

WATER & LAND ACQUISITION PROGRAM

of the

**YAKIMA RIVER BASIN
WATER CONSERVATION PROGRAM**

**Yakima River Basin
Conservation Advisory Group**

October 15, 1998

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Prepared by

**Yakima River Basin
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YAKIMA RIVER BASIN WATER & LAND ACQUISITION PROGRAM

1.0 INTRODUCTION

The Congress of the United States enacted Title XII of Public Law 103-434, on October 31, 1994, (Title XII) to (1) protect, mitigate, and enhance fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation, and enhancement of wetlands; and by other appropriate means of habitat improvement, and (2) improve the reliability of the water supply for irrigation. This is to be accomplished through a Yakima River Basin Water Conservation Program (Conservation Program) that will improve the efficiency of water delivery and use. Title XII also authorizes the purchase or lease of land, water, or water rights from anyone willing to limit or forego water use on a temporary or permanent basis to secure water to be used for instream flows for the benefit of anadromous fish.

To provide advice and counsel to the Secretary of the Interior (Secretary) and the State of Washington (State), Title XII authorized the Secretary to form a Conservation Advisory Group (CAG). CAG was chartered July 1995, under the Federal Advisory Committee Act and its six members appointed October 1995.

One of CAG's primary responsibilities is to prepare a Basin Conservation Plan to assist in guiding the Basin Conservation Program. A draft Basin Conservation Plan was submitted to the Secretary in June 1997, distributed for public review and comment, comments received, and a final Basin Conservation Plan was sent to the Secretary for permission to publish in May 1998. With the Secretary's permission, the Basin Conservation Plan will be published for public distribution. One of CAG's recommendations is that Reclamation should implement an aggressive program to acquire water and land for instream flow improvements (Acquisition Program).

This document outlines the Acquisition Program and the processes and procedures Reclamation's Upper Columbia Area Office proposes to use in this activity.

2.0 WATER & LAND ACQUISITION PROGRAM OBJECTIVES

2.1 FLOWS OVER SUNNYSIDE AND PROSSER DIVERSION DAMS

Acquiring water to increase instream target flows at Sunnyside and Prosser Diversion Dams is a primary emphasis of the Acquisition Program. These instream flows are in addition to the instream target flows to be realized with the successful implementation of water conservation measures under the Conservation Program.

Of particular significance is the acquisition of water with non-proratable entitlements to firm up instream target flows in years when the water supply is prorated. The Basin Conservation Plan provides that in such years, the instream target flows obtained through implementation of water

conservation measures will be increased above 300 cfs only in those cases where the irrigation return flows associated with the reduced diversion enter the Yakima River downstream of Sunnyside Diversion Dam (see Section 1.5 of Basin Conservation Plan). Since the Acquisition Program is dealing with the consumptive use portion of the diversion, acquired water with non-proratable entitlements can be used to increase instream target flows in years of proration (dry years) as well as to increase target flows in years when proration is not required.

2.2 FLOWS IN CRITICAL REACHES IDENTIFIED IN THE BASIN CONSERVATION PLAN

Another primary emphasis of the Acquisition Program is to acquire water for instream flows in critical river reaches identified in Section 4.0 of the Basin Conservation Plan to improve habitat for passage, spawning and rearing of anadromous fish.

2.3 TRIBUTARIES

The acquisition of water to improve habitat by increasing instream flows is an objective of the Acquisition Program. Water purchased in the tributaries also improves flows in the mainstem. Historically many tributaries of the Yakima and Naches Rivers were large producers of salmon and steelhead because they provided good quality habitat for passage, spawning and rearing of anadromous fish. Today production of anadromous fish is severely constrained because of problems associated with degraded habitat (i.e. loss of wetlands, backwater areas, side channels, and connectivity of the river channel and floodplains, etc.) due in part to dewatering of the streams for irrigation diversions.

2.4 FLUSHING FLOWS

Delays in the expeditious migration of anadromous smolts from the Yakima River basin can adversely affect survival. Title XII authorizes a specific appropriation of \$10 million for the initial acquisition of water for flushing flows. Such flushing flows will also help to normalize instream flows to aid anadromous fish in spring out-migration and in some cases may be used to supplement base flows throughout the summer and fall.

3.0 POTENTIAL SOURCES OF WATER ACQUISITION

In the Yakima River basin, there are three potential sources for acquiring water: (1) from individuals not within an organized irrigation entity (2) from irrigation entities, primarily irrigation companies and (3) from irrigation entities, primarily irrigation districts, organized under State statutes, who have contracts with Reclamation for supplemental and full water supplies and divert from the Yakima, Naches, and Tieton Rivers.

4.0 GUIDING PRINCIPLES

4.1 VOLUNTARY PROGRAM

Title XII provides authority for Reclamation to use appropriated funds to purchase or lease land, water, or water rights from any entity or individual willing to limit or forego water use on a permanent or temporary basis. The Acquisition Program is premised on voluntary participation.

Reclamation is soliciting permanent or temporary arrangements for a change in the use of water from a diversionary use, such as irrigation, municipal and industrial, or power production, to an instream use for the purpose of improving streamflows for fish and wildlife.

4.2 LAND ACQUISITION

Title XII authorizes the lease or purchase of lands to increase instream flows and to improve habitat for fish and wildlife. While Title XII provides authority for Reclamation to acquire land, for purposes of the Acquisition Program any proposed land acquisition must also have associated water rights or habitat benefits. It is essential that salmon and other fish and wildlife have instream flows and adequate habitat that meets their needs in order for them to survive.

Acquisition of riparian lands, floodplains, wetlands and other critical land acquisitions is key to restoring anadromous fish runs in the Yakima River.

4.3 CONCURRENCE

In administering the Acquisition Program authorized under Title XII, it shall be the policy of the Upper Columbia Area Office to obtain the concurrence of the board of directors of irrigation entities regarding any proposed sale or lease of water from lands lying within their area of jurisdiction.

4.4 TYPES OF WATER & LAND ACQUISITIONS TO BE CONSIDERED

Title XII authorizes Reclamation to pursue several types of water and land acquisitions ranging from leases, dry-year options, permanent acquisitions, and conservation easements. The Conservation Advisory Group indicated its preference for permanent acquisition because it allows Reclamation to plan for the future operation of the Yakima Project. The Conservation Advisory Group, however, recognizes that long-term leases and dry-year options may be a cost effective and biologically effective solution to a particular problem, especially where there is no foreseeable opportunity for permanent acquisition.

4.5 ADJUDICATION COURT

A critical aspect underlying the Acquisition Program is the ongoing adjudication of the use of the surface waters of the Yakima River basin. The reliability of all surface water rights may be unclear until the adjudication is completed and a Final Decree is entered. During the interim, Reclamation in any water acquisition will have to consider the appropriateness of the claimed rights, historical use, Reports of the Referee, Conditional Final Orders, and priority of water rights to determine the availability and likely reliability of the rights to the water proposed for acquisition.

As long as the adjudication of the water rights of the Yakima River basin continues, any water leases and purchases must occur within the context and under the authorities of the Superior Court of the State of Washington for the County of Yakima. The occurrence of ongoing water rights allocation and regulation issues was anticipated by the Court and is provided for in Pretrial Order No. 6 issued in February 1987.

This order allows any party to the adjudication to request the Court to issue an order pendente lite by filing a petition stating the relief being requested, along with specifics concerning subbasins and parties involved. Until the adjudication is completed, the Acquisition Program will require the Court authorization by order pendente lite. The pendente lite process will be used pending the completion of the adjudication and the entry of a Final Decree.

