

Colville Tribal Water
Rights
Meeting with
Colville Business
Council
October 3, 2023



Scope of Tribal Water Rights Claims

Aboriginal Water Rights

- To support traditional water uses, including hunting, fishing, trapping and gathering.
- Also to support traditional economic activity.
- Time immemorial priority.

Federal Reserved Water Rights

- To support the Colville Indian Reservation as the Tribes' permanent homeland. Unlike state law claims, tribal federal reserved rights include future needs and uses.
- Includes claims for agriculture, DCMI, instream flows, mining, timber, livestock, cultural purposes and wildland firefighting.

Indian Water Rights

- Federal reserved and aboriginal water rights of Indian tribes are special: they cannot be lost by non-use.
- “Use it or lose it” does not apply to Indian water rights which are protected under federal law.

Why did we start this process?

Trends in water use locally and across the west, and the timelines typically required to litigate or settle water claims.

Salmon reintroduction in the Upper Columbia River.

Additional pressures on water supply from climate change.

CRSO EIS and CBHP and other hydro project proposals.

Washington issues water permits without considering unquantified tribal water rights.

Uncertainty around the Columbia River Treaty.

Federal court

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graph TD; A[Federal court] --> B[State court]; B --> C[Settlement without litigation]; C --> D[Do nothing, maintain status quo];
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State court

