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[Report No. 115–107]

To amend Public Law 103–434 to authorize Phase III of the Yakima River Basin Water Enhancement Project for the purpose of improving water management in the Yakima River basin, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2017

Ms. CANTWELL (for herself and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 13, 2017

Reported by Ms. MURKOWSKI, without amendment

A BILL

To amend Public Law 103–434 to authorize Phase III of the Yakima River Basin Water Enhancement Project for the purpose of improving water management in the Yakima River basin, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Yakima River Basin
3 Water Enhancement Project Phase III Act of 2017”.

4 **SEC. 2. MODIFICATION OF TERMS, PURPOSES, AND DEFINI-**
5 **TIONS.**

6 (a) MODIFICATION OF TERMS.—Title XII of Public
7 Law 103–434 (108 Stat. 4550) is amended—

8 (1) by striking “Yakama Indian” each place it
9 appears (except section 1204(g)) and inserting
10 “Yakama”; and

11 (2) by striking “Superintendent” each place it
12 appears and inserting “Manager”.

13 (b) MODIFICATION OF PURPOSES.—Section 1201 of
14 Public Law 103–434 (108 Stat. 4550) is amended—

15 (1) by striking paragraph (1) and inserting the
16 following:

17 “(1) to protect, mitigate, and enhance fish and
18 wildlife and the recovery and maintenance of self-
19 sustaining harvestable populations of fish and other
20 aquatic life, both anadromous and resident species,
21 throughout their historic distribution range in the
22 Yakima Basin through—

23 “(A) improved water management and the
24 constructions of fish passage at storage and di-
25 version dams, as authorized under the Hoover

1 Power Plant Act of 1984 (43 U.S.C. 619 et
2 seq.);

3 “(B) improved instream flows and water
4 supplies;

5 “(C) improved water quality, watershed,
6 and ecosystem function;

7 “(D) protection, creation, and enhance-
8 ment of wetlands; and

9 “(E) other appropriate means of habitat
10 improvement;”;

11 (2) in paragraph (2), by inserting “, municipal,
12 industrial, and domestic water supply and use pur-
13 poses, especially during drought years, including re-
14 ducing the frequency and severity of water supply
15 shortages for pro-ratable irrigation entities” before
16 the semicolon at the end;

17 (3) by striking paragraph (4);

18 (4) by redesignating paragraph (3) as para-
19 graph (4);

20 (5) by inserting after paragraph (2) the fol-
21 lowing:

22 “(3) to authorize the Secretary to make water
23 available for purchase or lease for meeting munic-
24 ipal, industrial, and domestic water supply pur-
25 poses;”;

1 (6) by redesignating paragraphs (5) and (6) as
2 paragraphs (6) and (8), respectively;

3 (7) by inserting after paragraph (4) (as so re-
4 designated) the following:

5 “(5) to realize sufficient water savings from im-
6 plementing the Yakima River Basin Integrated
7 Water Resource Management Plan, so that not less
8 than 85,000 acre feet of water savings are achieved
9 by implementing the first phase of the Integrated
10 Plan pursuant to section 1213(a), in addition to the
11 165,000 acre feet of water savings targeted through
12 the Basin Conservation Program, as authorized on
13 October 31, 1994;”;

14 (8) in paragraph (6) (as so redesignated)—

15 (A) by inserting “an increase in” before
16 “voluntary”; and

17 (B) by striking “and” at the end;

18 (9) by inserting after paragraph (6) (as so re-
19 designated) the following:

20 “(7) to encourage an increase in the use of, and
21 reduce the barriers to, water transfers, leasing, mar-
22 kets, and other voluntary transactions among public
23 and private entities to enhance water management
24 in the Yakima River basin;”;

(10) in paragraph (8) (as redesignated by paragraph (6)), by striking the period at the end and inserting a semicolon; and

(11) by adding at the end the following:

“(9) to improve the resilience of the ecosystems, economies, and communities in the Basin as they face drought, hydrologic changes, and other related changes and variability in natural and human systems, for the benefit of both the people and the fish and wildlife of the region; and

“(10) to authorize and implement the Yakima River Basin Integrated Water Resource Management Plan as Phase III of the Yakima River Basin Water Enhancement Project, as a balanced and cost-effective approach to maximize benefits to the communities and environment in the Basin.”.

(c) MODIFICATION OF DEFINITIONS.—Section 1202 of Public Law 103–434 (108 Stat. 4550) is amended—

(1) by redesignating paragraphs (6), (7), (8), (9), (10), (11), (12), (13), and (14) as paragraphs (8), (10), (11), (13), (14), (15), (16), (18), and (19), respectively;

(2) by inserting after paragraph (5) the following:

1 “(6) DESIGNATED FEDERAL OFFICIAL.—The
 2 term ‘designated Federal official’ means the Com-
 3 missioner of Reclamation (or a designee), acting
 4 pursuant to the charter of the Conservation Advisory
 5 Group.