5.0 REQUIREMENTS FOR WATER & LAND ACQUISITION

In considering how the value of water to be acquired could be determined and clear title to water conveyed, Reclamation and the Field Solicitor, Boise, Idaho, concluded that water has attributes of real property because it is appurtenant to the land. Subsequently, in acquiring water the decision was made to follow the paradigms for acquiring real property. In cases such as acquisition of natural flow rights from individuals, there is a close match to the processes followed in acquiring land. In other cases, such as acquiring water from irrigation entities established and operating under State statutes, the process may be different.

The requirements followed by Reclamation in acquiring land or interests therein include the requirements of (1) the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-626 often referred to as the Relocation Act, and (2) Reclamation Manual Series 210, Land, Part 213 land Acquisition. Title procedures are those of the Department of Justice as outlined in the Standards for the Preparation of Title Evidence in Land Acquisitions by the United States.¹

5.1 VALUE

The Relocation Act and its implementing regulations (49 CFR Part 24) and Reclamation Manual provide, among other things, the following:

- Written offers are to be made after approved appraised values are determined and negotiations involving price are not to commence prior to that time.
- Appraisals are to be made by an independent, qualified appraiser and that appraiser is the only one who can make changes/adjustments to the appraisal.
- The owner is to be given the opportunity to accompany the appraiser during the inspection of the property.

¹ From Acquiring Water for Flow Augmentation, Richard M. Rigby, Bureau of Reclamation, Boise, Idaho

- The amount offered cannot be less than the approved appraisal of the fair market value of the property.
- With appropriate written justification, acquisition amounts above the appraisal are possible.

Preparation of all appraisals are to comply with applicable portions of and any subsequent revisions of:

1. Bureau of Reclamation Directives and Standards (Appraisals).
2. Uniform Appraisal Standards for Federal Land Acquisitions.
3. Uniform Standards of Professional Appraisal Practice.
4. Appraisal definitions as required in Item 2, above, with consideration to those definitions in Item 1, above, and supplemented by definitions in The Dictionary of Real Estate Appraisal-Third Addition (1993), if needed. Definitions for water or water related items as specified by State of Washington State Codes.

The three accepted approaches to value real estate and appurtenances (including water): Market Data Approach, Cost Approach, and Income Capitalization Approach.

In the Yakima River basin, Reclamation, to date, has not acquired water from irrigation entities. A land appraisal or net farm income approach may be appropriate as well as other possibilities, such as the cost of developing alternative water supplies, or an assessment of its value to the ecosystem. The appraiser should use the most appropriate method which fits an individual acquisition.

5.2 TITLE²

Department of Justice standards require that title to all land and interests in land to be acquired by the United States must be approved by the Attorney General, or her delegee (pursuant to 40 U.S.C. 255) unless Congress has specifically provided otherwise. This applies to all types of acquisitions, including direct purchase from the owner, exchange, donation, settlement of litigation, and condemnation.

The Field Solicitor, Boise, Idaho, has been delegated authority to approve title. The delegation is without limit when the title evidence being reviewed is in the form of Title Insurance from a title company approved by the Department of Justice. However, when an Abstract of Title is the title evidence provided for review (no title insurance), and the value of the rights to be acquired exceeds \$1 million, the title must be approved by attorneys with the Department of Justice in Washington, D.C.

²From *Acquiring Water for Flow Augmentation*, Richard M. Rigby, Bureau of Reclamation, Boise, Idaho

5.2.1 Individuals Not Within an Irrigation Entity

The preferred form of evidence in all water acquisitions from, individuals is Title Insurance. However, title companies do not normally insure water rights. To overcome this obstacle, Reclamation's Pacific Northwest Region has arranged with Stewart Title Insurance Company of Houston, Texas, to issue a water rights title insurance policy. This is a policy issued to the United States insuring the title to the water right acquired against attacks on the title to the land appurtenant. Through this arrangement, Reclamation can deal with the approval of the water right title locally, rather than through the Department of Justice in Washington, D.C.

5.2.2 Irrigation Entities

Title transfer procedures for water acquired from irrigation entities shall be consistent with applicable Federal and State statutes and may need to be secured through a vote by the water users on the acquisition agreement and confirmation by the appropriate court.

5.3 EFFECTIVENESS OF ACQUISITION

Paramount to the decision to fund a specific acquisition is a determination of how well the proposal contributes to meeting the purpose and objective of the Water Acquisition Program and the overall goals of Title XII and the instream flow problems and needs discussed in the Basin Conservation Plan.

Reclamation will perform a rigorous screening and data collection process for each proposal under the Acquisition Program. Reclamation will rely upon experts assembled to form a Working Group (described in Appendix III) to perform review of all proposals to be funded under the Water Acquisition Program. Experts from other disciplines, agencies, and entities will also provide insight and guidance.

6.0 CONDUCT OF WATER & LAND ACQUISITION PROGRAM

6.1 ADMINISTRATIVE RESPONSIBILITY

The Acquisition Program will be under the administrative jurisdiction of the Upper Columbia Area Office.

6.2 PRIORITIES

Reclamation is working with basin fish and wildlife resource managers and others to prioritize critical reaches as they relate to the propagation of the Yakima River basin's anadromous fishery. Recommendations in the Basin Conservation Plan, field investigations, air photos, flyovers of the basin, reports and mapping, and various other tools are being utilized to aid in management decisions for prioritization for the Acquisition Program. This will help in scoping potential areas that could effectively be addressed through water and land acquisition as opposed to improvements to water delivery and applications systems.

Pursuant to Section 5.5.2 of the Basin Conservation Plan, the primary emphasis for acquiring land, water and water rights, in the Yakima River Basin is to:

- Increase the instream flows at Sunnyside Diversion Dam and Prosser Diversion Dam.
- Supplement instream flows at other critical river reaches, including tributary reaches, identified in Section 4 of the Basin Conservation Plan.
- Acquire lands in areas indicated by the wetlands studies recommended in Section 5.3 of the Basin Conservation Plan as important areas for protection and enhancement of riparian and floodplain wetland habitats, as well as in other riparian areas that are key to anadromous fish restoration. Lands associated with water rights will be given priority for acquisition.

6.3 TRIBUTARY PROGRAM

To address the legal and institutional aspects and public acceptability of acquiring water and transferring it to instream flow purposes on tributaries to the Yakima River, Reclamation developed a pilot program in 1995. This pilot program focused on leasing irrigation water from water users on the Teanaway River.

This pilot program was implemented in 1996, with the lease of irrigation water rights from three water users in the Teanaway River. This resulted in fallowing 449 irrigated acres reducing diversions by about 2,428 acre-feet, with a maximum instantaneous diversion of approximately nine cubic feet per second (cfs). The net effect on the streamflow regime of the Teanaway River was an increase of flows varying from 9 cfs to 3 cfs. The 9 cfs is realized immediately downstream of the point of diversion (RM 4.3). This amount progressively diminishes as one moves downstream because of the effect of return flows from the irrigation of the 449 acres which would have entered the river. Downstream of the point where the last return flows would have accrued, the net gain is 3 cfs (the consumptive use amount estimated at 30 percent of the diversion). The consumptive use portion of the water rights were protected as instream flows to the confluence of the Teanaway River. The price for the leased irrigation water rights ranged from approximately \$23 an acre foot to \$40 an acre foot.

