

HOUSE BILL REPORT

HB 1642

As Amended by the Senate

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.

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.

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.

Summary of Bill:

Under the surface water code, the Department of Ecology may approve a change of the point of diversion for an undeveloped portion of an existing water right permit in certain circumstances. This authority applies to changing an existing authorized point of diversion downstream to an existing intake structure with the available capacity to transport the additional diversion. It applies only if there is no change in the ownership of the permit and if the original purpose and place of use of the water under the permit are not changed.

The authority of a water right holder to use a natural stream or lake in this state as a conveyance system for the person's water right is expanded. The authority now also applies to a watercourse located in a neighboring state, with the neighboring state's approval. The approval must be documented to the satisfaction of the Department of Ecology.

EFFECT OF SENATE AMENDMENT(S): The authority granted by the bill to change the point of diversion specified in a water right permit is intended, under the Senate amendments, to allow such a change when it provides both environmental and water supply benefits and is not to be construed as allowing any other change or transfer of a right to use surface water that has not been beneficially used. The Senate amendments provide additional conditions for such a change: the season of use may not be changed, and the existing intake structure to be used as the new point of diversion must be an "approved" intake structure.

The circumstances under which a natural stream or lake may be used to convey water in a neighboring state are also altered by the Senate amendments: the water may be

conveyed in this manner to an approved intake structure located in a neighboring state to accomplish an approved modification of the point of diversion in a water right permit.

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.