

ALASKA PIPELINE

Confusion and Irony

by our Washington Correspondent

THE Senate last week passed a remarkable piece of legislation. It voted to clear away all legal obstacles to construction of the trans-Alaska pipeline, and turned down an amendment which would have delayed a start on the venture until an alternative route through Canada had been given detailed review. The vote and debate were surrounded by irony, for the sponsor of the legislation is one of the staunchest supporters of some environmentalist causes in the Senate, and it was passed over the opposition of one of the staunchest supporters of the pipeline. Moreover, it was passed only after Spiro Agnew had, for the second time in his career as Vice-President, used his casting vote. But the most ironic aspect of the affair is that, according to some observers, the legislation raises constitutional issues that could delay construction of the pipeline for another two years.

The trans-Alaska pipeline has been held up by legal challenge from environmentalist groups who have argued that the Department of Interior has not fulfilled the dictates of the National Environmental Policy Act (NEPA) in granting a right of way for the pipeline. But in February this year, an appeals court in Washington DC astonished supporters of the venture with a ruling that, whatever the merits of the environmental argument, the proposed right of way for the pipeline is wider than a 1920 statute allows. For the past two weeks the Senate has been busy repealing that ancient law, and the key vote came on an amendment sponsored by Mike Gravel, a Senator from Alaska. The amendment, in short, clears away not only the right of way technicality, but all environmental challenges as well.

When the appeals court handed down its ruling on the right of way matter, it specifically declined to offer an opinion at that time on the environmental question raised by opponents of the pipeline. But Senator Gravel's amendment states that it is the opinion of Congress that the Administration has complied with NEPA, and in the words of Senator Ted Stevens, Gravel's colleague from Alaska and a co-sponsor of the amendment, "we are in fact trying to get Congress to substitute its judgment for the judgment of the court". If the amendment is supported by the House of Representatives, the effect will be to blast away all further legal challenge to the project. At least, that is what the sponsors are hoping.

But their interpretation is open to question, and in the opinion of some,

it could have just the opposite effect. One such doubter is Senator Henry M. Jackson, one of the most vocal supporters of the trans-Alaska pipeline but also the chief author of NEPA. In the debate on the amendment, Jackson said that he believes it "invites delay by creating numerous new opportunities for litigation".

First, he argues that the amendment does not exempt the pipeline from the requirements of NEPA because even if Congress states its opinion that the Administration has followed the dictates of the law, the courts will wish to make an independent judgment on the matter. It will take at least two years, he suggests, to decide whether or not the amendment does in fact exempt the pipeline from further NEPA review. Second, Jackson argues that the amendment invites a legal challenge on the constitutional question of whether or not Congress has the right to usurp the power of the courts. Third, Jackson is concerned about the precedent of by-passing NEPA: does Senator Gravel, "who has often expressed concern over the hazards of nuclear power want to exempt the breeder reactor program from NEPA and judicial review", he asked.

Senator Stevens replied, however, that the amendment has been looked at by constitutional lawyers, and that there is ample precedent for Congress issuing findings of fact and then denying the right of the courts to review those findings. But the most compelling argument for clearing away legal barriers to the pipeline turned out to be the energy crisis, which kept popping up throughout the two weeks of debate on the right of way matter, and in the event, the amendment was passed by 49 votes to 48. There was then a motion to reconsider the vote, which was split evenly 49 votes to 49, and Mr Agnew used his casting vote to enable the amendment to stand.

The focus has now turned to the House of Representatives, where similar legislation was being considered last week by the Interior Committee.

There is, however, another alternative waiting in the wings. Jackson said last week that if the pipeline is held up any further by litigation, particularly in regard to yet another factor—a disagreement between the oil companies and the State of Alaska regarding right of way across State land, which is at present being fought in the State courts—he will introduce legislation for the Federal Government to take over construction and operation of the pipeline. In other words, the pipeline would be nationalized, and that, in the words of a lawyer involved in the litigation, "would open a whole new can of worms".

APPOINTMENTS

New FDA Chief

CASPAR WEINBERGER, Secretary of Health, Education and Welfare, confirmed last week that Dr Alexander MacKay Schmidt will be the new Commissioner of the Food and Drug Administration. Dr Schmidt, who for the past two and a half years has been Dean of the Abraham Lincoln School of Medicine at the University of Illinois, has been tipped as the new FDA Commissioner for several weeks. He succeeds Dr Charles C. Edwards who was promoted earlier this year to the post of Assistant Secretary for Health in HEW. Born in 1926, Schmidt received his BS degree from Northwestern University in 1951 and his MD degree from the University of Utah in 1955. As Commissioner of FDA, Schmidt will occupy one of the hottest seats in the federal government, for the FDA is constantly caught in the crossfire between food and drug manufacturers and skilful and increasingly vocal consumer groups.

BUDGETS

Nixon's Warning

by our Washington Correspondent

ONE item in President Nixon's statement on Phase 4 of his economic game plan, announced last week, holds important implications for the scientific community. Mr Nixon announced that because "confidence in our management of our fiscal affairs is low, at home and abroad", the Administration has adopted the goal of balancing the federal budget. "It is clear," President Nixon said, "that several billion dollars will have to be cut from the expenditures that are already probable if we are to balance the budget". And he also said that he would instruct federal departments to reduce their payrolls below the levels budgeted for the 1974 fiscal year.

The announcement is important to science because the share of the federal budget devoted to science and technology is particularly vulnerable to cut-backs. About two thirds of federal expenditures cannot be cut because they go to such items as welfare, social security and pensions, for which prior commitments have been made; the cuttable third includes the entire science budget. It will be remembered that last year, when faced with the prospect of either increasing taxes or reducing federal expenditure, President Nixon opted for the latter course, cut back heavily on appropriated funds and vetoed several appropriations bills. Particularly hard hit were the Department of Health, Education and Welfare (HEW), and the National Institutes of Health.