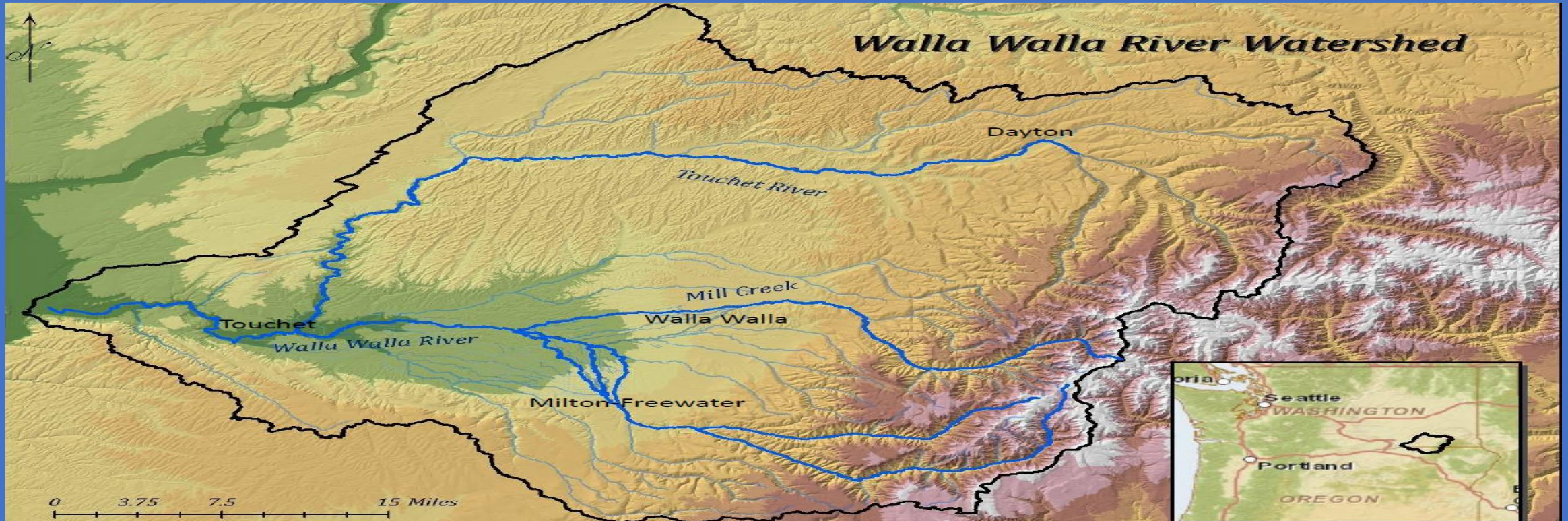


# Walla Walla River Watershed Transboundary Water Management Challenges & Opportunities



Chris Marks

DNR First Foods Policy Program Manager

Confederated Tribes of the Umatilla Indian Reservation

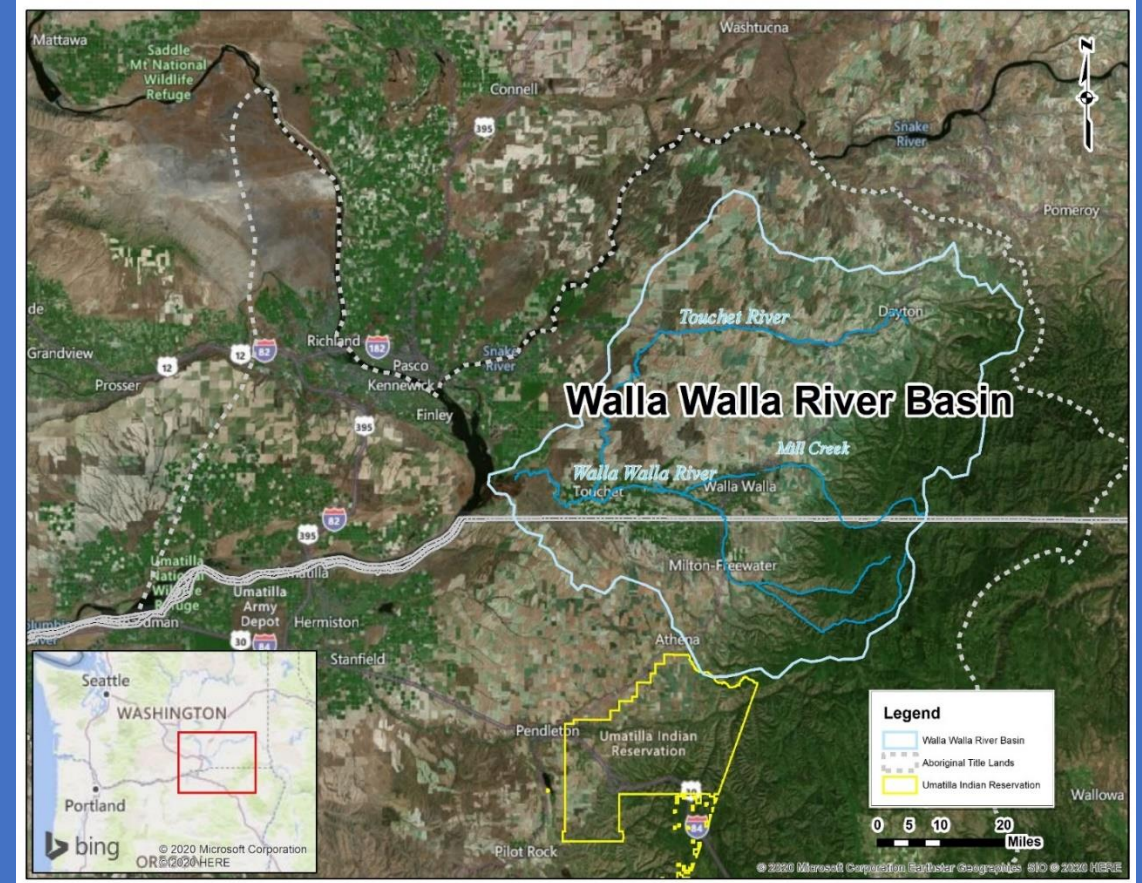
LCRG Annual Meeting

August 10, 2022



# Presentation Outline

- Walla Walla Watershed Background
- Transboundary Challenges
- Transboundary Opportunities
