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INAUGURAL MESSAGE

of

THE HONORABLE RALPH L. CARR

GOVERNOR OF COLORADO

Delivered before the Joint Session of the

COLORADO LEGISLATURE

Thirty-Third Session



AT DENVER

JANUARY 13, 1941

To the Members of the Thirty-third General Assembly:

To the people of Colorado and to the members of this General Assembly, may I express my thanks for your support and expressions of confidence. There are many bright spots along the trail ahead. There is every reason to believe that Colorado will enjoy one of the happiest and most prosperous periods in her whole development. I accept the great honor of being permitted, as your Chief Executive, to participate in the direction of the state's government at such a time and under such circumstances.

While fully aware of the responsibilities which the office entails, I am sustained by the knowledge of your faith in me. I accept this new honor and pledge you my determination to justify it.

On behalf of the other elected state officials, may I say that they too are conscious of the obligations which have come with the honors bestowed. We go forward on a united front for the establishment of Colorado in her true place among the sisterhood of states and for the accomplishment of everything which will work for the betterment of her citizenry.

The last General Assembly gave to the Supreme Court the power to draft a new code of civil procedure. An entire new code has been drafted in conformity with that authority and is now operating. It is unnecessary for the Legislature to take any action with respect to civil procedure because of that authority granted two years ago.

Since the delivery of my message to your joint bodies on Thursday of last week, a matter of such deep concern to the semi-arid West and, particularly, to the people of Colorado, has come to my attention that I feel impelled to take a few minutes this morning to discuss it. And if the situation appears as dark to you as it does to me, then I hope that you will take action to set in motion forces which will defeat the greatest menace to state's rights and individual liberties which exists today.

Last week your attention was directed to the fact that during the year just ended, the Supreme Court of the United States in an action between Colorado and one of her neighbors announced the doctrine that each state's equitable proportion of the flow of an interstate stream was subject to the exclusive control of that state and that rights in water under state court decrees could not be re-adjudicated in federal courts. A somewhat disquieting opinion of that same court of more recent date stating that the water of interstate rivers, navigable or capable of being made navigable by improvement, are subject to the control of the Congress under the commerce clause of the constitution was also mentioned. I told you then

that I was not certain to what limits this doctrine might be extended and in what manner it might affect the water rights of Colorado and her citizens.

A definite answer to this query has already been returned in the form of a bill introduced in the Congress entitled "A Bill to Provide for Improvement of Navigation and Control of Floods on the Arkansas, St. Francis, Red and White Rivers, for the Promotion of National Defense and for Other Purposes." It provides for the organization of a federal corporation with such extensive powers over the basins of the rivers mentioned in the title that, if even only partially exercised, it would destroy Colorado's control over the waters of the Arkansas River and jeopardize every decreed water right belonging to Colorado's farmers.

While I do not care to be classed as an alarmist, nevertheless I feel that it is my duty, as the Governor of your state, with a large portion of my life work spent in studying the problems of irrigation and particularly of interstate waters, to sound a warning to the members of the General Assembly, to the people of Colorado and of every other state in the irrigation West. My warning goes further to every person in the country who clings to the belief that under our constitution there remains something of sanctity in the doctrine of state's rights.

The proposed legislation which is patterned after the Tennessee Valley Authority is similar to certain bills which have been introduced into Congress for the establishment of what have come to be called the "Seven Little TVA's." This bill differs from them only in so far as the Authority now attempted to be granted to the proposed corporation on the Arkansas and these other rivers is more extensive, and more effectively denies the rights of the states in the development of their water resources than any other piece of proposed legislation which has come to my attention.

In order that there may be no misunderstanding as to the reasons for my concern, may I remind you that those who reclaimed the West were forced in the very nature of things to establish a doctrine concerning river flows which was different from that which had controlled in the states of their origin. The new theory was first in time, first in right.

Colorado has become one of the important agricultural states of the Union under this doctrine. To enforce it, there has been developed a comprehensive system for the allocation, distribution and administration of our river flows. Other western states have established systems generally paralleling that of Colorado although differing somewhat as to the methods of administration. Procedure has been set up for determining the relative rights of water users based on dates of use, the amount diverted and other factors. Court decrees in Colorado, and licenses and permits issued by state officials in others,

are considered as property right with titles as sacred and as valid as the title to the land on which the water is used.

Under the proposed law, irrigation rights on the upper Arkansas would be made subservient and subject to the navigable character of the lower streams. The corporation would be given absolute control over the rivers mentioned in the Act. The Authority is given powers of eminent domain, the right to require states to participate in the business of constructing projects and it may develop hydro-electric power and store water, and then sell both. There could be no development in the basins without the consent of the Authority. No dams, canals, or other structures could be built unless the corporation agreed. Nor may states even enter into compacts without the approval of the corporation.

