

# The Venn Diagram of Planning

Tom Ring, Hydrogeologist

Yakama Nation Water Resources Pgm

AWRA-WA State Conference

Oct 2<sup>nd</sup>, 2019

Me before watershed planning



Me after watershed planning

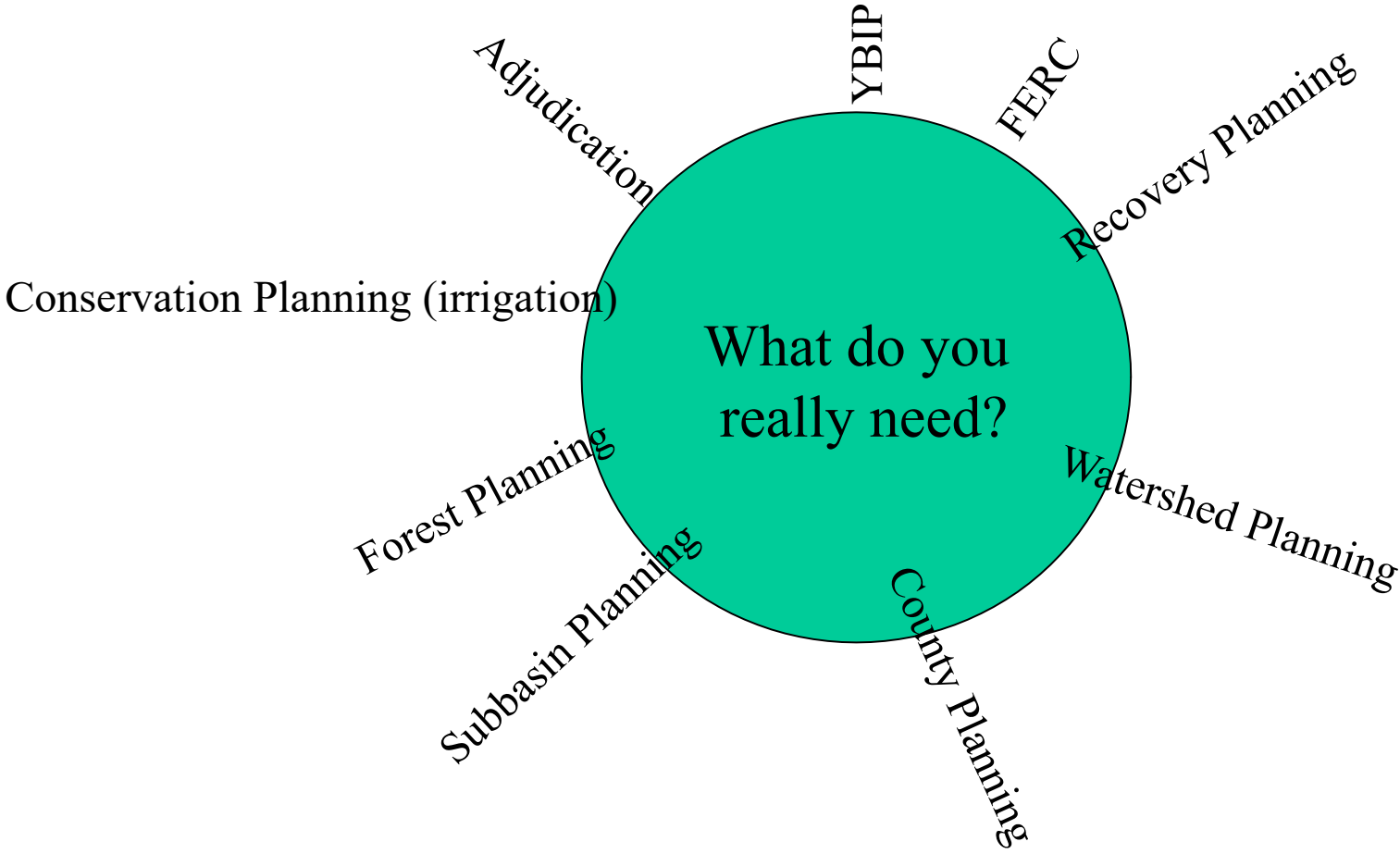


# The Ever Important Disclaimer

- There is no “short timer” exemption from this
- I do not speak for or represent the Yakama Nation
- All opinions expressed herein are my own except those I plagiarized from more credible sources
- I have some experience with planning, both fruitful and otherwise

