as they will allow States, tribes and the public to propose alternative licensing conditions, and will further allow these entities to trigger the trial-type hearing process outlined in this section. I believe these public participation provisions are key improvements in this legislation. I would also like to more fully explore the process by which alternative conditions proposed by these stakeholders should be considered.

Before an alternative condition or prescription to a license may be approved, the Secretary must concur with the judgment of the license applicant that it will either cost significantly less to implement, or result in improved operation of the hydro project for electricity production—at the same time it provides for adequate protection of the resource—or in the case of fishway prescriptions, will be no less protective than the fishway initially proposed by the Secretary. This provision does not provide the license applicant a so-called veto power over proposed alternatives, because this judgment requires the Secretary's concurrence. In addition, it is the Senate's intent that these judgments be supported by substantial evidence as required by Section 313 of the Federal Power Act. I would like to ask the senior Senator from New Mexico the following question: If the Secretary determines that a license applicant's judgment has been based on inaccurate data and thus fails to meet the test of being supported by substantial evidence, can the Secretary withhold his or her concurrence?

Mr. DOMENICI. The Senator from Washington is correct in expressing our intent that the license applicant's judgment be supported by substantial evidence. It is not our intent to provide an incentive for applicants to provide poor data in order to prompt the rejection of a condition by other stakeholders. If the Secretary of a resource agency determines that the evidence provided by the license applicant is of insufficient quality and therefore does not meet the substantial evidence test, the Secretary should not concur with the license applicant's judgment in the matter.

Mr. SALAZAR. Mr. President, I am pleased join with the distinguished majority leader in support of H.R. 6.

I am particularly pleased with the bill's support for integrated coal gasification, IGCC, technology development and deployment into commercial use. Our Nation needs a comprehensive energy policy which promotes new, cleaner, and more advanced generation technologies.

I have been increasingly concerned with the challenges associated with developing IGCC technology for burning Western coal. Western coal is a valuable resource and crucial to our economy; however, both cost and technological difficulties have prevented development of IGCC in the West. That is why I support a provision for a Western IGCC Demonstration Project, Section 407. This project would allow for development of an IGCC technology designed to use Western coal and in a cost-effective manner.

I have also been increasingly concerned with the need to address climate change. The promise of IGCC technology's ability to reduce carbon dioxide emissions should be realized as soon as possible. That is why the Western IGCC demonstration project shall include a carbon technology component.

I wish to also take this opportunity to clarify an important point. There have been media reports expressing concern that the Western IGCC demonstration project is special legislation designed to benefit a single company building a new project in Wyoming. I can assure you that neither this provision, nor any other provision I have sponsored, is designed to benefit any specific project or any specific company. My sincere objective is simply to provide for the development of an IGCC

demonstration project in the West, using Western coal, regardless of who owns or develops it.

This provision is designed to provide incentives to an IGCC project using Western coal at high altitudes. I have heard from many stakeholders, the utility industry, environmental groups and energy consumers, regarding the potential environmental and energy benefits of this new technoloy. However, I have also heard that IGCC has been applied primarily in the East. It is not yet demonstrated to be viable and cost-effective in the high altitude West using the low-rank coals mined in Western States. This provision would allow the region to prove the viability of this important technology, assess carbon capture and sequestration opportunities, and, I hope, lead to its successful deployment in my region of the country.

The purpose of the Western coal demonstration project will be to show that coal gasification works for the different kinds of coals mined in the West. This includes the lower energy coals like those mined in Wyoming's Powder River Basin, and it includes higher energy coals like those found in Colorado. These coals vary by energy content, and in other ways such as moisture and sulfur content. My colleague from Wyoming and I want to ensure that the demonstration project will show the feasibility of gasification for the entire range of Western coals. In that way, hurdles to gasification can be removed and our Nation can move forward into a cleaner energy future, and one that recognizes the importance of our abundance of coal resources.

I want to close with a special tribute to Senator THOMAS for his diligence in this effort. We are both Western Senators and we share a concern that the Western United States should benefit from IGCC technology as much as the Eastern United States. I want to thank him for his initiative and support for this provision.

Mr. DOMENICI. I thank Senator SALAZAR for his support for H.R. 6 and share his interest in developing a sound and forward-looking energy policy for our Nation. I understand his concern that the West enjoy clean energy generation. I look forward to working with him to move H.R. 6 as quickly as possible.

INNOVATIVE TECHNOLOGIES

Mr. CONRAD. Mr. President, I would like to engage the distinguished manager of the bill in a brief colloquy. I understand that title XIV of the bill before us includes incentives for ''innovative technologies,'' including gasification projects that will allow us to use our vast domestic coal reserves to produce clean transportation fuels.

Mr. DOMENICI. The Senator is correct.

Mr. CONRAD. I thank the distinguished Senator from New Mexico for accepting clarifying language that will allow additional coal-to-fuel facilities to qualify for the loan guarantees included in title XIV of the Energy bill.

As a result of these changes, the incentives included in section 1403, which include loan guarantees, would apply to the development of projects that will utilize various gasification technologies to produce clean transportation fuels from any of our coal types, including bituminus, sub-bituminous, and lignite coals.

Mr. DOMENICI. The Senator is correct.

Mr. CONRAD. Again, I thank the distinguished chairman of the Energy Committee for working with me to ensure that facilities in my State will be eligible for these incentives for coal-to-liquids technologies. It is my hope that North Dakota's coal resources will play an important role in reducing our dependence on foreign oil, allowing us to create jobs here at home and clean our environment.

GOVERNOR'S AUTHORITY

Mr. VITTER. Mr. President, I would like to discuss a Governor's authority to approve the issuance of a license for an offshore LNG facility.

Mr. DOMENICI. I understand that intend to emphasize the current role of a Governor in the licensing of offshore LNG facilities pursuant to the Deepwater Port Act.

Mr. VITTER. The Senator is correct. In Louisiana, there has been a tremendous amount of controversy involving the licensing of offshore LNG terminals recently related mainly to a technology for reheating the gas called open rack vaporization. My amendment is designed to emphasize the Governor's current authority under the Deepwater Port Act. Under current law the Deepwater Port Act allows the Governor of a state to approve—or be presumed to approve—the issuance of a license for an offshore LNG facility.

Mr. DOMENICI. The Senator saying that a Governor currently has a clear opportunity to disapprove that a license be issued for any offshore LNG terminal?

Mr. VITTER. That is correct. So, no changes to existing law are necessary in order for the Governor to approve or disapprove issuance of a license for offshore LNG facilities.

Mr. DOMENICI. How many times has a Governor used this authority to approve or disapprove that a license be issued?

Mr. VITTER. A Governor has never attempted to use this authority. In the case of Louisiana, we have two licensed offshore LNG facilities and the Governor of Louisiana approved both of these facilities.

Louisiana has lost thousands of jobs due to the high costs of energy. The underlying bill does much to address this challenge and LNG will play an important role in addressing the increasing demand for natural gas.

I thank the Senator from New Mexico for clarifying the Governor's authority to approve or disapprove an offshore LNG facility.

BLM POLICY ON OIL AND GAS DEVELOPMENT IN POTASH RESERVE

Mr. CORNYN. Mr. Chairman, I rise to speak to an amendment I have filed to address the Bureau of Land Management's policy toward development of much needed oil and gas resources in the potash reserve. Notwithstanding the strong bipartisan consensus that the U.S. must expeditiously develop its readily available domestic oil and gas resources, for decades the Bureau of Land Management has restricted development of large volumes of oil and gas located in the Known Potash Leasing Area near Carlsbad, NM. BLM has authority to permit compatible oil and gas development in conjunction with potash mining in the area, but the agency has failed to do so due to asserted concerns with adverse impact on potash mining reserves and mine safety. For a long time the oil and gas industry has had the technical ability to drill in the potash region without creating any such threat to these potash mining interests. Concerns with BLM's administration of the Interior Secretary's October 1986 order have been raised with Congress over many years. However, given the Nation's continuing economic stress due to the oil and gas price and supply situation, and the policy imperative underlying the current energy bill debate to facilitate resource development on Federal lands where Federal rules or policies have unnecessarily inhibited such activity, the time has come to expeditiously resolve the administrative problems that have impeded reasonable oil and gas development in the Nation's potash reserve.

The BLM has denied approximately 190 applications for drilling permits and applicants strongly believe that their permits have been denied without appropriate consideration of their technical ability to develop oil and gas in the potash area while not creating any safety risks to potash mining or jeopardizing economically recoverable potash reserves.

My amendment would address this disadvantage for oil and gas drilling permits in the potash area, insuring that BLM allows drilling compatibly with the interest in maintaining potash reserves and mining in the area. Specifically, my amendment would still allow BLM to deny permits out of concern for adverse impact on potash mining, but only if the agency could specify with particularity the reasons why approval of the oil and gas permit would jeopardize potash mining safety or threaten recoverable potash reserves the value of which exceeded the value of the recoverable oil and gas associated with the relevant permit.

I understand that the chairman is well aware of the protracted history of this problem and has directed his staff to investigate the situation with BLM. Indeed, this week my staff attended a meeting with the BLM State director and the Chairman's staff to discuss this issue.

I certainly could offer the amendment for a vote at this time, but may I first inquire of the chairman whether he shares my concern with the BLM policy regarding the amount of oil and gas drilling being permitted in the potash region?

Mr. DOMENICI. This has been an evolving problem for some time now and I share the Senator's concern about whether the proper balance is being struck. Particularly in light of available technologies, I believe that there should be a way to produce oil and gas in the potash area without interfering with the recovery of the potash resource. My desire is to see both a vibrant potash industry and a vibrant oil and gas industry in the region, with both generating strong economic activity and employment.

Mr. CORNYN. I share the Chairman's views and would furthr inquire whether the chairman would be willing to work with me through the course of the conference on the energy bill to assure that this problem with BLM policy is properly addressed?

Mr. DOMENICI. I would tell the Senator that I would be pleased to give him that commitment.

Mr. CORNYN. I thank the Chairman.

Ms. CANTWELL. Mr. President, I wish to clarify for my colleagues the intent of section 1270 of the underlying Energy bill, which is a provision of extreme importance to my Washington State constituents. Ratepayers in my State were harmed by the Western energy crisis and the manipulation and fraudulent practices of Enron in wholesale electricity markets. A number of proceedings remain underway at the Federal Energy Regulatory Commission, which will determine the relief granted to consumers harmed by Enron's unlawful trading practices. An important issue that remains is whether utilities—such as Washington State's Snohomish County Public Utility District—should be forced to make termination payments to Enron, for power Enron never delivered in the midst of its scandalous collapse into bankruptcy.

The intent of section 1270 of the underlying bill and the technical correction we have adopted today is simply to affirm that the Federal Energy Regulatory Commission has exclusive jurisdiction under sections 205 and 206 of the Federal Power Act to determine whether these termination payments should be required. This provision expresses Congress's belief that the issues surrounding the potential requirement to make termination payments associated with wholesale power contracts are inseparable and inextricably linked to the commission's jurisdictional responsibilities.

Mr. CRAIG. I would like to inquire of the Senator from Washington, does section 1270 predetermine or in any way prejudice the manner in which FERC employs its jurisdiction in matters currently pending before the Commission?

Ms. CANTWELL. This provision in no way prejudices or predetermines FERC's decisions in those matters. During the Senate Energy Committee's work on this legislation, the supporters of this amendment and I initially considered offering an amendment that would have gone further to require a certain outcome, had the commission made certain findings. We chose not to pursue that amendment in response to concerns that were raised by colleagues. Section 1270 of this legislation is completely neutral regarding how the commission uses its authority under sections 205 and 206 of the Federal Power Act. As such, the provision does not in any way implicate what is known as the Mobile-Sierra doctrine, related to which standard FERC should apply to its review of jurisdictional wholesale power contracts.

Mr. CRAIG. How does the technical amendment adopted today further clarify the committee and Congress's intent in regard to section 1270 of the underlying legislation?

Ms. CANTWELL. The clarifications to section 1270 effectuated by the amendment accepted today are consistent with the committee's intent in adopting section 1270. In addition, they are completely consistent with Supreme Court precedent.

The committee sought assurances that section 1270 would not disturb underlying legal doctrines such as the Mobile-Sierra doctrine or the separation of powers principles. The amendment provides further clarity that section 1270 is not intended to otherwise disturb or modify the Mobile-Sierra doctrine by adding the phrase ''or contrary to the public interest.'' This phrase, when coupled with the standard recital of FERC's exclusive authority to determine whether a charge is just and reasonable, makes it clear that Congress is making no pronouncements regarding the manner in which FERC exercises its authority, but rather only that it is the appropriate forum to resolve these issues. Congress is giving no guidance to FERC on Mobile-Sierra one way or another through this provision.

The committee's overarching intent with respect to section 1270 was to ensure that the Federal Energy Regulatory Commission, and not the bankruptcy court involved in the Enron matter, decides all of the issues surrounding whether termination payments are lawful. The addition of the phrase ''rate schedules and contracts entered thereunder'' ensures that result.

In addition, this clarification is completely consistent with Supreme Court decisions permitting Congress to give a Federal agency the authority to resolve matters that are also normally addressed by our judicial branch of government. As the Supreme Court stated in a case entitled Commodity Futures Trading Commission v. Schor, 478 U.S. 833, 854 (1986),

''looking beyond form to the substance of what Congress has done'', we are persuaded that the congressional authorization of limited CFTC jurisdiction over a narrow class of common law claims as an incident to the CFTC's primary, and unchallenged, adjudicative function does not create a substantial threat to the separation of powers. Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 589 (1985).

Similarly, in this instance, the grant of authority to FERC to decide this matter is exceedingly narrow insofar as it relates solely to the legality of Enron collecting additional profits in the form of termination payments for power not delivered. Clearly, it is directly related to the agency's core function to ensure just and reasonable rates and guard against market manipulation. Moreover, these are public rights that are at stake in this dispute—the rights of electric ratepayers across the country to just and reasonable rates, rights that have existed under federal statute since 1935—and not mere private rights that should be resolved by a non-article III bankruptcy tribunal. Accordingly, the clarification provided by the amendment is completely consistent with Supreme Court precedent on the separation of powers principle.

