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WISE USE MOVEMENT

P.O. Box 17804, Seattle, WA 98127

TESTIMONY OF THE WISE USE MOVEMENT
ON S.1694

SUBMITTED TO THE
COMMITTEE ON ENERGY AND WATER RESOURCES
U.S. SENATE

July 7, 2015

Sen. Murkowski (Chair, U.S. Senate Energy and Natural Resources Committee) and members of the Committee. The following testimony of the Wise Use Movement is submitted in opposition to the introduced version of S. 1694, a bill to amend Public Law 103-434. We request that this Committee not approve Phase III of the Yakima River Basin Water Enhancement Project (Yakima Plan), as proposed.

Amendments to P.L. 103-434 (1994)

***The Wise Use Movement recommends that the Senate Energy and Natural Resources Committee review the effectiveness of P.L. 103-434, enacted in 1994, over twenty years ago, before giving the Bureau of Reclamation new authorizations and authorizations of appropriations.**

P.L.103-434 was passed by Congress in 1994 to, among other things, protect, mitigate, and enhance fish and wildlife through improved instream flows, creation and enhancement of wetlands; to improve the reliability of water supply for irrigation; to authorize a Yakima River basin water conservation program; to encourage voluntary transactions among public and private entities; and provide for an irrigation demonstration project on the Yakama Reservation using water savings from system improvements to the Wapato Irrigation Project and a Toppenish Creek corridor enhancement project. *Sec. 1201(1)-(6).*

More specifically, the purpose of the Yakima River Basin Water Conservation Program was to realize “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 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.” *Sec. 1201(4).*

***The Wise Use Movement recommends that the Committee request the Bureau to verify that not less than 40,000 acre-feet of water savings per year have been achieved by the fourth year of the Basin Conservation Program; that not less than 110,000 acre-feet of water savings per year by the end of the eighth year of the program to protect and enhance fish and wildlife resources; and that 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 irrigation.**

Sec. 1201. Purposes. S. 1694 amends this section by adding a new purpose (8): “to authorize and implement the Yakima River Basin Integrated Water Resources Management Plan as Phase III of the Yakima River Basin Water Enhancement Project, in a balanced approach to maximize benefits to the communities and environment in the Basin.”

Together, with New Section 1214(a)(1), this new purpose leaves no doubt that it is the intent of S. 1695 to authorize and implement the entire Yakima Plan. The costs of the Yakima Plan likely exceed \$5 billion, and yet the Bureau of Reclamation has not costed out the entire plan, including new environmentally damaging water projects, or pumping water from the Columbia River to the Yakima Basin.

The Wise Use Movement recommends that the Committee delete this language. The Committee should not authorize the proposed elements in the initial development phase (S. 1694, pages 23-26) at this time. It is bad National Water Policy to accept the Bureau’s request for authorization of an insufficiently detailed plan. It is also bad NEPA (National Environmental Policy Act) policy, to request legislation from Congress when the Bureau has not completed a Final EIS on either the Kachess Drought Relief Pumping Plant or Keechelus Reservoir to Kachess Reservoir Conveyance projects.

Sec. 1202 Definitions. S. 1694 amends this section by adding a new definition of the “Work Group” that is not subject to the Federal Advisory Committee Act (FACA). (S.1694, page 6, lines 23-24.) Despite the fact that the Bureau of Reclamation established the Yakima Workgroup in 2009, as an advisory group, the Secretary of Interior refused to establish the Yakima Workgroup as a Federal Advisory Committee. This has allowed the Yakima Workgroup to establish committees that are closed to the public.

***The Wise Use Movement recommends that the Committee require that any Yakima Workgroup including the existing Workgroup be fair and balanced and subject to the Federal Advisory Committee Act. It is bad National Public Participation Policy to allow the Yakima Workgroup to avoid FACA.**

Sec. 1203 established a Yakima River Basin Water Conservation Program and a Conservation Advisory Group charged with submitting a draft basin conservation plan to the Secretary within 2 ½ years after the date of enactment. The Conservation Advisory Group was also charged with providing annual review of the implementation of applicable water conservation guidelines of the Secretary. *Sec. 1203(a)(1); (c)(1)(3);(f)*. In addition, Congress authorized the appropriations (at September 1990 prices) of the following amounts for the development of water conservation plans:

\$1,000,000 for development of water conservation plans;
\$4,000,000, for investigation of specific potential water conservation measures identified in conservation plans;
up to \$67,500,000 for design, implementation, post-implementation monitoring and evaluation of measures, and addressing environmental impacts;
up to \$10,000,000 for initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods;
and \$100,000 annually for the establishment and support of the Conservation Advisory Group.
Sec. 1203(j)(1)-(4).

