

103^D CONGRESS
2^D SESSION

H. R. 5148

AN ACT

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—

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

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

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

10 (4) to realize sufficient water savings from the
11 Yakima River Basin Water Conservation Program
12 so that not less than 40,000 acre-feet of water sav-
13 ings per year are achieved by the end of the fourth
14 year of the Basin Conservation Program, and not
15 less than 110,000 acre-feet of water savings per year
16 are achieved by the end of the eighth year of the
17 program, to protect and enhance fish and wildlife re-
18 sources; and not less than 55,000 acre feet of water
19 savings per year are achieved by the end of the
20 eighth year of the program for availability for irriga-
21 tion;

22 (5) to encourage voluntary transactions among
23 public and private entities which result in the imple-
24 mentation of water conservation measures, practices,
25 and facilities; and

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

9 **SEC. 2. DEFINITIONS.**

10 As used in this Act:

11 (1) The term “Basin Conservation Plan” means
12 a plan for implementing water conservation meas-
13 ures found in the various water conservation plans
14 developed under the Basin Conservation Program.

15 (2) The term “Basin Conservation Program”
16 means the Yakima River Basin Water Conservation
17 Program established under section 3(a).

18 (3) The term “comprehensive basin operating
19 plan” means a plan that will provide guidance to the
20 Yakima Project Superintendent for operation of the
21 existing Yakima Project as modified by actions
22 taken pursuant to this Act.

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

1 (5) The term “conserved water” means water
2 saved and attributable to the program established
3 under the Basin Conservation Program.

4 (6) The term “Irrigation Demonstration
5 Project” means the Yakama Indian Reservation Irri-
6 gation Demonstration Project authorized in section
7 4(b).

8 (7) The term “nonproratable water” means
9 that portion of the total water supply available
10 under provisions of sections 18 and 19 of Civil Ac-
11 tion No. 21 (Federal District Court Judgment of
12 January 31, 1945) that is not subject to proration
13 in times of water shortage.

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

19 (9) The term “proratable water” means that
20 portion of the total water supply available under
21 provisions of sections 18 and 19 of Civil Action No.
22 21 (Federal District Court Judgment of January 31,
23 1945) that is subject to proration in times of water
24 shortage.

1 (10) The term “Secretary” means the Secretary
2 of the Interior.

3 (11) The term “System Operations Advisory
4 Committee” means a group of fishery biologists—

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

12 (B) who advise the Yakima Project Super-
13 intendent on operations of the Yakima Project
14 for fish and wildlife purposes; and

15 (C) who, together with others, were identi-
16 fied for consultation on November 29, 1990, in
17 the amended partial summary judgment entered
18 in the basin adjudication (Yakima County Su-
19 perior Court No. 77-2-01484-5).

20 (12) The term “Toppenish Enhancement
21 Project” means the Toppenish Creek corridor en-
22 hancement project authorized by section 4(c).

23 (13) The term “Yakama Indian Nation” means
24 the Confederated Tribes and Bands of the Yakama
25 Indian Nation as redesignated under section 4(g).

1 (14) The term “Yakima Project Superintend-
2 ent” means the individual designated by the Re-
3 gional Director, Pacific Northwest Region, Bureau
4 of Reclamation, to be responsible for the operation
5 and management of the Yakima Federal Reclama-
6 tion Project, Washington.

7 **SEC. 3. YAKIMA RIVER BASIN WATER CONSERVATION PRO-**
8 **GRAM.**

9 (a) ESTABLISHMENT.—(1) The Secretary, in con-
10 sultation with the State of Washington, the Yakama In-
11 dian Nation, Yakima River basin irrigators, and other in-
12 terested parties, shall establish and administer a Yakima
13 River Basin Water Conservation Program for the purpose
14 of evaluating and implementing measures to improve the
15 availability of water supplies for irrigation and the protec-
16 tion and enhancement of fish and wildlife resources, in-
17 cluding wetlands, while improving the quality of water in
18 the Yakima Basin. The Secretary may make grants to eli-
19 gible entities for the purposes of carrying out this Act
20 under such terms and conditions as the Secretary may re-
21 quire. Such terms and conditions shall include a require-
22 ment that all water districts, irrigation districts, individ-
23 uals, or other entities eligible to participate in the Basin
24 Conservation Program must equip all surface water deliv-
25 ery systems within their boundaries with volumetric water

1 meters or equally effective water measuring methods with-
2 in 5 years of the date of enactment of this Act.

