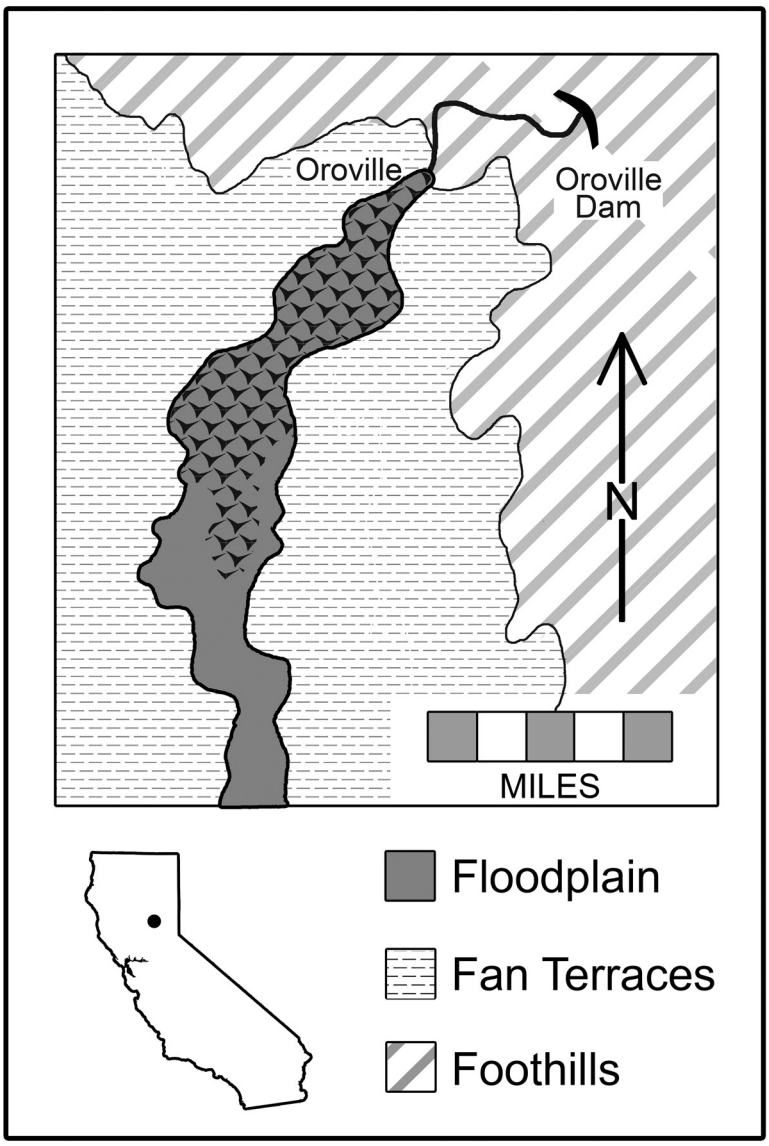
"Why Didn't They Do Something about It?": Gold Versus Grain in Post-World War II California

By
Khaled Bloom

Along the eastern edge of California's Great Central Valley, along streams flowing west out of the Sierra Nevada along a three-hundred-mile arc from Redding to Merced, topographic maps and soil surveys identify more than one hundred square miles of terrain as unnatural formations called "dredge tailings." These strips of raw gravel and cobbles, formerly fields of peach trees and alfalfa, represent the debris of the industrial-scale placer mining carried on in the region from 1898 to 1968. Brontosaurian digging and washing machines, capable of chewing through as much as a quarter-acre of bottomland a day, in effect turned upside down the natural alluvial deposit, sluicing former topsoil to the bottom of their cuts while disgorging the underlying river rock on top.[1]