- Next Steps



# Walla Walla Watershed Background

Treaty signed on banks of Mill Creek by the Umatilla, Cayuse, and Walla Walla Tribes;

Treaty reserved right to take fish at ***“usual and accustomed stations . . . in common with citizens of the territory”***;

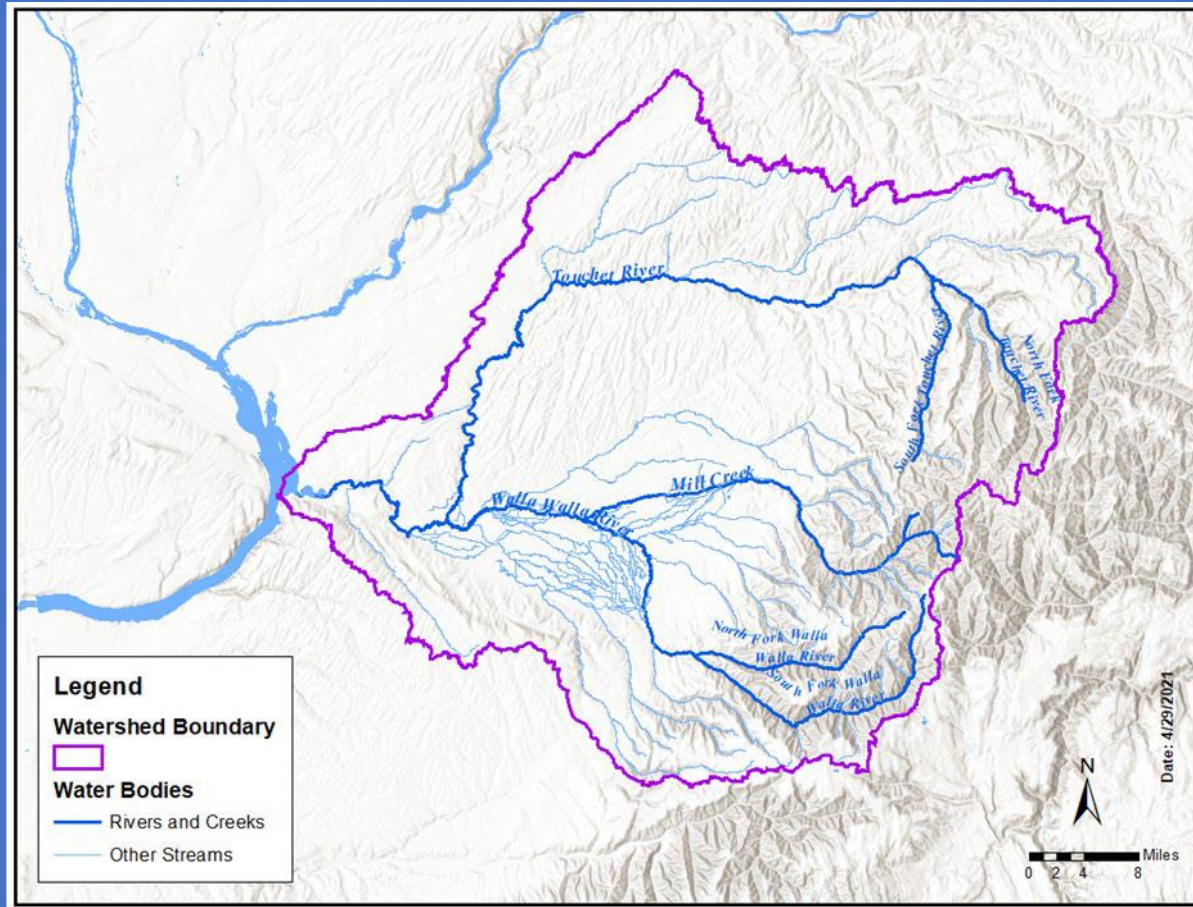
Inherent in this is the maintenance of habitat (such as instream flow) necessary for the right to be exercised;