Settlement without litigation

Do nothing, maintain status quo

Review of options

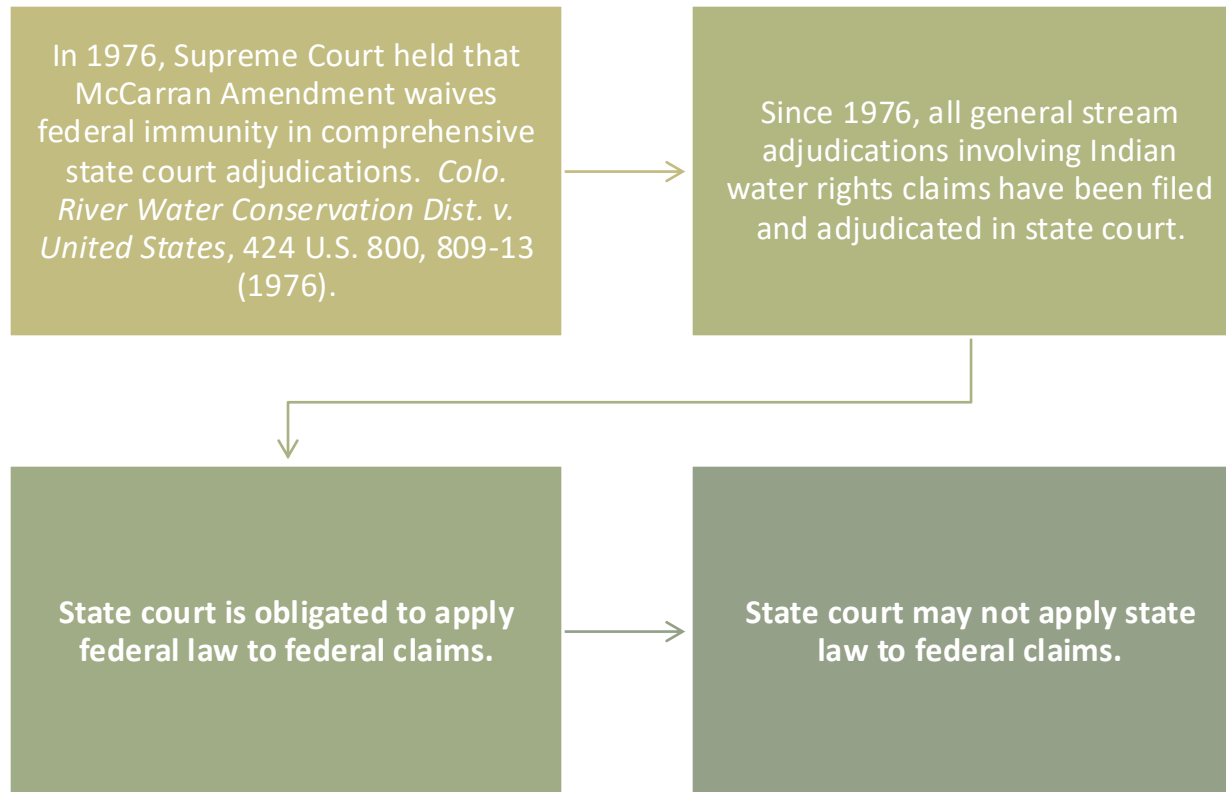
Review of options

Litigation:

- McCarran Amendment requires **comprehensive adjudication** before United States' immunity is waived
- U.S. is a necessary party
- Same requirements whether in federal or state court

Settlement without litigation: U.S. doesn't support because can't bind all necessary parties to settlement without underlying litigation.

Past and current state of Indian water rights



Indian water rights adjudications in state court

Washington v. Acquavella: In 1977, Yakama Nation attempted to adjudicate water rights of Yakima River system in federal court, but **federal court stayed the case in deference to state court action** that Washington Department of Ecology had filed *later* that same year.

