

# REGULATING FLORIDA GROUNDWATER LAW

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# AGENDA

## Regulating Florida Groundwater Use

- Florida law regulating surface water and groundwater usage
- Florida water well regulation
- Laws and issues impacting groundwater access and use
  - Prevention of contamination
  - Prevention of adverse impacts
  - Preservation of aquatic ecosystems
  - Mining laws and regulations
  - Agriculture law and regulation
  - Mining law
- New and anticipated developments



# LAW REGULATING SURFACE WATER AND GROUNDWATER USAGE



# COMMON LAW REGULATING SURFACE WATER AND GROUNDWATER USAGE

- **The Riparian Doctrine**
  - Common law riparian law is defined as land that abuts a natural watercourse.
  - Riparian landowners share equal rights to use water, with the type of use and amount determined by the "reasonable use doctrine".
    - Reasonableness is evaluated based on factors like purpose, social value, and harm to others or the environment.
  - Courts have also invalidated riparian rights based on unexercised rights based on the theory of abandonment, forfeiture and prescription.



# COMMON LAW REGULATING SURFACE WATER AND GROUNDWATER USAGE

- **The Prior Appropriation Doctrine**
  - The difference in climate and geography in the western United States led to a different common law water allocation known as the Prior Appropriation Doctrine.
  - Based on the “First in time, first in right” principle it did not require ownership of riparian land but allowed for the creation of riparian rights if the user satisfied all three following requirements:
    - 1) must demonstrate an intent to appropriate water from a natural watercourse;
    - (2) must divert water from the watercourse; and
    - (3) must apply the diverted water to a beneficial use without waste.



## FLORIDA COMMON LAW REGULATING SURFACE WATER AND GROUNDWATER USAGE

- In 1958, the Florida Supreme Court's decision in *Koch v. Wick*, limited waterfront property owners' rights by adopting the reasonable use rule.
- This rule, in addition to granting all property owners equal water rights, if there was no interference with another landowner's rights, required water use to be reasonable and related to the land's natural use.
  - Excluded practices for commercial use.