***The Wise Use Movement recommends that the Committee request that the Bureau of Reclamation document:**

- if it has spent \$1,000,000 for development of water conservation plans;
- if it has spent \$4,000,000, for investigation of specific potential water conservation measures identified in conservation plans;
- how much of the \$67,500,000 authorized has been spent for design, implementation, post-implementation monitoring and evaluation of measures, and addressing environmental impacts;
- how much of the \$10,000,000 for initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods has been spent; and
- how much of the \$100,000 authorized annually for the establishment and support of the Conservation Advisory Group has been spent.

Sec. 1203(d) is amended by a new subsection (4) allowing the State or Federal Government to fund not more than 17.5 percent local share of the costs of the Basin Conservation Program.

***The Wise Use Movement recommends that the local share of any costs of the current or modified Yakima Project be paid as local shares. It is bad National Water Policy to allow local sponsors to meet their local cost share by raiding state and federal taxpayers.**

Sec. 1204 authorized not more than \$49,000,000 for the plans, investigation of measures and implementation of system improvements to the Wapato Irrigation Project; \$8,500,000 for the design and construction of the Yakama Indian Reservation Irrigation Demonstration Project and such sums as may be necessary for the operation and maintenance of the Irrigation Demonstration Project; and \$1,500,000 to develop a Toppenish Creek corridor enhancement project and such sums as may be necessary for the operation and maintenance of the Toppenish Enhancement Project. *Sec. 1204(a)-(c).*

Sec. 1204(d) requires the Secretary, in consultation with the Yakama Indian Nation, to report to the Senate and House Committees and the Governor within 5 years of implementation of the Irrigation Demonstration Project and the Toppenish Enhancement Project, on the effectiveness of the conservation, training, mitigation, and other measures implemented. *Sec. 1204(d).*

A 2009, Bureau fact sheet reported:

Demonstration Project – still in beginning stages to improve irrigation efficiencies; will apply for a planning grant in fiscal year 2010 or fiscal year 2011.

Toppenish Creek – construction to separate creek from irrigation canals and restore floodplain habitat; planning work in process, so no estimate yet on costs.

<http://www.usbr.gov/pn/programs/yrbwep/reports/phase2/factsheet.pdf>

***The Wise Use Movement recommends that the Committee review this report and make it part of this hearing record. It is bad National Water Policy to authorize millions of dollars of Bureau projects that are not carried out in a timely fashion. The Committee should determine why the Irrigation Demonstration Project and Toppenish Enhancement Project had not been undertaken as of 2009.**

Sec. 1206(a)(1) authorized \$2,934,000 (at September 1990 prices) for several projects including modifying the radial gates at Cle Elum Dam to provide an additional 14,600 acre-feet of storage capacity in Lake Cle Elum, shoreline protection for Lake Cle Elum, and constructing juvenile fish passage facilities at Cle Elum Dam. Sec. 1206(a)(1)(A)-(C). Sec. 1205(b) provides that water from additional Lake Cle Elum storage shall not be part of the Yakima River basin's water supply as provided in subsection (a)(1)(A). The Bureau of Reclamation's FEIS for the Cle Elum Pool Raise Project (May 2015), interpreted this section as authorizing the accrued stored water for instream flows and not to be included as part of the Yakima Basin's Total Water Storage Available (TWSA) as defined by Civil Action No. 21 (1945 Consent Decree) Article 4, 1st Paragraph.

Over 20 years later, the Cle Elum Dam radial gates have still not been modified. The Wise Use Movement recommends that the Committee review whether P.L. 103-434 amended the 1945 Consent Decree without approval of the Federal District Court or the parties to the 1945 Consent Decree.

Over 20 years later, juvenile fish passage facilities at Cle Elum Dam have still not been carried out. Because Cle Elum Reservoir is used for irrigation district withdrawals, the reservoir water level fluctuates throughout the year. No downstream fish passage has ever been attempted at a reservoir with such a wide range of water levels. The Bureau's 2011 Record of Decision (August 2011) did not disclose a project cost. <http://www.usbr.gov/pn/programs/eis/cle-elum/signedROD.pdf>

The FEIS for the Cle Elum Fish Passage Facilities estimated project costs of \$84 million (in 2008 dollars) and annual OMR&P costs of \$300,000, far higher than estimated in 1994 due to the never-before engineered helix design of the fish passage facility.