In re Little Colorado River: In 1979, Navajo Nation filed suit in federal court seeking declaration of water rights in LCR Basin. **Federal court stayed its proceedings pending the outcome of the LCR adjudication in state court.**

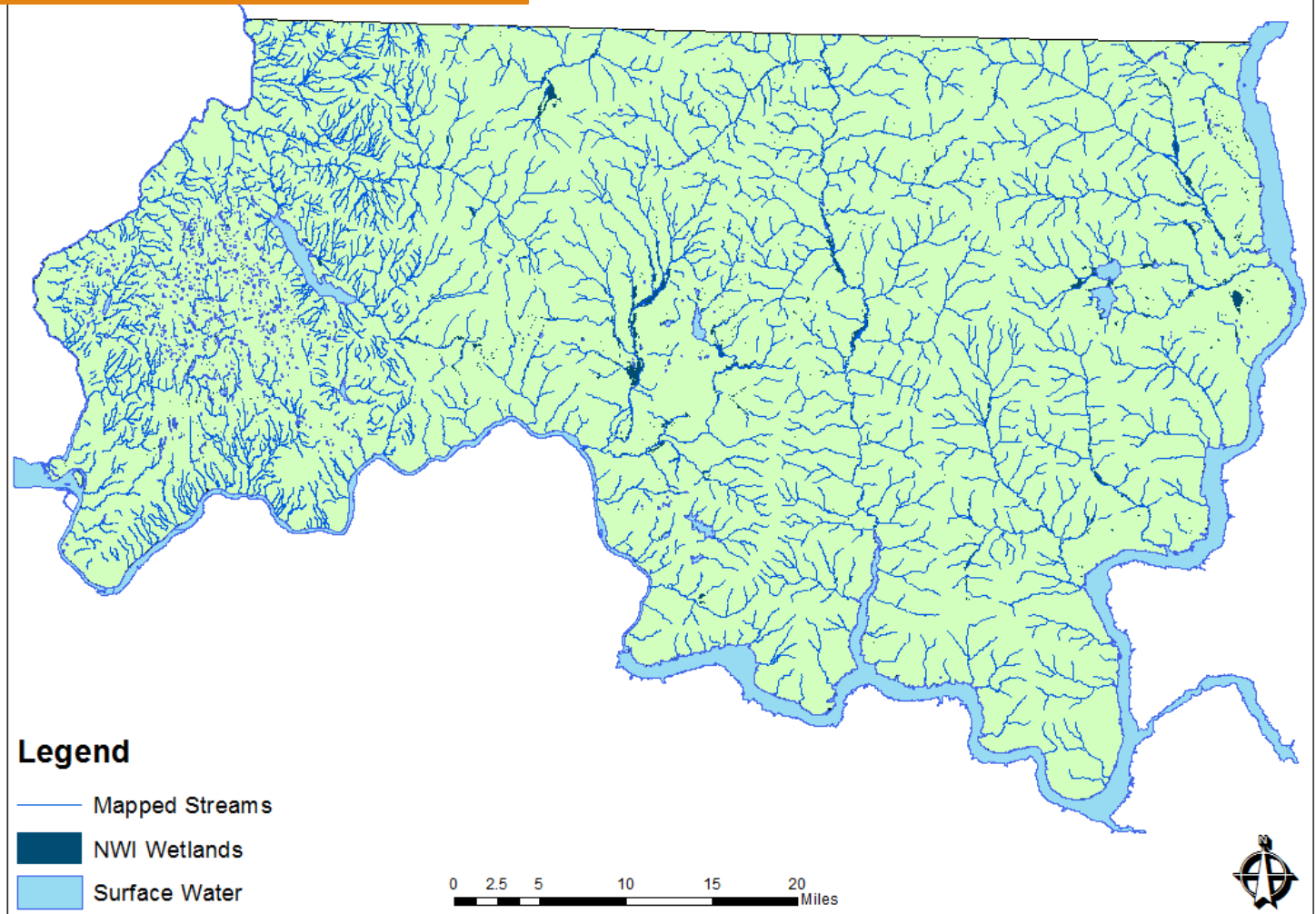
In re Gila River: Beginning in 1974, state water right claimants initiated several suits in state court to adjudicate water rights in the Gila River watershed. In 1979, several affected Indian tribes filed suit in federal court. **Federal district court dismissed the federal court actions and remanded back to state court, which the Supreme Court affirmed in *San Carlos Apache Tribe*.**

