

Kachess Community Association ♦ Kachess Ridge Maintenance Association ♦ East Kachess Homeowner's Association ♦ Kittitas County Fire District #8 ♦ Friends of Lake Kachess ♦ Bumping Basin Conservationists ♦ Alpine Lakes Protection Society ♦ North Cascades Conservation Council ♦ Friends of Bumping Lake ♦ Alliance for the Wild Rockies ♦ Western Lands Project ♦ Wise Use Movement ♦ Federation of Western Outdoor Clubs ♦ Endangered Species Coalition ♦ Kootenai Environmental Alliance ♦ Friends of the Clearwater ♦ Seattle Audubon Society ♦ Hyak Property Owners Association ♦ Lake Easton Estates Homeowners Association

November 18, 2015

The Honorable Maria Cantwell, Ranking Member
Senate Energy and Natural Resources Committee
United States Senate
Washington, D.C. 20510

cc: Melanie Stansbury – ENR Committee Staff
Eric Ffitch – Senator Cantwell Staff

RE: S. 1694 Yakima Plan suggested changes

Dear Senator Cantwell, Melanie, and Eric

Thank you for the conference call with Melanie and Eric to review changes to S. 1694. As we received a copy of the November 3, 2015 version just before the call, we now have had an opportunity review the changes in more detail. Thank you for removing language that explicitly authorized the controversial Yakima Plan in its entirety. We also note that the bill has removed all references to the Yakima Work Group (except for Sec. 1213(c)(1)(D) which retains a reference to the Work Group).

We have the following remaining concerns and have indicated where specific language changes in the 16-page version dated 11/3/2015 are needed:

1. Definition of “Integrated Plan” / Phase III - Authorizing the Integrated Plan.

While language authorizing the Integrated Plan in its entirety and the reference to the 2012 Final Programmatic EIS has been removed, S. 1694 continues to have several contradictory sections:

Sec. 1202 (c)(7) (page 3) provides a new definition: The terms “Integrated Plan” and Yakima 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 Yakima Nation.

- This creates confusion because the “Integrated Plan” is known as the 2012 Yakima Plan containing all the elements covered in the FPEIS. In effect, there would be two different definitions for the Yakima Plan.
- Sec. 1213(a)(3) (page 11) still authorizes and requires the Secretary to develop intermediate and final development phases. Because this is also authorized by this title, this is a backdoor way of authorizing and requiring the Secretary to carry out the last two phases (even if additional specific authorizations are required).
- Pages 1, 3, 8, 9, and 15 all still contain references to Phase III of the Yakima River Basin Water Enhancement Project. Again, Phase III is already known as the entire 2012 Integrated Plan.
- Section 1201(b)(10) (page 3), also calls Phase III of the Yakima Plan a “balanced and cost-effective approach to maximize benefits to the communities and Environment in the Basin.” This language needs to be deleted.

Recommendation:

All references to Phase III and Integrated Plan should be removed and replaced with “amendments to Phase II of the Yakima River Basin Water Enhancement Project” to make clear that these are amendments to the 1994 Act and not a backdoor way of supporting the entire 2012 Yakima Plan. Language in Sec. 1201(b)(10) about a “balanced and cost-effective approach to maximize benefits to the Communities and environment in the Basin” should be deleted.

2. Water Conservation Targets

Although Sec. 1201 (b) (5) (page 2) has re-inserted a water conservation target of 85,000 acre feet it does not specify whether this is for in-stream flows, or withdrawals, eliminates the requirement that savings be annual savings, and it excludes a mechanism required for interim targets to assure accountability. In addition, this target is far too low to be considered meaningful based on information from the Bureau of Reclamation.

Recommendation:

This needs to be amended to:

(5) 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; realize sufficient water savings from the Yakima River Basin Water Conservation Program so that not less than 250,000 acre feet of water savings per year are achieved within 10 years of enactment with half available for irrigation and half to protect and enhance fish and wildlife resources. Not less than one year after enactment of this Act, the Secretary shall

establish a timetable of targeted water conservation program achievement levels, with annual monitoring and reporting of performance achievements and the associated water allocations by purpose to assure that regular progress is made toward the overall achievement of the water conservation goals.

3. Workgroup and existing Conservation Advisory Group

This version has removed the Yakima Workgroup from the bill (although there is still a reference on page 14). The existing FACA compliant Conservation Advisory Group (CAG) should be used to beef up water conservation/water market/water efficiency measures. The latest bill merely adds a subsection to the CAG to provide recommendations to advance the purposes and programs of the Yakima Enhancement Project “including the Integrated Plan.”

Recommendation:

Sec. 1203 (c) needs to add another environmental organization and some additional language:

(c) 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 Nation;

(D) two representatives of environmental interests;

(E) one representative of the Washington State University Agricultural Extension Service;

(F) one representative of the Department of Fish and Wildlife of the State of Washington; and

(G) one member of the impacted community or fire district.

