



“Walla Walla Pilot Local Water Management Program”
Legislative Report to Implement 2SSB 5352

October 24, 2020



Prepared by the Walla Walla Watershed Management Partnership and Washington
Department of Ecology

Executive Summary

In 2009, the Legislature adopted chapter 90.92 RCW authorizing pilot program authority for a local water management board to use special management tools for a period of ten years, including flexibility that did not exist elsewhere in the state. The Walla Walla Watershed Management Partnership (Partnership) was formed under this authority.

Since 2009, the Partnership has implemented several primary areas of activities, including development of local water plans, managing banked water, entering into agreements for diversion reduction, leases or water acquisitions, participating in regional planning activities and overseeing a mitigation program for outdoor water use with permit-exempt wells.

In 2019, the Legislature passed Second Substitute Senate Bill 5352 (2SSB 5352), which authorized the continuation of the pilot program for two years. Associated with the extension, the Legislature required a number of specific actions, including conducting a financial and performance audit of the pilot program. In addition, the Partnership and the Department of Ecology (Ecology) were directed to develop a thirty-year integrated strategic plan for water resource management in the Walla Walla Basin and to develop an organization structure to support the strategic plan.

As directed in 2SSB 5352, the Washington State Auditor's Office (Auditor) published its performance audit on May 12, 2020, entitled Assessing Success of the Walla Walla Watershed Management Partnership Pilot, making five key findings and recommendations that included returning, "responsibility for water management in the Walla Walla watershed to the Department of Ecology while maintaining the benefits of the Partnership in the form of an advisory board that includes current membership." The auditor also recommended that, "the Governor open discussion with state leadership in Oregon to form an interstate compact that can address water management in the watershed."

Using existing funds, Ecology contracted to conduct a financial evaluation, to implement the directive in 2SSB 5352. Among the recommendations published, the financial evaluation recommended that Ecology take the lead and perform project management functions for continued work in the Walla Walla Watershed.

Ecology and the Partnership have been collaborating in the development of a 30-year integrated water resource management strategic plan. This effort, named the "Walla Walla Water 2050" strategic planning process seeks to address priorities and solutions from the basin's diverse stakeholders, including regional tribes, local residents, farmers and irrigators, environmental and conservation groups, Washington and Oregon state agencies, and federal governments. In partnership with the Confederated Tribes of the Umatilla Indian Reservation

(CTUIR), Ecology and the Partnership created a Strategic Plan Advisory Committee (SPAC) and Workgroups to help shape a strategic planning process that draws on local knowledge and reflects diverse priorities. Interests represented on the SPAC include agriculture, environmental, local government, state government, federal government, and tribal governments.

Although the strategic planning process is not yet complete, the following recommendations are provided at this time:

- The strategic plan should encompass the entire watershed and involve all affected governments.
- Effects of watershed processes to the headwaters should be included in the strategic planning process.
- The strategic planning process should address the current challenges in managing water use across Washington and Oregon jointly.
- The organizational structure created to advise implementation of the strategic plan will need to include public and private entities and various local, state, and federal agencies and governments.
- For the upcoming biennium, funding is essential to complete the strategic plan, complete an Environmental Impact Statement of potential management options, support the USGS groundwater study and begin to fill critical data gaps.

The Partnership recommends allowing RCW 90.92 to sunset as scheduled in June 2021. The Walla Walla Water 2050 process, with potential modifications to ensure inclusion of Partnership participants, will be used to refine strategic plan recommendations

A joint effort in advance of the 2023 legislative session will set forth strategic plan recommendations and an organizational structure to support implementation.

The Walla Walla Watershed Management Partnership appreciates the Washington State Legislature's support of legislation, policies, and funding to act on the Walla Walla 2050 Plan and the future of the Walla Walla Watershed now and in the future.

Introduction/Background

The Walla Walla Basin (Basin) has been over-appropriated for more than a hundred years. The last new water right was approved in 1992. In 2007, the Basin was formally closed to the issuance of new water rights.

By the 1990s, the Walla Walla River and tributaries were running dry every summer, and the Basin was threatened with federal intervention under the Endangered Species Act. The Basin is also within the ceded lands of the Confederated Tribes of the Umatilla Indian Reservation and a priority restoration area for treaty-reserved fishing, hunting and gathering rights.

Through the first decade of the 21st century, water resource interests completed a WRIA 32 watershed plan and a bi-state habitat plan. Basin stakeholders believed local management could create better and more sustainable outcomes than federal intervention. The concept of “flow from flexibility” informed the Partnership’s inception as the approach desired by local interests.

In 2009, the Legislature adopted chapter 90.92 RCW authorizing pilot program authority for a local water management board to use special management tools for a period of ten years, including flexibility that did not exist elsewhere in the state. The Walla Walla Watershed Management Partnership (Partnership) was formed under this authority.

2019 legislation overview

Chapter 90.92 RCW was established as a 10-year pilot program that was set to expire on June 30, 2019. As required in the 2009 authorizing legislation, the Partnership submitted a report to the legislature by December 1, 2018. In that report, several areas for future focus were identified, along with a recommendation for an extension of the pilot program.

In 2019, the Legislature passed Second Substitute Senate Bill 5352 (2SSB 5352), which authorized the continuation of the pilot program for two years. Associated with the extension, the Legislature required a number of specific actions, including conducting a financial and performance audit of the pilot program. In addition, Partnership and the Department of Ecology (Ecology) were directed to develop a thirty-year integrated strategic plan for water resource management in the Walla Walla Basin and to develop an organization structure to support the strategic plan (see Appendix A for the full text of 2SSB 5352).

Existing Structure and Activities conducted by the Partnership

Since 2009, the Partnership has implemented several primary areas of activities as authorized in RCW 90.92.050 and two additional activities that are not specifically identified in authorizing legislation. Each of these program elements is discussed in detail below.

1. Develop, approve, and oversee implementation of local water plans.
2. Manage banked water.
3. Acquire water rights by donation, purchase, or lease.
4. Participate in local, state, tribal, federal, and multistate basin water planning initiatives, and programs.
5. Enter into agreements with water rights holders to not divert any water that might become available as a result of local water plans, water banking activities, or other programs and projects endorsed by the board and the department.
6. Oversee mitigation program for outdoor water use with permit-exempt wells.