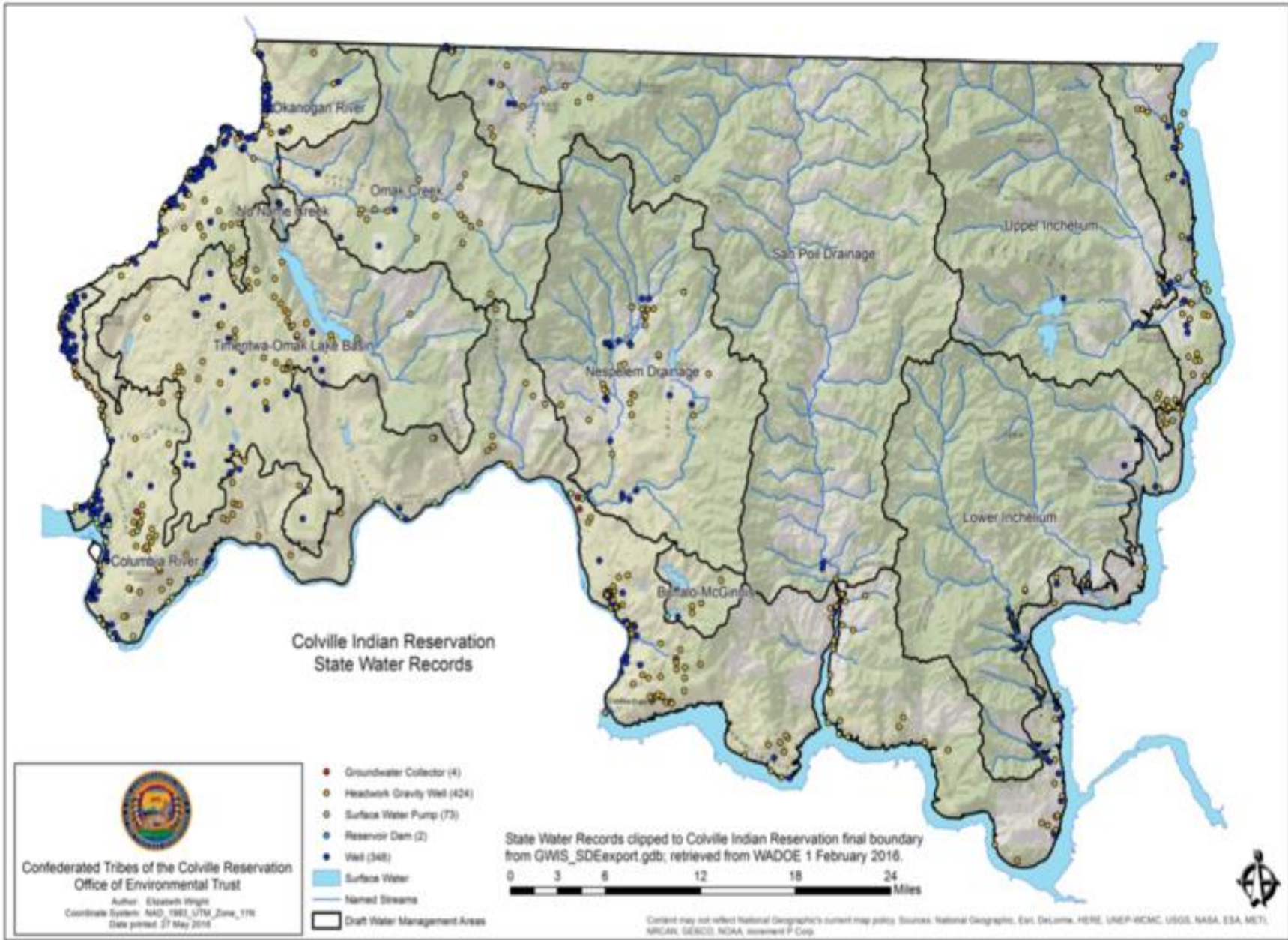
Indian water rights adjudications in state court