In 1959 Robert Kelley published an important book titled *Gold vs. Grain*, which tells about California's nineteenth-century struggle to curb an old mining practice called "hydraulicking," whereby entire hillsides were blasted away with pressure hoses to wash out the underlying deposits of gold. The resulting sediment started clogging rivers and smothering downstream farms and towns and brought on a lawsuit that led to a federal court injunction against hydraulic mining in 1884. It is a tribute to Kelley's scholarship that later historians have highlighted this 1884 injunction as a defining turn in California's environmental affairs. Possibly the present bit of scholarship will help better adjust the picture.[2]

Gold dredging came on the scene not long after hydraulicking died out, and over its subsequent career the younger industry would yield even bigger returns, devastating even more farmland along the way. But dredging found it comparatively easy to breast the legal and political waves it faced. Unlike hydraulic mining debris, dredge tailings were fundamentally landlocked and offered little demonstrable threat to down-



Location and physiographic setting of the Feather River dredge field, Butte County, California. Based on current USDA and USGS maps. Scale approximately 1:250,000.

stream interests. The old common law concerning nuisance and interference with neighbors' property, decisive in the 1884 case, was of questionable relevance when it came to the creation of dredge tailings. Meanwhile the other old rights and privileges of private property and individualistic land use remained solidly in place. Progressives bemoaned the ruin of so much beautiful land and appealed to posterity and long-range public interest, but all of that would not begin to interest the public at large for some decades to come.[3]

To some, at least, the impact of gold dredging on the landscape was shocking enough, and from the start the industry came in for moral denunciation and attempted statutory restriction. "The ultimate crime against those coming after us," John Muir's friend William Kent called it. From 1905 to 1941, the California legislature entertained at least eight bills to curtail the practice, but each one was rejected decisively on the floor of one house or the other, or simply allowed to die in one or another committee. One proposal, in 1913, to require dredged land to be "restored to a condition of usefulness and fertility" was hissed by the *Marysville Appeal* as "vicious and illogical." It was decried by the *Oakland Tribune* as "intrusive, ob-

jectionable, and an unwarrantable encroachment on property rights." It ended up being defeated by a senate vote of thirty-one to four. Thus the question of public regulation of the gold dredging business never crossed any California governor's desk, and never came to be tested in state or federal court.[4]

A critical pause came in October 1942, when federal war production orders called a nationwide halt to all forms of gold mining, with the aim of shunting manpower into more essential industries. California's agricultural and residential interests meanwhile boomed as never before. When wartime restrictions on gold mining ended in July 1945, a more spirited opposition to gold dredging was on hand to challenge its revival. The hour was already late for dredging, Senator Harley Dillinger of Placerville told the 1945 session of the state legislature, waving a sheaf of appeals from farm and real estate associations, irrigation districts, garden and sportsmen's groups, and a variety of other organizations from up and down the state. With the end of the war, however, he predicted that the gold dredges "will again be clanking and groaning across our fine fields and leaving barren rock piles and boarded up school houses [*sic*] behind."[5]

In 1946 the U.S. Bureau of Mines reported a "sensational" comeback of California gold dredging, with half of the state's big machines already back in commission. Dillinger's 1945 bill to require dredge operators to re-level and re-soil all land they dredged had been scuttled twenty-five to eight by his state senate colleagues. His similar bill in 1947 failed, by a seven to zero vote, to even clear the senate's natural resources committee.

Increasingly it looked as though a state legislature hopelessly in thrall to the interests of San Francisco's Montgomery Street, "the Wall Street of the West," would have to be leapfrogged by local initiative. Senator Dillinger hosted several conferences with such action in mind. Let us not, he begged, have posterity look at endless rock piles and wonder: "Why didn't they do something about it?" County boards of supervisors found themselves under increasingly heavy pressure from concerned constituents to address the issue.[6]

The supervisors of Butte County, where almost ten square miles already had been rooted up by the dredgers, found themselves under especially intense pressure. The county's farm bureau and most of its church ministers, together with the chambers of commerce of Chico and Oroville, pushed for some form of ordinance that would require prior stripping and prompt replacement of the native topsoil in all future gold-dredging operations.

