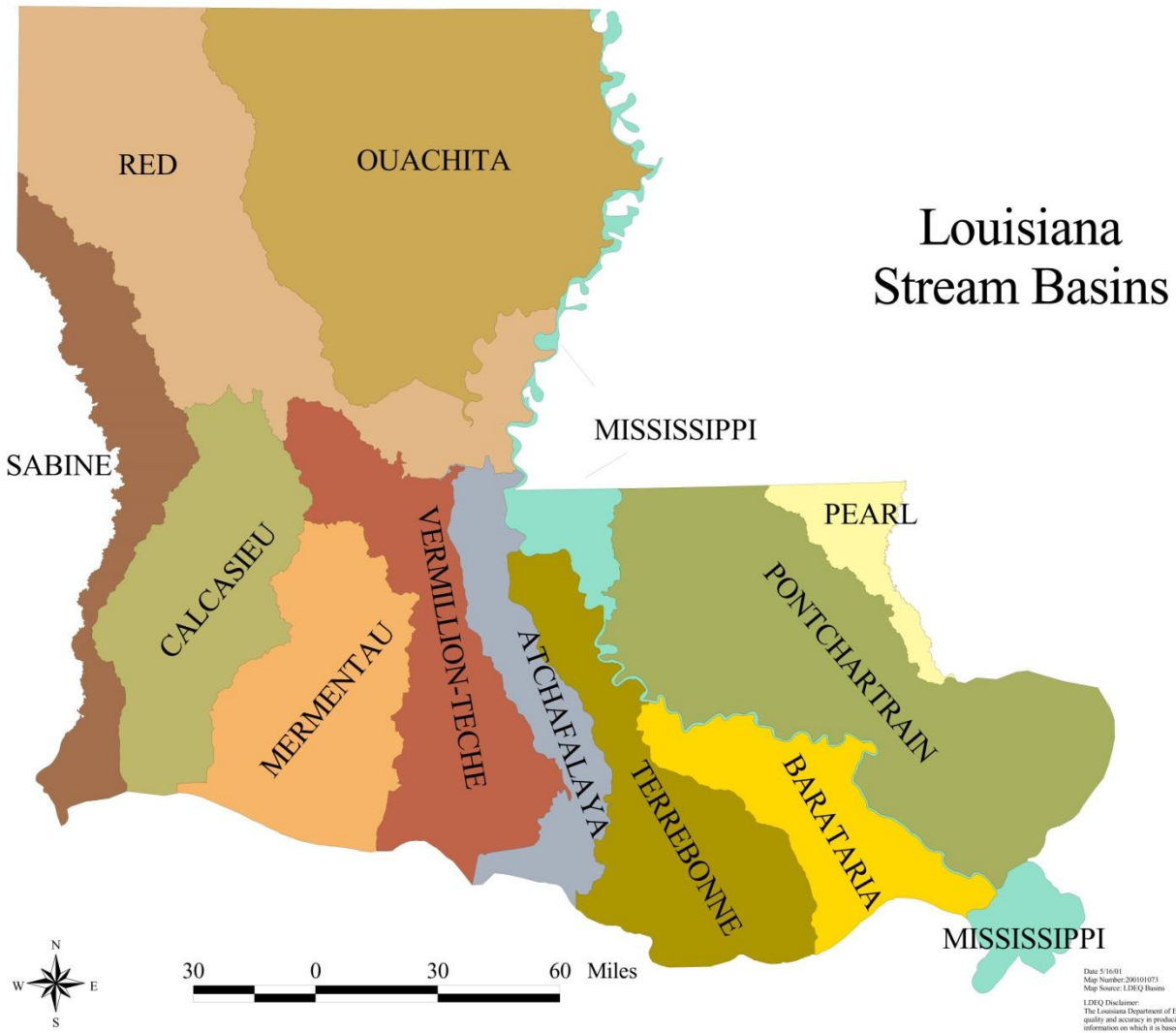




SURFACE WATER RESOURCES MANAGEMENT IN LOUISIANA

Louisiana Water Resources Commission
2013 Workshop
Baton Rouge, Louisiana



Date: 5/16/01
Map Number: 200101073
Map Source: LDEQ Basins

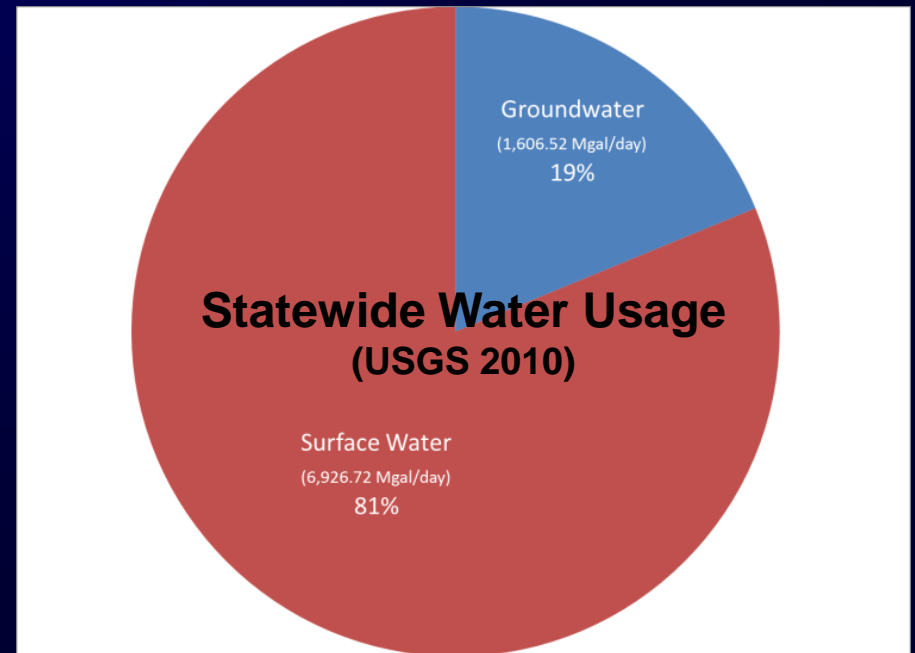
LDEQ Disclaimer:
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SURFACE WATER MANAGEMENT

Water from 41% of continental United States land areas flows through Louisiana.