In re San Juan River: In 1972, U.S. Filed suit in federal court to adjudicate water rights of two Colorado Ute tribes to the San Juan River. A defendant subsequently filed suit in state court. **Federal district court abstained in deference to state court proceeding, which supreme court affirmed in *Colorado River*.**

Big Horn River: In 1977, Wyoming filed suit in state court to adjudicate all water rights of Big Horn River system. U.S. Removed case to federal court, but **federal court granted state's motion to remand back to state court.** In 2014, **state court entered a final decree concluding the adjudication.**

- 2,671 miles of river and stream
- 9,535 acres of lakes
- 28,496 acres of wetland
- 36,100 acres of Columbia River reservoirs



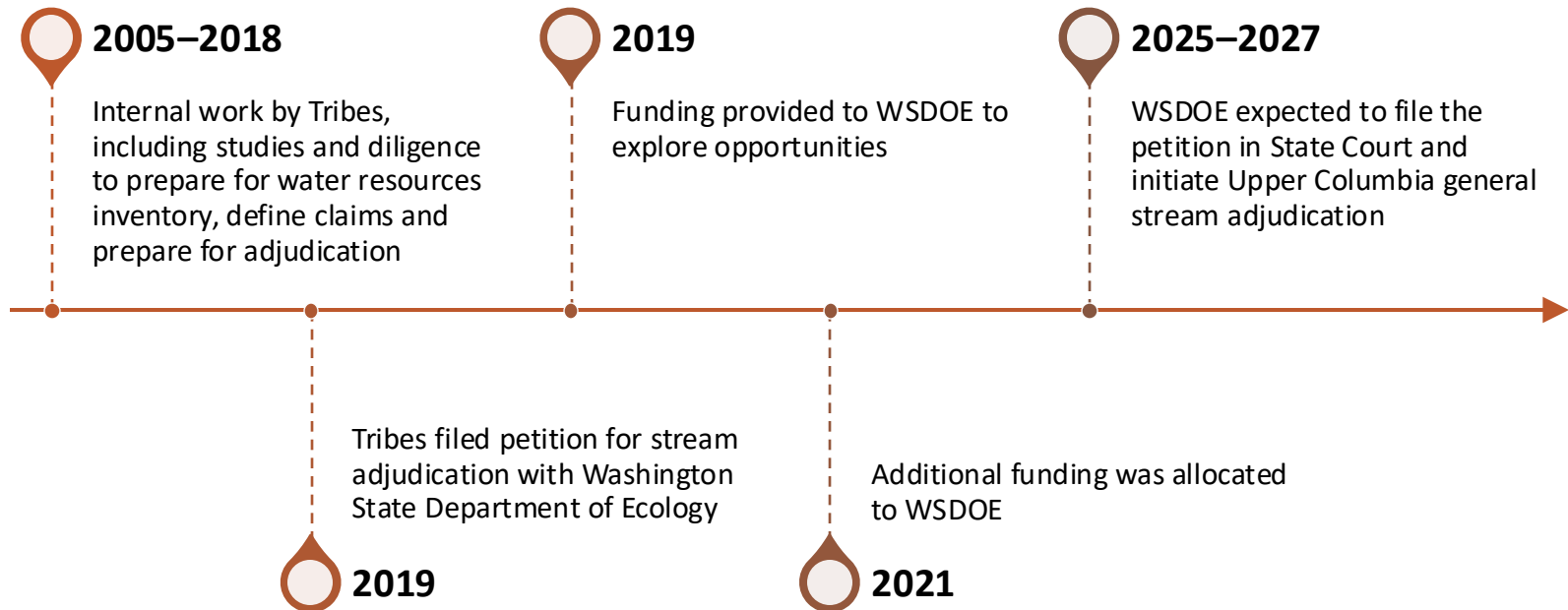


Confederated Tribes of the Colville Reservation
Office of Environmental Trust

Author: Elizabeth Wright
Coordinate System: NAD_1983_UTM_Zone_11N
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Content may not reflect National Geographic's current map policy. Sources: National Geographic, Esri, DeLorme, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, iSwatland P Corp

Important dates



Upper Columbia Adjudication



In 2019, Tribes determined to request State of Washington to commence general stream adjudication to determine Tribes' water rights, and all water rights that could affect Tribes' rights.



State court general stream adjudication is the gold standard for Indian and federal water rights adjudication.



Allows enforcement of priority of Indian rights under federal law over non-Indian rights under state law.



