

Agriculture & Ecology Committee

HB 1878

Brief Description: *Regarding water rights under family farm permits.*

Sponsors: *Representatives G. Chandler, Linville, Lovick, O'Brien, Wood, Edmonds and Jackley.*

Brief Summary of Bill

- *Allows the transfer of water made surplus to a water use under a family farm permit through more efficient practices or technologies to be transferred to any use under certain circumstances.*
- *Allows the transfer of a water right established under a family farm permit to non-irrigation uses under certain circumstances.*

Hearing Date: *2/13/01*

Staff: *Kenneth Hirst (786-7105).*

Background:

Modifying Existing Water Rights. *There are several fundamental elements of a water right. One is its priority (or seniority). Other elements of the water right include: the amount of water that may be withdrawn from a particular water source under the right, the time of year and point from which the water may be withdrawn, the type of water use authorized under the right (such as an agricultural or municipal use), and the place that the water may be used. Certain of these elements of a water right may be modified with the approval of the DOE if the modification would not impair other existing water rights. Alterations in water rights are referred to in statute as transfers, changes, and amendments of water rights. (RCW 90.03.380 and 90.44.100.)*

Family Farm Permits. *Family farm permits are water right permits issued under the Family Farm Water Act. The Act was adopted by the voters through the approval of Initiative Measure No. 59 in 1977. The Act requires that all water right permits issued*

after December 8, 1977, for irrigating agricultural lands be classified as: family farm permits, family farm development permits, public water entity permits, and publicly owned land permits. The principal permit for using water to irrigate privately owned agricultural lands under the Act is the family farm permit. (See RCW 90.66.050.) A family farm permit must limit the use of water withdrawn for irrigation of agricultural lands to land qualifying as a family farm. (RCW 90.66.050(1).) Under the Act, a family farm is not more than 2000 contiguous or noncontiguous acres of irrigated agricultural lands. (RCW 90.66.040(1).)

The Act states that the right to withdraw water for use for irrigating agricultural lands under such a permit is subject to the irrigated land's complying with the definition of a family farm as defined at the time the permit is issued. If a person's acquisition of land and water rights would otherwise cause land being irrigated under the permit to lose its status as a family farm, all lands held or acquired must again be in compliance with the definition of a family farm within 5 years from the date of the acquisition. (RCW 90.66.060(1).) Further, if the Department of Ecology (DOE) determines that water is being withdrawn under such a permit for use on land not in conformity with the definition of a family farm, the DOE must notify the permit holder and the permit must be suspended 2 years later unless the land is again in conformity with the definition of a family farm. The period may be extended in certain circumstances. If conformity is not achieved within 5 years of the notice, the withdrawal rights must be canceled. (RCW 90.66.060(2).) The DOE interprets these requirements as prohibiting the water right from being changed or amended so that it may be used for any purpose other than irrigating agricultural lands.

Summary of Bill:

A "transfer" of a water right under the Family Farm Water Act is defined broadly to include transfers, changes, and amendments of surface and ground water rights. (Section 2.) If a portion of the water governed by a water right established under the authority of a family farm permit is made surplus to the beneficial uses exercised under the right, the right to use the surplus water may be transferred to any purpose of use that is a beneficial use of water. For this purpose, a water right or portion of a water right may be made surplus through the implementation of practices or technologies, including conveyance practices or technologies, that are more efficient or more water-use efficient than those under which the right was perfected. This authority cannot be used to transfer the portion of a water right that is necessary for the production of crops historically grown under the right nor to transfer a water right or a portion of a water right that has not been perfected through beneficial use before the transfer. (Section 1(3) and 3(3).)

All other transfers of water rights established under a family farm permit to uses that are for agricultural irrigation purposes are subject to the 2000 irrigated acreage provisions of the Family Farm Water Act. Within this limitation for irrigated acreage, a water right established under a family farm permit may be transferred to any purpose of use that is a beneficial use of water:

·if the transfer is made exclusively under a lease agreement; or

·if the water right is for the use of water at a location that is, immediately before the transfer is approved, within the boundaries of a city or town or within the boundaries of an urban growth area designated under the Growth Management Act. (Section 1(2) and 3(3).)

A provision of the Surface Water Code limiting transfers to not more than an "annual consumptive quantity" of water calculated over the most recent 5-year period, but expressly allowing that quantity to be transferred, does not apply to transfers of water rights established under a family farm permit. (Section 4.)

Appropriation: *None.*

Fiscal Note: *Requested on February 11, 2001.*

Effective Date: *Ninety days after adjournment of session in which bill is passed.*