

Northwest Florida Water Management District



Consumptive Use Permitting in Florida

March 7, 2013



General Overview

- State and Federal Roles*
 - State responsibility for water supply
 - Cooperative efforts regarding water quality (shared regulatory responsibilities)
 - Implemented through planning and permitting programs

- * Land use regulations also developed by local governments



Federal Laws

- Federal Water Pollution Control Act (Clean Water Act)
- Safe Drinking Water Act
- Beaches Environmental Assessment and Coastal Health Act
- Coastal Zone Management Act
- Endangered Species Act
- National Environmental Policy Act



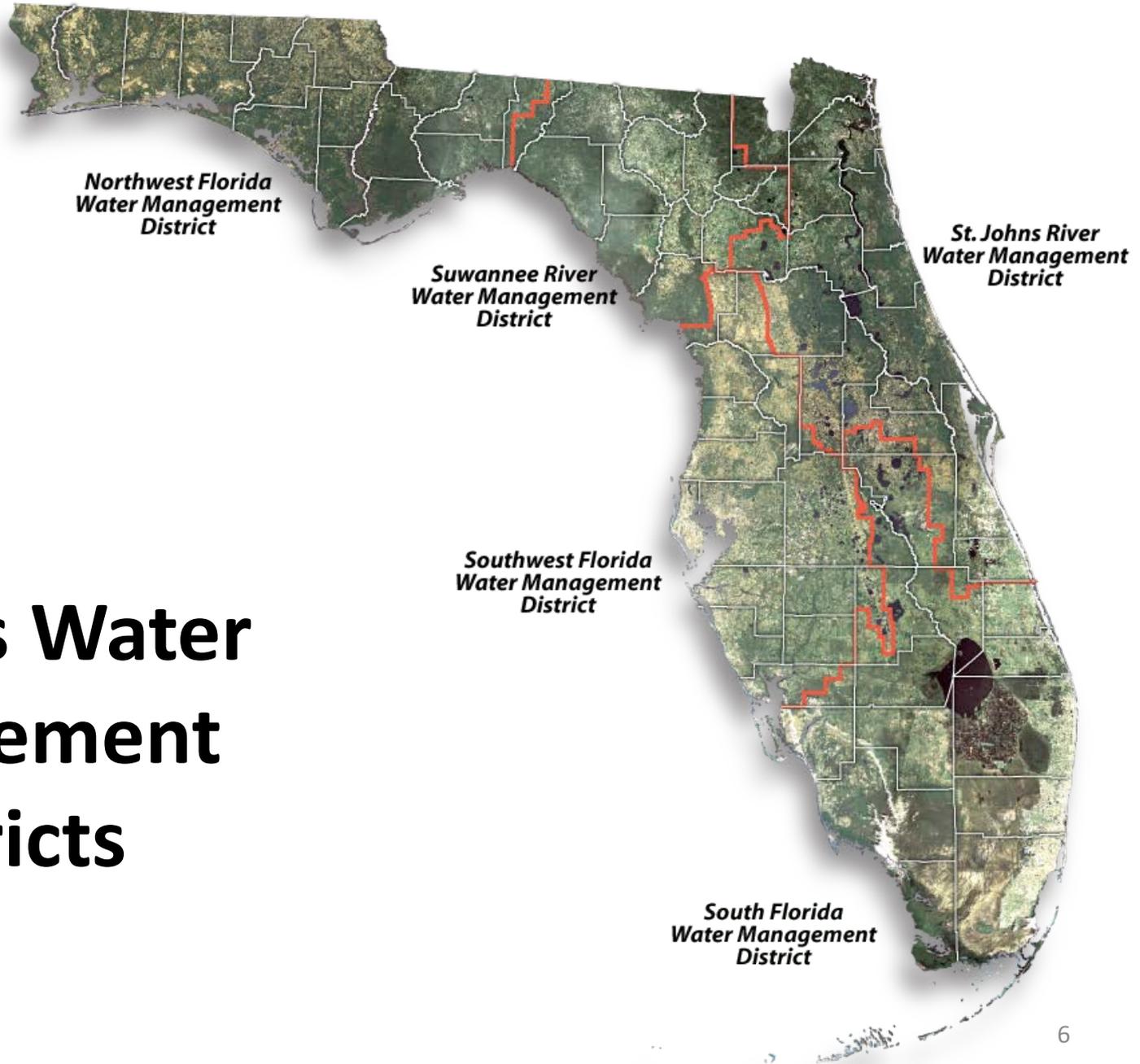
Florida Water Law

- **Historically, Florida was a common law, riparian state**
 - Reasonable use standard
 - Courts made case by case decisions
- **Severe Drought in 1970 – 1971**
- **A Model Water Code**
 - Renowned experts at Univ of FL
 - Proposed statutory system for regional water management
 - Selected best attributes of common law systems
- **1972 – Florida’s Legislature passed “The Water Resources Act” - Chapter 373, Florida Statutes**
 - Statewide permit system for water rights and additional authorities for water supply management



Florida Water Law (cont.)

