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SENATE

{ REPORT  
115–107

### YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT PHASE III ACT OF 2017

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JUNE 13, 2017.—Ordered to be printed

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Ms. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 714]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 714) to amend Public Law 103–434 to authorize Phase III of the Yakima River Basin Water Enhancement Project for the purpose of improving water management in the Yakima River basin, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 714 is to amend Public Law 103–434 to authorize Phase III of the Yakima River Basin Water Enhancement Project for the purposes of improving water management in the Yakima River basin.

#### BACKGROUND AND NEED

The legislation seeks to address long-term water supply challenges and environmental needs in the Yakima Basin by authorizing Phase III of the Yakima River Basin Water Enhancement Project (YRBWEP Phase III). Phase III is the first phase of the Yakima River Basin Integrated Water Resource Plan (Integrated Plan), an adaptive watershed management plan for the Yakima River Basin. The legislation seeks to improve the reliability and sustainability of water supplies to meet agricultural, municipal,

and environmental needs, and to restore the ecosystems and habitat of the Basin for fish, wildlife, and recreation purposes.

The Yakima Basin encompasses about 6,155 square miles in south-central Washington. The Yakima River originates in the Cascade Mountains and flows nearly 215 miles to its confluence with the Columbia River and is the longest river located entirely within the state. Upper elevations of the Basin primarily contain wilderness and public lands; middle elevations support dry and irrigated agriculture and cattle grazing; and lower elevations support irrigated agriculture. The Basin is one of the most productive agricultural regions in the state, producing billions of dollars a year in agricultural income—with apples, hops, grapes, and other fruits and vegetables as the primary cash crops. The Basin has experienced water supply challenges since irrigated agriculture began in the late 19th century and became the predominant economic engine of the region in the 20th and 21st centuries.

The Basin is also home to the Confederated Tribes and Bands of the Yakama Nation. The Yakama Nation signed a treaty with the U.S. in 1855 and American settlers began to establish permanent settlements and irrigated agriculture in the region in the 1850s and 1860s. In 1905, the Bureau of Reclamation (Reclamation) was authorized to build the Yakima Project to support irrigated agriculture in the Basin. One of the oldest Reclamation projects in the U.S., the Yakima Project today includes six major storage dams and reservoirs, several hydropower facilities, and seven divisions that serve 464,000 acres of irrigated land.

Water shortages and litigation in the first half of the 20th century led to a court decree in 1945, which established that irrigators throughout the Basin would share water shortages equally in times of drought. An adjudication of the Basin's water rights was filed in 1977 and the Yakama Nation filed suit to adjudicate the tribe's rights, which have the oldest priority date and thus seniority in the system. Subsequent growth further strained an already over-allocated water supply—contributing to ongoing water shortages, litigation, and conflict in the Basin.

Drought in the 1970s led to the Congressional authorization of the Yakima River Basin Water Enhancement Project (YRBWEP Phase I) in 1979 to alleviate water shortages, promote water conservation, and improve fish passage. YRBWEP Phase I was later amended in 1994 (title XII of Public Law 103–434) with a further focus on water conservation (YRBWEP Phase II).

In 2009, Reclamation and the State of Washington formed a Work Group to develop a consensus-based solution for the Basin. The Work Group evaluated various water supply options and supported the completion of a Yakima River Basin Study conducted under the Department of the Interior's WaterSMART Program in 2010, which built on decades of other project studies in the Basin. The Study evaluated current and future water demand scenarios in the Basin in relation to potential water supplies and found that increasing temperatures, decreasing snowpack, and drought are likely to intensify in coming decades.

To address these challenges, the Work Group engaged in a collaborative, locally-driven process to develop an integrated water resource management plan for addressing agricultural, municipal, tribal, and environmental water needs. A joint Programmatic Envi-

ronmental Impact Statement for this integrated plan was completed by Reclamation and the State of Washington in 2012. The State subsequently appropriated \$162 million to implement the plan, including \$132 million in 2013 and an additional \$30 million in 2015. S. 714 authorizes Federal participation in a subset of activities associated with the plan, to be implemented over a decade, and building on the original YRBWEP legislation.

#### LEGISLATIVE HISTORY

Senators Cantwell and Murray introduced S. 714 on March 23, 2017.

In the 114th Congress, similar legislation, S. 1694, was introduced by Senators Cantwell and Murray on June 25, 2015. The Energy and Natural Resources Committee conducted a hearing on S. 1694 on July 7, 2015. On November 19, 2015, the Committee met in open business session and ordered S. 1694 favorably reported with an amendment in the nature of a substitute (S. Rept. 114–187).

The measure was included in Amendment No. 3234, which the Senate agreed to on April 19, 2016, as an amendment to S. 2012, the Energy Policy Modernization Act of 2016, which the Senate passed, as amended, on April 20, 2016.

Representatives Reichert and Newhouse introduced companion legislation, H.R. 4686, in the House of Representatives on March 3, 2016.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 714 favorably reported.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on March 30, 2017, by a majority voice vote of a quorum present, recommends that the Senate pass S. 714. Senator Lee requested that his vote be recorded as nay.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides a short title.

##### *Section 2. Modification of terms, purposes, and definitions*

Section 2(a) amends title XII of Public Law 103–434 (YRBWEP Phase II) to modify certain terms and headings.

