

**Union Calendar No. 350**

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 1690**

[Report No. 103-644]

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**A BILL**

To authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

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AUGUST 1, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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### IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1993

Mr. INSLEE introduced the following bill; which was referred to the Committee on Natural Resources

AUGUST 1, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 5, 1993]

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## A BILL

To authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. PURPOSES.**

4        *The purposes of this Act are—*

1           (1) to protect, mitigate, and enhance fish and  
2 wildlife through improved water management; im-  
3 proved instream flows; improved water quality; pro-  
4 tection, creation and enhancement of wetlands; and  
5 by other appropriate means of habitat improvement;

6           (2) to improve the reliability of water supply for  
7 irrigation;

8           (3) to authorize a Yakima River basin water  
9 conservation program that will improve the efficiency  
10 of water delivery and use; enhance basin water sup-  
11 plies; improve water quality; protect, create and en-  
12 hance wetlands; and determine the amount of basin  
13 water needs that can be met by water conservation  
14 measures;

15           (4) to realize sufficient water savings from the  
16 Yakima River Basin Water Conservation Program so  
17 that not less than 40,000 acre-feet of water savings  
18 per year are achieved by the end of the fourth year  
19 of the Basin Conservation Program, and not less than  
20 110,000 acre-feet of water savings per year are  
21 achieved by the end of the eighth year of the program,  
22 to protect and enhance fish and wildlife resources;  
23 and not less than 55,000 acre feet of water savings  
24 per year are achieved by the end of the eighth year  
25 of the program for availability for irrigation;

1           (5) to encourage voluntary transactions among  
2 public and private entities which result in the imple-  
3 mentation of water conservation measures, practices,  
4 and facilities; and

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

13 **SEC. 2. DEFINITIONS.**

14 As used in this Act:

15           (1) The term “Basin Conservation Plan” means  
16 a plan for implementing water conservation measures  
17 found in the various water conservation plans devel-  
18 oped under the Basin Conservation Program.

19           (2) The term “Basin Conservation Program”  
20 means the Yakima River Basin Water Conservation  
21 Program established under section 3(a).

22           (3) The term “comprehensive basin operating  
23 plan” means a plan that will provide guidance to the  
24 Yakima Project Superintendent for operation of the

1 *existing Yakima Project as modified by actions taken*  
2 *pursuant to this Act.*

3 (4) *The term “Conservation Advisory Group”*  
4 *means the Yakima River Basin Conservation Advi-*  
5 *sory Group established under section 3(c).*

6 (5) *The term “conserved water” means water*  
7 *saved and attributable to the program established*  
8 *under the Basin Conservation Program.*

9 (6) *The term “Irrigation Demonstration Project”*  
10 *means the Yakama Indian Reservation Irrigation*  
11 *Demonstration Project authorized in section 4(b).*

12 (7) *The term “nonproratable water” means that*  
13 *portion of the total water supply available under pro-*  
14 *visions of sections 18 and 19 of Civil Action No. 21*  
15 *(Federal District Court Judgment of January 31,*  
16 *1945) that is not subject to proration in times of*  
17 *water shortage.*

18 (8) *The term “on-district storage” means small*  
19 *water storage facilities located within the boundaries*  
20 *of an irrigation entity, including reregulating res-*  
21 *ervoirs, holding ponds, or other new storage methods*  
22 *which allow for efficient water use.*

23 (9) *The term “proratable water” means that por-*  
24 *tion of the total water supply available under provi-*  
25 *sions of sections 18 and 19 of Civil Action No. 21*

1       *(Federal District Court Judgment of January 31,*  
2       *1945) that is subject to proration in times of water*  
3       *shortage.*

4             *(10) The term “Secretary” means the Secretary*  
5       *of the Interior.*

6             *(11) The term “System Operations Advisory*  
7       *Committee” means a group of fishery biologists—*

8                     *(A) created by the Yakima Project Super-*  
9                     *intendent in response to the supplemental in-*  
10                    *structions entitled “Supplementary Instructions*  
11                    *to the Water Master”, and dated November 28,*  
12                    *1980, in the case of Kittitass Reclamation Dis-*  
13                    *trict, et al. vs. the Sunnyside Valley Irrigation*  
14                    *District, et al. (E.D. Wash., Civil No. 21.);*

15                    *(B) who advise the Yakima Project Super-*  
16                    *intendent on operations of the Yakima Project*  
17                    *for fish and wildlife purposes; and*

18                    *(C) who, together with others, were identi-*  
19                    *fied for consultation on November 29, 1990, in*  
20                    *the amended partial summary judgment entered*  
21                    *in the basin adjudication (Yakima County Supe-*  
22                    *rior Court No. 77-2-01484-5).*

23             *(12) The term “Toppenish Enhancement Project”*  
24       *means the Toppenish Creek corridor enhancement*  
25       *project authorized by section 4(c).*

1           (13) *The term “Yakama Indian Nation” means*  
2           *the Confederated Tribes and Bands of the Yakama In-*  
3           *dian Nation as redesignated under section 4(g).*

4           (14) *The term “Yakima Project Superintendent”*  
5           *means the individual designated by the Regional Di-*  
6           *rector, Pacific Northwest Region, Bureau of Reclama-*  
7           *tion, to be responsible for the operation and manage-*  
8           *ment of the Yakima Federal Reclamation Project,*  
9           *Washington.*

