

HOUSE BILL REPORT

ESSB 6513

As Passed House:
March 4, 2016

Title: An act relating to reservations of water in water resource inventory area 45.

Brief Description: Concerning reservations of water in water resource inventory areas 18 and 45.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Warnick, Hobbs, Parlette, Takko, Hargrove and Honeyford).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/24/16 [DP].

Floor Activity:

Passed House: 3/4/16, 93-4.

Brief Summary of Engrossed Substitute Bill

- Requires the Department of Ecology to act on all water rights applications that rely on reservations of water established in rule for the Elwha-Dungeness and Wenatchee watersheds.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 11 members: Representatives Blake, Chair; Walkinshaw, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Hurst, Lytton, Orcutt, Pettigrew, Schmick, Stanford and Van De Wege.

Staff: Jason Callahan (786-7117).

Background:

Watershed Planning.

The Watershed Planning Act establishes a process through which local groups can develop and implement plans for managing and protecting local water resources and rights. The local

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groups authorized to develop watershed plans are organized by water resource inventory areas (WRAs). A WRA is, generally speaking, an area determined to be a distinct watershed.

There are 64 WRAs identified by the Department of Ecology (Department). Each WRA is identified by a number and may contain a local watershed planning group with an identified lead entity. Clallam County is the primary home to WRA 18, which is the Elwha-Dungeness watershed. This WRA is centered around the town of Port Angles and features the Elwha River and the Dungeness River as its major drainages. Chelan County houses WRA 45, which is known as the Wenatchee watershed. The Wenatchee River is the major drainage for WRA 45.

Reservations of Water for Domestic Use.

The Department has the authority to adopt rules establishing a minimum water flow for streams, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways. These levels, commonly called "instream flows," essentially function as water rights with a priority date set at the adoption date of the corresponding rule.

The establishment of an instream flow cannot affect an existing water right with a senior time priority date. Likewise, the Department may not allow any subsequent water withdrawals with a junior priority date to the instream flow that conflicts with the established flow level unless the withdrawals clearly serve to satisfy an overriding consideration of the public interest. As of today, there is an instream flow rule in place for almost half of the state's 64 identified watersheds.

The Department has used the administrative rule-making process to identify specific instances when a defined amount of water may be reserved in specific basins for future domestic uses. The water reserved for future uses may be used regardless of that water use's effect on established instream flows. The Department has found, in rule, that the reservation of water for future uses is necessary to satisfy overriding considerations of public interest.

Two of the basins with reservations of water established by the Department in rule are WRA 18 and WRA 45. Reservations of water for both basins are subject to specific limitations identified by the Department. These limitations include maximum withdrawals allowable in the various subbasins and the allowable purposes of use for the reserved water. The rules also describe the process required to utilize reserved water.

Summary of Bill:

The Department is required to act on all water rights applications that rely on reservations of water established in rule for WRA 18 and WRA 45. A declaration is made that the rule-based water reservations for those two WRAs are consistent with legislative intent and are authorized to be maintained and implemented by the Department.

The Department retains the authority to adopt, amend, or repeal any rules relating to water reservations. This authority extends to the rules effecting both WRA 18 and WRA 45. The

issuance of water rights that rely on reservations of water in WRIA 18 and 45 does not prejudice any other reservations of water in the state.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill was the result of a thorough stakeholder process designed to provide some certainty for the use of water that has already been planned and that serves as the underpinning for regional salmon recovery plans, water quality permits, and growth management decisions. Both of the affected watersheds in the bill have rules in place that are broadly supported and the result of very long, collaborative, local efforts involving myriad interest and thousands of hours of work.

This is a limited approach to make the plans in the two watersheds durable and settle any uncertainty or consequences that may arise due to recent state Supreme Court decisions. A clear legislative intent is helpful in ensuring that the local plans will be able to be implemented.

(Opposed) None.

Persons Testifying: Bruce Wishart, Center for Environmental Law and Policy, Sierra Club; Dawn Vyvyan, Yakama Nation; Tom Loranger, Department of Ecology; Mike Kaputa, Chelan County Natural Resources Department; Joel Walinski; and Raelene Gold.

Persons Signed In To Testify But Not Testifying: None.