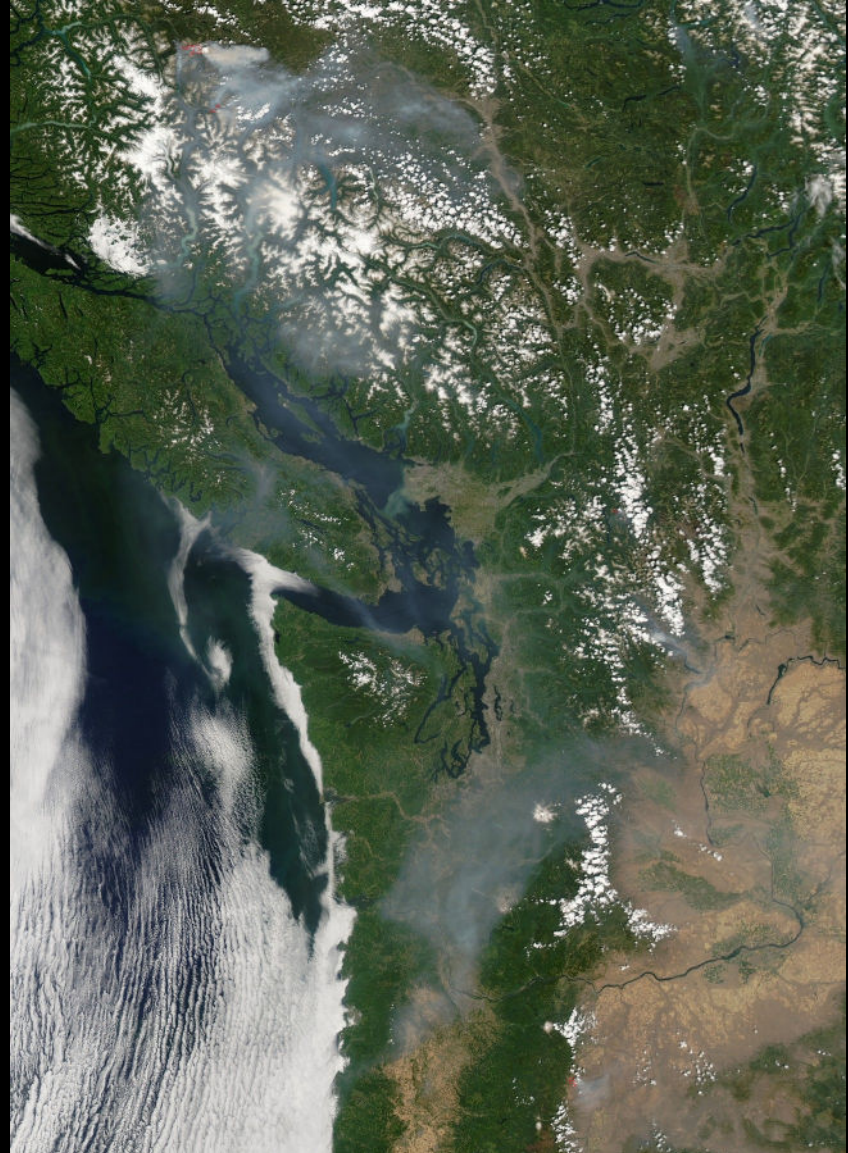


June 11, 2025

An Introduction to Water Law in Washington State

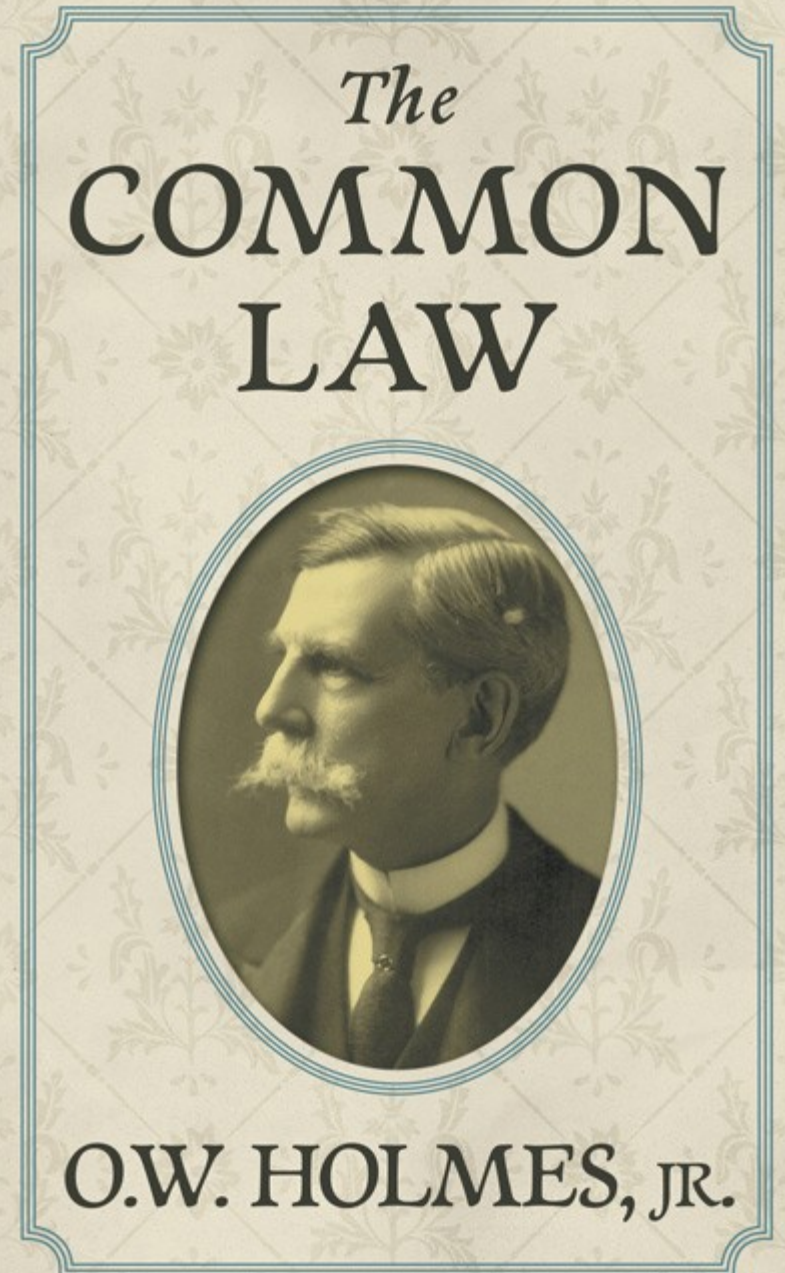
Lindsey Schromen-Wawrin, J.D., Esq.