1. Develop, approve and oversee implementation of local water plans

Local Water Plans (LWPs) provide flexibility for the water right holder in exchange for enhancing flow conditions. A Local Water Plan provides the water user a benefit, such as a new point of diversion or expanding the place of use, in exchange for a benefit to stream flows such as water left instream, shallow aquifer recharge, or enrollment in the Walla Walla County Conservation District's Conservation Reserve Enhancement Program (CREP) for riparian restoration. The goal of this program is to ensure that each local water plan benefits both irrigators and fisheries resources. Under RCW 90.92.080(3), a local water plan must include:

- A determination by the board of the baseline water use for all water rights involved in the LWP, based on the guidelines adopted by the board, and in consultation with the water resource panel.
- A clearly defined set of practices that provide for flexibility of water use as defined in the law.
- An estimate of the amount of water that would remain instream either long term or during critical flow periods for fish.
- Performance measures and options for achieving reductions in total water use from baseline.
- Performance measures for tracking improved streamflows either long term or during critical flow periods for fish.
- Measurement, tracking, and monitoring measures and procedures that ensure the implementation and enforcement of the measures for flexibility of water use,

enhancement of the streamflows, and other elements, terms, and conditions in the LWP.

To participate in a local water plan, water rights holders must, among other requirements, measure and monitor their water use, streamflows upstream and downstream of the boundaries of the plan, and groundwater levels within the boundaries of the plan (RCW 90.92.080(5)(d)).

Since 2009, the Partnership has approved seven LWPs. The summaries in Appendix 2 describe in detail the actions and activities that have been conducted under the LWP authority in chapter 90.92 RCW. Of the seven approved LWPs, three are currently being partially implemented, one has been recently approved and not yet implemented, and three have expired or are inactive.

All of the LWPs that employed shallow aquifer recharge to offset increased irrigation required water quality monitoring to ensure compliance with water quality standards. Tests to ensure water quality as required by the Washington Department of Ecology were expensive (\$30,000 per site per year). Despite applications for funding from a variety of sources, neither the Partnership nor plan participants or implementing basin organizations were able to sustain sufficient funding for the required monitoring. Lack of funding for monitoring directly contributed to the incomplete implementation of those LWPs.

Additionally, between 2009 and 2019 the Partnership's ability to measure stream flow effects of the LWPs was hampered by reduction of stream flow gauges on affected stream reaches.

The fundamental basis for the "Flow from Flexibility" concept is embodied within the Partnership's authority under RCW 90.92.080 to pilot LWPs, which are designed to incentivize conservation among water users by allowing flexible water management resulting in instream flow enhancement through cooperation outside of the regulatory framework. These customized water management plans are designed to enable sustainable management of water and preclude impacts on other water right holders.

Within the voluntary LWP framework, a water user may propose to change water management activities such as a point of diversion, place of use, time of use, or source of water. Through these locally-approved and Ecology-endorsed temporary changes to water use practices, this program enables stream flows to be augmented while still providing sufficient water for participants. LWP participants may operate their flexible water management within the Partnership's pilot period, with the potential for seeking permanent status of a successful plan after at least five years of successful implementation. Within a LWP, water conserved for instream flow enhancement can be banked in the Partnership's Walla Walla Water Bank or added to Ecology's Trust Water Program and participating water rights are preserved from

relinquishment during the plan.

However, much of the potential positive outcomes for LWPs was never realized due to a lack of funding for implementation or extensive water quality monitoring. The following table shows the amount of water that was actually left as instream flow (cumulative for all LWPs), and the amount of water that potentially could have been left instream if all of the projects were fully funded:

	<u>CFS</u>	<u>Acre-feet</u>
Actual water left instream	5.5 cfs	374 af
Potential water left instream	22.1 cfs	1,543 af

See Appendix B for the complete description of LWPs approved during the 10 year pilot project.

2. Manage banked water

The Partnership manages a water bank in the Walla Walla Basin as prescribed in RCW 90.92.070, which states that “the board must accept a water right temporarily banked for instream flow without conducting a review of the extent and validity of the water right” and that “a water right banked...is not subject to loss by forfeiture.” This program functions very similarly to temporary donations in the state’s Trust Water Rights Program under chapter 90.42 RCW.

The primary difference between rights accepted into the Partnership water bank and the state’s temporary donations is that the quantity to be donated is specified in RCW 90.42.080(4) as, “the quantity of water that has been exercised during the five years before the donation.” In addition, the Partnership requires annual reporting from water right holders who have banked water rights. Otherwise, the two authorities function under similar legislative directives.

The primary advantage to the water banking program is the interaction with water rights holders who voluntarily reduce water use. The water identified in the bank may not relate to improvements to instream flow. Some banking agreements are for only small amounts of water which are difficult to detect through physical measurement. Additionally, and significantly, water that is not withdrawn or diverted by one user can be taken by a junior water holder that would otherwise been curtailed. This may result in no increase in streamflows. To improve streamflow, measures to protect banked water must be instituted and adequate methods of measuring actual reductions in water use for banked water must be in place.

However, reduced water use on properties where water has been banked can be estimated. Ecology evaluated air photos of the legal place of use for each right enrolled in the Partnership water bank to assess benefits to instream flow. The goal was to determine whether banked rights could be associated with a clear reduction in water use potentially contributing toward improving stream flows.

Ecology identified records for 143 water rights in the Ecology's Water Rights Tracking System (WRTS) database enrolled in the Partnership water bank, with a cumulative total quantity of 18,698 acre-feet of water.^[1]

Based on Ecology's air photo analysis, clear reduction in water use through crop fallowing was found with 26 water rights, totaling up to 6,046 acre-feet of water. These banked rights had evidence of clear reduction in water use and benefit to streamflow after enrollment in the Partnership water bank. The remaining 117 water rights totaling up to 12,652 acre feet of water enrolled in the Partnership water bank had no clear change in water use based on air photo analysis because of one or more of the following:

- No apparent reduction in irrigated acreage in the years following being accepted into the Partnership water bank based on the aerial photos.
- The enrolled right was one of multiple water rights that overlap place of use.
- Only a small portion of a much larger water right was enrolled in the bank.
- No annual volume (in acre-feet) was identified in the enrollment (just instantaneous quantity).
- The authorized place of use on the water right was much larger than the irrigated acreage, which allows flexibility for crop rotation, but is difficult to confirm a change to actual (on the ground) use.