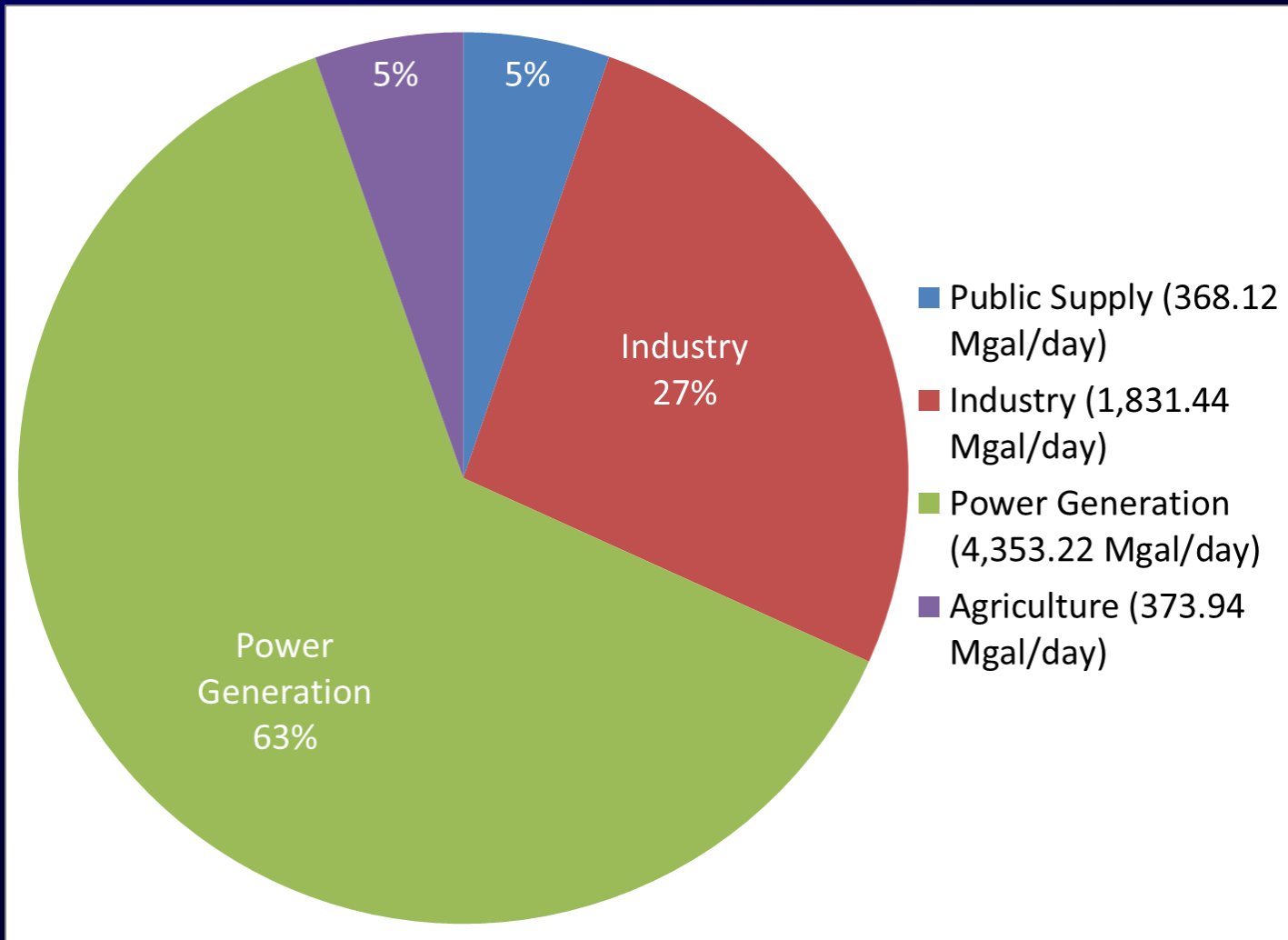
- Water covers 17.5% of Louisiana's territorial area
- 11% is coastal, including the Gulf of Mexico and bays. 4% is lakes and 2% rivers (La. GIS CD, 1999).
- The state's largest metropolitan area relies primarily on surface water resources rather than groundwater.
- The state's largest freshwater lake is Toledo Bend Reservoir





