

SENATE—Monday, September 10, 2001

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. BYRD].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Father, thank You for the privilege to pray to You at the beginning of this work week in the United States Senate. Gratefully, we remember the historic event which made possible one of America's most enduring traditions. On September 7, 1774, the first prayer in Congress was prayed when the Continental Congress convened. We praise You that this declaration of dependence on You led to the Declaration of Independence twenty-two months later. We reflect on the many times throughout our Nation's history that prayer broke deadlocks, opened the way to greater unity, and brought light in our darkest times. As we celebrate the power of prayer in years past, deepen our individual and corporate prayers for this Senate and our Nation. Help us to say those crucial words, "One Nation Under God" with new trust in You this morning.

Dear God, bless America. Guide this Senate to lead this Nation to greater trust in You. We need a profound spiritual awakening once again. Forgive our Nation's humanistic secularism, materialism, and insensitivity to the problems of poverty, racism, and injustice. Lower Your plumb line of righteousness on every facet of our society and reveal what is out of plumb for what You desire for America. May our prayers draw us to Your heart. We want this prayer to begin a continuous conversation with You throughout this day. Help us to listen, discern Your will, and obey with faithfulness. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine

morning business not to extend beyond the hour of 12 noon with Senators permitted to speak therein for up to 10 minutes each.

Also under the previous order, the time until 11:30 a.m. will be under the control of the Senator from Wyoming, Mr. THOMAS, or his designee. Under the previous order, the time until 12 noon will be under the control of the Senator from Illinois, Mr. DURBIN, or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Nevada, Mr. REID, is recognized.

STATUS OF THE COMMERCE, STATE, JUSTICE APPROPRIATIONS BILL

Mr. REID. Mr. President, I spoke Friday afternoon with Senator HOLLINGS, who will manage the Commerce, State, Justice appropriations bill. He indicated that he and Senator GREGG are ready to go to work. They will be on the floor at noon today. There are a number of amendments, but we don't think there will be a lot of amendments. We need to move this bill very quickly. As soon as we finish, we have seven more appropriations bills to complete as soon as possible, with the fiscal year coming to a close at the end of this month.

The majority leader has indicated that he will have a vote between 5 and 5:30 tonight. Senator HOLLINGS understands that. So Members should expect a vote tonight between 5 and 5:30.

The PRESIDENT pro tempore. The Senator from Wyoming, Mr. THOMAS, is recognized.

Mr. THOMAS. Mr. President, I yield the first 15 minutes to my friend, the Senator from Idaho.

The PRESIDENT pro tempore. The Senator from Idaho is recognized for not to exceed 15 minutes.

THE LAST OF THE "SLUDGE" FROM THE CLINTON ADMINISTRATION

Mr. CRAIG. Mr. President, I am on the floor of the Senate today to speak to an issue that is right in Washington D.C., in our midst. It is something that I think few of us realize, but it has begun to get the attention of the American public. We have seen several news articles on it in the last month.

Mr. President, the Bush administration inherited an environmental mess

from previous administrations over the past good number of years. As I have said, it is right here in the backyard of Washington, DC. The Washington Aqueduct, which is operated by the Army Corps of Engineers, is in violation of the Endangered Species Act and the Clean Water Act. Millions of pounds of sludge, laced with alum, are created when the Potomac River water is treated for drinking water for the Washington, D.C. and Northern Virginia area.

I have a picture of the release of the aqueduct into the Potomac River. Rather than send the sludge to a landfill, as other cities are required to do, it is dumped back into the Potomac River. Strangely enough, Mr. President, it is dumped into the river at night. Why? I suspect so that the public will not see it or ask the question: What is it? Therefore, it is dumped through the Chesapeake and the Ohio Canal National Historic Park.

The Corps claims that to alter this process so that it functions like other water treatment facilities will take years to plan, to build, and to become operational. The only problem is that they have been saying that now for decades.

The Corps has stated that if it were prohibited from dumping millions of pounds of toxic sludge into the river to protect an endangered species would create a security crisis. What would the crisis be? Well, it would deprive the White House, the Congress, the courts, and the Pentagon of adequate drinking water.