- **Created Water Management Districts**
 - Broad Authorities
 - 4 Mission Areas
 - Endorses regional water management & insulation from “local” interests
- **Consumptive Use Permit Program**
 - Exclusive District authority, not local governments



Florida's Water Management Districts



Historic Perspective

- **Eastern United States Common Law**
 - Humid climate, more water available
 - “Reasonable Use” Doctrine
 - Courts developed “reasonableness” factors
 - No property right in water, only right to use
 - Flexible system – adapts as society / uses change
- **Western United States Common Law**
 - Dry climate
 - “Prior appropriation” Doctrine
 - First in time is first in right
 - Junior users have subordinate rights
 - Property right in water
 - Perpetual right, no expiration
 - “Beneficial use” theories
 - Conservation



Major Principles & Rules

- **Chapter 373, Florida Statute**
- **Based new program on blend of eastern and western common law doctrines**
- **Certainty & Flexibility**
- **Users must obtain a permit to have a right to use water in Florida**
 - **Exclusive water management district authority**
 - **No property right to water**
 - **Permits expire**
- **Reclaimed Water not subject to regulation until discharged to the “waters of the state”**



Water Supply Assessment

- **Water Supply Assessment performed on a five-year basis.**
- **Where resource availability will be exceeded within 20-years, Regional Water Supply Plans are developed.**
 - **Alternative Water Supply**
 - **Water Resource Development**
 - **Conservation Projects**
 - **Reuse Projects**
- **Regional Plans are updated at least every five years.**



Water Use Permitting & Tools for Natural System Protection

- **Minimum Flows and Levels (MFL)**
- **Water Reservations**
- **Water Use/Water Resource Caution Areas**

More than one tool can apply to an area or water body



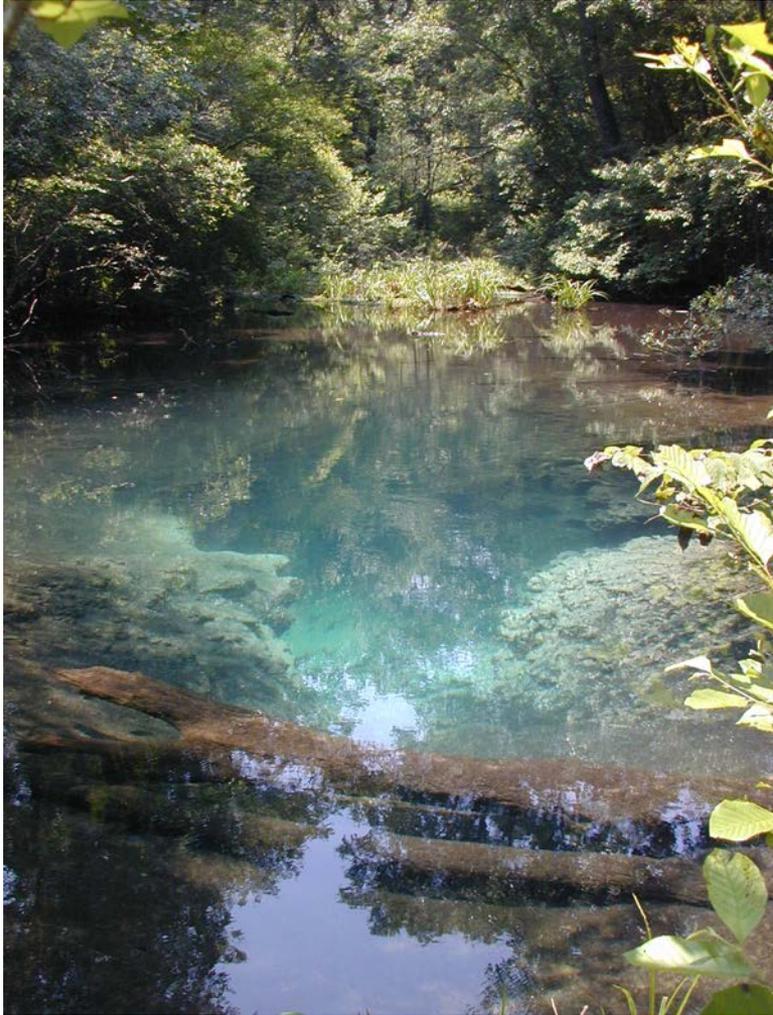
Minimum Flows & Levels

- **Authority: 373.042 and 373.0421, F.S.**
- **Minimum Flows and Levels identifies the point at which further withdrawals will cause "significant harm" to the water resources or ecology of an area**
- **MFLs adopted as rules of the WMD**
- **“Ground floor” for withdrawals**