10 **SEC. 3. YAKIMA RIVER BASIN WATER CONSERVATION PRO-**  
11 **GRAM.**

12           (a) *ESTABLISHMENT.*—(1) *The Secretary, in consulta-*  
13 *tion with the State of Washington, the Yakama Indian Na-*  
14 *tion, Yakima River basin irrigators, and other interested*  
15 *parties, shall establish and administer a Yakima River*  
16 *Basin Water Conservation Program for the purpose of eval-*  
17 *uating and implementing measures to improve the avail-*  
18 *ability of water supplies for irrigation and the protection*  
19 *and enhancement of fish and wildlife resources, including*  
20 *wetlands, while improving the quality of water in the Yak-*  
21 *ima Basin. The Secretary may make grants to eligible enti-*  
22 *ties for the purposes of carrying out this Act under such*  
23 *terms and conditions as the Secretary may require. Such*  
24 *terms and conditions shall include a requirement that all*  
25 *water districts, irrigation districts, individuals, or other en-*

1 *tities eligible to participate in the Basin Conservation Pro-*  
2 *gram must equip all surface water delivery systems within*  
3 *their boundaries with volumetric water meters or equally*  
4 *effective water measuring methods within 5 years of the*  
5 *date of enactment of this Act.*

6 (2) *Conserved water resulting in whole or in part from*  
7 *the expenditure of Federal funds shall not be used to expand*  
8 *irrigation in the Yakima Basin, except as specifically pro-*  
9 *vided in section 4(a)(3) on the Yakama Indian Reservation.*

10 (3) *The provisions of this section shall not apply to*  
11 *the Yakama Indian Nation except as to any funds specifi-*  
12 *cally applied for from the Basin Conservation Program.*

13 (b) *FOUR PHASES OF PROGRAM.—The Basin Con-*  
14 *servation Program shall encourage and provide funding as-*  
15 *sistance for four phases of water conservation, which shall*  
16 *consist of the following:*

17 (1) *The development of water conservation plans,*  
18 *consistent with applicable water conservation guide-*  
19 *lines of the Secretary, by irrigation districts, con-*  
20 *servation districts, water purveyors, other areawide*  
21 *entities, and individuals not included within an*  
22 *areawide entity.*

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

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

4           (4) *Post implementation monitoring and evalua-*  
5           *tion of implemented measures.*

6           (c) *CONSERVATION ADVISORY GROUP.—(1) Not later*  
7           *than 12 months after the date of enactment of this Act, the*  
8           *Secretary, in consultation with the State of Washington,*  
9           *the Yakama Indian Nation, Yakima River basin irrigators,*  
10          *and other interested and related parties, shall establish the*  
11          *Yakima River Basin Conservation Advisory Group.*

12          (2) *Members of the Conservation Advisory Group shall*  
13          *be appointed by the Secretary and shall be comprised of—*

14                (A) *one representative of the Yakima River basin*  
15                *nonproratable irrigators,*

16                (B) *one representative of the Yakima River basin*  
17                *proratable irrigators,*

18                (C) *one representative of the Yakama Indian Na-*  
19                *tion,*

20                (D) *one representative of environmental inter-*  
21                *ests,*

22                (E) *one representative of the Washington State*  
23                *University Agricultural Extension Service,*

24                (F) *one representative of the Department of*  
25                *Wildlife of the State of Washington, and*

1           (G) one individual who shall serve as the  
2           facilitator.

3           (3) The Conservation Advisory Group shall—

4           (A) provide recommendations to the Secretary  
5           and to the State of Washington regarding the struc-  
6           ture and implementation of the Basin Conservation  
7           Program,

8           (B) provide recommendations to the Secretary  
9           and to the State of Washington regarding the estab-  
10          lishment of a permanent program for the measure-  
11          ment and reporting of all natural flow and contract  
12          diversions within the basin,

13          (C) structure a process to prepare a basin con-  
14          servation plan as specified in subsection (f),

15          (D) provide annual review of the implementa-  
16          tion of the applicable water conservation guidelines of  
17          the Secretary, and

18          (E) provide recommendations consistent with  
19          statutes of the State of Washington on rules, regula-  
20          tions, and administration of a process to facilitate the  
21          voluntary sale or lease of water.

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

1           (5) *The Conservation Advisory Group shall consult an*  
 2 *irrigation district when considering actions specifically af-*  
 3 *fecting that district. For the purposes of this paragraph,*  
 4 *an irrigation district includes the Yakima Reservation Irri-*  
 5 *gation District.*

6           (6) *The Conservation Advisory Group shall be*  
 7 *nonvoting, seeking consensus whenever possible. If disagree-*  
 8 *ment occurs, any member may submit independent com-*  
 9 *ments to the Secretary. The Conservation Advisory Group*  
 10 *shall terminate 5 years after the date of its establishment*  
 11 *unless extended by the Secretary.*

12           (d) *COST SHARING.—(1) Except as otherwise provided*  
 13 *by this Act, costs incurred in the four phases of the Basin*  
 14 *Conservation Program shall be shared as follows:*

