RIDER TO FLOOD-RELIEF BILL ENRAGES ENVIRONMENTALISTS—ALASKA SENATOR SEEKS TO PAVE WAY FOR U.S. PARK ROADS

(By H. Josef Hebert)

As his Senate Appropriations Committee grappled with how to help victims of floods, chairman Ted Stevens saw an opportunity he couldn't pass up.

Alaska's senior senator tacked onto the must-pass emergency bill a pet piece of legislation to make it easier to build roads through federal parks, refuges and wilderness areas.

Environmental activists were outraged, and Interior Secretary Bruce Babbitt is urging a presidential veto if the provision added last week stays in the bill. It goes before the full Senate today.

The measure, also pushed by fellow Republican Sen. Bob Bennett of Utah, would give the government less say in what constitutes a valid right-of-way for roads built under a 130-year-old law.

''Such a requirement could effectively render the federal government powerless to prevent the conversion of foot paths, dogsled trails, jeep tracks, ice roads and other primitive transportation routes into paved highways,'' Babbitt complained in a letter to Stevens.

Bennett and Stevens have accused Babbitt of overstepping his authority by putting too many restrictions on such right-of-way claims and usurping the states' authority. They contend state law should determine validity of claims.

Road construction in federally protected parks, refuges and wilderness areas has been a growing worry among conservationists, especially in the West. Nowhere has it been an issue more than in Alaska and Utah, where hundreds of claims are pending for rights-of-way over federally protected land.

The controversy involves a law enacted in 1866, repealed by Congress 110 years later, then resurrected in part during President Reagan's administration as it began aggressively processing thousands of right-of-way claims it considered still valid under the defunct Civil War-era statute.

No one disputes valid claims exist, but the Clinton administration has waged a running battle with some state officials-particularly those of Alaska and Utah-over who should have the final say on their validity.

Babbitt announced a new policy in January that requires states to examine more closely whether a right-of-way actually once was a significant corridor, which would make it a valid site for road building.

The measure Stevens inserted into the $5.5 billion emergency relief legislation for victims of floods and other disasters would override Babbitt's new directive and again swing the pendulum to the states.

Stevens defended the measure. In 1976, he argued, Congress ''absolutely stated, without any question,'' that prior claims must be accepted.

''The provision is aimed at preserving historic rights-of-way established at least 20 years ago and creates no new rights-of-way across federal land,'' Stevens insisted.

Many environmentalists see it differently.

''It grants rights-of-way across millions of acres of federal land to virtually any person who asserts a claim,'' asserted William Watson of the National Parks and Conservation Association, a private watchdog group. ''It threatens to carve up our national parks.''

Most claims under the 1866 law are in Alaska and Utah because those states have been the most lenient in considering what constituted a historic pathway. Conservationists say the Stevens legislation may bring old claims boiling to the surface in other states. Rumblings already have been heard in Oklahoma, Nebraska, New Mexico and the Dakotas, said Phil Vorhees of the park association.

Adam Kolton of the Alaska Wilderness League said hundreds of rights-of-way claims are pending in Alaska, including some through the Denali National Park and seven in the coastal plain of the Arctic National Wildlife Refuge.

''Sen. Stevens wants to make Swiss cheese of the Arctic refuge and other wilderness areas by building roads through them,'' Kolton complained.

In Utah, where much of the land also is federal, an estimated 5,000 rights-of-way claims are pending. Many are in federal parks and refuges, as well as in the recently declared 1.7 million-acre Grand Staircase-Escalante National Monument.

WESTERNERS EKE OUT SENATE WIN ON RURAL ROADS

SALT LAKE CITY.—A White House move opponents claimed could block access to rural byways in Utah and Alaska has been narrowly defeated by the U.S. Senate.

Western senators led the revolt, even though Interior Secretary Bruce Babbitt said he would recommend that President Clinton veto the entire emergency flood and disaster relief bill to which the byways measure is attached.

''This is not an issue where the senators from the Western states are trying to do something improper,'' said Sen. Bob Bennett, R-Utah. ''The real issue is that there are a number of roads in rural Utah that the federal government wants closed.''

The vote Wednesday was 51–49.

At issue are rights-of-way created under an 1866 law that allowed counties to put roads on unreserved federal lands. It was repealed in 1976, but existing byways were allowed to continue. But no inventory of them was made.