SURFACE WATER MANAGEMENT

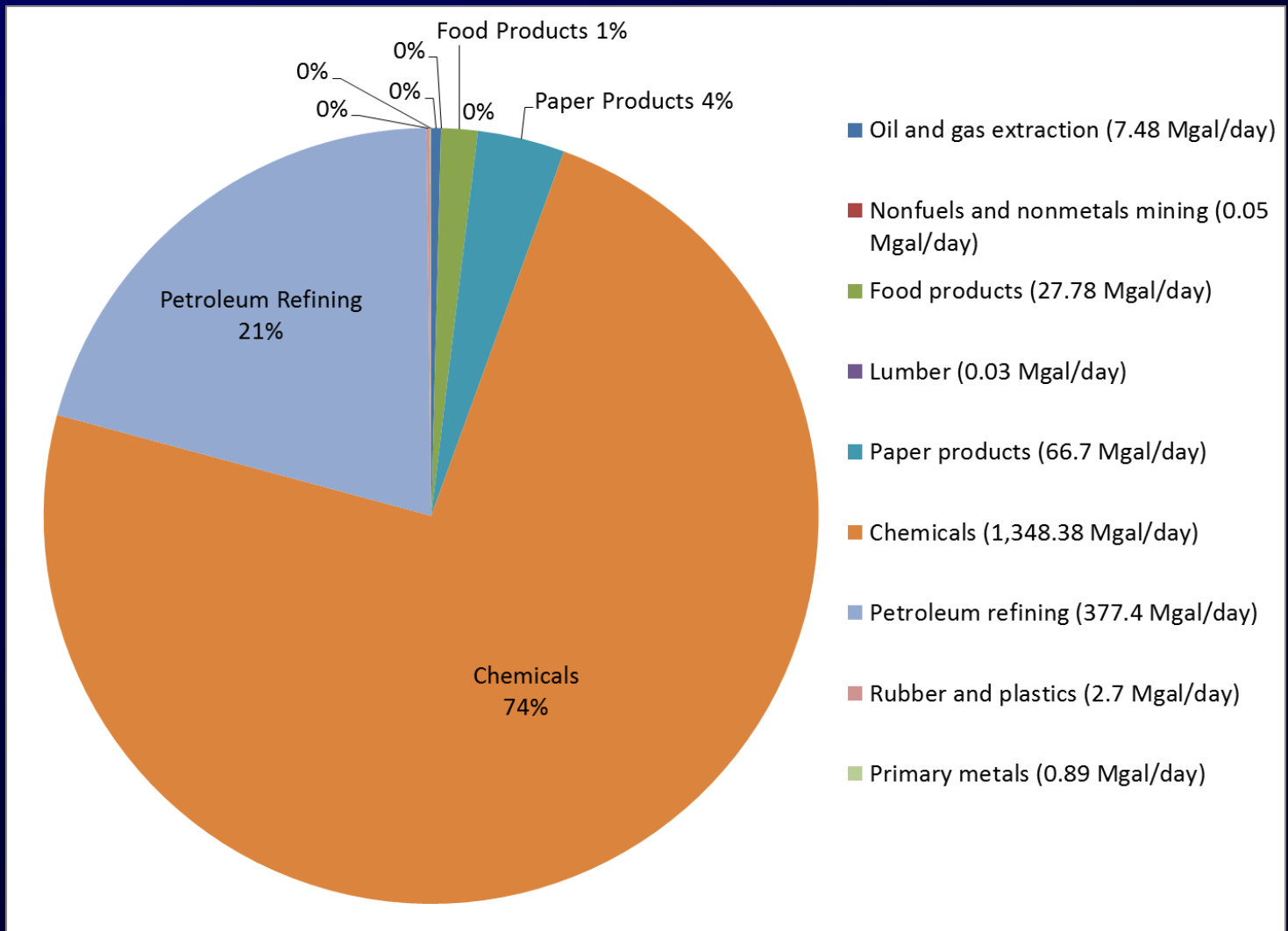
Surface Water Usage (USGS 2010)