Mr CARPER. Mr. President, I would like to take a moment to discuss with my friend, the Senator from Montana, a tax incentive which I believe is very important to our efforts to reduce fuel consumption in America. As you know, Senator BAUCUS is the ranking Democrat on the Senate Finance Committee and has a great understanding of our nation's tax policy, as well as a great institutional memory of tax legislation through the years. Senator BAUCUS and Senator GRASSLEY, the chairman of the Finance Committee, provide us with advice and counsel concerning tax policy and do a superb job in that role.

The specific incentive I would like to discuss with my friend from Montana is a provision included in the House energy bill to encourage the use of clean diesel passenger vehicles. It is called the ''diesel advanced lean-burn'' tax credit, and it would give consumers a credit on their income taxes when they purchase a clean diesel vehicle meeting stated fuel efficiency and environmental requirements. I am very supportive of this provision and want to encourage my colleagues to consider it when the Senate energy bill is conferenced with the House bill.

Why is that? Why do I think this provision is so important to our energy policy? For these reasons.

Diesel fuel contains more energy than gasoline, resulting in fuel economy increases of more than 40 percent compared to equivalent gas powered autos.

In fact, the Department of Energy estimates that 30 percent diesel penetration in the U.S. passenger vehicle market by 2020 would reduce net crude oil imports by 350,000 barrels per day.

So why aren't diesel vehicles more common on U.S. highways? Because until recently, they have been considered significantly dirtier in terms of air pollution. But the technology has

changed. Today, you will have a difficult time telling a new diesel car from its gasoline counterpart. New diesels are clean, quiet, and powerful. And they will get even cleaner with the introduction of low sulfur diesel fuel in the United States late next year as the result of new regulations.

Diesel engines have become increasingly popular in Europe over the last 20 years to the extent that market penetration now exceeds 40 percent. The situation is very different in the U.S. where diesel accounts for only 1 percent of light vehicles.

Clean diesel engines provide the perfect platform for the use of BioDiesel which comes from products grown here at home by American farmers. The more diesel engines on the road, the greater demand for this renewable product, and the less petroleum imports from overseas to meet our fuel needs.

We now have the opportunity to take advantage of the advances in clean diesel technology and to do what we can to get more of these fuel efficient vehicles on the road.

In the 2003 Energy Bill there was a tax incentive for ''new advanced lean burn motor vehicles,'' and the House recently passed an Energy Bill containing essentially the same provision.

So with that background, I wanted to ask my friend from Montana whether it is correct that high efficiency diesel vehicles would be considered ''lean burning'' vehicles?

Mr. BAUCUS. First, let me compliment my friend for his thoughtful discussion of this issue. The Senator from Delaware has obviously done a fair amount of homework on automotive technology, and I appreciate his insights on the benefits of clean diesel technology. Let me also congratulate the Senator on his work with Senator VOINOVICH and others on the recently introduced legislation to clean up heavy-duty diesel engines through retrofitting. We adopted that measure as an amendment to the energy bill earlier this week, and I think it is an important addition, so I thank the Senator for his work in that regard.

Now, to respond to the Senator's question concerning the diesel lean-burn provision from the House bill. Under the House provision, the tax credit would be available for the purchase of diesel vehicles meeting certain fuel efficiency and emissions standards. As long as a vehicle met those standards, it would be considered a ''lean burning'' vehicle and thereby merit the tax credit to the purchaser.

Mr. CARPER. The 2003 conference legislation contained incentives for lean-burn diesel vehicles. Is it fair to say that you are interested in this technology and in promoting cleaner diesel cars in the U.S.?

Mr. BAUCUS. I agree with my colleague that lean-burn diesel is promising technology. We did include the diesel lean-burn credit in the energy conference measure in 2003. As you know, in the Senate bill, we have included similar incentives for the purchase of other energy-efficient vehicles—hybrids, alternative fuel vehicles and fuel cell vehicles. We often start out with different positions than our House counterparts, and typically we merge together the best pieces of each bill in conference. I think any new technology warrants serious consideration if it can help make U.S. vehicles more fuel efficient and lessen our dependence on foreign oil.

Mr. CARPER. And is it your thought that the Senate conferees should carefully consider the tax incentives provided in the House version of the bill for these types of vehicles?

Mr. BAUCUS. I believe we should, and I believe we will. I am confident that the clean diesel credit will get very careful consideration by the Senate conferees.

Mr. CARPER. I thank my friend for taking a moment to discuss this matter with me, and I would encourage my colleagues who will be negotiating the tax provisions of the Energy Bill with the House of Representatives to do just that—to carefully consider the benefits that new clean diesel vehicles have to offer. I think the benefits are substantial, that diesel passenger vehicles are already very clean and will get even cleaner next year when low sulfur fuel becomes available, and that a transition toward this technology will pay big dividends for the country over the next few years. This is something we can do which will have an almost immediate positive effect, and I encourage my colleagues to consider this incentive positively.

Ms. CANTWELL. Mr. President, I rise to speak to a particular section of the comprehensive energy bill (S. 10) that we have been discussing for the past 2 weeks. My comments focus specifically on section 1270 of this legislation.

Section 1270 was an amendment I offered in the Energy & Natural Resources Committee mark-up of this legislation. It was accepted after considerable debate and discussion, on a bipartisan voice vote. Since then, I have continued to work with my colleagues on the Energy Committee, to further clarify and perfect this language. In fact, I was pleased to work with my colleague from Idaho, Senator CRAIG, on a technical amendment to this language, amendment No. 895, to refine it even further.

This provision, entitled ''Relief for Extraordinary Violations,'' is extremely important to the consumers of Washington State and ratepayers in other parts of the West, who bore tremendous costs as a result of Enron's schemes to manipulate our wholesale electricity markets. The principle at the heart of this provision is simple. The consumers of Washington State must not be forced to become the deep-pockets for Enron's bankruptcy. The same ratepayers who have paid so dearly for the Western energy crisis and Enron's schemes to manipulate markets should not be forced to pay even more—four years later—for power that Enron never even delivered.

I must thank my colleagues on the Energy Committee for their thoughtful consideration of this issue, particularly my colleagues from the Pacific Northwest and West as a whole who have seen first-hand the toll the crisis has taken on our economy and our constituents. I must also express my gratitude to the rest of the members of the committee, and to the chairman and ranking member for indulging what was a very thoughtful debate on this issue.

At the conclusion of the committee debate, this Senator was extremely satisfied; first, because of the very nature of the debate itself, in which—for almost an entire hour—a bipartisan group of Senators focused their valuable time and attention on a situation that is highly complicated, and likely unprecedented in the history and application of our Nation's energy laws. And second, because, at the end of the day, the committee struck a blow for justice and for Western consumers. It was an important statement. This is not the kind of country where we should reward Enron for its criminal conspiracy to commit fraud; a fraud of historic proportions perpetrated against the consumers of the West.

As my colleagues appreciate by now, my State was particularly ravaged by the western energy crisis of 2000–2001. One of my State's public utility districts, Public Utility District No. 1 of Snohomish County, had a long-term contract with Enron, to purchase power. The contract was terminated once Enron began its scandalous collapse into bankruptcy. Nonetheless, Enron has asserted before the bankruptcy court the right to collect all of the profits it would have made under the contract through so-called ''termination payments.'' Enron has made this claim even though Enron never delivered the power under the contract, even though Enron had obtained its authority to sell power fraudulently, and even though Enron was in gross violation of its legal authority to sell power at the very time the contract was entered into. This has been demonstrated by the criminal guilty pleas of the senior managers of Enron's Western power trading operation, in which it has been admitted that Enron was engaged in a massive criminal conspiracy to rig electric markets and rip off electric ratepayers. But it has been further illustrated by the now-infamous Enron tapes, in which Enron employees discuss many unsavory topics, including specifically how they were ''weaving lies together'' in their negotiations related to the contract with Snohomish.

I will tell my colleagues that there is no way under the sun that I believe my constituents owe Enron another penny. Not one single penny more. What this amendment does is ensure that, when the Federal Energy Regulatory Commission FERC comes to a conclusion

later this year about how to cleanup the Enron mess, that the bankruptcy court cannot overturn FERC's decision about whether these ''termination payments'' are just, reasonable or in the public interest. It says to FERC, ''do your job to protect consumers, and when you make a decision, that decision will stand.'' Interpreting our nation's energy consumer protection laws is not the job of a bankruptcy judge.

Now, this Senator has a very strong opinion on this matter in general. I believe there is no way no stretch of the imagination, or interpretation of law in which these termination payments could be deemed just, reasonable or in the public interest, knowing everything we know today about what Enron did to the consumers of my state. In fact, during committee debate on the underlying provision in this bill, some of my colleagues suggested that we should just out-right abrogate these contracts; simply declare them null and void on their face. But what we recognized, relying on the legal expertise of the committee staff, is that an act like that—as tempting as it may seem—would pose certain constitutional issues. We recognized that this provision section 1270—is the best way for Congress to express its will in this matter.

I have, as my colleagues know, had substantial differences with FERC over the course of the past few years. But I am glad to say today, after 4 long years, it appears that the commission may be on the right track on this issue. This March, FERC issued a ruling in which the commission definitely found that the termination payments at issue here ''are based on profits Enron projected to receive under its long-term wholesale power contracts executed during the period when Enron was in violation of conditions of its market-based rate authority.'' For the first time, FERC found that Enron was in violation of its market-based rate authority at the time victimized utilities such as Washington's Snohomish PUD inked power sales contract with the now-bankrupt energy giant. That FERC process is on-track to wrap-up this year; but so long as that process is ongoing, utilities like Snohomish have been operating under the threat that the bankruptcy court would swoop in and demand payments for Enron, regardless of the pattern of market manipulation and fraud. In a series of rulings, the bankruptcy court has expressed its will to do just that. What this provision does is ensure the bankruptcy court cannot force these utilities and their consumers to make termination payments that are unjust, unreasonable or contrary to the public interest.

Section 1270 states that notwithstanding any other provision of law, and specifically the bankruptcy code, FERC ''shall have exclusive jurisdiction'' to make these determinations. Many of my colleagues might naturally assume that this provision merely sets forth what is already the case. But as I stated earlier, that is not necessarily the case. This provision is necessary and critical because the Federal bankruptcy court has already concluded that it will not defer to FERC with respect to whether our constituents will be required to make termination payments. Not only has the bankruptcy court not deferred to FERC, it compounded the seriousness of the issue by enjoining FERC from proceeding with its own specific inquiry into whether Enron is owed the termination payments. It forced FERC to stop on a matter that FERC had said required its special expertise.

Imagine making it through the arduous and frustrating, years-long process of proving the case against Enron and proving it to FERC, only to find out at the end of the day that the bankruptcy court would intervene and force these termination payments anyway. It is this situation—a collision between FERC and the bankruputcy court that this legislation addresses. And what the Congress is saying with this amendment, as counsel for the Energy Committee stated during our extended discussion, is that ''the Commission, not the bankruptcy [court], is the proper forum in which these question be resolved.'' That is certainly my view, and the view of many of us who represent ratepayers harmed by Enron.

I do not assume this position in denigration of the responsibility of the bankruptcy court. The bankruptcy court has an important role to play in our law and our economic community. However, I do think it is fair to say that it is a forum in which it naturally looks first to maximizing the assets of the estate. In contrast, the Federal Energy Regulatory Commission's first obligation is to protect our nation's ratepayers. In this very unique context, in which a seller of electricity that has fraudulently and criminally manipulated the market in violation of the tariffs on file with the commission—and where the seller is now seeking to reap the profits from that activity in the form of termination payments for power never delivered—what we are saying here, unequivocally, is that FERC is the forum in which this should be resolved. FERC is the entity that is supposed to look after our nation's ratepayers, and should have make the decision about whether termination payments are permissible under the Federal Power Act..

Given the nuanced, legal nature of this provision, I can assure my colleagues that this ''rifle shot,'' as the ranking minority member of the committee called it, is narrowly drawn in order to minimize any unanticipated impacts. It is only applicable to contracts entered into during the electricity crisis with sellers of electricity that manipulated the market to such an extent that they brought about unjust and unreasonable rates. There is only one such seller, and that is Enron, and there are only a handful of terminated contracts with Enron that haven't been resolved as of this date.

As a result, the amendment does not tamper with or otherwise disturb longstanding legal precedents. It does not tamper with the Mobile-Sierra doctrine, nor does it disturb other recent federal court decisions regarding the relationship of the bankruptcy courts and FERC in the context of the rejection in bankruptcy of FERC approved power sales contracts. It is, as the ranking minority member of the committee observed, a ''clean shot'' that ''affirms that FERC is the entity with the authority to review whether termination payments associated with cancelled Enron power contracts are lawful under the Federal Power Act.''

The ultimate disposition of this issue is of paramount concern to my constituents. It will decide whether they will be on the hook for more than $120 million, an amount that means more than $400 in the pocket of each ratepayer in Snohomish County, WA. It is critical that this issue be decided by the forum with the specialized expertise in matters relating to the sale of electricity with a stated mission of protecting ratepayers, and that is the Federal Energy Regulatory Commission.

Let me conclude by saying that I am very pleased that this provision has broad bipartisan support as well as the support of the Edison Electric Institute, the National Rural Electric Cooperative Association and the American Public Power Association. I believe my colleague from Oregon, Senator SMITH, said it exactly right when this amendment was debated in committee, and I am extremely grateful for his support. He essentially said that no Senator Republican or Democrat should feel any limitation in ''lending their shoulder to this wheel,'' to get this situation fixed. Senator SMITH, Senator ALLEN, and Senator CRAIG all played important roles during the mark-up in allowing this measure to move forward.

And I would be remiss if I did not mention the invaluable assistance from the Senators from Nevada on this issue the minority leader, Senator REID, but also Senator ENSIGN. While Senator ENSIGN does not serve on the Energy Committee, he played a crucial role in ensuring that colleagues on both sides of the aisle understood the importance and reasonableness of this measure, and the importance of this provision to him and to the people of Nevada.

I thank my colleagues, look forward to the passage of this provision out of the Senate and to working together to ensure this critical measure is included in legislation that emerges from the Energy bill conference with the House of Representatives.

Mrs. MURRAY. Mr. President, I would like to express my support for a provision in this energy legislation that provides relief for Washington State ratepayers who suffered from Enron's market manipulation schemes.