The dredging companies, together with numerous farmers who had sold them leases or other contracts to dredge, pushed back just as hard. Dredging may be "scenically a shame," and possibly "short-sighted" from a social standpoint, they admitted, but they also made it clear that they resented any "quack interference" and firmly warned: "Don't fool with land that's already committed." Proponents of dredging pointed hopefully to recent "gentlemen's agreements" struck between various dredging concerns and the counties of Stanislaus and Merced, allowing the companies to go ahead and dredge any tracts already "signed up," but no more.[7]

"Don't be suckered," the *Oroville Mercury* admonished. After several decades of operation, the dredging interests undoubtedly had prospected and signed up all promising properties in the county. Dozens of farmers, in the desperation of depression times or the hell-may-care of war prosperity, had already taken the hook. "If you owned a piece of land worth $50 and you could get $700, what would you do?" one of them asked at one hearing. It appeared that none of these contracts were required to be officially recorded, so there was no telling how far and wide they extended. Invoking their assumed "vested rights," the companies could conceivably go on playing cards out of their sleeves indefinitely, until all the county's best lands were completely devastated. Yet when

national prohibition of liquor was passed, the *Mercury* remembered, the booze dealers were not suffered to stay in business until they had amortized all their investments and met all supposed prior obligations. "Their 'vested rights' weren't worth a cent."[8]

So it was in Butte County that the theory of police power versus the theory of vested rights would be dueled to a finish on this particular question. A set of restrictions on gold dredging proposed in 1946 was tabled after several heated hearings. The *Mercury* feared that the usual dickering and logrolling would result in an ordinance simply meaningless, but the one approved four to one by the county supervisors in April 1947 actually had some teeth in it.

The new ordinance required that any company first apply to the county for a permit to dredge, with a detailed description of the land intended to be dredged, plus suitable bond to ensure compliance. The application would be referred to a committee composed of the county assessor, the county surveyor, and the county horticultural commissioner, then handed up to the board of supervisors. If the land in question was judged to be agricultural, the company was required first to scrape aside all the original topsoil, and, after dredging, to regrade the gravel and cobbles, then redistribute the old soil over the new surface to a depth of at least three feet. If the company failed to perform, fines and jail terms appropriate to a serious misdemeanor were spelled out.[9]

