

TESTIMONY OF THE YAKAMA NATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON INDIAN IRRIGATION PROJECTS
SEPTEMBER 10, 2014

My name is Ruth Jim. I am a member of the Yakama Nation's Tribal Council and Chair of the Tribal Council's Roads, Irrigation and Land Committee. Our Tribal Council is the governing body of the Yakama Nation and of the Yakama Reservation. For many years our Tribe has been dealing with problems related to the Wapato Irrigation Project, a Bureau of Indian Affairs irrigation project on the Yakama Reservation.

I. BACKGROUND.

The Wapato Irrigation Project ("WIP" or "Project"), operated by the Bureau of Indian Affairs ("BIA"), is an Indian irrigation project located entirely on the Yakama Indian Reservation. WIP operates under the direction of the Bureau of Indian Affairs Regional Director. The Yakama Reservation covers an area of approximately 1.7 million acres in south central Washington State. Water was reserved by the Yakama Nation in the Treaty of June 9, 1855. The Nation's Treaty water is delivered through WIP to Tribal and allotted lands. The three units comprising the WIP have a combined total between 140,000 and 150,000 acres of land within their boundaries.

Irrigation under the auspices of the BIA began in the Nineteenth Century on the Reservation in the Toppenish Creek area shortly after the Reservation was created. Irrigation also occurred from Ahtanum Creek which forms the northern border of the Reservation. Assistance by the Federal government for the provision of irrigation water from the Yakima River itself was initiated

by the Indian Service (which is now the BIA) with the construction of the Irwin or Old Reservation Canal in 1896-1897.

WIP was authorized by the United States government and planned by the BIA in the early 1900s. In 1912, a report from the Department of the Interior was presented to Congress which confirmed that the water provided to the Yakama Nation from the Yakima River was inadequate. As a result of this report the Secretary was ordered in the 1912 Congressional appropriations act to develop a plan to get more Treaty water onto the Reservation:

That the Secretary of the Interior be, and he is hereby, authorized and directed to investigate the conditions on the Yakima Indian Reservation...with a view to determine the best, most practicable and most feasible plan for providing water for such lands...

Act of August 24, 1912, 37 Stat. 518

A report was also produced by Congress that recommended that work proceed on enlargement of WIP for the use of additional Treaty water for the Yakama Reservation. “Report of the Condition of the Yakima Indian Reservation, Washington,” H. Rept. Doc. No. 1299 (62nd Cong., 3d Sess.) (Jan. 24, 1913). Pursuant to this authority and this Report, Congress appointed a commission to investigate and make recommendations on providing additional Treaty irrigation water for the Yakama Nation and its Reservation and the “construction of an irrigation system” on it. Act of June 30, 1913, 38 Stat. 77, Sec. 23. Most of the facilities comprising the Project were constructed between 1917 and 1950.

WIP is divided into three units. The surface water for the bulk of the irrigated land is diverted to the Wapato-Satus Unit from the Yakima River near Parker Washington. There are also smaller irrigation units on Ahtanum Creek and on Toppenish and Simcoe Creeks which deliver natural flow from those creeks for irrigation. Of the designated lands entitled to delivery

of water through the Wapato-Satus Unit of WIP, a disproportionate number, about 27, 973 acres are idle Indian lands as of 2000. “Idle” means in this context that these lands are entitled to a delivery of water through WIP but are not being irrigated. The land is not being irrigated due to a number of factors outside of the control of the owner including an inability of WIP to actually deliver water to many of those acres. Some of the idle land included in the project is marginal for irrigation due to slopes and other factors such as its location near the end of laterals resulting in poor water supply. Such land can be farmed but requires the investment of a great deal of money that is not available. Up to 7,000 acres of such land was included in the project in the 1930’s with the understanding that it would not pay O & M because it could only occasionally be farmed. The problems for these lands specifically and the Project in general can be corrected but it will take a great deal of time and money to do so.