In 1997, Reclamation leased irrigation water rights from five water users in the Teanaway River and Big Creek. As a result of these leases 871 acres of land were temporarily fallowed, diversions reduced by about 4,662 acre-feet, and a total maximum flow of 17.44 cfs obtained.

The consumptive use portion of the irrigation water rights (about 5 cfs) were protected as an instream flow to the confluence of the Yakima River and Columbia River. The price for the leased irrigation water rights ranged from approximately \$23 an acre foot to \$35 an acre foot.

In 1998, Reclamation leased irrigation water rights from six water users in the Teanaway River and Big Creek for total of approximately 20.76 cfs. Approximately 1,037 acres of land will be temporarily fallowed and Reclamation will again seek to protect the consumptive use portion of these water rights as an instream flow to the confluence of the Yakima River and Columbia River.

Reclamation monitored the point of diversion and place of use associated with the water lease agreements to ensure compliance. All of the water rights leased in the Teanaway River and Big Creek by Reclamation are tied to either future permanent acquisitions or water conservation measures that will benefit the Teanaway River and Big Creek on a permanent basis.

In accordance with Section 5 of the CAG's Basin Conservation Plan, Reclamation will continue to seek water acquisitions to supplement instream flows in critical reaches, including tributary reaches of the Yakima River. Reclamation will file applications with Ecology under the State Trust Water Rights Program for water rights acquired on tributaries under the Water Acquisition Program. Ecology will hold the applications in its files until the adjudication is completed and then will take action. Each application requests change of purpose and place of use of an acquired irrigation water right for designation as an instream flow right to be managed pursuant to the Yakima River Basin Trust Water Rights Program (Chapter 90.38 RCW).

6.4 YAKIMA, NACHES, AND TIETON RIVER PROGRAM(S)

Water acquired and managed under Reclamation's Acquisition Program from Federal contract water users and other Yakima, Naches, and Tieton Rivers (mainstem) water transactions will be more complex than the tributaries, particularly with respect to diversion reductions, Total Water Supply Available, allocations, etc. Reclamation will address the legal and institutional aspects and public acceptability of acquiring water on the Yakima, Naches, and Tieton Rivers by implementing a pilot program. The pilot water acquisition program will proceed by applying lessons learned particularly with respect to adverse impacts to existing prior water rights, consumptive use determinations, fallowing requirements, and a number of other factors.

As appropriate, Reclamation may seek adjudication court verification of water acquisition transactions on the mainstem under the Acquisition Program. Reclamation will seek to assure that there are no adverse impacts to existing prior water rights associated with acquiring water on the mainstem through diversion reduction agreements and through the Working Group (see Appendix III, Section B.).

Following are some items for consideration to aid in implementing the Pilot Water Acquisition Program on the Yakima, Naches, and Tieton Rivers.

- Educational and public informational process.

- Conduct a water acquisition transfer workshop and work with farmers, irrigation districts, and other water users on the mainstem to work through issues such as diversion reductions, fallowing requirements, third-party impacts and review options concerning water acquisition possibilities.

- Irrigation entity policies and procedures in addressing proposed sale or lease of water by users within their area of jurisdiction.

APPENDICES

APPENDIX I

**TITLE XII OF THE ACT OF OCTOBER 31, 1994
PUBLIC LAW 103-434**

APPENDIX I
TITLE XII--YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

SEC. 1201. PURPOSES.

The purposes of this title are--

(1) to protect, mitigate, and enhance fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation and enhancement of wetlands; and by other appropriate means of habitat improvement;

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

(3) to authorize a Yakima River basin water conservation program that will improve the efficiency of water delivery and use; enhance basin water supplies; improve water quality; protect, create and enhance wetlands; and determine the amount of basin water needs that can be met by water conservation measures;

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

(5) to encourage voluntary transactions among public and private entities which result in the implementation of water conservation measures, practices, and facilities; and

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

SEC. 1202. DEFINITIONS.

As used in this title:

(1) The term "Basin Conservation Plan" means a plan for implementing water conservation measures found in the various water conservation plans developed under the Basin Conservation Program.

(2) The term "Basin Conservation Program" means the Yakima River Basin Water Conservation Program established under section 1203(a).

(3) The term "comprehensive basin operating plan" means a plan that will provide guidance to the Yakima Project Superintendent for operation of the existing Yakima Project as modified by actions taken pursuant to this title.

(4) The term "Conservation Advisory Group" means the Yakima River Basin Conservation Advisory Group established under section 1203(c).

(5) The term "conserved water" means water saved and attributable to the program established under the Basin Conservation Program.

(6) The term "Irrigation Demonstration Project" means the Yakama Indian Reservation Irrigation Demonstration Project authorized in section 1204(b).

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

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

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

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

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

(A) created by the Yakima Project Superintendent in response to the supplemental instructions entitled “Supplementary Instructions to the Water Master”, and dated November 28, 1980, in the case of Kittitass Reclamation District, et al. vs. the Sunnyside Valley Irrigation District, et al. (E.D. Wash., Civil No. 21.);

(B) who advise the Yakima Project Superintendent on operations of the Yakima Project for fish and wildlife purposes; and

(C) who, together with others, were identified for consultation on November 29, 1990, in the amended partial summary judgment entered in the basin adjudication (Yakima County Superior Court No. 77-2-01484-5).

(12) The term “Toppenish Enhancement Project” means the Toppenish Creek corridor enhancement project authorized by section 1204(c).

(13) The term “Yakama Indian Nation” means the Confederated Tribes and Bands of the Yakama Indian Nation as redesignated under section 1204(g).

(14) The term “Yakima Project Superintendent” means the individual designated by the Regional Director, Pacific Northwest Region, Bureau of Reclamation, to be responsible for the operation and management of the Yakima Federal Reclamation Project, Washington.

SEC. 1203. YAKIMA RIVER BASIN WATER CONSERVATION PROGRAM.

(a) ESTABLISHMENT- (1) The Secretary, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River basin irrigators, and other interested parties, shall establish and administer a Yakima River Basin Water Conservation Program for the purpose of evaluating and implementing measures to improve the availability of water supplies for irrigation and the protection and enhancement of fish and wildlife resources, including wetlands, while improving the quality of water in the Yakima Basin. The Secretary may make grants to eligible entities for the purposes of carrying out this title under such terms and conditions as the Secretary may require. Such terms and conditions shall include requirement that all water districts, irrigation districts, individuals, or other entities eligible to participate in the Basin Conservation Program must equip all surface water delivery systems within their boundaries with volumetric water meters or equally effective water measuring methods within 5 years of the date of enactment of this Act.

(2) Conserved water resulting in whole or in part from the expenditure of Federal funds shall not be used to expand irrigation in the Yakima Basin, except as specifically provided in section 1204(a)(3) on the Yakama Indian Reservation.

(3) The provisions of this section shall not apply to the Yakama Indian Nation except as to any funds specifically applied for from the Basin Conservation Program.

(b) **FOUR PHASES OF PROGRAM-** The Basin Conservation Program shall encourage and provide funding assistance for four phases of water conservation, which shall consist of the following:

(1) The development of water conservation plans, consistent with applicable water conservation guidelines of the Secretary, by irrigation districts, conservation districts, water purveyors, other areawide entities, and individuals not included within an areawide entity.

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

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

(4) Post implementation monitoring and evaluation of implemented measures.