3. Acquire water by donation, purchase or lease

The Partnership has authority to acquire water through purchase, donation, or lease of water rights under RCW 90.92.050(1)(g). The goal and anticipated outcome from these activities would be an improvement of flow conditions or to ensure water availability for existing water right holders.

^[1] Note: The Partnership's database shows 151 water rights enrolled in the Walla Walla water bank, with a cumulative quantity of 19,343 acre-feet. The small differences between the number of rights in Ecology's WRTS and the Partnership's databases is likely due to challenges in the administrative tracking of water rights, which is common throughout the state.

Acquisitions and Leases

The Partnership has not acquired water rights on a permanent basis for instream flow benefit since its inception in 2009. Water rights have been acquired for mitigation purposes for new permit-exempt wells as described below.

The Partnership has actively sought water for acquisition during its existence. However, there has not been much success. Challenges that have prevented acquisitions include:

- The high asking cost of water to be acquired.
- Staffing limitations, including turnover.
- Water issues are contentious and persuading people to sell water is difficult.

In general, there has been reluctance by water right holders to participate. Community concerns about selling water for stream flow benefits remain high. The Confederated Tribes of the Umatilla Indian Reservation and Washington Water Trust continue to actively seek water acquisitions for streamflow enhancement in the basin.

In 2017, the Partnership entered into two water leases totaling 2,600 acre-feet.

4. Participate in local, state, tribal, federal, and multistate basin water planning initiatives and programs

The Walla Walla Watershed has an additional layer of complexity for water resource management, as it is bifurcated by the Oregon-Washington border. As such, it requires the participation and integration of work being conducted by many organizations and individuals from both states, including both government and non-governmental entities.

One such important effort is the Walla Walla Basin Flow Enhancement Study, which is described in a separate section of this report, below.

The Partnership participates in the monthly activities of the Snake River Salmon Recovery Board, a local Regional Fisheries Enhancement Group. In addition to helping them work on policy questions and assist in writing letters, the Partnership also sits on their Regional Technical Team (RTT). The RTT reviews proposed fisheries enhancement projects, expending over \$1 million per year in on-the-ground habitat projects in southeastern Washington.

The Partnership participates on the Mid-Columbia Columbia River Basin group of the Marine Fisheries Advisory Committee, which is convened by the National Marine Fisheries Service (NMFS). This committee provides input and feedback to NMFS for recovery goals relating to salmon and steelhead.

The Partnership also participates on the Mill Creek Working Group. Mill Creek flows through the City of Walla Walla, and working collaboratively, the City, County and Corps of Engineers are developing a design for repair of a flood control system that is over 70 years old. The Working Group provides input to ensure the project has a more holistic goal, and not just focus on flood control.

5. Agreements with water rights holders to not divert water

Agreements not to divert (ANTD) are designed to be a short-term use (less than 90 days) to protect water instream from diversion that normally junior water users would be eligible to use. ANTDs were explored as a means of solving flow issues between Washington and Oregon during the pilot program. This tool, although authorized by the legislature, has not been implemented. Though not a comprehensive solution, ANTD should continue to be examined as a potential strategy to help under certain conditions that would ensure full protection of streamflow from use by junior users.

Critical low-flow plan

A Critical Low-Flow Plan is a voluntarily established plan with an irrigator that addresses drought impacts to the environment. It is a plan developed for the emergency situation of a drought, with multiple tools that could be used.

A “critical low flow” is defined as a low streamflow occurring during a critical migratory period for Endangered Species Act listed fish. Critical low flows are determined by a declaration of risk from fisheries biologists at the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), WDFW, and Oregon Department of Fish and Wildlife. The Partnership has multiple options during critical low flow periods: option contracts, pulse flows, changes in points of diversion, source switch, compensation for irrigators not to divert water, trap and haul of fish, and diversion reduction agreements.

No critical low-flow plans have been implemented since 2008.

Option contracts

Option contracts offer a payment to water rights holders to bypass water, reduce surface diversions near passage barriers, or rely on basalt wells rather than surface or shallow aquifer rights.

Currently, two option contracts are in place, but have not been called on.

Diversion reduction agreements

The Partnership developed two “Agreements Not To Divert” as a strategy to improve low flow conditions in the Walla Walla Basin in 2015, though neither was implemented during the drought that year, or since then.

6. Mitigation of permit exempt wells

The Exempt Well Mitigation Exchange (Mitigation Exchange) allows rural landowners to build new homes and rely on permit-exempt wells for a legal water supply for outdoor water use. Chapter 173-532 WAC requires landowners using permit-exempt wells which meet certain conditions in the Walla Walla Basin to obtain mitigation for the well use impact on senior water right holders.

Ecology and the Partnership combined have acquired a total of 24.4 acre-feet of water rights that provide the basis for the Mitigation Exchange managed by the Partnership. The Partnership sells credits at a fixed rate of \$2,000 per 0.55 acre-feet to recover the cost of the water right initially purchased for this purpose.

Since 2009, the Mitigation Exchange has provided outdoor water mitigation credits to eight landowners. The remaining balance in the bank of 21.1 acre-feet will be sufficient to supply mitigation credit for 38 additional homes.

While the Exempt Well mitigation program is not part of RCW 90.92, it will continue in the future, whether the Partnership continues to exist. Local government and the Department of Ecology would administer the program as they did prior to the Partnership's creation.

Walla Walla basin integrated flow enhancement study

The Walla Walla basin integrated flow enhancement study (Flow Study) was initiated in 2014 with funding from Ecology as a broad-scale collaboration of the Partnership, the Walla Walla Basin Watershed Council, Ecology, CTUIR and other water resource management interests. The objective of the Flow Study is to determine the best package of options for achieving Walla Walla River stream flow targets for native fish species while maintaining the long-term viability and water availability for irrigated agriculture, residential, and urban use.