This presentation is a simplification of complex legal subjects, and is for informational purposes only. It should not be taken as legal advice and is not intended as legal advice.



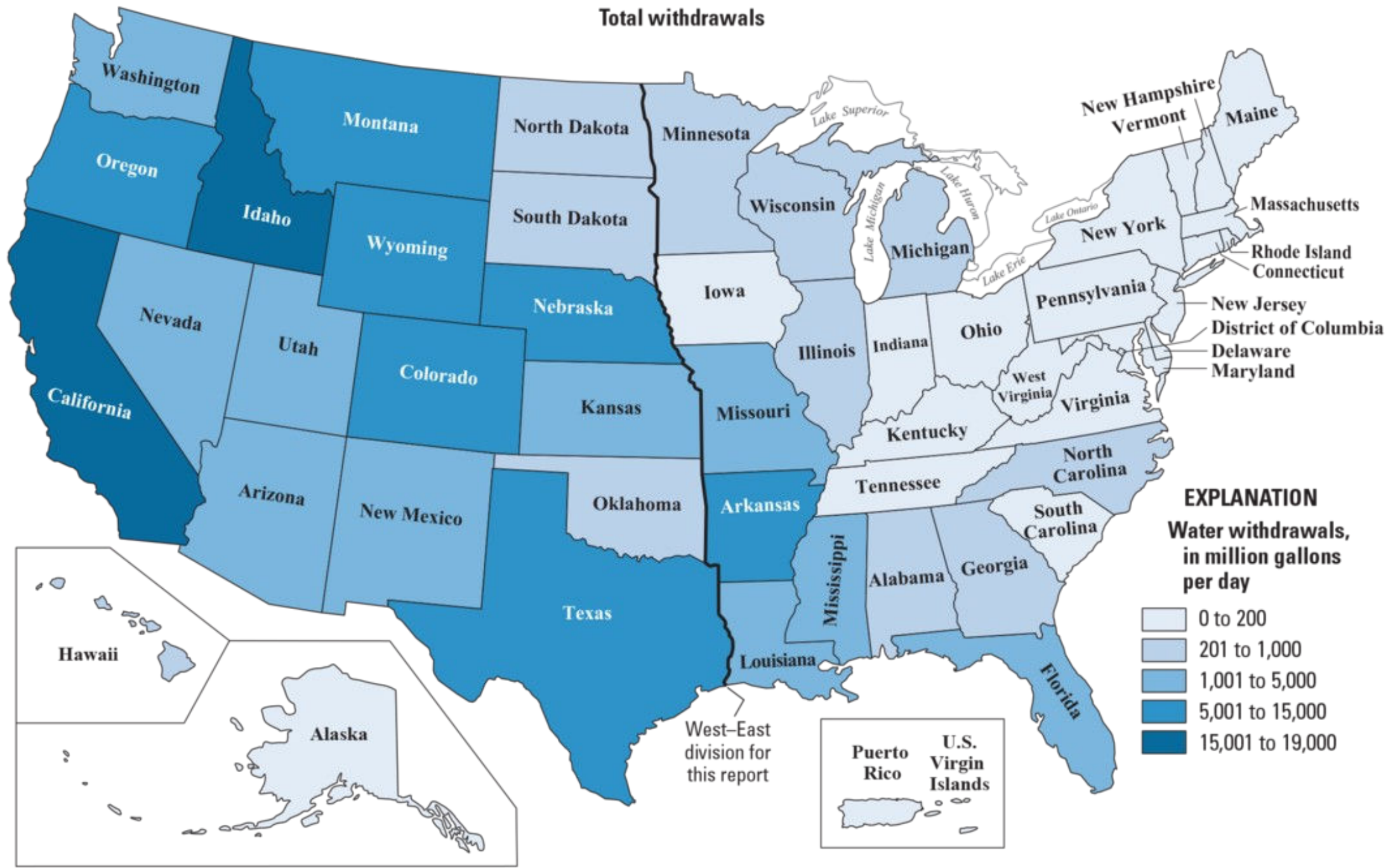
“The life of the law has not been logic – it has been experience. . . . The law embodies the story of a nation’s development through many centuries The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.”

