

**P.L.103-434, Oct.31., 1994**  
**YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT (YRBWEP) as amended by**  
**P.L.105-62, Oct.13, 1997, and P.L.106-372, Oct.27, 2000.**

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One Hundred Third Congress of the  
United States of America AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

To provide for the settlement of the water rights claims of the

Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

.....

**TITLE XII--YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT**

SEC. 1201. PURPOSES. The purposes of this title are--

~~(1) to protect, mitigate, and enhance fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation and enhancement of wetlands; and by other appropriate means of habitat improvement;~~

(1) to protect, mitigate, and enhance fish and wildlife and the recovery and maintenance of self-sustaining harvestable populations of fish and other aquatic life, both anadromous and resident species, throughout their historic distribution range in the Yakima Basin through—

(A) improved water management and the constructions of fish passage at storage and diversion dams, as authorized under the Hoover Power Plant Act of 1984 (43 U.S.C. 619 et seq.);

(B) improved instream flows and water supplies;

(C) improved water quality, watershed, and ecosystem function;

(D) protection, creation, and enhancement of wetlands; and

(E) other appropriate means of habitat improvement;”;

(2) to improve the reliability of water supply for irrigation, municipal, industrial, and domestic water supply and use purposes, especially during drought years, including reducing the frequency and severity of water supply shortages for pro-ratable irrigation entities;

(3) to authorize the Secretary to make water available for purchase or lease for meeting municipal, industrial, and domestic water supply purposes;

~~(3)~~ (4) to authorize a Yakima River basin water conservation program that will improve the efficiency of water delivery and use; enhance basin water supplies; improve water quality; protect, create and enhance wetlands; and determine the amount of basin water needs that can be met by water conservation measures;

~~(4)~~ (5) to realize sufficient water savings from the Yakima River Basin Water Conservation Program so that not less than 40,000 acre feet of water savings per year are achieved by the end of the fourth year of the Basin Conservation Program, and not less than 110,000 acre feet of water savings per year are achieved by the end of the eighth year of the program, to protect and enhance fish and wildlife resources; and not less than 55,000 acre feet of water savings per year are achieved by the end of the eighth year of the program for availability for irrigation; to realize sufficient water savings from implementing the Yakima Basin Integrated Water Resource Management Plan, so that not less than 85,000 acre feet of water savings are achieved by implementing the first phase of the Integrated Plan, pursuant to section 1213(a).

~~(5)~~ (6) to encourage an increase in voluntary transactions among public and private entities which result in the implementation of water conservation measures, practices, and facilities; and

(7) to encourage an increase in the, use of and reduce the barriers to, water transfers, leasing, markets, and other voluntary transactions among public and private entities to enhance water management in the Yakima River basin;

~~(6)~~ (8) to provide for the implementation by the ~~Yakama Indian Nation~~ Yakama Nation at its sole discretion of (A) an irrigation demonstration project on the ~~Yakama Indian~~ Yakama Reservation using water savings from system improvements to the Wapato Irrigation Project, and (B) a Toppenish Creek corridor enhancement project integrating agricultural, fish, wildlife, and cultural resources- ;

(9) to improve the resilience of the ecosystems, economies, and communities in the Basin as they face drought, climate variability, and climate change, for the benefit of both the people and the fish and wildlife of the region; and

(10) to authorize and implement the Yakima River Basin Integrated Water Resource Management Plan as Phase III of the Yakima River Basin Water Enhancement Project, as a balanced and cost-effective approach to maximize benefits to the communities and environment in the Basin.

## SEC. 1202. DEFINITIONS. As used in this title:

(1) The term `Basin Conservation Plan' means a plan for implementing water conservation measures found in the various water conservation plans developed under the Basin Conservation Program.

(2) The term `Basin Conservation Program' means the Yakima River Basin Water Conservation Program established under section 1203(a).

(3) The term `comprehensive basin operating plan' means a plan that will provide guidance to the Yakima Project ~~Superintendent~~ **Manager** for operation of the existing Yakima Project as modified by actions taken pursuant to this title.

(4) The term `Conservation Advisory Group' means the Yakima River Basin Conservation Advisory Group established under section 1203(c).

(5) The term `conserved water' means water saved and attributable to the program established under the Basin Conservation Program.

(6) The term `designated Federal official' means the Commissioner of Reclamation (or a designee), acting pursuant to the charter of the Conservation Advisory Group.

(7) The terms `Integrated Plan' and `Yakima River Basin Integrated Water Resource Plan' mean the plan and activities authorized by this title, to be carried out in cooperation with, and in addition to, activities of the State of Washington and the Yakama Nation.

~~(6)~~ (8) The term `Irrigation Demonstration Project' means the ~~Yakama Indian~~ **Yakama** Reservation Irrigation Demonstration Project authorized in section 1204(b).

(9) Municipal, industrial, and domestic water supply and use.—The term `municipal, industrial, and domestic water supply and use' means the supply and use of water for—

- (A) domestic consumption (whether urban or rural);
- (B) maintenance and protection of public health and safety;
- (C) manufacture, fabrication, processing, assembly, or other production of a good or commodity;
- (D) production of energy;
- (E) fish hatcheries; or
- (F) any conservation activity relating to a use described in any of subparagraphs (A) through (E).

~~(7)~~ (10) The term `nonproratable water' means that portion of the total water supply available under provisions of sections 18 and 19 of Civil Action No. 21 (Federal District Court Judgment of January 31, 1945) that is not subject to proration in times of water shortage.

~~(8)~~ (11) The term `on-district storage' means small water storage facilities located within the boundaries of an irrigation entity, including reregulating reservoirs, holding ponds, or other new storage methods which allow for efficient water use.

(12) The term `proratable irrigation entity' means a district, project, or State-recognized authority, board of control, agency, or entity located in the Yakima River basin that—

- (A) manages and delivers irrigation water to farms in the basin; and

(B) possesses, or the members of which possess, water rights that are proratable during periods of water shortage.

~~(9)~~ (13) The term `proratable water' means that portion of the total water supply available under provisions of sections 18 and 19 of Civil Action No. 21 (Federal District Court Judgment of January 31, 1945) that is subject to proration in times of water shortage.

~~(10)~~ (14) The term `Secretary' means the Secretary of the Interior.

~~(11)~~ (15) The term `System Operations Advisory Committee' means a group of fishery biologists—

(A) created by the Yakima Project ~~Superintendent~~ **Manager** in response to the supplemental instructions entitled `Supplementary Instructions to the Water Master', and dated November 28, 1980, in the case of Kittitass Reclamation District, et al. vs. the Sunnyside Valley Irrigation District, et al. (E.D.Wash., Civil No. 21.);

(B) who advise the Yakima Project ~~Superintendent~~ **Manager** on operations of the Yakima Project for fish and wildlife purposes; and

(C) who, together with others, were identified for consultation on November 29, 1990, in the amended partial summary judgment entered in the basin adjudication (Yakima County Superior Court No. 77-2-01484-5).

~~(12)~~ (16) The term `Toppenish Enhancement Project' means the Toppenish Creek corridor enhancement project authorized by section 1204(c).

(17) **Yakima Enhancement Project; Yakima River Basin Water Enhancement Project.—The terms `Yakima Enhancement Project' and `Yakima River Basin Water Enhancement Project' mean the Yakima River basin water enhancement project authorized by Congress pursuant to this Act and other Acts (including Public Law 96–162 (93 Stat. 1241), section 109 of Public Law 98–381 (16 U.S.C. 839b note; 98 Stat. 1340), Public Law 105–62 (111 Stat. 1320), and Public Law 106–372 (114 Stat. 1425)) to promote water conservation, water supply, habitat, and stream enhancement improvements in the Yakima River basin.**

~~(13)~~ (18) The term `~~Yakama Indian Nation~~' **Yakama Nation** means the Confederated Tribes and Bands of the ~~Yakama Indian Nation~~ **Yakama Nation** as redesignated under section 1204(g).