Spring Chinook salmon, summer steelhead, and bull trout all important to Umatilla Tribes' culture and subsistence.





# Walla Walla Watershed Background



- Rain and Snow fed system
- Streamflow Discharge Variation
- Glacier & Flood Deposition
- Extensive Alluvial Aquifer
- Legal Complexity
- Agriculture Based Economy
- Growing Population

# Streamflow Discharge Fluctuations



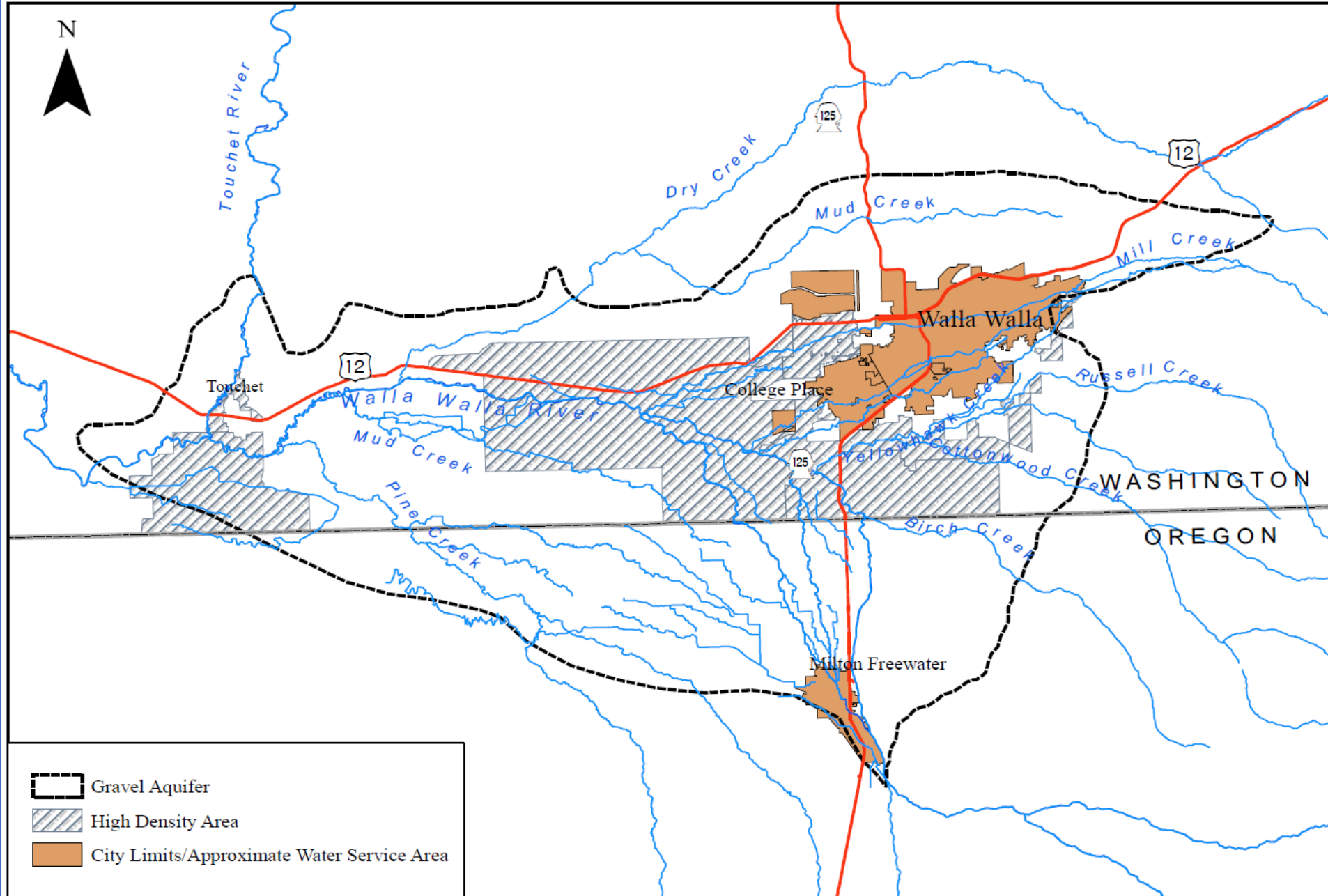
April 2019



June 2019



# Zoning and Approximate Extent of Gravel Aquifer in Walla Walla County



# Legal Complexity

- **1926 WA / 1932 OR Adjudication**
  - Determination for each water right on a source
  - Surface water only
  - Water supplies necessary to support CTUIR Treaty reserved rights were not considered
- **1936 US Supreme Court Washington v. Oregon**
