



RESOURCE

Protecting "The Wastes of the Foreshore": The Federal Navigational Servitude and Its Origins in State Public Trust Doctrine

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Description / Abstract

The federal navigational servitude provides that when the federal government regulates tidal or navigable fresh waters in order to protect navigation, it need not compensate for any loss caused to private interests in these waters. This Note considers the question of whether this takings defense should also apply when the federal government regulates waterways for conservation purposes. It argues that the federal navigational servitude has the same common law roots as state public trust doctrines, most of which would provide a takings defense for a state's conservation-promoting action. The navigational focus of the federal navigational servitude was the result of early limits on the federal government's Commerce Clause powers, rather than limits inherent in the federal navigational servitude. Thus, where the Commerce Clause now allows conservation-promoting federal action, the federal government should benefit from the same takings defense that state public trust doctrines would provide to similar state government action.

Publication year

2002

Country

United States of America (the)

Region

Americas

Publisher

Columbia Law Review Association, Inc.

Thematic Tagging

Water services

Language English

[View resource](#)

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A2.01

Source URL: <https://iwrmaactionhub.org/resource/protecting-wastes-foreshore-federal-navigational-servitude-and-its-origins-state-public>