6 “(7) INTEGRATED PLAN.—The terms ‘Inte-
 7 grated Plan’ and ‘Yakima River Basin Integrated
 8 Water Resource Plan’ mean the plan and activities
 9 authorized by the Yakima River Basin Water En-
 10 hancement Project Phase III Act of 2017 and the
 11 amendments made by that Act, to be carried out in
 12 cooperation with and in addition to activities of the
 13 State of Washington and Yakama Nation.”;

14 (3) by inserting after paragraph (8) (as redesign-
 15 ated by paragraph (1)) the following:

16 “(9) MUNICIPAL, INDUSTRIAL, AND DOMESTIC
 17 WATER SUPPLY AND USE.—The term ‘municipal, in-
 18 dustrial, and domestic water supply and use’ means
 19 the supply and use of water for—

20 “(A) domestic consumption (whether urban
 21 or rural);

22 “(B) maintenance and protection of public
 23 health and safety;

1 “(C) manufacture, fabrication, processing,
2 assembly, or other production of a good or com-
3 modity;

4 “(D) production of energy;

5 “(E) fish hatcheries; or

6 “(F) water conservation activities relating
7 to a use described in subparagraphs (A)
8 through (E).”;

9 (4) by inserting after paragraph (11) (as redes-
10 ignated by paragraph (1)) the following:

11 “(12) PRORATABLE IRRIGATION ENTITY.—The
12 term ‘proratable irrigation entity’ means a district,
13 project, or State-recognized authority, board of con-
14 trol, agency, or entity located in the Yakima River
15 basin that—

16 “(A) manages and delivers irrigation water
17 to farms in the basin; and

18 “(B) possesses, or the members of which
19 possess, water rights that are proratable during
20 periods of water shortage.”; and

21 (5) by inserting after paragraph (16) (as redes-
22 ignated by paragraph (1)) the following:

23 “(17) YAKIMA ENHANCEMENT PROJECT; YAK-
24 IMA RIVER BASIN WATER ENHANCEMENT
25 PROJECT.—The terms ‘Yakima Enhancement

1 Project’ and ‘Yakima River Basin Water Enhance-
 2 ment Project’ mean the Yakima River basin water
 3 enhancement project authorized by Congress pursu-
 4 ant to this Act and other Acts (including Public Law
 5 96–162 (93 Stat. 1241), section 109 of Public Law
 6 98–381 (16 U.S.C. 839b note; 98 Stat. 1340), Pub-
 7 lic Law 105–62 (111 Stat. 1320), and Public Law
 8 106–372 (114 Stat. 1425)) to promote water con-
 9 servation, water supply, habitat, and stream en-
 10 hancement improvements in the Yakima River
 11 basin.”.

12 **SEC. 3. YAKIMA RIVER BASIN WATER CONSERVATION PRO-**
 13 **GRAM.**

14 Section 1203 of Public Law 103–434 (108 Stat.
 15 4551) is amended—

16 (1) in subsection (a)—

17 (A) in paragraph (1)—

18 (i) in the second sentence, by striking
 19 “title” and inserting “section”; and

20 (ii) in the third sentence, by striking
 21 “within 5 years of the date of enactment
 22 of this Act”; and

23 (B) in paragraph (2), by striking “irriga-
 24 tion” and inserting “the number of irrigated
 25 acres”;

1 (2) in subsection (c)—

2 (A) in paragraph (2)—

3 (i) in each of subparagraphs (A)
4 through (D), by striking the comma at the
5 end and inserting a semicolon;

6 (ii) in subparagraph (E), by striking
7 the comma at the end and inserting “;
8 and”;

9 (iii) in subparagraph (F), by striking
10 “Department of Wildlife of the State of
11 Washington, and” and inserting “Depart-
12 ment of Fish and Wildlife of the State of
13 Washington.”; and

14 (iv) by striking subparagraph (G);

15 (B) in paragraph (3)—

16 (i) in each of subparagraphs (A)
17 through (C), by striking the comma at the
18 end and inserting a semicolon;

19 (ii) in subparagraph (D), by striking
20 “, and” and inserting a semicolon;

21 (iii) in subparagraph (E), by striking
22 the period at the end and inserting “;
23 and”; and

24 (iv) by adding at the end the fol-
25 lowing:

1 “(F) provide recommendations to advance
 2 the purposes and programs of the Yakima En-
 3 hancement Project, including the Integrated
 4 Plan.”; and

5 (C) by striking paragraph (4) and insert-
 6 ing the following:

7 “(4) AUTHORITY OF DESIGNATED FEDERAL OF-
 8 FICIAL.—The designated Federal official may—

9 “(A) arrange and provide logistical support
 10 for meetings of the Conservation Advisory
 11 Group;

12 “(B) use a facilitator to serve as a moder-
 13 ator for meetings of the Conservation Advisory
 14 Group or provide additional logistical support;
 15 and

16 “(C) grant any request for a facilitator by
 17 any member of the Conservation Advisory
 18 Group.”;

19 (3) in subsection (d), by adding at the end the
 20 following:

21 “(4) PAYMENT OF LOCAL SHARE BY STATE OR
 22 FEDERAL GOVERNMENT.—

23 “(A) IN GENERAL.—The State or the Fed-
 24 eral Government may fund not more than the
 25 17.5 percent local share of the costs of the

1 Basin Conservation Program in exchange for
 2 the long-term use of conserved water, subject to
 3 the requirement that the funding by the Fed-
 4 eral Government of the local share of the costs
 5 shall provide a quantifiable public benefit in
 6 meeting Federal responsibilities in the Basin
 7 and the purposes of this title.

