

Water Rights in Florida: Public Perception v. Legal Reality

There is a generally held belief that water in Florida cannot be owned as private property, but is instead a public resource only owned collectively by the people of Florida. Does this perception reflect reality? This paper shall examine the legal bases for water ownership in Florida, both in the environment and after capture for use. This paper will also examine whether there is any legal basis for the widely held belief that water is held collectively by the people of Florida, perhaps as a public trust.

Florida courts have generally limited water ownership to a usufructory right (a right to use), but the courts have not fully defined the bundle of rights associated with water. In *Village of Tequesta* the Florida Supreme Court generally limited the ownership of water to a right to use water once captured. But in other cases courts have found property rights exist prior to capture when water is permitted for withdrawal. Can these court decisions be reconciled, and is legal reality consistent with public perceptions of water ownership in Florida? These are the questions this paper will endeavor to answer.