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

1           (2) *The Yakima River Basin Water Enhancement*  
2 *Project is a Federal action to improve streamflow and fish*  
3 *passage conditions and shall be considered part of a com-*  
4 *prehensive program to restore the Yakima River basin*  
5 *anadromous fishery resource. Related fishery resource im-*  
6 *provement facilities which utilize funding sources under the*  
7 *Pacific Northwest Electric Power Planning and Conserva-*  
8 *tion Act of 1989 (94 Stat. 2697) and independent water-*  
9 *related improvements of the State of Washington and other*  
10 *public and private entities to improve irrigation water use,*  
11 *water supply, and water quality, shall be treated as non-*  
12 *Federal cost share expenditures and shall be consolidated*  
13 *in any final calculation of required cost sharing. Within*  
14 *one year of the date of enactment of this Act, the Secretary*  
15 *shall enter into a binding cost sharing agreement with the*  
16 *State of Washington. The agreement shall describe the terms*  
17 *and conditions of specific contributions and other activities*  
18 *that may, subject to approval by the Secretary, qualify as*  
19 *non-Federal cost share expenditures.*

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

24           (e) *ENTITY WATER CONSERVATION PLANS.—To par-*  
25 *ticipate in the Conservation Basin Program an entity must*

1 *submit a proposed water conservation plan to the Secretary.*  
2 *The Secretary shall approve a water conservation plan sub-*  
3 *mitted under this subsection if the Secretary determines*  
4 *that the plan meets the applicable water conservation guide-*  
5 *lines of the Secretary.*

6 (f) *BASIN CONSERVATION PLAN.*—*The Conservation*  
7 *Advisory Group shall, within 2½ years after the date of*  
8 *enactment of this Act, submit a draft basin conservation*  
9 *plan to the Secretary.*

10 (g) *PUBLIC COMMENT.*—*The Secretary shall distribute*  
11 *the draft basin conservation plan and the entity water con-*  
12 *servation plans submitted under subsections (e) and (f), re-*  
13 *spectively, for public comment for a 60-day period.*

14 (h) *PUBLICATION OF BASIN CONSERVATION PLAN.*—  
15 *Within 60 days after the close of the comment period under*  
16 *subsection (g), the Secretary shall publish the Basin Con-*  
17 *servation Plan which plan will provide the basis—*

18 (1) *for prioritizing and allocating funds to im-*  
19 *plement conservation measures under this Act; and*

20 (2) *for preparing an interim comprehensive*  
21 *basin operating plan under section 10 of this Act as*  
22 *provided for in Public Law 96–162 (93 Stat. 1241).*

23 (i) *CONSERVATION MEASURES.*—(1) *Measures consid-*  
24 *ered for implementation in the Basin Conservation Pro-*  
25 *gram may include, among others, conveyance and distribu-*

1 *tion system monitoring, automation of water conveyance*  
2 *systems, water measuring or metering devices and equip-*  
3 *ment, lining and piping of water conveyance and distribu-*  
4 *tion systems, on-district storage, electrification of hydraulic*  
5 *turbines, tail-water recycling, consolidation of irrigation*  
6 *systems, irrigation scheduling, and improvement of on-farm*  
7 *water application systems. Basin Conservation Program*  
8 *funds may also be used throughout all four phases of the*  
9 *Basin Conservation Program to mitigate for adverse im-*  
10 *pacts of program measures.*

11 *(2) In addition to implementing existing technologies,*  
12 *the Secretary shall encourage the testing of innovative water*  
13 *conservation measures. The Secretary shall, to the maxi-*  
14 *mum extent possible under applicable Federal, State, and*  
15 *tribal law, cooperate with the State of Washington to facili-*  
16 *tate water and water right transfers, water banking, dry*  
17 *year options, the sale and leasing of water, and other inno-*  
18 *vative allocation tools used to maximize the utility of exist-*  
19 *ing Yakima River basin water supplies.*

20 *(3) The Secretary may, consistent with applicable law,*  
21 *use funds appropriated to carry out this section for the pur-*  
22 *chase or lease of land, water, or water rights from any en-*  
23 *tity or individual willing to limit or forego water use on*  
24 *a temporary or permanent basis. Funds used for purchase*  
25 *or lease under this paragraph are not subject to the cost*

1 *sharing provisions of subsection (d). Efforts to acquire*  
2 *water should be made immediately upon availability of*  
3 *funds to meet the three-year goal specified in section 5(a)(4)*  
4 *to provide water to be used by the Yakima Project Super-*  
5 *intendent under the advisement of the System Operations*  
6 *Advisory Committee for instream flow purposes. The use of*  
7 *Basin Conservation Program funds under this paragraph*  
8 *are in addition to those specifically authorized to be appro-*  
9 *priated by subsection (j)(4).*

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

13 *(j) AUTHORIZATION OF APPROPRIATIONS.—There is*  
14 *hereby authorized to be appropriated to the Secretary, at*  
15 *September 1990 prices, plus or minus such amounts as may*  
16 *be justified by reason of ordinary fluctuations of applicable*  
17 *cost indexes, the following amounts for the Basin Conserva-*  
18 *tion Program:*

19 *(1) \$1,000,000 for the development of water con-*  
20 *servation plans.*

21 *(2) \$4,000,000 for investigation of specific poten-*  
22 *tial water conservation measures identified in con-*  
23 *servation plans for consideration for implementing*  
24 *through the Basin Conservation Program.*

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

4           (4) *Up to \$10,000,000 for the initial acquisition*  
5           *of water from willing sellers or lessors specifically to*  
6           *provide instream flows for interim periods to facili-*  
7           *tate the outward migration of anadromous fish flush-*  
8           *ing flows. Such funds shall not be subject to the cost*  
9           *sharing provisions of subsection (d).*