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

(2) Members of the Conservation Advisory Group shall be appointed by the Secretary and shall be comprised of--

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

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

(C) one representative of the Yakama Indian Nation,

(D) one representative of environmental interests,

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

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

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

(3) The Conservation Advisory Group shall--

(A) provide recommendations to the Secretary and to the State of Washington regarding the structure and implementation of the Basin Conservation Program,

(B) provide recommendations to the Secretary and to the State of Washington regarding the establishment of a permanent program for the measurement and reporting of all natural flow and contract diversions within the basin,

(C) structure a process to prepare a basin conservation plan as specified in subsection (f),

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

(E) provide recommendations consistent with statutes of the State of Washington on rules, regulations, and administration of a process to facilitate the voluntary sale or lease of water.

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

(5) The Conservation Advisory Group shall consult an irrigation district when considering actions specifically affecting that district. For the purposes of this paragraph, an irrigation district includes the Yakima Reservation Irrigation District.

(6) The Conservation Advisory Group shall be nonvoting, seeking consensus whenever possible. If disagreement occurs, any member may submit independent comments to the Secretary. The Conservation Advisory Group shall terminate 5 years after the date of its establishment unless extended by the Secretary.

(d) COST SHARING- (1) Except as otherwise provided by this title, costs incurred in the four phases of the Basin Conservation Program shall be shared as follows:

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%
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%

(2) The Yakima River Basin Water Enhancement Project is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Yakima River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1989 (94 Stat. 2697) and independent water-related improvements of the State of Washington and other public and private entities to improve irrigation water use, water supply, and water quality, shall be treated as non-Federal cost share expenditures and shall be consolidated in any final calculation of required cost sharing. Within one year of the date of enactment of this Act, the Secretary shall enter into a binding cost sharing agreement with the State of Washington. The agreement shall describe the terms and conditions of specific contributions and other activities that may, subject to approval by the Secretary, qualify as non-Federal cost share expenditures.

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

(e) ENTITY WATER CONSERVATION PLANS- To participate in the Conservation Basin Program an entity must submit a proposed water conservation plan to the Secretary. The Secretary shall approve a water conservation plan submitted under this subsection if the Secretary determines that the plan meets the applicable water conservation guidelines of the Secretary.

(f) **BASIN CONSERVATION PLAN-** The Conservation Advisory Group shall, within 2 1/2 years after the date of enactment of this Act, submit a draft basin conservation plan to the Secretary.

(g) **PUBLIC COMMENT-** The Secretary shall distribute the draft basin conservation plan and the entity water conservation plans submitted under subsections (e) and (f), respectively, for public comment for a 60-day period.

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

(1) for prioritizing and allocating funds to implement conservation measures under this title; and

(2) for preparing an interim comprehensive basin operating plan under section 1210 of this title as provided for in Public Law 96-162 (93 Stat. 1241).

(i) **CONSERVATION MEASURES-** (1) Measures considered for implementation in the Basin Conservation Program may include, among others, conveyance and distribution system monitoring, automation of water conveyance systems, water measuring or metering devices and equipment, lining and piping of water conveyance and distribution systems, on-district storage, electrification of hydraulic turbines, tail-water recycling, consolidation of irrigation systems, irrigation scheduling, and improvement of on-farm water application systems. Basin Conservation Program funds may also be used throughout all four phases of the Basin Conservation Program to mitigate for adverse impacts of program measures.

(2) In addition to implementing existing technologies, the Secretary shall encourage the testing of innovative water conservation measures. The Secretary shall, to the maximum extent possible under applicable Federal, State, and tribal law, cooperate with the State of Washington to facilitate water and water right transfers, water banking, dry year options, the sale and leasing of water, and other innovative allocation tools used to maximize the utility of existing Yakima River basin water supplies.

(3) The Secretary may, consistent with applicable law, use funds appropriated to carry out this section for the purchase or lease of land, water, or water rights from any entity or individual willing to limit or forego water use on a temporary or permanent basis. Funds used for purchase or lease under this paragraph are not subject to the cost sharing provisions of subsection (d). Efforts to acquire water should be made immediately upon availability of funds to meet the three-year goal specified in section 1205(a)(4) to provide water to be used by the Yakima Project Superintendent under the advisement of the System Operations Advisory Committee for instream flow purposes. The use of Basin Conservation Program funds under this paragraph are in addition to those specifically authorized to be appropriated by subsection (j)(4).

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

(j) **AUTHORIZATION OF APPROPRIATIONS-** There is hereby authorized to be appropriated to the Secretary, at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, the following amounts for the Basin Conservation Program:

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

(2) \$4,000,000 for investigation of specific potential water conservation measures identified in conservation plans for consideration for implementing through the Basin Conservation Program.

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

(4) Up to \$10,000,000 for the initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods to facilitate the outward migration of anadromous fish flushing flows. Such funds shall not be subject to the cost sharing provisions of subsection (d).

(5) \$100,000 annually for the establishment and support of the Conservation Advisory Group during its duration. Such funds shall be available for travel and per diem, rental of meeting rooms, typing, printing and mailing, and associated administrative needs. The Secretary and the State of Washington shall provide appropriate staff support to the Conservation Advisory Group.

SEC. 1204. YAKAMA INDIAN NATION.

(a) WAPATO IRRIGATION PROJECT IMPROVEMENTS AND APPROPRIATIONS-

(1) The Yakama Indian Nation's proposed system improvements to the Wapato Irrigation Project, as well as the design, construction, operation, and maintenance of the Irrigation Demonstration Project and the Toppenish Creek corridor enhancement project, pursuant to this title shall be coordinated with the Bureau of Indian Affairs.

(2) There is authorized to be appropriated to the Secretary not more than \$23,000,000 for the preparation of plans, investigation of measures, and following the Secretary's certification that such measures are consistent with the water conservation objectives of this title, the implementation of system improvements to the Wapato Irrigation Project. Funding for further improvements within the Wapato Irrigation Project may be acquired under the Basin Conservation Program or other sources identified by the Yakama Indian Nation.

(3) Water savings resulting from irrigation system improvements shall be available for the use of the Yakama Indian Nation for irrigation and other purposes on the reservation and for protection and enhancement of fish and wildlife within the Yakima River basin. The conveyance of such water through irrigation facilities other than the Wapato Irrigation Project shall be on a voluntary basis and shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(b) IRRIGATION DEMONSTRATION PROJECT APPROPRIATIONS- (1)(A) There is hereby authorized to be appropriated to the Secretary--

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

(ii) such sums as may be necessary for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies for the period specified by the Secretary, which

sums are in addition to operation and maintenance funds for wildlife and cultural purposes appropriated to the Secretary under other authorization.

(B) Funds may not be made available under this subsection until the Yakama Indian Nation obtains the concurrence of the Secretary in the construction, management, and administrative aspects of the Irrigation Demonstration Project.

(C) After the end of the period specified under subparagraph (A)(ii), costs for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies referred to in that subparagraph, shall be borne exclusively by the lands directly benefitting from the Irrigation Demonstration Project.

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

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

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

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

(c) **TOPPENISH CREEK CORRIDOR ENHANCEMENT PROJECT**

APPROPRIATIONS-There is hereby authorized to be appropriated to the Secretary \$1,500,000 for the further investigation by the Yakama Indian Nation of measures to develop a Toppenish Creek corridor enhancement project to demonstrate integration of management of agricultural, fish, wildlife, and cultural resources to meet tribal objectives and such amount as the Secretary subsequently determines is necessary for implementation. There is also authorized to be appropriated to the Secretary such sums as may be necessary for the operation and maintenance of the Toppenish Enhancement Project.