8 “(B) USE OF CONSERVED WATER.—The
 9 Yakima Project Manager may use water result-
 10 ing from conservation measures taken under
 11 this title, in addition to water that the Bureau
 12 of Reclamation may acquire from any willing
 13 seller through purchase, donation, or lease, for
 14 water management uses pursuant to this title.”;

15 (4) in subsection (e), by striking the first sen-
 16 tence and inserting the following: “To participate in
 17 the Basin Conservation Program, as described in
 18 subsection (b), an entity shall submit to the Sec-
 19 retary a proposed water conservation plan.”;

20 (5) in subsection (i)(3)—

21 (A) by striking “purchase or lease” each
 22 place it appears and inserting “purchase, lease,
 23 or management”; and

24 (B) in the third sentence, by striking
 25 “made immediately upon availability” and all

1 that follows through “Committee” and inserting
 2 “continued as needed to provide water to be
 3 used by the Yakima Project Manager as rec-
 4 ommended by the System Operations Advisory
 5 Committee and the Conservation Advisory
 6 Group”; and

7 (6) in subsection (j)(4), in the first sentence, by
 8 striking “initial acquisition” and all that follows
 9 through “flushing flows” and inserting “acquisition
 10 of water from willing sellers or lessors specifically to
 11 provide improved instream flows for anadromous
 12 and resident fish and other aquatic life, including
 13 pulse flows to facilitate outward migration of anad-
 14 romous fish”.

15 **SEC. 4. YAKIMA BASIN WATER PROJECTS, OPERATIONS,**
 16 **AND AUTHORIZATIONS.**

17 (a) YAKAMA NATION PROJECTS.—Section 1204 of
 18 Public Law 103–434 (108 Stat. 4555) is amended—

19 (1) in subsection (a)(2), in the first sentence,
 20 by striking “not more than \$23,000,000” and in-
 21 serting “not more than \$100,000,000”; and

22 (2) in subsection (g)—

23 (A) by striking the subsection heading and
 24 inserting “REDESIGNATION OF YAKAMA INDIAN
 25 NATION TO YAKAMA NATION.—”;

1 (B) by striking paragraph (1) and insert-
 2 ing the following:

3 “(1) REDESIGNATION.—The Confederated
 4 Tribes and Bands of the Yakama Indian Nation
 5 shall be known and designated as the ‘Confederated
 6 Tribes and Bands of the Yakama Nation’.”; and

7 (C) in paragraph (2), by striking “deemed
 8 to be a reference to the ‘Confederated Tribes
 9 and Bands of the Yakama Indian Nation’.” and
 10 inserting “deemed to be a reference to the
 11 ‘Confederated Tribes and Bands of the Yakama
 12 Nation’.”.

13 (b) OPERATION OF YAKIMA BASIN PROJECTS.—Sec-
 14 tion 1205 of Public Law 103–434 (108 Stat. 4557) is
 15 amended—

16 (1) in subsection (a)—

17 (A) in paragraph (4)—

18 (i) in subparagraph (A)—

19 (I) in clause (i)—

20 (aa) by inserting “addi-
 21 tional” after “secure”;

22 (bb) by striking “flushing”
 23 and inserting “pulse”; and

24 (cc) by striking “uses” and
 25 inserting “uses, in addition to the

1 quantity of water provided under
 2 the treaty between the Yakama
 3 Nation and the United States”;
 4 (II) by striking clause (ii);
 5 (III) by redesignating clause (iii)
 6 as clause (ii); and
 7 (IV) in clause (ii) (as so redesign-
 8 nated) by inserting “and water rights
 9 mandated” after “goals”; and
 10 (ii) in subparagraph (B)(i), in the
 11 first sentence, by inserting “in proportion
 12 to the funding received” after “Program”;
 13 (2) in subsection (b), in the second sentence, by
 14 striking “instream flows for use by the Yakima
 15 Project Manager as flushing flows or as otherwise”
 16 and inserting “fishery purposes, as”; and
 17 (3) in subsection (e), by striking paragraph (1)
 18 and inserting the following:
 19 “(1) IN GENERAL.—Additional purposes of the
 20 Yakima Project shall be any of the following:
 21 “(A) To recover and maintain self-sus-
 22 taining harvestable populations of native fish,
 23 both anadromous and resident species, through-
 24 out their historic distribution range in the Yak-
 25 ima Basin.

1 “(B) To protect, mitigate, and enhance
2 aquatic life and wildlife.

3 “(C) Recreation.

4 “(D) Municipal, industrial, and domestic
5 use.”.

6 (c) LAKE CLE ELUM AUTHORIZATION OF APPRO-
7 PRIATIONS.—Section 1206(a)(1) of Public Law 103–434
8 (108 Stat. 4560), is amended, in the matter preceding
9 subparagraph (A), by striking “at September” and all that
10 follows through “to—” and inserting “not more than
11 \$12,000,000 to—”.

12 (d) ENHANCEMENT OF WATER SUPPLIES FOR YAK-
13 IMA BASIN TRIBUTARIES.—Section 1207 of Public Law
14 103–434 (108 Stat. 4560) is amended—

15 (1) in the heading, by striking “**SUPPLIES**”
16 and inserting “**MANAGEMENT**”;

17 (2) in subsection (a)—

18 (A) in the matter preceding paragraph (1),
19 by striking “supplies” and inserting “manage-
20 ment”;

21 (B) in paragraph (1), by inserting “and
22 water supply entities” after “owners”; and

23 (C) in paragraph (2)—

24 (i) in subparagraph (A), by inserting
25 “that choose not to participate or opt out

of tributary enhancement projects pursuant to this section” after “water right owners”; and

(ii) in subparagraph (B), by inserting “nonparticipating” before “tributary water users”;

(3) in subsection (b)—

(A) in paragraph (1)—

(i) by striking the paragraph designation and all that follows through “(but not limited to)—” and inserting the following:

“(1) IN GENERAL.—The Secretary, following consultation with the State of Washington, tributary water right owners, and the Yakama Nation, and on agreement of appropriate water right owners, is authorized to conduct studies to evaluate measures to further Yakima Project purposes on tributaries to the Yakima River. Enhancement programs that use measures authorized by this subsection may be investigated and implemented by the Secretary in tributaries to the Yakima River, including Taneum Creek, other areas, or tributary basins that currently or could potentially be provided supplemental or transfer water by entities, such as the Kittitas Reclamation District or the Yakima-Tieton Irrigation

District, subject to the condition that activities may commence on completion of applicable and required feasibility studies, environmental reviews, and cost-benefit analyses that include favorable recommendations for further project development, as appropriate. Measures to evaluate include—”;

(ii) by indenting subparagraphs (A) through (F) appropriately;

(iii) in subparagraph (A), by inserting before the semicolon at the end the following: “, including irrigation efficiency improvements (in coordination with programs of the Department of Agriculture), consolidation of diversions or administration, and diversion scheduling or coordination”;

(iv) by redesignating subparagraphs (C) through (F) as subparagraphs (E) through (H), respectively;

(v) by inserting after subparagraph (B) the following:

“(C) improvements in irrigation system management or delivery facilities within the Yakima River basin when those improvements allow for increased irrigation system conveyance

1 and corresponding reduction in diversion from
 2 tributaries or flow enhancements to tributaries
 3 through direct flow supplementation or ground-
 4 water recharge;

5 “(D) improvements of irrigation system
 6 management or delivery facilities to reduce or
 7 eliminate excessively high flows caused by the
 8 use of natural streams for conveyance or irriga-
 9 tion water or return water;”;

10 (vi) in subparagraph (E) (as redesign-
 11 ated by clause (iv)), by striking “ground
 12 water” and inserting “groundwater re-
 13 charge and”;

14 (vii) in subparagraph (G) (as redesign-
 15 ated by clause (iv)), by inserting “or
 16 transfer” after “purchase”; and

17 (viii) in subparagraph (H) (as redesign-
 18 ated by clause (iv)), by inserting “stream
 19 processes and” before “stream habitats”;

20 (B) in paragraph (2)—

21 (i) in the matter preceding subpara-
 22 graph (A), by striking “the Taneum Creek
 23 study” and inserting “studies under this
 24 subsection”;

25 (ii) in subparagraph (B)—

1 (I) by striking “and economic”
 2 and inserting “, infrastructure, eco-
 3 nomic, and land use”; and

4 (II) by striking “and” at the end;

5 (iii) in subparagraph (C), by striking
 6 the period at the end and inserting “;
 7 and”; and

8 (iv) by adding at the end the fol-
 9 lowing:

10 “(D) any related studies already underway
 11 or undertaken.”; and

12 (C) in paragraph (3), in the first sentence,
 13 by inserting “of each tributary or group of trib-
 14 utaries” after “study”;

15 (4) in subsection (c)—

16 (A) in the heading, by inserting “**AND**
 17 **NONSURFACE STORAGE**” after “**NONSTOR-**
 18 **AGE**”; and

19 (B) in the matter preceding paragraph (1),
 20 by inserting “and nonsurface storage” after
 21 “nonstorage”;

22 (5) by striking subsection (d);

23 (6) by redesignating subsection (e) as sub-
 24 section (d); and

1 (7) in paragraph (2) of subsection (d) (as so re-
2 designated)—

3 (A) in the first sentence—

4 (i) by inserting “and implementation”
5 after “investigation”;

6 (ii) by striking “other” before “Yak-
7 ima River”; and

8 (iii) by inserting “and other water
9 supply entities” after “owners”; and

10 (B) by striking the second sentence.

11 (e) CHANDLER PUMPING PLANT AND POWERPLANT-
12 OPERATIONS AT PROSSER DIVERSION DAM.—Section
13 1208(d) of Public Law 103–434 (108 Stat. 4562; 114
14 Stat. 1425) is amended by inserting “negatively” before
15 “affected”.

16 (f) INTERIM COMPREHENSIVE BASIN OPERATING
17 PLAN.—Section 1210(e) of Public Law 103–434 (108
18 Stat. 4564) is amended by striking “\$100,000” and in-
19 serting “\$200,000”.

20 (g) ENVIRONMENTAL COMPLIANCE.—Section 1211
21 of Public Law 103–434 (108 Stat. 4564) is amended by
22 striking “\$2,000,000” and inserting “\$5,000,000”.

1 **SEC. 5. AUTHORIZATION OF PHASE III OF YAKIMA RIVER**
 2 **BASIN WATER ENHANCEMENT PROJECT.**

3 Title XII of Public Law 103–434 (108 Stat. 4550)
 4 is amended by adding at the end the following:

5 **“SEC. 1213. AUTHORIZATION OF THE INTEGRATED PLAN AS**
 6 **PHASE III OF YAKIMA RIVER BASIN WATER**
 7 **ENHANCEMENT PROJECT.**

8 “(a) INTEGRATED PLAN.—

9 “(1) IN GENERAL.—The Secretary shall imple-
 10 ment the Integrated Plan as Phase III of the Yak-
 11 ima River Basin Water Enhancement Project in ac-
 12 cordance with this section and applicable laws.