# The Venn Diagram

- Confession:  
This is not actually a Venn Diagram
- I'm not sure what I'm trying to say
  - Jackson Browne

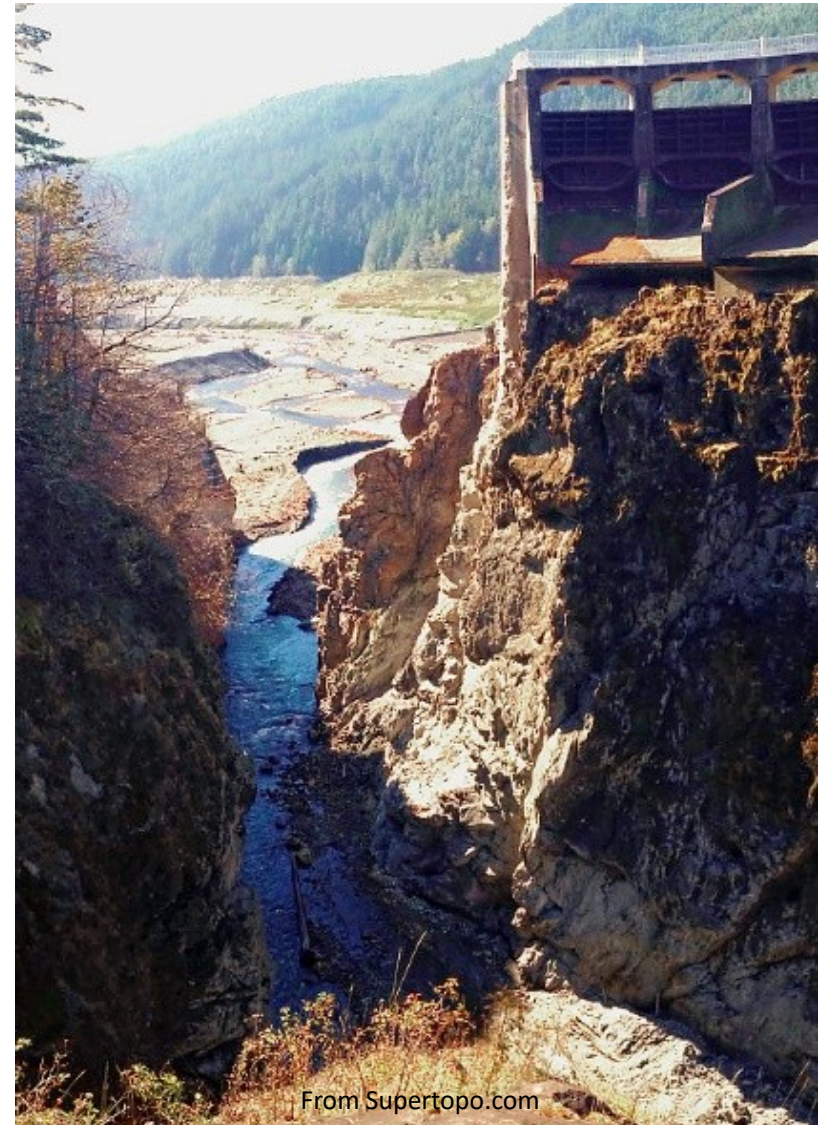




# How to Plan to Get Rid of Harmful Things Some People Really Like



Russ Busch and Rob Eloffson  
Lower Elwha Klallam Tribe



From Supertopo.com



# Planning to Satisfy Treaty Rights

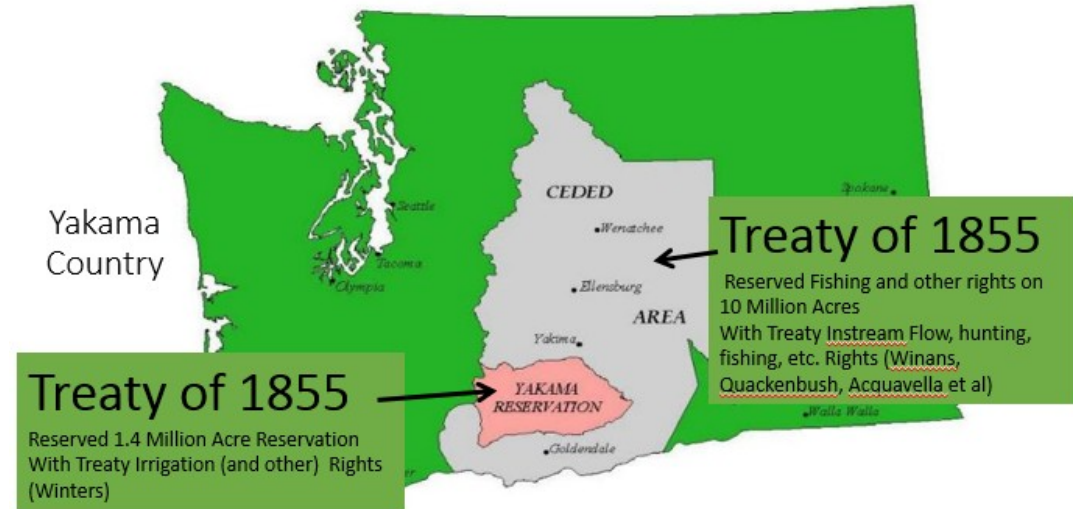
In 1890,  
Washington's  
Legislature  
passed a law  
requiring fishways  
to be built at  
dams "wherever  
food fish are  
wont to ascend."

<https://www.nwcouncil.org/history/FishPassage>



# Why do I Believe Watershed (or Other) Planning Can't Succeed Without Treaty Tribes?

- Protection of Treaty rights is a solemn obligation of federal gov. and “no principle of federalism requires the federal government to defer to the states in their protection”.
- Admission to Union had no effect on treaty rights, but imposed obligation to “observe and carry out the provisions” of the treaties.



*When the United States created the state of Washington, they didn't give us all the water. They held some back to meet pre-existing commitments. Everything we do as a State is floating on top of this unquantified sea of federal obligations.*

WA State Sen. Karen Fraser

# Planning

“Top Down”, “Bottom Up”, Middle Down, or Inside Out

- A justification offered by 2514 proponents was that we need “bottom up” planning rather than the “top down” planning where the Gods of Olympia dictate to the vassals in the counties.
- What we got in the Yakima Basin was middle down
- How did that work out?

# Disclaimer #2 Regarding Watershed Planning

- I did not start out to do a talk on Watershed Planning, but ...
- I did not have time to dig through the decades of historical stratigraphy in my office in preparing this talk.
- Descriptions of events described herein are based on the 20 year old recollections of a person who will be eligible for Medicare in 3 days .
- Therefore any errors or omissions are....what was I talking about...



# So Who Gets to Vote

## Let the Gerrymandering Begin

- **RCW 90.82.060** (3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and **(c) the water supply utility obtaining the largest quantity of water in each WRIA.**
- Roza ID, is the largest diverter from the upper Yakima WRIA but only delivers a small amount of water in the WRIA.
  - Roza diverts in Kittitas County, but all deliveries are in Yakima and Benton
- The largest water purveyor in the lower Yakima WRIA isn't SVID, it is WIP on the Yakama Res.
  - Interpretation: We meant state-based, not federal/tribal. Why? Simple.
    - Note: The US withdrew all unappropriated water in the Yakima basin in 1905. Although the ID participants in the Initiating Governments are state-chartered ID's, all of their water rights are in the name of the US. The judge had called the Yakima a "federalized basin".