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

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

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

15 (1) The development of water conservation
16 plans, consistent with applicable water conservation
17 guidelines of the Secretary, by irrigation districts,
18 conservation districts, water purveyors, other
19 areawide entities, and individuals not included with-
20 in an areawide entity.

21 (2) The investigation of the feasibility of spe-
22 cific potential water conservation measures identified
23 in 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,
8 the Secretary, in consultation with the State of Washing-
9 ton, the Yakama Indian Nation, Yakima River basin
10 irrigators, and other interested and related parties, shall
11 establish the Yakima River Basin Conservation Advisory
12 Group.

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

16 (A) one representative of the Yakima River
17 basin nonproratable irrigators,

18 (B) one representative of the Yakima River
19 basin proratable irrigators,

20 (C) one representative of the Yakama Indian
21 Nation,

22 (D) one representative of environmental inter-
23 ests,

24 (E) one representative of the Washington State
25 University Agricultural Extension Service,

1 (F) one representative of the Department of
2 Wildlife of the State of Washington, and

3 (G) one individual who shall serve as the
4 facilitator.

5 (3) The Conservation Advisory Group shall—

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

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

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

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

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

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

4 (5) The Conservation Advisory Group shall consult
 5 an irrigation district when considering actions specifically
 6 affecting that district. For the purposes of this paragraph,
 7 an irrigation district includes the Yakima Reservation Irriga-
 8 tion District.

9 (6) The Conservation Advisory Group shall be
 10 nonvoting, seeking consensus whenever possible. If dis-
 11 agreement occurs, any member may submit independent
 12 comments to the Secretary. The Conservation Advisory
 13 Group shall terminate 5 years after the date of its estab-
 14 lishment unless extended by the Secretary.

15 (d) COST SHARING.—(1) Except as otherwise pro-
 16 vided by this Act, costs incurred in the four phases of the
 17 Basin Conservation Program shall be shared as follows:

Program Phase	Non-Federal		Federal Grant
	State Grant	Local	
1. Development of water conservation plans	50% but not more than \$200,000 per recipient	(Residual amount if any)	50%

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

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
7 the Pacific Northwest Electric Power Planning and Con-
8 servation Act of 1989 (94 Stat. 2697) and independent
9 water-related improvements of the State of Washington
10 and other public and private entities to improve irrigation
11 water use, water supply, and water quality, shall be
12 treated as non-Federal cost share expenditures and shall
13 be consolidated in any final calculation of required cost
14 sharing. Within one year of the date of enactment of this
15 Act, the Secretary shall enter into a binding cost sharing
16 agreement with the State of Washington. The agreement
17 shall describe the terms and conditions of specific con-
18 tributions and other activities that may, subject to ap-

1 proval by the Secretary, qualify as non-Federal cost share
2 expenditures.

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

7 (e) ENTITY WATER CONSERVATION PLANS.—To par-
8 ticipate in the Conservation Basin Program an entity
9 must submit a proposed water conservation plan to the
10 Secretary. The Secretary shall approve a water conserva-
11 tion plan submitted under this subsection if the Secretary
12 determines that the plan meets the applicable water con-
13 servation guidelines of the Secretary.

14 (f) BASIN CONSERVATION PLAN.—The Conservation
15 Advisory Group shall, within 2½ years after the date of
16 enactment of this Act, submit a draft basin conservation
17 plan to the Secretary.

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

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

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

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

6 (i) CONSERVATION MEASURES.—(1) Measures con-
7 sidered for implementation in the Basin Conservation Pro-
8 gram may include, among others, conveyance and distribu-
9 tion system monitoring, automation of water conveyance
10 systems, water measuring or metering devices and equip-
11 ment, lining and piping of water conveyance and distribu-
12 tion systems, on-district storage, electrification of hydrau-
13 lic turbines, tail-water recycling, consolidation of irrigation
14 systems, irrigation scheduling, and improvement of on-
15 farm water application systems. Basin Conservation Pro-
16 gram funds may also be used throughout all four phases
17 of the Basin Conservation Program to mitigate for adverse
18 impacts of program measures.

