

# HOUSE BILL REPORT

## ESHB 1453

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**As Passed House:**

February 1, 2008

**Title:** An act relating to changes in the point of diversion under a water right.

**Brief Description:** Regarding points of diversion under a water right.

**Sponsors:** By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Grant, Haler, Moeller, Hankins and Linville).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/12/07, 2/21/07 [DPS].

**Floor Activity:**

Passed House: 2/1/08, 96-0.

### Brief Summary of Engrossed Substitute Bill

- Authorizes the Department of Ecology (DOE) to approve a change of a point of diversion to an approved intake structure at a location in the same pool of the main stem of the Columbia and Snake rivers.
- Requires the DOE to provide a 30 day consultation with interested government agencies, including tribal governments before approving a point of diversion transfer.
- Requires the DOE to report to the Legislature on implementation by January 10, 2010.
- Defines "main stem of the Columbia and Snake rivers" and "pool."

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 12 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz,

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Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Eickmeyer, Grant, Hailey, Lantz, Newhouse, Orcutt, Strow and VanDeWege.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Dickerson and McCoy.

**Staff:** Jaclyn Ford (786-7339).

## **Background:**

### Water Rights

A water right has several elements that define the right, or place limits on water use under the right. These elements include the water right's priority, quantity, time of the year water may be withdrawn, point of diversion, purpose of use, and place of use. There are requirements for specifying each of these elements in a water right permit or certificate and a process for changing certain elements of the water right, such as the place or purpose of use.

A water right is appurtenant to the land or place the water is used. However, certain elements of the water right may be modified with the approval of the Department of Ecology (DOE). Such a modification is called a transfer, change, or amendment of the right. A modification cannot be approved if it would injure or be detrimental to existing water rights. Making such a modification does not alter the priority date (or seniority date) of the right.

### Point of Diversion

Water rights or portions of water rights may be transferred to other uses or places if the transfer can be made without detriment or injury to existing rights. If the transfer involves surface water supplied by an irrigation district, and the transferred water remains in the district, the transfer needs to only be approved by the irrigation district. Other transfers must be approved by the DOE.

A change in the place of use, point of diversion, or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be authorized if the change results in no increase in the annual consumptive quantity (ACQ) of water used under the water right. The method of calculating this ACQ is specified by statute. It is the estimated or actual annual amount of water diverted under the water right, reduced by the estimated annual amount of return flows. It is averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

Water users may make a seasonal or temporary change of point of diversion or place of use of water when the change can be made without detriment to existing rights. Such a seasonal or temporary change requires the permission of the DOE or the local water master. With such approval, water users who own the land to which the water rights are attached may also rotate the use of the water when the rotation can be accomplished without detriment to other existing water rights.

The DOE may allow modification of the point of diversion to a downstream intake structure when a modification will provide both environmental benefits and water supply benefits. The structure must also be located downstream, have an existing approved intake structure with capacity to transport the additional diversion, and have the same ownership, purpose of use, season of use, and place of use.

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**Summary of Engrossed Substitute Bill:**

The DOE may approve any application from a permit to change the point of diversion to an approved intake structure located in the same pool of the main stem of the Columbia and Snake rivers, if the ownership, purpose of use, season of use, and place of use of the permit remain the same. The DOE may not approve a change in the point of diversion if it will result in a negative impact on fish habitat or archeological sites.

Prior to approving the point of diversion transfer, the DOE must provide a 30 day consultation with interested government agencies, including tribal governments, regarding the requested transfer and its potential to affect instream resources in the Columbia River. The DOE will report to the Legislature on the implementation by January 10, 2010.

A pool is any surface water reservoir where water is collected and stored for subsequent beneficial use. The main stem of the Columbia and Snake rivers includes the area from the Bonneville Dam to the upper limits of the pool behind the Chief Joseph Dam on the Columbia River, and from the confluence of the Snake River and the Columbia River to the upper limits of the pool behind the Ice Harbor Dam.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill clarifies point of diversion issues that several municipalities have been coping with. The bill also makes simple changes that help many cities along the mainstem, improves point of diversion flexibility, and does not cause any harm on the Columbia or Snake rivers.

(Concerns) Water right certificates should not be included in the substitute bill.

(Opposed) Currently, applications for a change in point of diversion are decided on a case-by-case basis, allowing in-stream flows and the effects on salmon to be taken into consideration. This bill would reduce the amount of input needed in order to make informed decisions regarding in-stream flow and the effects on salmon. The Columbia River is not a

stagnant pool; it is a series of pools that are long, thin, sluggish pieces of river that can be up to 76 river miles. Beneficial use, and extent and validity tests should be maintained on applications for point of diversion; only applications with perfected water rights should be approved. Groundwater to surface water changes involve screening that can lead to fish fatality.

**Persons Testifying:** (In support) Representative Grant, prime sponsor; Pat Boss, Columbia Snake River Irrigators Association; and Bruce Mackey, Washington State Department of Natural Resources.

(Concerns) Carl Samuelson, Washington Department of Fish and Wildlife.

(Opposed) Dawn Vyvyan, Yakama Nation; and Ken Slattery, Washington State Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.