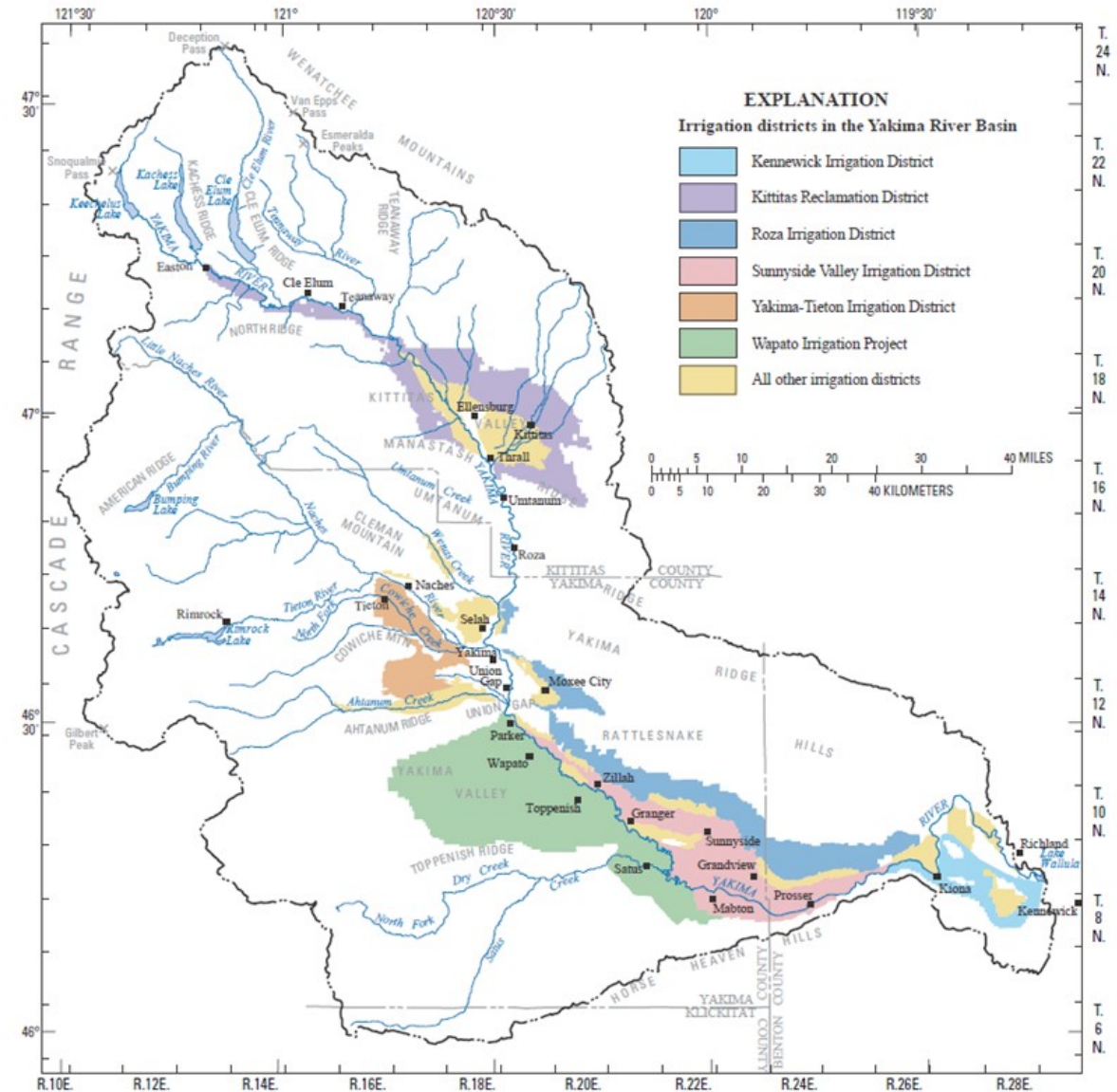


Figure 6. Surface-water irrigation districts, Yakima River Basin, Washington.

## Tribes under RCW [90.82.060](#)

If the IG's decide to buy a bus they have to invite you onboard.  
Your seat is back there.