19 (2) In addition to implementing existing technologies,
20 the Secretary shall encourage the testing of innovative
21 water conservation measures. The Secretary shall, to the
22 maximum extent possible under applicable Federal, State,
23 and tribal law, cooperate with the State of Washington
24 to facilitate water and water right transfers, water bank-
25 ing, dry year options, the sale and leasing of water, and

1 other innovative allocation tools used to maximize the util-
2 ity of existing Yakima River basin water supplies.

3 (3) The Secretary may, consistent with applicable
4 law, use funds appropriated to carry out this section for
5 the purchase or lease of land, water, or water rights from
6 any entity or individual willing to limit or forego water
7 use on a temporary or permanent basis. Funds used for
8 purchase or lease under this paragraph are not subject
9 to the cost sharing provisions of subsection (d). Efforts
10 to acquire water should be made immediately upon avail-
11 ability of funds to meet the three-year goal specified in
12 section 5(a)(4) to provide water to be used by the Yakima
13 Project Superintendent under the advisement of the Sys-
14 tem Operations Advisory Committee for instream flow
15 purposes. The use of Basin Conservation Program funds
16 under this paragraph are in addition to those specifically
17 authorized to be appropriated by subsection (j)(4).

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

21 (j) AUTHORIZATION OF APPROPRIATIONS.—There is
22 hereby authorized to be appropriated to the Secretary, at
23 September 1990 prices, plus or minus such amounts as
24 may be justified by reason of ordinary fluctuations of ap-

1 plicable cost indexes, the following amounts for the Basin
2 Conservation Program:

3 (1) \$1,000,000 for the development of water
4 conservation plans.

5 (2) \$4,000,000 for investigation of specific po-
6 tential water conservation measures identified in
7 conservation plans for consideration for implement-
8 ing through the Basin Conservation Program.

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

12 (4) Up to \$10,000,000 for the initial acquisi-
13 tion of water from willing sellers or lessors specifi-
14 cally to provide instream flows for interim periods to
15 facilitate the outward migration of anadromous fish
16 flushing flows. Such funds shall not be subject to the
17 cost sharing provisions of subsection (d).

18 (5) \$100,000 annually for the establishment
19 and support of the Conservation Advisory Group
20 during its duration. Such funds shall be available for
21 travel and per diem, rental of meeting rooms, typ-
22 ing, printing and mailing, and associated adminis-
23 trative needs. The Secretary and the State of Wash-
24 ington shall provide appropriate staff support to the
25 Conservation Advisory Group.

1 **SEC. 4. YAKAMA INDIAN NATION.**

2 (a) WAPATO IRRIGATION PROJECT IMPROVEMENTS
3 AND APPROPRIATIONS.—(1) The Yakama Indian Nation’s
4 proposed system improvements to the Wapato Irrigation
5 Project, as well as the design, construction, operation, and
6 maintenance of the Irrigation Demonstration Project and
7 the Toppenish Creek corridor enhancement project, pursu-
8 ant to this Act shall be coordinated with the Bureau of
9 Indian Affairs.

10 (2) There is authorized to be appropriated to the Sec-
11 retary not more than \$23,000,000 for the preparation of
12 plans, investigation of measures, and following the Sec-
13 retary’s certification that such measures are consistent
14 with the water conservation objectives of this Act, the im-
15 plementation of system improvements to the Wapato Irri-
16 gation Project. Funding for further improvements within
17 the Wapato Irrigation Project may be acquired under the
18 Basin Conservation Program or other sources identified
19 by the Yakama Indian Nation.

20 (3) Water savings resulting from irrigation system
21 improvements shall be available for the use of the Yakama
22 Indian Nation for irrigation and other purposes on the
23 reservation and for protection and enhancement of fish
24 and wildlife within the Yakima River basin. The convey-
25 ance of such water through irrigation facilities other than
26 the Wapato Irrigation Project shall be on a voluntary basis

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

4 (b) IRRIGATION DEMONSTRATION PROJECT APPRO-
5 PRIATIONS.—(1)(A) There is hereby authorized to be ap-
6 propriated to the Secretary—

7 (i) at September 1990 prices, plus or minus
8 such amounts as may be justified by reason of ordi-
9 nary fluctuations of applicable cost indexes,
10 \$8,500,000 for the design and construction of the
11 Yakama Indian Reservation Irrigation Demonstra-
12 tion Project; and

13 (ii) such sums as may be necessary for the op-
14 eration and maintenance of the Irrigation Dem-
15 onstration Project, including funds for administra-
16 tion, training, equipment, materials, and supplies for
17 the period specified by the Secretary, which sums
18 are in addition to operation and maintenance funds
19 for wildlife and cultural purposes appropriated to
20 the Secretary under other authorization.