Reservation of Water



- **Authority: 373.223(4), F.S.**
- **Sets aside water for the protection of fish and wildlife or for public health and safety**
- **Protects existing legal uses, unless contrary to the public interest**
- **Prevents new consumptive uses from accessing reserved water needed for the protection of fish and wildlife**



Water Use Caution Area

- **Water Use Caution Area or Water Resource Caution Area**
- **An area where water resources are, or will become critical within the next 20 years**
- **Applies to large spatial area covering multiple ecosystems for various purposes (saltwater intrusion, extensive drawdown, etc.)**
- **Used in tandem with minimum aquifer and lake levels, as well as minimum flows**



Water Shortage Plan

- **Section 373.246, F.S., authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the water resources of the District.**
- **The districts' Water Shortage Plans are set forth in Chapters 40x-21, F.A.C.**

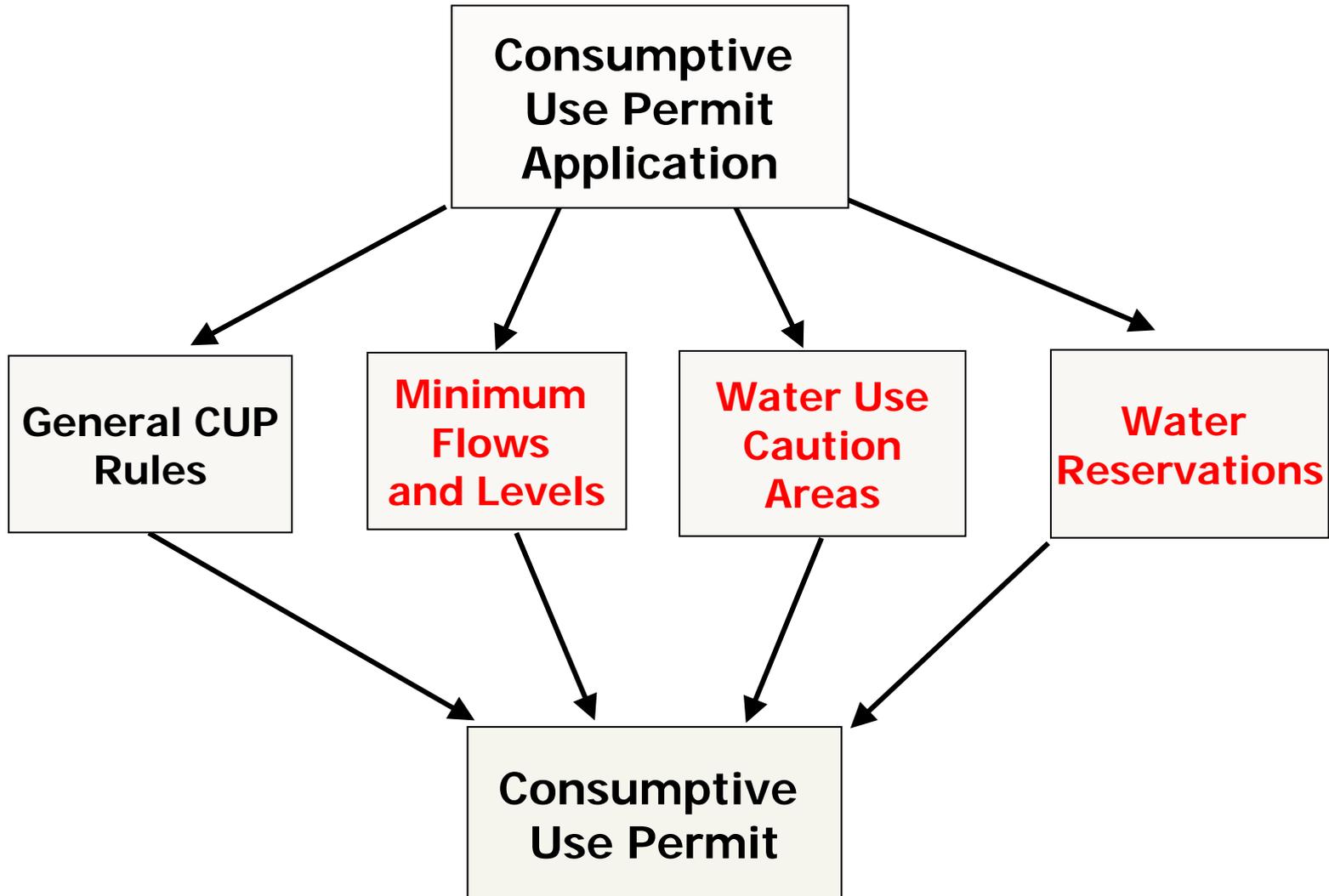


Water Supply Regulation

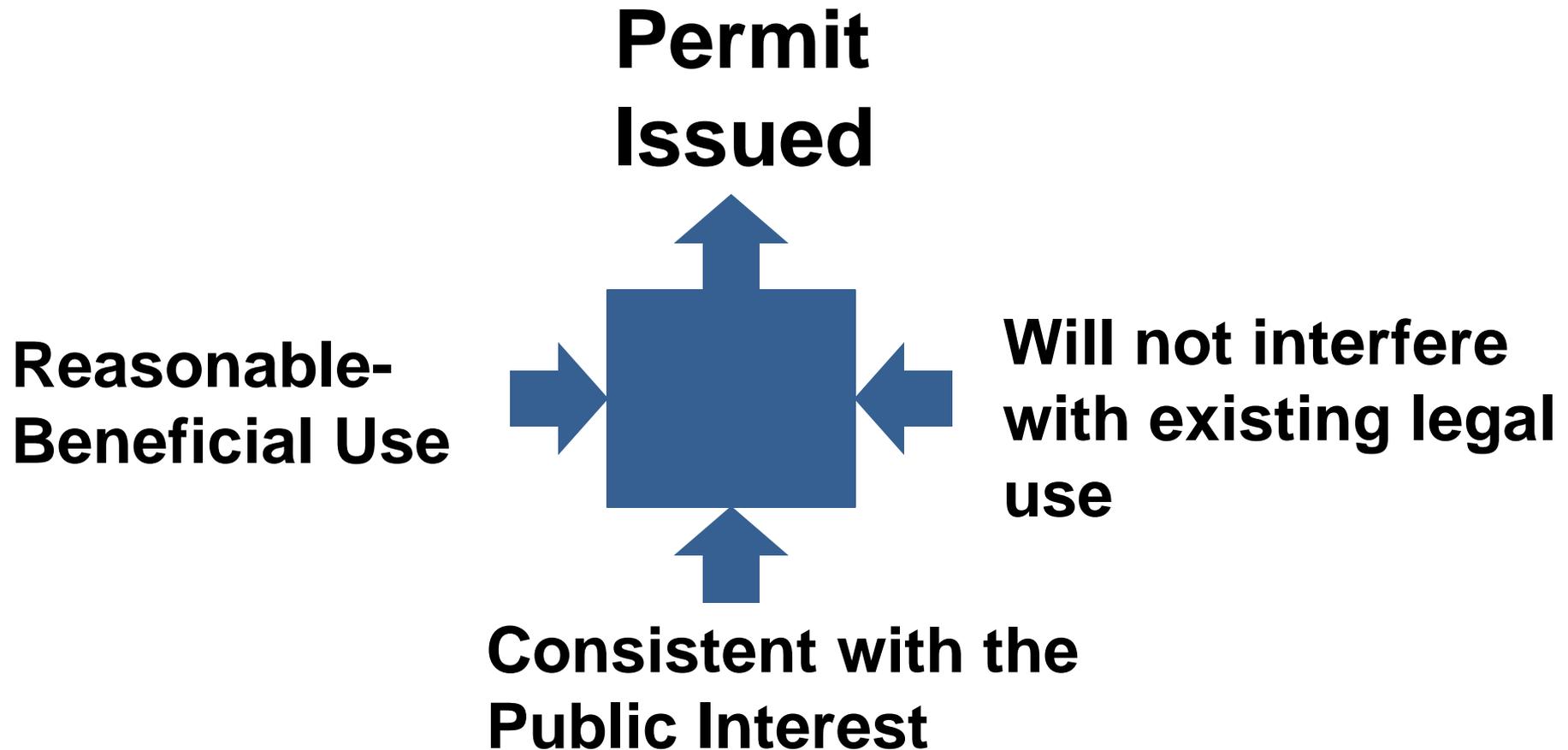
- **Exclusive Jurisdiction of the WMDs – Part II of Chapter 373, F.S.**
- **Water Use Permits**
 - Is the water actually needed (have to prove demand)
 - Is the water available without:
 - Affecting existing users
 - Harming the water resources



Considerations in Application Review



The Three Prong Test





Thank You

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