Subsection (b) amends section 1201 of Public Law 103–434 to modify the purposes of YRBWEP to include water management activities to achieve fish and wildlife benefits; to include improvements in the reliability of municipal, industrial and domestic water supplies and uses; to realize at least 85,000 acre feet of water conservation savings from the initial development phase of the Integrated Plan in addition to the 165,000 acre feet of water savings targeted through the Basin Conservation Program, as authorized on October 31, 1994; to encourage the use of water transfers, leasing, markets, and other voluntary transactions; to improve the resilience of the ecosystems, economies, and communities as they face

drought and hydrologic changes; and to authorize and implement the Yakima River Basin Integrated Water Resource Plan as Phase III of YRBWEP.

Subsection (c) amends section 1202 of Public Law 103–434 to include definitions for the following terms: “designated Federal official,” “Integrated Plan; Yakima River Basin Integrated Water Resource Plan,” “municipal, industrial, and domestic water supply and use,” “proratable irrigation entity,” and “Yakima Enhancement Project; Yakima River Basin Water Enhancement Project.”

### *Section 3. Yakima River Basin Water Conservation Program*

Section 3 amends section 1203 of Public Law 103–434 to make a number of technical or clarifying changes. This section amends section 1203(c)(3) of Public Law 103–434 by directing the Conservation Advisory Group to provide recommendations to advance the purposes and programs of the Yakima Enhancement Project, including the Integrated Plan and amends section 1203(c)(4) by tasking the designated Federal official to provide logistical support for Conservation Advisory Group meetings, including the use of a facilitator to serve as a moderator.

Section 3 further adds a new provision to section 1203(d) of Public Law 103–434 by authorizing the State or the Federal government to fund up to the 17.5 percent local cost share of the Basin Conservation Program in exchange for the long-term use of the conserved water. Any such funding provided by the Federal government must provide a quantifiable public benefit in meeting federal responsibilities in the Basin. Water resulting from conservation measures is made available for water management uses pursuant to the title.

Additionally, this section amends section 1203(i) of Public Law 103–434 to include management actions and to allow water acquisition efforts to continue as needed to provide water to be used by the Yakima Project Manager for instream flow purposes. This section also amends section 1203(j) to allow for voluntary water acquisitions to provide improved instream flows for anadromous and resident fish and other aquatic life.

### *Section 4. Yakima basin water projects, operations, and authorizations*

Section 4(a) amends section 1204 of Public Law 103–434 to increase the existing authorization amount from \$23 million to \$100 million and to redesignate the Yakima Indian Nation as the Yakama Nation.

Subsection (b) amends section 1205 of Public Law 103–434 to make a number of technical changes and to designate additional purposes for the Yakima Project, including to recover and maintain self-sustaining harvestable populations of native fish, both anadromous and resident species; to protect, mitigate, and enhance aquatic life and wildlife; recreation; and municipal, industrial, and domestic use.

Subsection (c) amends section 1206(a)(1) of Public Law 103–434 to increase the existing authorization amount from \$2 million to \$12 million for the development of additional storage capacity at Lake Cle Elum.

Subsection (d) amends section 1207 of Public Law 103–434 to make a number of technical changes. This section authorizes the Secretary, in consultation with the State and the Yakama Nation, and on agreement of appropriate water entities, to conduct studies to evaluate measures for water enhancements in the Yakima Basin tributaries. The Secretary is further authorized to implement measures to promote tributary flow enhancements subject to the condition that such activities may not commence until the applicable and required feasibility studies, environmental reviews, and cost-benefit analyses are completed and include favorable recommendations for further project development. Additionally, the Secretary is authorized to implement nonstorage, as well as non-surface storage measures, upon the agreement of willing water rights owners, the State and the Yakama Nation.

Subsection (e) amends section 1208(d) of Public Law 103–434 to make a clarifying change.

Subsection (f) amends section 1210(c) of Public Law 103–434 to increase the existing authorization amount for updates to the Interim Comprehensive Basin Operating Plan from \$100,000 to \$200,000 to complete that work.

Subsection (g) amends section 1211 of Public Law 103–434 to increase the existing authorization amount from \$2 million to \$5 million for environmental compliance activities in the Yakima River Basin.

*Section 5. Authorization of Phase III of Yakima River Basin Water Enhancement Project*

Section 5 amends title XII of Public Law 103–434 by adding a new section 1213 to authorize YRBWEP Phase III. The new section 1213(a) directs the Secretary, in coordination with the State and the Yakama Nation, to implement the Integrated Plan as YRBWEP Phase III, subject to feasibility studies, environmental reviews, cost-benefit analyses and available appropriations. The new section 1213(a)(2) specifies a number of authorized activities, including: completing upstream and downstream fish passage at Cle Elum Reservoir and another Yakima Project Reservoir; negotiating long-term agreements regarding a pumping plant and associated facilities to access and deliver inactive storage at Kachess Reservoir and a conveyance system to allow water transfers from Keechelus Reservoir to Kachess Reservoir (“K to K Pipeline”); participating in, providing funding for, and accepting non-federal financing for water conservation projects intended to conserve 85,000 acre-feet of water and for aquifer storage and recovery projects; conducting studies, feasibility analyses, and environmental reviews of fish passage, water supply, conservation, habitat restoration projects, and other alternatives; coordinating with and assisting the State in implementing a robust water market to enhance water management in the Yakima River Basin; and entering into cooperative agreements with, or making grants to, the Yakama Nation, the State, or other entities subject to a 50 percent non-federal cost-sharing requirement.