13 “(2) INITIAL DEVELOPMENT PHASE OF THE IN-
 14 TEGRATED PLAN.—

15 “(A) IN GENERAL.—The Secretary, in co-
 16 ordination with the State of Washington and
 17 Yakama Nation and subject to feasibility stud-
 18 ies, environmental reviews, and the availability
 19 of appropriations, shall implement an initial de-
 20 velopment phase of the Integrated Plan, to—

21 “(i) complete the planning, design,
 22 and construction or development of up-
 23 stream and downstream fish passage facili-
 24 ties, as previously authorized by the Hoo-
 25 ver Power Plant Act of 1984 (43 U.S.C.
 26 619 et seq.) at Cle Elum Reservoir and an-

1 other Yakima Project reservoir identified
2 by the Secretary as consistent with the In-
3 tegrated Plan, subject to the condition
4 that, if the Yakima Project reservoir iden-
5 tified by the Secretary contains a hydro-
6 power project licensed by the Federal En-
7 ergy Regulatory Commission, the Secretary
8 shall cooperate with the Federal Energy
9 Regulatory Commission in a timely manner
10 to ensure that actions taken by the Sec-
11 retary are consistent with the applicable
12 hydropower project license;

13 “(ii) negotiate long-term agreements
14 with participating proratable irrigation en-
15 tities in the Yakima Basin and, acting
16 through the Bureau of Reclamation, co-
17 ordinate between Bureaus of the Depart-
18 ment of the Interior and with the heads of
19 other Federal agencies to negotiate agree-
20 ments concerning leases, easements, and
21 rights-of-way on Federal land, and other
22 terms and conditions determined to be nec-
23 essary to allow for the non-Federal financ-
24 ing, construction, operation, and mainte-
25 nance of—

1 “(I) new facilities needed to ac-
2 cess and deliver inactive storage in
3 Lake Kachess for the purpose of pro-
4 viding drought relief for irrigation
5 (known as the ‘Kachess Drought Re-
6 lief Pumping Plant’); and

7 “(II) a conveyance system to
8 allow transfer of water between
9 Keechelus Reservoir to Kachess Res-
10 ervoir for purposes of improving oper-
11 ational flexibility for the benefit of
12 both fish and irrigation (known as the
13 ‘K to K Pipeline’);

14 “(iii) participate in, provide funding
15 for, and accept non-Federal financing
16 for—

17 “(I) water conservation projects,
18 not subject to the provisions of the
19 Basin Conservation Program de-
20 scribed in section 1203, that are in-
21 tended to partially implement the In-
22 tegrated Plan by providing 85,000
23 acre-feet of conserved water to im-
24 prove tributary and mainstem stream
25 flow; and

1 “(II) aquifer storage and recov-
2 ery projects;

3 “(iv) study, evaluate, and conduct fea-
4 sibility analyses and environmental reviews
5 of fish passage, water supply (including
6 groundwater and surface water storage),
7 conservation, habitat restoration projects,
8 and other alternatives identified as con-
9 sistent with the purposes of this Act, for
10 the initial and future phases of the Inte-
11 grated Plan;

12 “(v) coordinate with and assist the
13 State of Washington in implementing a ro-
14 bust water market to enhance water man-
15 agement in the Yakima River basin, in-
16 cluding—

17 “(I) assisting in identifying ways
18 to encourage and increase the use of,
19 and reduce the barriers to, water
20 transfers, leasing, markets, and other
21 voluntary transactions among public
22 and private entities in the Yakima
23 River basin;

1 “(II) providing technical assist-
2 ance, including scientific data and
3 market information; and

4 “(III) negotiating agreements
5 that would facilitate voluntary water
6 transfers between entities, including
7 as appropriate, the use of federally
8 managed infrastructure; and

9 “(vi) enter into cooperative agree-
10 ments with, or, subject to a minimum non-
11 Federal cost-sharing requirement of 50
12 percent, make grants to, the Yakama Na-
13 tion, the State of Washington, Yakima
14 River basin irrigation districts, water dis-
15 tricts, conservation districts, other local
16 governmental entities, nonprofit organiza-
17 tions, and land owners to carry out this
18 title under such terms and conditions as
19 the Secretary may require, including the
20 following purposes:

21 “(I) Land and water transfers,
22 leases, and acquisitions from willing
23 participants, so long as the acquiring
24 entity shall hold title and be respon-
25 sible for any and all required oper-

1 ations, maintenance, and management
2 of that land and water.

3 “(II) To combine or relocate di-
4 version points, remove fish barriers,
5 or for other activities that increase
6 flows or improve habitat in the Yak-
7 ima River and its tributaries in fur-
8 therance of this title.

9 “(III) To implement, in partner-
10 ship with Federal and non-Federal en-
11 tities, projects to enhance the health
12 and resilience of the watershed.

13 “(B) COMMENCEMENT DATE.—The Sec-
14 retary shall commence implementation of the
15 activities included under the initial development
16 phase pursuant to this paragraph—

17 “(i) on the date of enactment of this
18 section; and

19 “(ii) on completion of applicable feasi-
20 bility studies, environmental reviews, and
21 cost-benefit analyses that include favorable
22 recommendations for further project devel-
23 opment.

24 “(3) INTERMEDIATE AND FINAL PHASES.—

1 “(A) IN GENERAL.—The Secretary, in co-
2 ordination with the State of Washington and in
3 consultation with the Yakama Nation, shall de-
4 velop plans for intermediate and final develop-
5 ment phases of the Integrated Plan to achieve
6 the purposes of this Act, including conducting
7 applicable feasibility studies, environmental re-
8 views, and other relevant studies needed to de-
9 velop the plans.

