

# SENATE BILL REPORT

## SB 5519

---

---

As Reported By Senate Committee On:  
Water, Energy & Telecommunications, February 28, 2007

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

**Brief Description:** Directing the department of ecology to approve changes in the point of diversion under a water right.

**Sponsors:** Senators Delvin, Poulsen, Honeyford, McCaslin, Shin and Rasmussen.

**Brief History:**

**Committee Activity:** Water, Energy & Telecommunications: 2/06/07, 2/28/07 [DPS, DNP, w/oRec].

---

### SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5519 be substituted therefor, and the substitute bill do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Holmquist, Marr and Morton.

**Minority Report:** Do not pass.

Signed by Senator Regala.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Oemig.

**Staff:** Margaret King (786-7416)

**Background:** Washington adopted a water right permit system through enactment of a surface water code in 1917 and a ground water code in 1945. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage projects must be established according to the permit system. A person seeking a new water right files an application with the Department of Ecology (Ecology), which must consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington water law is based on the prior appropriation doctrine. The doctrine known as "first in time is first in right" creates a priority system based on the date of use or intent to use water. In times of water shortage, more senior water rights may be exercised to the fullest extent while use of water under more junior rights may be reduced or prohibited.

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. State statutes include requirements for specifying each of these elements in a water right permit or certificate and provide a process for changing certain elements of the water right, such as the place or purpose of use.

**Summary of Bill:** The Department of Ecology is authorized and directed to approve changes in point of diversion of a water right where the diversion is from one point within a pool, or hydrologically connected groundwater, to any other point within the same pool or hydrologically connected groundwater. There is to be a conclusive presumption that such a change does not impair any other water right, within or without the pool, and is in the public interest. If the new provisions are found to be in conflict with existing provisions of water rights transfer statutes then the new provisions are to prevail.

New definitions are provided. "Pool" is defined to mean any surface water reservoir or impoundment on the main stem where water is collected and stored for subsequent beneficial use pursuant to a water right and any groundwater, in direct hydrologic continuity with each pool. "Water right" means any surface or groundwater permit to appropriate water for beneficial use from a pool, whether or not water has actually been applied to beneficial use pursuant to the permit, and any surface or groundwater certificate authorizing the holder to appropriate water from a pool. "Main stem" means the main stem of the Columbia and Snake rivers from the Bonneville dam to the upper limits of the pool behind the Chief Joseph dam on the Columbia river, from the confluence of the Snake river and the Columbia river to the upper limits of the pool behind the Ice Harbor dam, and any groundwater determined by the department to be in direct hydrologic continuity with each main stem pool.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Water, Energy & Telecommunications):** Definitions for "Mainstem of the Columbia and Snake rivers" and "Pool" are provided for the limited use of the amended code section.

The department may approve a request of a change of point of diversion set forth in a permit for a water right without requiring an environmental benefit if the permit is within the same pool of the mainstem of the Columbia and Snake Rivers and if the ownership, purpose of use, season of use, and place of use of the permit remain the same.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This is really a housekeeping bill that addresses issues that municipalities are having when they need to move diversion from one point to another. The bill can be worked on to address some of the concerns that DOE currently has with the language.

CON: It is unclear how far pool extends. The bill language treats a permit as a water right. It provides a statutory exclusion for a class of water users and if the transfer will not cause harm then there is no need for the legislation. It would allow switches from ground to surface with no analysis and no proof of beneficial use. The bill should have been presented to the Columbia River Advisory Group to allow the ideas and issues to have gone through that process. The bill eliminates the Columbia river management bill's already inadequate protections.

OTHER: We believe that the process in this situation can be simplified but need to work on language in the bill.

**Persons Testifying:** PRO: Bruce Mackey, DNR; Pat Boss, Columbia Snake River Irrigator's Association.

CON: Michael Mayer, Washington Environmental Council; Dawn Vyvyan, Yakama Nation; Carl Samuelson, Washington Department of Fish and Wildlife.

OTHER: Joe Stohr, Department of Ecology.