

SENATE BILL REPORT

ESSB 6513

As Passed Senate, February 16, 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, Water & Rural Economic Development: 1/28/16, 2/02/16 [DPS].

Passed Senate: 2/16/16, 48-0.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6513 be substituted therefor, and the substitute bill do pass.

Signed by Senators Warnick, Chair; Danel, Vice Chair; Takko, Ranking Member; Hobbs and Honeyford.

Staff: Diane Smith (786-7410)

Background: Approximately a year after a Washington State Supreme Court decision in 2013, the Department of Ecology (DOE) issued a letter notifying Chelan County that DOE would no longer issue permits that rely on water reserved by Washington Administrative Code (WAC) governing Water Resource Inventory Area 45 (WRIA 45). The reason stated is that DOE believes these permits would not provide uninterrupted water rights.

WRIA 45 includes territory in the Wenatchee River Basin. WRIA 18 includes territory in the Elwha-Dungeness River basin.

In WRIA 45 and WRIA 18, DOE reserved water for new domestic, irrigation, and stock watering uses, well after instream flows were set that made no such provision. The legal authority DOE used to amend WRIA 18 and WRIA 45 to provide for these reservations of water was the legal theory of overriding consideration of the public interest. It is DOE's use

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of this legal principal that invalidated its reservations in the Skagit WRIA according to the 2013 Supreme Court decision. The setting of instream flows that include no reservations, prior to the amendment to make the reservations, are facts the Skagit Supreme Court case and the administrative history of WRIA 18 and WRIA 45 share.

Summary of Engrossed Substitute Bill: The Legislature declares its intent to authorize DOE to maintain and implement its current rule establishing reservations for WRIA 18 and WRIA 45. DOE must act on all water right applications relying on these reservations in WRIA 18 and WRIA 45 as the WAC governing WRIA 18 and WRIA 45 exists as of the effective date of the legislation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on First Substitute: PRO: The local comprehensive watershed plan (Plan) work group was inclusive, collaborative and all agreed to the resulting Plan, including the instream flow subcommittee's recommendations. The Plan was implemented in 2008 all except the instream flows and reservations. The Plan has the safeguards and limitations that the 1983 act lacks. This hold-up means we cannot meet our GMA planning obligations. We have water right applications with no hope of action without this bill. A very expensive waste water treatment plant was built that now has no assurance of water. DOE spent \$2 million of state funds to implement this plan and had hoped to expand it. The bill is an important first step.

OTHER: While in favor of the concept, we had hoped for a state-wide solution.

Persons Testifying on First Substitute: PRO: Mike Kaputa, Chelan County Natural Resource Department; Commissioner Keith Goehner, Chelan County Commission; Mayor Jeff Gomes, City of Cashmere; Mayor Cheri Farivar, City of Leavenworth; Joel Walinski, City of Leavenworth; Gretchen Wearne, City of Leavenworth; David Christensen, Department of Ecology; Kathleen Collins, Wa Water Policyn Alliance;

OTHER: Bruce Wishart, Sierra Club/CELP.

Persons Signed In To Testify But Not Testifying: Mark Peterson, Alpine Water District; Evan Sheffels, Wa Farm Bureau.