~~(14)~~ (19) The term `Yakima Project ~~Superintendent~~ **Manager** means the individual designated by the Regional Director, Pacific Northwest Region, Bureau of Reclamation, to be responsible for the operation and management of the Yakima Federal Reclamation Project, Washington.

## **SEC. 1203. YAKIMA RIVER BASIN WATER CONSERVATION PROGRAM.**

### (a) ESTABLISHMENT-

(1) The Secretary, in consultation with the State of Washington, the ~~Yakama Indian Nation~~

**Yakama Nation**, Yakima River basin irrigators, and other interested parties, shall establish and administer a Yakima River Basin Water Conservation Program for the purpose of evaluating and implementing measures to improve the availability of water supplies for irrigation and the protection and enhancement of fish and wildlife resources, including wetlands, while improving the quality of water in the Yakima Basin. The Secretary may make grants to eligible entities for the purposes of carrying out this ~~title~~ **section** under such terms and conditions as the Secretary may require. Such terms and conditions shall include a requirement that all water districts, irrigation districts, individuals, or other entities eligible to participate in the Basin Conservation Program must equip all surface water delivery systems within their boundaries with volumetric water meters or equally effective water measuring methods. ~~within 5 years of the date of enactment of this Act.~~

(2) Conserved water resulting in whole or in part from the expenditure of Federal funds shall not be used to expand ~~irrigation~~ **the number of irrigated acres** in the Yakima Basin, except as specifically provided in section 1204(a)(3) on the ~~Yakama Indian~~ **Yakama** Reservation.

(3) The provisions of this section shall not apply to the ~~Yakama Indian Nation~~ **Yakama Nation** except as to any funds specifically applied for from the Basin Conservation Program.

(b) **FOUR PHASES OF PROGRAM-** The Basin Conservation Program shall encourage and provide funding assistance for four phases of water conservation, which shall consist of the following:

(1) The development of water conservation plans, consistent with applicable water conservation guidelines of the Secretary, by irrigation districts, conservation districts, water purveyors, other areawide entities, and individuals not included within an areawide entity.

(2) The investigation of the feasibility of specific potential water conservation measures identified in conservation plans.

(3) The implementation of measures that have been identified in conservation plans and have been determined to be feasible.

(4) Post implementation monitoring and evaluation of implemented measures.

(c) **CONSERVATION ADVISORY GROUP-**

(1) Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the State of Washington, the ~~Yakama Indian Nation~~ **Yakama Nation**, Yakima River basin irrigators, and other interested and related parties, shall establish the Yakima River Basin Conservation Advisory Group.

(2) Members of the Conservation Advisory Group shall be appointed by the Secretary and shall be comprised of--

(A) one representative of the Yakima River basin nonproratable irrigators~~;~~;

- (B) one representative of the Yakima River basin proratable irrigators;
- (C) one representative of the ~~Yakama Indian Nation~~ **Yakama Nation**;
- (D) one representative of environmental interests;
- (E) one representative of the Washington State University Agricultural Extension Service; **and**
- (F) one representative of the ~~Department of Wildlife of the State of Washington,~~ **Department of Fish and Wildlife of the State of Washington.**
- ~~(G) one individual who shall serve as the facilitator.~~

(3) The Conservation Advisory Group shall--

- (A) provide recommendations to the Secretary and to the State of Washington regarding the structure and implementation of the Basin Conservation Program;
- (B) provide recommendations to the Secretary and to the State of Washington regarding the establishment of a permanent program for the measurement and reporting of all natural flow and contract diversions within the basin;
- (C) structure a process to prepare a basin conservation plan as specified in subsection (f);
- (D) provide annual review of the implementation of the applicable water conservation guidelines of the Secretary; **and**
- (E) provide recommendations consistent with statutes of the State of Washington on rules, regulations, and administration of a process to facilitate the voluntary sale or lease of water; **and**
- (F) provide recommendations to advance the purposes and programs of the Yakima Enhancement Project, including the Integrated Plan.**

~~(4) The facilitator shall arrange for meetings of the Conservation Advisory Group, provide logistical support, and serve as moderator for the meetings.~~

**(4) The Secretary shall designate a designated Federal official that—**

- (A) shall arrange and provide logistical support for meetings of the Conservation Advisory Group;**
- (B) may use a facilitator to serve as a moderator for meetings of the Conservation Advisory Group or provide additional logistical support; and**
- (C) shall grant any request for a facilitator by any member of the Conservation Advisory Group.**

(5) The Conservation Advisory Group shall consult an irrigation district when considering actions specifically affecting that district. For the purposes of this paragraph, an irrigation district includes the Yakima Reservation Irrigation District.

(6) The Conservation Advisory Group shall be nonvoting, seeking consensus whenever possible. If disagreement occurs, any member may submit independent comments to the Secretary. The Conservation Advisory Group shall terminate 5 years after the date of its establishment unless extended by the Secretary.

(d) COST SHARING-

(1) Except as otherwise provided by this title, costs incurred in the four phases of the Basin Conservation Program shall be shared as follows:

Program Phase	Non-Federal		Federal Grant
	State Grant	Local	
1. Development of water conservation plans	50% but not more than \$200,000 per recipient	(Residual amount if any)	50%
2. Investigation of specific water conservation measures	50% but sum of 1 and 2 not greater than \$200,000 per recipient	20% after deducting State funds for Item 2	Residual amount after deducting State and local funds for Item 2
3 and 4. Implementation and post implementation monitoring and evaluation	17.5%	17.5%	65.0%

(2) The Yakima River Basin Water Enhancement Project is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Yakima River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1989 (94 Stat. 2697) and independent water-related improvements of the State of Washington and other public and private entities to improve irrigation water use, water supply, and water quality, shall be treated as non-Federal cost share expenditures and shall be consolidated in any final calculation of required cost sharing. Within one year of the date of enactment of this Act, the Secretary shall enter into a binding cost sharing agreement with the State of Washington. The agreement shall describe the terms and conditions of specific contributions and other activities that may, subject to approval by the Secretary, qualify as non-Federal cost share expenditures.

(3) Costs of the Basin Conservation Program related to projects on the ~~Yakama Indian~~ Yakama Reservation are a Federal responsibility and shall be nonreimbursable and not subject to the cost-sharing provisions of this subsection.

**(4) PAYMENT OF LOCAL SHARE BY STATE OR FEDERAL GOVERNMENT.— State or the Federal Government may fund not more than the 17.5 percent local share of the costs of the Basin Conservation Program in exchange for the long-term use of conserved water.**



(e) ENTITY WATER CONSERVATION PLANS- ~~To participate in the Conservation Basin Program an entity must submit a proposed water conservation plan to the Secretary.~~ **To participate in the Basin Conservation Program, as described in subsection (b), an entity shall submit to the Secretary a proposed water conservation plan.** The Secretary shall approve a water conservation plan submitted under this subsection if the Secretary determines that the plan meets the applicable water conservation guidelines of the Secretary.

(f) BASIN CONSERVATION PLAN- The Conservation Advisory Group shall, within 2 1/2 years after the date of enactment of this Act, submit a draft basin conservation plan to the Secretary.

(g) PUBLIC COMMENT- The Secretary shall distribute the draft basin conservation plan and the entity water conservation plans submitted under subsections (e) and (f), respectively, for public comment for a 60-day period.