10          (5) *\$100,000 annually for the establishment and*  
11          *support of the Conservation Advisory Group during*  
12          *its duration. Such funds shall be available for travel*  
13          *and per diem, rental of meeting rooms, typing, print-*  
14          *ing and mailing, and associated administrative*  
15          *needs. The Secretary and the State of Washington*  
16          *shall provide appropriate staff support to the Con-*  
17          *servation Advisory Group.*

18       **SEC. 4. YAKAMA INDIAN NATION.**

19          (a) *WAPATO IRRIGATION PROJECT IMPROVEMENTS*  
20        *AND APPROPRIATIONS.—(1) The Yakama Indian Nation's*  
21        *proposed system improvements to the Wapato Irrigation*  
22        *Project, as well as the design, construction, operation, and*  
23        *maintenance of the Irrigation Demonstration Project and*  
24        *the Toppenish Creek corridor enhancement project, pursu-*

1 ant to this Act shall be coordinated with the Bureau of In-  
2 dian Affairs.

3 (2) There is authorized to be appropriated to the Sec-  
4 retary not more than \$23,000,000 for the preparation of  
5 plans, investigation of measures, and following the Sec-  
6 retary's certification that such measures are consistent with  
7 the water conservation objectives of this Act, the implemen-  
8 tation of system improvements to the Wapato Irrigation  
9 Project. Funding for further improvements within the  
10 Wapato Irrigation Project may be acquired under the Basin  
11 Conservation Program or other sources identified by the  
12 Yakama Indian Nation.

13 (3) Water savings resulting from irrigation system im-  
14 provements shall be available for the use of the Yakama In-  
15 dian Nation for irrigation and other purposes on the res-  
16 ervation and for protection and enhancement of fish and  
17 wildlife within the Yakima River basin. The conveyance of  
18 such water through irrigation facilities other than the  
19 Wapato Irrigation Project shall be on a voluntary basis and  
20 shall not further diminish the amount of water that other-  
21 wise would have been delivered by an entity to its water  
22 users in years of water proration.

23 (b) IRRIGATION DEMONSTRATION PROJECT APPRO-  
24 PRIATIONS.—(1)(A) There is hereby authorized to be appro-  
25 priated to the Secretary—

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

6           (ii) such sums as may be necessary for the oper-  
7           ation and maintenance of the Irrigation Demonstra-  
8           tion Project, including funds for administration,  
9           training, equipment, materials, and supplies for the  
10          period specified by the Secretary, which sums are in  
11          addition to operation and maintenance funds for  
12          wildlife and cultural purposes appropriated to the  
13          Secretary under other authorization.

14          (B) Funds may not be made available under this sub-  
15          section until the Yakama Indian Nation obtains the concur-  
16          rence of the Secretary in the construction, management, and  
17          administrative aspects of the Irrigation Demonstration  
18          Project.

19          (C) After the end of the period specified under subpara-  
20          graph (A)(ii), costs for the operation and maintenance of  
21          the Irrigation Demonstration Project, including funds for  
22          administration, training, equipment, materials, and sup-  
23          plies referred to in that subparagraph, shall be borne exclu-  
24          sively by the lands directly benefitting from the Irrigation  
25          Demonstration Project.

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

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

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

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

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

1           (d) *REPORT.*—Within 5 years of the implementation  
2 of the Irrigation Demonstration Project and the Toppenish  
3 Enhancement Project, the Secretary, in consultation with  
4 the Yakama Indian Nation, shall report to the Committee  
5 on Energy and Natural Resources of the Senate, the Com-  
6 mittee on Natural Resources of the House of Representa-  
7 tives, and the Governor of the State of Washington on the  
8 effectiveness of the conservation, training, mitigation, and  
9 other measures implemented.

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

16           (f) *TREATMENT OF CERTAIN COSTS.*—Costs related to  
17 Wapato Irrigation Project improvements, the Irrigation  
18 Demonstration Project, and the Toppenish Enhancement  
19 Project shall be a Federal responsibility and are  
20 nonreimbursable and nonreturnable.

21           (g) *REDESIGNATION OF YAKIMA INDIAN NATION TO*  
22 *YAKAMA INDIAN NATION.*—

23                 (1) *REDESIGNATION.*—The Confederated Tribes  
24 and Bands of the Yakima Indian Nation shall be

1       *known and designated as the “Confederated Tribes*  
2       *and Bands of the Yakama Indian Nation”.*

3               (2) *REFERENCES.*—*Any reference in a law, map,*  
4       *regulation, document, paper, or other record of the*  
5       *United States to the Confederated Tribes and Bands*  
6       *of the Yakima Indian Nation referred to in subsection*  
7       *(a) shall be deemed to be a reference to the “Confed-*  
8       *erated Tribes and Bands of the Yakama Indian Na-*  
9       *tion”.*

