



Legislation Details (With Text)

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Type: Action Item **Status:** Reported from Committee
File created: 9/5/2018 **In control:** Board of Directors
On agenda: 10/9/2018 **Final action:** 10/9/2018
Title: Consider recommendation from the Permits/Enforcement Committee to approve Proposed Rules related to proposed changes to EAA Critical Period Management rules regarding Notices of Intent to Finish Out a Crop.

Sponsors:

Indexes:

Code sections:

Attachments: 1. NFICRedlinePRs for BOD 9-17-18, 2. NFIC_CleanPRs for BOD 9-17-18

| Date | Ver. | Action By | Action | Result |
|-----------|------|-------------------------------|--------|--------|
| 10/9/2018 | 2 | Board of Directors | | |
| 9/25/2018 | 1 | Permits/Enforcement Committee | | |

Consider recommendation from the Permits/Enforcement Committee to approve Proposed Rules related to proposed changes to EAA Critical Period Management rules regarding Notices of Intent to Finish Out a Crop.

RECOMMENDED MOTION:

Move the board approve the Proposed Rules to amend the following chapters of the Edwards Aquifer Authority Rules, including any necessary renumbering of current rules due to the proposed amendments, and authorize the General Manager to take all actions required by law to process these Proposed Rules:

Chapter 715 (Comprehensive Water Management)
Subchapter E (Critical Period Management Plan)

SUMMARY:

The purpose of this agenda item is for the board to consider a Permits/Enforcement Committee recommendation and take possible action on a set of Proposed Rules that would amend the following Chapters and Subchapters of the EAA rules:

Chapter 715 (Comprehensive Water Management)
Subchapter E (Critical Period Management Plan)

Under the EAA Act and current EAA rules, "notwithstanding the existence of any stage of ... critical period ... a person authorized to withdraw groundwater from the aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed for that stage, be allowed to finish a crop

already planted in the calendar year during which the critical period is in effect." Under this provision, an irrigator is allowed to irrigate under less restrictive reductions until a planted crop is harvested (at which time full reductions are applied to his or her permit).

As EAA staff administered this process through multi-year droughts, it has become apparent that the calculations and paperwork required to properly account for irrigation practices are burdensome and complicated for irrigators and staff alike. Consequently, irrigators have come to rely upon staff to guide them through the process at almost every stage of implementation.

As early as the 2013 Board of Directors Work Session, EAA staff began having discussions with the board about the intricacies of Critical Period Management and about trying to simplify the process, while maintaining the intent behind the language of the EAA Act and EAA Rules. However, because of drought conditions and continued implementation of the Critical Period Management Plan since that time, the process of simplification has been slow. At the March 27 meeting, staff provided the Permits/Enforcement Committee with an explanation of the proposed new process, which is intended to be less complicated on all parties, and discussed the potential timing of changes that will require a formal rulemaking. Since then, staff has met with select stakeholders and discussed the concepts to be addressed in a proposed new process.

Under the Proposed Rules, an irrigator would still receive protection from critical period reductions for crops that are in the ground. However, that protection, or exemption from drought restrictions, would be administered at the time of need rather than at the beginning of implementation of critical period management. Such a shift in timing is designed to make calculations for irrigator reductions more understandable and less complicated for both the irrigator and EAA staff. The Proposed Rules, which have been reviewed by legal counsel, are attached in red-lined and clean formats.

At the September 25 meeting, the Permits/Enforcement Committee voted to recommend the board approve the Proposed Rules to amend the following chapters of the Edwards Aquifer Authority Rules, including any necessary renumbering of current rules due to the proposed amendments, and authorize the General Manager to take all actions required by law to process these Proposed Rules:

Chapter 715 (Comprehensive Water Management)
Subchapter E (Critical Period Management Plan).

M/WBE PARTICIPATION:

This agenda item does not involve the procurement of goods or services by the EAA and, therefore, this section is not applicable.

STRATEGIC PLAN REFERENCE:

This agenda item does not relate to a specific goal or action step within the Strategic Plan, but supports the general EAA mission.

FISCAL IMPACT:

None.