21 (B) Funds may not be made available under this sub-
22 section until the Yakama Indian Nation obtains the con-
23 currence of the Secretary in the construction, manage-
24 ment, and administrative aspects of the Irrigation Dem-
25 onstration Project.

1 (C) After the end of the period specified under sub-
2 paragraph (A)(ii), costs for the operation and maintenance
3 of the Irrigation Demonstration Project, including funds
4 for administration, training, equipment, materials, and
5 supplies referred to in that subparagraph, shall be borne
6 exclusively by the lands directly benefitting from the Irri-
7 gation Demonstration Project.

8 (2) The Irrigation Demonstration Project shall pro-
9 vide for the construction of distribution and on-farm irri-
10 gation facilities to use all or a portion of the water savings,
11 as determined by the Yakama Indian Nation, resulting
12 from the Wapato Irrigation Project system improvements
13 for—

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

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

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

22 (c) TOPPENISH CREEK CORRIDOR ENHANCEMENT
23 PROJECT APPROPRIATIONS.—There is hereby authorized
24 to be appropriated to the Secretary \$1,500,000 for the
25 further investigation by the Yakama Indian Nation of

1 measures to develop a Toppenish Creek corridor enhance-
2 ment project to demonstrate integration of management
3 of agricultural, fish, wildlife, and cultural resources to
4 meet tribal objectives and such amount as the Secretary
5 subsequently determines is necessary for implementation.
6 There is also authorized to be appropriated to the Sec-
7 retary such sums as may be necessary for the operation
8 and maintenance of the Toppenish Enhancement Project.

9 (d) REPORT.—Within 5 years of the implementation
10 of the Irrigation Demonstration Project and the
11 Toppenish Enhancement Project, the Secretary, in con-
12 sultation with the Yakama Indian Nation, shall report to
13 the Committee on Energy and Natural Resources of the
14 Senate, the Committee on Natural Resources of the House
15 of Representatives, and the Governor of the State of
16 Washington on the effectiveness of the conservation, train-
17 ing, mitigation, and other measures implemented.

18 (e) STATUS OF IMPROVEMENTS AND FACILITIES.—
19 The Wapato Irrigation Project system improvements and
20 any specific irrigation facility of the Irrigation Demonstra-
21 tion Project (excluding on-farm irrigation facilities) and
22 the Toppenish Enhancement Project shall become features
23 of the Wapato Irrigation Project.

24 (f) TREATMENT OF CERTAIN COSTS.—Costs related
25 to Wapato Irrigation Project improvements, the Irrigation

1 Demonstration Project, and the Toppenish Enhancement
2 Project shall be a Federal responsibility and are
3 nonreimbursable and nonreturnable.

4 (g) REDESIGNATION OF YAKIMA INDIAN NATION TO
5 YAKAMA INDIAN NATION.—

6 (1) REDESIGNATION.—The Confederated Tribes
7 and Bands of the Yakima Indian Nation shall be
8 known and designated as the “Confederated Tribes
9 and Bands of the Yakama Indian Nation”.

10 (2) REFERENCES.—Any reference in a law,
11 map, regulation, document, paper, or other record of
12 the United States to the Confederated Tribes and
13 Bands of the Yakima Indian Nation referred to in
14 subsection (a) shall be deemed to be a reference to
15 the “Confederated Tribes and Bands of the Yakama
16 Indian Nation”.

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

18 (a) WATER SAVINGS FROM BASIN CONSERVATION
19 PROGRAM.—(1) The Basin Conservation Program is in-
20 tended to result in reductions in water diversions allowing
21 for changes in the present operation of the Yakima Project
22 to improve stream flow conditions in the Yakima River
23 basin. Except as provided by paragraph (5) of this sub-
24 section and section 9, commencing with the enactment of
25 this Act, and notwithstanding that anticipated water sav-

1 ings are yet to be realized, the Secretary, upon the enact-
 2 ment of this Act and acting through the Yakima Project
 3 Superintendent, shall (A) continue to estimate the water
 4 supply which is anticipated to be available to meet water
 5 entitlements; and (B) provide instream flows in accord-
 6 ance with the following criteria:

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

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

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

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

18 (3) The instream flows shall be increased for interim
 19 periods during any month of April through October to fa-

1 cilitate when necessary the outward migration of anad-
2 romous fish. Increased instream flows for such interim pe-
3 riods shall be obtained through voluntary sale and leasing
4 of water or water rights or from conservation measures
5 taken under this Act.