  - Established that Oregon has priority over Washington
  - Adds complexity to an over-appropriated basin
- **1990's ESA Listings**
  - Bull trout (*Salvelinus confluentus*) listed as threatened in 1998 under 50 CFR § 17.31(a); Mid-Columbia summer steelhead (*O. mykiss*) follow suit in 1999
- **2007 WA Instream Flow Rule: Chapter 173-532 WAC**

# Transboundary Challenges: Water Supply

## Water Supply Over-Allocation Both States

- Groundwater
- Surface Water

## Separate State Water Laws/Limited Ability for Management Coordination

## Tribal Water Rights Not Formally Recognized

## ESA & Culturally Significant Species Needs Unmet

## U.S. Supreme Court Case

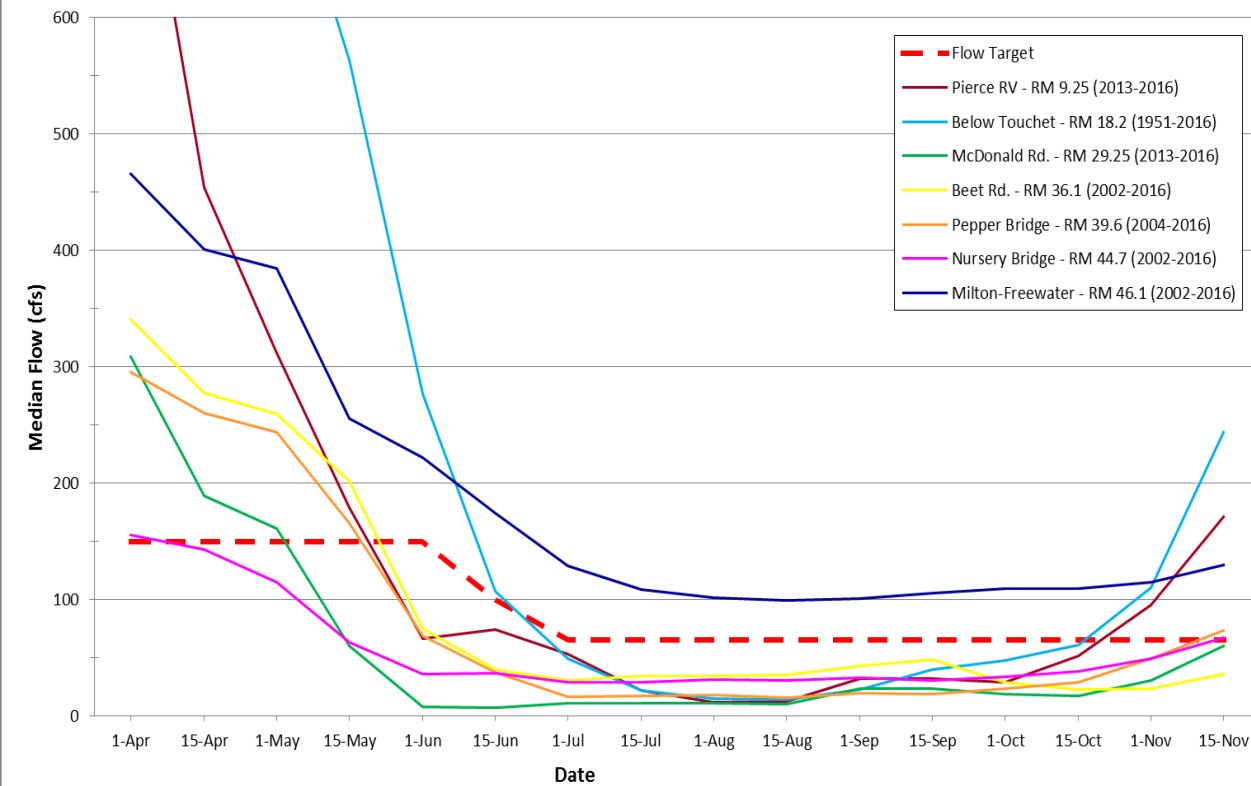
## Degraded Watershed Ecological Processes (Floodplain Connectivity/GW Recharge)



