

HOUSE BILL REPORT

HB 1013

As Reported by House Committee On:
Rural Development, Agriculture, & Natural Resources
Appropriations

Title: An act relating to the Walla Walla watershed management pilot program.

Brief Description: Concerning the Walla Walla watershed management pilot program.

Sponsors: Representatives Jenkin, Blake, Dent, Fitzgibbon, Mosbrucker, Doglio and Rude.

Brief History:

Committee Activity:

Rural Development, Agriculture, & Natural Resources: 1/16/19, 1/29/19 [DP];
Appropriations: 2/21/19, 2/25/19 [DPS].

Brief Summary of Substitute Bill

- Extends the expiration date for the Walla Walla pilot local water management program from 2019 to 2021.
- Directs the Walla Walla Water Management Board (Board) to collaborate with the Department of Ecology to develop a 30-year integrated water resource management strategic plan.
- Directs the Board to submit a report to the Legislature by November 1, 2020.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

Majority Report: Do pass. Signed by 14 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chapman, Dye, Fitzgibbon, Kretz, Lekanoff, Orcutt, Pettigrew, Ramos, Schmick and Walsh.

Staff: Robert Hatfield (786-7117).

Background:

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.

State Water Law.

Washington water law is based on the prior appropriation doctrine. The doctrine—often known as "first in time, 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 These elements include the water right's priority, quantity, time of the year water may be withdrawn, point of diversion, purpose of use, and place of use.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.

Instream Flow Rules.

The Department of Ecology (Ecology) 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. Ecology must set minimum water flows to protect fish, game, or wildlife resources, when requested by the Department of Fish and Wildlife or if Ecology finds it necessary to protect water quality.

These minimum water flow levels, commonly called instream flows, function as water rights with a priority date set at the adoption date of the corresponding rule. Instream flows have been set in 29 watersheds plus the mainstem of the Columbia River. The instream flow cannot affect an existing water right with a senior priority date, and a junior water right may not affect a senior instream flow.

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 groups authorized to develop watershed plans are organized by Water Resource Inventory Areas (WRIAs). A WRIA is, generally speaking, an area determined to be a distinct watershed. There are 64 WRIAs identified by Ecology. Each WRIA is identified by a number and may contain a local watershed planning group with an identified lead entity.

Walla Walla Pilot Program—Creation.

The Walla Walla pilot local water management program was created through legislation passed in 2009. As part of the legislation, a local water management board was created, with representatives drawn from city and county government, federally recognized Indian tribes, conservation districts, and water rights holders. The Walla Walla Water Management Board (Board) is authorized, among other duties, to assume the role of the local watershed planning unit, to administer the local water plan process, to manage banked water, to acquire water rights, and to enter into agreements with water rights holders to not divert water that becomes available as a result of local water plans and water banking activities. The Board is required to submit reports to the Legislature in 2012, 2015, and 2018. The 2018 report must also contain recommendations on the future of the Board.

Walla Walla Pilot Program—Water Banking.

The pilot program legislation authorized the Board to establish a water bank in which surface water and groundwater right holders may deposit their water rights on a permanent or temporary basis. The Board may manage those water rights in order to mitigate for impairment to instream flows and other existing water rights.

Walla Walla Pilot Program—Water Plan.

The Board is required to produce a water plan for the Walla Walla watershed. The water plan may be effective for a term of one to 10 years. The plan must address, among other things, a determination of the baseline water use for all water rights in the basin, options for reducing total water use from the baseline, a set of practices that provide for flexibility in water use, and an estimate of the amount of water that would remain instream for fish.

Walla Walla Pilot Program—Expiration.

By the terms of the 2009 legislation, the Walla Walla pilot local water management program expires on June 30, 2019.

Summary of Bill:

The expiration date for the Walla Walla pilot local water management program is extended from June 30, 2019, to June 30, 2021.