6 (4)(A)(i) Within the three-year period beginning
7 when appropriations are first provided to carry out the
8 Basin Conservation Program, the instream flow goal in
9 the Yakima River is as follows: to secure water which is
10 to be used for instream flows to facilitate meeting rec-
11 ommendations of the System Operations Advisory Com-
12 mittee for flushing flows or other instream uses.

13 (ii) In addition to any other authority of the Sec-
14 retary to provide water for flushing flows, the water re-
15 quired to meet the goal specified in clause (i) shall be ac-
16 quired through the voluntary purchase or lease of land,
17 water, or water rights and from the development of addi-
18 tional storage capability at Lake Cle Elum provided for
19 in section 6(a).

20 (iii) In addition to water required to meet the
21 instream flow goal specified in clause (i), the System Op-
22 erations Advisory Committee may recommend additional
23 water to meet instream flow goals pursuant to judicial
24 actions.

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

3 (i) The goal increases so that the instream tar-
4 get flows specified in the table in paragraph (1) in-
5 crease by 50 cubic feet per second for each 27,000
6 acre-feet of reduced annual water diversions
7 achieved through implementation of measures under
8 the Basin Conservation Program. Such increases do
9 not apply to actions taken pursuant to section 4.
10 Such increases shall not further diminish the
11 amount of water that otherwise would have been de-
12 livered by an entity to its water users in years of
13 water proration.

14 (ii) The goal changes directly with the availabil-
15 ity of water resulting from Federal expenditures
16 under this Act for purchase or lease of water under
17 this Act.

18 (C) The Yakima Project Superintendent shall main-
19 tain an account of funded and completed conservation
20 measures taken under the Basin Conservation Program.

21 (D) No later than March 31 of each calendar year,
22 the Yakima Project Superintendent shall meet with the
23 State of Washington, Yakama Indian Nation, and Yakima
24 River basin irrigators to mutually determine total diver-
25 sion reductions and respective adjustments to the target

1 flows referred to in this subsection. The Yakima Project
2 Superintendent shall announce such adjustments with the
3 announcements of Total Water Supply Available. For the
4 purposes of this subparagraph, conserved water will be
5 considered available for adjusting target flows in the first
6 year following completion of a measure or following a re-
7 sult from the post implementation monitoring and evalua-
8 tion program, as the case may be.

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

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

18 (B) The target flows provided for under this sub-
19 section shall be evaluated within three years after the date
20 of enactment of this Act by the Systems Operations Advi-
21 sory Committee for the purpose of making a report with
22 recommendations to the Secretary and the Congress evalu-
23 ating what is necessary to have biologically-based target
24 flows.

1 (C) The recommendations and reports under sub-
2 paragraphs (A) and (B) shall provide a basis for the third
3 phase of the Yakima River Basin Water Enhancement
4 Project.

5 (b) WATER FROM LAKE CLE ELUM.—Water accru-
6 ing from the development of additional storage capacity
7 at Lake Cle Elum, made available pursuant to the modi-
8 fications authorized in section 6(a), shall not be part of
9 the Yakima River basin's water supply as provided in sub-
10 section (a)(1). Water obtained from such development is
11 exclusively dedicated to instream flows for use by the Yak-
12 ima Project Superintendent as flushing flows or as other-
13 wise advised by the System Operations Advisory Commit-
14 tee. Water may be carried over from year-to-year in the
15 additional capacity to the extent that there is space avail-
16 able. Releases may be made from other Yakima Project
17 storage facilities to most effectively utilize this additional
18 water, except that water deliveries to holders of existing
19 water rights shall not be impaired.

20 (c) STATUS OF BASIN CONSERVATION PROGRAM FA-
21 CILITIES.—Measures of the Basin Conservation Program
22 which are implemented on facilities currently under the
23 administrative jurisdiction of the Secretary, except as pro-
24 vided in section 4, shall be considered features of the Yak-
25 ima River Basin Water Enhancement Project, and their

1 operation and maintenance shall be integrated and coordi-
2 nated with other features of the existing Yakima Project.
3 The responsibility for operation and maintenance and the
4 related costs shall remain with the current operating en-
5 tity. As appropriate, the Secretary shall incorporate the
6 operation and maintenance of such facilities into existing
7 agreements. The Secretary shall assure that such facilities
8 are operated in a manner consistent with Federal and
9 State law and in accordance with water rights recognized
10 pursuant to State and Federal law.