- (4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.
- (5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

# Before the Tri-County Water Resource Agency

## The First Bait and Switch

- 90.82 gave priority funding to “Applications from existing planning groups that have been in existence for at least one year”. The Yakima River Watershed Council, a non-governmental voluntary association had been meeting for some time. Tri-County applied stating that they would use the Watershed Council as their planning unit. Based on that they received the largest grant in WA, especially large because there are 3 WRIA’s in the Yakima basin.
- Shortly after receiving the largest grant in the state (\$675k), Tri-County announced that they had determined it would be illegal for them to use the Watershed Council (something Ecology apparently hadn’t noticed) and they would instead “pluck key members” from the Watershed Council.

# Daily Record

ELLENSBURG, WASHINGTON ♦ WEDNESDAY, JULY 15, 1998 ♦ VOLUME 97 No. 168 ♦ 50 CENTS; 33 CENTS HOME DELIVERY

## Yakima River Watershed Council will close

By DAILY RECORD STAFF & AP

YAKIMA — An organization formed four years ago to create a collective vision for meeting Yakima River Basin water needs will cease operations before achieving its goal.

The Yakima River Watershed Council Inc. doesn't have enough money to complete its draft watershed management plan and will

past efforts, leadership and policies will continue in a similar watershed planning effort being undertaken by eight local governments in Kittitas, Yakima and Benton counties through the state watershed planning bill. County government leaders say they'll build on what the non-profit council has accomplished and invite its members to take part in the new effort.

But some are skeptical the new

**Council supporters say the loss of the watershed council means a return to the litigation that marked the 1970s, when money was spent on attorney fees, not solutions.**

protection of fish.

The Watershed Council membership of more than 800 individuals is made up of a broad cross-section of interests, including agriculture, business, finance, environmental groups and governments, including participation by Yakima Indian Nation representatives.

Some of the organization's nearly 50 volunteer board members blame a newer basin organization — the

ning unit for the watershed assessment and planning work. It appears to some officials making up the “initiating governments” under the new effort that there is no provision in the state law allowing all planning efforts to be turned over to a single agency.

Instead, the Tri-County agency will appoint their own multi-agency planning unit, which officials stress can include the entire membership

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Instead, the Tri-County agency will appoint their own multi-agency planning unit,



