

ANALYSIS OF HB 1642

***House Agriculture & Ecology Committee
10, 1999***

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| <ul style="list-style-type: none">- 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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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. (RCW 90.03.330 and 90.44.080) 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. (RCW 90.03.380 and 90.44.100.) In a 1999 decision (*R. D. Merrill Co. v. P.C.H.B.*), the State Supreme Court distinguished between transfers of surface water rights and transfers of groundwater rights. The Court noted that a beneficial use requirement of the surface water code means that unperfected surface water rights are not among those that may be transferred under the general transfer section of that code, RCW 90.03.380. However, it found that beneficial use is not a prerequisite for a transfer, called an amendment,— under the provisions of the groundwater code.

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. (RCW 90.03.030.)

SUMMARY:

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

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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 the original purpose and place of use of the water under the permit are not changed. (Section 1.)

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 for water use under a water right permit or certificate. (Section 2.)