***The Wise Use Movement recommends that the Committee review the likelihood that the untried and untested fish passage facility design will cost far more than the Bureau has estimated. The Committee should reject the amendment to Sec. 1206(a)(1), which appears to strike the \$2,934,000 authorization and inserts "such sums as are necessary." (S.1694, page 15, lines 14-18). It is bad National Water Policy to grant the Bureau of Reclamation a blank check.**

In addition, Sec. 1206(a)(1)(B) (concerning the construction of juvenile fish passage facilities at Cle Elum) is stricken and replaced with generic authority to conduct feasibility studies, design,

construct, and operate fish passage facility, *in addition to any fish passage facilities authorized by section 109 of the Hoover Power Plant Act of 1984.* (S.1694, page 16, lines 1-9). Section 109 of the Hoover Power Plant Act already gives the Secretary authority to design, construct, and operate fish passage facilities in the Yakima River Basin and to accept funds for those purposes.

<http://www.gpo.gov/fdsys/pkg/STATUTE-98/pdf/STATUTE-98-Pg1333.pdf>

***The Wise Use Movement recommends that the Committee require the Bureau of Reclamation to explain what additional fish passage facilities the Bureau intends to pursue beyond the broad authority provided to it in 1984.**

Sec. 1207 concerns enhancement of water supplies for Yakima Basin Tributaries. S. 1694 makes several amendments to this section related to “improvements in irrigation system management or delivery facilities.” (S. 1694, page 19, lines 8-20). However, S. 1694 continues a major flaw with P.L. 103-434 by allowing such improvements to be voluntary. The Yakima Project is a Federally authorized Bureau of Reclamation project. As such, our country cannot afford to cement into place the failed policies of the past century that allowed irrigation districts to waste water.

***The Wise Use Movement recommends that the Committee take water conservation, water banking, water efficiency and other water conservation measures seriously by requiring irrigation districts to undertake such efforts before Congress spends additional taxpayer money in the Yakima River Basin.**

Sec. 1209 authorized \$20,000,000 to convey flows of Cabin Creek and Silver Creek to Kachess Reservoir and such sums as may be necessary to carry out a feasibility study. *Sec. 1209(a)(1) and (2).*

***The Wise Use Movement recommends that the Committee review any Cabin Creek and Silver Creek feasibility study produced by the Bureau of Reclamation as authorized under Sec. 1209 and determine whether authorizing \$20,000,000 was a credible proposal from the Bureau of Reclamation.**

New Additions to P.L. 103-434 (1994)

In addition to amending P.L. 103-434 (1994), S. 1694 includes several flawed new sections.

New Sec. 1213 states that “The Secretary may make grants or enter into cooperative agreements with . . . Yakima River basin irrigation districts. . . to carry out this title. . .” (S.1694, page 22, lines 15-21). New Sec. 1214(a)(2)(A) allows the Secretary to negotiate long-term agreements with participating proratable irrigation entities for the non-Federal financing, construction, operation and maintenance for the Lake Kachess inactive storage project and the Keechelus Reservoir to Kachess Reservoir (K-K) project (S. 1694, page 24, lines 22-25, and page 25, lines 1-13). These two projects, neither of which have completed EISs, are merely “insurance policies” in the case of drought, and presumably would not be used during non-drought years. In addition, the Lake Kachess inactive storage project would have a significant adverse impact on the Lake Kachess reservoir by allowing the water level to drop up an addition 84 feet during a

drought year. The Bureau has failed to explain how downstream fish passage can be accomplished at the Lake Kachess Dam with an additional 84 foot drawdown. Lake Keechelus is bordered by I-90 along most of its northern shoreline. Lake Kachess reservoir would also be impacted by transporting polluted Lake Keechelus water to Lake Kachess via the K-K pipeline project. In addition, the Bureau has failed to explain how returning fish will be able to find the Keechelus River if Lake Keechelus water will be mixed and released with Lake Kachess water.

However, the combination of new Secs. 1213 and 1214 appears to allow the Secretary to make grants for any project that would carry out this title, including the Lake Kachess and K-K projects, while merely giving the Secretary passive power to enter into agreements for non-Federal financing of these projects.

***The Wise Use Movement recommends that the Committee clarify that no federal taxpayer dollars are authorized for the construction, operation and maintenance of the Lake Kachess and K-K projects. The Committee should also review past irrigation district claims that they would only be responsible for irrigation benefits and that any fish or wildlife benefits from these projects should be assigned as Federal government costs. The Committee should require any irrigation districts seeking to construct, operate, and maintenance these two projects be required to pay the Federal government for the millions of dollars of project design work already spent.**

New Sec.1214(a)(1) (S.1694, page 23, lines 20-23) states, “It is the intent of Congress that the Management Plan shall be implemented in its entirety.” Amended Section 1202 new (8) (S. 1694, page 5, lines 10-17) defines the “Management Plan” as the plan described in the FPEIS and Integrated Water Resource Management Plan, Yakima River Basin, Water Enhancement Plan, Yakima River Basin, Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties, WA.