# Showdown in the Ecology Basement

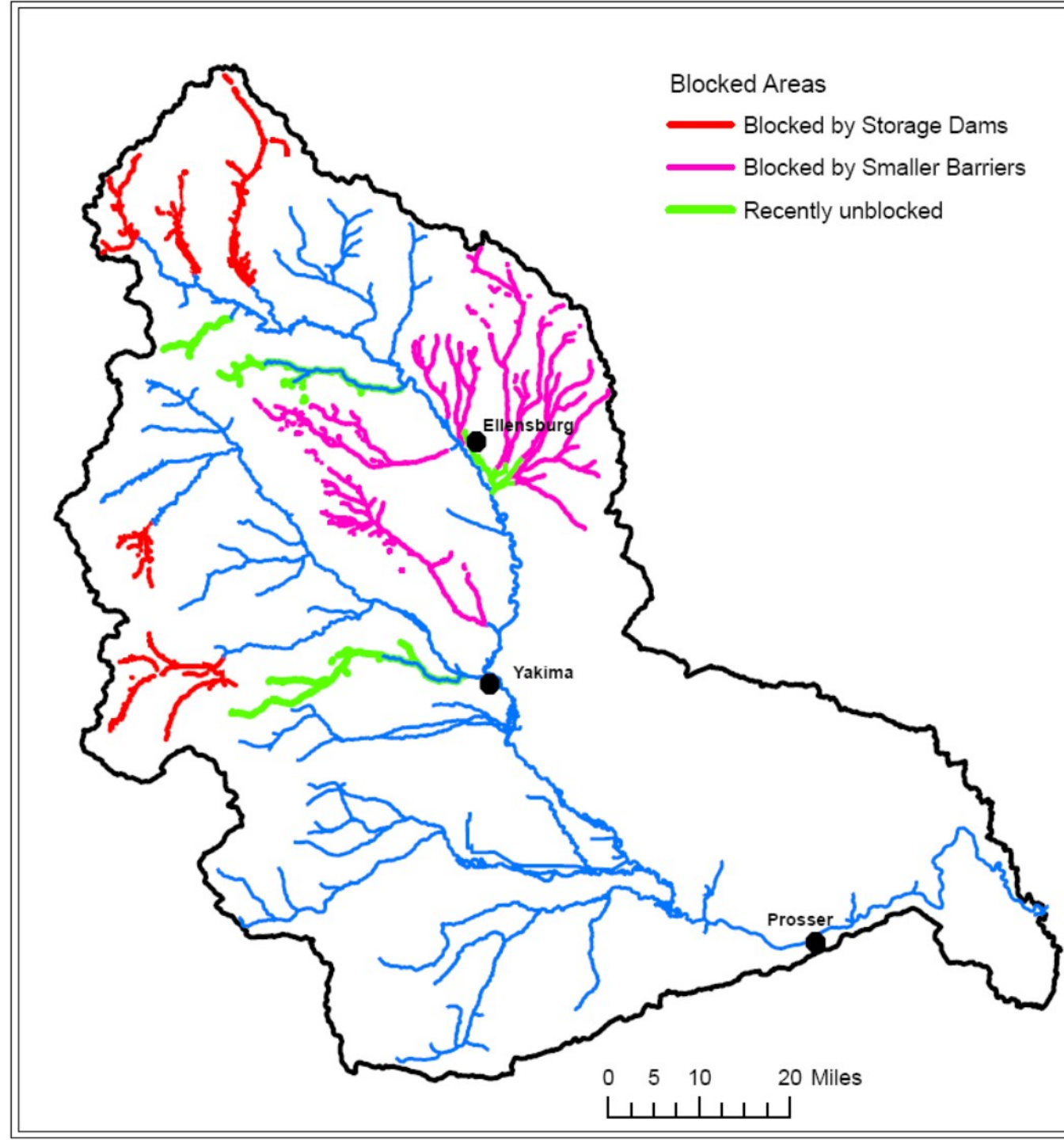
- “We invited the Yakama Nation and never heard back”
  - - An unnamed county commissioner named Max to Tom Fitzsimmons
- Not one penny more
- The Governance MOA: Consensus in Planning Unit, Tri-County Board limited to administration
- Various participants on Planning Unit prepared work plan including details on who would take lead on each section (e.g. Conservation Commission representative would lead writing of habitat section, I would lead Groundwater, etc.)
  - One dissenting vote on Planning Unit, no consensus
  - County Commissioner the next day: Oh boy, the Planning Unit didn’t have consensus, now we get to do dispute resolution
- Dispute Resolution aka bait and switch #2
  - Initiating Governments hand our work plan to out of basin consultants
    - “Need clean hands”, except where convenient
      - Groundwater handed to opposing expert witness in groundwater appeals
      - Habitat handed to irrigator expert witness in adjudication
- YN to Tri-County: If you do this, we must leave
  - 8 to 1: the last straw

# “We Can’t Not Give These Guys More Money”

- YN leaves (coincidentally YN, Ecology, Reclamation settle long pending groundwater appeals and commission the USGS Groundwater Study)
- Local legislators vanpool to Oly to demand governor make YN return to Tri-County, fire the Regional Director of WDFW, who had voted with YN, and give the groundwater study to Tri-County. Show trial at the Capital Theater.
- YN provides Governor 11 page chronology with 31 attachments documenting the history of YN attempt to work with Tri-County.
- Governor asks Jim Waldo to make a fact finding trip to Yakima
  - The Waldo Observation: Put them in the same room, they disagree about everything. Ask them separately what they want and they all say pretty much the same things.
- They didn’t not give these guys more money, lots more
- Kittitas County declines to sign on to the Watershed Plan
- The Bi-County Plan is adopted never to be seen again. The process became the product.

# What Didn't the Tri-County Plan Do?

- Tributaries: Too complicated
- Reservoir fish passage: Too hard?





