

Arizona, Colorado River Commission, Apr. 6, 1927-
Feb. 3, 1929.

WHY YOU SHOULD

VOTE "YES" ON

PROPOSITIONS 100 and 102

Statement by the Colorado River Commission of Arizona
Favoring Proposed Amendments to Constitution.

Election May 31, 1927

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TO THE PEOPLE OF ARIZONA:

At a special election to be held on the 31st day of the present month, the people of Arizona will vote on two amendments to the State Constitution, submitted by the Eighth Legislature. These amendments propose:

(1) To amend the fifth paragraph of Article XX by striking therefrom the following: "No taxes shall be imposed by this State upon lands or property situated in the State belonging to or which may hereafter be acquired by the United States or reserved for its use; * * but all such lands shall be exempt from taxation so long and to such extent as Congress has prescribed or may hereafter prescribe."

(2) To repeal the tenth paragraph of the same article, which reserves to the United States all rights and powers for the carrying out of the provisions by the United States of the national reclamation act, to the same extent as if this State had remained a Territory.

The Colorado River Commission of Arizona advises and urges that these proposals to amend the Constitution be ratified and approved by the people. It is the opinion of able constitutional lawyers that such action is essential to the success of Arizona's efforts to secure recognition of her rights in the water and power resources of the Colorado river. The reasons for this view may be briefly stated.

REVENUE FROM NATURAL RESOURCE

There is little division of opinion in Arizona regarding the elementary proposition that the power possibilities of the Colorado river within this State constitute a natural resource the benefits of which should accrue to the State. By whatever agency, private or public, the development of these resources may be accomplished, Arizona is entitled to an equitable revenue, by taxation, therefrom. As the matter now stands, however, Arizona would appear to be precluded by its own constitution from the imposition of a tax upon "property situated in the State belonging to * * the United States." The purpose of the amendment of paragraph five is to correct this situation. There is no thought of an attempt to impose a tax upon Federal property, such as public buildings, used in the performance of the government's ordinary, regular and proper functions. That could not be done in any event. The purpose is merely to remove the prohibition against valid legislation under which Arizona might derive an equitable revenue from the development of this most valuable natural resource, even though such development, which in its nature is a private enterprise, might be by the Federal government on "property belonging to the United States."

STATE VS. FEDERAL RIGHTS

The need for the second proposed amendment—repeal of the tenth paragraph of Article XX—is equally clear. This paragraph acquiesces in the reservation to the United States of all of the rights and powers possessed by

the Federal government when Arizona was a Territory, for the carrying out of the provisions of the national reclamation act. What the full extent of these powers might be declared to be, is not known, but in view of the broad waivers contained in the Arizona Constitution, it might well be that the Federal government would be permitted to usurp the State's sovereign powers to its very great detriment.

That postponements of the Swing-Johnson bill attach great importance to the limiting provisions of Arizona's Constitution, is shown. Section 13 of the measure makes the act a supplement to the reclamation law, and endows it with all of the powers attaching to that law. Arizona is then tied, hand and foot, by the following provision: "Nothing in this act shall be deemed to waive any of the rights or powers reserved or granted to the United States * * by the tenth paragraph of Article XX of the Constitution of Arizona, but the Secretary of the Interior is authorized on behalf of the United States to exercise such of said rights and powers as may be necessary or convenient for the construction and use of the works herein authorized and for carrying out the purposes of this act."

With these clauses in the Swing-Johnson bill, and Arizona bound, as she probably would be bound, by the express waivers contained in paragraph ten of Article XX of her Constitution, it is quite possible that Congress and the Secretary of the Interior might be allowed under the pretense of nationalizing the Colorado river, to Californiaize it, and disregard Arizona, in its development and in the division of its benefits to the full extent that Secretary of the Interior Work has recently threatened.

The Supreme Court of the United States has definitely held that the Federal government may not enter a State and improve by irrigation or otherwise even Government land within its boundaries except by compliance with the laws of such State. Unfortunately, in the light of her constitutional acquiescence in the broad reservations to the United States, Arizona would likely be precluded from taking advantage of this just rule, and until her constitutional acquiescence is repealed no valid law could be enacted in conflict with it. On the other hand, with the provision in question eliminated, the Federal government would have no right under the reclamation law to ignore or override the laws of Arizona, which in conformity with the State's sovereign political powers, provide a method for the appropriation of the waters of the State.

Another phase of the situation—practical if not legal—is that, inasmuch as it is the California belief that Arizona is bound by the restricting provisions of her Constitution, and that the Swing-Johnson bill embodying these provisions will be driven through Congress, it is altogether unlikely that her representatives will consent to any just agreement relating to the Colorado river until one of two things, or both, occur—viz, the striking from the Arizona Constitution of the provisions relied upon, or the definite and final defeat of the Swing-Johnson bill.

The Colorado River Commission hopes that an agreement may be effected between all of the States of the Colorado river basin or with the United States by which the rights of each will be recognized and preserved, and under

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which the Colorado river may be comprehensively and adequately developed, its floods controlled and its vast potentialities realized. To such an agreement, the State's legitimate interests being safeguarded, Arizona would unquestionably and readily subscribe, and the amending of the Constitution would thereby be rendered needless, but in view of the determined effort being exerted by California interests for the passage of the Swing-Johnson bill, to which Arizona can not subscribe, the possibility that a just and equitable agreement may not be effected must be seriously considered.

For these and other reasons, it is regarded as important that the proposed amendments be adopted. There appear to be no valid reasons why they should not be. Everything is to be gained and nothing lost by such a course. Whatever hope may be entertained for an agreement which will preclude the necessary for litigation, there is a very reasonable likelihood that Arizona's rights in the Colorado river will have to be settled in the courts. In such case her position should be as favorable as possible, and the presence in the State Constitution of the present provisions of paragraphs five and ten of Article XX would probably prove a serious handicap.

NO BAD FAITH SHOWN

It has been urged by some that inasmuch as Article XX of the Constitution is described as an irrevocable ordinance, its provisions may not be amended or repealed without the consent of Congress, and that an attempt by Arizona to do so would appear to be bad faith. This is not the case. The proposition is well established by decisions of the highest court (25 R. C L., p. 370) that "when a new state is admitted, it is so admitted with all of the powers of sovereignty and jurisdiction which pertained to the original States, and such powers may not be constitutionally diminished, impaired or shorn away by and conditions, compacts or stipulations embraced in the act under which the new State came into the Union * * *"

The provisions proposed to be repealed constitute, in the Arizona view, infringements upon Arizona's powers of sovereignty and jurisdiction. Congress has no right or power to impose these conditions. As a State of the American Union admitted upon an "equal footing" and possessing all of the sovereign rights and powers of the other States, we have the right to reject them, without any charge of bad faith. It would be much worse faith, with the vital interests of Arizona's citizens hanging in the balance, to fail to do so.

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