(d) **REPORT-** Within 5 years of the implementation of the Irrigation Demonstration Project and the Toppenish Enhancement Project, the Secretary, in consultation with the Yakama Indian Nation, shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington on the effectiveness of the conservation, training, mitigation, and other measures implemented.

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

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

(g) **REDESIGNATION OF YAKIMA INDIAN NATION TO YAKAMA INDIAN NATION-**

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

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

SEC. 1205. OPERATION OF YAKIMA BASIN PROJECTS.

(a) WATER SAVINGS FROM BASIN CONSERVATION PROGRAM- (1) The Basin Conservation Program is intended to result in reductions in water diversions allowing for changes in the present operation of the Yakima Project to improve stream flow conditions in the Yakima River basin. Except as provided by paragraph (5) of this subsection and section 1209, commencing with the enactment of this title, and notwithstanding that anticipated water savings are yet to be realized, the Secretary, upon the enactment of this title and acting through the Yakima Project Superintendent, shall (A) continue to estimate the water supply which is anticipated to be available to meet water entitlements; and (B) provide instream flows in accordance with the following criteria:

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

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

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

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

(3) The instream flows shall be increased for interim periods during any month of April through October to facilitate when necessary the outward migration of anadromous fish. Increased instream flows for such interim periods shall be obtained through voluntary sale and leasing of water or water rights or from conservation measures taken under this title.

(4)(A)(i) Within the three-year period beginning when appropriations are first provided to carry out the Basin Conservation Program, the instream flow goal in the Yakima River is as follows: to secure water which is to be used for instream flows to facilitate meeting

recommendations of the System Operations Advisory Committee for flushing flows or other instream uses.

(ii) In addition to any other authority of the Secretary to provide water for flushing flows, the water required to meet the goal specified in clause (i) shall be acquired through the voluntary purchase or lease of land, water, or water rights and from the development of additional storage capability at Lake Cle Elum provided for in section 1206(a).

(iii) In addition to water required to meet the instream flow goal specified in clause (i), the System Operations Advisory Committee may recommend additional water to meet instream flow goals pursuant to judicial actions.

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

(i) The goal increases so that the instream target flows specified in the table in paragraph (1) increase by 50 cubic feet per second for each 27,000 acre-feet of reduced annual water diversions achieved through implementation of measures under the Basin Conservation Program. Such increases do not apply to actions taken pursuant to section 1204. Such increases shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(ii) The goal changes directly with the availability of water resulting from Federal expenditures under this title for purchase or lease of water under this title.
(C) The Yakima Project Superintendent shall maintain an account of funded and completed conservation measures taken under the Basin Conservation Program.

(D) No later than March 31 of each calendar year, the Yakima Project Superintendent shall meet with the State of Washington, Yakama Indian Nation, and Yakima River basin irrigators to mutually determine total diversion reductions and respective adjustments to the target flows referred to in this subsection. The Yakima Project Superintendent shall announce such adjustments with the announcements of Total Water Supply Available. For the purposes of this subparagraph, conserved water will be considered available for adjusting target flows in the first year following completion of a measure or following a result from the post implementation monitoring and evaluation program, as the case may be.

(5) Operational procedures and processes in the Yakima River basin which have or may be implemented through judicial actions shall not be impacted by this title.

(6)(A) Within three years after the date of enactment of this Act, the Secretary shall conduct a study and submit a report with recommendations to the appropriate committees of the Congress on whether the water supply available for irrigation is adequate to sustain the agricultural economy of the Yakima River basin.

(B) The target flows provided for under this subsection shall be evaluated within three years after the date of enactment of this Act by the Systems Operations Advisory Committee for the purpose of making a report with recommendations to the Secretary and the Congress evaluating what is necessary to have biologically-based target flows.

(C) The recommendations and reports under subparagraphs (A) and (B) shall provide a basis for the third phase of the Yakima River Basin Water Enhancement Project.

(b) WATER FROM LAKE CLE ELUM- Water accruing from the development of additional storage capacity at Lake Cle Elum, made available pursuant to the modifications authorized in section 1206(a), shall not be part of the Yakima River basin's water supply as provided in subsection (a)(1). Water obtained from such development is exclusively dedicated to instream flows for use by the Yakima Project Superintendent as flushing flows or as otherwise advised by the System Operations Advisory Committee. Water may be carried over from year-to-year in the additional capacity to the extent that there is space available. Releases may be made from other Yakima Project storage facilities to most effectively utilize this additional water, except that water deliveries to holders of existing water rights shall not be impaired.

(c) STATUS OF BASIN CONSERVATION PROGRAM FACILITIES- Measures of the Basin Conservation Program which are implemented on facilities currently under the administrative jurisdiction of the Secretary, except as provided in section 1204, shall be considered features of the Yakima River Basin Water Enhancement Project, and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. The responsibility for operation and maintenance and the related costs shall remain with the current operating entity. As appropriate, the Secretary shall incorporate the operation and maintenance of such facilities into existing agreements. The Secretary shall assure that such facilities are operated in a manner consistent with Federal and State law and in accordance with water rights recognized pursuant to State and Federal law.

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

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

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

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

SEC. 1206. LAKE CLE ELUM AUTHORIZATION OF APPROPRIATIONS.

(a) MODIFICATIONS AND IMPROVEMENTS- There is hereby authorized to be appropriated to the Secretary--

(1) at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuation of applicable indexes, \$2,934,000 to--

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

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

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

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

(b) OPERATION AND MAINTENANCE APPROPRIATIONS- There is hereby authorized to be appropriated to the Secretary such sums as may be necessary for that portion of the operation and maintenance of Cle Elum Dam determined by the Secretary to be a Federal responsibility.

SEC. 1207. ENHANCEMENT OF WATER SUPPLIES FOR YAKIMA BASIN TRIBUTARIES.

(a) GENERAL PROVISIONS- The following shall be applicable to the investigation and implementation of measures to enhance water supplies for fish and wildlife and irrigation purposes on tributaries of the Yakima River basin:

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

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

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

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

(b) STUDY- (1) The Secretary, following consultation with the State of Washington, the tributary water right owners, and the Yakama Indian Nation, and agreement of appropriate water right owners to participate, shall conduct a study concerning the measures that can be implemented to enhance water supplies for fish and wildlife and irrigation purposes on Taneum Creek, including (but not limited to)--

(A) water use efficiency improvements;

(B) the conveyance of water from the Yakima Project through the facilities of any irrigation entity willing to contract with the Secretary without adverse impact to water users;

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

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

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

(F) other measures compatible with the purposes of this title, including restoration of stream habitats.

(2) In conducting the Taneum Creek study, the Secretary shall consider--

(A) the hydrologic and environmental characteristics;

(B) the engineering and economic factors relating to each measure; and

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

(3) The Secretary shall make available to the public for a 45-day comment period a draft report describing in detail the findings, conclusions, and recommendations of the study. The Secretary shall consider and include any comment made in developing a final report. The Secretary's final report shall be submitted to the Committee on Energy and Natural

Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington, and made available to the public.

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

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

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

(d) **OTHER YAKIMA RIVER BASIN TRIBUTARIES-** Enhancement programs similar to the enhancement program authorized by this section may be investigated and implemented by the Secretary in other tributaries contingent upon the agreement of the appropriate tributary water right owners to participate. The provisions set forth in this section shall be applicable to such programs.