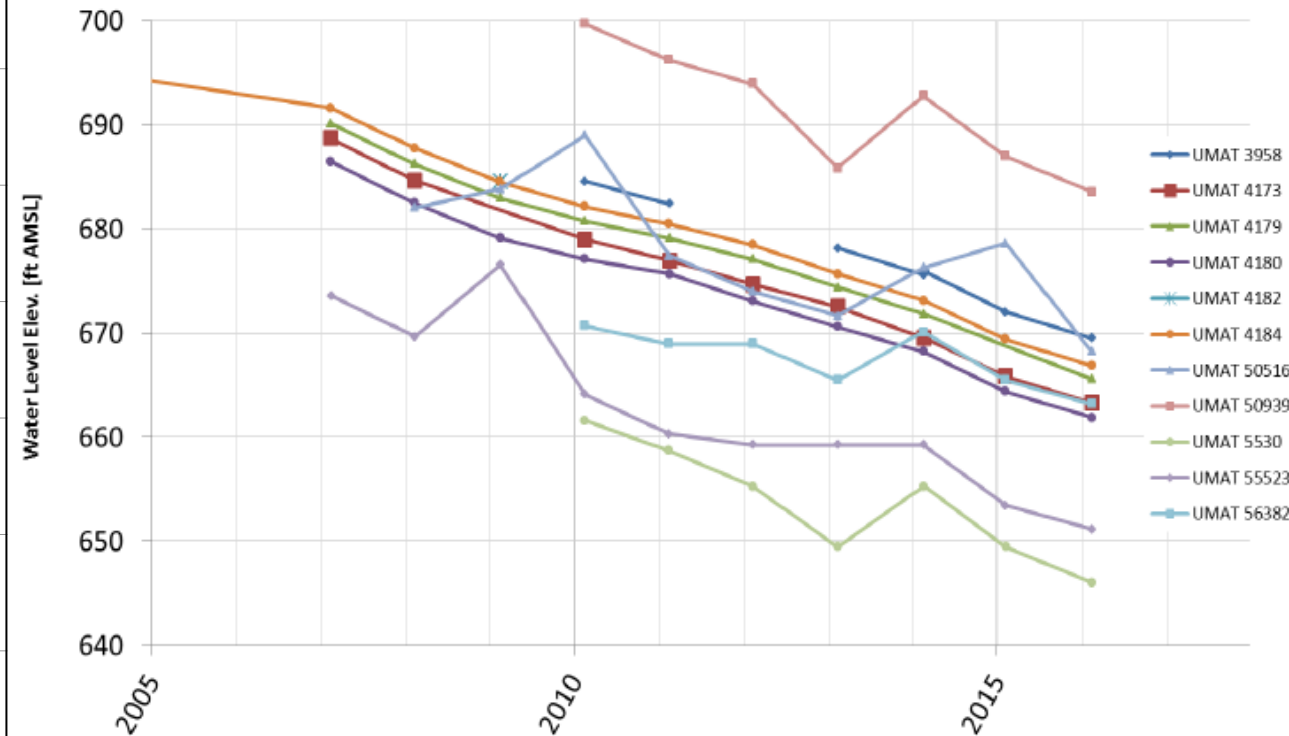


# Transboundary Challenges: Water Supply

**Walla Walla River  
Semi-Monthly Median Flow**



**Basalt Groundwater Declines**



# Transboundary Challenges: Floodplain



**5 Mile stretch Nursery Bridge Walla Walla River**



*Figure 11.—Walla Walla River in the 1964 flood showing meanders in a channelized section near Milton-Freewater. (Source: OSU Archives)*