The new section 1213(a)(3) directs the Secretary, in coordination with the State and in consultation with the Yakama Nation, to develop plans for the intermediate and final development phases of the Integrated Plan. The intermediate phase is to commence not

later than 10 years after the date of enactment of this Act and the final phase is to commence not later than 20 years after the date of enactment of this Act, subject to authorization and appropriation.

The new section 1213(a)(4) sets forth a number of contingencies to implementation, including the opportunity for public review, a Secretarial determination that the design, construction, and operation of a proposed project is in the public's best interest, and that the work be done in compliance with all applicable laws, including the National Environmental Policy Act and the Endangered Species Act.

The new section 1213(a)(5) directs the Secretary, in conjunction with the State and in consultation with the Yakama Nation, to submit a progress report to Congress on the development and implementation of the Integrated Plan not later than five years after the date of enactment of this Act. The report must identify the amount of federal funding and non-federal contributions received during that period and should identify any additional projects and activities proposed for inclusion in any future phase of the Integrated Plan.

The new section 1213(b)(1) stipulates that long-term agreements shall be negotiated between the Secretary and participating prorable irrigation entities in the Yakima Basin for the financing, construction, operation, and maintenance of the Kachess Drought Relief Pumping Plant and the K to K Pipeline. New paragraph (2) provides that water made available from construction and operation of facilities at Kachess Reservoir must exclusively be used to enhance water supply when the total water supply available in the Yakima Project is not sufficient to provide 70 percent of prorable irrigation district entitlements. New paragraph (3) provides that activities pursuant to these agreements shall not commence until stipulated criteria are met, including completion of environmental reviews and a finding that activities are in the public interest. New paragraph (4) directs the Administrator of the Bonneville Power Administration to provide project power to operate the Kachess Pumping Plant during times of drought at no more than the applicable Tier 1 rate. New paragraph (4)(F) provides that the cost of power for the Kachess Reservoir drought relief project must be borne by irrigation districts receiving benefits from the project.

The new section 1213(c) authorizes the Secretary to provide technical assistance for and participate in groundwater recharge projects, such as aquifer storage and recovery projects.

The new section 1213(d) specifies that the federal cost share for projects authorized under this section will be determined in accordance with Reclamation law and policy. The Secretary is authorized to accept contributions by the State and other participating entities toward implementation of the Integrated Plan. This section further requires that the federal cost share for the initial development phase of the Integrated Plan shall not exceed 50 percent of the total cost of the initial development phase and that federal funds may not be used to provide the non-federal cost-share unless otherwise specified.

The new section 1213(e) contains a number of savings clauses, including upholding existing contracts.

Section 5 also amends title XII of Public Law 103–434 by adding a new section 1214 regarding the operational control of water supplies. This new section stipulates that the Secretary retains the 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.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

S. 714 would expand the purposes of federal water projects in the Yakima River Basin in the State of Washington. Those expansions would aim to increase the amount of water available for communities and irrigation systems during drought years and to restore fish populations, wetlands, and ecosystems in the basin. The bill also would direct the Bureau of Reclamation (BOR) to develop plans to construct projects in the region. Based on information from BOR, CBO estimates that implementing the legislation would cost \$59 million over the 2018–2022 period and about \$240 million after 2022, assuming appropriation of the authorized and necessary amounts.

Enacting S. 714 could affect direct spending if nonfederal partners contribute funds for BOR to construct certain local projects; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect of collecting and spending such contributions would be negligible. Enacting S. 714 would not affect revenues.

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 714 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

**Estimated cost to the federal government:** The estimated budgetary effects of S. 714 are shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017– 2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Wapato Irrigation and Cle Elum Dam							
Projects:							
Estimated Authorization Level .....	0	8	8	8	7	6	37
Estimated Outlays .....	0	5	7	8	7	7	34
Water Projects in Yakima Basin Tributaries:							
Estimated Authorization Level .....	0	2	4	4	4	4	18
Estimated Outlays .....	0	1	3	4	4	4	16
Other Provisions:							
Estimated Authorization Level .....	0	2	2	2	2	2	10
Estimated Outlays .....	0	1	2	2	2	2	9
Total Changes:							
Estimated Authorization Level .....	0	12	14	14	13	12	65
Estimated Outlays .....	0	7	12	14	13	13	59

Note: Implementing the bill would cost about \$240 million after 2022, assuming appropriation of the authorized and estimated amounts.

Basis of estimate: For this estimate, CBO assumes that S. 714 will be enacted near the end of 2017, that the specified and estimated amounts will be appropriated each year, and that outlays will follow the historical rate of spending for similar activities.

S. 714 would authorize BOR to modify and complete certain water projects and to construct new ones in the Yakima River Basin. Under the bill, the federal share of the costs to complete those projects could not exceed 50 percent.