All of us from the West Coast remember the energy crisis of 2001, when consumers and businesses were hit with massive increases in the cost of energy. Many in California faced shortages and brownouts. In Washington State, we felt the impact as well.

Washington State ratepayers have been continually penalized for failures in the energy market and failures by Federal energy regulators. While there were many causes for the energy crisis, the most disturbing is the fact that energy companies, such as Enron, manipulated the marketplace to take advantage of consumers.

As we saw throughout the crisis, the Federal Energy Regulatory Commission did not take aggressive action to protect consumers from market manipulation. In fact, over the last several years, as we in the West have sought to clean up the mess that these companies left in their wake, FERC has continued to drag its regulatory feet.

For more than 3 years, many of us in the Northwest delegation have been urging FERC to better protect consumers, and provide relief to ratepayers affected by market manipulation. At the height of the 2001 energy crisis, FERC was urging companies to enter into long-term contracts at highly-inflated rates, advice which many Northwest companies followed.

In 2003, FERC found that market manipulation occurred during the 2001 energy crisis, but indicated it would be unlikely that Washington State ratepayers would be reimbursed for the harm caused by the manipulation. When Western utilities—including Snohomish PUD, which was hit particularly hard—terminated their contracts with Enron, Enron turned around and sued them for ''termination payments.''

It was very disturbing for all of us to see FERC agree that there was manipulation, but leave Washington ratepayers holding the bag—with no relief—for the harm they experienced in 2001 and continue to experience today.

I am pleased that this energy legislation addresses this important issue by giving FERC exclusive jurisdiction to determine whether termination payments are required under certain power contracts are unjust and unreasonable.

This is wonderful news for Washington State ratepayers because of a March 2005 order, in which FERC found Enron in violation of its market-based authority at the time Snohomish PUD signed its power contract. This provision ensures Snohomish PUD's ratepayers will not be required to pay the now-bankrupt Enron for power the region did not receive.

Mr. President, I support this provision as it will protect Northwest ratepayers and give FERC more tools to better police the energy market.

Mr. ENSIGN. Mr. President, I rise to thank my colleagues for including a provision in this bill which give the people of Nevada a fair chance to keep their hard earned money away from the clutches of Enron.

Enron is still seeking to extract an additional $326 million in profits from my State's utilities for power that was never delivered. Enron, after all of its market manipulation and financial fraud, is still trying to profit from its wrong-doing at the expense of each and every Nevadan.

Section 1270 of the Energy Policy Act ensures that the proper government agency will determine whether Enron is entitled to more money from Nevada. That agency is the Federal Energy Regulatory Commission. When FERC was established by Congress, its fundamental mission was, and remains, to protect ratepayers. FERC has specialized expertise required to resolve the issues surrounding some of the contracts that Enron entered into and eventually terminated.

Many of my colleagues know that Enron has filed for bankruptcy protection. There is an issue in the bankruptcy case as to whether Enron can enforce contracts that it terminated. The enforceability of these contracts should not be decided by a bankruptcy court. A bankruptcy judge does not have the specialized expertise required for this job. A bankruptcy court is responsible for considering different equities than an oversight agency, like FERC, would. The bankruptcy court is responsible for enhancing the bankruptcy estate for the benefit of creditors. FERC, on the other hand, sees a more complete picture which includes protecting the interests of the general public.

This is why section 1270 is so important. It is a provision that is limited in scope. It does not seek to resolve the issue in the favor of one party. Though many Senators from affected States may have been tempted to legislate the outcome, we have refrained from doing so. Let me set the stage for why this provision is so critical. It is a complicated story. It is one that should be told in order to understand why I so strongly support this provision and why I believe the provision should be enacted into law.

There are two major utilities that serve Nevada: Nevada Power and Sierra Pacific Power. Both need to buy power in the wholesale power market to meet the growing energy needs of Nevada. Las Vegas is the fastest growing city in the country. It takes a lot of power to keep the lights on in Las Vegas, Reno, and other parts of our growing State. At the height of the western electricity crisis, when spot market prices for electricity were going not just through the roof but through the stratosphere, FERC urged utilities like the Nevada utilities to reduce their purchases of spot supplies and enter into long-term contracts for electricity.

That is precisely what the Nevada utilities did. Enron was one of the biggest suppliers of wholesale electricity at the time. Starting in December 2000, the Nevada utilities entered into long-term contracts with Enron to meet a significant portion of their long-term needs. At the time, no one was aware of Enron's on-going criminal conspiracy to manipulate the market. No one knew that Enron had engaged in fraud to hide its true financial picture.

The prices that the Nevada utilities agreed to pay Enron for long-term power were truly outrageous. The prices fully reflected Enron's success in manipulating the market. Prices were three times as high as the threshold that FERC had established as a ceiling price that would trigger close scrutiny under the just and reasonable standard. As a result, in November 2001, the Nevada utilities asked FERC to review the rates to determine whether those contract prices were just and reasonable.

Two days after the Nevada companies filed their complaints against Enron, Enron filed for bankruptcy. Its financial house of cards had finally collapsed. As one definitive study of Enron concluded, Enron had been insolvent at the time the company entered into each and every contract with the Nevada utilities.

The contracts between Enron and the Nevada utilities incorporated the Western Systems Power Pool Agreement, a master agreement on file and approved by FERC. This master agreement governs transactions of more than 200 parties throughout the west.

Under the terms of that agreement, if one of the parties files for bankruptcy, the other party may rescind the agreement. So in this case, Enron's bankruptcy would have given the Nevada utilities cause to terminate the contracts. Under the unique terms of this agreement, however, the commercial party that is ''in the money'' will still be able to benefit if the contract is rescinded. So while the Nevada companies could terminate the contract, they still would have had to pay Enron the difference between the contract price and the market price at the time of terminating, to say nothing of the need to buy replacement power.

When Enron entered bankruptcy, the price for electricity had fallen to the level power had sold for prior to Enron's market manipulation. This demonstrates that there was a huge difference between the artificially and unlawfully manipulated price that Enron commanded at the time of the contract and the market price at the time Enron filed for bankruptcy. Given the huge financial hit that the Nevada companies would have had to pay to terminate the Enron contracts, the Nevada companies continued to honor their commitment to purchase power under these contracts.

In March 2002, the Public Utilities Commission of Nevada refused to allow the Nevada utilities to pass more than $400 million in purchased power costs on to ratepayers. As a result, the credit ratings of the Nevada utilities fell below investment grade. Under the terms of the WSPPA, this downgrade gave Enron the right to request assurances regarding the Nevada companies'

intentions with respect to their contracts. In meetings and in telephone calls, the Nevada Companies assured Enron that they would be able to pay Enron everything that would be owed under the contracts.

The WSPPA required Enron to use ''reasonable'' discretion with respect to the contracts. Despite this requirement, Enron terminated the contracts with the Nevada companies and demanded that the Nevada companies pay Enron termination payments totaling approximately $326 million. These termination payments represent pure profit to Enron on power than Enron never delivered. By pure profit, I mean just that. The termination payments are calculated, as I previously noted, by the difference between the cost of power today and the outrageous, manipulation-based prices Enron was able to extract during the energy crisis that Enron had unlawfully created.

The Nevada companies refused to make payment. At this time, it was known that Enron had manipulated the entire western market. As part of Enron's bankruptcy, an ''adversary proceeding'' was initiated to determine the enforceability of these contracts and whether Enron would be allowed to continue to profit under fraudulent contracts at the expense of Nevada's ratepayers.

At this point, the legal proceedings become very complex but the proceedings should be summarized so my colleagues will understand exactly what has happened.

On June 24, 2003, FERC determined that the ''just and reasonable'' standard of review is not available to the Nevada companies with respect to their long-term contracts with Enron. This decision was made because FERC argued that it had previously ''pre-determined'' that the contracts would be just and reasonable when they granted Enron its authority to sell electricity at market-based rates years earlier.

On the very next day, FERC withdrew Enron's authority to sell electricity at market-based rates because of its ''market manipulation schemes that had profound adverse impacts on market outcomes'' which violated its ''market-based rate authorizations.''

The bankruptcy court judge, on August 23, 2003, ruled on a summary judgment motion that the Nevada utilities were required to pay Enron $326 million in termination payments. The court held that, because FERC had not found that Enron's contracts should be modified by virtue of its market manipulation, the filed-rate doctrine applied. It further ruled that it did not need to defer to FERC on whether Enron had complied with the tariff since it could interpret the tariff as well as FERC.

On October 6, 2003, the Nevada Companies filed a complaint with FERC. The complaint sought to have FERC determine: Enron's termination was unreasonable under the tariff; Enron was not entitled to termination payments on equitable grounds; and, assuming Enron was otherwise entitled to termination payments, the contract provision should be set aside as contrary to the public interest.

Then, on July 22, 2004, FERC set for hearing the narrow question of whether Enron's termination was reasonable. FERC deferred ruling on the issue of whether the contract should be set aside under the public interest standard until that issue became ''necessary.'' At the hearing, FERC did not address the issue of equitable claims. On that same day, FERC ruled in a separate case that Enron could be required to disgorge all of its profits.

On September 30, 2004, FERC's administrative law judge denied Enron's motion to dismiss the case, finding, among other things, that FERC's specialized expertise is required.

U.S. District Court Judge Barbara Jones reversed a ruling of the bankruptcy court on October 15, 2004. The district court considered the issue of whether the Nevada companies owed Enron the termination payments. The district court found that the Nevada companies had offered timely assurances and that the issue of whether Enron rejected those assurances and terminated reasonably were issues of fact which required a trial.

On December 3, 2004, the bankruptcy court enjoined FERC from further proceedings after finding that FERC had violated the ''automatic stay'' provisions of the Bankruptcy Code. A hearing on termination payments was tentatively scheduled for this coming July. Currently, motions for interlocutory appeal are pending before a U.S. District Court Judge.

Despite the ruling of a FERC administrative law judge that FERC's expertise was necessary to interpret the master tariff's requirement that a terminating party act ''reasonably,'' the bankruptcy court has enjoined FERC from further considering this issue. Section 1270 of this legislation confirms the decision of the FERC administrative law judge. This section says the judge is correct and the bankruptcy court is wrong. It makes clear that, in this limited matter, FERC has the exclusive jurisdiction to determine the merits of the claims at issue.

This provision is very reasonable. It is a targeted response to a clash among competing jurisdictions over which tribunal, FERC or the bankruptcy court, should decide this issue. If Congress doesn't address the issue of jurisdiction now, the Supreme Court will have to do so years from now. That need not happen. Congress can decide this jurisdictional issue. The decision of the Senate, as reflected in Section 1270, is the right decision.

The language of the amendment tracks Supreme Court precedent that recognizes that Congress can choose to give jurisdiction over issues to administrative agencies when the jurisdiction is consistent with the core functions of the agency. In this instance, the recognition of authority to FERC to decide this matter is narrow. It relates solely to the legality of Enron collecting additional profits in the form of termination payments for power not delivered. It is also directly related to the agency's core function to ensure just and reasonable rates and guard against market manipulation.

I want to assure my colleagues that this provision does not encroach upon the sanctity of contracts. It merely picks the proper forum for determining whether Enron complied with its tariff obligations. Likewise, it also does not alter the standard of review for challenging the contract. Congress is not picking a standard; it is only picking a forum.

Mr. President, this reasonable provision has the support of key industry leaders such as the National Rural Electric Cooperative Association, the American Public Power Association, and the Edison Electric Institute. It has bipartisan support. Anyone who has been as harmed by Enron as ratepayers in my state have understands the need to ensure that only the most qualified tribunal should rule on whether Enron can collect an additional $326 million in windfall profits.

Mr. SALAZAR. Mr. President, as I have said time and again during this debate over the last several weeks, America is being held hostage to its over-dependence on foreign oil. This Energy bill is our first step in setting America free.

From the National Renewable Energy Laboratory in Golden to the balanced development of oil and gas, Colorado is already playing a big part in setting America free.

With a huge, untapped resource called oil shale, Colorado can play an even bigger role in this effort. If properly developed, oil shale that exists in my great State of Colorado has the potential to be part of a strategy to address America's dependence on foreign oil.

Colorado is home to tremendous deposits of oil shale, a type of hydrocarbon bearing rock that is abundant in Western Colorado, as well as Utah and Wyoming. Estimates place the potential recoverable amount of this type of oil as high as 1 trillion barrels. Let me say that again—1 trillion barrels.

Let me put that in perspective:

Saudi Arabia's proven conventional reserves are said to be around 261 billion barrels.

Several of our colleagues argued earlier this spring that ANWR is a resource so remarkable that we must open that pristine land to drilling. According to the U.S. Geological Survey—USGS—the mean estimate of technically recoverable oil is 7.7 billion barrels—billion bbl—but there is a small chance that, taken together, the fields on this Federal land could hold 10.5 billion bbl of economically recoverable oil. That's one percent of the potential oil shale.

Assuming we use 15 million barrels of oil a day just for transportation, oil

shale could keep our transportation going for another 200 years.

Colorado has some experience in trying to access this potential asset. We have had two boom and bust periods, one in the 1800s and the other in the 1980s.

The most recent story is about the ''Boom & Bust'' Colorado experienced during the last oil shale development cycle that began in the 1970's and ended in May of 1982 on ''Black Sunday.''

I will never forget the powerful lessons of Black Sunday.

Colorado invested millions in new towns, only to see thousands of residents flee when oil prices fell, leaving behind them a devastated real estate market.

Communities that invested heavily in schools and roads and housing could no longer meet the burden of paying for this critical infrastructure.

Buildings on the Western Slope—and even in Denver—were built and left empty, if the construction was completed at all.

Towns that thought they were seeing a bright future, struggled to deal with crippling unemployment.

The technical challenges of oil shale and the searing memories of Black Sunday have taught all of Colorado some important lessons.

We now recognize that oil shale's potential can only be realized if it is approached in the right way.

Oil shale development must be considered a marathon and not a sprint.

I believe, as many in Colorado do, that oil shale research and development must be conducted in an open, cautious and thoughtful manner that includes our local communities.

As Congress instructs Federal agencies to consider oil shale research and development leasing and commercial leasing, it must give careful consideration to environmental and socioeconomic impacts and mitigations as well as the sustainability of an oil shale industry.

