
**Agriculture & Natural Resources
Committee**

HB 1453

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

Sponsors: Representatives Grant, Haler, Moeller, Hankins and Linville.

Brief Summary of Bill

- Allows changes in the point of diversion under a water right from any point within a pool, or hydraulically connected groundwater, to any other point within the same pool, or hydraulically connected groundwater.
- Requires the Department of Ecology to approve any application filed by a water right holder to change the point of diversion and presumptively conclude that changes in the point of diversion do not impair any other water right and are in the public interest.

Hearing Date: 2/12/07

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 These elements include the water right's priority, quantity, time of the year water may be withdrawn, point of diversion, purpose of use, and place of use.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

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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 [RCW 90.03.380; 90.44.100].

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 [RCW 90.03.380].

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 as 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 [RCW 90.03.380].

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 [RCW 90.03.390].

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 [RCW 90.03.395]. 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 [RCW 90.03.397].

Summary of Bill:

A water right is 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, and any surface or groundwater certificate authorizing the holder to appropriate water for beneficial use from a pool.

The DOE will approve any application from a water right holder to change the point of diversion to any other point of diversion located in the same hydraulically connected pool. A hydraulically connected pool is any surface water reservoir or impoundment on the main stem (certain locations on the Columbia River and Snake River) where water is collected and stored for subsequent beneficial use.

Points of diversion are allowed to change from a surface water diversion to another surface or groundwater diversion, and to change a groundwater diversion to another groundwater or surface water diversion, as long as the change is within the same pool.

There is to be a conclusive presumption that a change in the point of diversion 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.

Appropriation: None.

Fiscal Note: Available.

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