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

(2) There is also authorized to be appropriated to the Secretary such funds as are necessary for the investigation of enhancement programs similar to the enhancement program authorized by this section in other Yakima River basin tributaries contingent upon the agreement of the appropriate water right owners to participate. Funds for the implementation of any such similar enhancement program may not be appropriated until after the Secretary submits an investigation report to the appropriate congressional committees.

SEC. 1208. CHANDLER PUMPING PLANT AND POWERPLANT-OPERATIONS AT PROSSER DIVERSION DAM.

(a) **AUTHORIZATION OF APPROPRIATIONS FOR ELECTRIFICATION-** In order to provide for electrification to enhance instream flows by eliminating the need to divert water to operate the hydraulic turbines which pump water to the Kennewick Irrigation District, there is authorized to be appropriated--

(1) \$50,000 to conduct an assessment of opportunities for alternative pumping plant locations;

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

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

(b) **POWER FOR PROJECT PUMPING-** (1) The Administrator of the Bonneville Power Administration shall provide for project power needed to effect the electrification as provided in subsection (a).

(2)(A) There is authorized to be appropriated for the Bureau of Reclamation for each fiscal year in which the Administrator provides power under this subsection an amount equal to the cost to the Bonneville Power Administration of providing power under this subsection during such fiscal year. The rate to be utilized by the Administrator in determining the cost of power under this paragraph in a fiscal year shall be the rate for priority firm power charged by the Bonneville Power Administration in that fiscal year under section 7(b) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(b)).

(B) The Bureau of Reclamation shall, using funds appropriated pursuant to the authorization of appropriations in subparagraph (A), reimburse the Bonneville Power Administration for the costs of the project power provided under this subsection. Such funds shall be available for such purpose without fiscal year limitation.

(c) **SUBORDINATION-** Any diversions for hydropower generation at the Chandler Powerplant shall be subordinated to meet the flow targets determined under subsection (f).

(d) **WATER SUPPLY FOR KENNEWICK IRRIGATION DISTRICT-** The Secretary shall ensure that the irrigation water supply for the Kennewick Irrigation District shall not be affected by conservation, electrification, or subordination pursuant to this title and any reduction in its irrigation water supply resulting from conservation measures adopted or implemented by other entities pursuant to this title shall be replaced by water developed through subordination, electrification, or a combination of the two.

(e) **TREATMENT OF CERTAIN FUNDS-** Funds appropriated and project power provided pursuant to this section shall be nonreimbursable since such funds are used for fish and wildlife purposes and such funds are not subject to cost share under section 1203(d).

(f) **TARGET FLOWS-** Target flows measured at appropriate biological and hydrological location or locations shall be determined by the Yakima Project Superintendent in consultation with the System Operations Advisory Committee.

SEC. 1209. AUGMENTATION OF KACHESS RESERVOIR STORED WATER.

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

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

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

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

(b) **LIMITATION-** Construction of the facilities described in subsection (a)(1) is contingent on the completion of the feasibility study referred to in subsection (a)(2).

(c) **USE OF ADDITIONAL WATER-** The stored water supply resulting from the construction of facilities under this section shall be used by the Secretary to:

(1) enhance the water supply available to the Kittitas Reclamation District and the Roza Irrigation District in years of proration; and

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

(d) TREATMENT OF COSTS- The construction and operation and maintenance costs of the facilities under this section shall be allocated to irrigation and fishery enhancement, as follows:

(1) The portion of such costs allocated to irrigation is reimbursable, with the construction costs to be paid prior to initiation of construction by the Kittitas Reclamation District and the Roza Irrigation District.

(2) The portion of such costs allocated to fishery enhancement is nonreimbursable.

(e) KACHESS DAM MODIFICATIONS- There is authorized to be appropriated \$2,000,000 for the modification of the discharge facilities of Kachess Dam to improve reservoir operations for anadromous fish enhancement. Amounts appropriated under this subsection are nonreimbursable.

SEC. 1210. INTERIM COMPREHENSIVE BASIN OPERATING PLAN.

(a) DEVELOPMENT- The Secretary shall, in consultation with the State of Washington, Yakama Indian Nation, Yakima River Basin irrigation districts, Bonneville Power Administration, and other entities as determined by the Secretary, develop an interim comprehensive operating plan for providing a general framework within which the Yakima Project Superintendent operates the Yakima Project, including measures implemented under the Yakima River Basin Water Enhancement Project, including (but not limited to)--

- (1) operating capability and constraints of the system;
- (2) information on water supply calculations and water needs;
- (3) system operations and stream flow objectives; and
- (4) the System Operations Advisory Committee activities.

(b) PROCESS REQUIREMENTS- A draft of the interim comprehensive basin operating plan shall be completed within 18 months after the completion of the Basin Conservation Plan under section 1203(f) and, upon completion, published for a 90-day public review period. The Secretary shall complete and publish the final interim comprehensive operating plan within 90 days after the close of the public review period. The Secretary shall update the plan as needed to respond to decisions from water adjudications relating to the Yakima River basin.

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

SEC. 1211. ENVIRONMENTAL COMPLIANCE.

There are hereby authorized to be appropriated to the Secretary \$2,000,000 for environmental compliance activities including the conduct, in cooperation with the State of Washington, of an inventory of wildlife and wetland resources in the Yakima River basin and an investigation of measures, including "wetland banking", which could be implemented to address potential impacts which could result from the activities taken under this title.

SEC. 1212. SAVINGS AND CONTINGENCIES.

(a) IN GENERAL- Nothing in this title shall be construed to--

- (1) affect or modify any treaty or other right of the Yakama Indian Nation;
- (2) authorize the appropriation or use of water by any Federal, State, or local agency, the Yakama Indian Nation, or any other entity or individual;
- (3) impair the rights or jurisdictions of the United States, the States, the Yakama Indian Nation, or other entities over waters of any river or stream or over any ground water resource;
- (4) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;
- (5) alter, establish, or impair the respective rights of States, the United States, the Yakama Indian Nation, or any other entity or individual with respect to any water or water-related right;
- (6) alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, the Yakama Indian Nation, or other entity, public or private;
- (7) affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;
- (8) affect or modify the settlement agreement between the United States and the State of Washington filed in Yakima County Superior Court with regard to Federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members;
- (9) affect or modify the rights of any Federal, State, or local agency, the Yakama Indian Nation, or any other entity, public or private with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including State against Acquavella, or constitute evidence in any such proceeding in which any water or water related right is adjudicated; or
- (10) preclude other planning studies and projects to accomplish the purposes of this title by other means: funded publicly, privately, or by a combination of public and private funding.

(b) CONTINGENCY BASED ON APPROPRIATIONS- The performance of any activity under this title which requires accomplishment within a specified period that may require appropriation of money by Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made.

APPENDIX II

**YAKIMA RIVER BASIN TRUST WATER RIGHTS PROGRAM
CHAPTER 90.38 RCW**

APPENDIX II

INSERT CHAPTER 90.38 RCW

APPENDIX III

ORGANIZATION AND MANAGEMENT OF WATER AND LAND PROGRAM

APPENDIX III ORGANIZATION AND MANAGEMENT

A. SYSTEMS OPERATIONS ADVISORY COMMITTEE

Section 1203(i)(3) of the YRBWEP states that the System Operations Advisory Committee (SOAC) is to advise the Yakima Project Superintendent (Yakima Field Office Manager) on where to use leased or purchased water for instream flow purposes to meet the three-year goal specified in Section 1205(a)(4).

