

HOUSE BILL REPORT

2SHB 1322

As Passed House:

March 2, 2023

Title: An act relating to the Walla Walla water 2050 plan.

Brief Description: Concerning the Walla Walla water 2050 plan.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Rude, Chapman, Klicker, Lekanoff and Reeves; by request of Department of Ecology).

Brief History:

Committee Activity:

Agriculture and Natural Resources: 1/24/23, 1/31/23 [DPS];
Capital Budget: 2/16/23, 2/20/23 [DP2S(w/out sub AGNR)].

Floor Activity:

Passed House: 3/2/23, 96-0.

Brief Summary of Second Substitute Bill

- Requires the Walla Walla Water 2050 Plan to be used as an integrated water resource strategy through a coordinated effort between the states of Washington and Oregon, affected federally recognized tribes, affected federal, state, and local agencies, and other stakeholders.
- Directs the Department of Ecology (Ecology) to evaluate the development of a bistate legal regulatory framework for the allocation of developed water resources in collaboration with the State of Oregon.
- Exempts applications for water rights implementing the Walla Walla Water 2050 Plan from the required one-third and two-thirds allocation of water resources between instream and out-of-stream uses established for new water supplies developed in the Columbia River Basin.
- Requires that water supplies developed under the act be apportioned between Oregon and Washington consistent with any written agreements

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entered into with the State of Oregon and the Confederated Tribes of the Umatilla Indian Reservation.

- Authorizes Ecology to designate water supplies developed under the act for instream flow purposes and be placed into the trust water rights program.
- Requires that, in financing projects to implement the Walla Walla Water 2050 Plan, at least half of the total costs must be funded through federal, private, and nonstate sources.

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Chapman, Chair; Morgan, Vice Chair; Reeves, Vice Chair; Dent, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Kloba, Kretz, Lekanoff, Orcutt, Schmick and Springer.

Staff: Robert Hatfield (786-7117).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 29 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; Sandlin, Assistant Ranking Minority Member; Alvarado, Bateman, Cheney, Christian, Couture, Dye, Eslick, Farivar, Fosse, Kloba, Leavitt, Maycumber, McClintock, McEntire, Morgan, Mosbrucker, Orwall, Peterson, Reed, Rule, Shavers, Stearns and Waters.

Staff: Dawn Eychaner (786-7135).

Background:

Walla Walla Pilot Local Water Management Program.

Legislation enacted in 2009 created the Walla Walla Pilot Local Water Management Program. Pursuant to that legislation, the Walla Walla Water Management Board was created with representatives drawn from city and county government, federally recognized Indian tribes, conservation districts, and water rights holders. The board was authorized, among other duties, to assume the role of the local watershed planning unit, administer the local water plan process, manage banked water, acquire water rights, and enter into agreements with water rights holders to not divert water becoming available from local water plans and water banking activities.

The board was required to produce a water plan for the Walla Walla watershed. The plan was required to 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 providing flexibility in water use, and an estimate of the amount of water that would remain instream for fish.

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

Legislation enacted in 2019 directed the Department of Ecology (Ecology) to collaborate with the Walla Walla Water Management Board to develop a 30-year strategic plan for water management in the Walla Walla River Basin. The final version of that plan, titled the Walla Walla Water 2050 Strategic Plan, was released in June 2021.

The Walla Walla Pilot Local Water Management Program expired June 30, 2021.

Columbia River Basin Water Supply Management Program.

Legislation enacted in 2006 created the Columbia River Basin Water Supply Development Program and directed Ecology to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses.

Water supplies secured through the development of new storage facilities pursuant to the Columbia River Basin Water Supply Development Program must be allocated as follows:

- two-thirds of active storage must be available for appropriation for out-of-stream uses; and
- one-third of active storage must be available to augment instream flows managed by Ecology.

Summary of Second Substitute Bill:

Implementation of Walla Walla Water 2050 Plan.

In developing water supply solutions in the Walla Walla River Basin, the Department of Ecology (Ecology) should employ an integrated water resource management strategy that will provide concurrent water supply benefits to both instream and out-of-stream uses and address a variety of water resource and ecosystem challenges affecting fish passage, habitat functions, and agricultural, municipal, industrial, and domestic water supply, consistent with the Walla Walla Water 2050 Plan. In developing such water supply solutions, Ecology will be advised by the Walla Walla River Basin advisory committee, including representatives from a broad range of interests, including agricultural, environmental, and other stakeholders, and tribal, local, state, and federal governments.

Ecology must consider any increase in the quantity of water supply due to a project being

implemented under the Walla Walla Water 2050 Plan that is completed after the effective date of the act as water supply developed under the act. Water supplies developed under the act must be managed consistent with the intent of the specific project being implemented.

The one-third/two-thirds allocation of water resources between instream and out-of-stream uses established for new water supplies developed in the Columbia River Basin does not apply to applications for water rights in the Walla Walla River Basin implementing the Walla Walla Water 2050 Strategic Plan.

At least one-half of the total costs to finance the implementation of the Walla Walla Water 2050 Plan must be funded through federal and other nonstate sources, including private funding from entities that benefit from projects. The condition on state funding applies to the total of all costs toward implementation of the Walla Walla Water 2050 Plan and not to individual projects funded under the act.

Interaction with the State of Oregon.

In consultation with affected federally recognized tribes, Ecology must evaluate the development of a bistrate legal regulatory framework for allocation of developed water resources, in collaboration with the State of Oregon. Ecology must submit a report to the relevant committees of the Legislature by June 30, 2025, with a recommendation for the bistrate legal regulatory framework necessary for equitable allocation and management of developed water resources from the build-out of water supply projects envisioned in the Walla Walla Water 2050 Plan.