10   **SEC. 5. OPERATION OF YAKIMA BASIN PROJECTS.**

11       (a) *WATER SAVINGS FROM BASIN CONSERVATION*  
12   *PROGRAM.*—(1) *The Basin Conservation Program is in-*  
13   *tended to result in reductions in water diversions allowing*  
14   *for changes in the present operation of the Yakima Project*  
15   *to improve stream flow conditions in the Yakima River*  
16   *basin. Except as provided by paragraph (5) of this sub-*  
17   *section and section 9, commencing with the enactment of*  
18   *this Act, and notwithstanding that anticipated water sav-*  
19   *ings are yet to be realized, the Secretary, upon the enact-*  
20   *ment of this Act and acting through the Yakima Project*  
21   *Superintendent, shall (A) continue to estimate the water*  
22   *supply which is anticipated to be available to meet water*  
23   *entitlements; and (B) provide instream flows in accordance*  
24   *with the following criteria:*

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

- 1           (2) *The initial target flows represent target flows at*  
2 *the respective points. Reasonable fluctuations from these*  
3 *target flows are anticipated in the operation of the Yakima*  
4 *Project, except that for any period exceeding 24 hours—*  
5           (A) *actual flows at the Sunnyside Diversion*  
6 *Dam may not decrease to less than 65 percent of the*  
7 *target flow at the Sunnyside Diversion Dam; and*  
8           (B) *actual flows at the Prosser Diversion Dam*  
9 *may not decrease by more than 50 cubic feet per sec-*  
10 *ond from the target flow.*
- 11           (3) *The instream flows shall be increased for interim*  
12 *periods during any month of April through October to fa-*  
13 *cilitate when necessary the outward migration of anad-*  
14 *romous fish. Increased instream flows for such interim peri-*  
15 *ods shall be obtained through voluntary sale and leasing*  
16 *of water or water rights or from conservation measures*  
17 *taken under this Act.*
- 18           (4)(A)(i) *Within the three-year period beginning when*  
19 *appropriations are first provided to carry out the Basin*

1 *Conservation Program, the instream flow goal in the Yak-*  
2 *ima River is as follows: to secure water which is to be used*  
3 *for instream flows to facilitate meeting recommendations*  
4 *of the System Operations Advisory Committee for flushing*  
5 *flows or other instream uses.*

6 *(ii) In addition to any other authority of the Secretary*  
7 *to provide water for flushing flows, the water required to*  
8 *meet the goal specified in clause (i) shall be acquired*  
9 *through the voluntary purchase or lease of land, water, or*  
10 *water rights and from the development of additional storage*  
11 *capability at Lake Cle Elum provided for in section 6(a).*

12 *(iii) In addition to water required to meet the*  
13 *instream flow goal specified in clause (i), the System Oper-*  
14 *ations Advisory Committee may recommend additional*  
15 *water to meet instream flow goals pursuant to judicial ac-*  
16 *tions.*

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

19 *(i) The goal increases so that the instream target*  
20 *flows specified in the table in paragraph (1) increase*  
21 *by 50 cubic feet per second for each 27,000 acre-feet*  
22 *of reduced annual water diversions achieved through*  
23 *implementation of measures under the Basin Con-*  
24 *servation Program. Such increases do not apply to*  
25 *actions taken pursuant to section 4. Such increases*

1       *shall not further diminish the amount of water that*  
2       *otherwise would have been delivered by an entity to*  
3       *its water users in years of water proration.*

4               (ii) *The goal changes directly with the availabil-*  
5       *ity of water resulting from Federal expenditures*  
6       *under this Act for purchase or lease of water under*  
7       *this Act.*

8       (C) *The Yakima Project Superintendent shall main-*  
9       *tain an account of funded and completed conservation*  
10       *measures taken under the Basin Conservation Program.*

11       (D) *No later than March 31 of each calendar year, the*  
12       *Yakima Project Superintendent shall meet with the State*  
13       *of Washington, Yakama Indian Nation, and Yakima River*  
14       *basin irrigators to mutually determine total diversion re-*  
15       *ductions and respective adjustments to the target flows re-*  
16       *ferred to in this subsection. The Yakima Project Super-*  
17       *intendent shall announce such adjustments with the an-*  
18       *nouncements of Total Water Supply Available. For the pur-*  
19       *poses of this subparagraph, conserved water will be consid-*  
20       *ered available for adjusting target flows in the first year*  
21       *following completion of a measure or following a result from*  
22       *the post implementation monitoring and evaluation pro-*  
23       *gram, as the case may be.*

1       (5) *Operational procedures and processes in the Yak-*  
2 *ima River basin which have or may be implemented*  
3 *through judicial actions shall not be impacted by this Act.*

4       (6)(A) *Within three years after the date of enactment*  
5 *of this Act, the Secretary shall conduct a study and submit*  
6 *a report with recommendations to the appropriate commit-*  
7 *tees of the Congress on whether the water supply available*  
8 *for irrigation is adequate to sustain the agricultural econ-*  
9 *omy of the Yakima River basin.*

10       (B) *The target flows provided for under this subsection*  
11 *shall be evaluated within three years after the date of enact-*  
12 *ment of this Act by the Systems Operations Advisory Com-*  
13 *mittee for the purpose of making a report with rec-*  
14 *ommendations to the Secretary and the Congress evaluating*  
15 *what is necessary to have biologically-based target flows.*

16       (C) *The recommendations and reports under subpara-*  
17 *graphs (A) and (B) shall provide a basis for the third phase*  
18 *of the Yakima River Basin Water Enhancement Project.*

19       (b) *WATER FROM LAKE CLE ELUM.—Water accruing*  
20 *from the development of additional storage capacity at Lake*  
21 *Cle Elum, made available pursuant to the modifications*  
22 *authorized in section 6(a), shall not be part of the Yakima*  
23 *River basin's water supply as provided in subsection (a)(1).*  
24 *Water obtained from such development is exclusively dedi-*  
25 *cated to instream flows for use by the Yakima Project Su-*