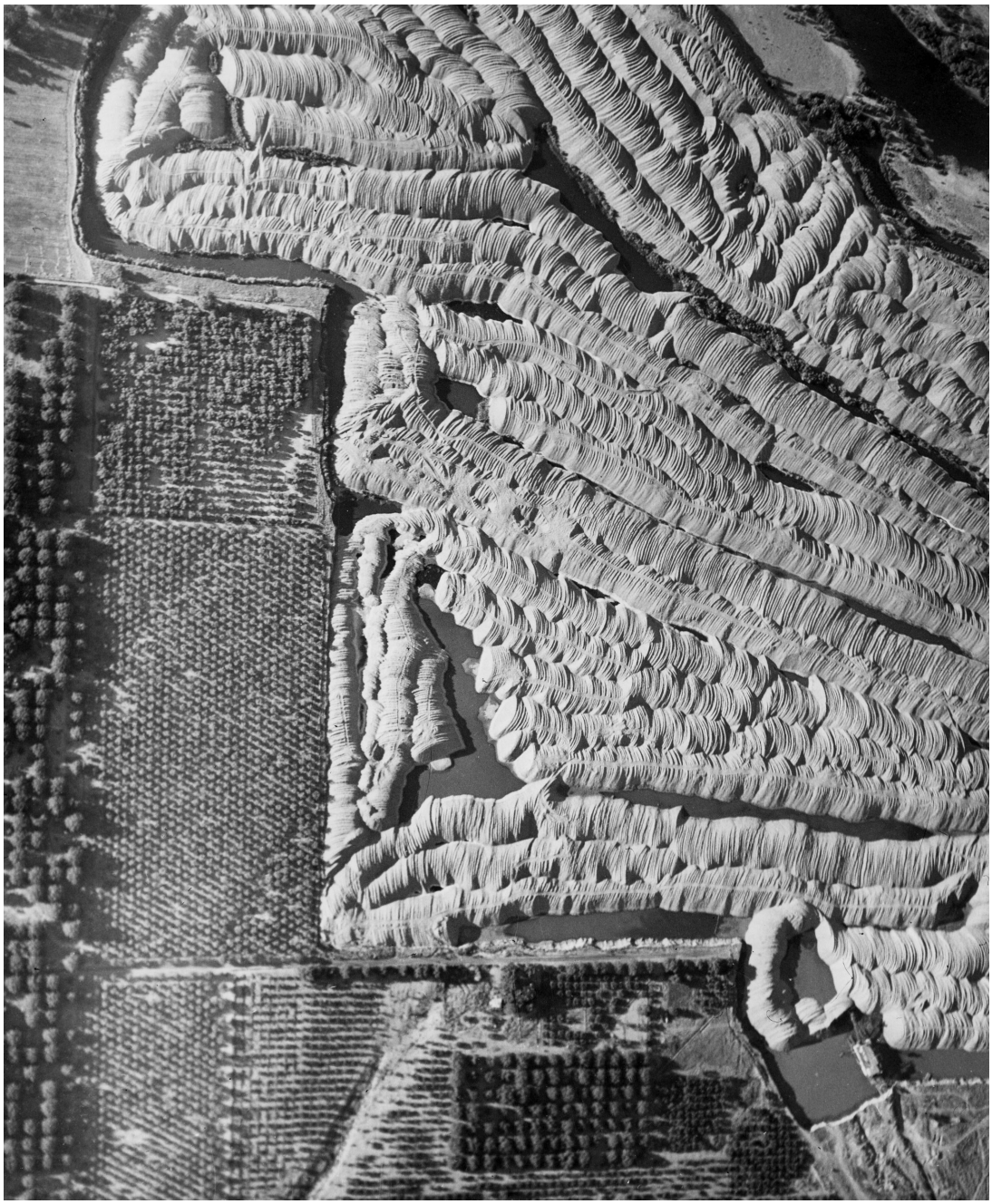
The gold-dredging industry bristled, sure enough. A policy statement from the American Mining Congress denounced the ordinance as "physically impracticable," "economically unsound," "confiscatory," and "an undesirable legislative precedent in every respect." The two largest companies operating in Butte County, both representing absentee capital and headquartered out of state, immediately adopted a stonewalling policy. They refused to apply for formal permits to dredge, declined to post any bonds, and kept on dredging.

In June 1947, the companies unbent so far as to request exemptions for 22 tracts aggregating 2,140 acres. On examination, the county's committee deemed all of the lands to be agricultural, with the possible exception of one 88-acre piece already surrounded by dredge tailings and so rendered practically inaccessible. Either enforce the recent ordinance or forget about it, the county district attorney advised. The supervisors decided to enforce it. The next month the two companies brought suit in federal court either to nullify the county ordinance or, as an alternative judgment, to recoup $1.5 million in compensation from the county.[10]

At most the ordinance only postponed the companies' expectations of recovery, the county contended—it was not expropriating their property in any sense. Their gold would remain in the ground just as before, where they could recover it just as well sometime in the future; meanwhile the land could be farmed just as it had during the war years—therefore no one could complain of any unreasonable confiscation or irreparable injury, as those terms were usually interpreted.