***The Wise Use Movement recommends that the Committee not adopt the FPEIS for the Yakima Plan because it would be bad NEPA policy. The FPEIS violated the National Environmental Policy Act by failing to provide a range of alternatives. 40 CFR Sec. 1502.14. In addition, as noted previously, the Yakima Workgroup has requested Congressional authorization of the Yakima Plan, even though no Final EIS under NEPA has been completed or public comments reviewed on the Kachess Drought Relief Pumping Plant and Keechelus Reservoir to Kachess Reservoir Conveyance projects. This is also bad NEPA policy.**

S. 1694 is fatally flawed by stating that it is the intent of Congress for the Yakima Plan, as defined in Sec. 1201 new (8) to be implemented **in its entirety**.

***The Wise Use Movement recommends that the Committee not approve a Yakima Plan that is:**

- **Bad National water policy**
 - A 2014 analysis by the Water Resource Center found that *“When implemented together as part of the IP, the major water storage projects as a group do not pass a*

- B-C test.*” The Yakima Plan violates both the past water projects principles and standards and recently adopted CEQ principles, standards and regulations.
- The Yakima Plan is a prototype of the Bureau of Reclamation’s “WaterSMART” Program to support the BuRec’s goal of constructing over 100 new water storage projects throughout the west to respond to climate change.
 - **Bad National Forest policy**
 - Would flood 1,000 acres of ancient forest roadless area in the Okanogan-Wenatchee National Forest that should be added to the William O. Douglas Wilderness area
 - **Bad National recreational policy**
 - Would designate two new National Recreational Areas within the Okanogan-Wenatchee National Forest with 41,000 acres dedicated to off-road vehicle use
 - **Bad National ESA policy**
 - Would flood critical habitat for ESA listed bull trout and Northern spotted owls, as well as sage-steppe habitat for greater sage grouse
 - **Bad National Environmental Policy Act policy**
 - The Yakima Plan Final Programmatic EIS included only the BuRec’s preferred alternative and the required no-action alternative. The BuRec failed to consider a range of alternatives as required by NEPA. *40 CFR Sec. 1502.14*
 - **Bad Public Participation policy**
 - The Yakima Plan was developed by a Yakima Workgroup, handpicked by the BuRec and WA Department of Ecology. The Yakima Workgroup’s Implementation Committee remains closed to the public.
 - Although the Yakima River Basin Conservation Advisory Group was authorized in 1994 by Congress and established under the Federal Advisory Committee Act, the Yakima Workgroup would be specifically **excluded** from FACA under this bill. (S. 1694, page 6, lines 23-24).

New Sec. 1214(a)(2)(A)(iii)(I) allows the Secretary to participate and provide funding for water conservation projects not subject to the provisions of the Basin Conservation Program by providing 85,000 acre-feet of conserved water to improve tributary and mainstem stream flow (S. 1694, page 25, lines 17-25). This section, as well as the Basin Conservation Program, remains voluntary.

***The Wise Use Movement recommends that the Committee take water conservation, water banking, water efficiency and other water conservation measures seriously by requiring irrigation districts to undertake such efforts before Congress spends additional taxpayer money in the Yakima River Basin.**

New Sec. 1214(a)(2) – (3) implements the Yakima Plan in its entirety in an (2) “Initial Development Phase” (S. 1694, page 23, line 24) and (3) “Intermediate and Final Phases” (S. 1694, page 26, line 8). The initial development phase has been discussed above. Subsection (3)(A) provides that “any project” determined by the Secretary that meets the objectives of the Yakima Plan shall be designed and constructed, subject to authorization and appropriation.

***The Wise Use Movement recommends that the Committee strike this provision as there is no public participation built into the Intermediate and Final phases and S. 1694 would also**

exclude the Yakima Workgroup from the Federal Advisory Committee Act. It is bad National Public Participation Policy to allow the Yakima Workgroup to avoid FACA.

New Sec. 1214(a)(2)(A)(i) allows the Secretary to plan, design, and construct upstream and downstream fish passage facilities at a Yakima Project reservoir, in addition to the Cle Elum Reservoir project, pursuant to the Hoover Power Plant Act of 1984. No further identification of this project is provided.

***The Wise Use Movement recommends that the Committee strike this provision, unless the reservoir is identified.**

New Sec. 1214(a)(3)(D) requires the Intermediate and Final Phases of the Yakima Plan to be contingent on “feasibility,” as determined by the Secretary, in consultation with the Workgroup.

