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Extent and Limits of Federal Power [outline]

George A. Gould

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EXTENT AND LIMITS OF FEDERAL POWER
George A. Gould
Associate Professor
University of Wyoming
College of Law

- I. Introduction: Federal Involvement in Water
 - A. The United States as a builder of projects.
 - B. The United States as a regulator of water activities.
 - C. The United States as a user of water. - *public lands*

- II. Federalism: The Nature of Federal Power
 - A. United States as a government of enumerated powers.
 - B. Conflicts with the States: The Supremacy Clause.
 - C. Actions by federal agencies: The delegation question.

- III. Specific Sources of Federal Power Relating to Water and Water Development
 - A. Navigation Power. *1871 Daniel Ball Case - defin. navigable
1940 - Expansion of defn. - Clean Water Act 1972 Amend.*
 - B. Commerce Clause.
 - C. Property Clause.
 - D. General Welfare Clause.
 - E. War Power.
 - F. Treaty Power.
 - G. Power to Spend.
 - H. The Compact Clause.

- IV. Federal - State Conflicts and Accomodation
 - A. Conflicts: Federal Power and the Supremacy Clause in Action.
 - B. Accomodation: The Reclamation Act of 1902.

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of 1902.

V. Selected Issues

- A. The Ownership Issue: Who "Owns"
Western Water?
- B. Federal Taking of State Created
Private Property Interests in
Water.
- C. Federal Reserved Rights.
- D. Federal Non-Reserved Rights. -1979 *Knoultin Opinion*
In-stream flows; Based on Supreme Ownership;
- E. The Navigation Servitude. *without regard to state
law*
- F. Compacts and Interstate Decrees.