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HOUSE BILL 1878

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State of Washington

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By Representatives G. Chandler, Linville, Lovick, O'Brien, Wood, Edmonds and Jackley

Read first time 02/07/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water rights established under the authority  
2 of family farm permits; amending RCW 90.66.040, 90.66.060, and  
3 90.03.380; and adding a new section to chapter 90.66 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.66  
6 RCW to read as follows:

7 (1) Transfers of water rights established under the authority  
8 of family farm permits may be approved as authorized under this  
9 section and under RCW 90.03.380, 90.03.390, or 90.44.100 as  
10 appropriate.

11 (2) A water right established under the authority of a family  
12 farm permit may be transferred:

13 (a) For use for agricultural irrigation purposes as limited by  
14 RCW 90.66.060 (1) and (2) except as provided in RCW 90.66.060(3);

15 (b) To any purpose of use that is a beneficial use of water if  
16 the transfer is made exclusively under a lease agreement, except  
17 that transfers for the use of water for agricultural irrigation

1 purposes shall be limited as provided by RCW 90.66.060 (1) and  
2 (2);

3 (c) To any purpose of use that is a beneficial use of water if  
4 the water right is for the use of water at a location that is,  
5 immediately before the transfer is approved, within the boundaries  
6 of a city or town or within the boundaries of an urban growth area  
7 designated under chapter 36.70A RCW, except that transfers for the  
8 use of water for agricultural irrigation purposes shall be limited  
9 as provided by RCW 90.66.060 (1) and (2).

10 (3) If a portion of the water governed by a water right  
11 established under the authority of a family farm permit is made  
12 surplus to the beneficial uses exercised under the right through  
13 the implementation of practices or technologies, including but not  
14 limited to conveyance practices or technologies, which are more  
15 efficient or more water-use efficient than those under which the  
16 right was perfected, the right to use the surplus water may be  
17 transferred to any purpose of use that is a beneficial use of  
18 water. Nothing in this subsection authorizes: A transfer of the  
19 portion of a water right that is necessary for the production of  
20 crops historically grown under the right; or a transfer of a water  
21 right or a portion of a water right that has not been perfected  
22 through beneficial use before the transfer.

23 (4) The authority granted by this section to transfer or alter  
24 the purpose of use of a water right established under the  
25 authority of a family farm permit shall not be construed as  
26 limiting in any manner the authority granted by RCW 90.03.380,  
27 90.03.390, or 90.44.100 to alter other elements of such a water  
28 right.

29 **Sec. 2.** RCW 90.66.040 and 1979 c 3 s 4 are each amended to read as  
30 follows:

31 For the purposes of this chapter, the following definitions  
32 shall be applicable:

33 (1) "Family farm" means a geographic area including not more  
34 than two thousand acres of irrigated agricultural lands, whether  
35 contiguous or noncontiguous, the controlling interest in which is  
36 held by a person having a controlling interest in no more than two

1 thousand acres of irrigated agricultural lands in the state of  
2 Washington which are irrigated under rights acquired after  
3 December 8, 1977.

4 (2) "Person" means any individual, corporation, partnership,  
5 limited partnership, organization, or other entity whatsoever,  
6 whether public or private. The term "person" shall include as one  
7 person all corporate or partnership entities with a common  
8 ownership of more than one-half of the assets of each of any  
9 number of such entities.

10 (3) "Controlling interest" means a property interest that can  
11 be transferred to another person, the percentage interest so  
12 transferred being sufficient to effect a change in control of the  
13 landlord's rights and benefits. Ownership of property held in trust  
14 shall not be deemed a controlling interest where no part of the  
15 trust has been established through expenditure or assignment of  
16 assets of the beneficiary of the trust and where the rights of the  
17 family farm permit which is a part of the trust cannot be  
18 transferred to another by the beneficiary of the trust under terms  
19 of the trust. Each trust of a separate donor origin shall be  
20 treated as a separate entity and the administration of property  
21 under trust shall not represent a controlling interest on the part  
22 of the trust officer.

23 (4) "Department" means the department of ecology of the state  
24 of Washington.

25 (5) "Application", "permit" and "public waters" shall have the  
26 meanings attributed to these terms in chapters 90.03 and 90.44  
27 RCW.

28 (6) "Public water entity" means any public or governmental  
29 entity with authority to administer and operate a system to supply  
30 water for irrigation of agricultural lands.

31 (7) "Transfer" means a transfer, change, or amendment to a  
32 water right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

33 (8) "Withdraw" means to withdraw ground water or to divert  
34 surface water.