(h) PUBLICATION OF BASIN CONSERVATION PLAN- Within 60 days after the close of the comment period under subsection (g), the Secretary shall publish the Basin Conservation Plan which plan will provide the basis--

(1) for prioritizing and allocating funds to implement conservation measures under this title; and

(2) for preparing an interim comprehensive basin operating plan under section 1210 of this title as provided for in Public Law 96-162 (93 Stat. 1241).

(i) CONSERVATION MEASURES-

(1) Measures considered for implementation in the Basin Conservation Program may include, among others, conveyance and distribution system monitoring, automation of water conveyance systems, water measuring or metering devices and equipment, lining and piping of water conveyance and distribution systems, on-district storage, electrification of hydraulic turbines, tail-water recycling, consolidation of irrigation systems, irrigation scheduling, and improvement of on-farm water application systems. Basin Conservation Program funds may also be used throughout all four phases of the Basin Conservation Program to mitigate for adverse impacts of program measures.

(2) In addition to implementing existing technologies, the Secretary shall encourage the testing of innovative water conservation measures. The Secretary shall, to the maximum extent possible under applicable Federal, State, and tribal law, cooperate with the State of Washington to facilitate water and water right transfers, water banking, dry year options, the sale and leasing of water, and other innovative allocation tools used to maximize the utility of existing Yakima River basin water supplies.

(3) The Secretary may, consistent with applicable law, use funds appropriated to carry out this section for the ~~purchase or lease~~ **purchase, lease, or management** of land, water, or water rights from any entity or individual willing to limit or forego water use on a temporary or permanent basis. Funds used for ~~purchase or lease~~ **purchase, lease or management** under this paragraph are not subject to the cost sharing provisions of subsection (d). Efforts to acquire water should be ~~made immediately upon availability of funds to meet the three year goal specified in section~~



~~1205(a)(4) to provide water to be used by the Yakima Project Superintendent Manager under the advisement of the System Operations Advisory Committee~~ continued as needed to provide water to be used by the Yakima Project Manager as recommended by the System Operations Advisory Committee and the Conservation Advisory Group for instream flow purposes. The use of Basin Conservation Program funds under this paragraph are in addition to those specifically authorized to be appropriated by subsection (j)(4).

(4) On-farm water management improvements shall be coordinated with programs administered by the Secretary of Agriculture and State conservation districts.

(j) AUTHORIZATION OF APPROPRIATIONS- There is hereby authorized to be appropriated to the Secretary, at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, the following amounts for the Basin Conservation Program:

(1) \$1,000,000 for the development of water conservation plans.

(2) \$4,000,000 for investigation of specific potential water conservation measures identified in conservation plans for consideration for implementing through the Basin Conservation Program.

(3) Up to \$67,500,000 for design, implementation, post-implementation monitoring and evaluation of measures, and addressing environmental impacts.

(4) Up to \$10,000,000 for the ~~initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods to facilitate the outward migration of anadromous fish flushing flows.~~ acquisition of water from willing sellers or lessors specifically to provide improved instream flows for anadromous and resident fish and other aquatic life, including pulse flows to facilitate outward migration of anadromous fish.

Such funds shall not be subject to the cost sharing provisions of subsection (d).

(5) \$100,000 annually for the establishment and support of the Conservation Advisory Group during its duration. Such funds shall be available for travel and per diem, rental of meeting rooms, typing, printing and mailing, and associated administrative needs. The Secretary and the State of Washington shall provide appropriate staff support to the Conservation Advisory Group.

#### **SEC. 1204. ~~YAKAMA INDIAN NATION~~ YAKAMA NATION.**

(a) WAPATO IRRIGATION PROJECT IMPROVEMENTS AND APPROPRIATIONS-

(1) The ~~Yakama Indian Nation's~~ Yakama Nation's proposed system improvements to the Wapato Irrigation Project, as well as the design, construction, operation, and maintenance of the Irrigation Demonstration Project and the Toppenish Creek corridor enhancement project, pursuant to this title shall be coordinated with the Bureau of Indian Affairs.

(2) There is authorized to be appropriated to the Secretary ~~not more than \$23,000,000~~ not more than \$49,000,000, at September 2000 prices, plus or minus such amounts as may be justified by

reason of ordinary fluctuations of applicable cost indexes, for the preparation of plans, investigation of measures, and following the Secretary's certification that such measures are consistent with the water conservation objectives of this title, the implementation of system improvements to the Wapato Irrigation Project. Funding for further improvements within the Wapato Irrigation Project may be acquired under the Basin Conservation Program or other sources identified by the ~~Yakama Indian Nation~~ Yakama Nation.

(3) Water savings resulting from irrigation system improvements shall be available for the use of the ~~Yakama Indian Nation~~ Yakama Nation for irrigation and other purposes on the reservation and for protection and enhancement of fish and wildlife within the Yakima River basin. The conveyance of such water through irrigation facilities other than the Wapato Irrigation Project shall be on a voluntary basis and shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(b) IRRIGATION DEMONSTRATION PROJECT APPROPRIATIONS-

(1)(A) There is hereby authorized to be appropriated to the Secretary--

(i) at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, \$8,500,000 for the design and construction of the ~~Yakama Indian~~ Yakama Reservation Irrigation Demonstration Project; and

(ii) such sums as may be necessary for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies for the period specified by the Secretary, which sums are in addition to operation and maintenance funds for wildlife and cultural purposes appropriated to the Secretary under other authorization.

(B) Funds may not be made available under this subsection until the ~~Yakama Indian Nation~~ Yakama Nation obtains the concurrence of the Secretary in the construction, management, and administrative aspects of the Irrigation Demonstration Project.

(C) After the end of the period specified under subparagraph (A)(ii), costs for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies referred to in that subparagraph, shall be borne exclusively by the lands directly benefitting from the Irrigation Demonstration Project.

(2) The Irrigation Demonstration Project shall provide for the construction of distribution and on-farm irrigation facilities to use all or a portion of the water savings, as determined by the ~~Yakama Indian Nation~~ Yakama Nation, resulting from the Wapato Irrigation Project system improvements for--

(A) demonstrating cost-effective state of the art irrigation water management and conservation,

(B) the training of tribal members in irrigation methods, operation, and management, and

(C) upgrading existing hydroelectric facilities and construction of additional hydroelectric facilities on the reservation to meet irrigation pumping power needs.

(c) TOPPENISH CREEK CORRIDOR ENHANCEMENT PROJECT APPROPRIATIONS- There is hereby authorized to be appropriated to the Secretary \$1,500,000 for the further investigation by the ~~Yakama Indian Nation~~ Yakama Nation of measures to develop a Toppenish Creek corridor enhancement project to demonstrate integration of management of agricultural, fish, wildlife, and cultural resources to meet tribal objectives and such amount as the Secretary subsequently determines is necessary for implementation. There is also authorized to be appropriated to the Secretary such sums as may be necessary for the operation and maintenance of the Toppenish Enhancement Project.

(d) REPORT- Within 5 years of the implementation of the Irrigation Demonstration Project and the Toppenish Enhancement Project, the Secretary, in consultation with the ~~Yakama Indian Nation~~ Yakama Nation, shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington on the effectiveness of the conservation, training, mitigation, and other measures implemented.

(e) STATUS OF IMPROVEMENTS AND FACILITIES- The Wapato Irrigation Project system improvements and any specific irrigation facility of the Irrigation Demonstration Project (excluding on-farm irrigation facilities) and the Toppenish Enhancement Project shall become features of the Wapato Irrigation Project.

(f) TREATMENT OF CERTAIN COSTS- Costs related to Wapato Irrigation Project improvements, the Irrigation Demonstration Project, and the Toppenish Enhancement Project shall be a Federal responsibility and are nonreimbursable and nonreturnable.