Mr. President, I have to be honest. That kind of an argument and that situation outrages me. I believe that no one should be above the law, including the Nation's Capital. Of all the places that I thought we would never hear the phrase, "not in my backyard," we are hearing it repeatedly said right here in Washington by the Army Corps of Engineers. A situation of this nature would never have occurred in the West because the Endangered Species Act would have trumped all of the other needs first. In fact, a community would be taxed beyond its capacity to finance a new facility and that facility would be ordered to be built by a court. There would be no arbitrary frustration of national security or that we simply can't get there in a timely fashion.

Let me give you an example in McCall, ID. The drinking water source from the community is cleaner than the standards of the Safe Water Drinking Act. However, the community has been struggling for the last decade to finance a new drinking water system in

order to comply with Federal regulations.

I strongly feel that no one entity should operate as if it was above the law and especially in our Nation's Capital. If changes need to be made to the Washington Aqueduct, then the Corps should be taking steps to work with the affected communities to establish a new plan. That is what is expected of all of the communities in my State, in the West, and across the Nation, and no less should be expected by our Nation's Capital.

A new discharge permit would require the current illegal discharge to cease, and that, of course, is the problem. This new permit has not been issued because there is a concern by local residents who do not want the dump trucks hauling the sludge through their community; thus, a resulting belief that ratepayers would prefer that the sludge be dumped into the river rather than pay for the cost of the facilities to treat it. At least that appears to be the attitude at this moment.

I have a hard time believing that the residents of any community would want to pollute the water of their community and especially through the middle of a national park. However, this is the typical response of "not in my backyard." We now affectionately call it NIMBY or being "NIMBYfied."

Clearly, in this instance, Washington is silent in its NIMBYism. The situation, I repeat, would not be tolerated in the West because a Federal court would order a community to stand down and be responsible under the regulations of the law.

According to the Army Corps, the volume of chemically treated sludge discharged into the primary, if not the only, spawning habitat of the endangered shortnose sturgeon is large enough to require 15 dump truckloads a day to haul it away from the area.

This chart is a picture taken at dawn of the sludge pouring into the river. While it is hard to see, in the distance lies the natural quality of the water. This is the chemical sludge that pours into the Potomac River during the night. Of course, this is a picture that is not very handsome, and I am sure the Army Corps of Engineers would not like to have it dramatized, but in reality, this is exactly what goes on. This dumping represents 15 truckloads of material that should be hauled away on a daily basis.

It has been concluded that a single enormous discharge that includes several million pounds of solids, often done under the cover of night, as I have mentioned, or in inclement weather, may contain the equivalent of a significant amount of the total annual discharge of phosphorous and nitrogen by the city's sewer treatment facilities. This gives you the magnitude of the problem with which we are dealing.

In the mid-1990's, area residents managed to get the Congress to require that Federal agencies give special attention to the concerns of the local residents when the facility was re-permitted and thwarted the EPA's issuance of a new permit that would have halted the dumping. In other words, there was an effort at one point, but local citizens and, quietly, the EPA in the mid-90's winked and nodded and said—"Not In Our Backyard." This is the Nation's Capital and it would create a national security problem, and so you are permitted. No new permit, though, has been issued since the old one expired. They just let it roll on. The expired permit has no limits on the total suspended solids, alum, and iron, discharged by the aqueduct. No other city in the Nation would get away with that, nor would there be a wink and a nod. The aqueduct discharges under continuation of the old permit pending issuance of a new one.

The Department of Justice contends this is not a violation of the ESA to dump millions of pounds of chemically treated sludge into the primary spawning habitat of an endangered species that may be present at the exact location of the dumping in the Potomac River.

None of this is going on in the Columbia and Snake Rivers, and yet we have five listed endangered species of salmon there. That water must be maintained in a near or pristine quality, and we have all kinds of activities going on up and down the stretch of the rivers to improve the water quality, but not in Washington and not for the shortnose sturgeon.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service have stated that the discharge may also result in chemo-sensory disruption and EPA documents state that the discharges may result in what we call bio-accumulation of harmful chemicals. I am getting a little more technical than is necessary.

This picture is worth a thousand more words than I can express about the situation that is going on.

