

# HOUSE BILL REPORT

## HB 1642

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### As Passed Legislature

**Title:** An act relating to surface water permits and rights.

**Brief Description:** Changing surface water permit and rights provisions.

**Sponsors:** Representatives Grant and Mastin.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 2/11/99, 2/19/99 [DP].

#### Floor Activity:

Passed House: 3/5/99, 97-0.

Senate Amended.

Passed Senate: 4/13/99, 49-0.

House Concurred.

Passed Legislature.

### Brief Summary of Bill

- Allows the point of diversion for an undeveloped portion of a water right under a surface water permit to be changed in certain circumstances.
- Allows a stream or lake in a neighboring state to be used as a conveyance system for a surface water right in this state in certain circumstances and with the approval of the neighboring state.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

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

### Background:

In general, a water right permit is issued for the purpose of developing the beneficial use for a water right. Once that use has been developed in accordance with the provisions of the permit, a water right certificate is issued for the use. Both the surface water code and the groundwater code allow for "transfers" of rights, through the approval of transfers, changes, or amendments regarding water rights. In recent decisions, the State Supreme Court has distinguished between transfers of surface water rights and transfers of groundwater rights. The court has found that the groundwater code does authorize, but the surface water code does not authorize an unperfected permitted right to be transferred under the general transfer sections of that codes.

In certain circumstances, the surface water code expressly allows a person to use a natural stream or lake in this state as a conveyance system to convey the water to which the person has a water right to a diversion point from which the water will be used.

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**Summary of Bill:**

The Department of Ecology may approve a change in the point of diversion prescribed in a permit to appropriate water to a point that is located downstream and is an existing approved intake structure with capacity to transport the additional diversion. This authority is granted if the ownership, purpose of use, season of use, and place of use of the permit remain the same.

The water may be conveyed to such an intake structure in a neighboring state in order to accomplish the modification in the permit, if the approval of the neighboring state is documented to the satisfaction of the department.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The city of Walla Walla would have to construct a diversion and conveyance system in a pristine, un-roaded area in the Blue Mountains to use water under an as yet unperfected water right permit held by the city. With this bill, it is seeking permission to allow the water to flow downstream into Oregon until it reaches the city's currently existing diversion facility that has the capacity to divert this water as well. Such a change in the point of diversion makes both environmental and economic sense. If the city does not perfect the right, it will lose it.

**Testimony Against:** None.

**Testified:** (In favor) Dick McKinley, city of Walla Walla; and Ken Slattery, Department of Ecology.