1 *perintendent as flushing flows or as otherwise advised by*  
2 *the System Operations Advisory Committee. Water may be*  
3 *carried over from year-to-year in the additional capacity*  
4 *to the extent that there is space available. Releases may be*  
5 *made from other Yakima Project storage facilities to most*  
6 *effectively utilize this additional water, except that water*  
7 *deliveries to holders of existing water rights shall not be*  
8 *impaired.*

9       (c) *STATUS OF BASIN CONSERVATION PROGRAM FA-*  
10 *CILITIES.—Measures of the Basin Conservation Program*  
11 *which are implemented on facilities currently under the ad-*  
12 *ministrative jurisdiction of the Secretary, except as pro-*  
13 *vided in section 4, shall be considered features of the Yak-*  
14 *ima River Basin Water Enhancement Project, and their op-*  
15 *eration and maintenance shall be integrated and coordi-*  
16 *nated with other features of the existing Yakima Project.*  
17 *The responsibility for operation and maintenance and the*  
18 *related costs shall remain with the current operating entity.*  
19 *As appropriate, the Secretary shall incorporate the oper-*  
20 *ation and maintenance of such facilities into existing agree-*  
21 *ments. The Secretary shall assure that such facilities are*  
22 *operated in a manner consistent with Federal and State*  
23 *law and in accordance with water rights recognized pursu-*  
24 *ant to State and Federal law.*

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

6           (e) *YAKIMA PROJECT PURPOSE.*—(1) *An additional*  
7 *purpose of the Yakima Project shall be for fish, wildlife, and*  
8 *recreation.*

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

12           (3) *The purposes specified in paragraphs (1) and (2)*  
13 *shall not impair the operation of the Yakima Project to pro-*  
14 *vide water for irrigation purposes nor impact existing con-*  
15 *tracts.*

16 **SEC. 6. LAKE CLE ELUM AUTHORIZATION OF APPROPRIA-**  
17 **TIONS.**

18           (a) *MODIFICATIONS AND IMPROVEMENTS.*—*There is*  
19 *hereby authorized to be appropriated to the Secretary—*

20           (1) *at September 1990 prices, plus or minus*  
21 *such amounts as may be justified by reason of ordi-*  
22 *nary fluctuation of applicable indexes, \$2,934,000*  
23 *to—*

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

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

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

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

10       (b) OPERATION AND MAINTENANCE APPROPRIA-  
11 TIONS.—There is hereby authorized to be appropriated to  
12 the Secretary such sums as may be necessary for that por-  
13 tion of the operation and maintenance of Cle Elum Dam  
14 determined by the Secretary to be a Federal responsibility.

15 **SEC. 7. ENHANCEMENT OF WATER SUPPLIES FOR YAKIMA**  
16 **BASIN TRIBUTARIES.**

17       (a) GENERAL PROVISIONS.—The following shall be ap-  
18 plicable to the investigation and implementation of meas-  
19 ures to enhance water supplies for fish and wildlife and  
20 irrigation purposes on tributaries of the Yakima River  
21 basin:

22           (1) An enhancement program authorized by this  
23 section undertaken in any tributary shall be contin-  
24 gent upon the agreement of appropriate water right  
25 owners to participate.

1           (2) *The enhancement program authorized by this*  
2           *section shall not be construed to affect (A) the water*  
3           *rights of any water right owners in the tributary or*  
4           *other water delivering entities; (B) the capability of*  
5           *tributary water users to divert, convey, and apply*  
6           *water; and (C) existing water and land uses within*  
7           *the tributary area.*

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

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

14          (b) *STUDY.—(1) The Secretary, following consultation*  
15          *with the State of Washington, the tributary water right*  
16          *owners, and the Yakama Indian Nation, and agreement of*  
17          *appropriate water right owners to participate, shall con-*  
18          *duct a study concerning the measures that can be imple-*  
19          *mented to enhance water supplies for fish and wildlife and*  
20          *irrigation purposes on Taneum Creek, including (but not*  
21          *limited to)—*

22                  (A) *water use efficiency improvements;*

23                  (B) *the conveyance of water from the Yakima*  
24          *Project through the facilities of any irrigation entity*

1        *willing to contract with the Secretary without adverse*  
2        *impact to water users;*

3            *(C) the construction, operation, and maintenance*  
4        *of ground water withdrawal facilities;*

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

9            *(E) purchase of water rights from willing sellers;*  
10       *and*

11           *(F) other measures compatible with the purposes*  
12       *of this Act, including restoration of stream habitats.*

13        *(2) In conducting the Taneum Creek study, the Sec-*  
14 *retary shall consider—*

15           *(A) the hydrologic and environmental character-*  
16        *istics;*

17           *(B) the engineering and economic factors relat-*  
18        *ing to each measure; and*

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

22        *(3) The Secretary shall make available to the public*  
23 *for a 45-day comment period a draft report describing in*  
24 *detail the findings, conclusions, and recommendations of the*  
25 *study. The Secretary shall consider and include any com-*

1 *ment made in developing a final report. The Secretary's*  
2 *final report shall be submitted to the Committee on Energy*  
3 *and Natural Resources of the Senate, the Committee on Nat-*  
4 *ural Resources of the House of Representatives, and the*  
5 *Governor of the State of Washington, and made available*  
6 *to the public.*