On the other hand, its counsel maintained that the public interest of Butte County stood to suffer "everlasting and irredeemable damage" if unbridled dredging of its richest lands were permitted to go on. "Great ado about very little injury," the companies replied, insisting that this controversy involved no overriding crisis of public health, morals, safety or welfare, as those terms were usually interpreted. The lands subject to gold dredging represented just a sliver of Butte County's, let alone California's, total stock of arable land, and the long-range public interest stood to suffer at most "very mild damage, if any." And the companies noted that although the gold in the ground could indeed stay there forever, it was "very common knowledge that non-operating capital [equipment] deteriorates very fast"[11]

They were being unfairly and unlawfully "picked out and discriminated against," the dredging companies complained. Destruction



One of nine aerial photographs taken on the afternoon of July 28, 1947, capturing five of the six gold dredges then working in open defiance of Butte County's anti-dredging ordinance. One rig is seen at the lower right corner of this shot. Photograph by Daniel L. Beebe, Jr., in his affidavit of March 17, 1948, in Civil Case File 5857 (see n. 9). Scale approximately 1:10,000.

Another of Beebe's 1947 aerial photos along the Feather River south of Oroville. The formations that look like giant worm castings are typical dredge tailings. Note how, here and there, some of the debris has had to be moved to restore the county road network. Also note the many stagnant ponds left behind in the wake of gold dredging.

of agricultural and other surface values was seen everywhere, from the nation's great iron and copper mines to its countless stone quarries and gravel pits, and likely a much greater amount of soil loss could be attributed to the activities of farmers themselves. In any case, the land in question belonged to its owners, not to the county, and no theory of police power authorized the county to dictate whatever it fancied to be the best fate of private property.[12]

Of particular bearing, the companies argued, was a decision handed down by the Illinois Supreme Court just that March. A combination of seventeen firms engaged in strip mining coal over some thirty thousand acres in Illinois had won an injunction stopping the state from enforcing a recent state law that would have made them grade down the ridges and fill in the troughs left behind by their operations. "The State has no authority, under guise of a conservation theory, to compel a private owner, at his own expense, to convert his property to what it considers to be a higher and better use," Chief Justice Walter Gunn wrote. This, Gunn inversely reasoned, would be just as preposterous as forcing a contented owner of forestland to chop down his trees, grub out the stumps, level his land, and begin farming row crops.[13]

The Butte County case dragged along for most of a year with the usual hearings and motions, and finally came to a head in July 1948. However progressive and benevolent its intent, the ordinance was confiscatory unreasonable, and discriminatory, the dredging companies pleaded. It was confiscatory because the burden it imposed was financially prohibitive, in effect wiping out their very substantial investments in land and machinery. Re-soiling bids solicited by the companies from several land-moving outfits all ran well over two thousand dollars an acre, far outweighing any foreseeable profits from gold dredging. The county was unable to contradict these cost estimates. It was unreasonable because faithful compliance with it would not restore substantial fertility to dredged lands. For one thing, three feet of topsoil was not enough: spread over a deep bed of loose rocks, much of it would soon sift down into the interstices and be lost, leaving at best a very poor quality of range land. Among the experts attesting to this was Thomas Means of San Francisco, retired chief of the U.S. Department of Agriculture's soil survey division. And it was discriminatory because numerous other industries not regulated by it also had the effect of ruining land for future agricultural use.[14]

Federal district judge Dal Lemmon of Sacramento rendered his decision on September 13, 1948. Preservation of natural resources was bound to be an increasingly pressing issue in the postwar world, and permanent destruction of even one acre of good farmland was a perfectly legitimate legislative concern, Lemmon observed. But however reasonable and laudable its objectives, he decided, the present ordinance had to be struck down as retroactive and as an unconstitutional invasion of established property rights.

The companies involved in this suit had been dredging in Butte County for more than a decade, and gold dredging generally had been tolerated and even encouraged by the county and state for decades before that. Many hundreds of thousands of dollars had been invested on that reliance. An "overnight" change of public policy imposing new burdens making it financially impossible for the companies to work off their investments would have the same practical effect as an outright seizure of their assets.