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

16 (e) YAKIMA PROJECT PURPOSE.—(1) An additional
17 purpose of the Yakima Project shall be for fish, wildlife,
18 and recreation.

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

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

1 **SEC. 6. LAKE CLE ELUM AUTHORIZATION OF APPROPRIA-**
2 **TIONS.**

3 (a) MODIFICATIONS AND IMPROVEMENTS.—There is
4 hereby authorized to be appropriated to the Secretary—

5 (1) at September 1990 prices, plus or minus
6 such amounts as may be justified by reason of ordi-
7 nary fluctuation of applicable indexes, \$2,934,000
8 to—

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

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

14 (C) construct juvenile fish passage facili-
15 ties at Cle Elum Dam, plus

16 (2) such additional amounts as may be nec-
17 essary which may be required for environmental
18 mitigation.

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

1 **SEC. 7. ENHANCEMENT OF WATER SUPPLIES FOR YAKIMA**
2 **BASIN TRIBUTARIES.**

3 (a) GENERAL PROVISIONS.—The following shall be
4 applicable to the investigation and implementation of
5 measures to enhance water supplies for fish and wildlife
6 and irrigation purposes on tributaries of the Yakima River
7 basin:

8 (1) An enhancement program authorized by
9 this section undertaken in any tributary shall be
10 contingent upon the agreement of appropriate water
11 right owners to participate.

12 (2) The enhancement program authorized by
13 this section shall not be construed to affect (A) the
14 water rights of any water right owners in the tribu-
15 tary or other water delivering entities; (B) the capa-
16 bility of tributary water users to divert, convey, and
17 apply water; and (C) existing water and land uses
18 within the tributary area.

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

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

25 (b) STUDY.—(1) The Secretary, following consulta-
26 tion with the State of Washington, the tributary water

1 right owners, and the Yakama Indian Nation, and agree-
2 ment of appropriate water right owners to participate,
3 shall conduct a study concerning the measures that can
4 be implemented to enhance water supplies for fish and
5 wildlife and irrigation purposes on Taneum Creek, includ-
6 ing (but not limited to)—

7 (A) water use efficiency improvements;

8 (B) the conveyance of water from the Yakima
9 Project through the facilities of any irrigation entity
10 willing to contract with the Secretary without ad-
11 verse impact to water users;

12 (C) the construction, operation, and mainte-
13 nance of ground water withdrawal facilities;

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

18 (E) purchase of water rights from willing
19 sellers; and

20 (F) other measures compatible with the pur-
21 poses of this Act, including restoration of stream
22 habitats.

23 (2) In conducting the Taneum Creek study, the Sec-
24 retary shall consider—

1 (A) the hydrologic and environmental character-
2 istics;

3 (B) the engineering and economic factors relat-
4 ing to each measure; and

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

8 (3) The Secretary shall make available to the public
9 for a 45-day comment period a draft report describing in
10 detail the findings, conclusions, and recommendations of
11 the study. The Secretary shall consider and include any
12 comment made in developing a final report. The Sec-
13 retary's final report shall be submitted to the Committee
14 on Energy and Natural Resources of the Senate, the Com-
15 mittee on Natural Resources of the House of Representa-
16 tives, and the Governor of the State of Washington, and
17 made available to the public.

18 (c) IMPLEMENTATION OF NONSTORAGE MEAS-
19 URES.—After securing the necessary permits the Sec-
20 retary may, in cooperation with the Department of Ecol-
21 ogy of the State of Washington and in accordance with
22 the laws of the State of Washington, implement
23 nonstorage measures identified in the final report under
24 subsection (b) upon fulfillment of the following conditions:

1 (1) The Secretary shall enter into an agreement
2 with the appropriate water right owners who are
3 willing to participate, the State of Washington, and
4 the Yakama Indian Nation, for the use and manage-
5 ment of the water supply to be provided by proposed
6 tributary measures pursuant to this section.

