

Overview of Florida Water Law

Governing Board Meeting

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sfwmd.gov

Presentation Overview

- Introduction
- Historic Perspective on Water Law in the United States
- Major Principles & “Tools” of Florida Water Law

Introduction to Florida Water Law

- Severe Drought in 1970 – 1971
- A Model Water Code
 - Renowned experts at Univ of FL
 - Proposed statutory system for regional water management
 - “Plucked” best attributes of common law systems
- 1972 – Florida’s Legislature passed “The Water Resources Act”
 - Chapter 373, Florida Statutes

Introduction to 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

Historic Perspective on Water Law

- “The Common Law is dead. Long live the Common Law.”
- 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

Historic Perspective on Water Law, cont.

- 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 & "Tools" of Florida Water Law

"The Common Law is Dead."

- Chapter 373, Fla. Stat.
- 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

Major Principles & “Tools” of Florida Water Law - **Consumptive Use Permits**

- **Scope of Program:**
 - Domestic, indoor use of water – exempt from permit program
 - All other uses required to obtain consumptive use permit
 - Existing District rule expanded exemption to include domestic outdoor uses (e.g. Irrigation)
 - Linkage to Year Round Conservation Rule

Major Principles & “Tools” of Florida Water Law – **Consumptive Use Permits**

“Long live the Common Law.”

“The 3 Prong Test” for permit issuance

The proposed use:

1. Is a **reasonable-beneficial** use as defined in §373.019(4);
2. Will not interfere with any **presently existing legal use** of water; and
3. Is consistent with the **public interest**

Major Principles & “Tools” of Florida Water Law – **Consumptive Use Permits**

#1: Reasonable-beneficial Use:

- Demand / need for the use
- Quantity requested (i.e. conservation)
 - Varies by use class
- Extent & amount of harm caused
 - “Impact” criteria
 - Wetlands, lakes, aquifers
 - Salt water
 - Pollution
- Suitability of use to source
- Water Resource Implementation Rule