#### *Wapato Irrigation and Cle Elum Dam Projects*

S. 714 would increase the ceiling on amounts authorized to be appropriated for improving the Wapato Irrigation Project by \$77 million (for a total authorization level of \$100 million) and for raising the height of the Cle Elum Dam by \$9 million (for a total authorization level of \$12 million). The bill also would increase the ceiling on amounts authorized to be appropriated for environmental oversight of those projects by \$3 million (for a total authorization level of \$5 million). Based on information from BOR about the construction schedules and time required to complete this work, CBO estimates that implementing those provisions would cost \$34 million over 2018–2022 period and \$55 million in the decade after 2022. CBO estimates most of the spending would occur after 2022 because improvements to the Wapato Irrigation Project are expected to take about 15 years to complete.

#### *Water Projects in the Yakima Basin Tributaries*

S. 714 would authorize BOR to conduct studies and construct projects to increase water supplies and to facilitate transfers of water in tributaries of the Yakima River for irrigation, recharging groundwater, and restoring riparian habitats. Based on information from BOR about how this new authority would be used, CBO expects BOR would use this authority to pursue projects in the Kittitas Reclamation District. BOR also would probably implement several other smaller projects in the Yakima Basin Tributaries. Under the bill, all construction costs for eligible projects would be a federal responsibility and could reach \$200 million, including \$120 million for the Kittitas projects, CBO estimates. (The amount of funding for those projects is not specified by the legislation.) Over the 2018–2022 period, CBO estimates that conducting feasibility studies and environmental reviews would cost \$16 million. Most of the costs for constructing those projects would occur after 2022.

#### *Other Provisions*

S. 714 would authorize the construction of projects to access water in Lake Kachess and to construct a pipeline between the Keechelus Reservoir and Lake Kachess to manage water supplies during periods of drought. Based on information from BOR, CBO estimates that constructing those projects would cost \$350 million but, under the bill, no federal funds could be used for those purposes. Instead, BOR would be authorized to negotiate agreements with the state or other nonfederal entities to fully fund and construct those projects.

How such agreements would work is uncertain. One possibility is that funds for construction could be donated to the federal gov-



ernment by the state or other parties and spent by BOR. Under such an agreement, donations would be recorded in the federal budget as an increase in offsetting receipts, (which are recorded in the budget as reductions in direct spending), and the expenditure of those funds would be recorded as an increase in direct spending. In that scenario the net effect on direct spending would not be significant. The costs to provide oversight and review of those projects would be a federal responsibility. Based on information from BOR, CBO estimates that providing oversight of the Keechelus and Kachess projects, and preparing other plans required by the bill would cost a total of \$9 million over the 2018–2022 period.

Pay-As-You-Go considerations: Enacting S. 714 could affect direct spending if nonfederal partners contribute funds for BOR to construct certain local projects; therefore, pay-as-you-go procedures apply. However, the net effect of collecting and spending those contributions would be negligible. Enacting S. 714 would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 714 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: S. 714 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit state and local governments in Washington, as well as tribes of the Yakama Nation, by authorizing financial and technical assistance for water infrastructure and conservation projects. Any costs incurred by those entities, including matching contributions, would be incurred voluntarily.

Estimate prepared by: Federal costs: Aurora Swanson; impact on state, local, and tribal governments: Jon Sperl; impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 714. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 714, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 714, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

Because S. 714 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Exec-

utive Agency views. The testimony provided by the Department of the Interior at the hearing before the Energy and Natural Resources Committee on July 7, 2015, follows:

STATEMENT OF TOM ISEMAN, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Chairman Murkowski, Ranking Member Cantwell and members of the Committee, thank you for the opportunity to provide the initial views of the Department of the Interior (Department) on S. 1694, legislation to implement Phase III of the Yakima River Basin Water Enhancement Project (YRBWEP). I am Tom Iseman, Deputy Assistant Secretary for Water and Science at the Department of the Interior. The Department continues to review the recently introduced version of S. 1694 and as such would like to work with the sponsor and this Committee to offer additional input on the bill and to address some initial concerns with the bill as discussed later in this testimony. The Department is an ongoing federal participant in Phase III, also known as the Integrated Plan, and this testimony will address areas where S. 1694 is consistent with that role. The Department supports the goals of S. 1694, which are consistent with the Department's ongoing coordination with our State partners and all Basin interests to find solutions to the long-term imbalance between water supply and demand in the Yakima Basin.

The YRBWEP Workgroup, formed in 2009, developed the Yakima River Basin Integrated Water Resources Management Plan, which is a partnership between Bureau of Reclamation (Reclamation), Washington State Department of Ecology, the Yakama Nation, irrigation districts, local governments, non-governmental organizations, and several other Federal and state agencies. It is exactly the kind of broad-based, consensus-driven cooperation that is essential to successful modern water resources management. As a long-term, collaborative process, the YRBWEP helps Reclamation continue to implement the Yakama Nation Settlement Agreement, and has progressed through two prior phases to arrive at Phase III, the Yakima River Basin Integrated Water Resources Management Plan, or Integrated Plan.

YRBWEP and the Integrated Plan have their roots in the original authorization of a joint Federal-state feasibility study in 1979 (PL 96-162). In this statute, Congress directed Reclamation to conduct a feasibility study of the Yakima River Basin Water Enhancement Project and develop a plan that would provide supplemental water for currently irrigated lands, water for new lands within the Yakama Indian Reservation, increased instream flows for aquatic life, and a comprehensive plan for efficient management of existing basin water supplies.