The Reclamation Service, which is peculiarly a western institution and which for forty years has been engaged in the development of the irrigation resources of the West on the theory that the water was owned by the states in equitable proportions, will not be permitted to participate in the future development of this basin.

At the present time, a state's representatives in the Congress may protect the rights of the people who elected them. If this authority were to be set up, the only power left in our Senators and Congressmen would be to vote appropriations to carry out the plans of the authority. No longer could a Senator or Congressman rise to the defense of the people of his state.

By a decision of the United States Supreme Court, many years ago, an equitable portion of the flow of the Arkansas was held to belong to Colorado. This water has been diverted in Colorado under decrees from state courts to individual ditches. To attempt to give this federal corporation the authority to control the flow of the river would be to deny the state's ownership or its right to control its use and future development.

Water users who divert water under state decrees now would be denied the right to such water when the corporation determines that it must be released to meet navigation demands, to develop power or to be impounded for storage purposes behind some federal dam.

Our state officials who, under state laws, apportion stream flow among individual water users would act only with the consent of federal water masters, unacquainted with and unsympathetic to our irrigation practices and needs.

In short, the whole system of life within these river basins is to be altered and changed to conform with a theory of government which nullifies constitutional rights and leaves individual states stripped of everything but their names.

All future development in these great river basins would be fashioned by the Federal Authority of three commissioners selected at Washington.

Those who would question our right to oppose federal control and assert that our position is based upon partisan or political motives should recall the asserted position and attitude of this state administration toward the question of national defense.

Last week we pledged everything of our resources, material and spiritual, to the accomplishment of the policy outlined by our President. We are Americans always, but as Americans we insist upon the continuation of those rights dedicated to us under our constitution.

The control of the natural resources of the states is to be taken so that state lines may be erased, that state ownership of property may be denied and that rights of individuals may be destroyed. Argument that such control by the national government will benefit the nation generally loses sight of the fact that for a period of seventy years or more men and states have been building on a different philosophy of life, a different theory of property rights. And they believed that their actions were justified by the constitution.

The things which I am suggesting to you with regard to this proposed action are not partisan in their nature. It is true that they may be in some ways sectional. But the business of reclaiming lands, of diverting waters for irrigation and acquiring titles to property is neither Republican or Democratic in its nature nor in any other way tied up with any theory of partisan government.

Aside from the mere question of our right to divert irrigation waters so as to continue the cultivation of agricultural lands along our rivers, there looms the greater question of federal encroachment on the powers of the state. Your very right to sit here as legislators representing a separate state is questioned by the provisions of this Act. Either we are to continue to retain some semblance of state rights and state individuality, or else we are to surrender every power of self determination. In short, the development of this upper country, which has been going on for three-quarters of a century, is now to be made subject to rights of navigation in far-distant states to the end that the federal government, using navigation as the excuse, may take over control of our property, of our future development, of our very lives.

You men of the West are brought to the verge of a bloodless civil war testing your rights under the constitution.

Viewing this proposed measure from a broader basis, it becomes clear that it constitutes merely the opening wedge in a great plan to place every major river basin in the country under similar federal authority. Colorado is in the most precarious position perhaps of any state in the Union because

when the major plan has been completed, our entire state will be regulated, controlled and governed by five major river basin authorities with powers as great as those attempted to be conferred under the Act which I am discussing.

The future development of Colorado is indissolubly related to the conduct of our water rights. Agriculture, industrial development and recreation are all affected. Whether they will be retarded will be determined without reference to our state needs and plans but rather by the needs of other sections and other states.

Men took up homesteads along the Arkansas and other rivers under the belief that there were certain rights resident in the states and recognized by Acts of Congress which were inviolable. Statutes of the Congress early recognized the power in the states to distribute water among their citizens according to local customs, laws and regulations. Uniform decisions of the United States Supreme Court declared that the states owned the river flow in equitable proportions and denied claims to ownership on the part of the federal government.

And now, under a new theory of law, the federal government would deny the ownership of the rivers by the states, would make the rights of the individual subservient to a federal agency, and nullify the basis upon which our western civilization has been developed.

The thing which is happening on the Arkansas may well happen on every major river drainage in Colorado and the West. Under the decision of the United States Supreme Court in the Appalachian Power Company case the power of Congress to control a navigable stream is not subject to review by the courts, but falls exclusively within the legislative powers of that branch of our government.

We must look, then, to the lawmakers at Washington for relief. We must show the Congress the facts. We must establish the injustice of this plan. Those of us who believe in Colorado and who realize that our great source of life and wealth and of future growth lies in the cultivation of the lands along her irrigation streams must realize that there is no justification for the seizure of a river basin under asserted federal authority to the absolute destruction of every theory, of every ideal, of every title, of every dream of the people who have builded a great civilization.

I am asking you as Coloradoans, as citizens, as the representatives of a great state, to investigate this proposed measure. And if you find that I am right, then I suggest by proper resolution and such other action as you may deem wise that you arouse the rest of the states of the West to a defense.

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