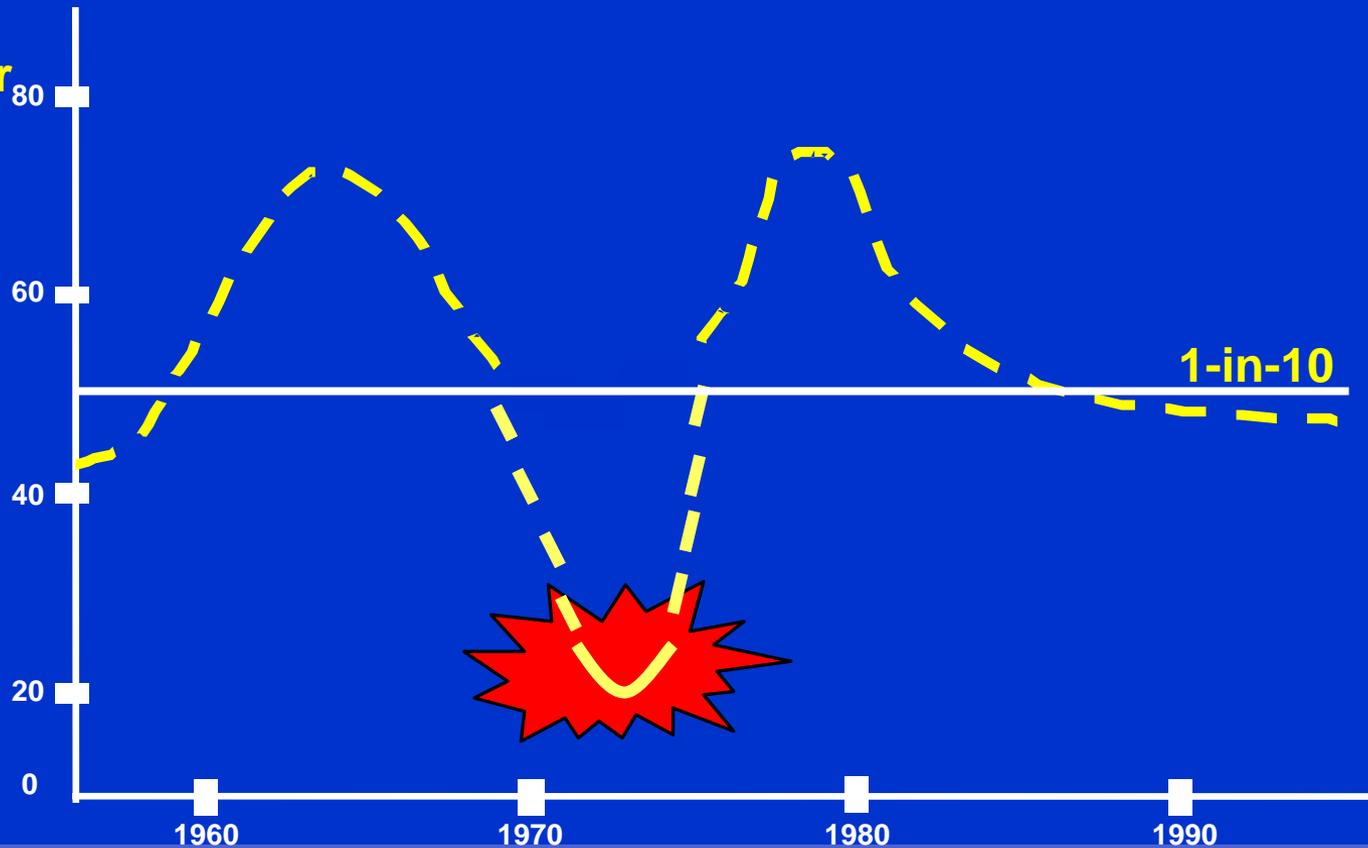


Certainty of Supply =

**Knowing water will be
available when you need it
(i.e., during 1 in 10 drought)**

Rainfall

Inches
Per
Year



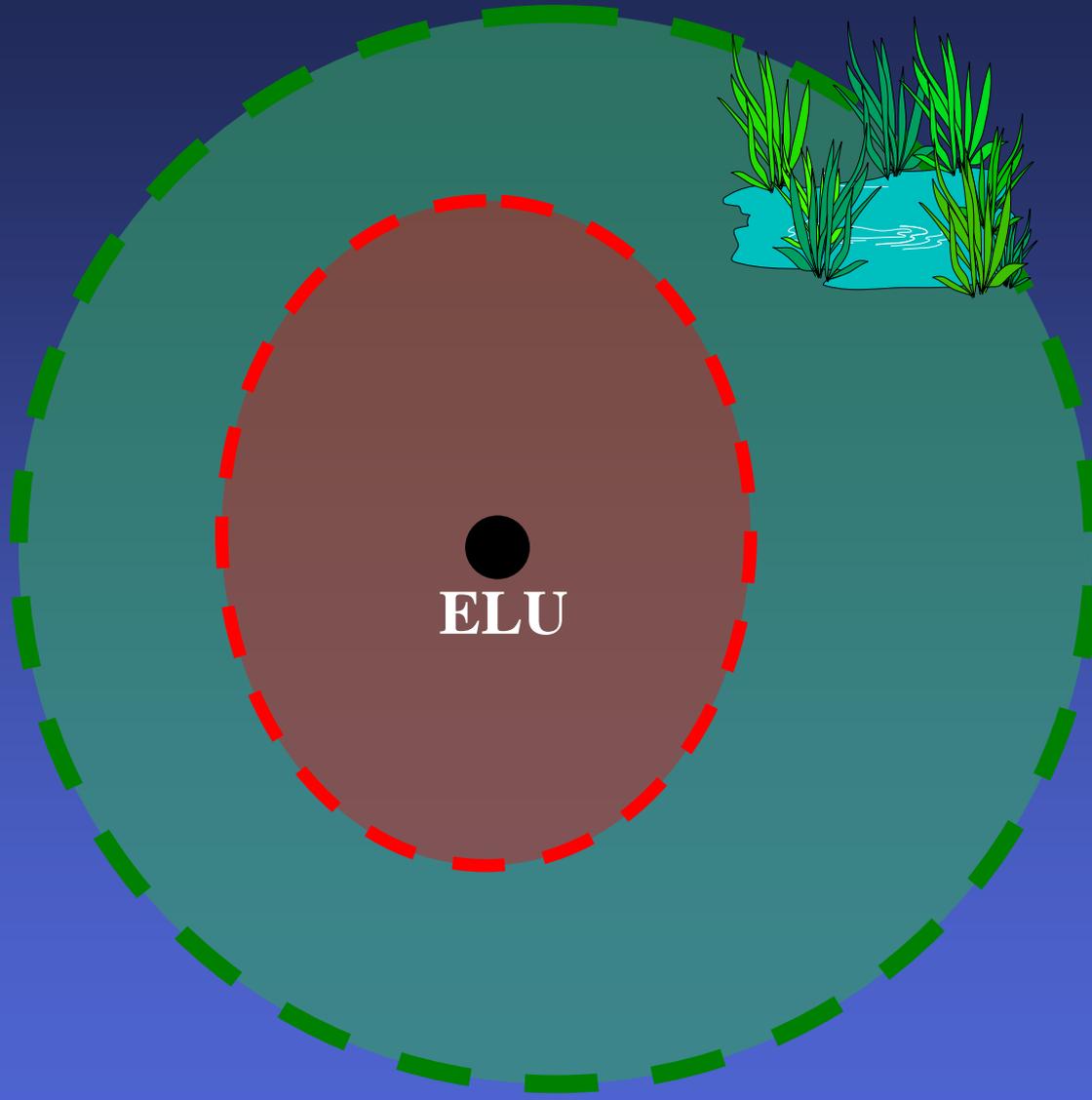
REASONABLE-BENEFICIAL USE

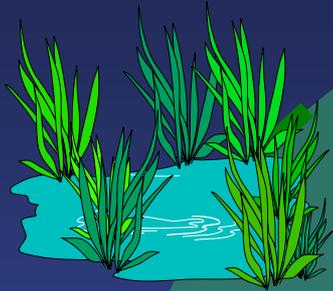
- What level of certainty to allocate?
- Drought Event Return Frequency
 - 1 in 5? 1 in 10? 1 in 20?
- More severe drought means more supplemental water needed
- Certainty 'tensions' in demand:
 - Locks up water supply / prevents more allocations (Existing legal user)
 - Protect from economic loss
 - Impacts limit allocation
 - Alternative water supplies required