Section 1205(a)(4a)(i) states within the three-year period beginning when appropriations are first provided to carry out the Basin Conservation Program, the instream flow goal in the Yakima River is as follows: to secure water which is to be used for instream flows to facilitate meeting recommendations of the SOAC for flushing flows or other instream uses.

B. WORKING GROUP

The Working Group was formed to provide guidance to Reclamation on water acquisitions under the tributary pilot acquisition program. Members of the Working Group represent interests of the Yakama Indian Nation, Washington State Department of Ecology, Washington Department of Fish and Wildlife, irrigation community, and environmental community. A Working Group will continue to be used in the Water Acquisition Program.

Final approval to acquire any water is the responsibility of Reclamation. Reclamation will not approve water acquisition until reasonable attempts have been made to address objections or concerns expressed by any member of the Working Group. Advice will be sought from individual members rather than seeking consensus from the group.

C. MANAGEMENT TEAM

Specific guidance for the water acquisition program will be provided by the Upper Columbia Area Office (UCAO).

Key personnel from the UCAO are:

- Area Manager, UCAO
- YRBWEP, Program Manager
- Water Acquisition Specialist
- Yakima Water Rights Adjudication Coordinator
- Environmental Programs Manager

D. TECHNICAL SUPPORT

Technical support and general Regional Office oversight will be provided by personnel from the staff of the Pacific Northwest Regional Office, Office of the Field Solicitor, and Department of Justice.

- PN Region, Water Allocation/Acquisition Specialist
- PN Region, Program Manager, Lands and Recreation
- PN Region, Regional Appraiser
- Office of the Field Solicitor
- Department of Justice

- Outside support

E. EXTERNAL SUPPORT

Additionally, the following personnel will be utilized in determining ramifications of the Yakima water acquisition effort.

- System Operations Advisory Committee
- Washington State Department of Ecology
- Yakama Indian Nation
- Washington Department of Fish & Wildlife
- U.S. Fish and Wildlife
- Irrigation representatives
- Environmental interests
- Habitat Study Team

APPENDIX IV

GENERAL PROCEDURES FOR WATER ACQUISITION FROM INDIVIDUALS

APPENDIX IV GENERAL PROCEDURES FOR WATER ACQUISITION FROM INDIVIDUALS

Preliminary Title Report is ordered. This is done through a title company. We provide the legal description and ownership. They provide us with a title report which references any encumbrances, liens or litigations on the subject property. Referenced documents are also provided. Time frame is 2-3 weeks.

Hazardous Materials Survey - Level 1. Bureau specialist walks parcel and determines if any contaminants are present. If no contaminants are found, time frame is about 2 weeks. If contaminants are found, either a Level 2 survey is done to determine exact extent of contaminants or acquisition is closed. Depending on extent of contaminant, clean-up can be excessively costly and very time consuming. This section applies only when land is purchased.

Appraisal. Government appraisal is done on lands to be acquired. This determines the fair market value. This is what the government considers to be a primary indicator of the reasonable value for the lands in question. Time frame is 2-5 months.

Offer/Negotiations With Landowner. If appraisal price is acceptable to landowner, 1 week. If owner is not satisfied with appraised value, negotiations can drag on for months. Reclamation assesses and justifies price to be offered. Under willing seller concept, condemnation procedures will not be applied. In some cases no reasonable settlement may result.

Land Purchase Contract or Easement Agreement. Signed by seller. States exactly what rights are being sold, type of document that will convey ownership, purchase price, legal description, and period of agreement for conservation easement.

Preliminary Title Opinion. Title report, copies of any easements, encumbrances on property, land purchase contract, appraisal, hazardous materials survey and other miscellaneous information are sent to Regional Solicitor for review. Review and concurrence takes 1-2 months.

Land Purchase Contract. Signed by U.S. Recorded in County recorders office.

Title Clearance. If necessary, take curative actions to clear any unacceptable title encumbrances on property owners title, 1-2 months.

Deed Signed by Grantor. Grantor signs warranty deed, conveying title to U.S. We record deed in county recorders office.

Title Insurance. Through title company, acquire title insurance for value of acquisition.

Certificate of Inspection/Possession. Bureau specialist goes onto parcel and verifies that no new structures or improvements have been placed on land within previous six months. This can assure no new mechanic liens, etc. have been placed against the property. Interview with

property owner typically takes place too. This section applies only when land is purchased, 1 month.

Final Title Opinion. Title insurance, warranty deed, certificate of inspection/possession are sent to Regional Solicitor for review and concurrence, 1-2 months.

Voucher Submitted for Payment. Via Reclamation Finance office in Denver, Colorado, 1 month.

Payment to Seller.

Copies of Warranty Distributed.

Reclamation Recordation. RIS, plat books noted. Also, copy of warranty sent to BLM for recordation.

APPENDIX V
INFORMATION NEEDED FOR WATER ACQUISITION

APPENDIX V INFORMATION NEEDED FOR WATER ACQUISITION

A. SOLICITATION OF WILLING SELLERS AND LESSORS

There are several alternative approaches for solicitation of water rights. Once an area has been established as a priority for the Water Acquisition Program, the landowners in this area can be approached by telephone, thus establishing direct negotiations with water users. This is the method that Reclamation used to implement the tributary pilot program..

Water rights were first identified and verified in the area of interest. Meetings were set up with interested water users to discuss possible options. Reclamation was also contacted by telephone by water users and meetings were set up with these interested parties.

Another method for the solicitation of water rights would be to write letters to water rights owners in the area of interest. Information concerning the Water Acquisition Program could be sent to possible sellers or lessors in a desired area, with follow-up phone calls at a later date.

Public meetings could also be a forum for providing information on the Water Acquisition Program. A brochure or written information with contact names and phone numbers should be provided at these meetings. A water acquisition/transfer workshop is another way in which to inform water users and the public concerning selling or leasing of water rights and provide information on the possibilities on a water bank in the Yakima River Basin.

Utilizing a local newspaper should also be considered for soliciting water rights for the Water Acquisition Program.

B. SCREENING

The type of information needed for water acquisitions will be shaped by the variables presented by every purchase or lease of water. During the screening process, information is collected on the individual proposed acquisition. The collected data will aid in the decision process to determine whether or not to proceed to the next step. Following is a description of the type of information that needs to be gathered and analyzed:

* **purpose of the acquisition** - What is the purpose of a possible acquisition? Is it for flushing flows, enhanced flows, to raise the target flows over Sunnyside and/or Prosser Diversion Dams, is it going to benefit a particular reach, or will it benefit a tributary?

* **water rights owner** - The owner of the water right needs to be identified in this stage of the decision process. Reclamation needs to know who has the legal right to sell or lease the water. The person irrigating with the water right or the person who may contact Reclamation about selling or leasing the water right may not be the legal owner of the right.

Until the completion of the adjudication process in the Yakima River and its tributaries, special attention needs to be focused on the following type of questions: How far along is a particular water right in the adjudication process? Has there been a Report of Referee completed, or a conditional final order? Is there a previous adjudication?

* **seniority of water right** - The relative seniority of the water right needs to be known and analyzed. What is the likelihood that it might be curtailed or prorated? What class are the water rights holders above and below the desired lessors diversion point and how might this affect the water right of the proposed lessor? A valid appraisal should reflect the validity of the water right.

