

**Chapter 90.66 RCW
FAMILY FARM WATER ACT**

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RCW 90.66.010 Short title. This chapter shall be known and may be cited as the "Family Farm Water Act". [1979 c 3 s 1 (Initiative Measure No. 59, approved November 8, 1977).]

RCW 90.66.020 Prior existing rights to withdraw and use public waters not affected. Nothing in this chapter shall affect any right to withdraw and use public waters if such rights were in effect prior to *the effective date of the act, and nothing herein shall modify the priority of any such existing right. [1979 c 3 s 2 (Initiative Measure No. 59, approved November 8, 1977).]

***Reviser's note:** "The effective date of the act" [1979 c 3 (Initiative Measure No. 59)], consisting of RCW 90.66.010 through 90.66.080, 90.66.900, and 90.66.910, is "thirty days after the election at which it is approved" as mandated by Article II, section 1(d) of the Washington Constitution. Initiative Measure No. 59 was approved by the voters at the election November 8, 1977, and was so certified by the governor on December 8, 1977.

RCW 90.66.030 Public policy enunciated—Maximum benefit from use of public waters—Irrigation. The people of the state of Washington recognize that it is in the public interest to conserve and use wisely the public surface and ground waters of the state in a manner that will assure the maximum benefit to the greatest possible number of its citizens. The maximum benefit to the greatest number of citizens through the use of water for the irrigation of agricultural lands will result from providing for the use of such water on family farms. To assure that future permits issued for the use of public waters for irrigation of agricultural lands will be made on the basis of deriving such maximum benefits, in addition to any other requirements in the law, all permits for the withdrawal of public waters for the purpose of irrigating agricultural lands after *the effective date of this act

shall be issued in accord with the provisions of this chapter. [1979 c 3 s 3 (Initiative Measure No. 59, approved November 8, 1977).]

***Reviser's note:** "the effective date of this act," see note following RCW 90.66.020.

RCW 90.66.040 Definitions. For the purposes of this chapter, the following definitions shall be applicable:

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

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

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

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

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

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

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

(8) "Withdraw" means to withdraw groundwater or to divert surface water. [2001 c 237 s 24; 1979 c 3 s 4 (Initiative Measure No. 59, approved November 8, 1977).]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

RCW 90.66.050 Classes of permits for withdrawal of public waters for irrigation purposes—Conditions—Requirements. After *the effective date of this act, all permits issued for the withdrawal of public waters for the purpose of irrigating agricultural lands shall

be classified as follows and issued with the conditions set forth in this chapter:

(1) "Family farm permits". Such permits shall limit the use of water withdrawn for irrigation of agricultural lands to land qualifying as a family farm.

(2) "Family farm development permits". Such permits may be issued to persons without any limit on the number of acres to be irrigated during a specified period of time permitted for the development of such land into family farms and the transfer of the controlling interest of such irrigated lands to persons qualifying for family farm permits. The initial period of time allowed for development and transfer of such lands to family farm status shall not exceed ten years. Such time limit may be extended by the department for not to exceed an additional ten years upon a showing to the department that an additional period of time is needed for orderly development and transfer of controlling interests to persons who can qualify for family farm permits.

(3) "Publicly owned land permits". Such permits shall be issued only to governmental entities permitting the irrigation of publicly owned lands.

(4) "Public water entity permits". Such permits may be issued to public water entities under provisions requiring such public water entity, with respect to delivery of water for use in the irrigation of agricultural lands, to make water deliveries under the same provisions as would apply if separate permits were issued for persons eligible for family farm permits, permits to develop family farms, or for the irrigation of publicly owned land: PROVIDED, HOWEVER, That such provisions shall not apply with respect to water deliveries on federally authorized reclamation projects if such federally authorized projects provide for acreage limitations in water delivery contracts. [1979 c 3 s 5 (Initiative Measure No. 59, approved November 8, 1977).]

***Reviser's note:** "the effective date of this act," see note following RCW 90.66.020.

RCW 90.66.060 Withdrawal of water under family farm permit—Conditioned upon complying with definition of family farm—Suspension of permit, procedures, time. (1) Except as provided in subsections (2) and (3) of this section, the right to withdraw water for use for the irrigation of agricultural lands under authority of a family farm permit shall have no time limit and shall be conditioned upon the land being irrigated complying with the definition of a family farm as defined at the time the permit is issued.

