

# SENATE BILL REPORT

## SSB 5635

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As Passed Senate, March 1, 2011

**Title:** An act relating to changes in the point of diversion under a surface water right permit located between Columbia river miles 215.6 and 292

**Brief Description:** Concerning changes in the point of a diversion under a surface water right permit.

**Sponsors:** Senate Committee on Environment, Water & Energy (originally sponsored by Senators Honeyford and Rockefeller; by request of Department of Natural Resources).

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/15/11 [DPS].

Passed Senate: 3/01/11, 49-0.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 5635 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Honeyford, Ranking Minority Member; Chase, Delvin, Fraser, Holmquist Newbry, Morton and Ranker.

**Staff:** Karen Epps (786-7424)

**Background:** Washington operates under a water right permit system. The right to use water that has been put to beneficial use is, and remains, an appurtenance of the land or place where the water is used. The Department of Ecology (Ecology) may permit certain changes to a water right. Ecology may also permit a transfer of a water right from one holder to another. In processing change or transfer applications, Ecology analyzes the validity, limits, and quantity of the right. If it appears that the transfer of the water right, change of point of diversion, or purpose of use can be made without harming existing rights, Ecology must grant the transfer or change.

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. 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 Ecology or the local water master. With such

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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.

Ecology may allow a change 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.

**Summary of Substitute Bill:** Ecology may allow a change of the point of diversion to a point of diversion located between Columbia River miles 215.6 and 292, if the existing point of diversion is also within those miles on the Columbia River.

**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 bill provides a long overdue change to allow for changes within the John Day Pool. This bill will enable the Department of Natural Resources (DNR) to provide more revenue to the school trust. This bill addresses a water right that DNR has on the Columbia River between mile marker 215.6 and 292. Unfortunately the current point of diversion is at a poor location and not proximal to state trust lands and without pumping infrastructure. DNR has been working closely with Ecology since acquiring this permit some time ago. DNR needs to show progress towards putting the water to beneficial use. This bill allows permit holders to move their point of diversion up river within the John Day Pool. This could provide up to \$1 million or more annually to the common school trust. This will also benefit the local farm economy and could create potentially up to 300 additional jobs. There is another pool right upstream, the McNary Pool, for which it may make sense to include in this bill. When moving a point of diversion upstream in a slack pool, the injury or detriment is negligible.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; Clay Sprague, Department of Natural Resources; John Stuhlmiller, Washington Farm Bureau; Ken Slattery, Department of Ecology.