II. PROBLEMS WITH THE WAPATO IRRIGATION PROJECT.

As the above shows, WIP has been in existence for over a hundred years. Many of the constructed works are between 50 and 100 years old. Because of a lack of funds, necessary maintenance for this Project has been repeatedly postponed. As it relates to all of the BIA irrigation projects the Government Accountability Office has concluded that because “... the BIA has historically not had adequate funds to operate and maintain the projects, the projects are in a serious state of disrepair.” Indian Irrigation Projects – Numerous Issues Need to Be Addressed to Improve Project Management and Financial Sustainability GAO 06-314 (Feb. 2006) at p. 30. Reviews of WIP, in particular, have repeatedly found problems in funding. In 1995 the Inspector General’s office of the BIA found that “... sufficient funds were not available to properly maintain the Project, and it has deteriorated to the extent that several studies have concluded that the continued ability of the Project to deliver water is in doubt.” Final Audit Report of the Wapato Irrigation Project,

Bureau of Indian Affairs, (No. 95-I-1402) (Sept. 30, 1995) at p. 5. The Inspector General found that WIP budgets would exclude the “costs of needed capital improvements...” thus creating a situation where “... maintenance was performed only on an exceptional basis, whenever funds were available to the Project.” Id. at p. 6. The Inspector General concluded that “...[t]he lack of adequate maintenance, combined with the increased age of Project facilities, has resulted in the deterioration of the Project.” Id. This was followed by a later GAO report on WIP. See, Indian Programs, BIA’s Management of the Wapato Irrigation Project, GAO/RCED-97-124 (May 1997). Most recently the BIA has released a report prepared for it by Dowl HKM which estimated that the cost of rehabilitation and replacement of failing WIP facilities to be between 136 and 276 million dollars in 2013 dollars. See, Engineering Evaluation and Condition Assessment, Wapato Irrigation Project, Vol. 1 (Oct. 2013) at p. vi (Executive Summary).

Part of the problem is due to the age of the Project. However, this problem was exacerbated by the Department of Interior’s decision in the early 1980’s to classify the Wapato-Satus Unit as “financially able to pay the full cost.” Report of the Current Status of Indian Irrigation Projects Administered by the Bureau of Indian Affairs (May 1988) at p. 23, 25. The Wapato-Satus Unit was arbitrarily listed as a Category I project which the BIA called one that is “...self-supporting, and water users are required to pay the full cost of operation.” Id. at p. 23. But WIP was never self-supporting. Hundreds if not thousands of acres of Indian land within the Wapato-Satus Unit have never been irrigated resulting in less land producing adequate funds to pay O & M.¹

1. Indeed some Tribal and individual lands that were designated for the delivery of WIP water were known to be marginal lands at the time they were included and have rarely or never been irrigated.

Until the 1980's, appropriated funds subsidized the operation and maintenance costs for this idle land. The cessation of annual appropriated funds in the 1980's unfortunately coincided with the increase of idle lands. Marginal lands had previously been planted with sugar beets. When the sugar beet industry collapsed in the Yakama area about the same time, the idle lands increased dramatically. The U.S. should have determined then that WIP was no longer self-supporting (without conceding it ever was) and started providing appropriated funds but failed to do so. This meant that there were fewer funds from O & M coming into WIP to pay for its operation precisely at the same time that federal appropriations also stopped.²

While there has been disagreement with BIA concerning the causes of the deferred maintenance problem on WIP and the liability of Indian owners of idle land to pay the O & M, there is no disagreement about the underlying deferred maintenance problem. Indian people and the Yakama Nation itself have been unwilling to pay O & M on this long term idle land (including land that has never been irrigated) merely to subsidize the federal government and non-Indian farmers. In many cases WIP cannot even deliver water to these idle lands due to deteriorated or non-existent delivery infrastructure.

The deferred maintenance has helped cause the following problems among others:

- a.) Supplies of water delivered through WIP are increasingly unreliable due to deteriorating infrastructure. Last year there was a failure of pumps on Unit 2 which caused a delay and failure to deliver water to certain trust and fee lands serviced by the Unit 2 Canal of WIP. Many other key facilities critical to the operation of WIP are in a similar state of

2. The fact that the BIA would charge Indian land owners O & M fees for water delivery on lands that had never received any water was confounding to the Indian land owners. Since the land a) wasn't getting any water; and b) wasn't generating any income from crops to pay O & M, many of the land owners didn't or couldn't pay their assessments and there were no longer federal funds to help make up the difference.

disrepair. For example, the Main Diversion headgates and flow control system are failing making it difficult to open and close the gates and regulate diversions from the Yakima River.