10 “(B) INTERMEDIATE PHASE.—The Sec-
11 retary shall develop an intermediate develop-
12 ment phase to implement the Integrated Plan
13 that, subject to authorization and appropria-
14 tion, would commence not later than 10 years
15 after the date of enactment of this section.

16 “(C) FINAL PHASE.—The Secretary shall
17 develop a final development phase to implement
18 the Integrated Plan that, subject to authoriza-
19 tion and appropriation, would commence not
20 later than 20 years after the date of enactment
21 of this section.

22 “(4) CONTINGENCIES.—The implementation by
23 the Secretary of projects and activities identified for
24 implementation under the Integrated Plan shall be—

1 “(A) subject to authorization and appro-
2 priation;

3 “(B) contingent on the completion of appli-
4 cable feasibility studies, environmental reviews,
5 and cost-benefit analyses that include favorable
6 recommendations for further project develop-
7 ment;

8 “(C) implemented on public review and a
9 determination by the Secretary that design,
10 construction, and operation of a proposed
11 project or activity is in the best interest of the
12 public; and

13 “(D) in compliance with all applicable
14 laws, including the National Environmental
15 Policy Act of 1969 (42 U.S.C. 4321 et seq.)
16 and the Endangered Species Act of 1973 (16
17 U.S.C. 1531 et seq.).

18 “(5) PROGRESS REPORT.—

19 “(A) IN GENERAL.—Not later than 5 years
20 after the date of enactment of this section, the
21 Secretary, in conjunction with the State of
22 Washington and in consultation with the
23 Yakama Nation, shall submit to the Committee
24 on Energy and Natural Resources of the Senate
25 and the Committee on Natural Resources of the

1 House of Representatives a progress report on
2 the development and implementation of the In-
3 tegrated Plan.

4 “(B) REQUIREMENTS.—The progress re-
5 port under this paragraph shall—

6 “(i) provide a review and reassess-
7 ment, if needed, of the objectives of the In-
8 tegrated Plan, as applied to all elements of
9 the Integrated Plan;

10 “(ii) assess, through performance
11 metrics developed at the initiation of, and
12 measured throughout the implementation
13 of, the Integrated Plan, the degree to
14 which the implementation of the initial de-
15 velopment phase addresses the objectives
16 and all elements of the Integrated Plan;

17 “(iii) identify the amount of Federal
18 funding and non-Federal contributions re-
19 ceived and expended during the period cov-
20 ered by the report;

21 “(iv) describe the pace of project de-
22 velopment during the period covered by the
23 report;

24 “(v) identify additional projects and
25 activities proposed for inclusion in any fu-

1 ture phase of the Integrated Plan to ad-
2 dress the objectives of the Integrated Plan,
3 as applied to all elements of the Integrated
4 Plan; and

5 “(vi) for water supply projects—

6 “(I) provide a preliminary discus-
7 sion of the means by which—

8 “(aa) water and costs asso-
9 ciated with each recommended
10 project would be allocated among
11 authorized uses; and

12 “(bb) those allocations
13 would be consistent with the ob-
14 jectives of the Integrated Plan;
15 and

16 “(II) establish a plan for solie-
17 iting and formalizing subscriptions
18 among individuals and entities for
19 participation in any of the rec-
20 ommended water supply projects that
21 will establish the terms for participa-
22 tion, including fiscal obligations asso-
23 ciated with subscription.

1 “(b) FINANCING, CONSTRUCTION, OPERATION, AND
 2 MAINTENANCE OF KACHESS DROUGHT RELIEF PUMPING
 3 PLANT AND K TO K PIPELINE.—

4 “(1) AGREEMENTS.—Long-term agreements ne-
 5 gotiated between the Secretary and participating
 6 proratable irrigation entities in the Yakima Basin
 7 for the non-Federal financing, construction, oper-
 8 ation, and maintenance of the Drought Relief Pump-
 9 ing Plant and K to K Pipeline shall include provi-
 10 sions regarding—

11 “(A) responsibilities of the participating
 12 proratable irrigation entities for the planning,
 13 design, and construction of infrastructure in
 14 consultation and coordination with the Sec-
 15 retary;

16 “(B) property titles and responsibilities of
 17 the participating proratable irrigation entities
 18 for the maintenance of and liability for all in-
 19 frastructure constructed under this title;

20 “(C) operation and integration of the
 21 projects by the Secretary in the operation of the
 22 Yakima Project;

23 “(D) costs associated with the design, fi-
 24 nancing, construction, operation, maintenance,
 25 and mitigation of projects, with the costs of

1 Federal oversight and review to be nonreim-
 2 bursable to the participating proratable irriga-
 3 tion entities and the Yakima Project; and

4 “(E) responsibilities for the pumping and
 5 operational costs necessary to provide the total
 6 water supply available made inaccessible due to
 7 drought pumping during the preceding 1 or
 8 more calendar years, in the event that the
 9 Kachess Reservoir fails to refill as a result of
 10 pumping drought storage water during the pre-
 11 ceding 1 or more calendar years, which shall re-
 12 main the responsibility of the participating pro-
 13 ratable irrigation entities.