Oliver Wendell Holmes (1881)



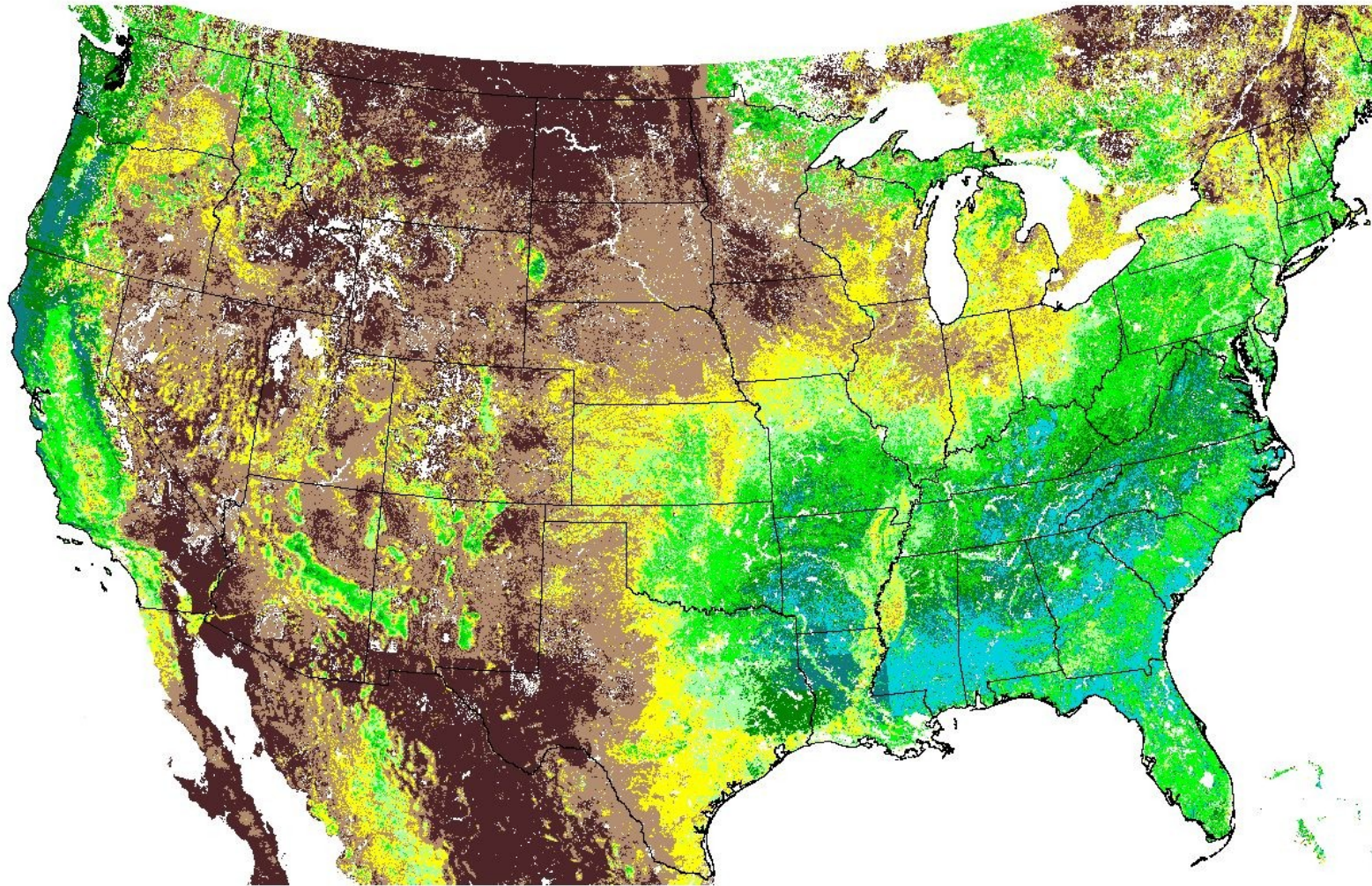
Irrigation 2015

Total withdrawals

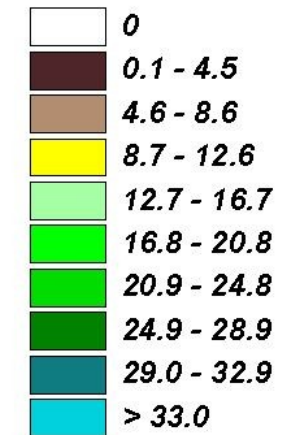


MODIS Land Gross Primary Production

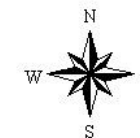
16 day total, March 26 - April 10, 2000



16 day total GPP
(gC / m²)

