



The Sovereign's Submerged Lands A Public Trust

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Sovereignty Submerged Lands



Florida's "Sovereignty Submerged Lands" are state owned rivers and lakes

Fla. Constitution Article X, § 11

Sovereignty lands. The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below, mean high water lines held by the State by virtue of its sovereignty in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law but only when not contrary to the public interest.



Key Words, Concepts and Phrases

The central question is whether a waterbody:

- located within the boundaries of Florida on March 3, 1845 (Statehood)
- was not previously alienated (Spanish land grants)

Was the waterbody “navigable at statehood?”



Easy Enough – Right?



Two vexing factual determinations need to be made:

- Defining “Navigability” on March 3, 1845
- Water level fixed as of March 3, 1845

The “character” of the waterbody on March 3, 1845



Navigability

The central concept in determining navigability is:

- A riparian (adjacent upland) owner's
- access to the waterbody
- for meaningful commerce

Example: "Can I float a log down it?"



Mean vs. Ordinary



Mean High Water Line
(typically tidal/saltwater)



Ordinary High Water Line
(typically fresh water)



Mean High Water Line

- Tidal/saltwater
- Daily ebb and flow
- Monthly
- “Where the grasses end up on an ordinary day” (used by many states)



Ordinary High Water Line

- Freshwater - no true ebb and flow
- Steep-banked or flat-banked
- Not extraordinary events
- Daily and monthly fluctuations are minimal
- Wet and dry seasons are discounted
- Multiple years considered
- Unusual events (El Niño) are not factors



The Public Trust Doctrine



- Ancient legal doctrine expressed by Spanish monarchs, English kings and queens, and Roman emperors
- Waterbodies capable of being used for suitable public purposes (navigation, commerce, recreation) are to be protected as public property

Canals are not Sovereignty Submerged Lands

Artificial waterbodies rendered “navigable” through artificial dredging (SFWMD canals) are not sovereignty submerged lands

- Not “navigable at statehood”
- Not subject to Public Trust Doctrine



Nature's Influences

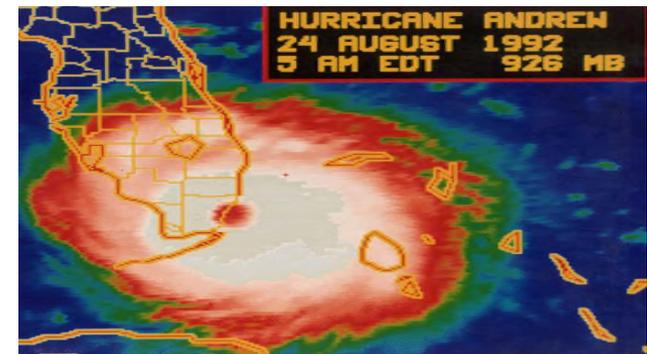
Natural “slow and imperceptible” influences do alter water boundary lines

Natural “sudden and perceptible” influences do not alter boundary lines

Floods



Hurricanes



Ownership & Regulation

Florida Board of Trustees of the Internal Improvement Trust Fund

Proprietary

(Chapters 18-1 & 18-2, Fla. Admin. Code)

- Hold title—buy/sell lease
- Administer parks, trails, forests, beaches, fish and wildlife, aquatic preserves

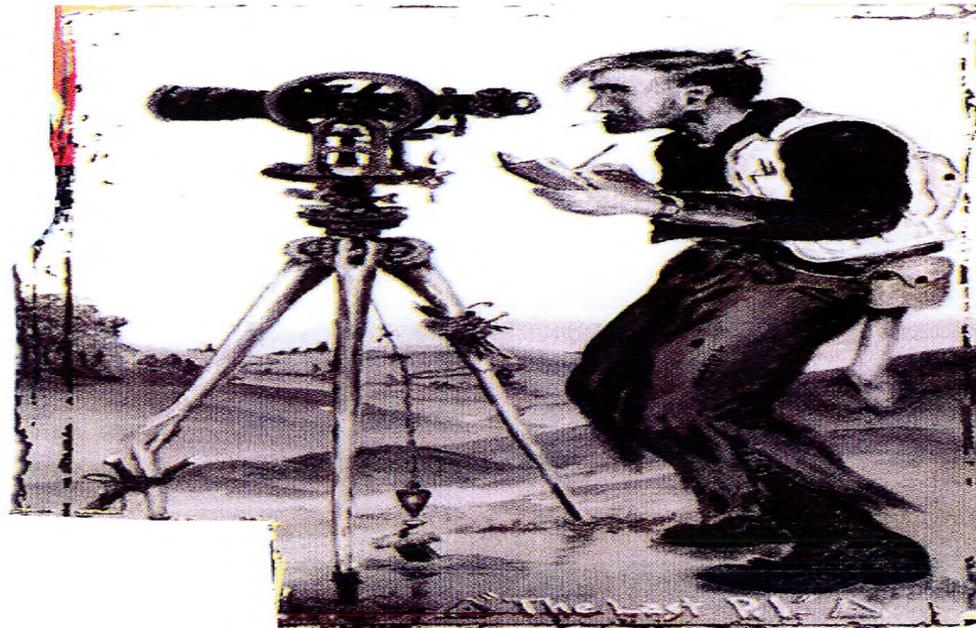
Regulatory

(Chapters 18-20 & 18-21, Fla. Admin. Code)

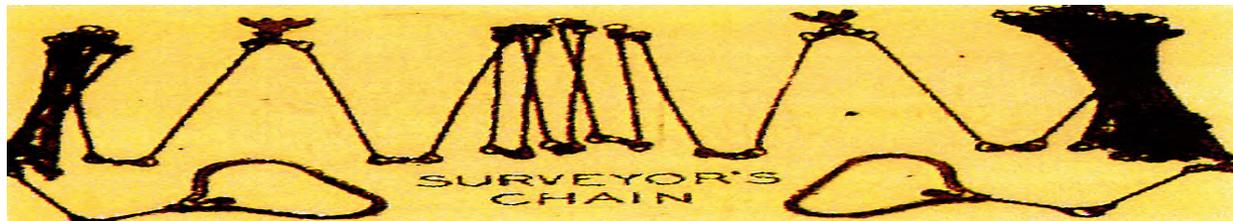
- Issue “Use” permits for docks, oil, gas and minerals, air, hazardous materials, deadhead logging



Florida's Cadastral Surveyor - Then



Possibly the first state cadastral surveyor



Florida's Cadastral Surveyor - Now



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