- b.) Leaky, unlined delivery canals have made irrigation deliveries more difficult and inefficient. Lack of annual cleaning and maintenance programs for these canals exacerbate these problems.
- c.) An increasing inability to convey irrigation water within the WIP delivery system has made it more difficult to fully deliver water to idle designated trust and allottee lands. This has led to parcels designated for delivery not being leased and a loss of assessed income to the WIP.
- d.) Antiquated diversion structures and leaky, unlined delivery canals result in poor water management and conveyance losses. This has required the diversion of more water to meet irrigation requirements on Ahtanum, Toppenish and Simcoe Creeks. Downstream from the diversion points the project spills canal water and discharges polluted return flows to Toppenish and Simcoe Creek, then diverts these return flows onto other portions of the WIP Project thus often impairing other natural resources in these Creeks and degrading Cultural sites. While instream flow for fish and other aquatic life is senior in priority to all irrigation rights, pressure to divert extra water for irrigation inevitably puts pressure on the environment and the Yakama Nation's natural and cultural resources. The Wapato Irrigation Project has a profound impact on Toppenish Creek and its tributary Simcoe Creek, which harbor their own distinct population of steelhead trout. Ahtanum, Toppenish and Simcoe creeks are used as both a water supply and a waste conduit by the Project. The Yakama Nation has conceptual designs for using natural stream water more efficiently, and for rerouting Project spills and return flows

directly to canals for use on Project lands without entering these natural streams, but the Project lacks the funding to fully develop and implement them.

III. CONCLUSION

The chronic deferred maintenance can be reduced if Congress does the following:

- a.) Adopts S. 715, particularly Title IV, so as to allow access to the Reclamation Fund (which now has over \$11 billion dollars in it) to be used to address deferred maintenance on Indian Irrigation Projects and to identify WIP as a priority project for the use of these funds.
- b.) Amend the Yakima River Basin Water Enhancement Project (YRBWEP), P.L. 103-434, to increase funding levels for proposed WIP improvements to account for inflation and projected increased project costs. YRBWEP currently provides \$23 million in authorization for WIP improvements. YRBWEP was enacted to address some of the water availability and fisheries issues both on and off Reservation. Unfortunately, this authorizing language for the Yakama Reservation, which was passed during the 103rd Congress, does not provide for adjustments to current day dollars. This lack of adjustment to current day dollars is inconsistent with other sections of YRBWEP which do provide adjustments for inflation for other portions of the Act. We believe that this exclusion of the WIP improvement project funding from having an inflation adjustment was a technical oversight. This is an important issue to resolve because funding of the *Priority Irrigation Water Conservation and Management Measures Plan for the Wapato Irrigation Project* (Priority Measures Plan)³ developed through the YRBWEP program will require

3. The Plan was partially certified by the Secretary of Interior for funding and implementation through the YRBWEP. Its major components consisted of upgrading the Satus Unit of the WIP through installation of a new downriver pumped diversion on the Yakima River and piping water to users in the Satus, improved measurement facilities to enable better Project water management and measurement of on-farm water deliveries, development of a

approximately \$53 million (in 2004 dollars) to complete. The Priority Measures Plan was developed to identify priority items for WIP conservation and improvements after a much more comprehensive list of rehabilitation and reconstruction items for WIP were determined to exceed the YRBWEP authorization. Thus a shorter (although certainly not complete) list of priority items was identified. Without the ability to adjust the original \$23 million authorized for this project for inflation and provide an increase in the original authorization limit amount, YRBWEP will not provide the necessary funding to complete the construction of the conservation measures outlined in the WIP Priority Measures Plan.

c.) Congress should also request that the Secretary of the Interior consult concerning the YRBWEP Priority Measures Plan and help implement this so as to address the underlying WIP problems. The Priority Measures Plan was partially certified on August 28, 2006 in a letter from the Secretary's office. However, the Secretary did not at that time certify two components of the Plan concerning a change in the WIP operation and maintenance rate structure and a plan to facilitate water leasing and transfer within the Reservation. The Secretary has agreed to continue to work on this without certification to address the WIP structural problems. We ask your help in facilitating resolution of these issues and provide authorized funding for these key components of the Wapato Irrigation Project.

tiered O&M assessment classification for irrigated parcels and creation of a water transfer/leasing system to enable irrigation water transfer within the WIP.