

Before the EPA, an administrative agency with Territorial Jurisdiction

In the matter of:

*Motion to add:*  
Brief in support of oral arguments

Dave Erlanson sr.

Respondent,

To "show cause"

## Table of authorities

1. Clean Water Act-10-2017-0109, Docket No. 1
2. CWA 301(a)
3. 33USC 1311(a)
4. Northwest Ordinance 1787
5. Reports on the Law of civil government in Territory subject to military occupation by the military forces of the United States; Submitted to Elihu Root secretary of war by Charles E. Magoon, Law officer bureau of insular affairs, Washington: Government printing office 1902.
6. Downes v Bidwell 182 US 244, (1901)
7. Organic Adminsitration act 1897
8. Organic acts for the Territories Link: <https://archive.org/details/organicactsfort01statgoog/page/n7>
9. Administrative procedures act 1946
10. Federal Constitution Article 1 section 8 clause 14
11. Federal Constitution Article 1 section 8 clause 17
12. Federal Constitution Article 4 section 3 clause 2
13. Doctrine from Downes v Bidwell
14. 14<sup>th</sup> Amendment (Due process)
15. Federal Constitution Article 6 clause 2
16. Marbury v Madison 5 US 137
17. The Thomas Jefferson case

18. Warring v Clarke 46 U.S. 5 How. 441 441 (1847)
19. Submerged lands act May 22, 1953
20. American insurance v Canter 1 Pet. 511, 545, (1828)
21. Romeu v Todd 206 US 358, 368 (1907)
22. United States v McMillan 165 US 504, 510 (1897)
23. McAllister v United States 141 US 174, 180 (1891)
24. Barron v Mayor of Baltimore 32 US 243 (1833)
25. Comprehensive state water plan Southfork Clearwater basin  
January 13, 2005
26. Rybachek v US EPA 904 F2d 1276, 1285 9<sup>th</sup> circuit (1990)
27. CFR (code of federal regulations) 122.2
28. Atomic energy act 1954, 42 USC 2011
29. National mining association et al v US Army corp of engineers  
(1998)
30. 33 USC 1319(a)(b)

#### **Environmental impact studies on dredging**

31. United States Army Corp of Engineers, Study on suction dredging  
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Impacts of Suction Dredge Mining on Anadramous Fish,

- Invertebrates and Habitat in Canyon Creek, California. California Cooperative Fishery Research Unit, U.S. Fish and Wildlife Service, Humboldt State University, Cooperative Agreement No. 14-16-0009-1547, Work Order No. 2, Final Report.
36. Huber, C. and D. Blanchet, 1992, Water quality cumulative effects of placer mining on the Chugach National Forest, Kenai Peninsula, 1988-1990. U.S. Forest Service, Chugach National Forest, Alaska Region. 74 pages.
37. Lewis, Robert Pollution Bioanalyst III, 1962, Results of Gold Suction Dredge Investigation. Memorandum of September 17, 1962. California Department of Fish and Game. Sacramento, California, 7 pp.
38. North, Phillip A., 1993, A Review of the Regulations and Literature Regarding the Environmental Impacts of Suction Gold Dredges. U.S. Environmental Protection Agency, Region 10, Alaska Operations Office.
39. Somer, W. L., and Hassler, T. J., 1992, Effects of suction-dredge gold mining on benthic invertebrates in Northern California Stream. North American Journal of Fisheries Management 12:244-252.
40. Stern, Gary R., 1988, Effects of suction dredge mining on anadromous salmonid habitat in Canyon Creek, Trinity County, California. M. S. Thesis, Humboldt State University, Arcata, California, 80 pp.
41. U.S. Environmental Protection Agency, 2001, Fact Sheet NPDES Permit AKG-37-5000, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 16 pp.



### Introduction

This case revolves around (in this citizen's opinion) a fatal flaw in the United States justice system that has permeated the entire system. It is our opinion (The People) that this flaw must be examined in its entirety by the AG of the United States. It is in the best interest of the entire country that this citizen detail what he knows (or thinks he knows) about this flaw at least to the extent that more brilliant minds can begin a forensic analysis with the intent to move the Congress into acting on this matter before the Constitutional System is destroyed by it, or the SCOTUS, using its Article 3 powers to close the legal loopholes that allow it.