# How the Failure of Watershed Planning Led to Successful Salmon Recovery Planning and Implementation

- Tri-County sought Lead Entity status for Salmon Recovery
- Unlike Watershed Planning the Salmon Recovery process requires tribal consent, which for obvious reasons the Yakama Nation did not grant
- The City of Selah reached out to YN staff
  - A guy in a cowboy hat and western suit came seeking support for Tri-County as Salmon Recovery Lead Entity so they could make sure the salmon recovery money went to farmers. Doesn't it seem like salmon recovery money should go to ...you know...salmon?
  - YN, Selah, and Yakima County created an salmon recovery area with just city limits of Selah ("WRIA or portion of WRIA"). Gerrymandered around all the Tri-County loyalists.
  - What about us, said the other cities and Benton County?
  - Showdown at Snoqualmie Pass
    - Solution: Take the YN-Selah-Yakima County agreement and put everybody else's name on it. Consensus.
- It's been working ever since.
- Lesson: The unquantified sea of federal obligations includes habitat for salmon guaranteed to tribes by Treaty. Perhaps they should be involved.

# Why Did Watershed Planning Work Where It Worked? Entiat and Wenatchee

- It only worked where people wanted it to work the way it was supposed to work
- Chelan County Commissioners had to be talked into Watershed Planning
- Rejection of Ecology Watershed Assessments e.g. Entiat
  - The infamous Entiat meeting
    - American Flags (made in China)
    - Ecology/WDFW inability to explain the findings in the assessment
    - Local group of citizens, federal agencies already in place
  - Relatively intact hydrograph (thanks in part to geology)
    - Commitment to maintain flow regime
    - New uses offset by habitat restoration (out of kind mitigation?)
- Respectful process
- YN helped defend the Wenatchee Plan in legislature

# The Methow Example

(not to be exemplified or hopefully repeated)

- “Canal leakage is a beneficial use of water”
  - “May” be beneficial unacceptable language to some
- USGS study
  - Leaky canals recharge groundwater (true)
  - More recharge equals more discharge (true)
  - More discharge = more streamflow (like in November)
  - Therefore diverting 80% of the flow of the Twisp River in summer and limiting adult salmon migration must be good for fish (ahem)
- When and where is waste bad?
- When and where is artificial recharge good? A legitimate question.
- MVID sues Ecology personnel by name
  - You need to calm down
    - Taylor Swift
- How can we do better? (leading question for later speaker)
  - How to proceed where the existing Plan is a problem



# Lessons Learned In The Methow

## Necessity is the Mother of Planning

- What do you really need?
- I'm an orchardist. I need 2.67 acre feet per acre and I don't care what you do with the rest of the water
  - MVID Board member after the settlement

# Then There Was The Klickitat

- What is a governmental entity
- Mosquito control district? Sure.
- Federally Recognized Indian Tribe? Gotta think about that one

## Lesson Learned #2

Why Waste Your Time Planning With People  
You Already Agree With?

“I want everyone here to find someone to invite to dinner. It has to be someone you really don't like.

Tom, you're having dinner with me.”

-Gary Chandler, former legislator



# Two Tributaries of the Yakima Basin Integrated Plan

- Following passage of the Columbia River Bill without any tribal participation, any hearings, or any opportunity for veto request letters
  - Jay Manning came to the Yakama Tribal Council and asked the Yakama Nation to propose a package of measures to fix the really big problems in the Yakima basin (this was several years after Watershed Planning had failed in the basin).
    - YN did so
    - Delivered proposal to Columbia River Policy Advisory Group

# The Other Tributary

- The Scene

- The parking lot of the Bureau of Reclamation in Yakima, Winter 2008. A freezing fog hangs heavy across the valley. The Black Rock Storage study also hangs like a white elephant across the valley.

- The Cast

- The late Ron Van Gundy, long time manager of the Roza Irrigation District
- An anonymous Yakama Nation Hydrogeologist

- Ron: Care to step outside

- This XXXX ain't working. What can we do together?