Colorado is a team player. The people of my State are ready to share the abundant natural resources with which we have been blessed. In exchange, Colorado expects to have a seat at the table.

That is why I introduced the Oil Shale Development Act of 2005. I am very pleased that it has been incorporated into the Energy bill we are now considering.

I believe the oil shale provision in this Energy bill is a thoughtful approach to future oil shale development. It is full of commonsense provisions that build on the lessons we learned in that painful experience 30 years ago.

It directs leasing for research and development;

It requires a programmatic Environmental Impact Study to ensure that we take a comprehensive environmental look at potential commercial leasing;

It directs the Secretary of Interior to work with the States, local communities, and industry to identify and report on issues of primary concern to local communities and populations with commercial leasing and development;

and it insists that States—not the Federal Government—retain authority over water rights.

I know we are going to hear more and more about oil shale development in the Rocky Mountain west. That is as it should be, and we will embark on a thoughtful, balanced approach to oil shale development with this bill.

Mr. ALLEN. Mr. President, as we move forward on Energy legislation crucial for our country's national security, jobs, and competitiveness, I wish to raise an issue which is threatening global energy security. The surging demand for energy in developing countries coupled with the dynamic rise in power and influence of government operated energy companies is changing the global energy market. Specifically, I am concerned about the role of the People's Republic of China with its national oil companies, and the potential adverse effects on U.S. energy supplies. I am also concerned about our ability to compete for energy assets.

China's surging demand for energy is impacting the world. China has now emerged as the second largest consumer of energy, and demand could double by 2020. According to the U.S. Energy Information Administration, China is consuming 7.2 million barrels of oil per day and this is expected to rise to 7.8 million barrels of oil per day by next year. China alone has accounted for 40 percent of growth in oil demand over the last 4 years. According to recent studies, China's growing demand for oil is one of the significant factors driving oil prices to record high levels. With such growth in the Chinese economy, it is understandable why there is greater demand for energy in the form of coal, oil, and nuclear power as well as materials ranging from cement to steel.

With limited domestic resources, China has embarked on an aggressive program through its national energy companies to secure energy and in doing so has proposed acquisition of energy assets around the world, including assets of U.S. based companies. It has become increasingly difficult for private companies in the U.S. to compete against these government-owned energy companies, such as the Chinese state-owned company known as CNOOC. The inherent advantage that these state-owned companies have is that they can operate under non-market terms and conditions for the purchase of energy supplies and assets, including accepting very low rates of return. Thus, private entities in free countries are disadvantaged in competing for energy assets.

China in the past year has signed deals for oil reserved in Africa, Iran, South America, and now Canada. Today, one of China's largest state-controlled oil companies made a $18.5 billion unsolicited bid for Unocal, signaling the first big takeover battle by a Chinese company for a U.S. corporation.

Energy is a global issue and we need to understand the implications for American interests on how these energy shifts may impact us as well as the rest of the world.

It is important that we have a comprehensive review which would include a full assessment of the types of investments China is making in international and U.S. based companies, a better understanding of the relationship between the Chinese energy sector and the Chinese government, and what we can do to ensure a level playing field and flexibility in the global market. Perhaps most importantly, we need to understand how we can better work cooperatively to pursue energy interests as well as work together on conservation, energy efficiency, and technology.

It is nice to talk about working cooperatively with China, but I am concerned that we may be headed on a collision course. Energy is the lifeblood of economic growth and we are beginning to see an imbalance occur. I look forward to hearing from the administration to gain a better understanding of the issues and how the U.S. can best proceed to secure our future energy needs.

Mr. FEINGOLD. Mr. President, while I voted for a similar amendment offered by the Senators from Arizona, Mr. MCCAIN, and Connecticut, Mr. LIEBERMAN, in 2003, unfortunately, the current version of the amendment includes over $600 million in taxpayer subsidies for the creation of new nuclear powerplants. The nuclear industry is a mature industry that does not need to be propped up by the taxpayers. Over 300 national environmental and consumer organizations, including the League of Conservation Voters, Public Interest Research Group, and the Sierra Club, oppose this amendment. Our Nation faces an ever-growing budget deficit and we must be fiscally and environmentally responsible. I strongly believe that global warming is an important national issue, which is why I supported the Bingaman-Specter sense-of-the-Senate amendment to push for a national policy on global warming. I will continue to work with my colleagues on both sides of the aisle to create a meaningful global warming program.

Mr. JEFFORDS. Mr. President, I rise today to congratulate my colleagues on our efforts to pass an energy bill through the Senate that does not include exemptions for the oil and gas industry from drinking water and clean water protections. Section 327 of H.R. 6 as reported contains an exemption to the Safe Drinking Water Act for the practice of hydraulic fracturing. Section 328 of H.R. 6 contains an exemption for the oil and gas industry from obtaining stormwater discharge permits under the Clean Water Act, rolling back fifteen years of environmental

protection. These efforts to weaken the protections applied to our Nation's waters should be stricken from the bill as the conferees on H.R. 6 work to resolve the differences between the two bills.

Over half of our Nation's fresh drinking water comes from underground sources. Hydraulic fracturing occurs when fluids are injected at high rates of speed into rock beds to fracture them and allow easier harvesting of natural oils and gases. It is these injection fluids, and their potential to contaminate underground sources of drinking water, that are of high concern. In a recent report, the EPA acknowledged that these fluids, many of them toxic and harmful to people, are pumped directly into or near underground sources of drinking water. This same report cited earlier studies that indicated that only 61 percent of these fluids are recovered after the process is complete. This leaves 39 percent of these fluids in the ground, risking contamination of our drinking water.

In June of 2004, an EPA study on hydraulic fracturing identified diesel as a ''constituent of potential concern.'' Prior to this, EPA had entered into a Memorandum of Agreement with three of the major hydraulic fracturing corporations, whom all voluntarily agreed to ban the use of diesel, and if necessary select replacements that will not cause hydraulic fracturing fluids to endanger underground sources of drinking water. However, all parties acknowledged that only technically feasible and cost-effective actions to provide alternatives would be sought.

Litigation over the last several years has resulted in findings that hydraulic fracturing should be regulated as part of the underground injection control program in the Safe Drinking Water Act. Yet, EPA indicated in a letter in December of 2004 that they have no intention of publishing regulations to that effect or ensuring that state programs adequately regulate hydraulic fracturing.

I will include our letter to EPA dated October 14, 2004, and their response dated December 7, 2004, in the RECORD.

We need to be moving in the right direction—taking steps to ensure that hydraulic fracturing is appropriately regulated under the Safe Drinking Water Act. I have introduced S. 1080, the Hydraulic Fracturing Safety Act of 2005 to ensure that the practice of hydraulic fracturing is regulated under the Safe Drinking Water Act through the Underground Injection Control, UIC, Program. I would like to thank Senators LAUTENBERG, BOXER, and LIEBERMAN for co-sponsoring that bill. The House energy bill takes steps in the wrong direction—exempting hydraulic fracturing from the Safe Drinking Water Act.

I urge the conferees of this energy bill to strike section 327 of the House-passed energy bill. By striking this language, the conferees will help to ensure that the drinking water enjoyed by all Americans is not damaged through the process of hydraulic fracturing.

This exemption for hydraulic fracturing is not the only step backwards that the House energy bill takes. Section 328 of the bill exempts the oil and gas industry from stormwater protections in the Clean Water Act.

Stormwater runoff is a leading cause of impairment to the nearly 40 percent of surveyed U.S. water bodies that do not meet water quality standards.

Currently, the oil and gas industry is regulated under Phase I of EPA's stormwater regulations which requires National Pollution Discharge Elimination System, NPDES, permits for medium and large municipal storm sewer systems and eleven, 11, categories of industrial activity, including construction sites disturbing more than 5 acres of land. In 1999, EPA adopted the Phase II permitting requirements, effective March 10, 2003, covering small municipal separate stormwater systems and construction sites affecting one to five acres of land. However, EPA extended the Phase II permitting deadline to June 12, 2006 for only the oil and gas industry.

Now, section 328 of the House energy bill completely exempts the oil and gas industry from compliance with both Phase I and Phase II of the NPDES stormwater program.

This action will adversely impact water quality. Oil and gas construction activities require companies to undertake a number of earth disturbing activities, including: clearing, grading, and excavating. Oil and gas site development may also include road construction to transport equipment and other materials, as well as pipeline construction. The stormwater pollution created from these activities can be devastating to the environment.

According to the EPA, over a short period of time, stormwater runoff from construction site activity can contribute more harmful pollutants, including sediment, into rivers, lakes, and streams than had been deposited over several decades. Sediment clouds water, decreases photosynthetic activity, reduces the viability of aquatic plants and animals; and ultimately destroys animals and their habitat. Sediment rates from cleared and graded construction sites are typically 10 to 20 times greater than those from agricultural lands and one-thousand to two-thousand times greater than those from forest lands. Other harmful pollutants in stormwater runoff from construction sites include phosphorous and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may be mobilized when land surfaces are disturbed.

More than 5,000 cities, towns, and counties and eleven, 11, industrial sectors are required to obtain NPDES stormwater permits. Large oil and gas construction sites covered under the Phase I stormwater program have been taking action to reduce the impact of sediments and pollutants on water quality since 1990. In 2005, GAO reported that over a one-year period, 4,330 oil and gas construction sites obtained Phase I stormwater permits in three of the six largest oil and gas producing states. In 20 the Warren County Conservation District submitted information to EPA indicating that 70 percent of the oil and gas projects they inspected between 1997 and 2002 were in violation of Phase I permit conditions. If this amendment is adopted, these actions will no longer be required. In FY 2002/2003, the Alaska Department of Environmental Conservation estimated that they would review 400 engineering plans as part of the stormwater permitting process. The House provision would exempt these sites from 15-year-old requirements to reduce the pollution they send into surrounding waters through stormwater discharges.

The environmental impact from this amendment is even more severe when you factor in the approximately 30,000 oil and gas ''starts'' per year that EPA anticipates could be covered by the Phase II stormwater regulation. EPA is currently reviewing the impact of the regulation on these sites. Adopting this amendment would circumvent this review process and exempt thousands of sites from taking action to protect water quality.

Section 402(l) of the Clean Water Act contains a limited exemption for specific types of uncontaminated discharges from specific types of oil and gas sites from stormwater permit requirements. The language of the Act and the legislative history of this section indicate that when adopted, section 402(l) was intended to give a narrow exemption for specific circumstances in the oil and gas industry that did not include construction activities at every oil and gas—related site.

I urge the conference committee on H.R. 6 to reject the Clean Water and Safe Drinking Water Act exemptions included in the House energy bill. These provisions represent a major step backward in efforts to protect water quality and could pose a direct threat to the safety of drinking water supplies. Should these exemptions be included in the final conference report, we will see our Nation's water quality standards go down the drain.

I ask unanimous consent to print the above-referenced letters in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, October 14, 2004.

Administrator MICHAEL O. LEAVITT,
Environmental Protection Agency, Ariel Rios Building, Washington, DC

DEAR ADMINISTRATOR LEAVITT: We are writing to you regarding the Environmental Protection Agency's (EPA's). administration of the Safe Drinking Water Act (SDWA) as it pertains to hydraulic fracturing. In recent months, the Agency has taken several key actions on this issue:

On December 12, 2003, the EPA signed a Memorandum of Understanding with three of the largest service companies representing 95 percent of all hydraulic fracturing performed

in the U.S. These three companies, Halliburton Energy Services, Inc., Schlumberger Technology Corporation, and BJ Services Company, voluntarily agreed not to use diesel fuel in their hydraulic fracturing fluids while injecting into underground sources of water for coalbed methane production.

In June of 2004, EPA completed its study on hydraulic fracturing impacts and released its findings in a report entitled, ''Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs. The report concluded that hydraulic fracturing poses little chance of contaminating underground sources of drinking water and that no further study was needed.

On July 15, 2004, the EPA published in the Federal Register its final response to the court remand (Legal Environmental Assistance Foundation (LEAF), Inc., v: United States Environmental Protection Agency, 276 F. 3d 1253). The Agency determined that the Alabama underground injection control (UIC) program for hydraulic fracturing, approved by EPA under section 1425 of the SDWA, complies with Class II well requirements.

We are concerned that the Agency's execution of the SDWA, as it applies to hydraulic fracturing, may not be providing adequate public health protection, consistent with the goals of the statute.

First, we have questions regarding the information presented in the June 2004 EPA Study and the conclusion to forego national regulations on hydraulic fracturing in favor of an MOD limited to diesel fuel. In the June 2004 EPA Study, EPA identifies the characteristics of the chemicals found in hydraulic fracturing fluids, according to their Material Safety Data Sheets (MSDSs), identifies harmful effects ranging from eye, skin, and respiratory irritation to carcinogenic effects. EPA determines that the presence of these chemicals does not warrant EPA regulation for several reasons. First, EPA states that none of these chemicals, other than BTEX compounds, are already regulated under the SDWA or are on the Agency's draft Contaminant Candidate List (CCL). Second, the Agency states that it does not believe that these chemicals ate present in hydraulic fracturing fluids used for coalbed methane, and third, that if they are used, they are not introduced in sufficient concentrations to cause harm. These conclusions raise several questions:

1. The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency plan to incorporate the results of this study and the fact that these chemicals are present in hydraulic fracturing agents into the CCL development process, and if not, why not?

2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not contain most of the chemicals identified. This conclusion is based on two items—''conversations with field engineers'' and ''witnessing three separate fracturing events'' (June 2004 EPA Study, p. 4–17.)

a. How did the Agency select particular field engineers with whom to converse on this subject?

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which they were affiliated.

c. How did the Agency select the three separate fracturing events to witness?

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (June 2004 EPA Study, p. 4–19) as determining factors in the types of hydraulic fracturing fluids that will be used?

e. Which companies were observed?

f. Was prior notice given of the planned witnessing of these events?

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does ''3'' represent?

h. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentially being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

The Agency concludes in the June 2004 study that even if these chemicals are present, they are not present in sufficient concentrations to cause harm. The Agency bases this conclusion on assumed flowback, dilution and dispersion, adsorption and entrapment, and biodegradation. The June 2004 study repeatedly cites the 1991 Palmer study, ''Comparison between gel-fracture and water-fracture stimulations in the Black Warrior basin; Proceedings 1991 Coalbed Methane Symposium,'' which found that only 61 percent of the fluid injected during hydraulic fracturing is recovered. Please explain what data EPA collected and what observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground are not present in sufficient concentrations to adversely affect underground sources of drinking water.