During the transition period between July 1, 2019, and June 30, 2021, the Walla Walla Water Management Board (Board) must accomplish the following tasks:

- participate with the Department of Ecology (Ecology) to complete performance and financial audits of the Walla Walla pilot local water management program's performance over the course of its existence by the deadline of December 31, 2019;
- continue to work with Ecology, with the Confederated Tribes of the Umatilla Indian Reservation, and with other participants to advance the Walla Walla basin flow-enhancement study;
- collaborate with Ecology to prepare a 30-year integrated water resource management strategic plan, which must incorporate the findings and recommendations from the financial and performance audits;
- develop with Ecology a report to the Legislature recommending the scope and scale of an integrated water resource management strategic plan to achieve the outcomes of improved and sustainable flows for fish, adequate water supplies for agricultural, municipal, and domestic water users, and improved habitat and floodplain functionality in the Walla Walla watershed; and
- coordinate with the Office of the Columbia River to request funding to complete tasks required during the transition period.

The Board, in collaboration with Ecology, must provide its report on the above tasks to the Legislature by November 1, 2020.

Appropriation: None.

Fiscal Note: Requested on January 14, 2019.

Effective Date: The bill contains an emergency clause and takes effect on June 30, 2019.

Staff Summary of Public Testimony:

(In support) The Confederated Tribes of the Umatilla Indian Reservation have been working to restore treaty fishing rights through the Walla Walla partnership. Last year, the partnership passed a motion to go in a different direction in order to produce an integrated water plan. This bill would provide two years in which to develop a 30-year plan. A bi-state flow is underway now in conjunction with the State of Oregon. The two additional years will allow the Department of Ecology to perform two audits: (1) a financial audit; and (2) a performance audit. The audits will show what has been successful, and where the Walla Walla partnership needs to improve. Other water basins have an integrated plan, and the Walla Walla partnership is looking to those plans to see what the Walla Walla integrated plan should look like.

The Walla Walla watershed is a very complex area, and the local community has a much better grasp of the water issues in that area as a result of the Walla Walla partnership. The flow improvements sought under the original Walla Walla pilot project have not yet been realized. An approach such as the one used in the Yakima River basin may be needed. There needs to be a strategy for how individual water projects will fit into a larger basin plan. All of the stakeholders are ready to proceed. The Department of Ecology has worked with its State of Oregon counterpart to focus on this issue. Some of the requested funding would go toward maintaining the Walla Walla partnership structure, and some funding would go toward the flow-enhancement study.

The Walla Walla pilot project was put into place 10 years ago. The plan gave local stakeholders a chance to make the best decisions for the area. The Department of Ecology has remained supportive during the pilot project. The pilot project has achieved multiple successes, including 152 water banking agreements and purchasing 21 acre feet of water rights. The pilot project has not improved instream flows as much as had originally been hoped. To make the needed changes, it will be necessary to construct bigger and more ambitious projects. The Office of the Columbia River has offered assistance to the Walla Walla partnership, which may expand the scope of projects the Walla Walla partnership can take on. The pilot project has been helpful to all stakeholders, and has all but eliminated lawsuits over water rights in the Walla Walla basin.

(Opposed) None.

Persons Testifying: Representative Jenkin, prime sponsor; Kat Brigham, Confederated Tribes of the Umatilla Indian Reservation; Mary Verner, Washington State Department of Ecology; and Todd Kimball, Office of the Walla Walla County Commissioner.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger, Volz and Ybarra.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Rural Development, Agriculture, & Natural Resources:

The substitute bill changes the due date of the performance audit and financial audit of the Walla Walla pilot program from December 31, 2019, to June 30, 2020. Responsibility for the performance audit is changed from the Department of Ecology (Ecology) to the State Auditor's Office. Both audits are required to be conducted within existing resources. The Walla Walla Water Management Board and Ecology are required to report to the Legislature on efforts to incorporate the audit findings into the 30-year integrated water resource management strategic plan. The bill is null and void if funding is not specifically provided in the omnibus appropriations act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on June 30, 2019. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This is an important bill for the cities and counties located in the Walla Walla watershed area. The two-year extension of the program will allow the Department of Ecology to work with the Walla Walla partnership to pursue a future for that area in a manner similar to the work that was done in the Yakima Basin.

(Opposed) None.

(Other) The funding for the capital portion of the bill is in the Governor's proposed budget. The operating funds are not in the Governor's proposed operating budget, although the Office of the Governor's Office has expressed support.

Persons Testifying: (In support) Representative Jenkin, prime sponsor.

(Other) Mary Verner, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.