



## Base irrigation water rule change discussion paper

The purpose of this document is to briefly describe the potential rule changes that staff have been discussing internally as well as to follow up on the discussion at the December 2016 board meeting relative to certain provisions within our existing base conversion rules. The hope is that this information and associated discussions will provide needed guidance for staff to proceed.

EAA staff have been considering certain changes to the EAA's existing rules related to base irrigation groundwater, specifically the processes by which permit holders can convert base irrigation water to unrestricted groundwater. This base irrigation groundwater ("BIG") is that water that was legislatively required to be tied to the land on which it was historically used for irrigation and was required to stay with that land unless certain conditions were met to allow for its conversion. The only case where BIG is not tied directly to all land on which it was applied is in the case of stacked base, which occurs when water from one farm was used on an adjacent farm by the same user during the historical use period.

Any discussion of possible rule changes are intended to foster consideration and development of a more clearly defined process for permit holders and staff to use in circumstances that are deemed appropriate for conversion to take place. It is intended that any changes to the conversion process will provide benefits to both permit holders and staff because additional clarity in the rules and realized during the application process will create a situation where permit holders will be positioned to make better decisions relating to their permits and staff will be able to utilize a more defined process when making recommendations to the board.

Currently, permit holders with BIG can apply to convert that water to unrestricted in two ways:

1. By demonstrating the **conservation** of water via efficiency upgrades
2. By demonstrating a **change in land use** as a result in:
  - a. The subject land has been physically developed such that at least 75% of the land (subject to the application) has been developed,
  - b. The historically irrigated land is no longer practicable to farm as evidenced by meeting two or more of the following limitations:
    1. Land is located within a City's corporate limits or Extra-territorial jurisdiction
    2. Land is sufficiently bordered by development
    3. Land has been re-zoned not allowing for agricultural use and
  - c. The land has not been irrigated for 5 or more years.

Staff would like to begin discussions with the Permits/Enforcement Committee to further consider potential rule changes relative to BIG conversions in three areas:

### **Stacked Base**

Some irrigated farms with EAA permits currently have “stacked BIG” (BIG in excess of the 1 acre-foot per acre legislative minimum). Such permit holders may wish to free up some of this stacked BIG as the off-site use that created it is no longer occurring and current use of the entire stacked amount may be unreasonable when the size of the appurtenant property is considered. Staff recommends that the Board consider rule change discussions that would allow for irrigation permit holders with stacked BIG to convert certain portions due solely to its stacked designation without consideration of any other qualifying conditions.

### **Changes in land (farm) ownership to entities with eminent domain authority:**

The sale of farms with BIG occasionally results in a new permit holder that has the power of condemnation or eminent domain authority. Such entities are currently treated in the same manner as all other permit holders regarding an application to convert, regardless of their interest in using the associated withdrawal permit. These entities are likely governmental agencies, but may include some private companies as well. Staff view the ownership of such property by these entities as being bound or potentially controlled in a manner that is not unlike a zoning change as these types of entities can dictate the type of acceptable land uses on the property. It may be reasonable to allow such owners to convert the associated BIG without consideration of other qualifying conditions.

### **Land bordered by development**

Current rules allow for irrigation permit holders to apply to convert BIG as a result of the demonstration that the land is no longer practicable to farm due to the fact that it has been “sufficiently bordered by development.” This rule is designed to allow BIG to be converted due to the fact that encroaching development has created a situation that does not allow for the continued irrigation of the property. This may include, but is not limited to, difficult access to the property (traffic issues), and challenges to the application of certain chemicals needed to farm. Staff believes the current language in the rules regarding “sufficiently bordered by development” is vague and in need of either clarification or a process change. Such a change would most likely require the input of subject matter experts as consideration proceeds.