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# FEDERAL CONTROL OF HYDRAULIC MINING

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FEDERAL CONTROL OF HYDRAULIC MINING.

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The question of the right and authority of the Federal Government to control mining by the hydraulic process to any extent has recently become interesting and important, particularly in the State of California, by reason of the efforts recently made by the United States authorities to enjoin gravel mining there, until the miner shall have submitted to the jurisdiction of a commission composed of engineers of the United States army appointed by the President.

Hydraulic mining, of itself, is and always has been recognized as a legitimate industry not subject to interference by the courts, except when it invaded the property rights of others.

It may be well to here observe, that hydraulic mining, as it is now and for more than thirty years last past has been conducted and understood in the mining regions of the western part of our country, is a process or mode of gold mining, by which hills, rocks, banks and other forms of deposits, composed largely of auriferous earth, are mined and removed from their position by means of large streams of water, which by great pressure are forced through pipes terminating in nozzles generally known as little giants or monitors. The water is discharged from these nozzles with great force against these bodies of earth, which are first frequently shattered or broken up by blasts of powder, and softened by streams of running water flowing at their base, loosening and tending to disintegrate them before they are further disintegrated and swept away by the great streams of water which are hurled upon them by the little giants or monitors. The clay, sand, gravel, stones and boulders of which these gold mines are largely composed, and known as mining *débris*, together with the gold itself which is mingled with it, are moved by these streams of water into and through flumes, sluices and other conduits near the mine, where the gold is arrested and the accompanying *débris* is carried through them and dumped or deposited into impounding basins or reservoirs. A part of this *débris*, depending upon the character of the impounding works—usually the lighter and more flocculent material—is carried beyond them and flows directly or ultimately

into the adjacent streams and canyons and thence to the larger rivers, some of it being frequently lodged either in the river beds or on the lands lying adjacent thereto.

It will readily be seen that this business, from its very nature, cannot be carried on without eventually doing injury, perceptibly or imperceptibly, to the streams, and often to the lands of riparian proprietors near them. Long continued mining by this process in the territory drained by the Sacramento and San Joaquin river systems, which ultimately lead to the Bay of San Francisco and thence to the Pacific Ocean, had resulted in lodging in these streams, their tributaries and headwaters, and upon thousands of acres of land adjacent to them, great quantities of débris which naturally resulted in impeding the navigation of many of these rivers, and injuring much of the lands lying along them. The result was a long and bitter litigation for years between the hydraulic miners on the one hand, and on the other the farmers and others owning lands adjacent to the streams used to carry off mining débris. In this litigation frequently, the public authorities were interested in their efforts to protect the navigability of these rivers. The courts of equity were time and again invoked to restrain the operation of hydraulic mines situated upon the various headwaters of the streams ultimately flowing into the Sacramento River; and in many instances where direct damage, either to the adjacent lands or the navigable waters were proven to the satisfaction of the courts, the operation of these mines by the hydraulic process was enjoined. In vain did the miners contend that the importance of their interests demanded especial consideration and extraordinary privileges, and that the inhibition of hydraulic mining meant incalculable loss and inconvenience, not only to the owners of such mines themselves, but also to the mining communities in which they were situated. They were met by the courts with the answer that these considerations were matters of judicial indifference. If public or private rights were being substantially infringed upon by this process of mining, it must stop regardless of the consequences to the miner or to the community in which his business was carried on; and the courts refused to make a comparison of the value of the conflicting rights, as the mode of determining their legal superiority.

The decisions, however, were not always adverse to the mining interests. An inherent and sometimes unsurmountable difficulty in this class of litigation, was the procurement of proof by complainant satisfactory to a court, that any particular

mine thus proceeded against was doing the damage complained of. These contests increased in number and bitterness, and finally the United States itself made an effort to prevent the further impairment of the navigability of certain streams, by prosecuting an action in equity for an injunction against the owner of one of the largest and most important gravel mines in California—The North Bloomfield Gravel Mining Company. This company had formerly in another suit, brought by a private party, entitled *Woodruff v. The North Bloomfield Mining Company*, 18 Fed. Rep. 753, been judicially prohibited from working its mining ground by the hydraulic process, until it could satisfactorily show to the court granting the injunction that it had constructed impounding reservoirs which would successfully restrain its tailings or débris; and it had thereafter, by constructing a vast and expensive system of impounding works in a manner satisfactory to the court, recommenced its mining operations. After a long trial of the case, instituted by the Government, in which much testimony was taken, the United States Circuit Court for the Ninth Circuit found as a fact that, by the new system of impounding works, the North Bloomfield Company was enabled thereby to restrain any débris resulting from the operation of the mine which could injure the navigability of any of the streams used by it, and the injunction prayed for was denied (*U. S. v. North Bloomfield Gravel Mining Co.*, 53 Fed. Rep. 625). In these as well as in other cases the courts were careful to observe that hydraulic mining, of itself, was not only a lawful but also a commendable business when so conducted as not to injure the rights of others.