(g) REDESIGNATION OF ~~YAKIMA INDIAN NATION~~ YAKAMA NATION TO ~~YAKAMA INDIAN NATION~~ YAKAMA NATION-

(1) REDESIGNATION- The Confederated Tribes and Bands of the ~~Yakima Indian Nation~~ Yakama Nation shall be known and designated as the `Confederated Tribes and Bands of the ~~Yakama Indian Nation~~ Yakama Nation.

(2) REFERENCES- Any reference in a law, map, regulation, document, paper, or other record of the United States to the Confederated Tribes and Bands of the ~~Yakima Indian Nation~~ Yakama Nation referred to in subsection (a) shall be deemed to be a reference to the `Confederated Tribes and Bands of the ~~Yakama Indian Nation~~ Yakama Nation.

## **SEC. 1205. OPERATION OF YAKIMA BASIN PROJECTS.**

(a) WATER SAVINGS FROM BASIN CONSERVATION PROGRAM-

(1) The Basin Conservation Program is intended to result in reductions in water diversions allowing for changes in the present operation of the Yakima Project to improve stream flow conditions in the Yakima River basin. Except as provided by paragraph (5) of this subsection and

section 1209, commencing with the enactment of this title, and notwithstanding that anticipated water savings are yet to be realized, the Secretary, upon the enactment of this title and acting through the Yakima Project ~~Superintendent-Manager~~, shall:

(A) continue to estimate the water supply which is anticipated to be available to meet water entitlements; and

(B) provide instream flows in accordance with the following criteria:

Water Supply Estimate for Period (million acre feet):				Target Flow from Date of Estimate thru October Downstream of (cubic feet per second):	
(1) 3.2	2.9	2.4	1.9	Sunnyside Diversion Dam	Prosser Diversion Dam
(2) 2.9	2.65	2.2	1.7	Sunnyside 600 Diversion 500 Dam 400	Prosser 600 Diversion 500 Dam 400
(3) 2.65	2.4	2.0	1.5		
Less than line 3 water supply				300	300

(2) The initial target flows represent target flows at the respective points. Reasonable fluctuations from these target flows are anticipated in the operation of the Yakima Project, except that for any period exceeding 24 hours--

(A) actual flows at the Sunnyside Diversion Dam may not decrease to less than 65 percent of the target flow at the Sunnyside Diversion Dam; and

(B) actual flows at the Prosser Diversion Dam may not decrease by more than 50 cubic feet per second from the target flow.

(3) The instream flows shall be increased for interim periods during any month of April through October to facilitate when necessary the outward migration of anadromous fish. Increased instream flows for such interim periods shall be obtained through voluntary sale and leasing of water or water rights or from conservation measures taken under this title.

(4) (A)

(i) Within the three-year period beginning when appropriations are first provided to carry out the Basin Conservation Program, the instream flow goal in the Yakima River is as follows: to secure **additional** water which is to be used for instream flows to facilitate meeting recommendations of the System Operations Advisory Committee for ~~flushing~~ **pulse** flows or other instream ~~uses~~ **uses, in addition to the quantity of water provided under the treaty between the Yakama Nation and the United States.**

~~(ii) In addition to any other authority of the Secretary to provide water for flushing flows, the water required to meet the goal specified in clause (i) shall be acquired through the voluntary purchase or lease of land, water, or water rights and from the development of additional storage capability at Lake Cle Elum provided for in section 1206(a).~~

~~(iii)~~ **(ii)** In addition to water required to meet the instream flow goal specified in clause (i), the System Operations Advisory Committee may recommend additional water to meet instream flow goals **and water rights mandated** pursuant to judicial actions.

(B) After the period referred to in subparagraph (A), such instream flow goal is modified as follows:

(i) The goal increases so that the instream target flows specified in the table in paragraph (1) increase by 50 cubic feet per second for each 27,000 acre-feet of reduced annual water diversions achieved through implementation of measures under the Basin Conservation Program **in proportion to the funding received.** Such increases do not apply to actions taken pursuant to section 1204. Such increases shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(ii) The goal changes directly with the availability of water resulting from Federal expenditures under this title for purchase or lease of water under this title.

(C) The Yakima Project ~~Superintendent~~ **Manager** shall maintain an account of funded and completed conservation measures taken under the Basin Conservation Program.

(D) No later than March 31 of each calendar year, the Yakima Project ~~Superintendent~~ **Manager** shall meet with the State of Washington, ~~Yakama Indian Nation~~ **Yakama Nation**, and Yakima River basin irrigators to mutually determine total diversion reductions and respective adjustments to the target flows referred to in this subsection. The Yakima Project ~~Superintendent~~ **Manager** shall announce such adjustments with the announcements of Total Water Supply Available. For the purposes of this subparagraph, conserved water will be considered available for adjusting target flows in the first year following completion of a measure or following a result from the post implementation monitoring and evaluation program, as the case may be.

(5) Operational procedures and processes in the Yakima River basin which have or may be implemented through judicial actions shall not be impacted by this title.

~~(5) (A) Within three years after the date of enactment of this Act, the Secretary shall conduct a study and submit a report with recommendations to the appropriate committees of the Congress on whether the water supply available for irrigation is adequate to sustain the agricultural economy of the Yakima River basin.~~

~~(B) The target flows provided for under this subsection shall be evaluated within three years after the date of enactment of this Act by the Systems Operations Advisory Committee for the purpose of making a report with recommendations to the Secretary and the Congress evaluating what is necessary to have biologically-based target flows.~~

~~(C) The recommendations and reports under subparagraphs (A) and (B) shall provide a basis for the third phase of the Yakima River Basin Water Enhancement Project.~~

(b) WATER FROM LAKE CLE ELUM- Water accruing from the development of additional storage capacity at Lake Cle Elum, made available pursuant to the modifications authorized in section 1206(a), shall not be part of the Yakima River basin's water supply as provided in subsection (a)(1). Water obtained from such development is exclusively dedicated to ~~instream flows for use by the Yakima Project Superintendent~~ **Manager** as flushing flows or as otherwise **fishery purposes**, as advised by the System Operations Advisory Committee. Water may be carried over from year-to-year in the additional capacity to the extent that there is space available. Releases may be made from other Yakima Project storage facilities to most effectively utilize this additional water, except that water deliveries to holders of existing water rights shall not be impaired.

(c) STATUS OF BASIN CONSERVATION PROGRAM FACILITIES- Measures of the Basin Conservation Program which are implemented on facilities currently under the administrative jurisdiction of the Secretary, except as provided in section 1204, shall be considered features of the Yakima River Basin Water Enhancement Project, and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. The responsibility for operation and maintenance and the related costs shall remain with the current operating entity. As appropriate, the Secretary shall incorporate the operation and maintenance of such facilities into existing agreements. The Secretary shall assure that such facilities are operated in a manner consistent with Federal and State law and in accordance with water rights recognized pursuant to State and Federal law.

(d) WATER ACQUIRED BY PURCHASE AND LEASE- Water acquired from voluntary sellers and lessors shall be administered as a block of water separate from the Total Water Supply Available, in accordance with applicable Federal and State law.

(e) YAKIMA PROJECT PURPOSE-

~~(1) An additional purpose of the Yakima Project shall be for fish, wildlife, and recreation.~~

**1) In general.—Additional purposes of the Yakima Project shall be any of the following:**

**(A) To recover and maintain self-sustaining harvestable populations of native fish, both anadromous and resident species, throughout their historic distribution range in the Yakima Basin.**



(B) To protect, mitigate, and enhance aquatic life and wildlife.

(C) Recreation.

(D) Municipal, industrial, and domestic use.

(2) The existing storage rights of the Yakima Project shall include storage for the purposes of fish, wildlife, and recreation.