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

11 (d) OTHER YAKIMA RIVER BASIN TRIBUTARIES.—
12 Enhancement programs similar to the enhancement pro-
13 gram authorized by this section may be investigated and
14 implemented by the Secretary in other tributaries contin-
15 gent upon the agreement of the appropriate tributary
16 water right owners to participate. The provisions set forth
17 in this section shall be applicable to such programs.

18 (e) AUTHORIZATION OF APPROPRIATIONS.—(1)
19 There is hereby authorized to be appropriated to the Sec-
20 retary \$500,000 for the study of the Taneum Creek
21 Project and such amount as the Secretary subsequently
22 determines is necessary for implementation of tributary
23 measures pursuant to this section.

24 (2) There is also authorized to be appropriated to the
25 Secretary such funds as are necessary for the investigation

1 of enhancement programs similar to the enhancement pro-
2 gram authorized by this section in other Yakima River
3 basin tributaries contingent upon the agreement of the ap-
4 propriate water right owners to participate. Funds for the
5 implementation of any such similar enhancement program
6 may not be appropriated until after the Secretary submits
7 an investigation report to the appropriate congressional
8 committees.

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

11 (a) AUTHORIZATION OF APPROPRIATIONS FOR ELEC-
12 TRIFICATION.—In order to provide for electrification to
13 enhance instream flows by eliminating the need to divert
14 water to operate the hydraulic turbines which pump water
15 to the Kennewick Irrigation District, there is authorized
16 to be appropriated—

17 (1) \$50,000 to conduct an assessment of oppor-
18 tunities for alternative pumping plant locations;

19 (2) \$4,000,000 for construction; and

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

24 (b) POWER FOR PROJECT PUMPING.—(1) The Ad-
25 ministrator of the Bonneville Power Administration shall

1 provide for project power needed to effect the electrifica-
2 tion as provided in subsection (a).

3 (2)(A) There is authorized to be appropriated for the
4 Bureau of Reclamation for each fiscal year in which the
5 Administrator provides power under this subsection an
6 amount equal to the cost to the Bonneville Power Adminis-
7 tration of providing power under this subsection during
8 such fiscal year. The rate to be utilized by the Adminis-
9 trator in determining the cost of power under this para-
10 graph in a fiscal year shall be the rate for priority firm
11 power charged by the Bonneville Power Administration in
12 that fiscal year under section 7(b) of the Pacific North-
13 west Electric Power Planning and Conservation Act (16
14 U.S.C. 839e(b)).

15 (B) The Bureau of Reclamation shall, using funds
16 appropriated pursuant to the authorization of appropria-
17 tions in subparagraph (A), reimburse the Bonneville
18 Power Administration for the costs of the project power
19 provided under this subsection. Such funds shall be avail-
20 able for such purpose without fiscal year limitation.

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 sub-
24 section (f).

1 (d) WATER SUPPLY FOR KENNEWICK IRRIGATION
2 DISTRICT.—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 subordi-
9 nation, electrification, or a combination of the two.

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

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

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

1 to system demands, there is authorized to be appro-
2 priated—

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

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

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

13 (b) LIMITATION.—Construction of the facilities de-
14 scribed in subsection (a)(1) is contingent on the comple-
15 tion of the feasibility study referred to in subsection
16 (a)(2).

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

20 (1) enhance the water supply available to the
21 Kittitas Reclamation District and the Roza Irriga-
22 tion District in years of proration; and

23 (2) facilitate reservoir operations in the Easton
24 Dam to Keechelus Dam reach of the Yakima River
25 for the propagation of anadromous fish.

1 (d) TREATMENT OF COSTS.—The construction and
2 operation and maintenance costs of the facilities under
3 this section shall be allocated to irrigation and fishery en-
4 hancement, as follows:

5 (1) The portion of such costs allocated to irri-
6 gation is reimbursable, with the construction costs to
7 be paid prior to initiation of construction by the
8 Kittitas Reclamation District and the Roza Irriga-
9 tion District.

10 (2) The portion of such costs allocated to fish-
11 ery enhancement is nonreimbursable.

12 (e) KACHESS DAM MODIFICATIONS.—There is au-
13 thorized to be appropriated \$2,000,000 for the modifica-
14 tion of the discharge facilities of Kachess Dam to improve
15 reservoir operations for anadromous fish enhancement.
16 Amounts appropriated under this subsection are
17 nonreimbursable.