(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 revise the basin conservation plan;

(D) provide annual review of the implementation of the applicable water conservation guidelines of the Secretary;

(E) provide recommendations consistent with statutes of the State of Washington on rules, regulations, and administration of a process to carry out a water market within the Yakima River Basin, and facilitate the voluntary sale or lease of water; and

(F) review and provide recommendations on any water-related programs or projects proposed with the Yakima Basin.

A new subsection needs to be added to Sec. 1203 to update the Conservation Basin Plan:

New (j) The Conservation Advisory Group shall, within six months after the date of enactment of these amendments, submit a revised draft basin conservation plan to the Secretary designed to achieve the purposes and water conservation goals of Section 1201(4).

(1) The Secretary shall distribute the revised draft basin conservation plan and revised entity water conservation plans, for public comment for a 60-day period.

(2) Within 6 days after the close of the comment period under subsection (1), the Secretary shall publish the revised Basin Conservation Plan, which shall provide the basis for prioritizing and allocation funds to implement conservation measures in the revised Basin Conservation Plan.

4. Intermediate and Final Phases

The reference to “surface water storage” should be removed from Sec. 1213(a)(2)(A)(iv) and the last phrase regarding the “initial and future phases of the Integrated Plan” should also be deleted. The bill (Sec. 1213(a)(3) (page 11)) persists in requiring that the Secretary “shall” develop intermediate and final development phases with 10 and 20 year deadlines. The “contingencies” listed in subsection (a)(4) (page 11) are insufficient when the language in (a)(3) requires that the Secretary shall develop these plans to implement the “Integrated Plan.” As noted earlier, because the “Integrated Plan” is now defined as anything in this bill, the intermediate and final phases also become part of the “Integrated Plan.”

Recommendation:

The reference to “surface water storage” should be removed from Sec. 1213(a)(2)(A)(iv) and the last phrase regarding the “initial and future phases of the Integrated Plan” should also be deleted. In addition, the intermediate and final phases should be deleted, as Congress should not bind the Secretary to carrying out plans 20 years in the future.

5. Inactive Storage

Sec. 1213(b)(2)(A)(ii) (page 12) provides that inactive storage in Kachess Lake shall not be part of the total water supply available, as that term is defined in various court rulings. The 1945 Consent Decree defined the Total Water Supply Available (TWSA) in the Yakima Basin.

Recommendation:

Subsection 1213 (b)(2)(A)(ii) should be amended as follows:

shall be part of the total water supply available unless amended by the parties to the 1945 Consent Decree (Kittitas Reclamation District v. Sunnyside Valley Irrigation District, Civil Action No. 21 (Eastern District of Washington, Southern Division, Jan. 1945));

6. Kachess Pumping Plant and K-K Pipeline.

We request that any references to Kachess Reservoir be changed to Kachess Lake. We continue to object to including the K to K pipeline and the Kachess Pumping Plant in the bill pending the outcome of the EIS process and all feasibility study requirements. We continue to object to language that Congress mandates that the Secretary “shall” (rather than “may”) do these things.

Recommendation:

The following changes are requested specifically targeting the Kachess Lake project elements. They include the following:

- a) **Page 9 – Line 12 Delete “shall” and replace with “may.”**
- b) **Page 11, line 16, should be amended to read:** “subject to project specific Congressional authorization and appropriation.”
- c) **Page 12 – Line 34 Insert:** “Should Kachess Lake fail to refill, the amount of water used by the participating parties in the preceding 1 or more years will first be withheld from the participating parties until all other parties are assured their full allotment. Participating parties will then be allowed to access any remaining water consistent with that year’s stated proration levels.”
- d) **Page 12 – Line 35 Insert:** “(F) Notwithstanding the above, in no case shall the KDRPP be used when the Kachess Reservoir fails to recover to at least 75% of maximum refill (Pool elevation of 2248’) in the year of potential use.”
- e) **Page 13 – Line 35 Insert after adjacent communities:** “including, the impacts of increased fire hazards, Fire District access to water, community and homeowner wells, future water levels based on projected usage, recreational value and property/home values.”
- f) **Page 13 - Line 36 Insert new section (C) and adjust hierarchy for (D) etc. as follows:** “Identified and specific mitigation measures have been legally agreed to with the affected adjacent communities and fire districts with the projected costs of such measures added to the overall project cost and funds committed to an escrow account for future disbursement.”
- g) **Page 14 – Line 4 Insert:** “and adjacent communities” at the end of Section (3)(D)(ii).

- h) **Page 14 – Line 5 Insert New Section:** “(iii) ensure water access for Fire Districts, uninterrupted water supply for existing domestic water wells, and maintain adequate water in Lake Kachess to support continued recreational use.

Thank you,

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