The National Marine Fisheries Service is allowing the project to proceed on the basis that the fish has not been verified in the upper tidals of the Potomac. Yet the regional director of the National Marine Fisheries Service stated more than 2 years ago that studies funded by the Corps that were critical to the analysis of the sturgeon status in the Potomac would commence that spring.

It was determined that the fish are in the river. Only four species have been verified, not counting reports of sturgeon caught by sports fishermen. In fact, at one time, sturgeon was so abundant in the river, along with other fish, that it created a commercial fishery. George Washington took advantage of that commercial fishery with

his own fleet of fishing boats. In fact, I am oftentimes told, and I have even looked at the transcripts from Mount Vernon, that one of the most lucrative parts of the Mount Vernon operation was fishing in the Potomac. We know that cannot happen nor would it happen today.

The National Marine Fisheries Service has concluded that the fish is present in the general area because commercial fishermen turned in the sturgeon they happened to catch in their nets in response to a reward program for another species of sturgeon that was known to be in the area.

The bottom line is, there are threatened and endangered fish in the Potomac River, and yet the Army Corps has done nothing in response to the need to cooperate.

In my State of Idaho, or any other State in the Nation, this is a practice that would not be tolerated, and that is why I have come to the floor today. We pass laws, you and I, Mr. President, and the administration writes the regulations to administer those laws. The Endangered Species Act over the last three decades has been touted by some to be the most progressive environmental law in our Nation, and clearly it has saved species of threatened and endangered plants, animals, fish.

My State has been largely reshaped by it. Federal land use plans in my State are much more prescriptive today and controlled by the very issue of the Endangered Species Act. But here, by a wink and by a nod, nothing happens. It is a river that you and I, Mr. President, for years have worked to pass legislation that would progressively clean it up and improve it, moving it back toward a time when it was a viable fishery on the east coast. But with the millions of pounds of sludge dumped daily into this river in the dark of night under a permit that has not been reissued since 1994—really, how long do we allow something like this to go on? How long do we allow the Army Corps of Engineers to continue to operate because it is in our best interest in the Nation's Capital, the city that ought to lead by example but can get away with a direct violation of the law or by ignoring the enforcement of the law?

I do not think that should be the case. That is why I stand in the Chamber to dramatize this issue and to speak more clearly to it. While I believe the Endangered Species Act needs to be reformed, there is not any way I could write it to reform it that would justify this, nor would I try. Nor would any Senator vote for that kind of a reform.

Yes, we would expect the Endangered Species Act to be more practical in its application, and, yes, we would want a more cooperative relationship with local communities of interest, but never would we ever tolerate the kind

of an aggressive act that goes on in Washington on a daily basis, as I have said, oftentimes in the dark of night by this city and by our own agency, the Army Corps of Engineers, which is primarily responsible for the water treatment of this city.

The application of the Endangered Species Act, as we see it, is good for the country and good for the West. It ought to be the same act and it ought to be enforced in the same way in our Nation's Capital. This is simply not being done.

I am in the Chamber to speak to that issue and to recognize I have been involved with others in trying to bring about the conformity of the enforcement of the Endangered Species Act as we rebuild the Woodrow Wilson Bridge. This is one of many issues where there seems to be this attitude, well, if it is the Government doing it, somehow the Government can get away with it, and if it is in or near our Nation's Capital, where national security and the importance of the Congress are involved, then surely we can wink and nod and we can let the law be bypassed.

I think not, Mr. President, and I think you agree with me.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Wyoming, Mr. Thomas.

PLANNING THE SENATE AGENDA

Mr. THOMAS. Mr. President, we enter into our second week of this fall's session after the recess, and we are faced with much to do. I think that is not unusual. It is often the case things pile up towards the end of the session, of course, but it seems to me we have a great many items to consider.

There are 13 appropriations bills to be passed in order to have this Government operate in the next fiscal year. The fiscal year begins October 1, which is only 3 weeks away. In the course of those 3 weeks, there are several days which, for various reasons—the Jewish holidays, and so on—there will not be votes. So we have really a relatively short time.

Obviously, what we will be doing is passing a continuing resolution before this is over, but nevertheless we have a great deal to do. None of these bills has yet gone to the President. Some of them have been passed in both Houses and are waiting now on the conference committees.