FLORIDA  
DEPARTMENT OF  
ENVIRONMENTAL  
PROTECTION



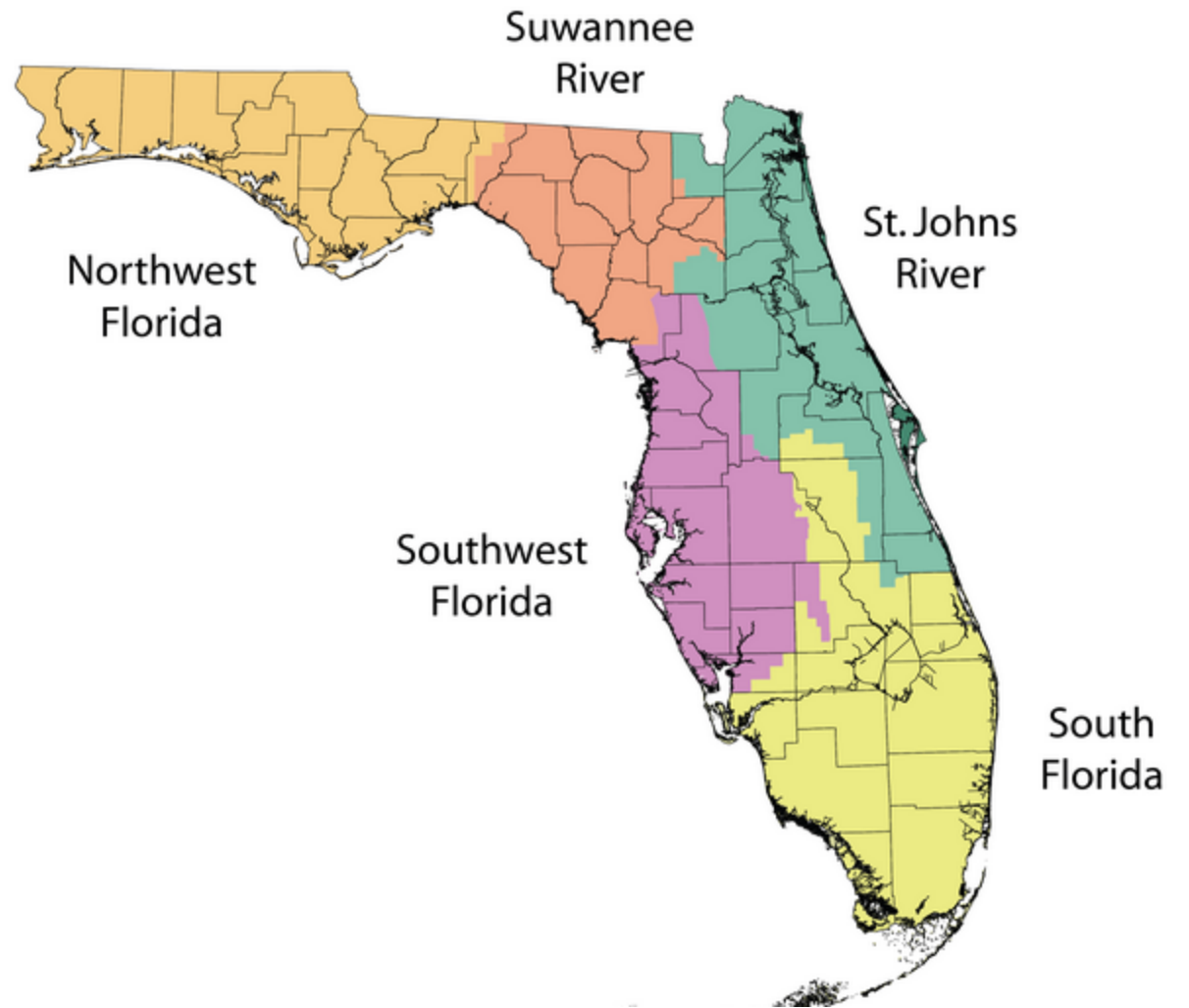


# FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

- Regulates:
  - Surface Water Discharges
  - Groundwater Discharges
  - Groundwater Withdrawals
  - Stormwater Discharges (through ERPs)
  - Cleanup and Control of Pollution in Surface Waters and Groundwaters



## THE FIVE WATER MANAGEMENT DISTRICTS





## THE FIVE WATER MANAGEMENT DISTRICTS

- Regulate:
  - Groundwater Withdrawals
  - Stormwater Discharges (through ERPs)
- Water Supply Planning



## FLORIDA LAW REGULATING SURFACE WATER AND GROUNDWATER USAGE

- Florida's water supply comes from the bountiful systems of rivers, streams, wetlands, lakes, springs, aquifers and estuaries across the state.
- The Florida Water Resources Act, Chapter 373, Florida Statutes, establishes that all water in Florida, on the surface or in the ground, is a public resource managed by the department and the five water management districts.



# FLORIDA LAW REGULATING SURFACE WATER AND GROUNDWATER USAGE

- Chapter 373 includes, among other things:
  - MFLs 373.042, Fla. Stat.
  - Consumptive Use Permitting 373.223, Fla. Stat.
  - Stormwater Permitting (ERP) 373.414, Fla. Stat.
  - Regional Water Supply Planning 373.709 Fla. Stat.
- Chapter 403 includes, among other things:
  - Total Maximum Daily Loads 403.067, Fla. Stat.
  - Discharge Permitting 403.087, Fla. Stat.
  - Establishes NPDES Permit Program 403.0885, Fla. Stat.