14 “(2) USE OF KACHESS RESERVOIR STORED
 15 WATER.—

16 “(A) IN GENERAL.—The additional stored
 17 water made available by the construction of fa-
 18 cilities to access and deliver inactive storage in
 19 Kachess Reservoir under subsection
 20 (a)(2)(A)(ii)(I) shall—

21 “(i) be considered to be Yakima
 22 Project water;

23 “(ii) not be part of the total water
 24 supply available, as that term is defined in
 25 various court rulings; and

1 “(iii) be used exclusively by the Sec-
2 retary—

3 “(I) to enhance the water supply
4 in years when the total water supply
5 available is not sufficient to provide
6 70 percent of proratable entitlements
7 in order to make that additional water
8 available up to 70 percent of proratable
9 entitlements to the Kittitas Rec-
10 lamation District, the Roza Irrigation
11 District, or other proratable irrigation
12 entities participating in the construc-
13 tion, operation, and maintenance costs
14 of the facilities under this title under
15 such terms and conditions to which
16 the districts may agree, subject to the
17 conditions that—

18 “(aa) the Bureau of Indian
19 Affairs, the Wapato Irrigation
20 Project, and the Yakama Nation,
21 on an election to participate, may
22 also obtain water from Kachess
23 Reservoir inactive storage to en-
24 hance applicable existing irriga-
25 tion water supply in accordance

1 with such terms and conditions
2 to which the Bureau of Indian
3 Affairs and the Yakama Nation
4 may agree; and

5 “(bb) the additional supply
6 made available under this clause
7 shall be available to participating
8 individuals and entities in pro-
9 portion to the proratable entitle-
10 ments of the participating indi-
11 viduals and entities, or in such
12 other proportion as the partici-
13 pating entities may agree; and

14 “(II) to facilitate reservoir oper-
15 ations in the reach of the Yakima
16 River between Keechelus Dam and
17 Easton Dam for the propagation of
18 anadromous fish.

19 “(B) EFFECT OF PARAGRAPH.—Nothing
20 in this paragraph affects (as in existence on the
21 date of enactment of this section) any contract,
22 law (including regulations) relating to repay-
23 ment costs, water right, or Yakama Nation
24 treaty right.

1 “(3) COMMENCEMENT.—The Secretary shall
 2 not commence entering into agreements pursuant to
 3 subsection (a)(2)(A)(ii) or subsection (b)(1) or im-
 4 plementing any activities pursuant to the agree-
 5 ments before the date on which—

6 “(A) all applicable and required feasibility
 7 studies, environmental reviews, and cost-benefit
 8 analyses have been completed and include favor-
 9 able recommendations for further project devel-
 10 opment, including an analysis of—

11 “(i) the impacts of the agreements
 12 and activities conducted pursuant to sub-
 13 section (a)(2)(A)(ii) on adjacent commu-
 14 nities, including potential fire hazards,
 15 water access for fire districts, community
 16 and homeowner wells, future water levels
 17 based on projected usage, recreational val-
 18 ues, and property values; and

19 “(ii) specific options and measures for
 20 mitigating the impacts, as appropriate;

21 “(B) the Secretary has made the agree-
 22 ments and any applicable project designs, oper-
 23 ations plans, and other documents available for
 24 public review and comment in the Federal Reg-
 25 ister for a period of not less than 60 days; and

1 “(C) the Secretary has made a determina-
 2 tion, consistent with applicable law, that the
 3 agreements and activities to which the agree-
 4 ments relate—

5 “(i) are in the public interest; and

6 “(ii) could be implemented without
 7 significant adverse impacts to the environ-
 8 ment.

9 “(4) ELECTRICAL POWER ASSOCIATED WITH
 10 KACHESS DROUGHT RELIEF PUMPING PLANT.—

11 “(A) IN GENERAL.—The Administrator of
 12 the Bonneville Power Administration, pursuant
 13 to the Pacific Northwest Electric Power Plan-
 14 ning and Conservation Act (16 U.S.C. 839 et
 15 seq.), shall provide to the Secretary project
 16 power to operate the Kachess Pumping Plant
 17 constructed under this title if inactive storage
 18 in Kachess Reservoir is needed to provide
 19 drought relief for irrigation, subject to the re-
 20 quirements of subparagraphs (B) and (C).

21 “(B) DETERMINATION.—Power may be
 22 provided under subparagraph (A) only if—

23 “(i) there is in effect a drought dec-
 24 laration issued by the State of Washington;

1 “(ii) there are conditions that have led
 2 to 70 percent or less water delivery to pro-
 3 ratable irrigation districts, as determined
 4 by the Secretary; and

5 “(iii) the Secretary determines that it
 6 is appropriate to provide power under that
 7 subparagraph.

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

16 “(D) RATE.—The Administrator of the
 17 Bonneville Power Administration shall provide
 18 power under subparagraph (A) at the then-ap-
 19 plicable lowest Bonneville Power Administration
 20 rate for public body, cooperative, and Federal
 21 agency customers firm obligations, which as of
 22 the date of enactment of this section is the pri-
 23 ority firm Tier 1 rate, and shall not include any
 24 irrigation discount.

1 “(E) LOCAL PROVIDER.—During any pe-
 2 riod in which power is not being provided under
 3 subparagraph (A), the power needed to operate
 4 the Kachess Pumping Plant shall be obtained
 5 by the Secretary from a local provider.

6 “(F) COSTS.—The cost of power for such
 7 pumping, station service power, and all costs of
 8 transmitting power from the Federal Columbia
 9 River Power System to the Yakima Enhance-
 10 ment Project pumping facilities shall be borne
 11 by irrigation districts receiving the benefits of
 12 that water.

13 “(G) DUTIES OF COMMISSIONER.—The
 14 Commissioner of Reclamation shall be respon-
 15 sible for arranging transmission for deliveries of
 16 Federal power over the Bonneville system
 17 through applicable tariff and business practice
 18 processes of the Bonneville system and for ar-
 19 ranging transmission for deliveries of power ob-
 20 tained from a local provider.