To be sure, it is difficult. It is always difficult. This year we are seeing some more difficulties because of the change in conditions with regard to the surplus, because of the difficulty I think we are finding now in staying within the budget we passed some time ago. Nevertheless, those are the items before us.

It does not seem to me perhaps that we are moving ahead quite as rapidly as we might. It does not seem to me we

have a very well designed plan to accomplish these things within a certain period of time.

I understand it is very difficult to bring together a group of this kind with different views and properly argue those views. On the other hand, the role of leadership is to have a plan. It is the role of leadership to cause things to happen. Even though they are difficult issues, they must be done. Unfortunately, as I noticed particularly this weekend on public media, and so on, rather than seeking to find a plan to move forward, we seem to be spending more time blaming one another, particularly the President and the administration, for the difficulties in which we find ourselves.

We can have different points of view about whether that is valid or whether it is not, but even if it is, the fact is we have things to do and we should be moving ahead with the plan to do them. Instead of that, we seem to be spending more of our time complaining about the administration's plan. The fact is, we do have indeed the second largest surplus in our history. We also have a budget that we passed that is about a 4-percent increase, which is a fairly low increase, which is what we need compared to what we have spent in the past several years. Our challenge is to stay within the budget we passed and to continue to move forward in doing that.

We hear a great deal of complaint about tax relief—too much tax relief. As a matter of fact, we are in the process of passing that relief back to the people who own the money, and that is as it should be, I believe, particularly as we find ourselves in a time with a very slowing economy. What else is more important than to return more money to the taxpayers if we indeed have a surplus? And we are doing that.

The question, of course, is one of not reaching into Social Security, which I happen to agree with, although we have done that for how many years and those dollars are accounted for in the Social Security fund, even though for years they have been spent for other things without a great deal of complaint, I might add.

However, I do not think that is really the issue. The issue is holding down spending to comply with the budget that we passed. It seems to me that ought to be our challenge.

There is, of course, in my view, no real threat to the beneficiaries of Social Security. Those obligations are there. They are going to be there. We have paid down more debt because of the surpluses over the last several years than in years past. So what we really need to do is address ourselves to the issues we have before us. The turndown in the economy, of course, is the thing most of us are very concerned about, all of us, whether we are here, whether we are in Casper, WY, or

wherever, and to do what we can to seek to play the Government's role in doing what we can to change that.

A reduction in taxes, the return of taxes, is designed to help do that. Hopefully, it will. We are not through with that yet. We are in the process with, I believe, seven reductions in the last year in interest rates designed hopefully to stimulate the economy. We need to do that.

Limiting our spending in the budget is another aspect we are seeking to help pick up and strengthen the economy. There are some other things we ought to be doing. We ought to be doing something with giving the President the opportunity to have trade agreements that are then brought to the Senate for approval. They are all brought to the Senate for approval, but the world economy and our involvement in trade, particularly in agriculture, in which I am involved, was the difficulty in the Asian currency a year ago which brought a good deal of problems to our economy. So we are a part of that, of course.

There are a number of things we can do, and I cannot think of anything more important for us to talk about collectively than what is appropriate for the Government in helping to strengthen this economy.

Yesterday, again on the TV, there were some questions about that: Oh, no, it is up to the President to do that. I do not agree with that. Of course, the President is the one who brings up the suggestions to the Senate. The President is not in control of the Senate, and the Senate has some responsibilities to take leadership as well. The idea of saying it all began since this President became President is not true. It has been here for a year, and then to say it is up to the President, I do not agree with that.

Each of us in this body has some responsibility to give thought to what we can do to help strengthen this economy, which everyone in this country wants us to do.

In addition to that, of course, it seems to me we ought to be moving on an energy bill. This is very important to us, not only to the economy, but we are going to see some more impacts of it, of course, in the winter. We can do that. We started to work on pharmaceuticals. The budget contains opportunity for that. We can do that. Education has been passed by both Houses of Congress and still remains in conference.

I know many in the leadership on both sides are very anxious to work together and show evidence of working together and want to work together. I certainly encourage that be done so we can do what we are here to do, which is to solve the problems before the country, the legitimate problems for the Federal Government.

I yield the floor.