Flow Study reports have been completed in 2017 and 2019 documenting the preferred options and analysis for achieving Flow Study goals. The study identifies streamflow targets of 65 cfs for the low flow period between July 1 and November 30, and 150 cfs during the spring migration period of April 1 to May 31. Then a transition of flow of 100 cfs is the target for June 1 to July 1. Walla Walla River flow enhancement is essential for the success of the Walla Walla River Hatchery and efforts to increase populations of native aquatic species. These target flows would represent a significant improvement relative to current low flows, which can reach 0 (no flow) during these periods.

Currently, four alternatives are being considered. Each alternative combines a mixture of anchor projects (large-scale infrastructure development) and smaller complementary projects. Construction costs for each alternative ranges between \$227 million to \$384 million with annual operating costs of \$190,000 to \$2.55 million.

Work to improve flows in the Walla Walla River is expected to continue through this effort. Next steps include:

- **Environmental Review:** Begin the development of a Programmatic Environmental Impact Statement (PEIS) to implement requirements of the Washington State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA).
- **Expanded Outreach:** Extend invitations to new Washington and Oregon stakeholders to help guide selection of Preferred Alternatives for the PEIS.
- **Feasibility Studies and Data Gaps:** The Preferred Alternatives include projects that need additional analysis to thoroughly evaluate project feasibility.
- **Initiate Design of Preferred Alternative:** Initiate a more detailed design of the Preferred Alternative once the feasibility analyses have been completed.
- **Legal Coordination:** This is needed to ensure that newly developed water supplies will be protected instream through both Oregon and Washington to the mouth of the Walla Walla River and confluence with the Columbia River.
- **Funding Coordination:** A combination of federal, state, and local partners are needed to implement a Preferred Alternative at the size and scale necessary to meet the target flows in the Walla Walla River.

The Walla Walla Basin Watershed Council has the complete [2019 Flow Study report](#) available on their website.

Tribal and State coordinated water resource management

The Confederated Tribes of the Umatilla Indian Reservation, Washington Department of Ecology and Oregon Water Resource Department have come together recognizing the important and urgent need to address both current and long term water resource issues facing the bi-state Walla Walla River Basin, including ecological purposes and consumptive use needs of Oregon and Washington communities.

The Walla Walla Basin's unique bi-state nature – waters originate in Oregon and cross into Washington – require the commitment of all three parties to address current and long-term water management issues. All three parties are committed to working together with Walla Walla River Basin interests to achieve and strengthen our water management goals by building and enhancing our working relationships with the Walla Walla Watershed Management

Partnership, Walla Walla Basin Watershed Council, basin irrigators, fishery co-managers and other interested parties.

The three parties are engaging in recurring conversations among members of a leadership team composed of staff from each sovereign. While recognizing their respective missions, authorities and responsibilities, the tri-sovereign group needs to work together on how to best enhance instream flows in the Walla Walla River while maintaining out-of-stream uses. This group is committed to decision-making based on strong science, factual information and welcome advice and engagement from the Walla Walla Watershed Management Partnership, Walla Walla Basin Watershed Council, basin water users and other interested parties.

Performance audit report

As directed in 2SSB 5352, the Washington State Auditor's Office (Auditor) published its performance audit on May 12, 2020, entitled *Assessing Success of the Walla Walla Watershed Management Partnership Pilot*. The full [audit report](#) is available on the Auditor's web site.

The Auditor made five key findings:

1. **Stream flow.** The Partnership did not explicitly identify improving streamflow as a core goal despite clear statutory intent, and board members agree that streamflow did not improve.
2. **Accountability.** The Partnership met most statutory requirements, but did not create and use an accountability framework that could have helped it evaluate and adapt its activities to ensure success.
3. **Funding.** The Partnership lacked sufficient funds to implement strategies necessary to improve streamflow but failed to fully exercise its authority to pursue additional revenue.
4. **Authority.** Returning management of the Walla Walla watershed to Ecology could offer better access to funding for needed infrastructure projects.
5. **Interstate collaboration.** Significant streamflow improvements in the Walla Walla watershed require greater state-level cooperation between Washington and Oregon. The volume of water in the Walla Walla River on Washington's side depends largely on the amount of water that crosses the state line from the river's source in Oregon. Oregon and Washington currently lack a formal agreement to collaborate in the Walla Walla watershed, but an interstate compact could help them work together to improve and protect streamflow.

Based on these findings, the Auditor concluded:

While the Partnership may have had some benefits, including bringing diverse interests together for a common goal, after 10 years it is clear that the Partnership has not affected streamflow as intended.

At this point, it makes the most sense to return the responsibility for water management in the Walla Walla watershed to the Department of Ecology while maintaining the benefits of the Partnership in the form of an advisory board that includes current membership. Ecology could then follow a watershed management model similar to that employed in the Yakima watershed, where streamflow has measurably improved.

Perhaps most importantly, because water supply in the Walla Walla watershed is so dependent on actions taken upstream in Oregon, any real solution to streamflow will have to involve cooperation across state lines. For that reason, we recommend the Governor open discussion with state leadership in Oregon to form an interstate compact that can address water management in the watershed.

Financial evaluation report

Ecology funded a financial evaluation to implement the statutory directive to conduct a financial audit under 2SSB 5352. The Ecology contractor published the financial evaluation in May 2020.

The work resulted in six findings.

1. The Partnership is not maintaining sound internal controls and accountability for project cash.
2. The Partnership did not provide an accurate and complete financial report to its Board and Ecology for yearend December 31, 2019. This is the financial report that may be in the next report to the Legislature.
3. The Partnership did not make timely payments to contractors due to lack of working capital.
4. The Partnership did not maintain procurement and project files in accordance with Contract WROCR-2018- WaWWMP-0001 requirements.

5. The Partnership is not tracking time and effort by Task on Contract WRFA-1921-WaWWWMP-0003.
6. The financial framework of the Partnership as it currently exists does not make economic sense.

Based on the findings from the financial evaluation, the contractor made the following conclusions and recommendations.