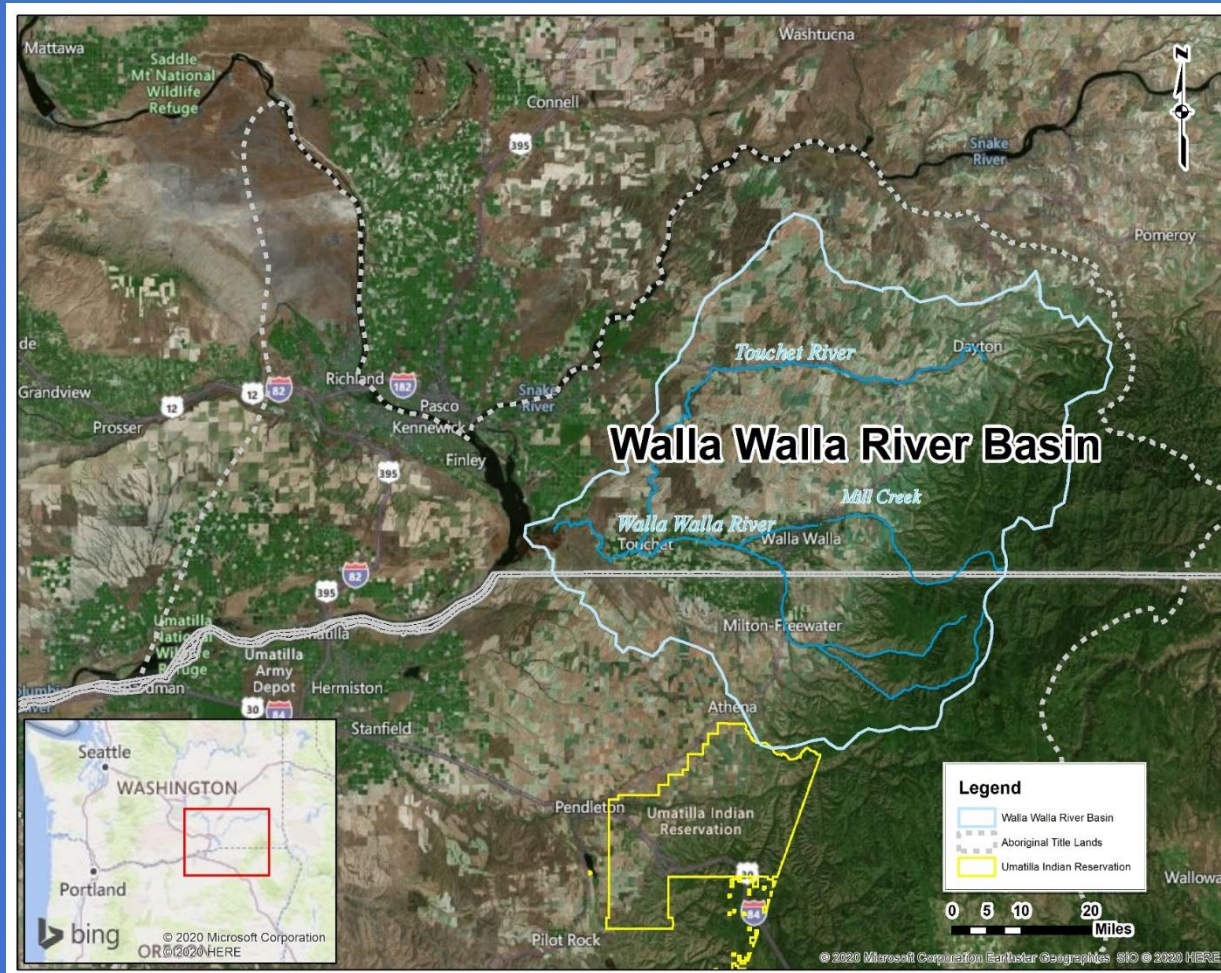
# Transboundary Challenges: Floodplain



Walla Walla River

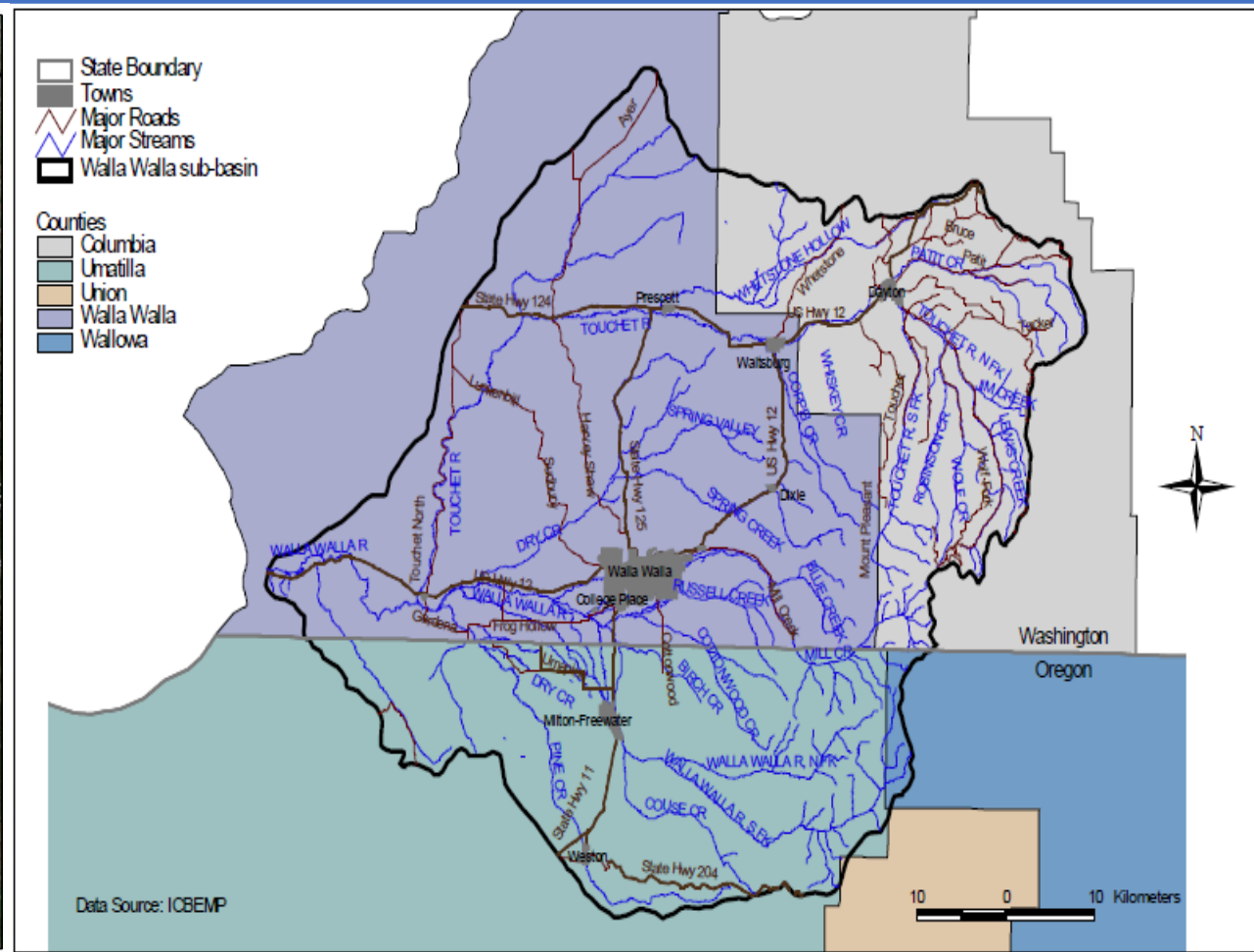


# Transboundary Challenges: Jurisdiction



Bi-State Watershed

CTUIR Aboriginal Title Lands



Local Governments

Federal Government



# Transboundary Challenges: First Foods

Treaty Rights Links



**First Foods sustainability;**  
**First Foods that are safe to eat;**  
**Protected, useable access; and**  
**Ability to celebrate, share First Foods.**

# Transboundary Opportunities

- ESA Listings and subsequent lawsuits = call to action

## *Collaboration or Litigation?*

- CTUIR asked to explore Umatilla Basin model in Walla Walla
  - Co-sponsored Walla Walla Basin Integrated Flow Enhancement Study with US Corps of Engineers
- ESA Civil Penalty Agreement – Good Faith Foundation
- Local Salmon and Water Management Modifications and Pilot
  - Salmon Recovery Plan
  - Instream Flow Rules, closures, exempt well limitations
  - Walla Walla Watershed Management Partnership

6-7-04.

U.S. FISH AND WILDLIFE SERVICE,	)	Civil Penalty Settlement
Complainant,	)	Endangered Species Act
v.	)	16 U.S.C. 1540(a); 50 CFR Part 11
Hudson Bay District Improvement Company, Walla Walla River Irrigation District, and Gardena Farms Irrigation District #13	)	FWS.PN.2731
Respondents.	)	

**THIRD AMENDED CIVIL PENALTY SETTLEMENT AGREEMENT**

The undersigned parties to this civil penalty proceeding hereby enter into this THIRD amended agreement ("Agreement") as a complete and binding resolution of any civil penalty liability in this matter. Pursuant to paragraphs 4 and 5 of the August 4, 2003, settlement agreement between the parties, the parties hereby voluntarily enter into this Agreement. This Agreement supersedes the June 9, 2000, June 27, 2001, and August 4, 2003, settlement agreements.