Early in the YRBWEP study process, fish passage problems were identified as needing immediate attention and in 1984, Congress authorized YRBWEP Phase I (Section

109 of PL 98–381), which primarily involved rebuilding fish ladders and constructing fish screens on river diversions. The YRBWEP study proceeded through the 1980s, but was not fully completed primarily due to uncertainties associated with the adjudication of basin surface water rights that began in 1977. Consequently, Congress passed additional legislation in 1994 (PL 103–434), for what is generally referred to as YRBWEP Phase II. This legislation provided for significant water conservation and acquisition activities, studies to define the long-term water needs of fish and current irrigators, improvements to the Wapato Irrigation Project, and development of a plan for management of basin water supplies.

The broad-based, consensus-driven nature of YRBWEP Phases I and II has been established through the development of many relationships, building diverse support for continued implementation of a broad range of projects as part of Phase III. The elements of this plan, and associated activities, were never envisioned to be stand-alone, individual efforts, but rather broad-based collaborative efforts that strive to integrate elements of interests held by each stakeholder. Still, while prioritizing Federal support, both financially and administratively, we have a responsibility to ensure that available resources are put to their highest and best use, utilized for the most cost-effective elements that have a strong Federal interest. This has been the approach used in the Administration's recent Budgets, as discussed below. As a corollary to this Federal support, in June 2013, the Washington State Legislature affirmed their support for the Integrated Plan in statute (SSSB 5367) and provided \$132 million to begin implementation of the plan.

The current lack of facilities in which to store the full water supply of the basin, operational constraints, and legal framework affecting water resources in the Yakima River Basin illustrate the challenges for residents, businesses, tribal communities, and ecosystem resources. The Integrated Plan is aimed at addressing these challenges, which include:

- Water reliability for the Yakama Nation: the Integrated Plan approach will help assure the ability to meet Tribal water supply needs, and offers an alternative to expensive and time-consuming litigation to resolve treaty issues.
- Proratable water users receive sharply diminished supplies from the Yakima Project during severe drought years, in one year as little as 38% of their full allotment. Junior users can be cut off completely. This reduces agricultural production and associated jobs in the basin. For those who grow tree fruit, this could cause early loss of trees, which could have remained economically productive, sometimes for many additional years.
- Most municipal and domestic water users in the basin rely on junior water rights for their drinking water supplies. The Yakama Nation and irrigation users, including

proratable irrigation users, hold water rights and entitlements that are senior to most municipal and domestic uses. Municipal and domestic users live with a very real risk that their supplies could be cut off as a result of litigation brought by senior water users under drought conditions. This affects current residents and also limits the ability of local communities to grow and develop. The State of Washington and local governments have identified averting such litigation as a key objective.

- Scientists studying the effects of global climate change on the Columbia River Basin project that less water will be stored in the Cascade Range snowpack in future decades compared with current conditions. Snowpack currently provides a substantial portion of runoff to the Yakima River basin, and reduced snowpack in the future would compromise water supply, streamflow, and aquatic habitat conditions. There is no single type of action that can address the multiple effects of climate change on snowpack, runoff conditions, water temperature, aquatic life, and forest health. Reclamation and Ecology believe that an integrated approach that includes consideration of water storage, water conservation, streamflow management, fish passage, and habitat improvements offers the best opportunity to mitigate climate change impacts on the Yakima basin's aquatic habitat and economy.

- Forest resources, land and terrestrial habitat of the Yakima basin also face risks from climate change, large wildfires, fragmented ownership, and land-use practices. These risks exacerbate the other risks to water resources and aquatic habitats. The Integrated Plan includes approaches to coordinate land management and water management to help manage these risks.

The Integrated Plan encompasses seven elements: habitat and watershed protection and enhancement; reservoir fish passage; surface storage; enhanced water conservation; structural and operational changes; groundwater storage; and the use of market-based forces to reallocate water and habitat among willing buyers and sellers. The goals of the Integrated Plan are to protect, mitigate, and enhance fish and wildlife habitat; provide increased operational flexibility to manage instream flows to meet ecological objectives; and improve the reliability of the water supply for irrigation, municipal supply and domestic uses.

Because of this history, a strong foundation of planning, study and diverse support underlies the YRBWEP and the Integrated Plan. Reclamation and Ecology completed a final Programmatic Environmental Impact Statement (PEIS) for the Integrated Plan in March 2012, and a Record of Decision (ROD) was signed in 2013. Under Phase II, Reclamation completed eight basin conservation plans and five feasibility-level conservation plans with two more feasibility plans to be completed this year.

The President's FY 2016 request is \$12.8 million for currently authorized YRBWEP activities consistent with Phase II and the Integrated Plan that are cost-effective

and have a strong Federal interest. The YRBWEP has been part of the President's request consistently each year because of its nexus with several mission areas for the Department, and because of the multiple benefits that the current process makes possible, such as avoiding water resources conflicts that might otherwise occur and achieving both ecological and economic benefits in the basin. By linking several elements together for shared progress, YRBWEP is meaningfully increasing the reliability of the irrigation water supply and benefiting anadromous fish in the Yakima River basin. Dozens of activities are underway and in various stages of implementation. For example, the river levee set-back project in Yakima, Washington, is now complete and was jointly funded by Reclamation, the U.S. Army Corps of Engineers (Corps) and the City of Yakima, and provides multiple local benefits including fish and wildlife benefits, increased flood protection and improved water quality. Reclamation is currently in the design phase of a similar project near Ellensburg, Washington.

