

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

thority conferred, even if those other purposes would not alone have justified an exercise of congressional power.”⁸³¹

And, in the *Appalachian Power* case, the Court, abandoning previous holdings laying down the doctrine that to be subject to Congress’ power to regulate commerce a stream must be “navigable in fact,” said: “A waterway, otherwise suitable for navigation, is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken,” provided there must be a “balance between cost and need at a time when the improvement would be useful. . . . Nor is it necessary that the improvements should be actually completed or even authorized. The power of Congress over commerce is not to be hampered because of the necessity for reasonable improvements to make an interstate waterway available for traffic. . . . Nor is it necessary for navigability that the use should be continuous. . . . Even absence of use over long periods of years, because of changed conditions, . . . does not affect the navigability of rivers in the constitutional sense.”⁸³²

Furthermore, the Court defined the purposes for which Congress may regulate navigation in the broadest terms. “It cannot properly be said that the constitutional power of the United States over its waters is limited to control for navigation. . . . That authority is as broad as the needs of commerce. . . . Flood protection, watershed development, recovery of the cost of improvements through utilization of power are likewise parts of commerce control.”⁸³³ These views the Court has since reiterated.⁸³⁴ Nor is it by virtue of Congress’ power over navigation alone that the National Government may develop water power. Its war powers and powers of expenditure in furtherance of the common defense and the general welfare supplement its powers over commerce in this respect.⁸³⁵

Congressional Regulation of Land Transportation

Development of Highways and Railroads.—The settlement of the interior of the country led Congress to seek to facilitate access by first encouraging the construction of highways. In successive acts, it authorized construction of the Cumberland and the National Road from the Potomac across the Alleghenies to the Ohio, reserving certain public lands and revenues from land sales for con-

⁸³¹ 283 U.S. at 455–56. See also *United States v. Twin City Power Co.*, 350 U.S. 222, 224 (1956).

⁸³² 311 U.S. at 407, 409–10.

⁸³³ 311 U.S. at 426.

⁸³⁴ *Oklahoma v. Atkinson Co.*, 313 U.S. 508, 523–33 (1941).

⁸³⁵ *Ashwander v. TVA*, 297 U.S. 288 (1936).