

Water Use Rights

Historically, Florida's water law was based in common law which, through case law and long established practices, provided a basis for water use rights. In essence, owners of land adjoining lakes and streams could withdraw water for "reasonable" use provided they did not impair reasonable use by other riparian owners. Similarly, land could be drained by routing water to lower areas through an improved drainage system provided the owner of the lower land was not unreasonably damaged by the altered drainage. Groundwater rights were tied to land ownership, but again, withdrawals were subject to the reasonable use doctrine and the rights of adjacent owners to groundwater (Kiker).

Under common law doctrine, disagreements over water use rights were resolved in court, usually after damages were alleged as a result of some modification of water flow or quality. As long as water supplies were abundant relative to water demands, there was little need for litigation and water allocation under common law doctrine was fairly efficient. When the state's population began expanding rapidly, in the 1950s, it became apparent that water rights needed to be defined more clearly and with greater certainty before large investments were made based on water availability and existing water users needed protection against the loss of water supplies due to new uses which exceeded supply.

The Florida Water Resources Act of 1972 (Chapter 373, Florida Statutes) modified the common law doctrine and brought all waters of the state under regulation. Other legislation (Chapter 403, Florida Statutes) defined waters of the state quite broadly, to include all surface and underground waters, whether fresh, brackish, or salt.

Administrative Structure

The 1972 Water Resources Act and subsequent legislation, and an amendment to the state's constitution to provide for ad valorem taxation to fund water resource management, established the administrative elements to manage all waters of the state. Statewide authority for various environmentally related programs, including management of water resources, was vested in the Department of Environmental Regulation (DER). The agency was directed to develop, with five water management districts created by the Act, a State Water Use Plan. It was clearly stated in the legislation that powers to manage water would be delegated "to the greatest extent practicable" to the water management districts (Chapter 373.016, Florida Statutes). Legislative intent was to provide for continuity of water management