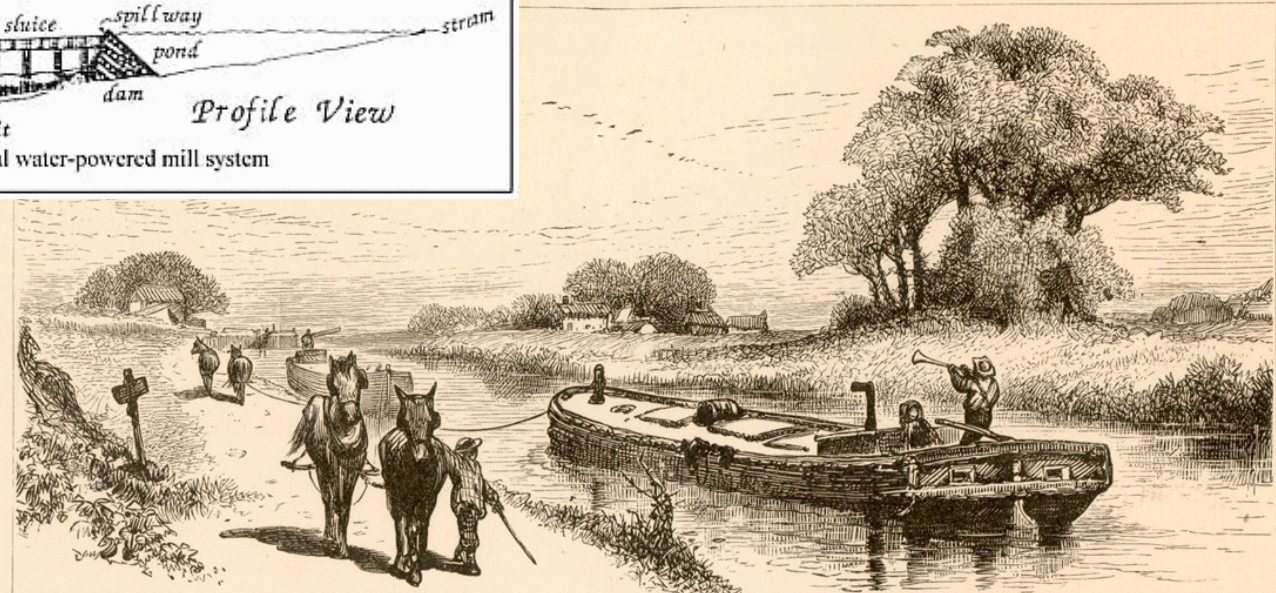
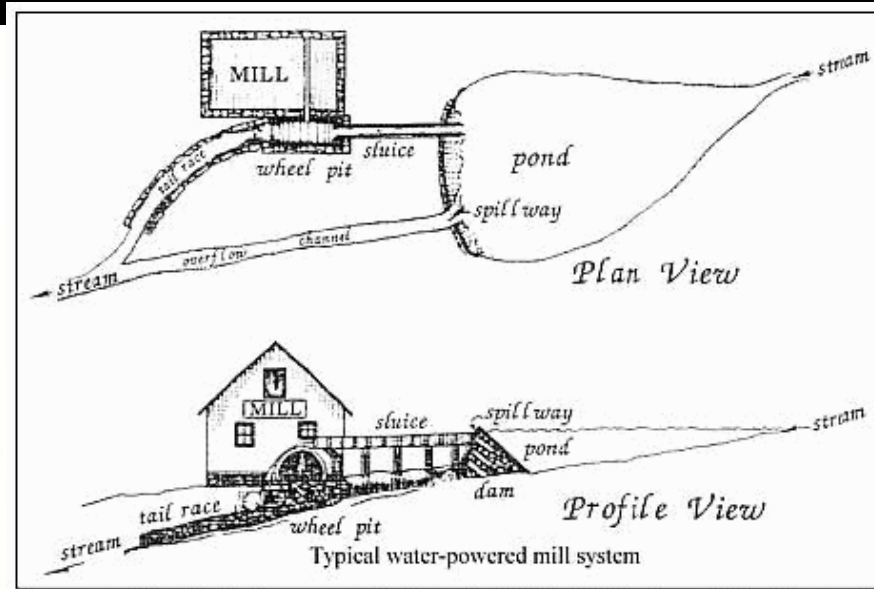
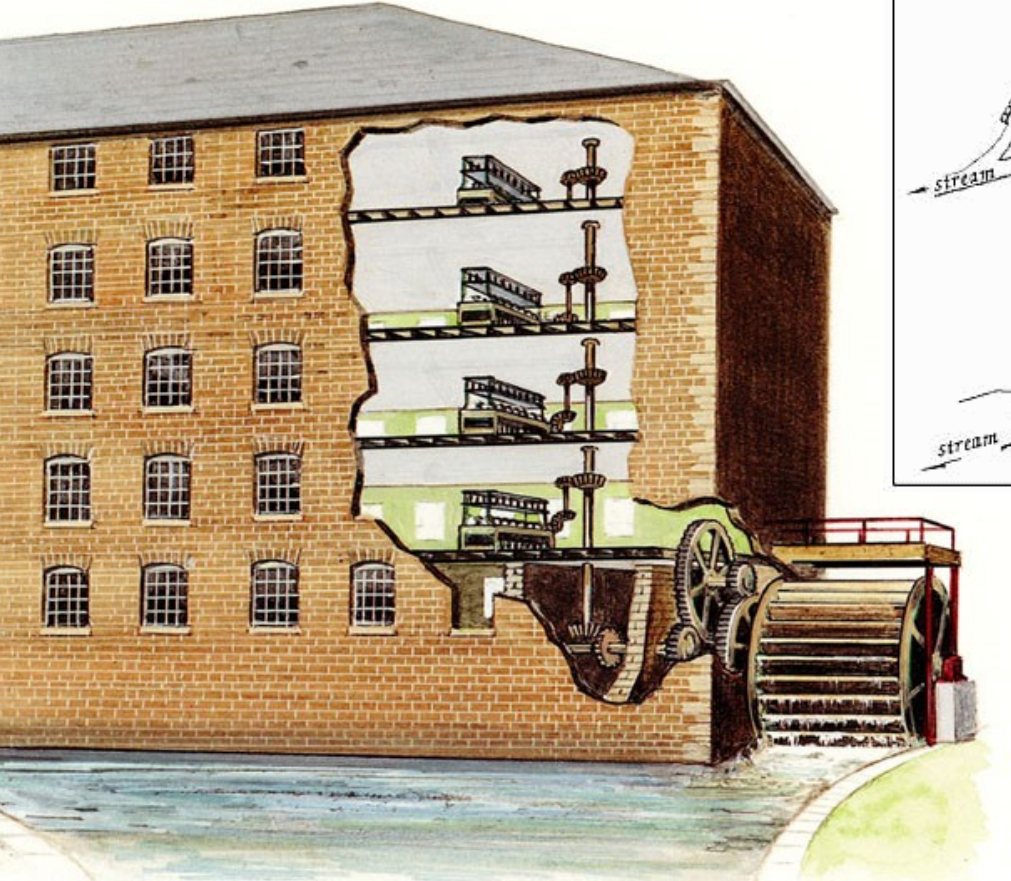