Ecology is authorized to fund the development, construction, and implementation of projects to implement the Walla Walla Water 2050 Plan that may be located outside of the state, provided that the projects benefit instream and out-of-stream water demands in the state.

Water supplies developed under the act must be apportioned between the states consistent with any written agreements entered into with the State of Oregon and the Confederated Tribes of the Umatilla Indian Reservation related to the management of water in the Walla Walla River Basin.

Instream Flows and Impairment.

Ecology must consider any increase in the quantity of water supply due to a project being implemented under the Walla Walla Water 2050 Plan that is completed after the effective date of the act as water supply developed under the act. Water supplies developed under the act must be managed consistent with the intent of the specific project being implemented.

Ecology has the authority to designate water supplies developed under the act for instream flow purposes and to be placed into the trust water rights program. Water supplies developed under the act that are designated for instream flow purposes are unavailable to satisfy existing water rights, including water rights with superior priority, and are exempt

from provisions that prohibit the involuntary impairment of existing water rights.

Nothing prevents Ecology from regulating water users consistent with existing adjudications to ensure that water use by holders of adjudicated surface water right certificates is not impaired by use under junior groundwater right certificates, claims, and permits.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Agriculture and Natural Resources):

(In support) Water supply issues in the Walla Walla River basin are important, and past efforts have not been able to restore streamflows. The Walla Walla Water 2050 Plan process is encouraging. There is a real need for this legislation because of the complexity of the basin. Oregon and Washington water laws currently do not work well together, which is a barrier to implementation of the Walla Walla Water 2025 Plan. There also needs to be investment to make the plan a reality. This bill will basically make the plan implementable.

Legislation enacted in 2019 directed the Department of Ecology (Ecology) to develop a 30-year plan for the Walla Walla River basin. Ecology has developed the Walla Walla Water 2050 Plan in consultation with both the State of Oregon and the Confederated Tribes of the Umatilla Indian Reservation. The bill provides the authority to build infrastructure in Oregon if needed to protect water supplies in Washington. The bill also ensures that funding for projects is equitable. The Oregon Legislature is considering similar legislation this session.

The Walla Walla Water 2050 Plan is a roadmap for cooperative water management. This bill is important for upholding rights reserved in the 1855 Treaty of Walla Walla. The political boundary between Oregon and Washington has prevented holistic, cooperative management of Walla Walla water resources. The Confederated Tribes of the Umatilla Indian Reservation are investing in the vision represented in the Walla Walla Water 2050 Plan; they have built a hatchery and dedicated money to water conservation projects. The agricultural economy is the cornerstone of the region, and the Walla Walla Water 2050 Plan helps support that economy.

This bill represents an important step forward for salmon recovery in the Walla Walla River basin. Integrated approaches to water resource management have a proven track record of success in Washington. Local knowledge will guide development of water supply solutions

in the Walla Walla Water 2050 Plan. Despite instream flow protections, many streams and rivers in the Walla Walla River basin have insufficient water to support the recovery of threatened and endangered species. There are significant habitat and streamflow challenges in the Walla Walla River basin, and projected climate change impacts will make those challenges worse. The state needs to act now to support water availability.

(Opposed) None.

Staff Summary of Public Testimony (Capital Budget):

(In support) This bill supports the work of tribes and other partners who have invested in this project over many years, including the State of Oregon. The Walla Walla basin is split between Oregon and Washington. The Walla Walla Pilot Local Water Management Program that began this work was in operation for 12 years and was tasked with implementing a number of projects. Since the Walla Walla Pilot Local Water Management Program has expired, the Walla Walla Water 2050 Plan takes the next steps to continue that work. This policy will help with stream flows in the Walla Walla basin. The Umatilla Tribe and farmers in the area are in agreement and support this plan, which provides important structure for the management of water supply in the Walla Walla basin. The Walla Walla River water shortage has created challenges in maintaining sufficient instream flows for fish. The water resources have been overallocated, and it is crucial to maintain adequate uses for instream and out-of-stream flows. Conservation of the Walla Walla River basin has come a long way, and it is critical that these efforts are continued. The local wine industry is important to the Walla Walla community, and these wineries rely on the availability of water through the Walla Walla River. This legislation will allow Washington, Oregon, the Confederated Tribes of the Umatilla, and other stakeholders to implement projects and strategies contained in the Walla Walla Water 2050 Plan. The State of Oregon is working on a concurrent bill that reflects much of the same language as this proposal and should be available for review in the next few days. The Oregon Water Resources Department has funded nearly \$2.8 million so far in the basin and anticipates an additional \$2.7 million in the next few years to continue the bistate study and implement other projects in the Walla Walla basin. It is time to turn paper water into true water. In the last 20 years, millions of dollars have been invested to bring salmon back, including a recent fish hatchery on the Walla Walla River in Oregon, where the fish are expected to return in 2025. This bill will give the Department of Ecology the authority it needs to protect water developed under the Walla Walla Water 2050 Plan.

(Opposed) None.

Persons Testifying (Agriculture and Natural Resources): Representative Skyler Rude, prime sponsor; James Kraft, Washington Water Trust; Tom Tebb, Department of Ecology; Lisa Ganuelas, Confederated Tribes of the Umatilla Indian Reservation; Chris Kowitz, Oregon Water Resources Department; and Megan Kernan, Department of Fish and Wildlife.

Persons Testifying (Capital Budget): Representative Skyler Rude, prime sponsor; Tom Tebb, Department of Ecology; Chris Kowitz, Oregon Water Resources Department; Marissa Gantar; Leo Groves; and Kathryn Brigham, Confederated Tribes of the Umatilla Indian Reservation.

Persons Signed In To Testify But Not Testifying (Agriculture and Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.