Major Principles & “Tools” of Florida Water Law – **Consumptive Use Permits**

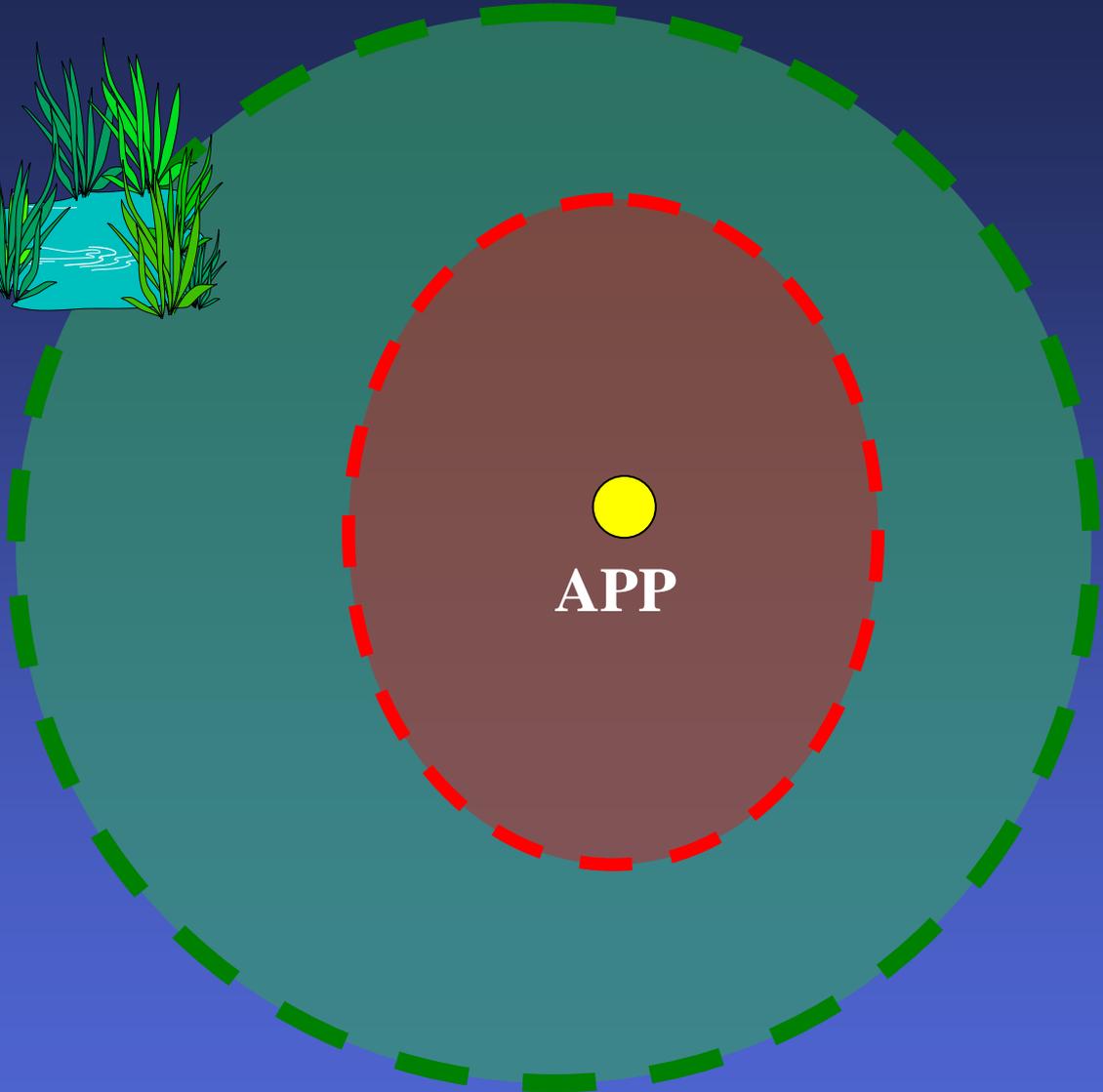
#2: Not Interfere with Existing Legal User