A going business not otherwise unlawful could not be put out of business without compensation to its owners—this, Lemmon believed, was the decisive point; the various other considerations invoked by the companies he considered incidental and arguable. He permanently enjoined the county from enforcing its recent ordinance. If it really wanted to stop gold dredging within its jurisdiction, he said, Butte County would have to exercise its power of eminent domain, dig into its pockets, and buy out the companies' vested interests.[15]

Another Beebe aerial photo, this of a dredge working a bend along the lower Feather River in July 1947. Note how erstwhile orchard land has been cleared in preparation for gold dredging. One curious plea of the gold-dredging companies was that they were, in effect, building levees along the river and thereby protecting at least as much acreage as they spoiled.

Judge Lemmon's prescription was obviously well beyond the county's means. The implications of his injunction were mulled over by the county's legal staff and its board of supervisors shortly afterward. "The way things are now there is no end to this dredging," complained one supervisor. What would happen if federal controls on the price of gold were removed and it rose to maybe seventy dollars an ounce, he wondered—then the dredgers would move onto their marginal holdings, and all of the county's lovely valleys would be absolutely devastated. Another supervisor asked: "Didn't you know it was hard to make a law retroactive at the time it was enacted?" The county's attorneys explained that they knew it all along, but that "a great deal of pressure from the public and the newspapers" had forced them to try the gambit anyway.[16]

The attorneys advised that Lemmon's injunction would almost certainly be upheld on appeal, and thus any further resistance would be futile as well as expensive. However, they thought that the injunction could be argued to apply only to present investments and not to any future extensions of dredge operations. The ninety-day leeway for appeal passed and the *Oroville Mercury* concluded that the public's cause was irrevocably lost. The dredging companies, it sadly observed, no doubt already had all of the papers they needed on all of the land that they wanted—"thousands of acres of it, and all of it will be dredged."[17]

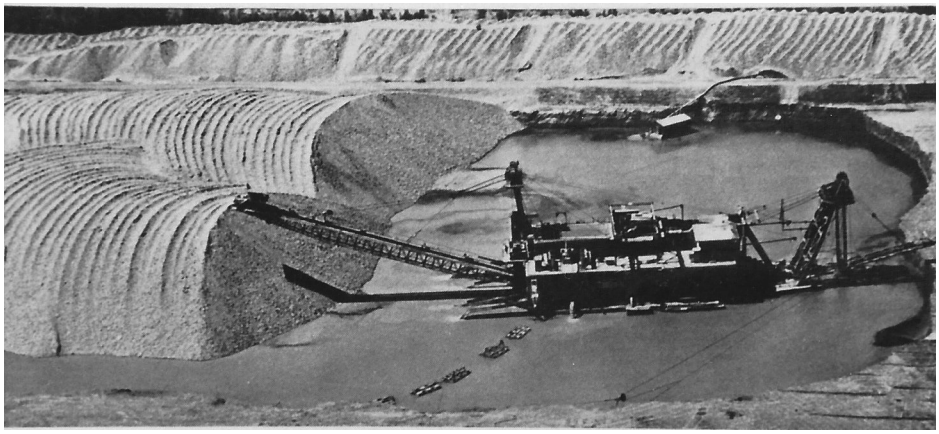
Members of an interim committee of the state assembly had toured the Butte County rock piles in the fall of 1947. "Amazing," "awful," and "anti-social" were among their comments. This fight was bound to be taken up again at the next session of the legislature, chairman Howard Cramer of Chula Vista promised, and one side or the other would tire of it, "and it will not be us." The California Farm Bureau Federation called for a statute flatly outlawing any further gold dredging in the state under any conditions. However, the bill submitted by Cramer in January 1949 was far more moderate.[18]

In fact, it was just another re-soiling proposition, and the usual hearings followed. Representatives of the industry claimed the issue was already adequately addressed at the county and federal levels. They pointed out that the 1948 Lemmon decision would likely restrain the State of California just as it had Butte County. Cramer's bill was referred to the assembly's manufacturing, oil, and mining industries committee, and was never heard of again.[19]

In March 1949, Butte County's supervisors approved a resolution in favor of Cramer's bill. They also voted to sharply hike property assessments on dredged lands in the county. Recently seeking sixty-three acres of tailings for a dumpsite, they had been disgusted to find the owner demanding $125 an acre for ground nominally assessed at $5 an acre.[20]