The United States Fish and Wildlife Service (Service) contends that Respondents Hudson Bay District Improvement Company and the Walla Walla Irrigation District knowingly diverted flows of the Walla Walla River during the summers of 1998 and 1999 at or near the Cemetery Bridge Dam in Umatilla County, Oregon, and Respondent Gardena Farms Irrigation District #13 (Gardena Farms) knowingly diverted flows from the Walla Walla River during the summers of 1998 and 1999 at or near the Burlingame Dam in Walla Walla County, Washington.

The Service further contends that the foregoing diversion of water flows of the Walla Walla River by Respondents caused the take of bull trout during both 1998 and 1999. The bull trout (*Salvelinus confluentus*) is a species of wildlife which is listed in 50 CFR § 17.11 as a threatened species. A proposed rule to list the Columbia River distinct population segment of bull trout as a threatened species was published in the Federal Register on June 13, 1997. A final rule listing this bull trout population as a threatened species was published in the Federal Register on June 10, 1998, and became effective on July 10, 1998. Upon the listing effective date, the provisions of 50 CFR § 17.31(a) prohibited unauthorized taking of bull trout. The federal Endangered Species Act (ESA) makes it unlawful for any person to violate any regulation pertaining to any

Page 1 U.S. Fish and Wildlife Service v. Hudson Bay District Improvement Company, Walla Walla River Irrigation District, and Gardena Farms Irrigation District #13 FWS PN 2731



# Transboundary Opportunities

## Collaboration is Difficult—Success not Guaranteed

- No Meaningful Flow Restoration
- No Solution to Jurisdiction Challenges
- Increased Groundwater and Climate Change problems and awareness

## *Collaboration or Litigation Revisited*

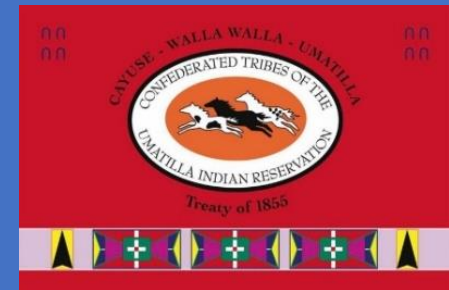
## Assess Strategies—Build Upon Past Planning & Coordination— Modify Based on Lessons Learned

- Enhance Sovereign Government Coordination
- Improve Legally Defensible Data for Decision Making
- Develop & Implement Basin-Wide Strategic Plan



# Transboundary Opportunities: Tri-Sovereign Coordination

- Long Term Commitment to Walla Walla Basin watershed health
- Retain quality of “The Land of Many Waters”
- Achieve meaningful fish recovery
- Balance both instream and out-of-stream needs
- Manage surface water & groundwater conjunctively across the bi-state Walla Walla Basin
- Provide Support and Leadership to guide complex legal, technical and funding challenges



# Transboundary Opportunities: USGS Basin Study

- Multi-year cooperative groundwater study in the Walla Walla Basin with the USGS, WA ECY, and OWRD
- Obtain an understanding of the groundwater-flow system
- Emphasis on the interaction of groundwater and surface water and related hydrogeologic controls
- Concerted public engagement and outreach components





# Transboundary Opportunities: Walla Walla 2050 Strategic Planning

## Walla Walla Water 2050 Strategic Plan

- 30-year integrated water resource management approach
- Integrates goals and solutions from the basin's diverse stakeholders in both Washington and Oregon
- Strategic Plan Advisory Committee and Workgroups
- Explore interstate agreements
- Phase 1: Plan Developed/Adopted June 2021
- Phase 2: Implementation underway



# Collaboration Next Steps

- **State Adoption/Acknowledgment of Strategic Plan**
  - Draft WA Legislation for 2023 Session
  - Strategy for OR to-be-determined
- **Refine & Advance Strategic Plan Actions**
- **Seek Strategic Plan Federal Partner**
  - Plan implementation and cost-share partner
  - BOR WaterSmart Basin Study Proposal
- **Advance bi-state regulatory framework**



# Thank you!

Chris Marks

First Foods Policy Program

Department of Natural Resources

Confederated Tribes of the Umatilla Indian Reservation

[chrismarks@ctuir.org](mailto:chrismarks@ctuir.org)

(541) 429-7213