After identifying BTEX compounds as the major constituent of concern (June 2004 EPA study, page 4–15), the Agency entered into the MOU described above as its mechanism to eliminate diesel fuel from hydraulic fracturing fluids.

3. a. How does the Agency plan to enforce the provisions in the MOD and ensure that its terms are met?

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes in the field to ensure that diesel fuel is not used?

c. Will the Agency require states to monitor for diesel use as part of their Class II UIC Programs?

4. a. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

b. What action does the Agency plan to take should such a situation occur?

c. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

d. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOU and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel hydraulic fracturing?

e. The Agency also states that it expects that even if diesel were used, a number of factors would decrease the concentration and availability of BTEX. Please elaborate on the data EPA collected and the observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground (1991 Palmer), should they contain BTEX compounds, would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

We are also concerned that the EPA response to the court remand leaves several unanswered questions. The Court decision found that hydraulic fracturing wells ''fit squarely within the definition of Class II wells,'' (LEAF II, 276 F.3d at 1263), and remanded back to EPA to determine if the Alabama underground injection control program under section 1425 complies with Class II well requirements. On July 15, 2004, EPA published its finding in the Federal Register that the Alabama program complies with the requirements of the 1425 Class IT well requirements. (69 FR No. 135, pp 42341.) According to EPA, Alabama is the only state that has a program specifically for hydraulic fracturing approved under section 1425. Based on this analysis, it seems that in order to comply with the Court's finding that hydraulic fracturing is a part of the Class II well definition, the remaining states should be using their existing Class IT, EPA—approved programs, under 1422 or 1425, to regulate hydraulic fracturing.

To date, EPA has approved Underground Injection Control programs in 34 states. Approval dates range from 1981–1996.

5. Do you plan to conduct a national survey or review to determine whether state Class IT programs adequately regulate hydraulic fracturing?

At the time that these programs were approved, the standards against which state Class IT programs were evaluated did not include any minimum. requirements for hydraulic fracturing. In its January 19, 2000 notice of EPA's approval of Alabama's 1425 program, the Agency stated, ''When the regulations in 40 CFR parts 144 and 146, including the well classifications, were promulgated, it was not EPA's intent to regulate hydraulic fracturing of coal beds. Accordingly, the well classification systems found in 40 CFR 144.6 and 146.5 do not expressly include hydraulic fracturing injection activities. Also, the various permitting; construction and other requirements found in Parts 144 and 146 do not specifically address hydraulic fracturing.'' (65 FR No. 12, p. 2892.)

Further, EPA acknowledges that there can be significant differences between hydraulic fracturing and standard activities addressed by state Class IT programs. In the January 19, 2000 Federal Register notice, the Agency states:

''. . . since the injection of fracture fluids through these wells is often a one-time exercise of extremely limited duration (fracture injections generally last no more than two hours) ancillary to the well's principal junction of producing methane, it did not seem entirely appropriate to ascribe Class II status to such wells, for all regulatory purposes, merely due to the fact that, prior to commencing production, they had been fractured.'' (65 FR No. 12, p. 2892.)

Although hydraulic fracturing falls under the Class II definition, the Agency has acknowledged that hydraulic fracturing is different than most of the activities that occur under Class II and that there are no national regulations or standards on how to regulate hydraulic fracturing.

6. In light of the Court decision and the Agency's July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under state Class II programs?

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them.

b. Do you plan to establish such regulations or standards in the future?

c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class IT programs?

We appreciate your timely response to these questions in reaction to the three recent actions taken by the EPA in relation to hydraulic fracturing—the adoption of the MOU, the release of the final study, and the response to the Court remand. Clean and safe drinking water is one of our nation's greatest assets, and we believe we must do all we

can to continue to protect public health. Thank you again for your response.

Sincerely,

JIM JEFFORDS.
BARBARA BOXER.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, December 7, 2004.

Hon. JIM JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR JEFFORDS: Thank you for your letter to Administrator Michael Leavitt dated October 14, 2004, concerning the recent actions that the Environmental Protection Agency (EPA) has taken in implementing the Underground Injection Control (UIC) program with respect to hydraulic fracturing associated with coalbed methane wells.

The Office of Ground Water and Drinking Water (OGWDW) has prepared specific responses to your technical and policy questions regarding how we conducted the hydraulic fracturing study, the reasons behind our decisions pertaining to the recommendations contained in the study, and any plans or thoughts we may have on the likelihood for future investigation, regulation, or guidance concerning such hydraulic fracturing.

Since the inception of the UIC program, EPA has implemented the program to ensure that public health is protected by preventing endangerment of underground sources of drinking water (USDWs). The Agency has placed a priority on understanding the risks posed by different types of UIC wells, and worked to ensure that appropriate regulatory actions are taken where specific types of wells may pose a significant risk to drinking water sources. In 1999, in response to concerns raised by Congress and other stakeholders about issues associated with the practice of hydraulic fracturing of coalbed methane wells in the State of Alabama, EPA initiated a study to better understand the impacts of the practice.

EPA worked to ensure that its study, which was focused on evaluating the potential threat posed to USDWs by fluids used to hydraulically fracture coalbed methane wells was carried out in a transparent fashion. The Agency provided many opportunities to all stakeholders and the general public to review and comment on the Agency study design and the draft study. The study design was made available for public comment in July 2000, a public meeting was held in August 2000, a public notice of the final study design was provided in the Federal Register in September 2000, and the draft study was noticed in the Federal Register in August 2002. The draft report was also distributed to all interested parties and posted on the internet. The Agency received more than 100 comments from individuals and other entities.

EPA's final June 2004 study, Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs, is the most comprehensive review of the subject matter to date. The Agency did not recommend additional study at this time due to the study's conclusion that the potential threat to USDWs posed by hydraulic fracturing of coalbed methane wells is low. However, the Administrator retains the authority under the Safe Drinking Water Act (SDWA) section 1431 to take appropriate action to address any imminent and substantial endangerment to public health caused by hydraulic fracturing.

During the course of the study, EPA could not identify any confirmed cases where drinking water was contaminated by hydraulic fracturing fluids associated with coalbed methane production. We did uncover a potential threat to USDWs through the use of diesel fuel as a constituent of fracturing fluids where coalbeds are co-located with a USDW. We reduced that risk by signing and implementing the December 2003 Memorandum of Agreement (MOA) with three major service companies that carry out the bulk of coalbed methane hydraulic fracturing activities throughout the country. This past summer we confirmed that the companies are carrying out the MOA and view the completion of this agreement as a success story in protecting USDWs.

In your letter, you asked about the Agency's actions with respect to hydraulic fracturing in light of LEAF v. EPA. In this case, the Eleventh Circuit held that the hydraulic fracturing of coalbed seams in Alabama to produce methane gas was ''underground injection'' for purposes of the SDWA and EPA's UIC program. Following that decision, Alabama developed—and EPA approved—a revised UTC program to protect USDWs during the hydraulic fracturing of coalbeds. The Eleventh Circuit ultimately affirmed EPA's approval of Alabama's revised UIC program.

In administering the UIC program, the Agency believes it is sound policy to focus its attention on addressing those wells that pose the greatest risk to USDWs. Since 1999, our focus has been on reducing risk from shallow Class V injection wells. EPA estimates that there are more than 500,000 of these wells throughout the country. The wastes injected into them include, in part, storm water runoff, agricultural effluent, and untreated sanitary wastes. The Agency and States are increasing actions to address these wells in order to make the best use of existing resources.

EPA remains committed to ensuring that drinking water is protected. I look forward to working with Congress to respond to any additional questions, or the concerns that Members of Congress or their constituents may have. If you have further comments or questions, please contact me, or your staff may contact Steven Kinberg of the Office of Congressional and Intergovernmental Relations at (202) 564–5037.

Sincerely,

BENJAMIN H. GRUMBLES,
Acting Assistant Administrator.

Attachment.

EPA RESPONSE TO SPECIFIC QUESTIONS REGARDING HYDRAULIC FRACTURING

The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency plan to incorporate the results of this study and the fact that these chemicals are present in hydraulic fracturing agents into the Contaminant Candidate List (CCL) development process, and if not, why not?''

Although the EPA CBM study found that certain chemical constituents could be found in some hydraulic fracturing fluids, EPA cannot state categorically that they are contained in all such fluids. Each fracturing procedure may be site specific or basin specific and fluids used may depend on the site geology, the stratigraphy (i.e. type of coal formation), depth of the formation, and the number of coal beds for each fracture operation. The Agency's study did not develop new information related to potential health effects from these chemicals; it merely reported those potential health effects indicated on the Material Safety Data Sheet (MSDS) or other information we obtained from the service companies.

As noted in the final report, ''Contaminants on the CCL are known or anticipated to occur in public water systems. . .'' The extent to which the contaminants identified in fracturing fluids are part of the next CCL process will depend upon whether they meet this test.

2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not contain most of the chemicals identified. This conclusion is based on two items—''conversations with field engineers'' and ''witnessing three separate fracturing events''.

a. How did the agency select particular field engineers with whom to converse on this subject?

The Agency did not ''select'' any of the engineers; we talked with the engineers who happened to be present at the field operations. In general those were engineers from the coalbed methane companies and the service companies who conducted the actual hydraulic fracturing. When we scheduled to witness the events, we usually conversed with the production company engineer to arrange the logistics and only spoke with the field engineers from the service companies at the well site.

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which they were affiliated.

EPA did not prepare a word-for-word transcript of conversations with engineers.

c. How did the Agency select the three separate fracturing events to witness?

The events selected were dependent on the location of the fracturing events, the schedules of both EPA OGWDW staff and EPA Regional staff to witness the event, and the preparation time to procure funding and authorization for travel. EPA witnessed the 3 events because the planning and scheduling of these happened to work for all parties. In one event, only EPA HQ staff witnessed the procedure, in another event only EPA Regional staff witnessed it, and in one event both EPA HQ and Regional staff attended with DOE staff.

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (p. 4–19) as determining factors in the types of hydraulic fracturing fluids that will be used?

Budget limitations precluded visits to each of the 11 different major coal basins in the U.S. It would have proven to be an expensive and time-consuming process to witness operations in each of these regions. Additionally, even within the same coal basin there are potentially many different types of well configurations, each of which could affect the fracturing plan. EPA believed that witnessing events in 3 very different coal basin settings—Colorado, Kansas, and south western Virginia—would give us an understanding of the practice as conducted in different regions of the country.

e. Which companies were observed?

EPA observed a Schlumberger hydraulic fracturing operation in the San Juan basin of Colorado, and Halliburton hydraulic fracturing operations in southwest Virginia and Kansas.

f. Was prior notice given of the planned witnessing of these events?

Yes, because it would have been very difficult to witness the events had they not been planned. To plan the visit, EPA needed to have prior knowledge of the drilling operation, the schedule of the drilling, and the scheduling of the services provided by the hydraulic fracturing service company. Wells, in general, take days to drill (in some cases weeks and months depending on depth of the well) and the fracturing may take place at a later date depending on the availability of the service company and other factors beyond anyone's control.

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does ''3'' represent?

Because of a limited project budget, EPA did not attempt to attend a representative

number of hydraulic fracturing events; that would have been beyond the scope of this Phase I investigation. The primary purpose of the site visits was to provide EPA personnel familiarity with the hydraulic fracturing process as applied to coalbed methane wells. The visits served to give EPA staff a working-level, field experience on exactly how well-site operations are conducted, how the process takes place, the logistics in setting up the operation, and the monitoring and verification conducted by the service companies to assure that the fracturing job was accomplished effectively and safely. EPA understands that thousands of fracturing events take place annually, for both conventional oil and gas operations and for coalbed methane production, and that three events represent an extremely small fraction of that total.

h. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentialIy being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

In Table 4–1 of the final study, EPA identified the range of fluids and fluid additives commonly used in hydraulic fracturing. Some of the fluids and fluid additives may contain constituents of potential concern, however, it is important to note that the information presented in the MSDS is for the pure product. Each of the products listed in Table 4–1 is significantly diluted prior to injection. The MSDS information we obtained is not site specific. We reviewed a number of data sheets and we noted that many of them are different, contain different lists of fluids and additives, and thus we concluded in the final report that we cannot say whether one specific chemical, or chemicals, is/are present at every hydraulic fracturing operation.

3. a. How does the Agency plan to enforce the provisions in the MOU and ensure that its terms are met?

There is no mechanism to ''enforce'' a voluntary agreement such as the MOA signed by EPA and the three major service companies. The MOA was signed in good faith by senior managers from the three service companies and the Assistant Administrator for Water, and EPA expects it will be carried out. EPA has written all signers of the MOA and asked if they have implemented the agreement and how will they ensure that diesel fuel is not being used in USDWs. All three have written back to EPA, stating that they have removed diesel from their CBM fracturing fluids when a USDW is involved and intend to implement a plan to ensure that such procedures are met. EPA intends to follow up with the service companies on progress in implementing such plans.

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes in the field to ensure that diesel fuel is not used?

It is unlikely that EPA will conduct such field monitoring. First, in most oil and gas producing states, and coalbed methane producing states, the State Oil and Gas Agency generally has UIC primary enforcement responsibility, and the state inspectors are the primary field presence of such operations. Second, EPA has a very limited field staff and in most cases they are engaged in carrying out responsibilities related to Class I, III and V wells in states in which they directly implement the UIC program. EPA plans to work with several organizations, including the Ground Water Protection Council and the Independent Petroleum Association of America to determine if there are other smaller companies conducting CBM hydraulic fracturing with diesel fuel as a constituent and will explore the possibility of including them in the MOA.

c. Will the Agency require states to monitor for diesel use as part of their Class II programs?

Given limited funds for basic national and state UIC program requirements, EPA does not have plans to include the states as parties to the MOA or require them to monitor for diesel fuel in hydraulic fracturiug fluids. The State of Alabama's EPA-approved UIC program prohibits the hydraulic fracturing of coalbeds in a manner that allows the movement of contaminants into USDWs at levels exceeding the drinking water MCLs or that may adversely affect the health of persons. Current federal UIC regulations do not expressly address or prohibit the use of diesel fuel in fracturing fluids, but the SDWA and UIC regulations allow States to be more stringent than the federal UIC program.

