

# SENATE BILL REPORT

## SB 5677

---

---

As of February 22, 2013

**Title:** An act relating to authorizing the establishment of a water management board in the Methow watershed.

**Brief Description:** Authorizing the establishment of a water management board in the Methow watershed.

**Sponsors:** Senators Parlette, Hatfield, Honeyford, Chase, Brown, Bailey, Smith and Hewitt.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 2/12/13.

---

### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Staff:** Bob Lee (786-7404)

**Background:** In 1998, the Watershed Planning Act was enacted to establish a process for local groups to develop and implement plans to manage and protect local water resources and rights. The process requires watershed planning to include an assessment of water supply and use in a water basin and development of strategies for future water use. Watershed planning may include water quality, habitat, and instream flow elements. Local governments initiating watershed planning create a planning unit and designate a lead agency to provide staff support.

The local groups authorized to develop watershed plans are organized by basins known as water resource inventory areas (WRIAs). The Department of Ecology (Ecology) has identified 62 water basins in the state. Watershed planning groups were formed in a number of basins in the state pursuant to the 1998 Watershed Planning Act, including the Walla Walla and the Methow River Basins.

In 2009, the Legislature enacted the Pilot Local Water Management Program and is applicable to the Walla Walla River Basin. This provided for the transition of the Walla Walla watershed planning group to convert to the Walla Walla Watershed Management Partnership to plan and implement the watershed plan. The Walla Walla legislation was designated as a pilot project and is scheduled to expire in 2019, unless extended by the Legislature.

---

*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.*

Legislation similar to that enacted for the Walla Walla River Basin is proposed for the Methow River Basin.

**Summary of Bill:** Authority is provided for a member of the existing watershed planning group to petition Ecology to establish a water management board for the Methow River Basin where:

- community support for the adopted watershed management plan exists, including the affected tribes, local governments, and general community;
- there is a commitment on the part of the watershed planning unit and affected community to enhance stream flows for fish;
- an adequate monitoring network exists, as determined by Ecology;
- an instream flow for the WRIA has been adopted; and
- the watershed planning unit has completed a watershed implementation plan.

The water management board would be composed of a representative from:

- each affected tribe;
- the county commissioners;
- Twisp, the largest city in the WRIA;
- other cities in the WRIA;
- the entity that uses the largest quantity of water in the basin; and
- three to five additional residents of the planning area that includes at least one water right holder and one environmental representative.

Board members are not to act on any matter on which they have a conflict of interest.

The board must create a policy advisory and water resource panel, or may form two subpanels. The board must invite participation from Ecology, the Department of Fish and Wildlife, and other affected agencies and interests as appropriate. The board may appoint members from local governmental agencies, academia, watershed and salmon recovery entities, business, and agricultural and environmental organizations as it deems appropriate. Also, the board must include in the advisory panel members who have expertise in surface and ground water monitoring and hydrological analysis, irrigation, water rights, fisheries habitat, and economic development. This panel must provide technical assistance for the development and implementation of the local water plans.

The authorities and responsibilities of the board are delineated. This includes carrying out implementation plans, entering into agreements with water right holders not to divert water, hire staff, and buy or sell personal property. The board constitutes an independently funded entity and may provide for its own funding. The boards may solicit and accept grants, loans, and donations, and may adopt fees for services it provides. The board may not impose taxes or acquire property or water rights by eminent domain. The board may distribute available funds for local water plans and projects.

The board has authority to establish a nonprofit corporation for assistance in obtaining funding. Such a corporation will be subject to audit in the manner provided by law for auditing public funds.

Each year, the board must provide a written report to the Legislature and to the county government.

Authority is provided to the board to establish a mechanism to bank water for water right holders by a voluntary deposit of water rights on a temporary or permanent basis. Water rights banked on a temporary basis are retained by the original water right holder. A water right banked on a permanent basis must be transferred to the state as a trust water right. Banked water is not subject to loss by forfeiture. When a temporary water right is withdrawn from banking, the time period that it was banked is not calculated into the time the water has been used for purposes of relinquishment. Banked water may be used to mitigate for impairment to instream flows.

Local plans may have elements that provide rights to the use of water that are not otherwise authorized in the water rights including:

- the ability to use the quantity of water defined as baseline on new or additional places of use, from new points of diversion or withdrawal, and at different times of year;
- the ability to change or add a source of water and the ability to implement conjunctive use of ground and surface water; and
- the storage of water and infiltration of water to supplement shallow groundwater withdrawals or to replenish the aquifer.

To participate in a local water plan, water rights holders must:

- agree to allow a portion or all of their baseline water use to remain instream as specified in the approved local water plan;
- have existing operable water conveyance infrastructure in place and available for use;
- agree that any water made available for stream flow enhancement may not be diverted from the water source and used during the term of the local water plan, but instead must be deposited into the water bank, or upon request of the water rights holder, transferred to the trust water rights program;
- measure and monitor their water use, and stream flows above and below the boundaries of the plan; and
- commit to staying in the program consistent with criteria established by the board.

Unless agreed by the water right holder, nothing in this chapter diminishes or changes existing water rights. The water users must submit annual reports to Ecology and the board. Local water plans may be effective for a term of one to ten years.

The board must provide a 30-day public notice period to receive comments on the local water plan. To become effective, the local water plan must be approved both by the board and Ecology. The plan will not be approved if the board and Ecology determine that the local water plan will not substantially enhance instream flow conditions. The approved plan must be signed by the executive director of the board, the director, and by all water users participating in the local water plan. The plan is a contract between the board, Ecology, and the water users.

Any person not a party to the local water plan aggrieved by the director's decision may appeal the decision to the Pollution Control Hearings Board. A water right holder who

believes their right has been impaired by action under this chapter may request Ecology to review the claim. Any decision of the department not to alter the plan is also appealable.

A local water plan expires by its terms, by withdrawal of one or more water users, or upon agreement by all parties of the contract. Upon expiration of a local plan that has been operating over five years, the water users may request that the elements of the local water plan be permanent.

**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: The Methow Basin Watershed Planning Unit has been in existence for 15 years and has completed watershed planning including a detailed implementation plan (DIP) in close partnership and financial support from Ecology. The Council is currently enacting the DIP but Phase IV funding is ending. The goal of the legislation is to establish a permanent organization to continue acting on and adapting the plan.

CON: The bill makes some changes to water law that is of concern because it would reduce the involvement of Ecology in approving water right transfers.

OTHER: Due to shortness of time since this bill was introduced, there has not been sufficient time to fully evaluate the bill. Though the bill is patterned after the Walla Walla Basin Partnership statute, it is not yet determined whether a similar statute would bring the results that are sought.

**Persons Testifying:** PRO: Senator Parlette, prime sponsor; Lee Hatcher, Methow Watershed Council.

CON: Bruce Wishart, Center for Environmental Policy, Sierra Club.

OTHER: Evan Sheffels, Ecology, Dawn Vyvyan, Yakama Nation.