SURFACE WATER MANAGEMENT

Industry Surface Water Use (USGS 2010)





Surface Water Riparian Rights

- **Civil Code Article 657.** *Estate bordering on running water.*
The owner of an estate bordering on running water may use it as it runs for the purpose of watering his estate or for other purposes. Acts 1977, No. 514, §1.
- **Civil Code Article 658.** *Estate through which water runs.*
The owner of an estate through which water runs, whether it originates there or passes from lands above, may make use of it while it runs over his lands. He cannot stop it or give it another direction and is bound to return it to its ordinary channel where it leaves his estate. Acts 1977, No. 514, §1.
- **Civil Code Article 667** limits the riparian owner's uses to those that do not "deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him."



Surface Water Riparian Rights

- Application of the Absolute Ownership and Rule of Capture theories results in largely unlimited access by landowners to ground waters within their property boundaries
- By contrast, “Riparian Rights” for surface waters have traditionally had more limits within Louisiana law.
- Similar to ground water, riparian rights are held by the owner by virtue of the spatial relationship of the property and the water



Surface Water Riparian Rights

Limitations on Use of Surface Water

- Limited to domestic purposes.
- Riparian user is bound to return the water to its original channel
- Riparian use is limited by its effect on neighbors
- Surface waters are not treated in law as privately owned. A riparian owner has a right to the “use” of surface waters, but not legal title to the water. “Usufruct” of a public resource.
- Similar to the treatment of other fugitive resources like wildlife (game animals) and liquid minerals (petroleum)



SURFACE WATER MANAGEMENT

- Prior to 2010 – No provision for non-riparian, private use of water from naturally navigable water bodies owned by the state.
- Sometimes this resulted in negotiated agreements between private entities and the public entities statutorily charged with the management of a water body.
- However, sometimes removal of state surface water was occurring without the knowledge or consent of appropriate public entities



SURFACE WATER MANAGEMENT

- Ongoing drought, especially in North Louisiana 2005-10
- Concurrent with nationwide increase in shale exploration using horizontal drilling and hydraulic fracturing technology
- Unprecedented use for water in the same locale as the drought
- Highlighted the need for unprecedented management of the resource
- February 5, 2010- Guidance Memorandum issued by the Louisiana Attorney General and the Secretary of DNR



SURFACE WATER MANAGEMENT

2010 GUIDANCE MEMORANDUM

- “ Under Louisiana Law persons, with the possible exception of riparian landowners, are not authorized to remove State owned surface water without obtaining the prior written approval of the State and without paying fair value.”
- The Guidance Memorandum continues with instructions to state agencies and state political subdivisions for responding to requests for the transfer or sale of state-owned surface waters.