***The Wise Use Movement recommends that the Committee require that the Bureau of Reclamation present projects with a positive Benefit/Cost ratio, not just on engineering feasibility. The lack of Benefit/Cost analysis is bad National Water Policy.**

New Sec. 1214(a)(4) requires the Secretary to prepare a progress report not later than five years from the date of enactment. Under subsection (B)(ii), the report must assess, “through performance metrics measured throughout implementation of the Yakima Plan, the degree to which the Initial Phase addresses the objectives and all elements of the Yakima Plan. (S. 1694, page 28, lines 1-6). This section does not provide for any public participation opportunities.

***The Wise Use Movement recommends that the Committee clarify what the Bureau means by “performance metrics.” The Committee should require that any progress report be subject to public participation, review, and comment.**

New Sec. 1214(a)(4)(B)(iii) requires the Secretary to identify additional projects and activities proposed for inclusion in any future phase of the Yakima Plan. There is no provision for any public involvement in identifying additional projects.

***The Wise Use Movement recommends that the Committee require that any identification of additional projects and activities be subject to public participation, review, and comment. The lack of public involvement is bad National Public Participation Policy.**

New Sec. 1214(b)(1)(B) seeks to overturn the definition of Total Water Supply Available in Civil Action No. 21 (1945 Consent Decree) Article 4, 1st Paragraph.

***The Wise Use Movement recommends that the Committee review whether Sec. 1214(b)(1)(B) of S. 1694 amends the 1945 Consent Decree without approval of the Federal District Court or the parties to the 1945 Consent Decree.**

New Sec. 1214(c)(1) provides that any aquifer storage project shall not be considered to be a part of the total water supply available if it complies with subsections (A) – (D). This implies that without this legislation, aquifer storage is considered part of the total water supply available.

***The Wise Use Movement recommends that the Committee review whether Sec. 1214(c)(1) of S. 1694 amends the 1945 Consent Decree without approval of the Federal District Court or the parties to the 1945 Consent Decree.**

New Sec. 1214(c)(1)(D) provides that any aquifer storage project shall not be considered to be a part of the total water supply available if the project is approved by the Workgroup. Again, there is no public participation opportunity, and the Workgroup has been elevated from an advisory committee to a decision-making committee.

***The Wise Use Movement recommends that the Committee strike this subsection.**

New Sec. 1214(d)(2) provides that federal cost-share for the Initial Development Phase under subsection (a)(2) including the reimbursable share to be repaid by non-Federal project contractors, shall not exceed 50 percent of the total costs of the initial development phase.

***The Wise Use Movement recommends that the Committee clarify why this subsection allows 50 percent federal cost-share for the Initial Development Phase (which includes the Kachess inactive storage and K-K pipeline projects).**

Conclusion

In summary, the Wise Use Movement is opposed to S. 1694. We find that it includes Congressional intent to support and authorize the entire Yakima Plan, which is likely to exceed \$5 billion in costs. Most of the costs of the Yakima Plan are devoted to an “insurance policy” for irrigators in the Yakima Basin during a drought year. These are the same irrigators that have not paid off the costs of the existing Bureau of Reclamation’s Yakima Project. The State of Washington’s Water Research Center concluded that the Yakima Plan was not cost-effective. This is because it contains many “bridges-to-nowhere” projects that do not pencil out. In addition, the Yakima Plan includes analysis of projects to transfer water from the Columbia River to the Yakima Basin.

We also request that the attached Cato Institute article, “Cutting the Bureau of Reclamation and Reforming Water Markets,” by Chris Edwards and Peter J. Hill (February 2012), be included in the hearing record. As the article concludes:

“The era of major federal dam building is over, but Reclamation continues to provide water to the western states at artificially low prices. Without reforms, that policy will exacerbate the major water challenges facing the western states. About four-fifths of water supplied by Reclamation goes to farm businesses, and the agency provides the largest subsidies to those users. As a consequence, agriculture must be at the center of efforts to reform federal water policies.”

“Reforms are also needed with regard to water rights, water transfers, and water pricing in the West. Reducing restrictions on water transfers and allowing water prices to better reflect market supply and demand would promote efficiency and benefit the environment.

In the West, new supplies of water have been generally exhausted, so avoiding shortages in the future will depend on greater efficiency in water allocation and consumption.”

Thank you for the opportunity to provide these comments.

Sincerely,

John de Yonge

John de Yonge
President
540 Main St, Apartment 5C
Chatham NJ 07928
jdeyonge@gmail.com