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Water Scarcity and Permit Questions: Georgia Farmers at Risk?

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Abstract Text:

The primary purpose of this paper is to consider the following two questions that we believe have paramount importance to Georgia's farming sector:

Question 1: Can the Georgia Environmental Protection Division (EPD) modify, revoke, or in any way alter water use permits during periods of drought?

Question 2: Does the tenure of a permit affect the permittee's vulnerability to any such modification or revocation?

Water users seem to assume that the answers to both of these questions are simple. Particularly for those holding grandfathered permits, there is a strong presumption that the EPD cannot alter permits. However, an examination of state law, EPD regulations, and case law yields ambiguous answers to both of these questions. Permittees may not have the clear rights to water that they believe that they have. "Grandfathered," or permits based on applications submitted prior to December 1, 1999, may not have the protection from involuntary suspension (during drought) that many permit holders assume. Moreover, current law that excludes permits based on applications received by the EPD after December 1, 1999 from the Flint River Drought Protection Act, which provides for voluntary and involuntary suspension of permits (with compensation), creates a curious situation where permits based on applications received by the EPD prior to December 1, 1999 (including grandfathered permits) may be involuntarily suspended, but newly issued permits (those based on applications submitted on or after December 1, 1999) are not subject involuntary suspension proceedings.

Water scarcity issues are becoming more prevalent nationwide and the humid southeast is no exception. As the focus on water use, allocation and demand management intensifies many agricultural water users may learn their understanding of their permitted "rights" are unfounded. This paper explores the developing situation in Georgia and the possible impacts.

Impact Statement:

This project endeavors to clear up the misunderstandings in Georgia's farming sector in regard to State issued water withdrawal permits. The agricultural community's understanding of their rights and responsibilities with regard to water use is a key to beneficial management. Understanding the limitations and uncertainties of access to the resource, even when permitted, helps promote investment in efficiency and thus protects the resource. A well protected resource will sustain the agricultural practices reliant on it.

The lessons being learned in Georgia may well be applicable in other states that are also just beginning to experience water scarcity.