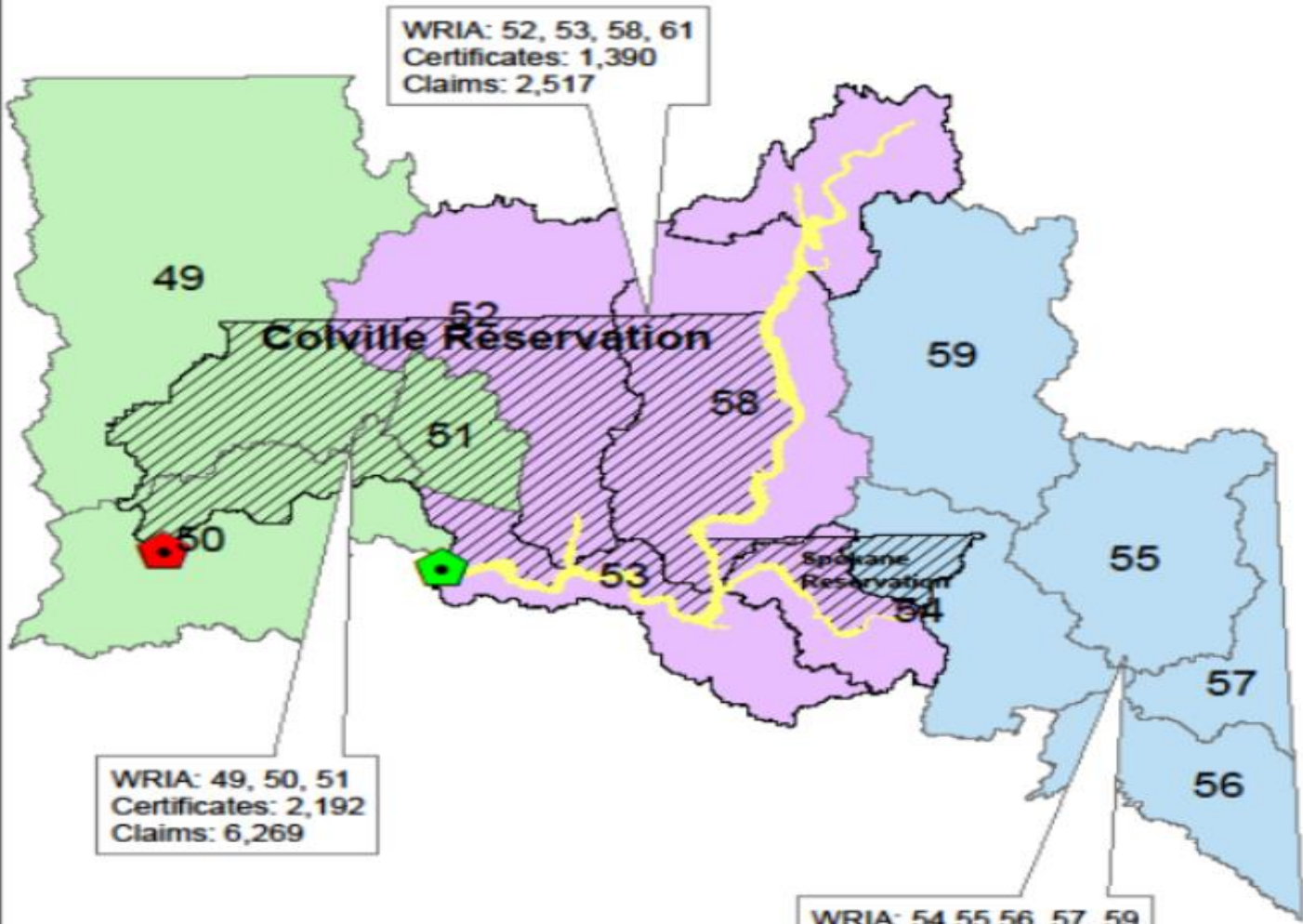
Responsibility on state to join all claimants so that adjudication is comprehensive.

Commencement of Adjudication

Funding is included in the Governor's budget to file the Upper Columbia adjudication in the next biennium (25-27).

Federal assessment team has been approved, and members of team have met with Colville and Spokane Tribal Councils.

Once adjudication filed in court, all necessary parties (Tribes, US Government, State, other Tribes, individuals) will be joined.