(3) The purposes specified in paragraphs (1) and (2) shall not impair the operation of the Yakima Project to provide water for irrigation purposes nor impact existing contracts.

## **SEC. 1206. LAKE CLE ELUM AUTHORIZATION OF APPROPRIATIONS.**

(a) **MODIFICATIONS AND IMPROVEMENTS-** There is hereby authorized to be appropriated to the Secretary--

(1) ~~at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuation of applicable indexes, \$2,934,000 to~~ **such sums as are necessary to**

(A) modify the radial gates at Cle Elum Dam to provide an additional 14,600 acre-feet of storage capacity in Lake Cle Elum,

(B) provide for shoreline protection of Lake Cle Elum, and

(C) construct juvenile fish passage facilities at Cle Elum Dam, plus

(2) such additional amounts as may be necessary which may be required for environmental mitigation.

(b) **OPERATION AND MAINTENANCE APPROPRIATIONS-** There is hereby authorized to be appropriated to the Secretary such sums as may be necessary for that portion of the operation and maintenance of Cle Elum Dam determined by the Secretary to be a Federal responsibility.

## **SEC. 1207. ENHANCEMENT OF WATER SUPPLIES **MANAGEMENT** FOR YAKIMA BASIN TRIBUTARIES.**

(a) **GENERAL PROVISIONS-** The following shall be applicable to the investigation and implementation of measures to enhance water **supplies management** for fish and wildlife and irrigation purposes on tributaries of the Yakima River basin:

(1) An enhancement program authorized by this section undertaken in any tributary shall be contingent upon the agreement of appropriate water right owners **and water supply entities** to participate.

(2) The enhancement program authorized by this section shall not be construed to affect

(A) the water rights of any water right owners **that choose not to participate or opt out of tributary enhancement projects pursuant to this section** in the tributary or other water delivering entities;

(B) the capability of **nonparticipating** tributary water users to divert, convey, and apply water; and

(C) existing water and land uses within the tributary area.

(3) The water supply for tributary enhancement shall be administered in accordance with applicable State and Federal laws.

(4) Any enhancement program authorized by this section shall be predicated upon the availability of a dependable water supply.

(b) ~~STUDY—~~

~~(1) The Secretary, following consultation with the State of Washington, the tributary water right owners, and the **Yakama Indian Nation Yakama Nation**, and agreement of appropriate water right owners to participate, shall conduct a study concerning the measures that can be implemented to enhance water supplies for fish and wildlife and irrigation purposes on Taneum Creek, including (but not limited to)—~~

**(1) In general.—The Secretary, following consultation with the State of Washington, the Yakama Nation, and on agreement of appropriate water supply entities, is authorized to conduct studies to evaluate measures to further Yakima Project purposes on tributaries to the Yakima River. Enhancement programs that use measures authorized by this section may be investigated and implemented by the Secretary in tributaries, including Taneum Creek, other areas, or tributary basins that currently or could potentially be provided supplemental or transfer water by entities, such as the Kittitas Reclamation District or the Yakima-Tieton Irrigation District. Measures to evaluate include—**

**(A) water use efficiency improvements including irrigation efficiency improvements (in coordination with programs of the Department of Agriculture), consolidation of diversions or administration, and diversion scheduling or coordination;**

**(B) the conveyance of water from the Yakima Project through the facilities of any irrigation entity willing to contract with the Secretary without adverse impact to water users;**

**C) improvements in irrigation system management or delivery facilities within the Yakima River basin when those improvements allow for increased irrigation system conveyance and corresponding reduction in diversion from tributaries or flow enhancements to tributaries through direct flow supplementation or groundwater recharge;**

(D) improvements of irrigation system management or delivery facilities to reduce or eliminate excessively high flows caused by the use of natural streams for conveyance or irrigation water or return water;

~~(C)~~ (E) the construction, operation, and maintenance of ~~ground-water~~ **groundwater recharge and** withdrawal facilities;

~~(D)~~ (F) contracting with any entity that is willing to voluntarily limit or forego present water use through lease or sale of water or water rights on a temporary or permanent basis;

~~(E)~~ (G) purchase **or transfer** of water rights from willing sellers; and

~~(F)~~ (H) other measures compatible with the purposes of this title, including restoration of **stream processes and** stream habitats.

(2) In conducting the ~~Tanenum Creek study~~ **studies under this subsection**, the Secretary shall consider—

(A) the hydrologic and environmental characteristics;

(B) the engineering ~~and economic~~ **infrastructure, economic, and land use** factors relating to each measure; ~~and~~

(C) the potential impacts upon the operations of present water users in the tributary and measures to alleviate such impacts.; **and**

**(D) any related studies already underway or undertaken.**

(3) The Secretary shall make available to the public for a 45-day comment period a draft report describing in detail the findings, conclusions, and recommendations of the study **of each tributary or group of tributaries**. The Secretary shall consider and include any comment made in developing a final report. The Secretary's final report shall be submitted to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington, and made available to the public.

(c) IMPLEMENTATION OF NONSTORAGE **AND NONSURFACE STORAGE** MEASURES- After securing the necessary permits the Secretary may, in cooperation with the Department of Ecology of the State of Washington and in accordance with the laws of the State of Washington, implement nonstorage and **nonsurface storage** measures identified in the final report under subsection (b) upon fulfillment of the following conditions:

(1) The Secretary shall enter into an agreement with the appropriate water right owners who are willing to participate, the State of Washington, and the ~~Yakama Indian Nation~~ **Yakama Nation**,

for the use and management of the water supply to be provided by proposed tributary measures pursuant to this section.

(2) The Secretary and the State of Washington find that the implementation of the proposed tributary measures will not impair the water rights of any person or entity in the affected tributary.

~~(d) OTHER YAKIMA RIVER BASIN TRIBUTARIES— Enhancement programs similar to the enhancement program authorized by this section may be investigated and implemented by the Secretary in other tributaries contingent upon the agreement of the appropriate tributary water right owners to participate. The provisions set forth in this section shall be applicable to such programs.~~

~~(e)~~ (d) AUTHORIZATION OF APPROPRIATIONS-

(1) There is hereby authorized to be appropriated to the Secretary \$500,000 for the study of the Taneum Creek Project and such amount as the Secretary subsequently determines is necessary for implementation of tributary measures pursuant to this section.

(2) There is also authorized to be appropriated to the Secretary such funds as are necessary for the investigation **and implementation** of enhancement programs similar to the enhancement program authorized by this section in ~~other~~ Yakima River basin tributaries contingent upon the agreement of the appropriate water right owners **and other water supply entities** to participate. ~~Funds for the implementation of any such similar enhancement program may not be appropriated until after the Secretary submits an investigation report to the appropriate congressional committees.~~

## **SEC. 1208. CHANDLER PUMPING PLANT AND POWERPLANT-OPERATIONS AT PROSSER DIVERSION DAM.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR ELECTRIFICATION OR WATER EXCHANGE-

(1) ELECTRIFICATION. In order to provide for electrification to enhance instream flows by eliminating the need to divert water to operate the hydraulic turbines which pump water to the Kennewick Irrigation District, there is authorized to be appropriated--

(1A) \$50,000 to conduct an assessment of opportunities for alternative pumping plant locations;  
(2B) **\$13,000,000, at 1997 prices for construction plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes;** and

(3C) such sums as may be necessary for the prorata share of the operation and maintenance allocated to fish and wildlife as determined by the Secretary.

(2) WATER EXCHANGE ALTERNATIVE-

(A) IN GENERAL- As an alternative to the measures authorized under paragraph

(1) for electrification, the Secretary is authorized to use not more than \$4,000,000 of sums appropriated under paragraph (1) to study the engineering feasibility of exchanging water from the Columbia River for water historically diverted from the Yakima River.