4. a. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

There are no terms in the MOA that would provide EPA a mechanism to take any enforcement action should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOA. However, EPA would work closely with the companies to determine why such action occurred and discuss possible termination procedures. The agreement defines how either party can terminate the agreement. EPA would make every effort to work with such a company to maintain their participation in the agreement. EPA entered the agreement with an assumption that the companies would honor the commitments they have made about diesel use in hydraulic fracturing fluids.

b. What action does the Agency plan to take should such action occur?

If such a situation does happen, and EPA learns that diesel fuel used in hydraulic fracturing fluid may enter a USDW and may present an imminent and substantial threat to public health, EPA may issue orders or initiate litigation as necessary pursuant to SDWA section 1431 to protect public health. Otherwise, EPA would take the actions described under the previous question.

c. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

While the report's findings did not point to a significant threat from diesel fuel in hydraulic fracturing fluids, the Agency believed that a precautionary approach was appropriate. EPA chose to work collaboratively with the oil service companies because we thought that such an approach would work quicker and be more effective than other approaches the Agency might employ (i.e. rulemaking, enforcement orders, etc.). We believed that once the service companies became familiar with the issue, they wouid willingly address EPA's concerns. After several months of meetings and negotiations between representatives of the service companies and high level management in EPA's Office of Water, a Memorandum of Agreement (MOA) was drafted and signed by all parties effective December 24, 2003.

We believe that the MOA mechanism accomplished the intended goal of removing diesel from hydraulic fracturing fluids in a matter of months, whereas proposing a rule to require removal would have taken at least a year or more.

d. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOU and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel in hydraulic fracturing?

During the specified time-frame, EPA focused on making editorial changes to the report and clarifying information relative to its qualitative discussion of the mitigating effects of dilution, dispersion. adsorption, and biodegradation of residual fluids. With respect to tbe use and effects of diesel fuel. changes in the study primarily focused on including language in the text of the report which acknowledged that we had successfully negotiated an MOA with the service companies. Specifically, EPA referenced this agreement in the text of the report in the Executive Summary at page ES–2 and on page ES–17, and further discussed the MOA in Chapter 7 in the Conclusions Section of the study.

e. The Agency also states that it expects that even if diesel were used, a number of factors would decrease the concentration and availability of BTEX. Please elaborate on the data EPA collected and the observations the Agency made in the field that would support the conclusion that 39 percent of fluids remaining in the ground (1991 Palmer), should they contain BTEX compounds, would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

EPA reiterates that the 39 percent figure from the 1991 Palmer paper is only one instance where it has been documented what quantity of the hydraulic fracturing fluids injected into wells will remain behind. Dr. Palmer, who conducted the original research, estimated that coalbed methane production wells flow back a greater percentage of fracturing fluids injected during the process. Where formations are dewatered or produced for a substantial period of time, greater quantities of formation and fracturing fluids would presumably be removed. We used 39 percent remaining fluids as a ''worst case'' scenario while doing our qualitative assessment, since it was the only figure we had from research conducted on coalbed methane wells.

With respect to the BTEX compounds, we no longer believe that they are a concern owing to the MOA negotiated between EPA and the three major service companies.

5. Do you plan to conduct a national survey or review to determine whether state Class II programs adequately regulate hydraulic fracturing?

At this time, EPA has no plans to conduct such a survey or review regarding the adequacy of Class II programs in regularing hydraulic fracturing. In its final study design, EPA indicated that it would not begin to evaluate existing state regulations concerning hydraulic fracturing until it decided to do a Phase III investigation. The Agency, however, reserves the right to change its position on this if new information warrants such a change.

6. In light of the Court decision and the Agency's July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under Class II programs?

When State UIC programs were approved by the Agency—primarily during the early 1980s—there was no Eleventh Circuit Court decision indicating that hydraulic fracturing was within the definition of ''underground injection.'' Prior to LEAF v. EPA. EPA had never interpreted the SDWA to cover production practices, such as hydraulic fracturing. After the Court decision in 1997, the Agency began discussions with the State of Alabama on revising their UIC program to include hydraulic fracturing. The net result of that process was the EPA approval of Alabama's revised section 1425 SDWA UIC program to include specific regulations addressing CBM

hydraulic fracturing. This approval was signed by the Administrator in December 1999. and published in the Federal Register in January 2000.

In light or the Phase I HF study and our conclusion that hydraulic fracturing did not present a significant public health risk, we see no reason at this time to pursue a national hydraulic fracturing regulation to protect USDWs or the public health. It is also relevant at the three major service companies have entered into an agreement with EPA to voluntarily remove diesel fuel from their fracturing fluids.

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them.

b. Do you plan to establish such regulations or standards in the future?

c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class II programs?

EPA has not explored in any detailed fashion minimum national or state requirements for hydraulic fracturing of CBM wells, except when it evaluated the revised UIC program in Alabama.

Considering and developing national regulations for hydraulic fracturing would involve discussions with numerous stakeholders. the states, and the public and it would require an intensive effort to arrive at regulatory language that could be applied nation-wide. As EPA's study indicates, coalbeds are located in very distinct geologic settings and the manner in which they are produced for methane gas may be very different in each locale. The proximity of USDW to the coal formations. and the regional geology and hydrology all play roles in how hydraulic fracturing operations are conducted.

If EPA receives information of drinking water contamination incidents and follow-up investigations point to a problem, EPA would then re-evaluate its decision to not continue with additional stndy relating to CBM hydraulic fracturing.

Should additional states submit revised UIC programs for EPA's review and approval which include hydraulic fracturing regulations, we would evaluate these programs under the '''effectiveness.'' standards of the SDWA section 1425 as we did or the State of Alabama.

OIL AND GAS ACCOUNTABILITY PROJECT
Durango, CO, June 14, 2005.

Hon. JAMES M. JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR JEFFORDS: Please accept this letter of endorsement for S. 1080, the Hydraulic Fracturing Safey Act of 2005.

Hydraulic fracturing is the industry practice of injecting fluids and other substances underground in order to increase production of oil and gas. While the industry refuses to fully list the chemicals it injects underground, the EPA has found that many of these chemicals are known to be toxic to humans and some are actually considered hazardous under federal law. Yet, the EPA and all states except Alabama have refused to regulate the toxics that are used during hydraulic fracturing operations. What this, means, in practice, is that is it legal for hydraulic fracturing companies to inject toxic chemicals into or close to drinking water aquifers. The EPA has even admitted that a number of toxic hydraulic fracturing chemicals can be injected into drinking water sources at concentrations that pose a threat to human health.

With thousands of new oil and gas wells being drilled each year, the impacts of hydraulic fracturing are beginning to show up. In western Colorado, hydraulic fracturing literally blew up one homeowner's water well and contaminated it with methane. In Alabama, hydraulic fracturing turned water wells black, and citizens have experienced health problems following contact with the affected water. The true scope of the problem, is not known, however, because state agencies do not monitor groundwater for chemicals used in hydraulic fracturing operations.

Despite the fact that unregulated hydraulic fracturing may be poisoning our drinking water. Senator Inhofe has introduced a bill, S.837, on behalf of the oil and gas industry, that would completely exempt hydraulic fracturing from EPA regulation under the Safe Drinking Water Act.

Thank you and Senators Lautenberg, Boxer and Lieberman for introducing the Hydraulic Fracturing Safety Act of 2005 (S. 1080). requiring the use of nontoxic products in hydraulic fracturing operations during oil and gas production. This important bill will help to protect our precious underground drinking water sources.

Sincerely,

GWEN LACHELT,
Director.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, May 25, 2005.

Hon. JAMES M. JEFFORDS,
Ranking Member, Senate Environment and Public Works Committee, U.S. Senate, Washington, DC.

DEAR RANKING MEMBER JEFFORDS: On behalf of the National Wildlife Federation, and the millions of hunters, anglers and outdoor enthusiasts we represent, I am writing to thank you for introducing the Hydraulic Fracturing Safety Act of 2005.

I am pleased that your legislation would ban the use of diesel or other priority pollutants listed under the Federal Water Pollution Control Act in hydraulic fracturing for oil or natural gas exploration and production and also require the EPA to regulate hydraulic fracturing.

EPA does not currently regulate hydraulic fracturing, a common technique used to stimulate oil and gas production that can potentially compromise groundwater resources and reserves. An EPA whistle-blower and other experts agree that hydraulic fracturing is a serious threat to drinking water. Hydraulic fracturing has already impacted residential drinking water supplies in at least three states (Colorado, Virginia and Alabama) and incidents have been recorded in other states (New Mexico, West Virginia and Wyoming) where residents have recorded changes in water quality or quantity following hydraulic fracturing operations near their homes.

I am disappointed that the U.S. House of Representatives passed an energy bill that exempts the oil and gas industry from being regulated under the Safe Drinking Water Act for hydraulic fracturing. The House passed bill would also exempt all oil and gas construction activities from the Clean Water Act; cut the heart out of environmental reviews by allowing for numerous National Environmental Policy Act exemptions; and require the BLM to rush to judgment on complex energy permitting decisions. These provisions would harm America's wildlife and Americans' water resources and recreational opportunities. I urge you to remain steadfast and oppose any amendments on the Senate floor that would provide egregious exemptions to the laws that protect water resources, wildlife and their habitat.

NWF and the millions of hunters, anglers and outdoor enthusiasts we represent commend you for your leadership on safeguarding our water resources and wildlife habitat. If you have further questions, please do not hesitate to contact me.

Sincerely,

JIM LYON,
Senior Vice President, Conservation.

Mr. JEFFORDS. Mr. President. I thank Senator GRASSLEY, Senator BAUCUS and the other members of the Senate Finance Committee for agreeing to my recycling amendment, which I call the Recycling Investment Saves Energy, RISE, provisions. These provisions were added to the tax title of the energy bill last week and have now been incorporated into the Energy bill as section 1545 of H.R. 6.

The current Senate Energy bill contains important provisions to promote the use of energy savings in vehicles, appliances, new homes, and commercial buildings. As we move forward with fostering energy efficiency, we must not neglect recycling. Recycling should be an integral component of our nation's energy efficiency strategy.

The RISE provisions will create jobs, increase productivity, and conserve energy by establishing a tax credit to preserve and expand America's recycling infrastructure. Specifically, the provisions establish a 15 percent tax credit for the purchase of qualified recycling equipment used to sort or process packaging and printed materials, such as beverage containers, cardboard boxes, glass jars, steel cans and newspapers.

The tax credit could be claimed by material recovery facilities, manufacturers or other persons that purchase recycling equipment that sorts or processes residential or commercial recyclable materials, even if such equipment also is used to handle material from industrial facilities.

This national investment in our recycling infrastructure is necessary to reverse the declining recycling rate of many consumer commodities, including aluminum, glass and plastic, which are near historic lows. For example, 55 billion aluminum cans were wasted by not being recycled in 2004, which represents approximately $1 billion of aluminum lost to industry. The recycling rate of paper is estimated to be roughly 50 percent, glass containers 35 percent, and PET plastic bottles less than 20 percent.

The energy savings from greater recycling are significant. Increasing the recycling of containers, packaging and paper could save the equivalent energy output of 15 medium-sized power plants on an annual basis. Recycling aluminum cans, for example, saves 95 percent of the energy required to make the same amount of aluminum for its virgin source. Increasing the U.S. recycling rate to 35 percent would result in annual energy savings of 903 trillion BTUs, enough to meet the annual energy needs of 8.9 million homes.

Due to the diminishing quantity and quality of available recyclable materials, many companies are not able to obtain the volume of quality recycled feedstock needed to meet demand. This

new economic challenge makes it even harder for recycled products to compete in the marketplace. For example, two Michigan plastic recycling facilities recently closed, affecting 100 jobs, as a result of inconsistent supply of recycled plastic. Similarly 17 percent of the recycling capacity at U.S. paper mills has been shut down, in part due to insufficient quality recyclable materials. One leading glass manufacturer also reports that they are able to obtain only a small fraction of the volume of recycled glass that their facilities can use.

In some cases, recyclers have been forced to shut down their operations in the United States and relocate to other countries due in part to insufficient or poor quality recycled feedstocks. This is particularly unfortunate as, on a per-ton basis, sorting and processing recyclables are estimated to sustain 10 times more jobs than landfilling or incineration.

The RISE provisions aim to reverse the declining recycling rate and resulting energy loss by incentivizing greater collection of quality recyclable materials. The bill would expand collection efforts by making innovative technology more affordable, such as reversible vending machines that collect and process empty containers. It could also be used to finance equipment at recycling collection centers.

This targeted tax credit would address quality concerns by reducing the barriers hindering investment in optical sorting and other state of the art equipment needed at material recovery facilities. By reducing material loss and improving quality, RISE will increase both the quantity and quality of recycled feedstock available to manufacturers.

Reducing the barriers to recycling also serves a number of environmental goals, including lessening the need for new landfills, preventing emissions of many air and water pollutants, reducing greenhouse gas emissions, and stimulating the development of green technology. But most importantly, recycling helps preserve resources of our children's future. For these reasons, I urge my colleagues to support these provisions.

Mr. President, last night the Senate narrowly defeated the Kerry amendment No. 844, sense-of- the-Senate resolution on climate change. I was unable to be present for the vote, but I strongly supported this sense of the Senate. The United States has consistently failed to constructively engage in international discussions in a manner consistent with our obligations under the United Nations Framework Convention on Climate Change or even under a basic good neighbor policy. The Bush administration policy on global warming is ineffective, unproductive, and irresponsible.

The administration's voluntary approach and efforts to address global warming have been underfunded and will not produce real emissions reductions in the timeframe necessary. Fortunately, many of the States have taken up the mantle of leadership, since there is a tremendous vacuum in the White House. By reversing his pledge to control carbon dioxide from powerplants, walking away from the Kyoto Protocol, and now snubbing British Prime Minister Tony Blair's request for assistance from the United States on this critical climate change problem, the President is reneging on this Nation's responsibility and opportunity to be a world leader.