Such, in brief, was the condition of hydraulic mining in the State of California when the act of Congress to which I shall shortly advert became a law. Nobody there wanted hydraulic mining stopped if it could be carried on with due regard to the property rights of others. Steps were thereupon taken to bring the conflicting interests together, and the miners in convention assembled suggested to the farmers and those interested in the preservation of the navigability of the streams, as a compromise, that, recognizing as they did the binding effect of the decrees of the courts, the determination of the question whether such mining could be safely carried on without injury, and if so, where and under what conditions, be left to an impartial commission of Government engineers who should be the judges of the facts and whose determination should be final. To this the farming and agricultural interests consented, and the result was

the passage by Congress of the act of March 1, 1893 (27 U. S. Stats. at Large, p. 507), commonly known as the "Caminetti Act."

My space is too limited to give even an abstract of this act and I can only mention some of its principal features. It is entitled "An Act to create the California Débris Commission, and regulate hydraulic mining in the State of California," and provides, *inter alia*, for the appointment of a commission composed of three army engineers to act under the direction of the Secretary of War and the supervision of the Chief of Engineers of the United States Army, and to supervise hydraulic mining in the territory drained by the Sacramento and San Joaquin river systems, so that no injury might be done to the streams and property adjacent thereto; as well as to make a study of and determine upon plans for the improvement of the navigability of all the rivers comprising this system, in order to preserve them against damage from mining débris, and, if possible, restore them to the condition in which they existed in 1860.

The commission, by this act, is further charged with the duty of investigating the feasibility of establishing storage sites in the tributaries of the Sacramento and San Joaquin rivers, or low lands adjacent thereto, with a view to the further protection of the navigability of all these streams; "and in general to make such a study of and researches in the hydraulic mining industry, as science, experience and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid."

The act inhibits and denominates as a criminal offense the conduct of hydraulic mining in the territory heréinbefore referred to, which directly or indirectly injures the navigability of these river systems, other than such mining by this process as may be permitted by the débris commission, and further provides that every owner of a mine in the territory mentioned which it is desired to work by the hydraulic process, must, in a prescribed manner, submit to the jurisdiction and general direction of the commission as far as the means and methods of impounding its débris is concerned.

This act, however, was not suffered to go unchallenged. The North Bloomfield Gravel Mining Company, heretofore mentioned, determined that the importance of its interests would not allow it to submit to the jurisdiction of this or any other commission, and, contending that its system of impounding works

was, and had been heretofore, judicially declared sufficient, and that it did not injure the streams directly or indirectly, refused to execute and file with the duly appointed commission of engineers the petition and instruments provided for by the act, surrendering to the United States the right and privilege to regulate by law the manner and method of impounding the débris resulting from the working of its mine by the hydraulic process.

In order to test the act of Congress before referred to and upon the relation of the débris commission, an action was instituted by the United States in 1895 for an injunction to restrain the operation of this mine by the hydraulic process, until it should have complied with the act before mentioned. No damage to the navigability of any streams was directly alleged in the bill, but it was averred that the mining company was using certain streams leading into navigable rivers, and forming a part of the Sacramento River system, for the purpose of floating off some of its tailings. The company demurred, and then answered, contending first that the act was not mandatory in its requirements upon the miner but permissive only; secondly, that if it was to be construed as mandatory it was unconstitutional, as transgressing the commercial powers of Congress and trenching upon State rights; and thirdly, that a court of equity would not enjoin hydraulic mining unless actual or threatened and irreparable damage was alleged and proven. On the miner's behalf it was argued that the court might as well enjoin a farmer while plowing from turning a few feet of soil into an adjacent stream, or a saw mill from using the streams for carrying away its sawdust and shavings, as to enjoin a gravel miner from floating diminutive particles of débris that only discolor the water, do not impair its commerce and float with every current, resting nowhere until they reach the ocean. The company averred in its answer that its mining operations performed no injury to the navigability of the streams, and that only light, flocculent matter, ultimately carried out into the ocean by the currents, left the company's impounding works and reached the streams.