Additionally, Reclamation, along with several Federal, state, local and private partners, completed the Manastash Creek Conservation and Tributary Enhancement Project, which was the first construction project included in the Integrated Plan, and was completed in 2014. This project is considered a major success because portions of the stream that have been seasonally dewatered for over 100 years are now flowing year-round, and steelhead can be found in the stream. Other projects include providing permanent fish passage at Cle Elum Dam; construction is scheduled to begin this year and is being co-funded by Reclamation and the State of Washington, which will help meet Reclamation's obligation for fish passage under the Yakama Nation Settlement Agreement, in addition to continuing acquisitions of land and water on the Yakima River and its tributaries where there exists a high potential for improved fisheries and watershed conditions. As of 2015, approximately 40,000 acre-feet (af) of water has been acquired for instream flows by Phase II projects and over 13,000 af has been conserved to improve irrigation supplies in drought years. These diverse projects combine planning, grant-making and direct construction through many partnerships.

This legislation specifically directs the completion of construction of fish passage at Cle Elum dam and at least one other Yakima Basin reservoir within the next ten years. This is extremely important to the Yakama Nation and various federal and state fishery agencies. Restoration of fish passage in the Yakima Basin is culturally significant and fish passage at the dams will open up tens of miles of pristine fish habitat currently inaccessible above the dams.

The Department would like to work with the sponsor's office and this committee to clarify the authorities that are utilized in the Yakima River Basin and altered by this bill, particularly those in Section 4(c) and Section 5. As cur-

rently drafted, we do not interpret the authorization provided in this bill to extend to the construction or raise of any large dams in the Basin, with the exception of Cle Elum Dam, despite their inclusion in the overall Integrated plan, the provision in Section 2(b)(8), and the provisions added by Section 5. In general, we interpret authorities added by this bill to be limited to carrying out those elements currently identified as the 'Initial Development Phase' of the Integrated Plan. We would also like to work with the committee regarding the fish recovery language at sections 2(b)(1) and 4(b)(3) [bill pages 2 and 15], the treaty language at 4(b) [bill page 12], and the instream flow language at section 4(b)(2) [bill page 14].

This legislation also allows for the irrigation districts to construct a facility to access a significant amount of water stored in the inactive pool of Kachess Reservoir. This will provide proratable irrigation districts with the additional water needed to increase their supply in drought years from a climate-model estimated low of 20–30% up to 70%. This legislation will also allow additional funds for water conservation on the Yakama Reservation, which is the largest irrigator in the basin and has a significant conservation need, to be able to help the entire basin with more efficient use of limited water supplies. Additional funds for the Cle Elum pool raise project are authorized which will allow control of another 14,600 af of water that can be used in ways beneficial to fish. There are many other benefits to this legislation, but the last I will mention here is that it allows the Secretary to accept cost share for many of these projects which allows Federal dollars to be leveraged to achieve more conservation.

The Integrated Plan has also provided for unprecedented collaboration between irrigation districts, the Yakama Nation and fish agencies, which can best be described by the recent example of Kittitas Reclamation District's (KRD) efforts to relieve hardships to local streams from drought. KRD has turned on siphons and water gates in its canals that provide flows to Manastash Creek and five other upstream Yakima River tributaries. Under an agreement with Reclamation, Ecology, the Yakama Nation and in consultation with the state Department of Fish & Wildlife, Yakima Project water is being routed through KRD canals on its way to downstream diverters and passed through these small creeks. It then flows back to the same river it came from and it is available for diversions further down the Yakima River. This is being done in a manner that has no impact on the total water supply and still improves flow, fish habitat and vegetation lining creek banks.

Implementation of the YRBWEP is based on a funding strategy that includes the premise that projects with Federal participation will be cost-shared by Federal and non-Federal entities. For example, the State of Washington and Reclamation have signed a Memorandum of Agreement to provide 50–50 cost-share for the Cle Elum Dam Fish Passage Project, and the beneficiaries of the Kachess

Drought Relief Pumping Plant have suggested that they will fund both capital and operations and maintenance (O&M) costs of that project. Additionally, several habitat enhancement and agricultural conservation projects are being funded by Federal, state, and local governments.

S. 1694 is being introduced at an opportune time when stakeholders understand the urgency in implementing many elements of the Integrated Plan and are willing funding partners, able to take on the operations and maintenance (O&M) of various elements of YRBWEP projects, thus taking the full funding and O&M burden off the federal budget. This unique opportunity is a result of many years of collaboration with a diverse group of stakeholders who have traditionally held opposing views but are now cooperatively working together to achieve real, tangible results. This legislation is essential in maintaining the momentum that has been built.