In order to mitigate legal, environmental, and financial risk, it is recommended that Ecology take the lead and perform the project management function for continued project work in the Walla Walla Watershed.

Because the Partnership is almost entirely dependent on Ecology funds, 58.6% of these funds are used for traditionally indirect functions. Even with this being said, internal control systems are still not sound including cash disbursements, bookkeeping, timekeeping, and financial reporting. It would take additional funding and a significant increase in Board involvement to improve current systems. Spending additional money for the services provided does not make economic sense when other established organizations already maintain trusted internal control systems and don't require Ecology funding to establish and maintain an administrative and financial infrastructure.

It is recommended that Ecology evaluate the Partnership's relationship and whether it should continue after Contract WRFA-1921-WaPARTNERSHIP -0003 ends and possibly look to other established organizations to perform regional public engagement, facilitation, and water management work.

See Appendix C for the Partnership's response to the Performance Audit and financial evaluation.

Recommendations to the Legislature

In SSSB 5352 the Partnership and Ecology are directed to recommend the scope and scale of an integrated water resource management strategic plan, including a funding approach and organization structure, to achieve the desired outcome of improved and sustainable flows for fish, adequate water supplies for agriculture, municipal, and domestic water users, and improved habitat and floodplain functionality in the Walla Walla watershed; and Coordinate

with the department's office of Columbia river to request funding to complete tasks required during the transition period.

Ecology and the Partnership have been collaborating in the development of a 30-year integrated water resource management strategic plan. In partnership with CTUIR, Ecology and the Partnership created a Strategic Plan Advisory Committee (SPAC) and Workgroups to help shape a strategic planning process that draws on local knowledge and reflects diverse priorities. Interests represented on the SPAC include agriculture, environmental, local government, state government, federal government, and tribal governments. Each interest self-selected their members to the SPAC. The SPAC is tasked with developing science-based, consensus recommendations for the strategic plan that incorporate varied basin stakeholder perspectives and address the challenges of bi-state water resource management to meet the outcomes in SSSB 5352. The [SPAC Roster](#) provides a full list of members and can be found on the [Walla Walla Water 2050 Website](#).

Working Groups assist plan development by identifying, researching, and analyzing potential strategies and formulating draft recommendations for consideration by the SPAC. Working Groups are addressing various topics including water supply (out-of-stream demands); ecological function (in-stream demands); data, studies, and monitoring; land-use; administration; and implementation. Representatives from Ecology or another state agency participate in each of the six working groups. Partnership staff or members participate in each of six working groups as feasible. Each Working Group consist of 10-25 representatives from Ecology, the Partnership, cities, counties, tribes, state agencies, irrigation districts, environmental groups, and other entities:

- **Data, Studies, and Monitoring Group:** water rights evaluation; bi-state flow study; Touchet River habitat assessment; USGS bi-state groundwater study; water supply and availability (forecasting); surface/groundwater interactions; and infrastructure inventory and gap analysis.
- **Ecological Function Group:** fish and wildlife; instream flows; habitat; water quality; and recreation and quality of life.
- **Water Supply Needs Group:** municipal; rural-domestic; commercial and industrial; and agricultural water uses.
- **Land Use Group:** upland management; dryland agriculture; forests; and urban/rural planning and zoning.
- **Administrative Group:** regulatory framework; financial structure and funding mechanisms; public engagement; and adjacent processes.
- **Implementation Group:** aquifer storage and recovery; managed aquifer recharge; storage, piping, and flooding control; source swaps; floodplain/riparian restoration;

wetland enhancement; fish passage and screening; water banking, trust water, and mitigation; and conservation.

At the same time, in a bi-state effort to improve understanding of the Walla Walla Watershed hydrologic system, the Oregon Water Resources Department (ORWD), the Washington State Department of Ecology (Ecology), Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the Washington Water Science Centers are working in collaboration with the United States Geological Survey (USGS) to conduct a groundwater study of the watershed.

Scope and Scale of Strategic Plan

The Walla Walla Water 2050 strategic planning effort seeks to address priorities and solutions from the basin's diverse stakeholders, including regional tribes, local residents, farmers and irrigators, environmental and conservation groups, Washington and Oregon state agencies, and federal governments.

GEOGRAPHIC SCOPE

Walla Walla Basin is a bi-state watershed located in southeastern Washington and northeastern Oregon. The Walla Walla River headwaters (North and South Forks) flow out of the Blue Mountains in Oregon to form the mainstem. The two largest tributaries to the Walla Walla River are Mill Creek and the Touchet River, both of which flow out of headwater streams in the Blue Mountains.

The Walla Walla Basin is located primarily in Walla Walla County in Washington and Umatilla County in Oregon. Smaller portions of the mainstem and tributaries run through Columbia County in Washington and Wallowa and Union counties in Oregon. The Walla Walla strategic plan should encompass the entire watershed and involve all affected governments.

SCALE

Watershed processes, including potential water storage upstream, should be included in the strategic planning process. The planning process should also address the impacts of channel confinement, groundwater and surface water interactions, and the current challenges in managing water use across Washington and Oregon jointly.

Organizational Structure

Partnership members understand that a formal organizational structure will not be established in time for the 2021 session as the Walla Walla Water 2050 Plan is unlikely to be completed

until June 30, 2021 or after. The Partnership recommends allowing RCW 90.92 to sunset as scheduled in June 2021. With continued funding support, the Walla Walla Water 2050 planning process will advance and be used to consider and inform potential participants, roles, and functions of a potential future bi-state entity to help guide plan implementation. The Partnership agrees that whatever the organizational structure, it will need to include public and private entities and various local, state, and federal agencies and governments. A joint effort in advance of the 2023 legislative session will set forth Walla Walla Water 2050 plan recommendations and an organizational structure to support implementation.

Funding

Funding support from Oregon, CTUIR, federal agencies, and the local community have directly and indirectly complemented Washington's funding support for the Partnership pilot. Tens of millions of dollars have been invested to maintain and enhance water availability for communities, improve irrigation efficiency and conservation, enhance fish habitat and passage conditions, and break ground on a new fish hatchery among many other collaborative improvements. These investments and improvements have set the stage to meet the watershed's multi-objective water goals for fish, farms and people upon finalizing and implementing the Walla Walla Water 2050 Plan underway.