The Government was content to rest its case largely upon the admission in the defendant's answer, of the use of the navigable streams to some extent, and claimed that the history of the times, as well as the verbiage employed, showed that the act was designed to be mandatory and within the constitutional powers of Congress granting it the right to regulate interstate

commerce. It was further urged in the Government's behalf, that it was for Congress and not the courts to determine what was and what was not an injury to the navigability of the public waters capable of floating interstate and foreign commerce, and that the passage of the act in question was an authoritative and final declaration by Congress that any hydraulic mining carried on in the country drained by the Sacramento and San Joaquin river systems was an injury to the navigability of these streams when not regulated by the commission appointed under the provisions of the act under consideration. Congress had not only legislated for their protection by passing this act but had also provided for their improvement by the various River and Harbor Acts especially those of 1886, 1890, 1894 and 1896.

On June 8, 1897, Judge Ross of the Circuit Court for the Ninth Circuit rendered his decision, sustaining the contention of the Government throughout and upholding the act (*U. S. v. North Bloomfield Gravel Mining Co.*, 81 Fed. Rep. 243).

From this decision the mining company took an appeal to the Circuit Court of Appeals for that Circuit, which was argued at the February, 1898, term, and will probably be decided about the time this article appears in print. There can be but little doubt that the appellate court will also uphold this act, construing it as mandatory and not merely permissive, and declare the absolute power of Congress to regulate the impounding of débris from any mine which uses the public streams of the nation directly or indirectly, as conduits in carrying away its refuse, no matter how imperceptible or trivial this use may be, or how insignificant, if at all, the damage resulting therefrom may appear; for, as the learned Circuit Judge observed, "The power to absolutely prevent the use of such waters for objectionable purposes necessarily includes the power to prescribe the terms and conditions upon which they may be so used," which the act of 1893 was designed to accomplish.

The decision in this case will authoritatively settle the question of the authority of Congress, or its duly appointed Governmental agents, to regulate and provide methods of impounding mining débris in the territory referred to, and thereby establish the right of the Federal Government to control hydraulic mining at least to this extent; for the right of Congress to either itself arbitrarily declare what is and what is not an injury to the navigable capacity of a public stream of the United States open to interstate or foreign commerce, or to delegate this power to one of its duly-appointed agents or arms of Govern-

ment, such as the Secretary of War, or a board of engineer officers, is now too well settled to be open to serious dispute.

The courts held the absolute prohibition against the exportation from the United States of merchandise to England, under the "Embargo Acts" preceding the war of 1812, was a constitutional exercise of the power of Congress despite the opinion to the contrary of such eminent men and profound lawyers as Samuel Dexter and Daniel Webster.

The decision by the proper officers of the Government that a bridge across Rock River, Illinois, was an obstruction to commerce on it and hindered the work of the improvement of the stream, despite the fact that the bridge was erected under State authority, was held sufficient to enable the United States Government to maintain a criminal action against the city of Moline for maintaining an obstruction to a navigable stream under the River and Harbor Act of September 19, 1890 (26 U. S. Stats. at Large, p. 624; *U. S. v. City of Moline*, 82 Fed. Rep. 592), and the failure of the Secretary of the Treasury to include a certain kind of tea among the list of those whose importation was provided for by his regulations, where an act of Congress delegated that power to the Secretary, did not serve to render such act invalid or unconstitutional or constitute an unjust discrimination against any one, although no reason appeared for the omission (*Sang Lung & Co., et al., v. The Collector of Customs, etc.*, 85 Fed. Rep. 502).

As the Circuit Court there observed, the power of the Government to act arbitrarily in shutting out or admitting an article of commerce was complete and not reviewable in the courts; and upon a like principle and by the same course of reasoning, and under the same constitutional authority, the power of Congress or its duly delegated agents to arbitrarily determine what is and what is not an injury to the public navigable streams or their navigable capacity, and upon what terms such streams may be used, if at all, seems equally clear, and appears now to be judicially settled beyond question.

The action which has been taken by Congress in this matter is in the right direction. It is now the province of experts and not of mine owners on the one hand or of interested farmers or riparian owners on the other, to determine whether, and if so how, hydraulic mining in the territory containing most, if not all, of these mines in the State of California can be carried on without creating damage to the others; and this legislation is in line with the present efforts of miners and others interested in



this important branch of industry, to have a Department of Mines created by the Federal Government coördinate with the recently-created Department of Agriculture and having like powers and authority.

*Samuel Knight.*

[NOTE.—Since the foregoing article was written the Circuit Court of Appeals for the Ninth Circuit on the second day of May, 1898, affirmed the decision of the Circuit Court in the case brought by the United States against the North Bloomfield Gravel Mining Company.]