Carbon dioxide levels have never been higher and the United States disproportionately contributes to the global warming problem. We need to reengage with the world in producing a binding global plan that reduces greenhouse gases below levels that would cause dangerous interference with the Earth's climate.

The administration and the world should pay close attention to the passage of the Bingaman-Specter resolution that committed the Senate to adopting legislation containing mandatory controls on carbon dioxide. This is an important resolution and it should serve as a wakeup call to the administration and those among the carbon-intensive industries. We must shoulder our moral responsibility to reduce the risks of global warming.

Mr. President, I thank the bill managers, Senator DOMENICI and Senator BINGAMAN, for agreeing to accept my amendment in the managers' package that was agreed to last night by unanimous consent. My amendment directs the Architect of the Capitol to study the feasibility of installing energy and water conservation measures on the rooftop of the Dirksen building, specifically the roof area above the cafeteria in the center of the building.

Today, all that exists is open space in the center of the building. My amendment will assist the Architect in obtaining information that will allow this space to be used in a more efficient manner and save taxpayer dollars.

During debate on the energy bill, the Senate has heard numerous arguments on the importance of conserving energy. In August of 2003, nearly 50 million people in the Northeast and Midwest were affected by a massive power outage. This event emphasized the vulnerability of the U.S. electricity grid to human error, mechanical failure, and weather-related outages. Failure to maintain a reliable grid had a huge impact on our Nation's economy, businesses, and individuals' everyday lives.

It is vital, then, that we here in the Senate do our part and put measures in place to make the Nation's Capitol a more secure and sustainable user of electricity. The Capitol Complex is largely dependent upon the electrical grid for power. Our daily operations should not be compromised by grid failure.

My amendment moves us forward in the right direction. Technology already exists to ensure that our operating systems can continue to operate despite loss of a main power supply. By creating onsite generating capacity through the installation of cogeneration equipment at the power plant and using solar powered equipment, like photovoltaic panels, we could produce energy to operate essential systems during a blackout or significant loss of power. We can start slowly by powering emergency lighting and notification systems in hallways so the occupants know how to exit the building safely or upgrade the electrical generating capacity of the complex. Technology is only getting better. My amendment asks the Architect of the Capitol to explore the use of this new technology to ensure that the Nation's Capitol always has reliable power.

In addition, this new technology also has the potential to provide significant savings in the Capitol's operating budget. We are all looking for ways to save the taxpayers money and reduce the Nation's deficit. We have the opportunity today to set an example and practice what we preach. As Members of Congress, we can educate ourselves and our staff on the benefits of energy efficiency, and see first hand the savings it can generate. The Nation's Capitol can join those already utilizing this technology and help encourage others to adopt it as well.

My amendment requires a feasibility study be conducted to look at the Dirksen building rooftop, including the open space in the center of the building directly above the cafeteria. The study will focus on more efficient use of the space while providing energy and water savings to the Capitol Complex.

I envision a wonderful park and garden area that Members and staff can actually use. These gardens would not only provide a beautiful environment by utilizing native plants, but they would also reduce energy use, and provide insulation for the building to reduce heat and energy loss.

These gardens would also provide a collection system for rainwater to limit the amount of stormwater runoff in the area. This collected water could be utilized for basic plumbing, watering the vegetation, or even the fire sprinkler systems; thereby reducing the use of water in the Capitol Complex.

Installation of technology, like photovoltaic panels, could collect the rays of the sun and provide energy to the building. These can be installed on the rooftops of our buildings in many different areas. These panels are now made to blend into any environment

There is even technology that exists to funnel natural daylight into the cafeteria in the basement. Imagine enjoying natural daylight as you consume your lunch or hold that quick meeting. Preliminary studies show that exposure to daylight improves worker productivity and results in less absenteeism due to illness.

The Architect of the Capitol is currently updating the master plan for the

Capitol Complex. This small project fits into that plan. The Architect is making great strides to update our operating systems with newer and efficient technology with sustainable features. I appreciate his efforts and encourage him to continue doing so.

Before I conclude, I would like to thank a former staffer who helped me develop this great idea, Mary Katherine Ishee. Mary Katherine was creative enough to look beyond the barren view from the committee offices on the fourth floor of the Dirksen building and realize the opportunity it presented.

It is about time we bring our home, the Capitol Complex, up to date with the rest of the world. This language is a step in that direction. We have the potential to use the latest technology to save energy, address security concerns, conserve our resources, and make more efficient use of this space.

We will all benefit from a wonderful, efficient, and useful park in the middle of the Dirksen building, and the taxpayers will benefit from our reduced energy and water use in the form of lower utility bills. I am very pleased that this measure has been added and I hope it will be retained by the conferees.

Mr. President, I want to thank Senators DOMENICI and BINGAMAN for adopting my amendment No. 774, as part of the Senate Energy bill. The amendment authorizes up to $20 million a year for 7 years for the establishment of a new Department of Energy grant program to aid local governments, municipal utilities, rural electric cooperatives, and not-for-profit agencies. The cost of repairing transmission lines is proving particularly difficult for small communities in Vermont and across America.

I became interested in creating such a program due to the challenges that communities in my State are facing with respect to the upgrading and siting of transmission and distribution lines. For example, residents in Lamoille County, VT, have been struggling to find ways to expand the transmission system to accommodate the demands of a growing tourism industry without overly burdening local residents with the cost of such an upgrade. Currently, the transmission system that delivers electricity to this area of my State is at peak capacity, leaving the local community in jeopardy should a single event like a fallen power line or damage to a key piece of equipment occur.

Not only must communities afford the costs of the infrastructure itself, but also the costs of integrating these new technologies into the rural landscape in a way that does not destroy their scenic quality and protects their lifestyle.

These grants will help rural communities meet these needs. They can be used for increasing energy efficiency, siting or upgrading transmission lines, or providing modernizing electric generating facilities to serve rural areas. Under the generation grants portion of the program, preference will be given to renewable facilities such as wind, ocean waves, biomass, landfill gas, incremental hydropower, livestock methane, or geothermal energy.

By adopting my legislation as part of this Energy bill, small electric cooperatives and local governments in Lamoille County, VT, will be eligible to apply for Federal grants to construct new facilities and transmission upgrades. This is a good amendment and it should be retained by the conferees.

Mr. President, last night the Senate defeated amendment No. 961 that would have banned the siting of windmills in many areas in the lower 48 States and made them ineligible to receive Federal tax subsidies. Had I been present to vote, I would have opposed this amendment. In my 30 years in Congress, I have been a strong proponent of renewable energy sources including wind power. I am very optimistic about the role wind energy can play in satisfying a growing proportion of this Nation's energy needs.

If the objective of this amendment was to protect scenic qualities of America's lands and shorelines, it did not achieve that goal. The amendment only targeted the siting of windmills within 20 miles of Federal public lands, but did not address the siting of coal-fired powerplants and other energy sources that have far greater impacts to our public lands. Just look at the impacts that air pollution blowing in from coal-fired Midwest powerplants is currently having on the Great Smoky Mountain National Park, Shenandoah National Park, and the protected areas in the beautiful green mountains of Vermont.

This amendment also failed to treat all public lands and wildlife refuges equally. As ranking member of the Environment and Public Works Committee, the committee with jurisdiction over our Nation's wildlife refuges, I was concerned that, had this amendment been approved, no wind turbine situated anywhere near Federal lands in the lower 48 States would have been eligible to receive Federal tax subsidies, thereby severely limiting the expansion of wind power in the United States. Oddly, this amendment specifically exempted some other federally protected areas such as coastal wildlife refuges in Louisiana and Alaska. By defeating this amendment by a wide margin, the Senate sends a strong message that wind power has a role to play in satisfying this Nation's energy needs.

Mr. PRYOR. Mr. President, families in Arkansas want and deserve a national energy policy that truly moves us towards energy independence. We must look beyond oil, gas, and coal and develop cleaner alternatives and new sources of energy, especially renewable fuels.

This bill offers a good starting point in achieving this goal, and I am pleased the Senate has agreed to adopt my amendment that embraces the potential of biodiesel and hythane as part of this effort.

My amendment requires that the Department of Energy, in conjunction with universities throughout the country, prepare two reports. These reports would evaluate the potential markets, infrastructure development needs and possible impediments to commercialization for two alternative fuels: biodiesel and hythane.

Biodiesel can substitute directly for petroleum-based diesel fuel, usually with no engine modifications, and offers a number of health and environmental benefits. It produces less carbon monoxide, less sulfur oxides emissions, and less particulate or soot emissions from some engines. It allows for safer handling. It is an agricultural-based feedstock may be produced anew every year, unlike fossil fuels which have declining reserves. And in Arkansas and other agricultural states, the robust commercializing of biodiesel would mean an economic boon to our farmers.

The promise of biodiesel as a fuel source is just beginning to show. Biodiesel only currently accounts for less than 0.1 percent of diesel fuel consumption in the U.S. But total U.S. diesel fuel use was estimated at 39.5 billion gallons in 2001, including 33.2 billion of on-road highway use.

The enhanced commercialization of biodiesel can help reverse this trend, but only if we enable this industry to get off the ground on a solid footing. We have seen an enormous amount of federal assistance help support and catapult the ethanol industry. Our soybean farmers and our Nation could benefit from similar treatment.

My amendment also requires a study on the feasibility of hythane deployment, which is a blend of hydrogen and methane. Hythane is considered a stepping stone or bridge to the hydrogen economy because it represents an initial commercial application of hydrogen as a legitimate fuel option. It reduces nitrogen oxide, NO_x, emissions by 95 percent relative to diesel, and makes significant reductions in carbon dioxide.

China is now leading the way in developing hythane-powered vehicles. In preparation for the 2008 Olympics, Beijing, is in the process of replacing 10,000 diesel buses with hythane buses.

Additionally, hythane offers a solution to improve waste management in our communities. According to the Environmental Protection Agency, municipal solid waste landfills are the largest source of human-related methane emissions in the United States, accounting for about 34 percent of these emissions. Landfill gas is created as solid waste decomposes in a landfill and consists of about 50 percent methane.

Instead of allowing this gas to escape into the air, it can be captured, converted, and used to make hythane. As

of December 2004, there are approximately 380 operational Landfill Gas energy projects in the United States and more than 600 landfills that are good candidates for projects. Companies ranging from Ford to Honeywell to Nestle are converting landfill gas into energy.

There is similar potential for chemical plants who also release methane into the atmosphere, contributing to local smog and global climate change. If they sequestered methane to sell to a hythane manufacturer, I believe they would take advantage of the profits it would yield.

My State of Arkansas, for example, has significant methane seams, including the Fayetteville shale bed methane seam, which Southwest Energy and CDX Gas are already using to their advantage. These resources could contribute to hythane fuel production as well.

Our Nation's energy problems cannot be solved overnight; however, we would be remiss if we did not at least further explore innovative and practical solutions, such as biodiesel and hythane. This amendment is a win-win situation for our energy dependence, health, economy and environment. I thank my colleagues for their support.

Mr. FEINGOLD. Mr. President, I regret that I was unable to take part in yesterday's cloture vote because I was testifying before the BRAC Commission in St. Louis, MO, along with the senior Senator from Wisconsin, in an effort to save the Milwaukee-based 440th Airlift Wing from closing. The fate of the 440th is very important to me and my constituents, and, while I have only missed a handful of votes in my 12 years in the Senate, it is clear to me that testifying in St. Louis was the right decision.

If I had been present I would have again voted against the cloture motion on the nomination of John Bolton. Since the motion required 60 votes to pass, my absence did not affect, and could not have affected, the outcome of the vote.

Mr. BYRD. Mr. President, for too long, we as a body, and we as a Nation, have fallen short in our efforts to address some of the most profound and far reaching challenges of our time—global climate change and energy security. For too long, we have skirted the issues and have shirked our responsibilities. We have convinced ourselves that we are doing something but, in reality, we continue to take no real action. Rather than lead, we have stood by, paralyzed, undermining any efforts to forge an effective response.

It is time to pull ourselves out of that quicksand and confront the tasks at hand. First, we must establish practical and comprehensive steps to reduce U.S. emissions of greenhouse gases and to reduce our dependence on foreign energy sources. Second, we must work in a partnership with developing nations to deploy clean energy technologies that can meet their urgent development needs while reducing their own contribution to global climate change and their growing energy dependency. Third, we must commit ourselves to the fundamental task of forging an effective and sound international agreement to guide a truly global effort to confront this most daunting problem, global climate change.

In 1997, during the 105th Congress, the Senate passed S. Res. 98, by a vote of 95 to 0. As the primary author, along with Senator HAGEL, of S. Res. 98, I sought at that time to express the sense of the Senate regarding the provisions of any future binding, international agreement that would be acceptable to the Senate.

However, almost from the day of that vote, those on both sides of the issue have misrepresented and misconstrued its intent. What was meant as a guide for action has instead been invoked, time and again, as an excuse for inaction. Yet no one has misrepresented and misconstrued S. Res. 98 more so than this present administration. Rather than employing it as a tool to positively influence the international negotiations, the administration used it as cover to simply walk away from the negotiating table.

For the U.S., the issue should no longer be about the Kyoto Protocol. Certainly, everyone in this Chamber knows that the United States will not join the Kyoto Protocol. The rest of the world has come to accept that fact as well. So let us exorcize the specter of the Kyoto Protocol from this debate. The real question is what comes next. How do we arrive at a credible, workable strategy, one compatible with the best interests of the United States and of the other major emitting industrial and developing countries? That must be the question now before us.

We must send a clear signal that we recognize our responsibilities, and we must be prepared to work toward a fair and effective framework for action. We must be bold leaders. We owe this to ourselves; we owe it to the other nations of the world; and we owe it most of all to our children and to future generations.

Technology is a critical component to resolving the climate change challenges in the U.S. and around the world. But let me be clear. Even as the administration has touted technology as the solution, it continues to woefully underfund these very programs. Technology policies by themselves cannot be the silver bullet. Technology policies must be paired with commonsense, market-based solutions to create incentives for innovation and adoption of new and improved technologies that will provide a signal to reduce emissions.

There must be a broader approach. I want to commend Senators MCCAIN and LIEBERMAN for their diligence and hard work to find a middle ground. I want to commend Senator BINGAMAN on his efforts as well. Like them, I believe that we face a problem, and it requires that we craft an economically and environmentally sound solution.