### Statement of the case

The EPA filed its Complaint in this matter on June 20, 2016 (CWA-10-2017-0109, Docket No. 1). In its Complaint, the EPA alleged that Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and claims that respondent 'discharged a pollutant into' 'discharging suspended solids into' and 'discharged sediment into' each of these terms being used by the EPA in this case.

Counsel was secured by Respondent and appeared in this matter September 23, 2016. The EPA began a Pre-hearing exchange on April 7, 2017 and counsel for Respondent filed their Pre-hearing exchange on May 8, 2017. Rebuttal of Pre-hearing exchange began by the EPA on June 5, 2017 in which the EPA proposed a penalty of \$6,600.00 using incoherent and confusing explanations as to how a penalty could be offered without first finding a determination of guilt. (Pre-hearing Timeline). 2 years Before Penalty TRIAL To Assess Penalty!

The EPA then filed a motion for accelerated decision on June 5 2017. This court granted that motion based upon what it considered 'unquestioned material facts' seemingly contained in a document that was denied by the Judge at trial to place on the record as undisputed. The EPA may not engage in terms like 'nefarious' to describe its actions but Respondent is a private citizen and has no such barrier in citing his opinion, and indeed has now done so.

The court then found that the only remaining question was one of penalty amount. Since the underlying material fact has been discovered as sourced from a 'fraudulent document' there are officially NO material facts left in this matter unless this court is going to proceed to base its material fact pattern upon the document in question, we shall soon find out. Counsel for the Respondent drafted the document in question 'without' the knowledge of Respondent and without consent, moreover a signature appeared on the document that was obviously NOT the Respondents. The trial judge did not allow the document to be put on the

record as an 'agreed upon material fact' in the case, denying the EPA's adamant request to do so.

Counsel for the Respondent subsequently withdrew from the case on December 18, 2018 citing health issues. As the Judge noted at trial, these above stated facts are 'very serious' and indeed the activity surrounding this matter requires our full attention as the OPTICS of the situation are potentially quite damaging and already in an environment when the DOJ has lost an incredible amount of credibility in the eyes of the American Public, it appears the EPA may need to be looked at as well.

Since no fact pattern now exists that is undisputed, or rather that the Respondent feels he can assume the position that the material facts once relied on to determine the Respondents culpability now lie in ruin, Respondent is allowed to argue his case without restriction.

#### **Regulatory and Territorial background**

How did we get here? The US government has 2 jurisdictions, Territorial and Constitutional. The US Constitution sets the authorized duties of the branches of government and limits their scope to enumerated clauses. The Constitutional jurisdiction applies to those enumerated subjects upon which the US legislature is authorized to act. In this matter the Territorial jurisdiction of the government is the overriding jurisdiction. Here's how we understand it worked;

1. The Confederate Congress passed the Northwest Ordinance (NWO) in 1787 to dispose of the lands it acquired from England. Thomas Jefferson wrote the first piece of legislation which was denied, the second drafting subsequently passed and became law. The NWO created a process for converting Territories into States (since the Constitution was moot on the subject BECAUSE the NWO had been adopted before the Constitution was drafted to deal with that subject matter). The NWO was then subsequently used for all the Territories in the contiguous US.
2. The created Territories were governed by the NWO and Congress in debating the matter over the Louisiana Purchase decided the Constitution did NOT follow the flag (reports on the law of civil government in Territories under occupation by the military forces of the United States).
3. Once the requirements of the NWO were met for statehood of a Territory, the Territory could apply to Congress for statehood. Congress would create enabling legislation and if it passed Congress then an admission act was drafted and passed thus including into the union the new state.