For the upcoming biennium, funding is essential to complete the Walla Walla Water 2050 Plan, complete an Environmental Impact Statement of potential management options, support the USGS groundwater study and begin to fill critical data gaps. Near term funding is required to close data gaps by increasing monitoring of infrastructure, including stream gauges, funding for water quality testing and exploration of and preliminary implementation of telemetry on surface and groundwater withdrawal. Measurement of water use is necessary to determine who is using how much water where and when in real time to manage water in the Walla Walla Basin.

Ecology has included a \$3 million Capital Budget funding request for continuation of these efforts in its budget submittal, which is currently under review at the Office of Financial Management. The Governor's proposed budget is anticipated to be submitted to the Legislature in December 2020.

In advance of the 2023 legislative session, proposals will be considered for near term projects including but not limited to flood plain restoration, habitat improvement, managed aquifer recharge, continued data collection and monitoring to provide the on-the-ground solutions to the basin's water needs.

It is anticipated that the local governments, the State of Oregon, and the federal government will also contribute through an integrated funding plan for long-term large infrastructure projects to ensure future water supply for fish, farms and people.

The Walla Walla Watershed Management Partnership appreciates the Washington State Legislature's support of legislation, policies, and funding to act on the Walla Walla Water 2050 Plan and the future of the Walla Walla Watershed.

Appendix A: 2SSB 5352

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE SENATE BILL 5352

Chapter 78, Laws of 2019

66th Legislature
2019 Regular Session

WALLA WALLA WATERSHED MANAGEMENT--PILOT PROGRAM

EFFECTIVE DATE: June 30, 2019

Passed by the Senate March 5, 2019
Yeas 48 Nays 0

KAREN KEISER

President of the Senate

Passed by the House April 11, 2019
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 19, 2019 11:19 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5352** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

April 22, 2019

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5352

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Walsh, Warnick, McCoy, Kuderer, Van De Wege, and Hasegawa)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to the Walla Walla watershed management pilot
2 program; amending RCW 90.92.010, 90.92.050, and 90.92.060; amending
3 2009 c 183 s 20 (uncodified); providing an effective date; providing
4 an expiration date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 90.92.010 and 2009 c 183 s 1 are each amended to
7 read as follows:

8 The legislature finds that (~~the Walla Walla watershed community~~
9 ~~faces substantial challenges in planning for future water use and~~
10 ~~meeting the needs of fish, farms, and people. The legislature further~~
11 ~~finds that the participants in the Walla Walla watershed planning~~
12 ~~group have demonstrated exceptional cooperation in developing an~~
13 ~~innovative water management concept that enhances flexibility in~~
14 ~~water use while protecting ecological functions)) participants in the
15 Walla Walla watershed pilot program have demonstrated exceptional
16 cooperation in developing and implementing an innovative water
17 management concept that enhances flexibility in water use since
18 convening in 2009. The legislature further finds that the existing
19 authorities and structure of the pilot program must evolve to meet
20 the growing water resource demands in the Walla Walla watershed and
21 to protect and enhance ecological functions. As the next step in the~~

1 process, the legislature intends to extend the Walla Walla pilot
2 program through June 30, 2021, to allow the pilot to perform internal
3 and external evaluations, build upon previous pilot program efforts,
4 continue Walla Walla river flow enhancement technical work, and
5 restructure this chapter to develop a thirty-year integrated water
6 resource management strategic plan. The legislature ~~((also))~~
7 continues to recognize~~((s))~~ the significant contribution of former
8 state representative William Grant's leadership in the creation of a
9 Walla Walla pilot design to authorize local water management
10 activity.

11 **Sec. 2.** RCW 90.92.050 and 2009 c 183 s 5 are each amended to
12 read as follows:

13 (1) The board has the following authority, duties, and
14 responsibilities:

15 (a) Assume the duties, responsibilities, and all current
16 activities of the watershed planning unit and the initiating
17 governments authorized in RCW 90.82.040;

18 (b) Develop strategic actions for the planning area by building
19 on the watershed plan;

20 (c) Adopt and revise criteria, guidance, and processes to
21 effectuate the purpose of this chapter;

22 (d) Administer the local water plan process;

23 (e) Oversee local water plan implementation;

24 (f) Manage banked water as authorized under this chapter;

25 (g) Acquire water rights by donation, purchase, or lease;

26 (h) Participate in local, state, tribal, federal, and multistate
27 basin water planning initiatives and programs; and

28 (i) Enter into agreements with water rights holders to not divert
29 water that becomes available as a result of local water plans, water
30 banking activities, or other programs and projects endorsed by the
31 board and the department.

32 (2) During the transition period of July 1, 2019, to June 30,
33 2021, the board shall:

34 (a) Participate with the department to complete, by June 30,
35 2020, a performance audit conducted by the state auditor's office
36 within existing resources, and a financial audit funded with existing
37 department resources, to evaluate the Walla Walla pilot program since
38 2008 and to incorporate audit findings and recommendations into a
39 thirty-year integrated water resource management strategy;

1 (b) Continue working with the department, the Confederated Tribes
2 of the Umatilla Indian Reservation, and other participants to advance
3 the Walla Walla basin flow enhancement study and its recommendation,
4 including any necessary environmental reviews for near-term actions;

5 (c) Collaborate with the department in the development of a
6 thirty-year integrated water resource management strategic plan,
7 including a draft and final programmatic environmental impact
8 statement, and explore interstate agreements to maximize integrated
9 water resource management;

10 (d) By November 1, 2020, jointly develop with the department a
11 report to the legislature recommending the scope and scale of an
12 integrated water resource management strategic plan, including a
13 funding approach and organization structure, to achieve the desired
14 outcome of improved and sustainable flows for fish, adequate water
15 supplies for agriculture, municipal, and domestic water users, and
16 improved habitat and floodplain functionality in the Walla Walla
17 watershed; and

18 (e) Coordinate with the department's office of Columbia river to
19 request funding to complete tasks required during the transition
20 period.