7       (c) *IMPLEMENTATION OF NONSTORAGE MEASURES.—*  
8 *After securing the necessary permits the Secretary may, in*  
9 *cooperation with the Department of Ecology of the State*  
10 *of Washington and in accordance with the laws of the State*  
11 *of Washington, implement nonstorage measures identified*  
12 *in the final report under subsection (b) upon fulfillment of*  
13 *the following conditions:*

14           (1) *The Secretary shall enter into an agreement*  
15 *with the appropriate water right owners who are*  
16 *willing to participate, the State of Washington, and*  
17 *the Yakama Indian Nation, for the use and manage-*  
18 *ment of the water supply to be provided by proposed*  
19 *tributary measures pursuant to this section.*

20           (2) *The Secretary and the State of Washington*  
21 *find that the implementation of the proposed tribu-*  
22 *tary measures will not impair the water rights of any*  
23 *person or entity in the affected tributary.*

24       (d) *OTHER YAKIMA RIVER BASIN TRIBUTARIES.—En-*  
25 *hancement programs similar to the enhancement program*

1 *authorized by this section may be investigated and imple-*  
2 *mented by the Secretary in other tributaries contingent*  
3 *upon the agreement of the appropriate tributary water*  
4 *right owners to participate. The provisions set forth in this*  
5 *section shall be applicable to such programs.*

6 *(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There*  
7 *is hereby authorized to be appropriated to the Secretary*  
8 *\$500,000 for the study of the Taneum Creek Project and*  
9 *such amount as the Secretary subsequently determines is*  
10 *necessary for implementation of tributary measures pursu-*  
11 *ant to this section.*

12 *(2) There is also authorized to be appropriated to the*  
13 *Secretary such funds as are necessary for the investigation*  
14 *of enhancement programs similar to the enhancement pro-*  
15 *gram authorized by this section in other Yakima River*  
16 *basin tributaries contingent upon the agreement of the ap-*  
17 *propriate water right owners to participate. Funds for the*  
18 *implementation of any such similar enhancement program*  
19 *may not be appropriated until after the Secretary submits*  
20 *an investigation report to the appropriate congressional*  
21 *committees.*

22 **SEC. 8. CHANDLER PUMPING PLANT AND POWERPLANT-OP-**  
23 **ERATIONS AT PROSSER DIVERSION DAM.**

24 *(a) AUTHORIZATION OF APPROPRIATIONS FOR ELEC-*  
25 *TRIFICATION.—In order to provide for electrification to en-*

1 *hance instream flows by eliminating the need to divert*  
2 *water to operate the hydraulic turbines which pump water*  
3 *to the Kennewick Irrigation District, there is authorized to*  
4 *be appropriated—*

5           (1) *\$50,000 to conduct an assessment of opportu-*  
6 *nities for alternative pumping plant locations;*

7           (2) *\$4,000,000 for construction; and*

8           (3) *such sums as may be necessary for the*  
9 *prorata share of the operation and maintenance allo-*  
10 *cated to fish and wildlife as determined by the Sec-*  
11 *retary.*

12       (b) *POWER FOR PROJECT PUMPING.—The Adminis-*  
13 *trator of the Bonneville Power Administration, consistent*  
14 *with provisions of the Columbia River Basin Fish and*  
15 *Wildlife Program established pursuant to the Pacific North-*  
16 *west Electric Power Planning and Conservation Act (94*  
17 *Stat. 2697), shall provide for project power needed to effect*  
18 *the electrification as provided in subsection (a). The cost*  
19 *of power shall be credited to fishery restoration goals of the*  
20 *Columbia River Basin Fish and Wildlife Program.*

21       (c) *SUBORDINATION.—Any diversions for hydropower*  
22 *generation at the Chandler Powerplant shall be subordi-*  
23 *nated to meet the flow targets determined under subsection*  
24 *(f).*

1           (d) *WATER SUPPLY FOR KENNEWICK IRRIGATION DIS-*  
2 *TRICT.—The Secretary shall ensure that the irrigation*  
3 *water supply for the Kennewick Irrigation District shall*  
4 *not be affected by conservation, electrification, or subordi-*  
5 *nation pursuant to this Act and any reduction in its irriga-*  
6 *tion water supply resulting from conservation measures*  
7 *adopted or implemented by other entities pursuant to this*  
8 *Act shall be replaced by water developed through subordina-*  
9 *tion, electrification, or a combination of the two.*

10           (e) *TREATMENT OF CERTAIN FUNDS.—Funds appro-*  
11 *priated and project power provided pursuant to this section*  
12 *shall be nonreimbursable since such funds are used for fish*  
13 *and wildlife purposes and such funds are not subject to cost*  
14 *share under section 3(d).*

15           (f) *TARGET FLOWS.—Target flows measured at appro-*  
16 *priate biological and hydrological location or locations shall*  
17 *be determined by the Yakima Project Superintendent in*  
18 *consultation with the System Operations Advisory Commit-*  
19 *tee.*

20 **SEC. 9. AUGMENTATION OF KACHESS RESERVOIR STORED**  
21 **WATER.**

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

1           (1) *such sums as may be necessary to carry out*  
2           *a feasibility study, including the benefits, costs, and*  
3           *environmental aspects, of the facility described in*  
4           *paragraph (2);*