(B) REQUIREMENTS- In carrying out subparagraph (A), the Secretary, in coordination with the Kennewick Irrigation District and in consultation with the Bonneville Power Administration, shall--

- (i) prepare a report that describes project benefits and contains feasibility level designs and cost estimates;
- (ii) secure the critical right-of-way areas for the pipeline alignment;
- (iii) prepare an environmental assessment; and
- (iv) conduct such other studies or investigations as are necessary to develop a water exchange.

(b) POWER FOR PROJECT PUMPING-

(1) The Administrator of the Bonneville Power Administration shall provide for project power needed to effect the electrification or water exchange as provided in subsection (a).\

(2)(A) There is authorized to be appropriated for the Bureau of Reclamation for each fiscal year in which the Administrator provides power under this subsection an amount equal to the cost to the Bonneville Power Administration of providing power under this subsection during such fiscal year. The rate to be utilized by the Administrator in determining the cost of power under this paragraph in a fiscal year shall be the rate for priority firm power charged by the Bonneville Power Administration in that fiscal year under section 7(b) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(b)) or the equivalent of the rate.

(B) The Bureau of Reclamation shall, using funds appropriated pursuant to the authorization of appropriations in subparagraph (A), reimburse the Bonneville Power Administration for the costs of the project power provided under this subsection. Such funds shall be available for such purpose without fiscal year limitation.

(c) SUBORDINATION- Any diversions for hydropower generation at the Chandler Powerplant shall be subordinated to meet the flow targets determined under subsection (f).

(d) WATER SUPPLY FOR KENNEWICK IRRIGATION DISTRICT- The Secretary shall ensure that the irrigation water supply for the Kennewick Irrigation District shall not be **negatively** affected by conservation, electrification electrification or water exchange, or subordination pursuant to this title and any reduction in its irrigation water supply resulting from conservation measures adopted or implemented by other entities pursuant to this title shall be replaced by water developed through subordination, electrification electrification or water exchange, or a combination of the two thereof.

(e) TREATMENT OF CERTAIN FUNDS- Funds appropriated and project power provided pursuant to this section shall be nonreimbursable since such funds are used for fish and wildlife purposes and such funds are not subject to cost share under section 1203(d).

(f) TARGET FLOWS- Target flows measured at appropriate biological and hydrological location or locations shall be determined by the Yakima Project **Superintendent Manager** in consultation with the System Operations Advisory Committee.

## **SEC. 1209. AUGMENTATION OF KACHESS RESERVOIR STORED WATER.**

(a) AUTHORIZATION OF APPROPRIATIONS- In order to augment Kachess Reservoir stored water supplies from flows of Cabin Creek and Silver Creek which are excess to system demands, there is authorized to be appropriated--

- (1) such sums as may be necessary to carry out a feasibility study, including the benefits, costs, and environmental aspects, of the facility described in paragraph (2);
- (2) for the construction of facilities to convey such flows to Kachess Reservoir, \$20,000,000; and
- (3) such sums as may be necessary for the pro rata share of the operation and maintenance allocated to fish and wildlife determined by the Secretary.

(b) LIMITATION- Construction of the facilities described in subsection (a)(1) is contingent on the completion of the feasibility study referred to in subsection (a)(2).

(c) USE OF ADDITIONAL WATER- The stored water supply resulting from the construction of facilities under this section shall be used by the Secretary to--

- (1) enhance the water supply available to the Kittitas Reclamation District and the Roza Irrigation District in years of proration; and
- (2) facilitate reservoir operations in the Easton Dam to Keechelus Dam reach of the Yakima River for the propagation of anadromous fish.

(d) TREATMENT OF COSTS- The construction and operation and maintenance costs of the facilities under this section shall be allocated to irrigation and fishery enhancement, as follows:

- (1) The portion of such costs allocated to irrigation is reimbursable, with the construction costs to be paid prior to initiation of construction by the Kittitas Reclamation District and the Roza Irrigation District.
- (2) The portion of such costs allocated to fishery enhancement is nonreimbursable.

(e) KACHESS DAM MODIFICATIONS- There is authorized to be appropriated \$2,000,000 for the modification of the discharge facilities of Kachess Dam to improve reservoir operations for anadromous fish enhancement. Amounts appropriated under this subsection are nonreimbursable.



**SEC. 1210. INTERIM COMPREHENSIVE BASIN OPERATING PLAN.**

(a) DEVELOPMENT- The Secretary shall, in consultation with the State of Washington, ~~Yakama Indian Nation~~, **Yakama Nation**, Yakima River Basin irrigation districts, Bonneville Power Administration, and other entities as determined by the Secretary, develop an interim comprehensive operating plan for providing a general framework within which the Yakima Project ~~Superintendent~~ **Manager** operates the Yakima Project, including measures implemented under the Yakima River Basin Water Enhancement Project, including (but not limited to)--

- (1) operating capability and constraints of the system;
- (2) information on water supply calculations and water needs;
- (3) system operations and stream flow objectives; and
- (4) the System Operations Advisory Committee activities.

(b) PROCESS REQUIREMENTS- A draft of the interim comprehensive basin operating plan shall be completed within 18 months after the completion of the Basin Conservation Plan under section 1203(f) and, upon completion, published for a 90-day public review period. The Secretary shall complete and publish the final interim comprehensive operating plan within 90 days after the close of the public review period. The Secretary shall update the plan as needed to respond to decisions from water adjudications relating to the Yakima River basin.

(c) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated ~~\$100,000~~ **\$200,000, at September 2014 prices**, to carry out this section.

**SEC. 1211. ENVIRONMENTAL COMPLIANCE.** There are hereby authorized to be appropriated to the Secretary \$2,000,000, **at September 2014 prices**, for environmental compliance activities including the conduct, in cooperation with the State of Washington, of an inventory of wildlife and wetland resources in the Yakima River basin and an investigation of measures, including 'wetland banking', which could be implemented to address potential impacts which could result from the activities taken under this title.

**SEC. 1212. SAVINGS AND CONTINGENCIES.**

(a) IN GENERAL- Nothing in this title shall be construed to--

- (1) affect or modify any treaty or other right of the ~~Yakama Indian Nation~~ **Yakama Nation**;
- (2) authorize the appropriation or use of water by any Federal, State, or local agency, the ~~Yakama Indian Nation~~ **Yakama Nation**, or any other entity or individual;
- (3) impair the rights or jurisdictions of the United States, the States, the ~~Yakama Indian Nation~~ **Yakama Nation**, or other entities over waters of any river or stream or over any ground water resource;
- (4) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(5) alter, establish, or impair the respective rights of States, the United States, the ~~Yakama Indian Nation~~ **Yakama Nation**, or any other entity or individual with respect to any water or water-related right;

(6) alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, the ~~Yakama Indian Nation~~ **Yakama Nation**, or other entity, public or private;

(7) affect or modify the rights of the ~~Yakama Indian Nation~~ **Yakama Nation** or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the ~~Yakama Indian~~ **Yakama** Reservation;

(8) affect or modify the settlement agreement between the United States and the State of Washington filed in Yakima County Superior Court with regard to Federal reserved water rights other than those rights reserved by the United States for the benefit of the ~~Yakama Indian Nation~~ **Yakama Nation** and its members;

(9) affect or modify the rights of any Federal, State, or local agency, the ~~Yakama Indian Nation~~ **Yakama Nation**, or any other entity, public or private with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including State against Acquavella, or constitute evidence in any such proceeding in which any water or water related right is adjudicated; or

(10) preclude other planning studies and projects to accomplish the purposes of this title by other means: funded publicly, privately, or by a combination of public and private funding.

(b) CONTINGENCY BASED ON APPROPRIATIONS- The performance of any activity under this title which requires accomplishment within a specified period that may require appropriation of money by Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made.