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

(3) For family farm permits under this chapter, if the department determines that water is being withdrawn for use on land not in conformity with the definition of a family farm, the department shall notify the holder of such family farm permit by personal service of

such fact and the permit shall be suspended two years from the date of receipt of notice unless the person having a controlling interest in said land satisfies the department that such land is again in conformity with the definition of a family farm. The department may, upon a showing of good cause and reasonable effort to attain compliance on the part of the person having the controlling interest in such land, extend the two year period prior to suspension. If conformity is not achieved prior to five years from the date of notice the rights of withdrawal shall be canceled. [2001 c 237 s 25; 1979 c 3 s 6 (Initiative Measure No. 59, approved November 8, 1977).]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

RCW 90.66.065 Transfers or change in purpose of family farm permits. (1) Transfers of water rights established as family farm permits under this chapter may be approved as authorized under this section and under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as appropriate.

(2) A family farm permit may be transferred:

(a) For use for agricultural irrigation purposes as limited by RCW 90.66.060 (1) and (2);

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

(c) To any purpose of use that is a beneficial use of water if the water right is for the use of water at a location that is, at the time the transfer is approved, within the boundaries of an urban growth area designated under chapter 36.70A RCW or, in counties not planning under chapter 36.70A RCW, within a city or town or within areas designated for urban growth in comprehensive plans prepared under chapter 36.70 RCW, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2).

(3) 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 through the implementation of practices or technologies, including but not limited to conveyance practices or technologies, that are more water-use efficient than those under which the right was perfected, the right to use the surplus water may be transferred to any purpose of use that is a beneficial use of water. Nothing in this subsection authorizes: A transfer of the portion of a water right that is necessary for the production of crops historically grown under the right; or a transfer of a water right or a portion of a water right that has not been perfected through beneficial use before the transfer. Water right transfers approved under this subsection must be consistent with the provisions of RCW 90.03.380(1).

(4) Before a change in purpose of a family farm water permit to municipal supply purpose or domestic purpose may be authorized, the public water system that is receiving the family farm water permit must be meeting the water conservation requirements of its current

water system plan approved by the department of health or its small water system management program.

(5) The place of use for a water right transferred under the authority of this section shall remain within: The water resource inventory area containing the place of use for the water right before the transfer; or the urban growth area or contiguous urban growth areas of the place of use for the water right before the transfer if the urban growth area or contiguous urban growth areas cross boundaries of water resource inventory areas.

(6) The authority granted by this section to transfer or alter the purpose of use of a water right established under the authority of a family farm permit shall not be construed as limiting in any manner the authority granted by RCW 90.03.380, 90.03.390, or 90.44.100 to alter other elements of such a water right. [2001 c 237 s 23.]

Intent—2001 c 237: "It is the intent of the legislature to help preserve the agricultural economy of the state by allowing changes of family farm water permits from agricultural irrigation to other agricultural purposes. Within the urbanizing areas of the state, the legislature recognizes the need to allow water from family farms to be converted to other purposes as the use of the land changes consistent with adopted land use plans. The legislature also intends to allow farmers to benefit from water conservation projects and from temporary leases of their family farm water permits. Water conservation and water leases will also allow farmers to contribute to instream flows and other purposes. However, outside of urbanizing areas, the legislature intends to preserve farmlands by ensuring that the quantity of water needed to grow the crops historically grown remains with the farm. In addition, to help retain family farms within the state, the legislature intends to allow family farms of a large enough size to be economically viable under modern agricultural market conditions." [2001 c 237 s 22.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

RCW 90.66.070 Transfer of property entitled to water under permit—Rights—Requirements. (1) At any time that the holder of a family farm development permit or a publicly owned land permit shall transfer the controlling interest of all or any portion of the land entitled to water under such permit to a person who can qualify to receive water for irrigation of such land under a family farm permit, the department shall, upon request, issue a family farm permit to such person under the same conditions as would have been applicable if such request had been made at the time of the granting of the original family farm development permit. If the permit under which water is available is held by a public water entity prior to the transfer of the controlling interest to a person who qualifies for a family farm permit, such entity shall continue delivery of water to such land without any restriction on the length of time of delivery not applicable generally to all its water customers.

(2) The issuance of a family farm permit secured through the acquisition of land and water rights from the holder of a family farm development permit, or from the holder of a publicly owned land permit, where water delivery prior to the transfer is from a public

water entity, may be conditioned upon the holder of the family farm permit issued continuing to receive water through the facilities of the public water entity. [1979 c 3 s 7 (Initiative Measure No. 59, approved November 8, 1977).]

RCW 90.66.080 Rules and regulations—Decisions, review. The department is hereby empowered to promulgate such rules as may be necessary to carry out the provisions of this chapter. Decisions of the department, other than rule making, shall be subject to review in accordance with chapter 43.21B RCW. [1979 c 3 s 8 (Initiative Measure No. 59, approved November 8, 1977).]

Pollution control hearings board of the state: Chapter 43.21B RCW.

RCW 90.66.900 Liberal construction—Initiative Measure No. 59. This chapter is exempted from the rule of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. [1979 c 3 s 9 (Initiative Measure No. 59, approved November 8, 1977).]