Congress and the administration have fought for years over proposals by Babbitt to force counties now to prove the byways existed before 1976 and were used for vehicular traffic, not just livestock or horses.

Congress had blocked that move, but in January Babbitt issued administrative rules outlining how until a final compromise is reached counties could gain emergency, permanent recognition on some claims. The status would be granted only for those byways where vehicular traffic and upgrades for them occurred.

Senators from Utah and Alaska, where most of the byways claims are pending, charged the White House was trying to take the first step toward federalizing local roads.

''What is at stake here for those of us in the West is the preservation of what amounts to the primary transportation system and infrastructure of many cities and towns,'' said Sen. Orrin Hatch, R-Utah.

''In many cases, these roads are the only routes to farms and ranches; they provide necessary access for school buses, emergency vehicles and mail delivery.''

Sen. Dale Bumpers, D-Ark., countered that Westerners were really pushing the issue to block wilderness designations by claiming roads in the areas.

He also charged Westerners want to put roads in sensitive areas to foster development.

''Can you imagine anything so insane as allowing states to build roads across public lands, no matter where they may be?'' he said. ''You cut the weeds, it becomes a 'highway.' You move a few rocks, it becomes a 'highway'''

Senate Appropriations Committee Chairman Ted Stevens, R-Alaska, reacted angrily to those claims. He pounded his desk so hard he tipped over this water glass into his documents. He also trembled as he declared the byways ''are our lifeblood.''

Bennett recalled that when Garfield County bulldozed in Capitol Reef National Park to widen the Burr Trail by four feet on a blind curve but still within its right of way the federal government sued.

''It has little or nothing to do with the county maintaining this kind of right of way. What it had to do with is who's going to make the decision and the federal government is determined it will make the decision.'' Bennett said.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—FLANK DOCUMENT AGREEMENT TO THE CFE TREATY

Mr. STEVENS. Mr. President, for the majority leader I ask as in executive session for unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to consideration of the Flank Document Agreement, No. 105–5, to the CFE Treaty which was ordered reported by the Foreign Relations Committee on Thursday, May 8, and, further, the treaty be considered having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, that all committee reservations, understandings, declarations, statements, conditions and definitions be considered and agreed to, with the exception of condition No. 5. I further ask consent that no other amendments be in order to the resolution, other than a modification to condition No. 5 offered on behalf of Senators KERRY of Massachusetts, SARBANES, and ABRAHAM. I further ask consent that overall debate on the resolution be limited to 1½ hours between chairman and ranking member, and an additional 30 minutes under the control of Senator BYRD; and, further, after the expiration or yielding back of that time the Senate proceed to a vote on the resolution of ratification. I finally ask that immediately following that vote, the President be notified of the Senate's action and Senate then return to legislative session.

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

Mr. STEVENS. Mr. President, I want to clarify the unanimous-consent agreement that was just entered into. The amendment is an amendment being offered on behalf of Senators KERRY, SARBANES, and ABRAHAM. The consent agreement could be interpreted otherwise but it is their amendment that is being offered as a managers' amendment.

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

AUTHORIZING USE OF CAPITOL GROUNDS FOR THE SIXTEENTH ANNUAL PEACE OFFICERS' MEMORIAL SERVICE

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of House Concurrent Resolution 66, which is at the desk.

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

The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 66) authorizing the use of the Capitol Grounds for the sixteenth annual national peace officers' memorial service.

The Senate proceeded to consider the concurrent resolution.

Mr. STEVENS. Mr. President, I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid on the table, and any statements relating to the resolution be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered. The concurrent resolution, House Concurrent Resolution 66, was considered and agreed to.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Vermont is recognized to speak for up to 45 minutes.

JUDICIAL VACANCIES

Mr. LEAHY. Mr. President, I have spoken on the floor many times about the judicial vacancies in our Federal courts. It concerns me. In fact, I believe other than the subject of antipersonnel landmines, I have probably spoken on this subject more than any other. I am concerned that some in the Republican Party are engaging in a court-bashing situation that does not reflect the proud heritage of either the Republican Party or the Democratic Party.