35 **Sec. 3.** RCW 90.66.060 and 1979 c 3 s 6 are each amended to read as  
36 follows:

37 (1) Except as provided in subsections (2) and (3) of this

1 section, the right to withdraw water for use for the irrigation of  
2 agricultural lands under authority of a family farm permit shall  
3 have no time limit (~~but~~) and shall be conditioned upon the land  
4 being irrigated complying with the definition of a family farm as  
5 defined at the time the permit is issued(~~(:—PROVIDED, HOWEVER,~~  
6 That)).

7 (2) If the acquisition by any person of land and water rights  
8 by gift, devise, bequest, or by way of bona fide satisfaction of a  
9 debt, would otherwise cause land being irrigated pursuant to a  
10 family farm permit to lose its status as a family farm, such  
11 acquisition shall be deemed to have no effect upon the status of  
12 family farm water permits pertaining to land held or acquired by  
13 the person acquiring such land and water rights if all lands held  
14 or acquired are again in compliance with the definition of a  
15 family farm within five years from the date of such acquisition.

16 ((+2)) If the department determines that water is being  
17 withdrawn under a family farm permit for use on land not in  
18 conformity with the definition of a family farm, the department  
19 shall notify the holder of such family farm permit by personal  
20 service of such fact and the permit shall be suspended two years  
21 from the date of receipt of notice unless the person having a  
22 controlling interest in said land satisfies the department that  
23 such land is again in conformity with the definition of a family  
24 farm. The department may, upon a showing of good cause and  
25 reasonable effort to attain compliance on the part of the person  
26 having the controlling interest in such land, extend the two year  
27 period prior to suspension. If conformity is not achieved prior to  
28 five years from the date of notice the rights of withdrawal shall  
29 be canceled.

30 (3) This section does not apply in any manner whatsoever to a  
31 transfer of surplus water authorized by section 1(3) of this act;  
32 however, this section does apply to other transfers of a water  
33 right established under the authority of a family farm permit to  
34 the extent that the transfer is to a use of water for agricultural  
35 irrigation purposes.

36 **Sec. 4.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
37 read as follows:

1 (1) The right to the use of water which has been applied to a  
2 beneficial use in the state shall be and remain appurtenant to the  
3 land or place upon which the same is used: PROVIDED, HOWEVER,  
4 That the right may be transferred to another or to others and  
5 become appurtenant to any other land or place of use without loss  
6 of priority of right theretofore established if such change can be  
7 made without detriment or injury to existing rights. The point of  
8 diversion of water for beneficial use or the purpose of use may be  
9 changed, if such change can be made without detriment or injury to  
10 existing rights.

11 (a) A change in the place of use, point of diversion, and/or  
12 purpose of use of a water right to enable irrigation of additional  
13 acreage or the addition of new uses may be permitted if such  
14 change results in no increase in the annual consumptive quantity  
15 of water used under the water right. For purposes of this section,  
16 "annual consumptive quantity" means the estimated or actual annual  
17 amount of water diverted pursuant to the water right, reduced by  
18 the estimated annual amount of return flows, averaged over the  
19 most recent five-year period of continuous beneficial use of the  
20 water right.

21 (b) Before any transfer of such right to use water or change of  
22 the point of diversion of water or change of purpose of use can be  
23 made, any person having an interest in the transfer or change,  
24 shall file a written application therefor with the department, and  
25 the application shall not be granted until notice of the  
26 application is published as provided in RCW 90.03.280. If it shall  
27 appear that such transfer or such change may be made without  
28 injury or detriment to existing rights, the department shall issue  
29 to the applicant a certificate in duplicate granting the right for  
30 such transfer or for such change of point of diversion or of use.  
31 The certificate so issued shall be filed and be made a record with  
32 the department and the duplicate certificate issued to the  
33 applicant may be filed with the county auditor in like manner and  
34 with the same effect as provided in the original certificate or  
35 permit to divert water.

36 (2) If an application for change proposes to transfer water  
37 rights from one irrigation district to another, the department  
38 shall, before publication of notice, receive concurrence from each

1 of the irrigation districts that such transfer or change will not  
2 adversely affect the ability to deliver water to other landowners  
3 or impair the financial integrity of either of the districts.

4 (3) A change in place of use by an individual water user or  
5 users of water provided by an irrigation district need only  
6 receive approval for the change from the board of directors of the  
7 district if the use of water continues within the irrigation  
8 district, and when water is provided by an irrigation entity that  
9 is a member of a board of joint control created under chapter  
10 87.80 RCW, approval need only be received from the board of joint  
11 control if the use of water continues within the area of  
12 jurisdiction of the joint board and the change can be made without  
13 detriment or injury to existing rights.

14 (4) This section shall not apply to trust water rights acquired  
15 by the state through the funding of water conservation projects  
16 under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.  
17 Subsection (1)(a) of this section does not apply to and shall not  
18 be construed as providing any limitation to the transfers,  
19 changes, or amendments of water rights established under the  
20 authority of a family farm permit that are authorized under  
21 section 1 of this act.

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