WRIA: 52, 53, 58, 61
Certificates: 1,390
Claims: 2,517

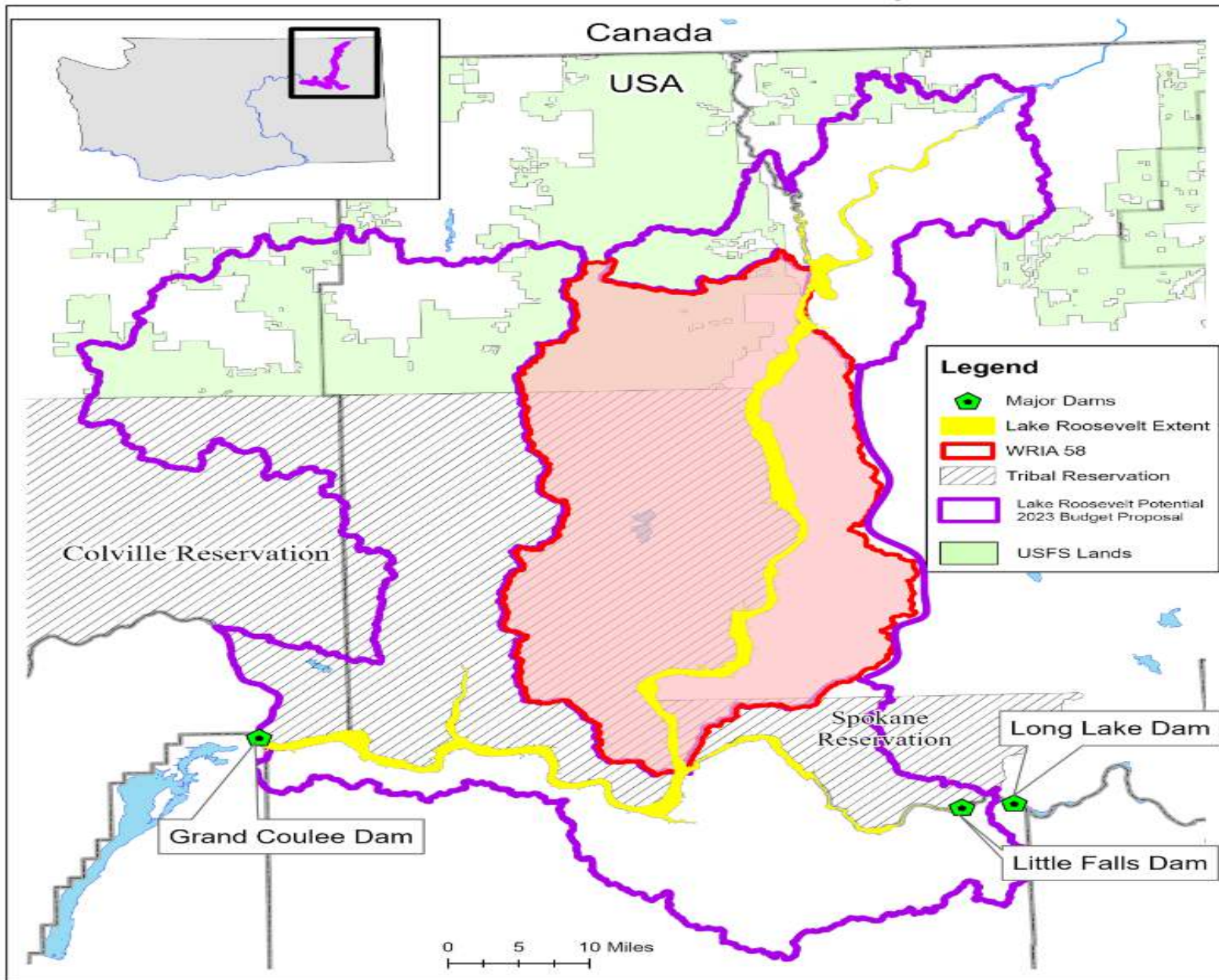
WRIA: 49, 50, 51
Certificates: 2,192
Claims: 6,269

WRIA: 54, 55, 56, 57, 59
Certificates: 4,108
Claims: 12,331

-  Grand Coulee Dam
-  Chief Joseph Dam



Lake Roosevelt Potential Proposal



What is a Federal Assessment Team?



United States assembles representatives from Department of Justice and Department of Interior to assess Tribes' water needs.



Upon request of an Indian Tribe, Working Group on Indian Water Settlements appoints assessment teams to help determine whether to appoint a Federal Negotiation Team upon the request of an Indian tribe.



Appointment of a Federal Assessment Team helps United States better understand nature and extent of a tribe's water rights claims, position and interests of various parties, and make transition to a Federal Negotiation Team more fluid.



Team members are expected to utilize expertise and ideas on technical, factual, and policy matters in assessing whether Federal Negotiation Team should be appointed.

Federal Assessment Team Appointed

On May 23, 2023, Working Group appointed Federal Assessment Team following Colville Tribes' request.

Spokane Tribe also requested team, and United States wishes to have one team for both Tribes.

Team has begun assessment process: Natural Resources Consulting Engineers is under contract with United States to perform recognizance level assessment of Tribes' claims.

Federal Assessment likely to transition to federal settlement team after the petition is filed

Next Steps

Federal Assessment Team kick off meeting in November

Update expert reports that Tribes prepared for development of petition

Work with United States' experts in its development of recognizance review of Tribes' claims

Work with United States and WSDOE to ensure McCarran Amendment compliance

Urge WSDOE to file Upper Columbia adjudication in 2027 to take advance of incumbent federal and state administrations

Plan for next round of district meetings to inform Tribal members



Questions
