

Murphy & Buchal LLP

P.O. Box 86620

Portland, Oregon 97286

telephone: (503) 227-1011

fax: (503) 573-1939

e-mail: jbuchal@mblp.com

MEMORANDUM

To: Dr. Darryll Olsen, Alternate Board Director
Franklin County Water Conservancy Board

From: James L. Buchal

Date: January 14, 2026

Re: Family Farm Act Leases

You have asked me to describe the nature of a “lease agreement” as that term is utilized in the Family Farm Act, RCW 90.66.065, and the nature of “common ownership” or “controlling” property interests in leases that may trigger transfer restrictions under RCW 90.66.060(1) and (2). As set forth below, a “lease agreement” is simply a contract allowing use of a Family Farm Act water right for some defined term, perhaps with rights of renewal, with the statute providing no limitations on the term a holder may lease such rights.

What is a Lease?

The term “lease” is used throughout the Water Code to signify the longstanding common law definition of a “lease,” which the Legislature has elsewhere defined as “a written agreement which gives rise to a relationship of landlord and tenant, affecting commercial real estate, such that the holder of a leasehold interest in the commercial real estate has the right to the use and possession of the commercial real estate during the term of the lease.” RCW 60.42.005. It is the existence of a term—less than a permanent transfer of the right of possession—that makes leases an inherently temporary transfer as opposed to a permanent title transfer.

The Washington State Department of Ecology has pointed out that there is legislative intent that the Legislature intended farmer to benefit from “temporary leases of their family farm water permits,”¹ which Ecology has suggested may require attention to

¹ Laws of 2001, Chap. 237, § 22.

the duration of leases. The term “lease agreement,” however, is unambiguous and contains no particular durational requirements. It would be contrary to longstanding Washington law for Ecology to attempt to limit the plain meaning of “lease agreement” by reference to legislative history. *See Agrilink Foods, Inc. v. Dep’t of Revenue*, 153 Wn.2d 392, 396 (2005) (“Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency.”). Had the Legislature intended to limit transfers to shorter term leases—contrary to the prevailing practice of longer-term leases of agricultural land—the Legislature could have limited term “lease agreement”. It is commonplace in Washington business transactions for real estate leases of land and water to have durations of decades with renewal rights, and the Legislature made no attempt to limit such practices.

Significantly, Ecology’s formal policy addressing this issue, “Development Schedules for Water Rights Changes and Transfers Policy and Interpretive Statement—POL 1280,” merely states that Ecology should consider the length of the lease when setting development schedule in the change/transfer context, and states that “[l]ong term or renewable Family Farm Water Act lease transfers can be performed under RCW 90.03.380”—the statute used for permanent changes and transfers.²

Ownership-Based Transfer Restrictions

Family Farm Act water permits can, by law, only be used by landowners owning or controlling six thousand or fewer acres of land irrigated with Family Farm Act rights. They can be leased for purposes other than agricultural irrigation purposes to any lessee, but where the lease is for agricultural irrigation purposes the lessee is “limited as provided by RCW 90.66.060(1) and (2)”. RCW 90.66.065(2)(b). For example, if the holder of a Family Farm Water permit wishes to transfer the permit to someone who wishes to make commercial use of it, there are no restrictions other than compliance with the transfer processes of RCW 90.03.380 or RCW 90.03.390. In particular, the broad authority for leases involving a change of purpose under RCW 90.66.065(2)(b) would allow a Family Farm Water Act water rights holder to lease the right to an LLC he controlled so long as a change of purpose was involved.

² Public Review Draft: Development Schedules for Water Rights Changes and Transfers Policy and Interpretive Statement, Policy No. POL 1280, at 7 (October 2025 draft available at <https://apps.ecology.wa.gov/publications/documents/2511105.pdf>).