500 0 500 1000 1500 2000 Kilometers

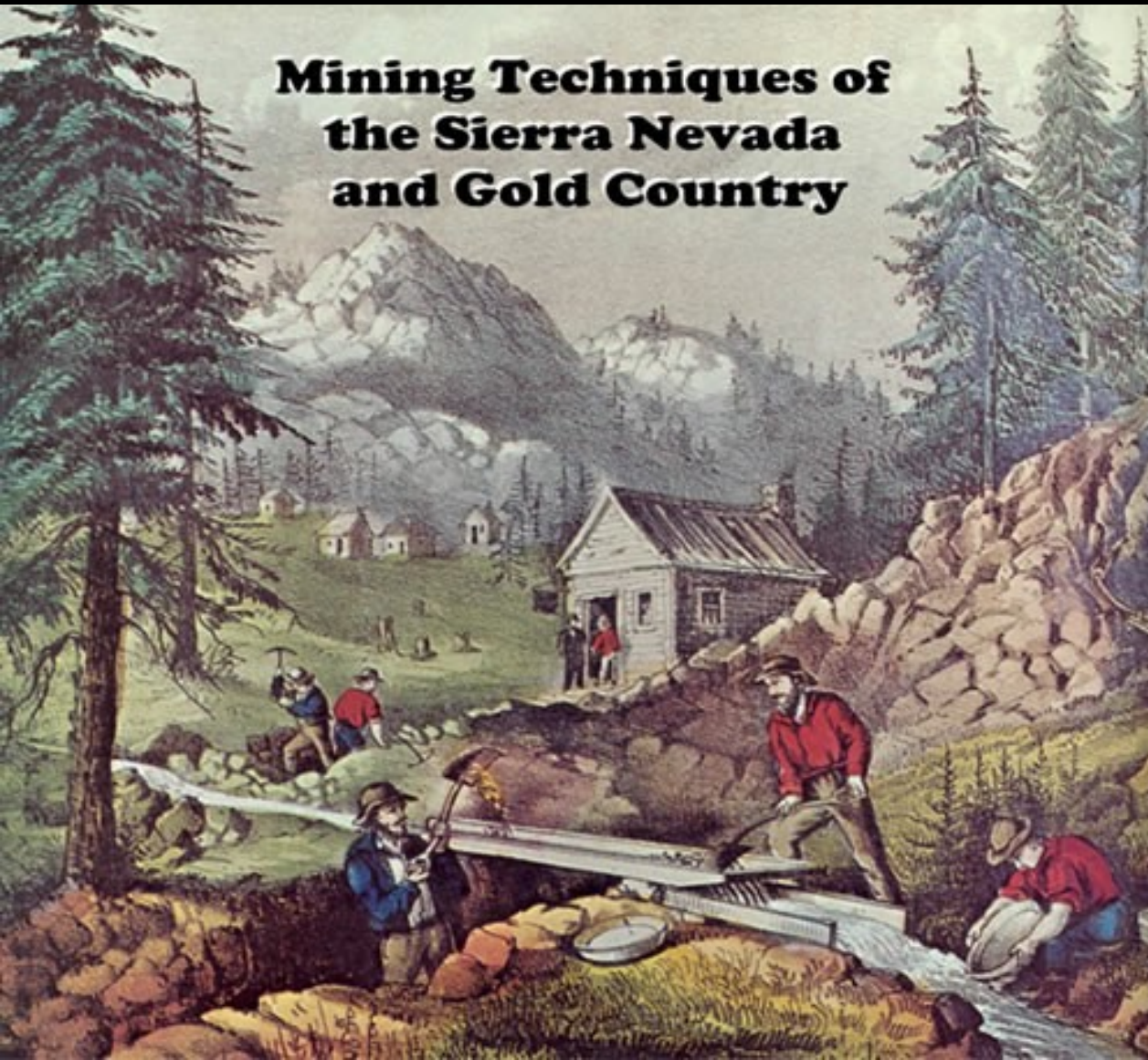


University of Montana
MODIS-SCF / NTSG

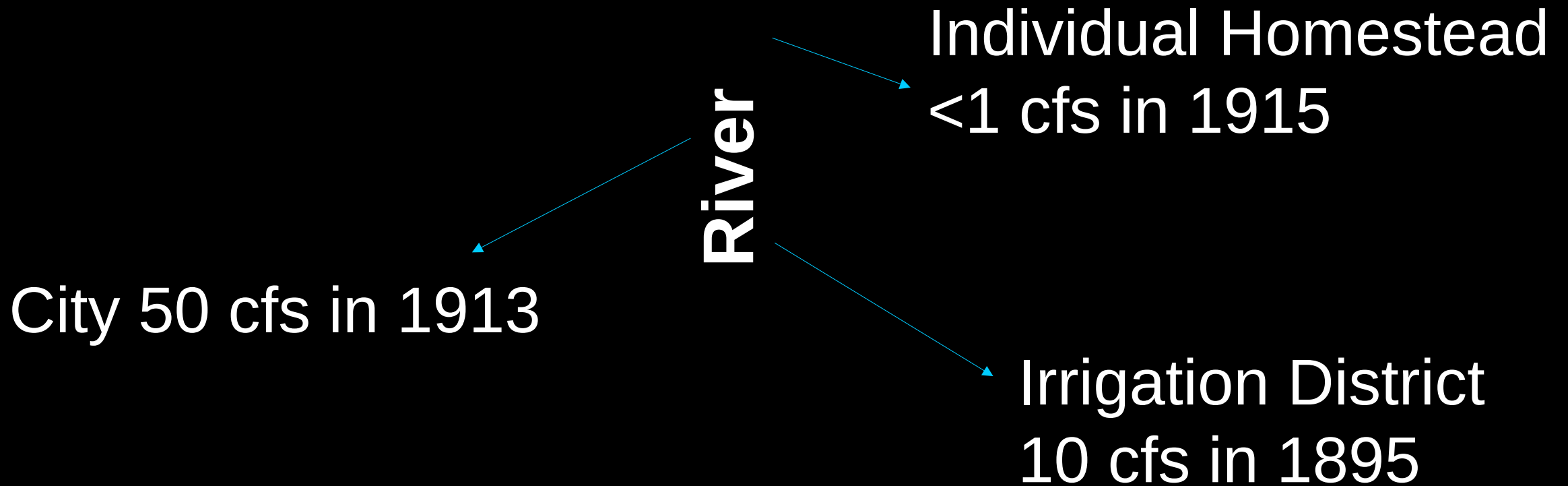
Eastern US water law connected land ownership adjacent to water with a right to reasonable use of the water, often in the channel. Aka Riparian Rights.



Western US water law developed with the need to divert water from the channel. Aka Prior Appropriation



Prior Appropriation principles: First in time, first in right



(The hypothetical water rights holders depicted in this slide are fictitious. Any similarity to actual water rights is purely coincidental.)

Prior Appropriate Principles: Beneficial Use



Prior Appropriation Principles: Use it or lose it.



RCW 90.14.180

reads in part:

“Any person hereafter entitled to divert or withdraw waters of the state through an appropriation...

Focus on **Water Right Relinquishment**

from Ecology's Water Resources Program

Introduction

Washington's water law includes the principle that a water right is confirmed and maintained through beneficial use. People often use the expression “*use it or lose it*” to describe this principle. Put simply, a water right may be wholly or partially lost through extended periods of voluntary non-use. The return of unused water to the state is called *relinquishment*. The purpose of relinquishment is to ensure that Washington's limited water resources are put to maximum beneficial use for all of Washington's citizens.

But even with a water right, you don't own the water. It's just a water-use right.