4. The new state would then be granted land for the establishment of its political subdivisions but under the restrictions laid out in the admission act. Whatever land was not granted to the state in the admission act remained Territorial, and still remains Territorial governed only by acts of Congress (see *Downes v Bidwell* SCOTUS doctrine).
5. Private rights were moved into the Territories (and then subsequently due process of same) through subsequent acts of Congress now allowing Constitutional protections for US citizens who lived or worked in the Territorial possessions of the United States. (The Organic Administration Act 1897).
6. In the United States Organic Acts are Territorial acts (see Organic Acts for the Territories).
7. In 1946 Congress passed the Administrative Procedures Act giving Administrative agencies a process for implementing its rule making and regulatory duties under the Constitution Article 1 section 8 clause 14, Article 1 section 8 clause 17, and Article 4 section 3 clause 2. Since Congress owns the Territories it was natural to move this act into the same.
8. Naturally a problem arose after Congress began implementing the APA in the Territories, it clashed with Congresses movement of private rights into these areas and under the doctrine of *Downes v Bidwell* point 6 we see: *6. That where the Constitution has been once formally extended by Congress to territories, neither Congress nor the territorial legislature can enact laws inconsistent therewith.*
9. Private rights and due process are being ignored because the Administrative process is the process being used which constitutes a systematic deprivation of rights in these areas. While most of the rights held by citizens in these areas are legislative rights and do not rise to the character of those enumerated in the Constitution, the citizen still was extended due process as a function of private rights being extended and THAT process is completely ignored by the administrative/Territorial system. Every US citizen operating in the Territories has due process of rights even if they cannot assert a private right violation. Congress should have thought it through before extending these protections into these areas if they wanted to deal with citizens in these areas in an alternate manner but the intention of Congress was to extend those protections even though the rules of the Territorial system

were extra-Constitutional. Thus making private rights and due process SUPERIOR to the rules and regulatory system (Article 6: see Marbury v Madison).

This 9 point breakdown reveals the Regulatory/Constitutional anomaly in these areas and this citizen believes this anomaly will be found in almost every high profile case arising out of the Territories since their acquisition, so if we are attempting to assert a 'cases and controversies' standing certainly we have just done so.

#### Argument and Cause of action

The Regulation being used against the Respondent is the CWA section 301(a). The authority of federal courts over navigable waterways began as early as 1821 out of a Kentucky federal court, but in 1825 *The Thomas Jefferson* case confined Admiralty Jurisdiction back to the high seas and only included rivers where the ebb and flow of tide was evident. 22 years later in *Waring v Clarke* admiralty jurisdiction was once again extended the reach of an act of Congress in 1845 giving admiralty jurisdiction over the great lakes AND connecting waters, which had the effect of extending admiralty jurisdiction over ALL navigable waters in the US.

The power of Congress over navigable waters is it's commerce power but the power conferred on the EPA is NOT out of Congress's commercial power as no power exists to justify their existence, which is why they were created by executive order. The EPA seems to be operating as if the grant of power is a general grant under Congress's power over the Territories. The South Fork of the Clearwater River, at the area where the Respondent holds his mining claim, is NOT approachable by water navigation UNLESS a major undertaking clears the boulders out of the river for miles, thus allowing commercial activity to be conducted on the river. However, the state owns the ground and thus the boulders in the river and the Federal government's power is simply a 'navigation on the water' power, which means the federal government cannot just simply go in and clear the boulders without permission from the state to do so [Submerged lands act May 22, 1953]

In order for there to be a cause of action that 'triggers' any law, whether federal or state, the intent of the statute has to be broken. In order to ascertain whether a law has been broken we must determine through the meaning of the language of the law, if it applies to the matter at hand, an accusation is not enough in the American system, even administratively, since innocence is assumed and guilt must be proven. If the Territorial system functions on guilt first and then innocence needing to be proven, then it is a simple matter for the court of pointing to where and when this change took place, and what act of Congress altered the original system?

not under  
the  
CWA act



# Certificate of Service

I certify that the foregoing Brief in support of oral arguments were sent to the following parties on Monday November 30 by

USPS overnight mail, return receipt!

By regular E-mail also!

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