18 **SEC. 10. INTERIM COMPREHENSIVE BASIN OPERATING**
19 **PLAN.**

20 (a) DEVELOPMENT.—The Secretary shall, in con-
21 sultation with the State of Washington, Yakama Indian
22 Nation, Yakima River Basin irrigation districts, Bonne-
23 ville Power Administration, and other entities as deter-
24 mined by the Secretary, develop an interim comprehensive
25 operating plan for providing a general framework within

1 which the Yakima Project Superintendent operates the
2 Yakima Project, including measures implemented under
3 the Yakima River Basin Water Enhancement Project, in-
4 cluding (but not limited to)—

5 (1) operating capability and constraints of the
6 system;

7 (2) information on water supply calculations an
8 water needs;

9 (3) system operations and stream flow objec-
10 tives; and

11 (4) the System Operations Advisory Committee
12 activities.

13 (b) PROCESS REQUIREMENTS.—A draft of the in-
14 terim comprehensive basin operating plan shall be com-
15 pleted within 18 months after the completion of the Basin
16 Conservation Plan under section 3(f) and, upon comple-
17 tion, published for a 90-day public review period. The Sec-
18 retary shall complete and publish the final interim com-
19 prehensive operating plan within 90 days after the close
20 of the public review period. The Secretary shall update the
21 plan as needed to respond to decisions from water adju-
22 dications relating to the Yakima River basin.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated \$100,000 to carry out this
25 section.

1 **SEC. 11. ENVIRONMENTAL COMPLIANCE.**

2 There are hereby authorized to be appropriated to the
3 Secretary \$2,000,000 for environmental compliance activi-
4 ties including the conduct, in cooperation with the State
5 of Washington, of an inventory of wildlife and wetland re-
6 sources in the Yakima River basin and an investigation
7 of measures, including “wetland banking”, which could be
8 implemented to address potential impacts which could re-
9 sult from the activities taken under this Act.

10 **SEC. 12. SAVINGS AND CONTINGENCIES.**

11 (a) IN GENERAL.—Nothing in this Act shall be con-
12 strued to—

13 (1) affect or modify any treaty or other right of
14 the Yakama Indian Nation;

15 (2) authorize the appropriation or use of water
16 by any Federal, State, or local agency, the Yakama
17 Indian Nation, or any other entity or individual;

18 (3) impair the rights or jurisdictions of the
19 United States, the States, the Yakama Indian Na-
20 tion, or other entities over waters of any river or
21 stream or over any ground water resource;

22 (4) alter, amend, repeal, interpret, modify, or
23 be in conflict with any interstate compact made by
24 the States;

25 (5) alter, establish, or impair the respective
26 rights of States, the United States, the Yakama In-

1 dian Nation, or any other entity or individual with
2 respect to any water or water-related right;

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

7 (7) affect or modify the rights of the Yakama
8 Indian Nation or its successors in interest to, and
9 management and regulation of, those water re-
10 sources arising or used, within the external bound-
11 aries of the Yakama Indian Reservation;

12 (8) affect or modify the settlement agreement
13 between the United States and the State of Wash-
14 ington filed in Yakima County Superior Court with
15 regard to Federal reserved water rights other than
16 those rights reserved by the United States for the
17 benefit of the Yakama Indian Nation and its mem-
18 bers;

19 (9) affect or modify the rights of any Federal,
20 State, or local agency, the Yakama Indian Nation,
21 or any other entity, public or private with respect to
22 any unresolved and unsettled claims in any water
23 right adjudications, or court decisions, including
24 State against Acquavella, or constitute evidence in

1 any such proceeding in which any water or water re-
 2 lated right is adjudicated; or

3 (10) preclude other planning studies and
 4 projects to accomplish the purposes of this Act by
 5 other means: funded publicly, privately, or by a com-
 6 bination of public and private funding.

7 (b) CONTINGENCY BASED ON APPROPRIATIONS.—
 8 The performance of any activity under this Act which re-
 9 quires accomplishment within a specified period that may
 10 require appropriation of money by Congress or the allot-
 11 ment of funds shall be contingent upon such appropriation
 12 or allotment being made.

Passed the House of Representatives October 3,
 1994.

Attest:

Clerk.

HR 5148 EH—2

HR 5148 EH—3

HR 5148 EH—4

HR 5148 EH—5

103^D CONGRESS
2^D SESSION

H. R. 5148

AN ACT

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