21 “(c) DESIGN AND USE OF GROUNDWATER RE-
 22 CHARGE PROJECTS.—

23 “(1) IN GENERAL.—Any water supply that re-
 24 sults from an aquifer storage and recovery project

1 shall not be considered to be a part of the total
2 water supply available if—

3 “(A) the water for the aquifer storage and
4 recovery project would not be available for use,
5 but instead for the development of the project;

6 “(B) the aquifer storage and recovery
7 project will not otherwise impair any water sup-
8 ply available for any individual or entity entitled
9 to use the total water supply available; and

10 “(C) the development of the aquifer stor-
11 age and recovery project will not impair fish or
12 other aquatic life in any localized stream reach.

13 “(2) PROJECT TYPES.—The Secretary may pro-
14 vide technical assistance for, and participate in, any
15 of the following 3 types of groundwater recharge
16 projects (including the incorporation of groundwater
17 recharge projects into Yakima Project operations, as
18 appropriate):

19 “(A) Aquifer recharge projects designed to
20 redistribute Yakima Project water within a
21 water year for the purposes of supplementing
22 stream flow during the irrigation season, par-
23 ticularly during storage control, subject to the
24 condition that if such a project is designed to
25 supplement a mainstem reach, the water supply

1 that results from the project shall be credited to
2 instream flow targets, in lieu of using the total
3 water supply available to meet those targets.

4 “(B) Aquifer storage and recovery projects
5 that are designed, within a given water year or
6 over multiple water years—

7 “(i) to supplement or mitigate for mu-
8 nicipal uses;

9 “(ii) to supplement municipal supply
10 in a subsurface aquifer; or

11 “(iii) to mitigate the effect of ground-
12 water use on instream flow or senior water
13 rights.

14 “(C) Aquifer storage and recovery projects
15 designed to supplement existing irrigation water
16 supply, or to store water in subsurface aquifers,
17 for use by the Kittitas Reclamation District,
18 the Roza Irrigation District, or any other pro-
19 ratable irrigation entity participating in the re-
20 payment of the construction, operation, and
21 maintenance costs of the facilities under this
22 section during years in which the total water
23 supply available is insufficient to provide to
24 those proratable irrigation entities all water to

1 which the entities are entitled, subject to the
2 conditions that—

3 “(i) the Bureau of Indian Affairs, the
4 Wapato Irrigation Project, and the
5 Yakama Nation, on an election to partici-
6 pate, may also obtain water from aquifer
7 storage to enhance applicable existing irri-
8 gation water supply in accordance with
9 such terms and conditions to which the
10 Bureau of Indian Affairs and the Yakama
11 Nation may agree; and

12 “(ii) nothing in this subparagraph af-
13 fects (as in existence on the date of enact-
14 ment of this section) any contract, law (in-
15 cluding regulations) relating to repayment
16 costs, water right, or Yakama Nation trea-
17 ty right.

18 “(d) FEDERAL COST-SHARE.—

19 “(1) IN GENERAL.—The Federal cost-share of a
20 project carried out under this section shall be deter-
21 mined in accordance with the applicable laws (in-
22 cluding regulations) and policies of the Bureau of
23 Reclamation.

24 “(2) INITIAL PHASE.—The Federal cost-share
25 for the initial development phase of the Integrated

1 Plan shall not exceed 50 percent of the total cost of
 2 the initial development phase.

3 “(3) STATE AND OTHER CONTRIBUTIONS.—The
 4 Secretary may accept as part of the non-Federal
 5 cost-share of a project carried out under this section,
 6 and expend as if appropriated, any contribution (in-
 7 cluding in-kind services) by the State of Washington
 8 or any other individual or entity that the Secretary
 9 determines will enhance the conduct and completion
 10 of the project.

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

16 “(e) SAVINGS AND CONTINGENCIES.—Nothing in this
 17 section shall—

18 “(1) be a new or supplemental benefit for pur-
 19 poses of the Reclamation Reform Act of 1982 (43
 20 U.S.C. 390aa et seq.);

21 “(2) affect any contract in existence on the date
 22 of enactment of this section that was executed pur-
 23 suant to the reclamation laws;

1 “(3) affect any contract or agreement between
2 the Bureau of Indian Affairs and the Bureau of
3 Reclamation;

4 “(4) affect, waive, abrogate, diminish, define, or
5 interpret the treaty between the Yakama Nation and
6 the United States; or

7 “(5) constrain the continued authority of the
8 Secretary to provide fish passage in the Yakima
9 Basin in accordance with the Hoover Power Plant
10 Act of 1984 (43 U.S.C. 619 et seq.).

11 **“SEC. 1214. OPERATIONAL CONTROL OF WATER SUPPLIES.**

12 “The Secretary shall retain authority and discretion
13 over the management of project supplies to optimize oper-
14 ational use and flexibility to ensure compliance with all
15 applicable Federal and State laws, treaty rights of the
16 Yakama Nation, and legal obligations, including those
17 contained in this Act. That authority and discretion in-
18 cludes the ability of the United States to store, deliver,
19 conserve, and reuse water supplies deriving from projects
20 authorized under this title.”.

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115TH CONGRESS
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S. 714

[Report No. 115-107]

A BILL

To amend Public Law 103-434 to authorize Phase III of the Yakima River Basin Water Enhancement Project for the purpose of improving water management in the Yakima River basin, and for other purposes.

JUNE 13, 2017

Reported without amendment