Parallel anti-dredging bills offered to the 1951 session of the state legislature by Senator Dillinger and by Assemblyman Everett Burkhalter of Los Angeles were both snuffed in committee with no ado. It hardly mattered anymore. The placer gold deposits feathered under valley fill had for all practical purposes just about played out in Butte County and elsewhere in the Sacramento and San Joaquin valleys. Excavation depths of twenty feet or so in the young days of the industry had deepened, downstream, to fifty feet and more, and net gold recoveries per cubic yard processed had fallen to something less than ten cents. Given continuing instability in international currency markets, the U.S. government refused to budge on its 1934 fixed price of thirty-five dollars an ounce; meanwhile the onset of the Korean War made the costs of labor and materials all the more expensive. The gold dredging business died a more-or-less natural death in Butte County in 1952, and in Merced and Stanislaus counties at about the same time. In the richer fields of Yuba and Sacramento counties it managed to drag along into the 1960s. The last gold dredge in California shut down in 1968.[21]

In October 1948, not three weeks after Dal Lemmon handed down his decision but forty-



A dredge excavated alluvial deposits with its bucket ladder supported by its bow gantry at right, extracted gold by gravity separation in its house, and dumped tailings with its stacker at left.

three years before economist Ronald Coase won a Nobel Prize for his writing on the problem of social cost, one "Interested Taxpayer" offered readers of the *Sacramento Bee* thoughts on the gold-dredging controversy. Congratulating Butte County for its "game and lone-handed fight" against the companies, Interested Taxpayer pointed out that most of the land then being dredged for gold could produce agricultural crops worth $75-400 an acre annually. Yearly crop production at a minimum of $75 an acre, over a century, would thus total $7,500 an acre—ten times the average per-acre profit declared by the dredging operations. "Besides every 300 acres could support in some way some 100 persons during the same time," Interested Taxpayer reckoned. In stark contrast, three hundred acres of dredge piles, over a century, "could hardly support a cigar store Indian." Figure in long-term loss of property taxes and the depreciation of adjacent property, and in exchange for its "one crop gold harvest," the California public ended up with "a well-established nuisance forever."[22]

Whatever we think about its results from a standpoint of public policy and long-range public good, the vested-rights principle enunciated by Judge Dal Lemmon in 1948 appears to have been perfectly sound jurisprudence. The comprehensive reclamation act finally imposed on surface-mining operations by California twenty-seven years later, in 1975, fully accommodated vested rights and took care to scissor its terms and penalties around existing operations.

However, the "ghastly desolation of gravel," as one popular guidebook characterizes the Feather River dredge field, promises to be even more enduring—indeed it has every prospect of lasting at least until the next Ice Age. Some eighty million cubic yards of the stuff were scooped out for construction of the gigantic Oroville Dam in the 1960s, and yet as one local historian comments, "the materials available were so great that one can hardly notice the loss of the rocks." Some seven square miles of the seventeen-square-mile dredge field were permanently flooded for fish and waterfowl. There matters stand at present writing.[23]

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Notes:

