

Water Rights In Florida:
Public Perception v. Legal Reality

Charles R. Fletcher, Esq.

What is the public perception of water rights in Florida?

- Water rights are tied to the land
- Water is owned by the State
- “Local sources first” prohibits water from being taken out of a locality except in extreme circumstances

Are water rights tied to the land?

- No, not really . . .
- Water rights are not necessarily tied to land ownership
- But, land ownership can be a an element in establishing a water right

Is water owned by the State?

- No, not at all . . .
- The State only regulates water use
- Water in nature is a fugitive resource
 - Who owns captured water?
 - Who owns permitted water?

Are there limits on transport of water?

- No, not really . . .
- The “Local Sources First” statute only requires certain considerations when determining if the proposed transport and use across county boundaries is in the public interest.

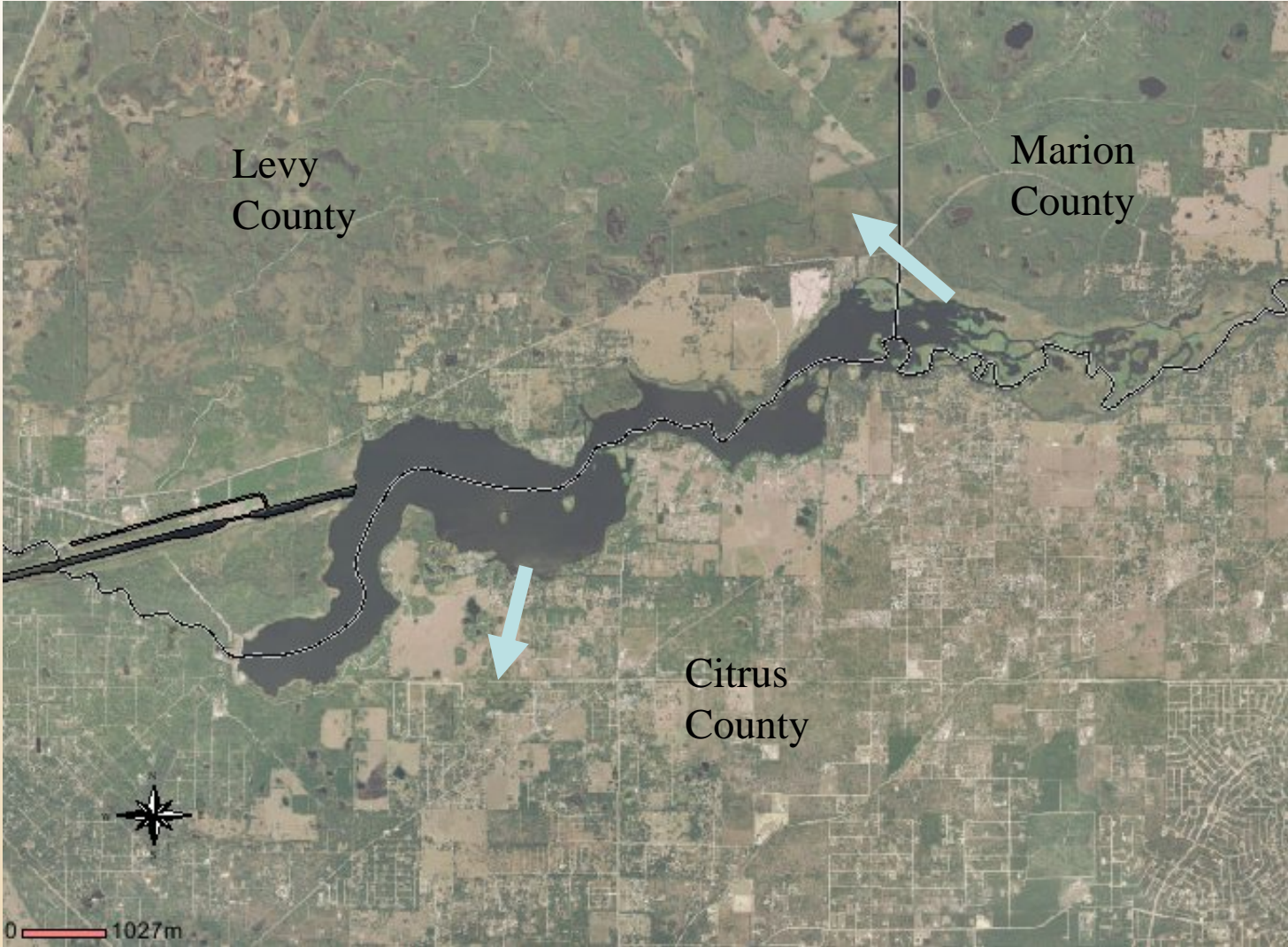
Statutory considerations when crossing county boundaries

- proximity of the water source to the use
- water sources that are closer to the use
- all economically and technically feasible alternatives
- potential environmental impacts
- whether existing and reasonably anticipated sources of water and conservation are adequate
- value of the existing capital investment in water-related infrastructure.

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Sources of property rights in water

- U.S. Constitution
- Florida Constitution
- Florida Statutes
 - Chapter 373, Fla. Stat.
 - Model Water Code
- Florida Administrative Code

What water rights exist in Florida?

- Right to own captured water?
- Usufructuary right?
- Right to beneficial use?
- First in time, first in right?
- A stick in the bundle of real property rights?

When is a water right perfected?

- Upon acquisition of land?
- Upon issuance of a permit?
- Upon capture or use?
 - What about stormwater?
 - What about reclaimed water?

Examples of when a water right is a protected property right

- When governmental or non-governmental action prevents capture and use of water otherwise permitted under state law
- When governmental or non-governmental action prevents use of legally captured water

How can we refine Florida water rights to promote capital investment?

- Clarify state preemption of local regulation of water use
- Recognize the reality of first in time, first in right
- Commoditize reclaimed water and other non-extractive water sources