SURFACE WATER MANAGEMENT

Attorney General's Opinions (2008–2010)

- No right to private ownership of running waters (08-0176)
- If a lake's water is considered "running water, it is owned by the State (09-0028)
- Sales of state waters must be for fair market value (09-0066)
- Political subdivisions of the State may only sell running waters with specific legislative authority (09-0291)
- Riparian owner may access and "use" running water for his estate, but the water remains a public thing owned by the State (10-0173)
- Statute authorizing a political subdivision to "regulate the use of water" gives regulatory control, but does not grant rights with regard to selling the waters at issue (10-0289)
- Sabine River Authority has a specific statutory exemption from these limitations (10-0297)



Legislative Authority Divided Among State Agencies

- To enact its policies, legislature set up various agencies with differing, but complementary, regulatory authority for water management.
- CPRA, DNR, Conservation, DAF, DEQ, DHH, WLF, DOTD, Regional and Local entities, etc.

SURFACE WATER MANAGEMENT

2010 SURFACE WATER MEMORANDUM OF UNDERSTANDING

- Protect State's Water Resources
- Lend Credence to State Commenting process
- Avoid Duplicated Efforts
- Streamline and Facilitate Government Efficiencies



SURFACE WATER MANAGEMENT



MEMORANDUM OF UNDERSTANDING

- MOU's Stated Purposes:
- Protect State's Water Resources
- Lend Credence to process
- Avoid Duplicated Efforts
- Streamline and Facilitate Government Efficiencies





SURFACE WATER MANAGEMENT

MEMORANDUM OF UNDERSTANDING

- Applies to Surface Water Withdrawals and Uses
- Parties: DNR, DEQ and DWF
- Coordination with other resource agencies CPRA, DHH, DOTD and others, as needed
- DNR charged with responsibility to facilitate coordination



SURFACE WATER MANAGEMENT



MEMORANDUM OF UNDERSTANDING

Typical Instances that trigger this coordinating MOU:

- Requests for State Reviews and Comments
- Surface Water Cooperative Endeavor Agreements
- Federal Agency actions
- U.S. Army Corps of Engineers' Section 10 Permit Applications





SURFACE WATER MANAGEMENT

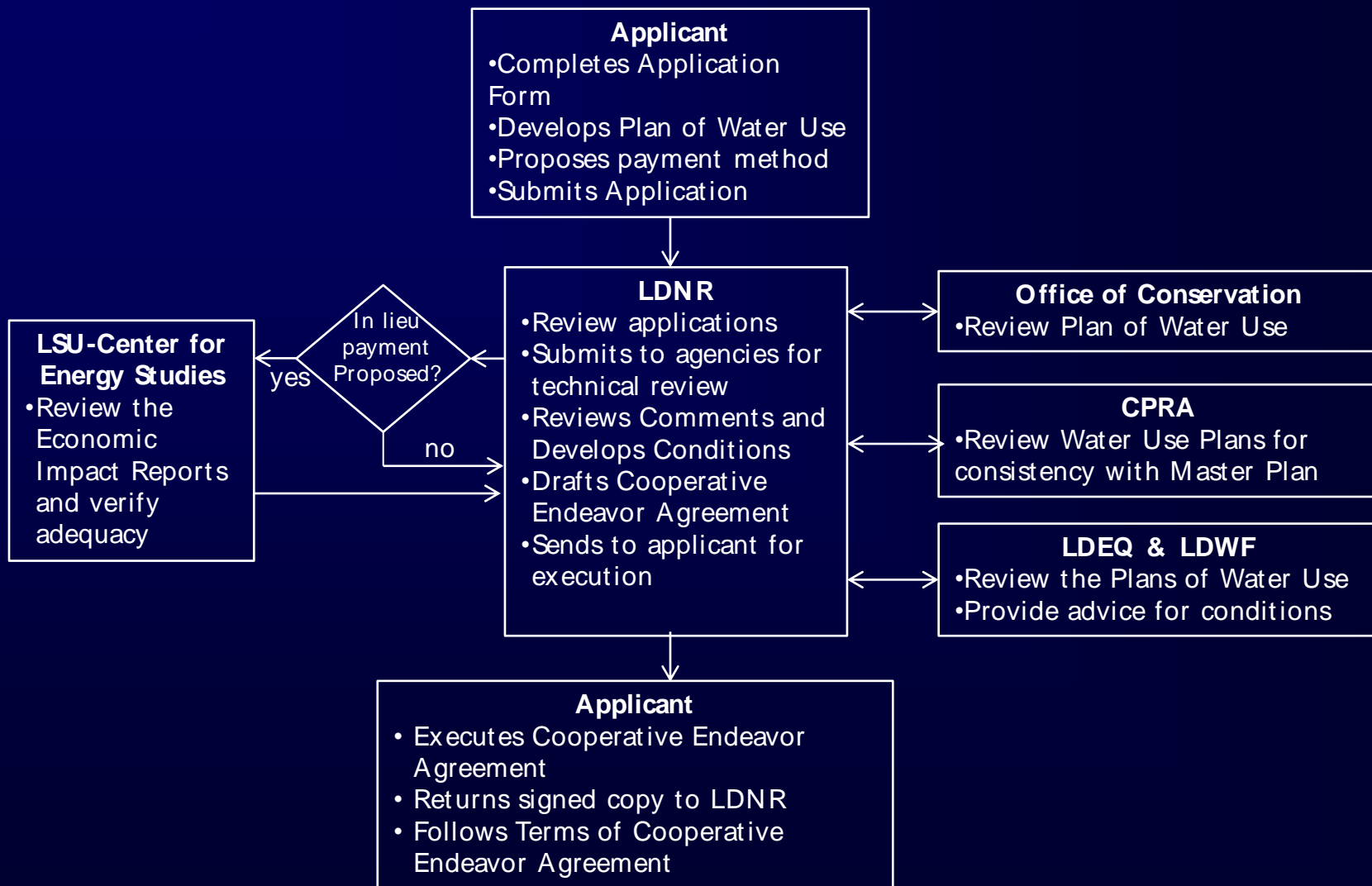
Surface Water Management Act
(LRS 30:961-963)