21 (3) The board may acquire, purchase, hold, lease, manage, occupy,
22 and sell real and personal property, including water rights, or any
23 interest in water rights, enter into and perform all necessary
24 contracts, appoint and employ necessary agents and employees,
25 including an executive director and fix their compensation, employ
26 contractors including contracts for professional services, and do all
27 lawful acts required and expedient to carry out the purposes of this
28 chapter.

29 (~~(3)~~) (4) The board constitutes an independently funded entity,
30 and may provide for its own funding as determined by the board. The
31 board may solicit and accept grants, loans, and donations and may
32 adopt fees for services it provides. The board may not impose taxes
33 or acquire property, including water rights, by the exercise of
34 eminent domain. The board may distribute available funds as grants or
35 loans to local water plans or other water initiatives and projects
36 that will further the goals of the board.

37 (~~(4)~~) (5) The ability of the board to fully meet its duties
38 under this chapter is dependent on the level of funding available to
39 the board. If sufficient funding is not available to the board to
40 carry out its duties, the board may, in consultation with the

1 department, establish a plan that determines and sets priorities for
2 implementation of the board's duties.

3 ~~((+5+))~~ (6) The board, and its members and staff, acting in their
4 official capacities, are immune from liability and are not subject to
5 any cause of action or claim for damages arising from acts or
6 omissions engaged in under this chapter.

7 ~~((+6+))~~ (7) Upon the creation of the board, and for the duration
8 of the board, the existing planning unit for the planning area,
9 established under RCW 90.82.040, is dissolved and all assets, funds,
10 files, planning documents, pending plans and grant applications, and
11 other current activities of the planning unit are transferred to the
12 board.

13 **Sec. 3.** RCW 90.92.060 and 2009 c 183 s 6 are each amended to
14 read as follows:

15 The board, in collaboration with the department, must provide a
16 written report to the legislature by ~~((December 1, 2012, December 1,~~
17 ~~2015, and December 1, 2018. The report must summarize the actions,~~
18 ~~funding, and accomplishments of the board in the previous three~~
19 ~~years, and submit recommendations for improvement of the local water~~
20 ~~plan process. The 2018 report must also contain recommendations on~~
21 ~~the future of the board))~~ November 1, 2020, as described in RCW
22 90.92.050.

23 **Sec. 4.** 2009 c 183 s 20 (uncodified) is amended to read as
24 follows:

25 This act expires June 30, ~~((2019))~~ 2021.

26 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of
28 the state government and its existing public institutions, and takes
29 effect June 30, 2019.

Passed by the Senate March 5, 2019.
Passed by the House April 11, 2019.
Approved by the Governor April 19, 2019.
Filed in Office of Secretary of State April 22, 2019.

--- END ---

Appendix B: Approved Local Water Plans

Local Water Plan developed with Greta Hassler

Current status: Active. The LWP is effective through March 1, 2025. The plan:

- Authorizes an additional point of withdrawal and an increase to 117 acres of irrigation.
- Includes provisions to divert high winter flows for shallow aquifer recharge, so that the increased shallow aquifer recharge would increase streamflow by a greater amount than the increase withdrawal from the additional irrigation.
- Includes enrollment in the Federal Conservation Reserve Enhancement Program.

The water withdrawal location has been moved and the landowner has added 117 acres of irrigated land. However, the aquifer recharge component of the plan has not been implemented to date. Monitoring data have not been evaluated that demonstrate consistency with the requirements of the law.

Local Water Plan developed with Yancey Reser

Current status: Active. This LWP is effective through June 18, 2024. The plan:

- Authorizes an additional point of withdrawal and an increase of 45 acres of irrigation.
- Includes provisions to divert high winter flows for shallow aquifer recharge so that the increased shallow aquifer recharge would increase streamflow by a greater amount than the increase withdrawal from the additional irrigation.

The water withdrawal location has been moved and the landowner has added 45 acres of irrigated land. However, the aquifer recharge component of the plan has not been implemented to date. Monitoring data have not been evaluated that demonstrate consistency with the requirements of the law.

Local Water Plan developed with Larry Pierce

Current status: Active. The LWP is effective through November 2023. The plan:

- Authorizes changes to the place of use for two water rights and an increase of irrigated acreage by 70.81 acres.
- Moves the point of diversion downstream to divert water from the McNary Pool of the Columbia River as the new source of water for irrigated lands.
- Includes a determination that eliminating the diversion from the Walla Walla River would increase streamflow allowing fish passage by moving impacts from the water withdrawal into the mainstem Columbia River.

In 2019, the first growing season that the LWP was active, irrigated acreage increased as authorized under the plan. However, the point of diversion has not been moved downstream and streamflow impacts from the existing diversion from increased irrigated acreage are occurring in the Walla Walla River. Monitoring data have not been evaluated that demonstrate consistency with the requirements of the law.

Local Water Plan developed with Gardena Farms Irrigation District #13 (GFID)

Current status: Inactive. This LWP is effective until June 6, 2022, but is no longer being implemented due to lack of funding. The plan:

- Divert water during high flow conditions and discharge into the shallow aquifer for recharge to benefit late summer and fall streamflow.
- Bypass up to 20 cubic feet per second (cfs) to provide a streamflow benefit.

In 2012-2014, the LWP was actively implemented. During those years, an average of 229 acre-feet of water was diverted each year during high flow conditions and discharged into the shallow aquifer for recharge that benefitted late summer and fall streamflow.

GFID continues to bypass up to 20 cfs despite the plan being no longer active.

Local Water Plan developed for Stiller Pond Site

Current status: Inactive (expired).

This LWP was effective May 16, 2011 through September 30, 2016. The Plan authorized the diversion of water during high flow conditions and discharge into the shallow aquifer for recharge to benefit late summer and fall streamflow.

The LWP was actively implemented during the 2011 through 2016 irrigation seasons. During those years, 32 acre-feet of water was diverted each year during high flow conditions and discharged into the shallow aquifer for recharge that benefitted late summer and fall streamflow. Implementation of the project created a measurable increase in stream flow late in the irrigation season in 2014 and 2015, as measured by the Walla Walla Basin Watershed Council.