### **SEC. 1213. AUTHORIZATION OF THE INTEGRATED PLAN AS PHASE III OF YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT.**

(a) Integrated Plan.—

1) IN GENERAL.—The Secretary shall implement the Integrated Plan as Phase III of the Yakima River Basin Water Enhancement Project in accordance with this section and applicable laws.

(2) INITIAL DEVELOPMENT PHASE OF THE INTEGRATED PLAN.—

(A) IN GENERAL.—The Secretary, in coordination with the State of Washington and Yakama Nation and subject to feasibility studies, environmental reviews, and the availability of appropriations, shall implement an initial development phase of the Integrated Plan, to—

(i) complete the planning, design, and construction or development of upstream and downstream fish passage facilities, as previously authorized by the Hoover Power Plant Act of 1984 (43 U.S.C. 619 et seq.) at Cle Elum Reservoir and another Yakima

Project reservoir identified by the Secretary as consistent with the Integrated Plan and as set forth in the applicable feasibility study or report;

(ii) negotiate long-term agreements with participating proratable irrigation entities in the Yakima Basin and, acting through the Bureau of Reclamation, coordinate between Bureaus of the Department of the Interior and with the heads of other Federal agencies to negotiate agreements concerning leases, easements, and rights-of-way on Federal land, and other terms and conditions determined to be necessary to allow for the non-Federal financing, construction, operation, and maintenance of—

(I) facilities needed to access and deliver inactive storage in Kachess Reservoir for the purpose of providing drought relief for irrigation (known as the ‘Kachess Drought Relief Pumping Plant’), as set forth in the applicable feasibility study or report; and

(II) a conveyance system to allow transfer of water between Keechelus Reservoir to Kachess Reservoir for purposes of improving operational flexibility for the benefit of both fish and irrigation (known as the ‘K to K Pipeline’), as set forth in the applicable feasibility study or report;

(iii) participate in, provide funding for, and accept non-Federal financing for—

(I) water conservation projects, not subject to the provisions of the Basin Conservation Program described in section 1203, that are intended to partially implement the Integrated Plan by providing 85,000 acre-feet of conserved water to improve tributary and mainstem stream flow; and

(II) aquifer storage and recovery projects benefitting all beneficial uses;

(iv) study, evaluate, and conduct feasibility analyses and environmental reviews of fish passage, water supply (including groundwater and surface water storage), conservation, habitat restoration projects, and other alternatives identified as consistent with the purposes of this Act, for the initial and future phases of the Integrated Plan;

(v) coordinate with and assist the State of Washington in implementing a robust water market to enhance water management in the Yakima River basin, including—

(I) assisting in identifying ways to encourage and increase the use of, and reduce the barriers to, water transfers, leasing, markets, and other voluntary transactions among public and private entities in the Yakima River basin;

(II) providing technical assistance, including scientific data and market information; and

(III) negotiating agreements that would facilitate water transfers between entities, including as appropriate, the use of federally managed infrastructure; and

(vi) enter into cooperative agreements with, or make grants to, the Yakama Nation, the State of Washington, Yakima River basin irrigation districts, water districts, conservation districts, other local governmental entities, nonprofit organizations, and land owners to carry out this title under such terms and conditions as the Secretary may require, including the following purposes:

“(I) Land and water transfers, leases, and acquisitions from willing participants,

so long as the acquiring entity shall hold title and be responsible for any and all required operations, maintenance, and management of that land and water.

“(II) Operation and maintenance or management of Federal land acquired under this title, in partnership with the Secretary.

(III) To combine or relocate diversion points, remove fish barriers, or for other activities that increase flows or improve habitat in the Yakima River and its tributaries in furtherance of this title.

(IV) To implement, in partnership with Federal and non-Federal entities, projects to enhance the health and resilience of the watershed, subject to the condition that if such a grant or cooperative agreement results in a direct benefit to a project beneficiary, the Secretary may determine that the costs are reimbursable.

(B) COMMENCEMENT DATE.—The Secretary shall commence implementation of the activities included under the initial development phase pursuant to this paragraph—

(i) on the date of enactment of this section; and

(ii) on completion of applicable feasibility studies that include a recommendation for further development and environmental reviews.

(3) INTERMEDIATE AND FINAL PHASES.—

(A) IN GENERAL.—The Secretary, in coordination with the State of Washington and in consultation with the Yakama Nation, shall develop plans for intermediate and final development phases of the Integrated Plan to achieve the purposes of this Act, including conducting applicable feasibility studies, environmental reviews, and other relevant studies needed to develop the plans.

(B) INTERMEDIATE PHASE.—The Secretary shall develop an intermediate development phase to implement the Integrated Plan that, subject to authorization and appropriation, would commence not later than 10 years after the date of enactment of this section.

(C) FINAL PHASE.—The Secretary shall develop a final development phase to implement the Integrated Plan that, subject to authorization and appropriation, would commence not later than 20 years after the date of enactment of this section.

(4) CONTINGENCIES.—The implementation by the Secretary of projects and activities identified for implementation under the Integrated Plan shall be—

(A) subject to authorization and appropriation;

(B) contingent on the completion and outcome of applicable feasibility studies that include a recommendation for further project development, environmental reviews, and cost-benefit and other analyses;

(C) implemented subject to public review and a determination by the Secretary that design, construction, and operation of a proposed project or activity is in the best interest of the public; and

(D) in compliance with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq).

“(5) PROGRESS REPORT.—

(A) IN GENERAL.—Not later than 5 years after the date of enactment of this section, the Secretary, in conjunction with the State of Washington and in consultation with the Yakama Nation, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a progress report on the development and implementation of the Integrated Plan.

(B) REQUIREMENTS.—The progress report under this paragraph shall—

- (i) provide a review and reassessment, if needed, of the objectives of the Integrated Plan, as applied to all elements of the Integrated Plan;
- (ii) assess, through performance metrics developed at the initiation of, and measured throughout the implementation of, the Integrated Plan, the degree to which the implementation of the initial development phase addresses the objectives and all elements of the Integrated Plan;
- (iii) identify additional projects and activities proposed for inclusion in any future phase of the Integrated Plan to address the objectives of the Integrated Plan, as applied to all elements of the Integrated Plan; and
- (iv) for water supply projects—
  - (I) provide a preliminary discussion of the means by which—
    - (aa) water and costs associated with each recommended project would be allocated among authorized uses; and
    - (bb) those allocations would be consistent with the objectives of the Integrated Plan; and
  - (II) establish a plan for soliciting and formalizing subscriptions among individuals and entities for participation in any of the recommended water supply projects that will establish the terms for participation, including fiscal obligations associated with subscription.

(b) Financing, Construction, Operation, and Maintenance of Kachess Drought Relief Pumping Plant and K to K Pipeline.—

(1) AGREEMENTS.—Long-term agreements negotiated between the Secretary and participating proratable irrigation entities in the Yakima Basin for the non-Federal financing, construction, operation, and maintenance of the Drought Relief Pumping Plant and K to K Pipeline shall include provisions regarding—

- (A) responsibilities of the participating proratable irrigation entities for the planning, design, and construction of infrastructure in consultation and coordination with the Secretary;
- (B) property titles and responsibilities of the participating proratable irrigation entities for the maintenance of and liability for all infrastructure constructed under this title;
- (C) operation and integration of the projects by the Secretary in the operation of the Yakima Project;
- (D) costs associated with the design, financing, construction, operation, maintenance, and mitigation of projects, with the costs of Federal oversight and review to be nonreimbursable

to the participating proratable irrigation entities and the Yakima Project; and

(E) responsibilities for the pumping and operational costs necessary to provide the total water supply available made inaccessible due to drought pumping during 1 or more preceding calendar years, in the event that the Kachess Reservoir fails to refill as a result of pumping drought storage water during the 1 or more preceding years, which shall remain the responsibility of the participating proratable irrigation entities.