5           (2) *for the construction of facilities to convey*  
6           *such flows to Kachess Reservoir, \$20,000,000; and*

7           (3) *such sums as may be necessary for the pro*  
8           *rata share of the operation and maintenance allocated*  
9           *to fish and wildlife determined by the Secretary.*

10          (b) *LIMITATION.*—*Construction of the facilities de-*  
11          *scribed in subsection (a)(2) is contingent on the completion*  
12          *of the feasibility study referred to in subsection (a)(1).*

13          (c) *USE OF ADDITIONAL WATER.*—*The stored water*  
14          *supply resulting from the construction of facilities under*  
15          *this section shall be used by the Secretary to—*

16                 (1) *enhance the water supply available to the*  
17                 *Kittitas Reclamation District and the Roza Irriga-*  
18                 *tion District in years of proration; and*

19                 (2) *facilitate reservoir operations in the Easton*  
20                 *Dam to Keechelus Dam reach of the Yakima River for*  
21                 *the propagation of anadromous fish.*

22          (d) *TREATMENT OF COSTS.*—*The construction and op-*  
23          *eration and maintenance costs of the facilities under this*  
24          *section shall be allocated to irrigation and fishery enhance-*  
25          *ment, as follows:*



1           (1) *operating capability and constraints of the*  
2           *system;*

3           (2) *information on water supply calculations*  
4           *and water needs;*

5           (3) *system operations and stream flow objectives;*  
6           *and*

7           (4) *the System Operations Advisory Committee*  
8           *activities.*

9           (b) *PROCESS REQUIREMENTS.*—*A draft of the interim*  
10          *comprehensive basin operating plan shall be completed*  
11          *within 18 months after the completion of the Basin Con-*  
12          *servation Plan under section 3(f) and, upon completion,*  
13          *published for a 90-day public review period. The Secretary*  
14          *shall complete and publish the final interim comprehensive*  
15          *operating plan within 90 days after the close of the public*  
16          *review period. The Secretary shall update the plan as need-*  
17          *ed to respond to decisions from water adjudications relating*  
18          *to the Yakima River basin.*

19          (c) *AUTHORIZATION OF APPROPRIATIONS.*—*There is*  
20          *authorized to be appropriated \$100,000 to carry out this*  
21          *section.*

22          ***SEC. 11. ENVIRONMENTAL COMPLIANCE.***

23          *There are hereby authorized to be appropriated to the*  
24          *Secretary \$2,000,000 for environmental compliance activi-*  
25          *ties including the conduct, in cooperation with the State*

1 *of Washington, of an inventory of wildlife and wetland re-*  
2 *sources in the Yakima River basin and an investigation*  
3 *of measures, including “wetland banking”, which could be*  
4 *implemented to address potential impacts which could re-*  
5 *sult from the activities taken under this Act.*

6 **SEC. 12. SAVINGS AND CONTINGENCIES.**

7 (a) *IN GENERAL.*—*Nothing in this Act shall be con-*  
8 *strued to—*

9 (1) *affect or modify any treaty or other right of*  
10 *the Yakama Indian Nation;*

11 (2) *authorize the appropriation or use of water*  
12 *by any Federal, State, or local agency, the Yakama*  
13 *Indian Nation, or any other entity or individual;*

14 (3) *impair the rights or jurisdictions of the*  
15 *United States, the States, the Yakama Indian Nation,*  
16 *or other entities over waters of any river or stream*  
17 *or over any ground water resource;*

18 (4) *alter, amend, repeal, interpret, modify, or be*  
19 *in conflict with any interstate compact made by the*  
20 *States;*

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

1           (6) *alter, diminish, or abridge the rights and ob-*  
2 *ligations of any Federal, State, or local agency, the*  
3 *Yakama Indian Nation, or other entity, public or pri-*  
4 *vate;*

5           (7) *affect or modify the rights of the Yakama In-*  
6 *dian Nation or its successors in interest to, and man-*  
7 *agement and regulation of, those water resources aris-*  
8 *ing or used, within the external boundaries of the*  
9 *Yakama Indian Reservation;*

10          (8) *affect or modify the settlement agreement be-*  
11 *tween the United States and the State of Washington*  
12 *filed in Yakima County Superior Court with regard*  
13 *to Federal reserved water rights other than those*  
14 *rights reserved by the United States for the benefit of*  
15 *the Yakama Indian Nation and its members;*

16          (9) *affect or modify the rights of any Federal,*  
17 *State, or local agency, the Yakama Indian Nation, or*  
18 *any other entity, public or private with respect to*  
19 *any unresolved and unsettled claims in any water*  
20 *right adjudications, or court decisions, including*  
21 *State against Acquavella, or constitute evidence in*  
22 *any such proceeding in which any water or water re-*  
23 *lated right is adjudicated; or*

24          (10) *preclude other planning studies and projects*  
25 *to accomplish the purposes of this Act by other means:*

1        *funded publicly, privately, or by a combination of*  
2        *public and private funding.*

3        *(b) CONTINGENCY BASED ON APPROPRIATIONS.—The*  
4        *performance of any activity under this Act which requires*  
5        *accomplishment within a specified period that may require*  
6        *appropriation of money by Congress or the allotment of*  
7        *funds shall be contingent upon such appropriation or allot-*  
8        *ment being made.*

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