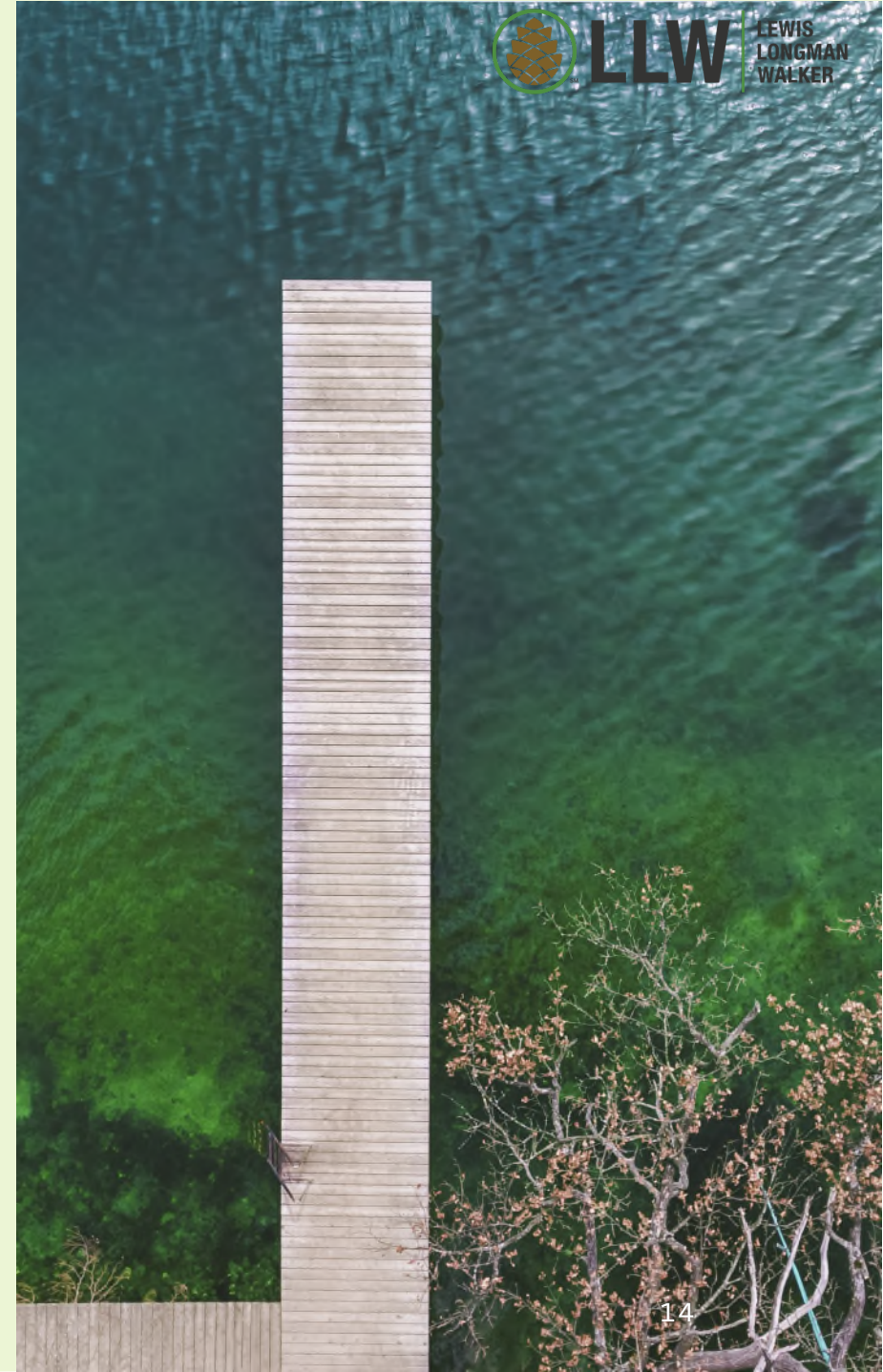
A first-person perspective of a person fly fishing in a river. The person's hands are visible, holding a fishing rod and a green fly line. The rod is bent, and the line is being cast into the water. The background shows a river with rocks, surrounded by trees with yellowing leaves, suggesting autumn. In the distance, there are mountains under a clear sky.