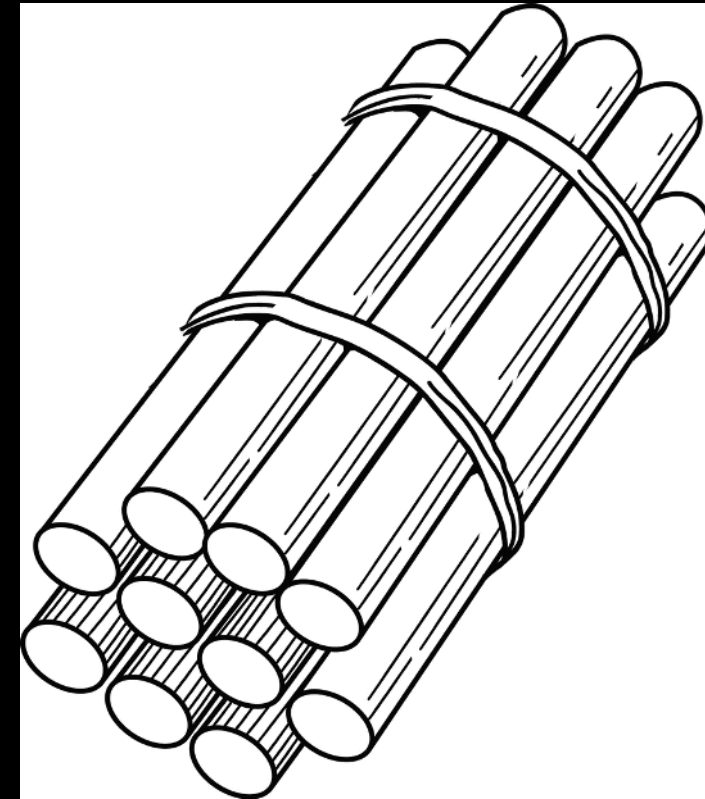
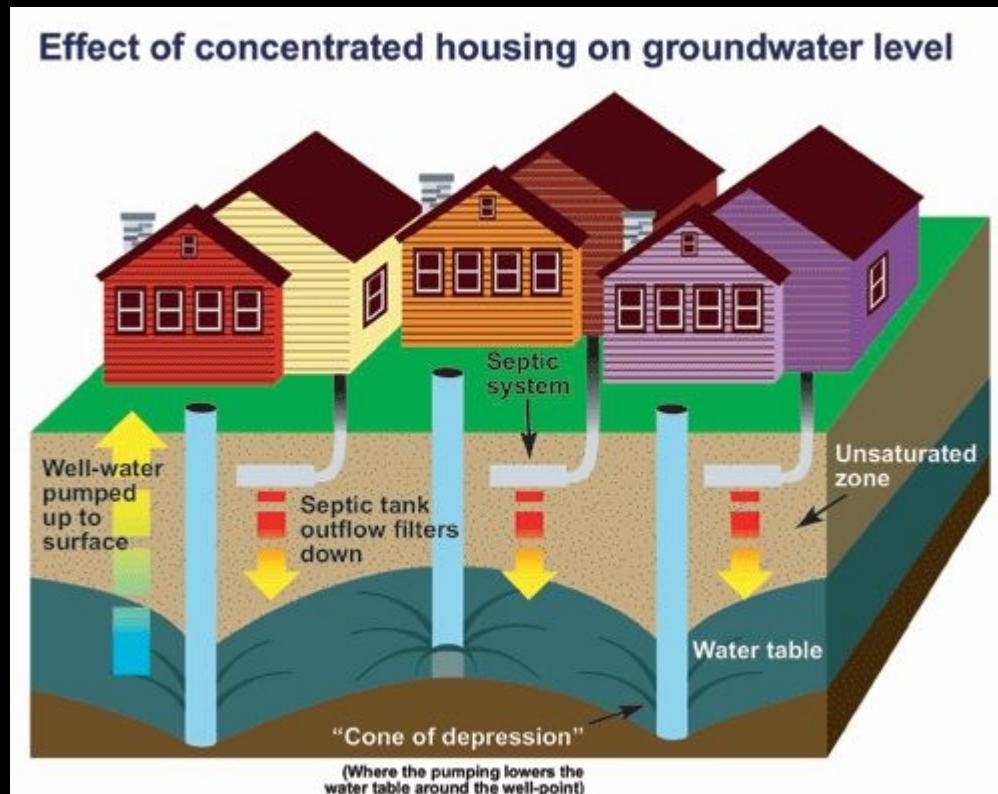
RCW 90.03.010

Appropriation of water rights—Existing rights preserved.

The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. Subject to existing rights **all waters within the state belong to the public**, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this chapter shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in RCW 90.03.040, and the amount and priority thereof may be determined by the procedure set out in RCW 90.03.110 through 90.03.240.

[1917 c 117 § 1; RRS § 7351. Prior: 1891 p 127 § 1. Formerly RCW 90.04.020.]

Water-use rights and landownership rights are separate property rights in Washington State.



Department of Ecology must establish minimum instream flows, which are appropriations of water for rivers and streams.



RCW 90.54.020 requires that perennial rivers and streams shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values and navigational values.

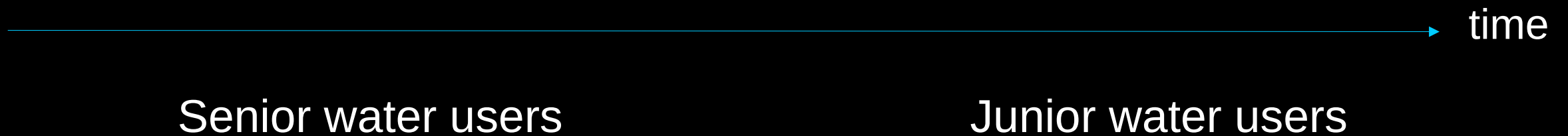
DUNGENESS RIVER NEAR MOUTH RM 0.8

Average Daily Flow Hydrograph
Ecology gage 18A050; Period of Record: 2010 & 2011

- 2010
- 2011
- Target Flow
- Instream Flow



Remember “first in time, first in right”: Instream Flow priority (seniority) is the date of the rule’s adoption.