- The Epilog

# The Letter



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

March 31, 2008

- Roza opposed Black Rock, suggested a common proposal
- Frank discussion of needs of both irrigation and fisheries followed
- The result: YN and Roza sent a joint EIS comment letter to Ecology and Reclamation

Re: Joint Yakama Nation, Roza Irrigation District comments on Yakima Basin Storage Study

Dear Sirs,

The Yakama Nation and Roza Irrigation District appreciate the opportunity to submit this



Sincerely,

Ralph Sampson, Jr., Chairman  
Yakama Tribal Council

Ric Valicoff, Chairman  
Roza Irrigation District Board of Directors

# The Yakama Nation and Roza Irrigation District Joint Comment Letter

- Solution must **benefit all resources** Indian, non-Indian, ag and fisheries.
- **Use all the available tools**
  - restoration of fish passage at Reclamation Reservoirs
  - additional storage
  - further conservation
  - water markets
  - habitat restoration and others.
- **Storage alone can not solve all the of problems** facing the resources.
- **Revisit storing Yakima River flows**, particularly in the Naches Arm.
- **Part of any newly stored water** would be managed by the YN as part of its **Treaty Right for instream flow**
- **We recommend** that Ecology and Reclamation work with Roza, the Yakama Nation, and others to construct **a package of with these elements** of a consensus solution

# In May 2010 YN Staff gave presentation Seeking Support on the Yakima Basin Package to Several Environmental Organizations

- The Discussion
- Why storage?
  - Additional supply needed to grow crops and grow fish
  - Frequent curtailment of proratable water rights (including on-reservation irrigation)
- What about other means to meet demands?
  - Conservation mostly rearranges, does not create new supply
    - Reach specific benefits
  - Markets helpful, but not enough water can be moved to meet irrigation demand in drought
- Result: Several NGO's supported package, others not supportive of storage



# Early Success in 2013 State Legislature

- Governor adopted Integrated Plan as his first priority, proposed bill
  - Authorizing the Integrated Plan
  - Acquiring the Teanaway private forest lands
  - Funding early implementation projects (130M)
- Legislative support was overwhelming
  - Unanimous in state Senate
  - 40-2 in state House



# Progress

02.12.19

**CANTWELL SECURES SENATE PASSAGE OF YAKIMA BASIN WATER LEGISLATION**

**SENATOR CANTWELL'S BILL MOVES FORWARD A COMPREHENSIVE PLAN TO RESTORE HISTORIC SALMON RUNS AND SUPPORT DROUGHT RESILIENCY THROUGHOUT THE YAKIMA RIVER BASIN**



- On Feb 12, 2019, the Lands Package including Senator Cantwell's YBIP legislation passed the US Senate 92-8.
- Bill passed House and was signed into law in 2019

## Newhouse, Schrier Introduce Bipartisan Legislation to Authorize Phase III of Yakima Basin Integrated Plan



*Rep. Newhouse signing H.R. 1048 for introduction with members of the Yakima Basin Integrated Plan Implementation Committee*



# How Else to Succeed

- Litigation is Failure  
Except where it is not
  - Well over 100 times
  - Most egregious
  - “inconvenient to state - Gorsuch”



## Salmonscam: On trial for fishing



30 years after 'salmon scam' trial, David Sohappy is still on the river  
[http://www.yakimaherald.com/years-after-salmon-scam-trial-david-sohappy-is-still-on/article\\_5dc2f63e-27d6-11e7-9b2f-276b99f27bf6.html](http://www.yakimaherald.com/years-after-salmon-scam-trial-david-sohappy-is-still-on/article_5dc2f63e-27d6-11e7-9b2f-276b99f27bf6.html)

## JUST BUY IT

Combining water right acquisition, mitigation, and watershed restoration to protect and restore Tribal Water:

### The Teanaway Example

- Acquisition:
  - WWT: Willing buyers (and funders) and willing sellers/lesers.
  - Land: State acquired 50k acres of private forest land in 2013.
- Mitigation
  - Water right acquisition and trusting to mitigate for effects of new domestic uses during irrigation season.
    - Ecology, Kittitas County, Washington Water Trust





# Manastash Creek

(Below the diversions)

Just Share it

*We can share what we got of yours,  
cuz we done shared all of mine.*

Grateful Dead- 1972





**JUST DO IT**  
After 99 years,  
Sockeye in  
Cle Elum Lake.



Temporary  
Passage





# Why is it working

I can live with what you want if you can live with what we want.  
Not the usual “compromise”.

Adversaries become advocates  
(even Huskies and Cougars)

Many dedicated participants →

“We can’t do it without each other”