As stated above, while the Administration supports YRBWEP activities that are cost-effective and have a strong Federal interest through its budget request and through ongoing activities at other agencies, the Department is still completing its review of the introduced version of S. 1694. We understand it has undergone several recent revisions up through the preceding days, and we appreciate having been part of some of those revisions. The Department still needs to closely complete review of the introduced bill to determine its consistency—both from a budgetary perspective as well as a programmatic view—with the agreed-to elements in YRBWEP and the Integrated Plan. While the Department supports the sponsor's intention to authorize continued federal participation in the implementation of the Integrated Plan (a.k.a. YRBWEP Phase III), we look forward to working with the bill's sponsor and the Committee to address specific elements of the bill once we have had the opportunity to conduct further analysis. The Department supports the goals of S. 1694; however, we reserve the right to submit additional comments on the bill in the future.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the original bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### **Public Law 103–434, as amended**

\* \* \* \* \*

## 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) 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;】

*(5) to realize sufficient water savings from implementing the Yakima River 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), in addition to the 165,000 acre feet*



*of water savings targeted through the Basin Conservation Program, as authorized on October 31, 1994;*

[(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] 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, hydrologic changes, and other related changes and variability in natural and human systems, 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) *DESIGNATED FEDERAL OFFICIAL.*—The term “designated Federal official” means the Commissioner of Reclamation (or a designee), acting pursuant to the charter of the Conservation Advisory Group.

(7) *INTEGRATED PLAN.*—The terms “Integrated Plan” and “Yakima River Basin Integrated Water Resource Plan” mean the plan and activities authorized by the Yakima River Basin Enhancement Project Phase III Act of 2015 and the amendments made by that Act, to be carried out in cooperation with

and in addition to activities of the State of Washington and 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) water conservation activities relating to a use described in 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) PRORATABLE IRRIGATION ENTITY.—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] *Yakama Nation*” means the Confederated Tribes and Bands of the [Yakama Indian] *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] *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] *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]** *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]** *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, and]** *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) *AUTHORITY OF DESIGNATED FEDERAL OFFICIAL.—The designated Federal official may—*

(A) *arrange and provide logistical support for meetings of the Conservation Advisory Group;*

(B) *use a facilitator to serve as a moderator for meetings of the Conservation Advisory Group or provide additional logistical support; and*

(C) *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:

(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.—

(A) *IN GENERAL.*—*The 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, subject to the requirement that the funding by the Federal Government of the local share of the costs shall provide a quantifiable public benefit in meeting Federal responsibilities in the Basin and the purposes of this title.*

(B) *USE OF CONSERVED WATER.*—*The Yakima Project Manager may use water resulting from conservation measures taken under this title, in addition to water that the Bureau of Reclamation may acquire from any willing seller through purchase, donation, or lease, for water management uses pursuant to this title.*

(e) ENTITY WATER CONSERVATION PLANS.—[To participate in the Conservation Basin Program an entity must submit a proposed water conservation plan to the Secretary. 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.] *To participate in the Basin Conservation Program, as described in subsection (b), an entity shall submit to the Secretary a proposed water conservation plan.*

(f) BASIN CONSERVATION PLAN.—The Conservation Advisory Group shall, within 2½ 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] YAKAMA NATION.

(a) WAPATO IRRIGATION PROJECT IMPROVEMENTS AND APPROPRIATIONS.—(1) The [Yakama Indian] *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 \$100,000,000* 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]** *Yakama* Nation.

(3) Water savings resulting from irrigation system improvements shall be available for the use of the **[Yakama Indian]** *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]** *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]** *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]** *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 subse-



quently 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]** *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 TO YAKAMA INDIAN NATION.—]** *REDESIGNATION OF YAKAMA INDIAN NATION TO YAKAMA NATION.*—

**[(1) REDESIGNATION.**—The Confederated Tribes and Bands of the Yakima Indian Nation shall be known and designated as the “Confederated Tribes and Bands of the Yakama Indian Nation”.]

*(1) REDESIGNATION.—The Confederated Tribes and Bands of the Yakama Indian Nation shall be known and designated as the “Confederated Tribes and Bands of the 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 referred to in subsection (a) shall be **[deemed to be a reference to the “Confederated Tribes and Bands of the Yakama Indian Nation”.]** *deemed to be a reference to the “Confederated Tribes and Bands of the 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:

(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]** *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.

(6)(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—]** *not more than \$12,000,000 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]** *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)—**]**

*IN GENERAL.—(1) The Secretary, following consultation with the State of Washington, tributary water right owners, and the Yakama Nation, and on agreement of appropriate water right owners, 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 subsection may be investigated and implemented by the Secretary in tributaries to the Yakima River, 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, subject to the condition that activities may commence on completion of applicable and required feasibility studies, environmental reviews, and cost-benefit analyses that include favorable recommendations for further project development, as appropriate. 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 Taneum 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] *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.—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—

- (1) \$50,000 to conduct an assessment of opportunities for alternative pumping plant locations;
- (2) \$4,000,000 for construction; and
- (3) 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.

(b) POWER FOR PROJECT PUMPING.—(1) The Administrator of the Bonneville Power Administration shall provide for project power needed to effect the electrification 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)).

(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, 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, or a combination of the two.

(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] *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* to carry out this section.

