
SENATE BILL 5914

State of Washington

57th Legislature

2001 Regular Session

By Senator Fraser

Read first time 02/07/2001. Referred to Committee on Environment,
Energy & Water.

1 AN ACT Relating to conditions for transfer, change, or amendment of
2 water rights established as family farm permits; amending RCW 90.66.040
3 and 90.66.060; and adding new sections 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 RCW
6 to read as follows:

7 (1) Transfers of water rights established as family farm permits
8 under this chapter may be approved as authorized under this section and
9 under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as
10 appropriate.

11 (2) A family farm permit may be transferred:

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

14 (b) To any purpose of use that is a beneficial use of water if the
15 transfer is made exclusively under a lease agreement, except that
16 transfers for the use of water for agricultural irrigation purposes
17 shall be limited as provided by RCW 90.66.060 (1) and (2);

18 (c) To any purpose of use that is a beneficial use of water if the
19 water right is for the use of water at a location that is, immediately

1 before the transfer is approved, within the boundaries of a city or
2 town or within the boundaries of an urban growth area designated under
3 chapter 36.70A RCW, except that transfers for the use of water for
4 agricultural irrigation purposes shall be limited as provided by RCW
5 90.66.060 (1) and (2).

6 (3) If a portion of the water governed by a water right established
7 under the authority of a family farm permit is made surplus to the
8 beneficial uses exercised under the right through the implementation of
9 practices or technologies, including but not limited to conveyance
10 practices or technologies, which are more efficient or more water-use
11 efficient than those under which the right was perfected, the right to
12 use the surplus water may be transferred to any purpose of use that is
13 a beneficial use of water. Nothing in this subsection authorizes: A
14 transfer of the portion of a water right that is necessary for the
15 production of crops historically grown under the right; or a transfer
16 of a water right or a portion of a water right that has not been
17 perfected through beneficial use before the transfer. Water right
18 transfers approved under this subsection must be consistent with the
19 provisions of RCW 90.03.380(1).

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

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

27 For the purposes of this chapter, the following definitions shall
28 be applicable:

29 (1) "Family farm" means a geographic area including not more than
30 two thousand acres of irrigated agricultural lands, whether contiguous
31 or noncontiguous, the controlling interest in which is held by a person
32 having a controlling interest in no more than two thousand acres of
33 irrigated agricultural lands in the state of Washington which are
34 irrigated under rights acquired after December 8, 1977.

35 (2) "Person" means any individual, corporation, partnership,
36 limited partnership, organization, or other entity whatsoever, whether
37 public or private. The term "person" shall include as one person all

1 corporate or partnership entities with a common ownership of more than
2 one-half of the assets of each of any number of such entities.

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

15 (4) "Department" means the department of ecology of the state of
16 Washington.

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

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

22 (7) "Transfer" means a transfer, change, or amendment to a water
23 right authorized under RCW 90.03.380, 90.03.390, or 90.44.100 or
24 chapter 90.80 RCW.

25 (8) "Withdraw" means to withdraw ground water or to divert surface
26 water.

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

29 (1) Except as provided in subsections (2) and (3) of this section,
30 the right to withdraw water for use for the irrigation of agricultural
31 lands under authority of a family farm permit shall have no time limit
32 ((but)) and shall be conditioned upon the land being irrigated
33 complying with the definition of a family farm as defined at the time
34 the permit is issued((:—PROVIDED, HOWEVER, That)).

35 (2) If the acquisition by any person of land and water rights by
36 gift, devise, bequest, or by way of bona fide satisfaction of a debt,
37 would otherwise cause land being irrigated pursuant to a family farm
38 permit to lose its status as a family farm, such acquisition shall be

1 deemed to have no effect upon the status of family farm water permits
2 pertaining to land held or acquired by the person acquiring such land
3 and water rights if all lands held or acquired are again in compliance
4 with the definition of a family farm within five years from the date of
5 such acquisition.

6 ~~((2))~~ (3) For family farm permits under this chapter, if the
7 department determines that water is being withdrawn ~~((under a family~~
8 ~~farm permit))~~ for use on land not in conformity with the definition of
9 a family farm, the department shall notify the holder of such family
10 farm permit by personal service of such fact and the permit shall be
11 suspended two years from the date of receipt of notice unless the
12 person having a controlling interest in said land satisfies the
13 department that such land is again in conformity with the definition of
14 a family farm. The department may, upon a showing of good cause and
15 reasonable effort to attain compliance on the part of the person having
16 the controlling interest in such land, extend the two year period prior
17 to suspension. If conformity is not achieved prior to five years from
18 the date of notice the rights of withdrawal shall be canceled.

19 (4) This section does not apply in any manner whatsoever to a
20 transfer of surplus water authorized by section 1(3) of this act.
21 However, this section does apply to other transfers of a water right
22 established under the authority of a family farm permit to the extent
23 that the transfer is to a use of water for agricultural irrigation
24 purposes.

25 NEW SECTION. Sec. 4. A new section is added to chapter 90.66 RCW
26 to read as follows:

27 A certificate of water right must be issued to the holder of a
28 family farm permit, a publicly owned land permit, or a public water
29 entity permit in accordance with RCW 90.03.330 after and to the extent
30 that water has been put to beneficial use. However, a person holding
31 a family farm permit must not be issued a water right certificate until
32 the person has divested controlling interest in all irrigated acreage
33 exceeding two thousand acres.

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