



# Oregon

Tina Kotek, Governor

Water Resources Department

725 Summer Street NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

## Testimony for Senate Bill 761

Senate Committee on Veterans, Emergency Management, Federal and World Affairs

Senator James Manning, Chair

Submitted by: Bryn Hudson, Legislative Coordinator

2/6/2025

Thank you for the opportunity to provide informational testimony for SB 761 and the -2 amendments, as well as to identify some considerations for the forthcoming amendments (possibly -1). This testimony is provided as informational only; the Department is not taking a position on this legislation at this time.

### Walla Walla 2050 Plan

Waters of the Walla Walla Basin in northeastern Oregon supports communities, industries, farms, fish, and wildlife for sovereign tribes, Washington, and Oregon. Due to the complexity of the basin and water demands exceeding water supplies, the Walla Walla Water 2050 Strategic Plan was launched in 2021 to improve streamflows and water supplies in the basin over the next 30 years.

The Washington Department of Ecology-Office of Columbia River, Confederated Tribes of the Umatilla Indian Reservation, Oregon Water Resources Department, local governments in both Washington and Oregon, community members, and other stakeholders have helped develop recommendations for the Plan.

Senate Bill 1567, passed by the legislature in 2024, directed the Department to collaborate with the Confederated Tribes of the Umatilla Indian Reservation and the State of Washington to implement the Walla Walla Water 2050 Strategic Plan. The bill also allowed state agencies in Oregon to fund projects located wholly or partially in the State of Washington that implement the objectives of the Walla Walla Water 2050 Strategic Plan, if the projects benefit in-stream, out-of-stream or groundwater demands in Oregon.

### What the Bill Does

As written, the bill allocates \$2,500,000 the Department to implement projects that benefit water demands in the Walla Walla basin. The bill, as introduced, does not tie to the 2024 legislation resulting in a lack of clarity on what the money is intending to fund. Based on discussions with the bill sponsor, it is the Department's understanding that the intent of this legislation is to provide funding to support water projects that implement the Walla Walla 2050 Strategic Plan in partnership with the State of Washington, as directed in SB 1567 (Chapter 22, Oregon Laws 2024).

### *-2 Amendments: Technical adjustments to funding allocation*

A forthcoming amendment will clarify that the \$2,500,000 allocation is to enter into an agreement with the State of Washington, Department of Ecology's Office of Columbia River to fund projects in the Walla Walla basin pursuant to Section 1(6), Chapter 22, Oregon Laws 2024. Section 1(6) states that the Department may use funds to study, design, engineer and construct projects implementing the Walla Walla Water 2050 Strategic Plan that are located wholly or partially in the State of Washington if the projects: (a) benefit in-stream, out-of-stream or ground water demands in this state; and (b) are consistent

with the objectives of the Walla Walla Water 2050 Strategic Plan. This language provides the Department with clear direction and authority as to how funds provided through the proposed SB 761 may be spent.

### **Forthcoming Amendments**

#### *Walla Walla Irrigation Districts Pilot Program for split-rate instream leasing*

It's the Department's understanding that there are forthcoming amendments (likely –1) to SB 761 proposing a pilot program specific to irrigation districts within the Walla Walla basin. This pilot would allow for irrigation districts in the Walla Walla basin to apply to temporarily transfer a portion of an irrigation right's certificated rate for the purposes of an instream lease while continuing to simultaneously irrigate the same number of acres. This type of temporary transfer is not currently allowed as it is considered enlargement of the water right. Enlargement occurs when a proposed transfer would result in an expansion in the water right. With most streams fully appropriated in this state, changes made by one water right holder that result in expansion of the right can have broader impacts in the water system. Examples of enlargement include but are not limited to increasing the acreage irrigated under the right or failing to keep the original place of use of water from receiving water from the same source. This proposal would create a new, temporary instream water right that would be protected by the Watermaster, without reducing then number of irrigated acres within the originating District.

In order for the bill to work as proponents intend, the proposal will need to exempt these transactions from enlargement considerations during Department review. While the Department recognizes the unique situation that drives this need within the Walla Walla basin, it is important to acknowledge that this approach could have broader implications in other parts of the state. Splitting certificated rates and duties can result in increased consumptive use, increase the likelihood of injury to other water rights, and can be very difficult for Department watermaster staff to manage in the field.

OWRD is currently in conversation with the bill proponents about the need for further sideboards to address enlargement and management concerns. These could include requiring consumptive use to not increase, rate and or volumetric limits on what can be simultaneously diverted and placed instream, considerations of prior diversion rates and tailwater, real-time measurement where necessary for the watermaster to manage the water effectively, a shorter sunset date to pilot the program, and a requirement that consolidation of the individual water rights occur to reduce temporary transfer processing/review complexity. Lastly, the provisions of the forthcoming amendments provide a model for flexibility of water use in a novel way that Oregon law has not previously allowed without going through the permanent Allocation of Conserved Water Program. The considerations outlined above work to address the Department's concerns. The Department will continue to work with the bill sponsor to ensure those considerations are addressed.