(2) USE OF KACHESS RESERVOIR STORED WATER.—

(A) IN GENERAL.—The additional stored water made available by the construction of facilities to access and deliver inactive storage in the Kachess Reservoir under subsection (a)(2)(A)(ii)(I) shall—

(i) be considered to be Yakima Project water;

(ii) not be part of the total water supply available, as that term is defined in various court rulings; and

(iii) be used exclusively by the Secretary—

(I) to enhance the water supply in years when the total water supply available is not sufficient to provide 70 percent of proratable entitlements in order to make that additional water available up to 70 percent of proratable entitlements to the Kittitas Reclamation District, the Roza Irrigation District, or other proratable irrigation entities participating in the construction, operation, and maintenance costs of the facilities under this title under such terms and conditions to which the districts may agree, subject to the conditions that—

(aa) the Bureau of Indian Affairs, the Wapato Irrigation Project, and the Yakama Nation, on an election to participate, may also obtain water from Kachess Reservoir inactive storage to enhance applicable existing irrigation water supply in accordance with such terms and conditions to which the Bureau of Indian Affairs and the Yakama Nation may agree; and

(bb) the additional supply made available under this clause shall be available to participating individuals and entities in proportion to the proratable entitlements of the participating individuals and entities, or in such other proportion as the participating entities may agree; and

(II) to facilitate reservoir operations in the reach of the Yakima River between Keechelus Dam and Easton Dam for the propagation of anadromous fish.

(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph affects (as in existence on the date of enactment of this section) any contract, law (including regulations) relating to repayment costs, water right, or Yakama Nation treaty right.

(3) COMMENCEMENT.—The Secretary shall not commence entering into agreements pursuant to subsection (a)(2)(A)(ii) or paragraph (1) or implementing any activities pursuant to the agreements before the date on which—

(A) all applicable feasibility studies and environmental reviews—

(i) have been completed; and



- (ii) include favorable recommendations for further project development;
- (B) an analysis has been completed of—
  - (i) the impacts of the agreements and activities pursuant to the agreements on adjacent communities; and
  - (ii) options for mitigating those impacts;
- (C) the Secretary has made available in the Federal Register the agreements and any applicable project designs, operations plans, and other documents for public review and comment for a period of not less than 60 days; and
- (D) the Secretary has made a determination that the agreements and activities to which the agreements relate—
  - (i) are in the public interest; and
  - (ii) could be implemented without significant adverse impacts to the environment.

(4) ELECTRICAL POWER ASSOCIATED WITH KACHESS DROUGHT RELIEF PUMPING PLANT.—The Administrator of the Bonneville Power Administration, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), shall provide to the Secretary project power to operate the Kachess Pumping Plant constructed under this title whenever inactive storage in the Kachess Reservoir is needed to provide drought relief for irrigation. The Administrator shall provide the power at the then-applicable lowest Bonneville Power Administration rate for public body, cooperative, and Federal agency customers firm obligations, which as of the date of enactment of this section is the priority firm Tier 1 rate, and shall not include any irrigation discount. At all other times, power needed to operate the Kachess Pumping Plant shall be obtained by the Secretary from a local provider. The cost of power for such pumping, station service power, and all costs of transmitting power from the Federal Columbia River Power System to the Yakima Enhancement Project pumping facilities shall be borne by irrigation districts receiving the benefits of that water. The Commissioner of Reclamation shall be responsible for arranging transmission for deliveries of Federal power over the Bonneville system through applicable tariff and business practice processes of the Bonneville system and for arranging transmission for deliveries of power obtained from a local provider.

(c) Design and Use of Groundwater Recharge Projects.—

(1) IN GENERAL.—Any water supply that results from an aquifer storage and recovery project shall not be considered to be a part of the total water supply available if—

- (A) the water for the aquifer storage and recovery project would not be available for use, but instead for the development of the project;
- (B) the aquifer storage and recovery project will not otherwise impair any water supply available for any individual or entity entitled to use the total water supply available;
- (C) the development of the aquifer storage and recovery project will not impair fish or other aquatic life in any localized stream reach; and
- (D) the aquifer storage and recovery project is approved by the Work Group.

(2) PROJECT TYPES.—The Secretary may design, implement, and otherwise participate in groundwater recharge projects of any of the following 3 types:

(A) Aquifer recharge projects designed to redistribute Yakima Project water within a water year for the purposes of supplementing stream flow during the irrigation season, particularly during storage control, subject to the condition that if such a project is designed to supplement a mainstem reach, the water supply that results from the project shall be credited to instream flow targets, in lieu of using the total water supply available to meet those targets.

(B) Aquifer storage and recovery projects that are designed, within a given water year or over multiple water years—

- (i) to supplement or mitigate for municipal uses;
- (ii) to supplement municipal supply in a subsurface aquifer; or
- (iii) to mitigate the effect of groundwater use on instream flow or senior water rights.

(C) Aquifer storage and recovery projects designed to supplement existing irrigation water supply, or to store water in subsurface aquifers, for use by the Kittitas Reclamation District, the Roza Irrigation District, or any other proratable irrigation entity participating in the repayment of the construction, operation, and maintenance costs of the facilities under this section during years in which the total water supply available is insufficient to provide to those proratable irrigation entities all water to which the entities are entitled, subject to the conditions that—

- (i) the Bureau of Indian Affairs, the Wapato Irrigation Project, and the Yakama Nation, on an election to participate, may also obtain water from aquifer storage to enhance applicable existing irrigation water supply in accordance with such terms and conditions to which the Bureau of Indian Affairs and the Yakama Nation may agree; and
- (ii) nothing in this subparagraph affects (as in existence on the date of enactment of this section) any contract, law (including regulations) relating to repayment costs, water right, or Yakama Nation treaty right.

(d) Federal Cost-share.—

(1) IN GENERAL.—The Federal cost-share of a project carried out under this section shall be determined in accordance with the applicable laws (including regulations) and policies of the Bureau of Reclamation.

(2) INITIAL PHASE.—The Federal cost-share for the initial development phase of the Integrated Plan under subsection (a)(2) shall not exceed 50 percent of the total cost of the initial development phase.

(3) STATE AND OTHER CONTRIBUTIONS.—The Secretary may accept as part of the non-Federal cost-share of a project carried out under this section, and expend as if appropriated, any contribution (including in-kind services) by the State of Washington or any other individual or entity that the Secretary determines will enhance the conduct and completion of the project.

(e) Savings and Contingencies.—Nothing in this section shall—

(1) be a new or supplemental benefit for purposes of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.);

(2) affect any contract in existence on the date of enactment of the Yakima River Basin Water Enhancement Project Phase III Act of 2015 that was executed pursuant to the reclamation laws;

(3) affect any contract or agreement between the Bureau of Indian Affairs and the Bureau of Reclamation;

(4) affect, waive, abrogate, diminish, define, or interpret the treaty between the Yakama Nation and the United States; or

(5) constrain the continued authority of the Secretary pursuant to the Hoover Power Plant Act of 1984 (43 U.S.C. 619 et seq.) to provide fish passage in the Yakima Basin.

## **SEC. 1214. OPERATIONAL CONTROL OF WATER SUPPLIES.**

The Secretary shall retain authority and discretion over the management of project supplies to optimize operational use and flexibility to ensure compliance with all applicable Federal and State laws, treaty rights of the Yakama Nation, and legal obligations, including those contained in this Act. That authority and discretion includes the ability of the United States to store, deliver, conserve, and reuse water supplies deriving from projects authorized under this title.