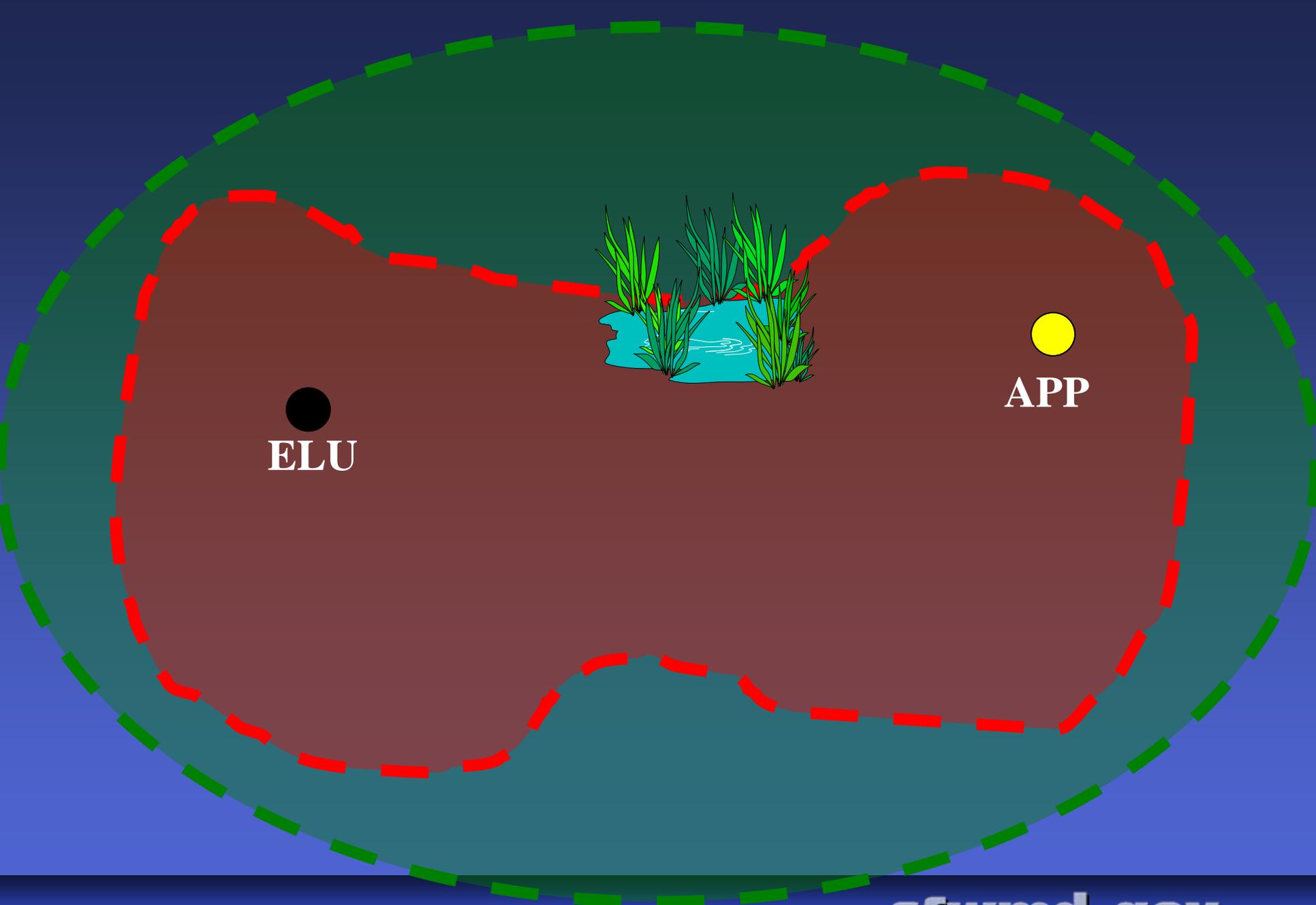
- Prior Appropriation concept
- “Time line” continuum
- Cumulative Impact Analysis
 - Environmental impacts
 - Impacts to presently existing legal users
 - Quantity and quality considerations
 - Solutions vary





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Major Principles & “Tools” of Florida Water Law – Consumptive Use Permits

3: Consistent with Public Interest:

- Specific Statutory tests:
 - Interdistrict transfers
 - Local sources first
 - Alternative water supply sources

Major Principles & “Tools” of Florida Water Law – Consumptive Use Permits

3: Consistent with Public Interest:

- Resource Protection Criteria
 - LEC Regional Water Availability Rule
 - Saltwater intrusion
 - Wetland protection
 - Aquifer compaction
 - Contamination movement
 - Sinkhole development
- Changes through time
 - Everglades restoration

Major Principles & “Tools” of Florida Water Law – Reservations

- **Consumptive Use Permitting**

“3 Prong Test” **prevents harm** to the water resources; specific resource protection criteria implemented by rule

- **Reservations**

set aside water for **protection of fish and wildlife or public health and safety**

- *Existing legal uses are protected if not contrary to public interest*

Major Principles & “Tools” of Florida Water Law – Reservations

- Purpose of Reservation
 - Prevent allocation of water needed for the protection of fish and wildlife or public health & safety
- Governing Board *may* reserve water
 - Locations, quantity, timing & distribution
- Peer review of all scientific & technical data *if* determined necessary
- Reservations subject to periodic review

Major Principles & “Tools” of Florida Water Law – MFL’s & Water Shortage

- **Minimum Flows and Levels**
identify point when further withdrawals would cause **significant harm** & develop prevention/recovery plan
- **Water Shortage Program**
prevent serious harm to the water resources;
temporarily restrict CUP level of usage during droughts

Discussion