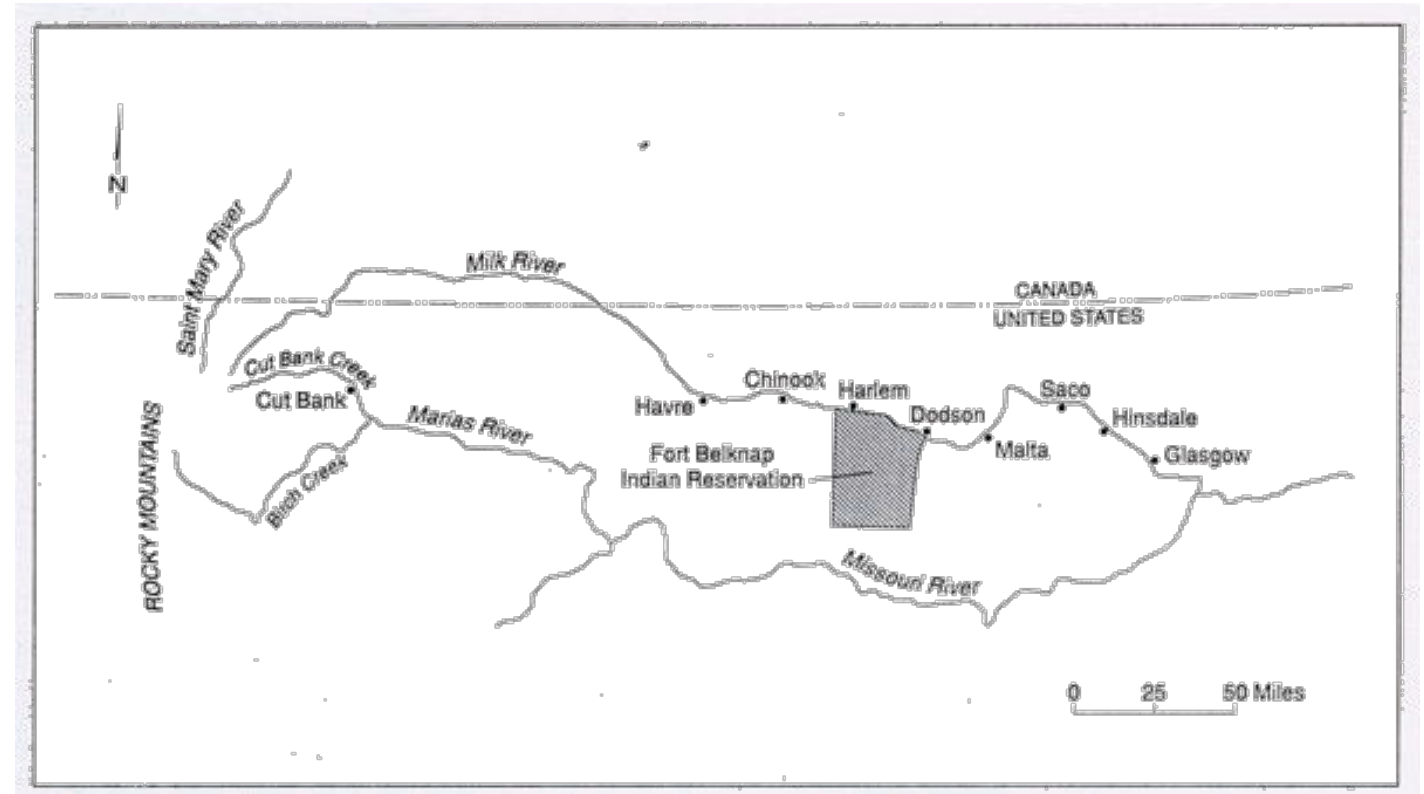


But maybe not....

Winters Doctrine: when the federal government created the Indian reservations, water rights were reserved in sufficient quantity to meet the purposes for which the reservation was established.

An Indian Reservation may reserve water for future use in an amount necessary to fulfill the purpose of the reservation, with a priority dating from the treaty that established the reservation.

Winters v. United States,
207 U.S. 564 (1908)



The Treaty of Point No Point (1855) reserved indigenous fishing rights.

“The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States”

Articles of Agreement and Convention, made and concluded at Nahd-shus, or Point no Point, Squamish Head, in the Territory of Washington, this twenty eighth day of January eighteen hundred and fifty five, by Isaac I. Stevens, Governor and Superintendent of Indian Affairs for the said Territory on the part of the United States, and the undersigned Chiefs, headmen, and delegates of the different bands of the P'Nallams, viz: Kaktai, Squash-quishel, Tshaguen, Tshaguen-lum, Tshaguen, Yonnis, El-hwa, Pisketo, Mun-nint, Klat-la-wash and Okhe-ho, and also of the Shok-ho-mish, Tsoan-hoosh and Chem-a-hum tribes, occupying certain lands on the Strait of Fuca and Hood's Canal, in the Territory of Washington, on behalf of said tribes and duly authorized by them.

Art. 1. The said tribes and bands of Indians, hereby cede, relinquish and convey to the United States, all their right, title and interest in and to the lands and country occupied by them, bounded and described as follows, viz: Commencing at the mouth of the Okhe river on the strait of Fuca, thence South eastwardly along the western line of Territory claimed by the Nallam tribe of Indians to the Summit of the Cascade range, thence still South eastwardly and Southwardly, along said Summit to the head of the West branch of the Satop river, down that branch to the main fork, thence eastwardly and following the line of lands heretofore ceded to the United States by the Nisqually and other tribes and bands of Indians, to the Summit of the Black Hills, and north eastwardly to the portage known as Wilkes' Portage, thence north eastwardly, and following the line of lands heretofore ceded to the United States by the Duwamish, Squamish, and other tribes and bands of Indians to Squamish Head, thence northwardly through Admiralty Inlet to the Strait of Fuca, thence westwardly through said Strait to the place of beginning, including all the right, title and interest of the said tribes and bands to any land in the Territory of Washington.

“The severity of the laws prevents their execution.”

- Montesquieu