# FLORIDA WATER WELL REGULATIONS



## FLORIDA WATER WELL REGULATIONS

- Federal law DOES NOT regulate the construction of wells. However, federal environmental protection statutes may be still be involved protecting against environmental damage.
- The Florida Department of Environmental Protection (“FDEP”) delegated most of its statutory authority to individual Water Management Districts (“WMD”) to regulate water wells.  
§ 373.308, Fla. Stat. (2025).
  - In Florida, only licensed contractors may perform the construction, repair, or abandonment of wells, with some exceptions regarding homeowner construction of a well that is two inches or less in diameter and where the governing WMD determines that compliance would be an unnecessary hardship.
- Importantly, local ordinances are allowed to be stricter for well construction than the State’s regulations.







# LAWS AND ISSUES IMPACTING GROUNDWATER ACCESS AND USE IN FLORIDA



# LAWS AND ISSUES IMPACTING GROUNDWATER ACCESS AND USE IN FLORIDA

- The Florida Water Resources Act requires a three-part test for water use permits:
  - (1) Is a reasonable-beneficial use;
  - (2) Will not interfere with any presently existing legal use of water; and
  - (3) Is consistent with the public interest.

§373.223, Fla. Stat. (2025).
- Some districts have attempted to define “public interest”, focusing on water protection, conservation, and avoiding harm. Judicial rulings emphasize that the public interest involves balancing local and state benefits, efficiency, and the impact on water resources.



# LAWS AND ISSUES IMPACTING GROUNDWATER ACCESS AND USE IN FLORIDA

- Water Use Permit Handbooks
  - Suwannee River Water Management District
  - South Florida Water Management District
  - Southwest Florida Water Management District
  - Northwest Florida Water Management District
- Consumptive Use Permit Handbook
  - St. Johns River Water Management District



## PREVENTION OF CONTAMINATION

- The state prohibits discharging waste into state waters without a permit from a state agency.
  - A permit will not be issued if the discharge reduces ground or surface water quality below the required FDEP standards.
- Water use permit withdrawals cannot cause significant degradation of surface water or groundwater quality through the induced movement of pollutants into a water resource.
  - Also requires monitoring wells to evaluate the effects of withdrawal on nearby plumes/pollutants.



## PREVENTION OF ADVERSE IMPACTS

- Potential impacts to wetlands and other surface waters are considered as part of water use permit applications.
  - “No harm” to wetlands or other surface waters.
    - Narrative or numeric thresholds
- Elimination or reduction of harm
- Mitigation of harm



# PRESERVATION OF AQUATIC ECOSYSTEMS

- As required by Section 373.042, Florida Statutes, state WMDs or FDEP must establish minimum flows and levels for aquifers, surface watercourses, and other surface water bodies to identify the limit when withdrawals would significantly harm the water resources or ecological area.
- Minimum flows apply to rivers, streams, estuaries, and springs, while minimum levels are set for lakes, wetlands, and aquifers.



# AGRICULTURE LAW AND REGULATION

- The FDACS is involved in the development and implementation of best management practices (“BMP”).
- Landowners are required to implement all applicable BMPs on agricultural land uses within basin management action plan areas adopted by FDEP. § 403.067, Fla. Stat.
- The implementation and maintenance of BMPs provides a presumption of compliance with water quality standards.
- Ultimately, BMPs for agricultural discharges must reflect a balance between water quality improvements and agricultural productivity. § 373.0454(2)(a), Fla. Stat.



## MINING LAWS AND REGULATIONS

- In Florida, mines are considered stormwater management systems regulated under the ERP program of FDEP, The Mining and Mitigation Program.
- This program reviews ERP applications for most mines, mandatory reclamation program under Chapter 378 of the Florida Statutes for mines and borrow pits, permitting, compliance, inspection and enforcement at mine sites.



NEW AND  
ANTICIPATED  
DEVELOPMENTS

- Regulations of emerging contaminants.
- ASR wells.
- Direct potable reuse.



THANK YOU

Any questions?



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