* **location** - A legal description of the water right at the point of diversion needs to be made available (the state usually has this on record). The location of the land with the appurtenant water rights and the point of diversion should be evaluated when deciding whether or not to proceed on the proposed acquisition. A map and/or drawing of the area under consideration is helpful.

The diversions above and below the proposed lessor's diversion point needs to be analyzed and taken into consideration. If other parties divert at the same location, what relative seniority are they to the proposed lessor? What type, if any, of organization - districts, association, or partnerships is associated with the point of diversion of the proposed lessor? What do any of these entities need to do in order to implement the reduction in diversions?

* **biological investigations** - The degree of biological benefits associated with a particular acquisition needs to be examined and studied in relation to restoration of anadromous fish. This information may be needed to help justify purchases above appraisal price.

* **acres irrigated** - It is necessary to know how many acres can be legally irrigated with the water right?

* **cropping** - The history of cropping patterns on the land with the appurtenant water right is an important piece of information. This information will aid in understanding the consumptive use and return flows of the water right.

* **affected reach** - The question needs to be asked whether or not the proposed acquisition is going to benefit a desired reach of the river. If the answer is yes, then this is one more additional piece of data which will help decide whether or not to proceed on to the next step; if the answer is no, then it needs to be evaluated whether or not it is necessary to proceed with the inquiry.

C. ADDITIONAL DATA

Once the initial data is collected a decision may be made to either forego the acquisition, or to proceed with collecting additional data which will further aid in the decision process for the proposed acquisition. Following is a description of the type of information that needs to be gathered and analyzed:

* **third party impacts** - There can be beneficial or adverse impacts to those outside of the agreement to acquire water. Generally speaking, those who stand to be affected are (1) other water rights holders; (2) agriculture; (3) the environment, wetlands, water quality, and other interests affected by environmental changes; (4) urban interests; (5) Indian tribes; and (6) nonagricultural rural communities. Impacts need to be carefully addressed and scrutinized

because they can cause the acquisition to be delayed, stopped, or add additional costs to the transaction.

If there are third-party impacts, what mitigation, if any, will be necessary? If mitigation is necessary, what are the associated costs and time line? Reclamation needs to understand what third-party impacts are apt to occur before proceeding with a lease.

* **diversion and delivery facilities** - The following questions need to be answered concerning the proposed acquisition: where is the diversion located; what is the type and current condition of the diversion; what is the type and current condition of the delivery system; is there only one water user on the diversion, or are there multiple water users on this system?

* **present water measuring points and existing stream gages** - Reclamation needs to be sure that the water that is being leased will be retained in the river and not diverted by another user. The following questions need to be addressed concerning measurement: what type of measurement device is available at a the diversion point in question; what is the condition of the diversion headworks; is the weir in good working condition; are there adequate staff gages and are they placed in areas that are most beneficial to our need; if additional staff gages need to be installed, who will be responsible to pay for them, who is responsible to make sure they are installed, who will maintain these stream gages; who will read and record the measurements; how often will the measurements be taken, daily or weekly?

* **return flows and consumptive use** - What role do return flows and consumptive use play in a particular water acquisition? Are there other water users who rely on the return flows? What is the consumptive use in the area of the proposed acquisition for a particular crop? How does the geology and hydrology in this area affect river gains or losses?

* **what happens to the land if it is not irrigated?** - The answer to this question will vary according to whether or not the land and/or appurtenant water right is permanently acquired or leased. If the acquisition is permanent then Reclamation needs to decide what they want to do with the land before the acquisition is completed. If the water right is leased, how long is the lease and what type of crop will be foregone? If Reclamation acquires the proposed water right, is the land going to be fallowed, or is it going to be support dry land crops? Will there be cattle or other livestock grazing on this land? Will there be reestablishment costs incurred if we are leasing the water right and fallowing the land? Who is responsible for the control of noxious weeds?

* **river/stream regulation** - Is the river/stream in question regulated, if not, how will it be protected?

* **environmental compliance** - What type of environmental compliance under National Environmental Policy Act (NEPA) will be necessary for an acquisition? What is the time line associated with a Categorical Exclusion Checklist, Environmental Assessment, or an Environmental Impact Statement? What costs will be associated with a particular NEPA document? Will there be a need for public involvement?

* **stockwater** - Does the lease or purchase involve stockwater? If the water right holder retains his stockwater right, how will they get their stockwater?

D. ACQUISITION SCHEDULE FOR INDIVIDUALS

Lease

Water Right Validation

Economic *Evaluation*

Negotiations

National Environmental Policy Act Compliance

Offer & Contract

Field Solicitors Office Review & Approval of Contract

Superior Court of the State of Washington (Acquavella)

-*Order Pendente Lite* to protect water as an instream flow right

Permanent Acquisition (* denotes differences from leasing)

Water Right Validation

*Preliminary Title Search

*Economic *Appraisal*

Negotiations

National Environmental Policy Act Compliance

Offer & Contract

Field Solicitors Office Review & Approval of Contract

Superior Court of the State of Washington (Acquavella)

-*Order Pendente Lite* to protect water as an instream flow right

E. ESTIMATED TIME LINE FOR PROCESSING ACQUISITIONS FROM INDIVIDUALS

SEE ATTACHMENT

SCHEDULE
Lease

ACTIVITY	ANNUAL CYCLE (MONTHS)												RESPONSIBILITY	
	O	N	D	J	F	M	A	M	J	J	A	S		
Water Right Validation	█													UCAO Staff ¹
Economic Justification (internal and external)		█	█											UCAO and Regional Office Staff
Offer & Negotiations				█	█									UCAO Staff
NEPA ²				█	█	█	█	█	█	█				UCAO Staff
Contract					█	█	█							UCAO and PNW Regional Staff
Solicitors Review & Approval of Contract						█	█	█						Field Solicitor's Office
Order Pendente Lite (protect water as an instream flow)						█	█	█						UCAO Staff & U.S. Attorneys Office
Washington State Process (file application for change of use)							█							UCAO Staff

¹ Upper Columbia Area Office (UCAO) Pacific Northwest Regional Office (Regional Office), Boise, ID

² National Environmental Policy Act (NEPA) time frame varies widely on expected impacts and the related NEPA requirements (i.e., categorical exclusion (1 week to 2 months), environmental assessment (6 months to 1 year), environmental impact statement (1 year to 2 years)).

**SCHEDULE
PURCHASE**

ACTIVITY	ANNUAL CYCLE (MONTHS)												RESPONSIBILITY	
	O	N	D	J	F	M	A	M	J	J	A	S		
Water Right Validation & Preliminary Title Search														UCAO Staff ¹ s
Economic Appraisal (internal and external)														UCAO and Regional Office Staff
Negotiations														UCAO Staff
NEPA ²														UCAO Staff
Contract														UCAO and PNW Regional Staff
Solicitors Review, Contract Approval & Final Title Opinion - two weeks														Field Solicitor's Office
Order Pendente Lite (protect water as an instream flow)														UCAO Staff & U.S. Attorney's Office
Washington State Process (file application for change of use)														UCAO Staff

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² National Environmental Policy Act (NEPA) time frame varies widely on expected impacts and the related NEPA requirements (i.e., categorical exclusion: 1 week to 2 months; environmental assessment: 6 months to 1 year; environmental impact statement: 1 year to 2 years).