1. Lewis E. Aubury, *Gold Dredging in California*, California State Mining Bureau Bulletin 57 (Sacramento: State Printer, 1910); Clark C. Spence, "The Golden Age of Dredging: The Development of an Industry and Its Environmental Impact," *Western Historical Quarterly*, 11 (1980): 401-14; Conrad J. Bahre and Thomas H. Whitlow, "Floristic and Vegetational Patterns in a California Dredge Field," *Journal of Biogeography* 9 (1982): 79-90.
2. Robert L. Kelley, *Gold vs. Grain: The Hydraulic Mining Controversy in California's Sacramento Valley, a Chapter in the Decline of the Concept of Laissez Faire* (Glendale, CA: Arthur H. Clark, 1959); Kevin Starr, *California: A History* (New York: Modern Library, 2005), 333; Richard B. Rice, William A. Bullough, Richard J. Orsi, and Mary Ann Irwin, *The Elusive Eden: A New History of California*, 4th ed. (New York: McGraw-Hill, 2012), 263. See also: Grove Karl Gilbert, *Hydraulic Mining Débris in the Sierra Nevada*, U.S. Geological Survey Professional Paper 105 (Wash. D.C.: USGPO, 1917).
3. William B. Clark, *Gold Districts of California*, California Division of Mines and Geology Bulletin 193, revised ed. (Sacramento: California Department of Conservation, 1998), 6-8; Gilbert, *Hydraulic Mining Débris*, 63-5; Spence, "Golden Age of Dredging," 409-11; "*Merced Dredging Co. v. Merced County et al.*," *Federal Supplement* 67 (1947): 607-8.
4. Genevieve M. Haynor, "The History of Gold Dredging in California, 1848-1940" (M.A. thesis, University of California, Berkeley, 1941), 53-5, 98-118, 140-8; *Marysville Appeal*, 26 and 29 Jan. 1913; Franklin Hitchborn, *Story of the Session of the California Legislature of 1913* (San Francisco: James H. Barry, 1913), 174-87.
5. *San Francisco Examiner*, 17 May 1945.
6. *Sacramento Bee*, 12 and 13 July, 6 and 20 Sep. 1946, 15 and 31 Jan., 28 Mar., 6 May 1947.
7. *Oroville Mercury*, 16 Apr., 7 and 8 May 1946.
8. *Oroville Mercury*, 15 Apr. 24 and 25 June 1947.
9. Various enrolled papers in: "Complaint for Injunctive Relief," 14 July 1947, Civil Case File 5857, Sacramento Division, U.S. District Court for the Northern District of California, Record Group 21, National Archives at San Francisco, San Bruno, CA.
10. *Oroville Mercury*, 24, 25 and 28 June, 3, 11, 15, and 19 July 1947; *Mining and Industrial News* (Dec. 1947), 17.
11. "Reporter's Transcript," 30 Sep. 1947, 40-3, 61-7, Civil Case File 5857. The ultimate extent of the Feather River dredge field is approximately seventeen square miles: U.S. Natural Resources Conservation Service, *Soil Survey of Butte Area, California* (CD-ROM publication, 2006). The extent of irrigated cropland in Butte County at the time of this controversy was approximately 106 square miles: U.S. Census Bureau, *Sixteenth U.S. Census: Irrigation of Agricultural Lands*, (Wash., D.C.: USGPO, 1943), 170.
12. "Reporter's Transcript," 30 Sep. 1947, 8-10, 15, 24-7.
13. "*Northern Illinois Coal Corporation et al. v. Medill, Director of Mines and Minerals*," *Northeastern Reporter* 2, no. 72 (1947): 844-8.
14. "Plaintiff's Reply Brief on Final Submission," 17 July 1948, Civil Case File 5857.
15. "Opinion and Order," 13 Sep. 1948, Civil Case File 5857.
16. *Oroville Mercury*, 5 Oct. 1948.
17. *Oroville Mercury*, 18 Dec. 1948.
18. *Oroville Mercury*, 2 Oct. 1947.
19. *Assembly Final History, 1949 Regular Session* (Sacramento: State Printer, 1949), 229.
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21. *Sacramento Bee*, 3 May 1951; Clark, *Gold Districts of California*, 47-9, 62-3, 103-4, 120-1.
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23. Section 2776, California Public Resources Code (see *West's Annotated California Codes*, 2001 ed., v. 50, 224); David Alt and Donald W. Hyndman, *Roadside Geology of Northern and Central California* (Missoula: Mountain Press, 2000), 67; *Sacramento Bee*, 30 Aug. 1964; F. D. Calhoon, *California Gold and the Highgraders: True Stories of the Mines and Miners* (Sacramento: Cal-Con Press, 1988), 97.