ACT 955 of 2010 &
ACT 532 of 2012

Provided “Needed Interim
Stewardship” of Surface Water

SURFACE WATER MANAGEMENT

Application Process



SURFACE WATER MANAGEMENT



Each Cooperative Endeavor Agreement must:

- Be in the Public Interest
- Be based on Best Management Practices
- Be based on Sound Science
- Consider effect on Sustainability
- Balance environmental and ecological impacts with economic and social benefits.

Secretary may take actions including:

- Suspension or termination of withdrawal
- Other necessary actions.



Surface Water Management Act

Provided a voluntary process for surface waters owned by the State to be withdrawn:

- Prior written approval of the State
- Compensate the State at fair market value
- Charged DNR with task of developing process
- Gave users the option to demonstrate economic value of activities associated with use of water

SURFACE WATER MANAGEMENT



Agreements for the sale of surface water must:

1. Be a writing in the form of a contract or cooperative endeavor agreement;
2. Form developed by State Mineral and Energy Board
3. Form must be approved by the Attorney General;
4. Individual Agreements to be approved by Secretary, DNR
5. And be for a fair market value.



Implementation of Surface Water Management Program

Development of a process including:

- Preparation of forms and agreement
- Approval of the agreement by the Mineral Board
- Organization of a review process
- Development of an electronic submittal process through SONRIS
- Development of a tracking system



Application Content

- Plan of Water Use:
 - Specific and detailed description of the withdrawal event(s), by whom and for what purpose(s)
 - Specific description of waterbody condition, current use, impairment, and other relevant scientific information
 - Description of potential impact, and proposed monitoring and mitigating activities
 - Supporting documentation