The McCain-Lieberman amendment did not pass in its current form. While I did not vote for their amendment, I want to make it very clear to the administration and to others who just want to say ''no'' that I will work with Senator MCCAIN, Senator LIEBERMAN, and Senator BINGAMAN, and other Republican and Democratic Senators who want to craft a constructive solution.

I have long said that global warming and our energy security are major challenges in the U.S. and around the world. Troubling things are happening in our atmosphere, and we should wake up. I am not alone in this belief. The U.S. cannot bury its head in the sand and hope that these problems will simply go away.

I have insisted on a rational and cost-effective approach for dealing with climate change, both domestically and internationally. I have no doubt that the far right and the far left will oppose any moderate approach on this issue, but it is time to get the right architecture and solid funding in place to make a first step a reality. I am concerned that the McCain-Lieberman approach, in its present form, will negatively impact my State, but that does not mean that we will not be able to find some common ground in the future. I hope that my friends in the energy industry will decide to work with them as well.

Mr. President, we cannot just stand still. I know Senator MCCAIN. He is tenacious, and Senators LIEBERMAN and BINGAMAN are equally tenacious. If 14 Senators in the middle can come together to diffuse the Nuclear Option, then I am certain that a solid center of Senators can find a new path forward to address global climate change and our Nation's energy security needs. I would certainly not support actions that would harm the economy or the people of my State of West Virginia or the United States in general. Yet, I repeat, I believe that there is a middle path forward, and I stand ready to work with those who share that view.

Mr. REID. Mr. President, I rise to speak to a particular section of H.R. 6, the Energy bill that would lead to Nevada and Washington ratepayers being relieved of $480 million in fees under fraudulent contracts entered into with Enron, the defunct energy company.

The largest utility in my State, Nevada Power, had a $326 million contract with Enron for power. The contract was terminated once it became impossible for Enron to hide its financial frauds any longer and instead was forced to declare bankruptcy. Nonetheless, Enron has asserted before the bankruptcy court the right to collect all of the profits it would have made under the contract through so-called ''termination payments.'' Enron has made this claim even though Enron never delivered the power under the

contract, even though Enron had obtained its authority to sell power fraudulently, and even thought Enron was in gross violation of its legal authority to sell power at the very time the contract was entered into.

The energy bill ensures that the proper government agency will determine whether Enron is entitle to more money from Nevada. That agency is the Federal Energy Regulatory Commission, FERC. When FERC was established by Congress, its fundamental mission was, and remains, to protect ratepayers. FERC has specialized expertise required to resolve the issues surrounding some of the contracts that Enron entered into and eventually terminated. The provision is an outgrowth of the Enron criminal conspiracy to rip off ratepayers throughout the West.

Enron is still seeking to extract an additional $326 million in profits from my State's utilities for power that was never delivered. Enron, after all of its market manipulation and financial fraud, is still trying to profit from its wrong-doing at the expense of every Nevadan.

Starting in December 2000, Nevada utilities entered into long-term contracts with Enron to meet a significant portion of their long-term needs. No one was aware of Enron's fraudulent activities to manipulate electricity markets. The prices that Nevada Power agreed to pay were three times as high as the threshold that FERC had established as a ceiling price. In November 2001, Nevada Power asked FERC to review the rate to determine whether those contracts were just and reasonable. Two days after the complaint was filed against Enron, Enron filed for bankruptcy. There is an issue in the bankruptcy case as to whether Enron can enforce contracts that it terminated. The bankruptcy court is responsible for enhancing the bankruptcy estate for the benefit of creditors. FERC, on the other hand, sees a more complete picture which includes protecting the interests of the general public.

This issue is of paramount concern to my constituents. It will decide whether they will be on the hook for more than a hundred million dollars, an amount that when spread out over a relatively small number of ratepayers, would translate into rate increases. It is critical that this issue be decided by the forum with the specialized expertise in matters relating to the sale of electricity with a stated mission of protecting ratepayers, and that is the Federal Energy Regulatory Commission.

I would like to especially thank Senators BINGAMAN, CANTWELL, DOMENICI, and ENSIGN for their assistance on this provision. I thank my colleagues on both sides of the aisle for their support up until this point, and for their continuing support in making sure that this critical measure is included in the legislation that emerges from the conference committee.

I yield the floor.

Mr. CRAIG. Mr. President, I am not aware of any further amendments. Therefore, I ask for a third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. CRAIG. I ask unanimous consent that the vote on passage of the bill occur at 9:45 a.m, on Tuesday, June 28, with paragraph 4 of rule XII waived.

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

Mr. CRAIG. Mr. President, before I yield the floor, let me extend a very special thanks to all who have participated in the crafting and the final work product that we now have before us, a national energy policy for our country. A good many have contributed and most assuredly the chairman of the committee, PETE DOMENICI, and the ranking member, Senator BINGAMAN, have done an excellent job, in a very bipartisan way, to bring us to where we are at this moment.

Let me also extend a special thanks to the staff of the committee who have expended extraordinary time and hours to get us to this point. I thank my personal staff for a near 5-year effort, as we have worked over a long period of time to winnow out, shape, and bring before us what I think I can say is a very fine work product.

I am anxious to see its final passage, which will occur on Tuesday, and a conference with the House. I hope we can have this bill on the President's desk sooner, rather than later. The American people deserve a national energy policy that allows this country to get back into the production of energy of all of the types that have been addressed in this legislation.

I thank all of my colleagues for their work effort, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent to speak as in morning business.

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

KARL ROVE

Mr. REED. Mr. President, I rise to join many of my colleagues to express my dismay concerning the deplorable comments by Karl Rove that suggest that—indeed states that Democrats did not respond to the attack on this country on 9/11, that they did not join in with other Americans who not only recognized the consequences but came together to work together to attack those who attacked us and to bring to justice those who had callously attacked and killed thousands of Americans. Such a statement is beyond the pale.

Mr. President, 9/11 is a moment in which the Nation was attacked, and we all came together, not as Democrats or Republicans, liberals or conservatives, but as Americans. We all came together.

The record itself clearly undercuts this contention of Mr. Rove. Within days of the attack of 9/11, we passed in this Senate an authorization for the use of military force. The vote was 98 to nothing. Every Republican and every Democratic Senator voting cast his or her vote to give the President of the United States the authority and the power to go forward, seek our enemies, and destroy them.

I can recall going up to Providence, RI, my State capital, that afternoon, and standing with every one of the elected officials in the State, Republican and Democrat, before a crowd of 25,000 people. My message was very simple. The Senate unanimously has authorized the President to seek out and destroy those who attacked us. That is what happened on 9/11. It was not as Mr. Rove tries to distort, to spin some situation in which we did not recognize the consequences or respond to the responsibilities of that dreadful moment.

Mr. Rove suggests that our response was simply to suggest therapy, to understand our attackers. That is a misstatement of the fact. In fact, following that authorization of the use of force, we succeeded in this Senate, acting with virtual unanimity on measure after measure, to give the President and this Nation what we all needed to defend ourselves and to inflict upon our adversaries the justice which they so richly deserved.

We passed the Aviation Transportation Security Act. We passed the fiscal year Intelligence Authorization Act—unanimously, the fiscal year Defense Authorization Act, the fiscal year Defense Appropriations Act, on and on and on, with virtual unanimity.

We did this because we recognized that we are Americans. Today, Mr. Rove seeks to distort this historic record, to suggest we did not come together as Americans, but that there were those who knew the way and took it and those who tried to ignore the reality. That is a gross misstatement of history, of the facts, and he should apologize for it. It is inappropriate that an individual who works in the White House should make such callous and clearly erroneous statements for political effect.

Mr. Rove suggests, in the article I have seen in the newspaper describing his speech, that our response was one of moderation and restraint. Nothing could be further from the truth. Our response was one voice authorizing the President to attack, giving him the tools to carry out the attack. Mr. Rove suggested that conservatives saw 9/11 and said we will defeat our enemies. That is exactly what all Americans said or did. He goes on to suggest that what liberals saw prompted liberals to say: We must understand our enemies.

Again, that is not the reality. I hope Mr. Rove is not suggesting unwittingly that we should go about without respecting and understanding our enemies. He should look back at Sun Tzu,

the Chinese philosopher whose ''Art of War'' speaks to us today as it did centuries ago. As Sun Tzu said:

If you know the enemy and know yourself, you need not fear the results of 100 battles.

In fact, some might suggest we are learning about our enemy too late in Iraq today.

The point I make is this type of attack has no place, it does not conform to history, it undercuts the spirit of that moment, a moment in which every American came together as one people, indeed, as the world responded to us. That unanimity may have lessened over the last several months, but it was there. To view September 11 any other way is a gross distortion. Mr. Rove should apologize for it.

He went on to attack my colleague, the Senator from Illinois, Mr. DURBIN. Senator DURBIN has apologized for his comments, and that apology is appropriate. But to continue to attack this individual does nothing to advance any of the ideals or aspirations or policies that we must be engaged with. What it does is distort a person, someone I have come to know, respect, and admire. Someone who is caring and concerned for people, whose thoughtfulness, whose intense commitment to doing what is appropriate for all Americans, and who is particularly sensitive to the needs of our military forces has impressed me.

Like anyone who has had the privilege of serving and understanding in the U.S. Army or any uniformed service, I had the privilege of commanding paratroopers of the 82nd Airborne Division. We understand the extraordinary courage and bravery and valor of those individuals.

I have been impressed many times with Senator DURBIN's commitment to help those individuals in meaningful ways by providing the equipment they need, by ensuring that our veterans who have served with distinction are not ignored. The attacks on him are without correlation to the person and to the service of this individual.

I hope Mr. Rove would apologize for these remarks and would refrain in the future from distorting the historial record. I don't think that is too much to ask of someone who is in such a position of power in the White House.

At this point, it is sufficient to conclude by saying I hope, indeed, that we can avoid this kind of personalized attack, this gross distortion, which is untrue, misleading, and divides a nation and does not unite it. I hope we move on to substantive policy as we face real problems that face this Nation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be 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.

HONORING OUR ARMED FORCES

FIRST LIEUTENANT NOAH HARRIS

Mr. ISAKSON. Mr. President, I rise today to read from an e-mail sent to me in May of this year:

Our presence here is not just about Iraq. It is sending a message to the oppressed peoples of the world that freedom can be a reality. Freedom is the greatest gift that we, the U.S., have been granted, and as such, it is our responsibility to spread it. For it to become a permanent fixture in our future and our children's future, we must give it to all those that desire it.

Mr. President, that is an e-mail to me from 1LT Noah Harris, of Ellijay, GA, from Baghdad, Iraq.

On Saturday of this past week, First Lieutenant Harris died in the service of his country. His e-mail to me expressed democracy and freedom far better than I am capable of doing.

Noah Harris served as an intern in Congressman DEAL's office 2 years ago, which is where I had the occasion to meet him.

When I received his e-mail, I sat down at my desk in my office and wrote him a note thanking him for his service to his country and his fellow man.

This morning, I rise to pay tribute to the life that has been given on behalf of the greater good. Noah Harris was the type of young man who serves without desire for credit or acclaim in Iraq today but on behalf of his country and everything we stand for.

At the age of 23, he embodied the hope of the future. His sacrifice, in fact, ensures that the future for others will be brighter.

He captained his high school football team, was never beaten in the State in wrestling, went to the University of Georgia and captained the cheerleaders at that institution.

He came to Washington to serve as an intern. Shortly after September 11, 2001—struck, as all of us were, by the tragedy of that day—Noah Harris volunteered to serve in the U.S. military and, to the greater good, the people of the world.

On Saturday, at noon of this week, in Ellijay, GA, I and hundreds of other Georgians will pause in the northwest Georgia mountains to pay tribute to the life of Noah Harris.

I am privileged and pleased to stand on the floor of the Senate today in advance of that to acknowledge our thanks, on behalf of this Senate, and all who serve in this Congress, and our President, for the life, the times, the service, and the gift of 1LT Noah Harris.

Mr. CHAMBLISS. Mr. President, I stand before this body tonight with a heavy heart. One of Georgia's best and brightest young soldiers has paid the ultimate sacrifice in the service of his country in the War on Terror. Tonight the people of Ellijay, GA are grieving the loss of one of their bravest sons on the battlefield of freedom.

In our Nation's noble struggle to spread democracy, First Lieutenant Noah Harris gave his life in Baqubah, Iraq.

Noah, a member of the 2nd Battalion, 69th Armor Regiment, 3rd Infantry Division, died of wounds suffered as a result of an explosion near his armored vehicle around midnight, June 17, 2005.

Noah's death came one week before his birthday. Most young men his age would be making plans for a celebration; however, this young hero choose the battlefield instead.

Nearly 24 years old, this brave patriot was eager to serve his country and to spread our message of freedom and democracy to oppressed nations. His tragic and untimely death is a testimony of his passion and dedication to freedom's call.

The only child of Rick and Lucy Harris, Noah was a state champion wrestler and the captain of his high school football team. A natural leader and athlete, Noah took these skills to the University of Georgia where he was the captain of the cheerleading squad.

As a 1999 graduate of Gilmer High School, Noah's gifts were not merely athletic. He was honored as a scholar athlete during the Peach Bowl. These are but a few of the admirable accomplishments and achievements that endeared Noah to all of those with whom he came in contact.

While a student at UGA, Noah was motivated by the attack on our country on September 11th. Noah walked in to the ROTC office immediately after 9/11 asking to serve. Told he was too far along in his studies, Noah persisted until he was allowed to join the ROTC. You see, Noah believed passionately that there were no exemptions from serving in the cost of freedom.

A personal longing to promote liberty and help the Iraqi people who had long suffered under Saddam Hussein were a constant theme in Noah's letters home to his family and friends, but ever humble, Noah shrugged off the gravity of his commitment adopting the simple mantra ''I do what I can'' in response to being called a hero.

Noah believed that a greater good was worth fighting for and recognized the power of leading by example which exemplifies the qualities in each one of our Nation's treasured soldiers.

Noah's vision and passion to achieve a greater good for the people of Iraq is an excellent model for those who come after him to continue the fight against freedom's foes.

Noah aspired to serve in public office, and he was also interested in real estate as a personal career. A passionate advocate for the mission in Iraq, Noah expressed the urgency of the cause