Pepper Bridge Land Company

Current status: Inactive (expired).

This LWP was effective May 16, 2011 through September 30, 2016. The plan authorized the water user to change the source for a water right from a surface water diversion to a withdrawal from a deep basalt aquifer well.

The project reduced the impact to the river by an estimated 311 acre-feet per year, resulting in improvements to streamflow. No specific monitoring data were collected to evaluate the impact of the project on streamflow or groundwater levels.

Walla Walla Community College

This LWP was approved March 6, 2019 and is effective through December 2024. This LWP has not yet been implemented due to lack of funding. The LWP authorizes a change from a surface water diversion to groundwater withdrawal, provides flexibility in place of use and when fully implemented determines that the result will improve stream flow and instream conditions. The LWP concludes there will be 75 acre-feet per year of streamflow benefit to Titus Creek when the plan is implemented.

LWP	Qi actually left instream	Max Qi possible	Delta	Qa left instream	Max Qa possible	Delta2
10-01 GFID (2011 -2016)	3.5 - 4 CFS (SAR)	5 CFS (SAR)	1 - 1.5	152 ac-ft average 2011-2014 No data 2015-2016	No max-Water diverted when instream flow conditions allow Max year 2014 250.5 ac-ft	
10-02 Stiller Pond (2011 - 2016)	.127 CFS 6/15 -6/30 and .095 CFS 7/1 -9/30 (portion of baseline water use)	.127 CFS 6/15 - 6/30 and .095 CFS 7/1 -9/30 (portion of baseline water use)	0	16 ac-ft avg (SAR) (32 ac-ft in 2012, 2014, 2015) Being constructed 2011, waiting for QAPP 2013, no funding to operate 2016	32 ac-ft (SAR)	16 ac-ft
11-01 Pepper Bridge (2011-2016) (no SAR)	.866 CFS 10/1 - 4/1 (portion of baseline water use)	.866 CFS 10/1 - 4/1 (portion of baseline water use)	0	29 ac-ft (portion of baseline water use)	29 ac-ft (portion of baseline water use)	0
14-01 Reser (2014-2024)	.04 CFS (left instream)	1 CFS (left instream or SAR)	.96 CFS	26.79 ac-ft 11/1-5/30 (left instream)	250 ac-ft (left instream or SAR)	223.21 ac-ft
14-02 Hassler (2015-2025)	.99 CFS 3/1 - 6/15 and 10/1 - 10/31 (left instream)	5.13 CFS (left instream or SAR)	4.14 CFS	26.46 ac-ft (left instream) SAR site constructed-no funds for monitoring	783.7 ac-ft (left instream or SAR)	757.24 ac-ft
17-02 GFID (2017-2029)	0 (SAR) No funding for monitoring	10 CFS 12/1 -5/31 (SAR)	10 CFS	0 No funding for monitoring	No max-Water diverted when instream flow conditions allow	
18-01 Pierce (2018-2023) (no SAR)	Not specified	Not specified		123.57 ac-ft	123.57 ac-ft	0
19-01 WWCC (2019-2024) (no SAR)	Not specified	Not specified		0 (Not implemented)	75 ac-ft	75 ac-ft

Appendix C: Partnership Response to Performance Audit and Financial Evaluation



Walla Walla Watershed Management Partnership

For Fish • For Farms • For Everyone

The Honorable Pat McCarthy
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

May 6, 2020

Formal Walla Walla Watershed Management Partnership Response to Performance Audit Report:

The Walla Walla Watershed Management Partnership (Partnership) appreciates the opportunity to provide a formal response to the performance report prepared in accordance with Second Substitute Senate Bill 5352 (2019) (SSSB 5352). Senate Bill 5352 directed the Partnership to:

“Participate with the department to complete, by June 30, 2020, a performance audit conducted by the state auditor’s office within existing resources, and a financial audit funded with existing department resources, to evaluate the Walla Walla pilot program since 2008 and to incorporate audit findings and recommendations into a thirty-year integrated water resource management strategy;”

While Partnership Board members, informed by our staff, the Water Resources Panel and the Policy Advisory Group have concerns and do not agree with some of the findings and recommendations in both the performance and financial audit reports submitted to the Legislature, all agree with the general conclusions that significant investments of public funds have not resulted in measurable improvements to the Partnership’s primary objective of instream flow enhancement. At this stage, it is of greatest importance to focus on the future, learn from the audits, and set the stage to make the thirty-year integrated water resource management strategy process (Walla Walla Water 2050) a success.

The Partnership’s focus is intended to help ensure the collaborative approach established to guide development of the Walla Walla Water 2050 process, takes full advantage of the early high level of engagement from the local community, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and many other vital state and federal partners. The involvement from Oregon Water Resources Department is especially vital in our bi-state basin. The collaborative process, especially considering COVID 19 safety measures, will take effort but is vital to ensure we identify and integrate into the plan our unique local values, knowledge, and experiences. We also believe this focus will help the basin identify the best ways to support and build upon the good working relationships and collaboration between the CTUIR and the federal and state natural resource managers.

The Performance and Financial Audit reports are important forms of governance review for management of public funds and scarce water resources in an over-appropriated and stream flow deficient basin. The reports provide valuable information and lessons to inform the future of water management in the Walla Walla River Basin in emergent and collaborative processes like the WWW 2050 planning process. We look forward to updating the Legislature in November and would like to again express our appreciation for your continued support and guidance.

Sincerely,

Judith S. Johnson, Chair
Walla Walla Watershed Management Partnership



Walla Walla Watershed Management Partnership

For Fish • For Farms • For Everyone •

Jim Skalski
Washington State Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Formal Walla Walla Watershed Management Partnership Response to Financial Audit Report:

The Walla Walla Watershed Management Partnership (Partnership) appreciates the opportunity to provide a formal response to the performance and financial audit reports prepared in accordance with Second Substitute Senate Bill 5352 (2019) (SSSB 5352). Senate Bill 5352 directed the Partnership to:

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Sincerely,

Judith S. Johnson, Chair
Walla Walla Watershed Management Partnership