Application Content

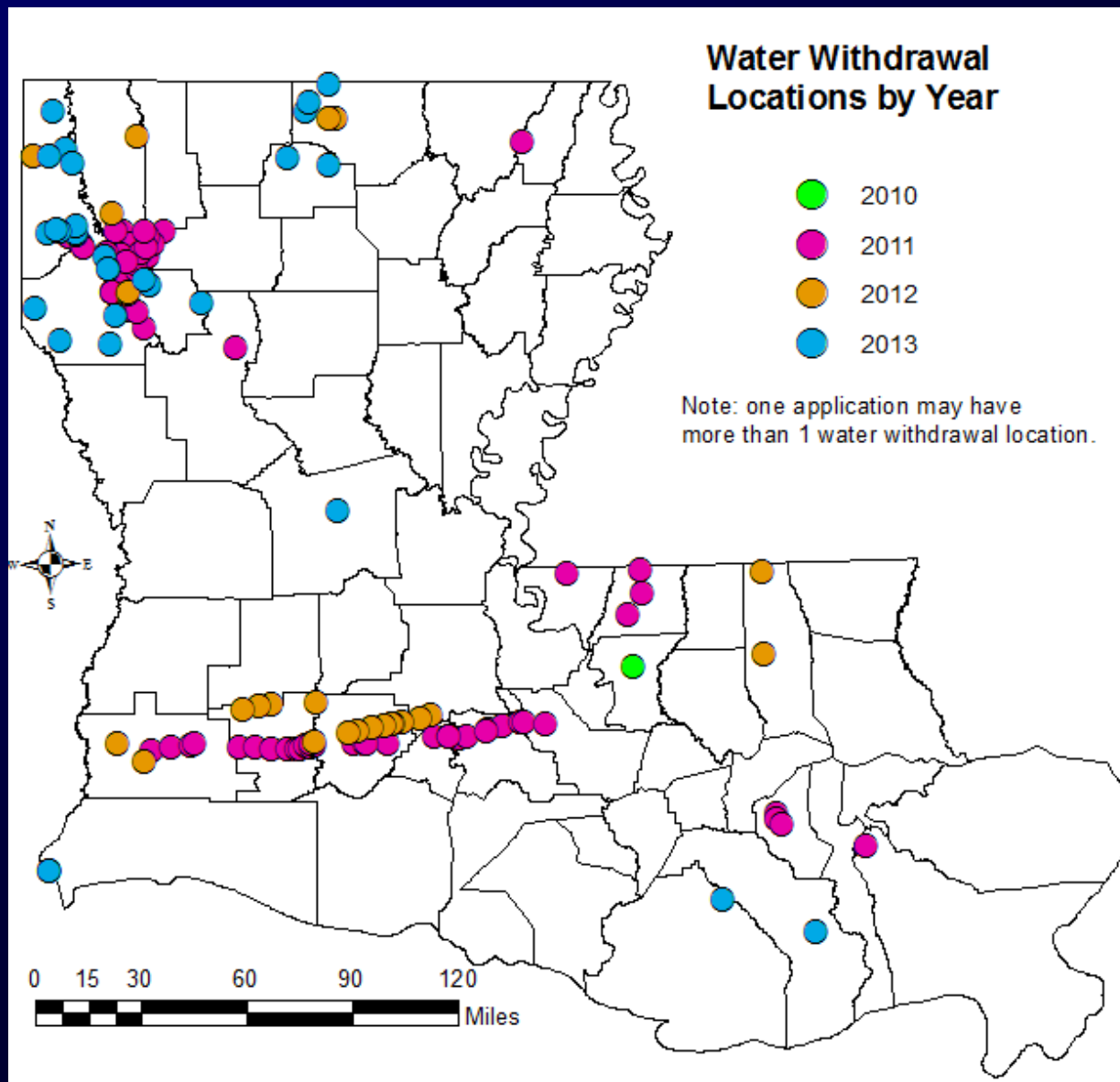
- Economic Impact Report:
 - Detailed description of how the state will be compensated
 - Detailed description of social and economic benefits
 - Detailed project-specific cost breakdown



Summary of CEA Initiative

Tasks	2010	2011	2012	2013	Total
Application received	10	40	11	30	91
Application reviewed	4	34	10	30	78
Application withdrawn/ returned	6	6	1	1	14
CEAs Submitted to the Applicant	4	34	10	29	77
CEAs Executed	4	28	6	25	63
CEAs Executed with in lieu payments	3	19	1	22	45
CEAs Executed with cash payments	1	9	5	7	22
Cash Payments Collected	\$4.42	\$2,780.73	\$3,135.37	\$1,477.22	\$6,763.32
Volume of Water Requested in Executed CEAs (gallons)	59,860,000	1,517,743,331	204,271,167	920,929,997	2,702,804,495

SURFACE WATER MANAGEMENT





Going Forward

- Legislative review of Surface Water Management Act for 2014
- Water Monitoring Network is a time limited program
- Development of a comprehensive statewide strategy needs to be addressed



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