I have spoken about the crisis that has been created by the almost 100 vacancies that are being perpetuated in the Federal courts around the country. We have recently seen a constitutional amendment proposed to remove the life tenure that has been the bedrock of judicial independence from the political branches since the ratification of our Constitution. It is just one of, I think, over 100 constitutional amendments proposed this year alone. It ignores the fact that our independent judiciary is the envy of the rest of the world. We have heard calls for impeachment when a judge rendered a decision with which a Republican House Member disagreed. I have read the Constitution. It speaks of very specific grounds for impeachment. Among those grounds is not that a Republican House Member disagrees with a judge. We would probably have a very difficult time if every judge could be impeached because any Member of the House or Senate disagreed with him.

We have heard demands that the Congress act as a supercourt of appeals and legislatively review and approve or disapprove cases on a case-by-case basis. That is for the same Congress that has not yet even taken up a budget bill, even though the law requires us to do it by April 15.

We are seeing exemplary nominees unnecessarily delayed for months, and vacancies persist into judicial emergencies. We are seeing outstanding nominees nitpicked, probed, and delayed to the point where one wonders why any man or woman would subject themselves to such a process or even allow themselves to be nominated for a Federal judgeship.

Instead of reforming the confirmation process to make it more respectful of the privacy of the nominee, something that we all claim we want to do, the Republican majority in the Senate is moving decidedly in the other direction. They are approaching the imposition of political litmus tests, which some have openly advocated under the guise of opposing judicial activism, even though some of these same Members were the ones who said that nobody should impose a litmus test on judges.

Even conservatives like Bruce Fein, in his recent opinion column in the New York Times, reject this effort. Actually, so do the American people. We have not had a time when any President or any Senate should be asked to impose litmus tests on an independent judiciary.

I recommend my colleagues read the excellent commentary by Nat Hentoff on this new political correctness that appeared in the April 19, 1997, edition of the Washington Post. I have spoken in broad generalities, although each are backed up by dozens of cases. But let me be specific on one. The nomination of Margaret Morrow to be a Federal judge for the Central District of California is an example of the very shabby treatment accorded judicial nominees. The vacancy in this Federal court has existed for more than 15 months, and the people in central California—Republican, Democrat, Independent—are being denied a most needed, and in this case a most qualified, judge.

Ms. Morrow's nomination is stuck in the Senate Judiciary Committee again. I am appalled by the treatment that Margaret Morrow has received before the Judiciary Committee. Ms. Morrow first came before the Judiciary Committee for a hearing and she was favorably and unanimously reported by the committee in June of 1996, almost exactly a year ago—a year ago less a couple of weeks. Then her nomination just got caught in last year's confirmation shutdown and she was not allowed to go through. So she has to start the process all over again this year.

Let me tell you about Margaret Morrow. She is an exceptionally well qualified nominee.

She was the first woman president of the California Bar Association, no small feat for anybody, man or woman. She is the past president of the Los Angeles County Bar Association. She is currently a partner at the well-known firm of Arnold & Porter, and she has practiced law for 23 years. She is supported by the Los Angeles Mayor Richard Riordan, who, incidentally, is Republican, and Robert Bonner the former head of the Drug Enforcement Administration under a Republican administration. Representative JAMES ROGAN from the House joined us during her second confirmation hearing and, of course, she is backed and endorsed by both Senators from California.

Margaret Morrow has devoted her career to the law, to getting women involved in the practice and to making lawyers more responsive and responsible as a profession. The Senate ought to be ashamed for holding up this outstanding nominee, and I question whether the Senate would give this kind of treatment to a man. It sure as heck has been doing it to a woman.

Despite her qualifications, she is being made an example, I am not quite sure of what, but this woman who has dared to come forward to be a Federal judge is being made an example before the Senate Judiciary Committee.

At her second hearing before the committee on March 18, even though she already has gone through a committee hearing and even though the committee last year unanimously voted to confirm her with every single Republican and every single Democrat supporting her, even though she had gone through it once before, she was made to sit and wait until all the other nominees were questioned, as though she were being punished. ''We have these men who want to be heard, and even though you had to do this before, you, woman nominee, sit in the back and the corner.'' She was then subjected to round after round of repetitive questioning.

Then came a series of written questions from several members, and they were all Republican members of the committee. Then came the ''when did you start beating your husband'' type questions to Ms. Morrow, based on her previous questions. I objected when Ms. Morrow was asked about her private views on all voter initiatives on the ballots in California for the last decade. Basically, she was being asked how did she vote in a secret ballot in the privacy of a voting booth on 160 initiatives on the ballot in California over the last 10 years.