**SEC. 1211. ENVIRONMENTAL COMPLIANCE.**

There are hereby authorized to be appropriated to the Secretary ~~["\$2,000,000"]~~ *\$5,000,000* 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"]~~ *Yakama* Nation;

(2) authorize the appropriation or use of water by any Federal, State, or local agency, the ~~["Yakama Indian"]~~ *Yakama* Nation, or any other entity or individual;

(3) impair the rights or jurisdictions of the United States, the States, the ~~["Yakama Indian"]~~ *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"]~~ *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"]~~ *Yakama* Nation, or other entity, public or private;

(7) affect or modify the rights of the ~~["Yakama Indian"]~~ *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"]~~ *Yakama* Nation and its members;

(9) affect or modify the rights of any Federal, State, or local agency, the ~~["Yakama Indian"]~~ *Yakama* Nation, or any other entity, public or private with respect to any unresolved and unsettled claims in any water right adjudications, or court deci-

sions, 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, subject to the condition that, if the Yakima Project reservoir identified by the Secretary contains a hydropower project licensed by the Federal Energy Regulatory Commission, the Secretary shall cooperate with the Federal Energy Regulatory Commission in a timely manner to ensure that actions taken by the Secretary are consistent with the applicable hydropower project license;*

*(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) new facilities needed to access and deliver inactive storage in Lake Kachess for the purpose of providing drought relief for irrigation (known as the 'Kachess Drought Relief Pumping Plant'); and*

*(II) a conveyance system to allow transfer of water between Keechelus Reservoir to Kachess Res-*

*ervoir for purposes of improving operational flexibility for the benefit of both fish and irrigation (known as the 'K to K Pipeline');*

(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;*

(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 voluntary water transfers between entities, including as appropriate, the use of federally managed infrastructure; and*

(vi) *enter into cooperative agreements with, or, subject to a minimum non-Federal cost-sharing requirement of 50 percent, 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) 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.*

(III) To implement, in partnership with Federal and non-Federal entities, projects to enhance the health and resilience of the watershed.

(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, environmental reviews, and cost-benefit analyses that include favorable recommendations for further project development.

(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 of applicable feasibility studies, environmental reviews, and cost-benefit analyses that include favorable recommendations for further project development;

(C) implemented on 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 the amount of Federal funding and non-Federal contributions received and expended during the period covered by the report;*

(iv) *describe the pace of project development during the period covered by the report;*

(v) *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*

(vi) *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 nonre-*

*imbursable 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 the preceding 1 or more calendar years, in the event that the Kachess Reservoir fails to refill as a result of pumping drought storage water during the preceding 1 or more calendar 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 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 subsection (b)(1) or implementing any activities pursuant to the agreements before the date on which—*

*(A) all applicable and required feasibility studies, environmental reviews, and cost-benefit analyses have been completed and include favorable recommendations for further project development, including an analysis of—*

*(i) the impacts of the agreements and activities conducted pursuant to subsection (a)(2)(A)(ii) on adjacent communities, including potential fire hazards, water access for fire districts, community and homeowner wells, future water levels based on projected usage, recreational values, and property values; and*

*(ii) specific options and measures for mitigating the impacts, as appropriate;*

*(B) the Secretary has made the agreements and any applicable project designs, operations plans, and other documents available for public review and comment in the Federal Register for a period of not less than 60 days; and*

*(C) the Secretary has made a determination, consistent with applicable law, 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.*—

*(A) IN GENERAL.*—*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 if inactive storage in Kachess Reservoir is needed to provide drought relief for irrigation, subject to the requirements of subparagraphs (B) and (C).*

*(B) DETERMINATION.*—*Power may be provided under subparagraph (A) only if—*

*(i) there is in effect a drought declaration issued by the State of Washington;*

*(ii) there are conditions that have led to 70 percent or less water delivery to proratable irrigation districts, as determined by the Secretary; and*

*(iii) the Secretary determines that it is appropriate to provide power under that subparagraph.*

*(C) PERIOD OF AVAILABILITY.*—*Power under subparagraph (A) shall be provided until the date on which the Secretary determines that power should no longer be provided under that subparagraph, but for not more than a 1-year period or the period during which the Secretary determines that drought mitigation measures are necessary in the Yakima River basin.*

*(D) RATE.*—*The Administrator of the Bonneville Power Administration shall provide power under subparagraph (A) at the then-applicable lowest Bonneville Power Admin-*

istration 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.

(E) *LOCAL PROVIDER.*—During any period in which power is not being provided under subparagraph (A), the power needed to operate the Kachess Pumping Plant shall be obtained by the Secretary from a local provider.

(F) *COSTS.*—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.

(G) *DUTIES OF COMMISSIONER.*—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; and

(C) the development of the aquifer storage and recovery project will not impair fish or other aquatic life in any localized stream reach.

(2) *PROJECT TYPES.*—The Secretary may provide technical assistance for, and participate in, any of the following 3 types of groundwater recharge projects (including the incorporation of groundwater recharge projects into Yakima Project operations, as appropriate):

(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 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.*

*(4) LIMITATION ON USE OF OTHER FEDERAL FUNDS.—Except as otherwise provided in this title, other Federal funds may not be used to provide the non-Federal cost-share of a project carried out under this section.*

**(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 to provide fish passage in the Yakima Basin in accordance with the Hoover Power Plant Act of 1984 (43 U.S.C. 619 et seq.).*

**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.*

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