

Water Law in Eastern Washington Conference  
Spokane, WA - May 15-16, 2024

# THE FEDERAL GOVERNMENT'S ROLE IN WASHINGTON STATE WATER

**Norman M. Semanko**

800 West Main Street, Suite 1300

Boise, ID 83702

Direct: 208.562.4909

Cell: 208.863.7921

Fax: 208.562.4901

[nsemanko@parsonsbehle.com](mailto:nsemanko@parsonsbehle.com)

The logo for Parsons Behle & Latimer, featuring the firm's name in white, bold, sans-serif capital letters on a dark blue square background.

**PARSONS  
BEHLE &  
LATIMER**

# The Federal Government's Role

- Authority/Deference to State Water Law
- The Reclamation Act
  - Federal Reclamation Projects in WA
- The McCarran Amendment
  - Federal Reserved Water Rights
- Columbia River Treaty
- Clean Water Act
- Endangered Species Act (CRSO)

# Federal Sources of Authority

- U.S. Constitution
  - Commerce Clause. Art. I, Sec. 8.
  - Property Clause. Art. IV, Sec. 3.
  - Treaty Clause. Art. II, Sec. 2.
  - Supremacy Clause. Art. VI.
  - Powers Reserved to States. 10<sup>th</sup> Amendment.
    - Creation of property rights and police powers.
    - Comity and Cooperative Federalism.

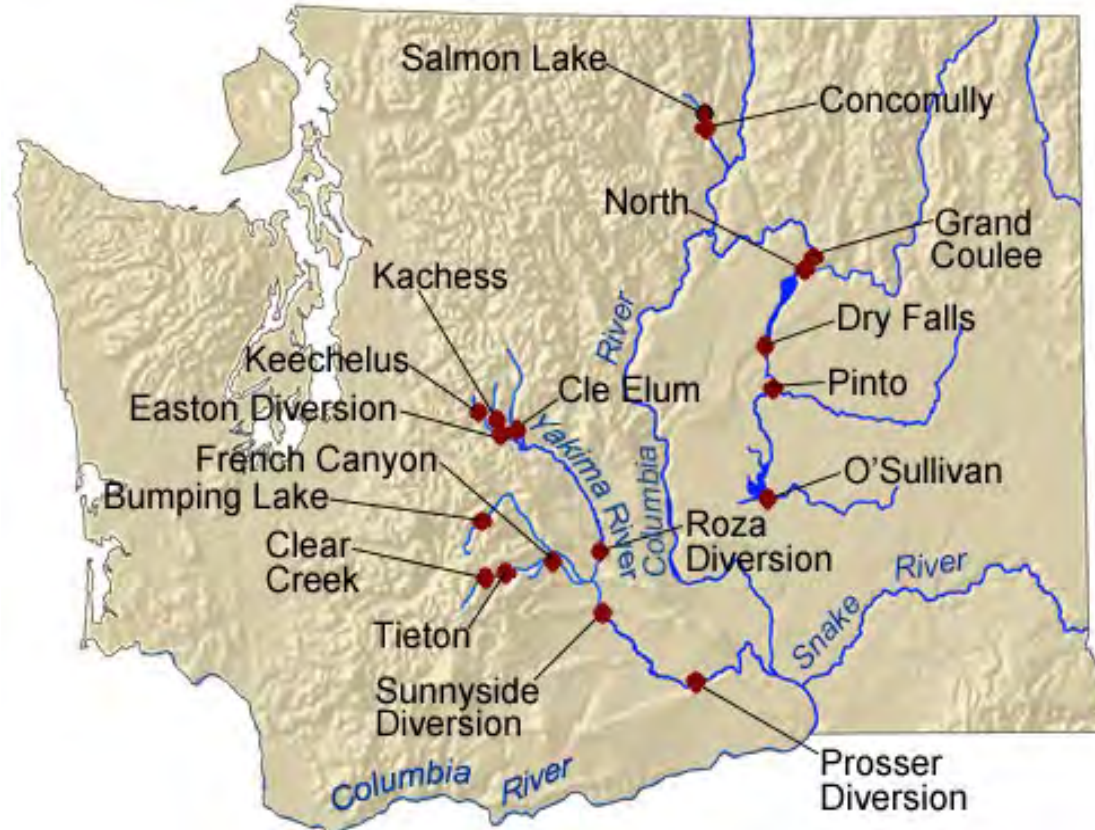
# Deference to State Water Law

“The history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States is both long and involved, but through it runs **the consistent thread of purposeful and continued deference to state water law** by Congress.” *California v. United States*, 438 U.S. 645, 653 (1978)

# The Reclamation Act

- Authorized federal funding for construction of dams, reservoirs and canals by the U.S. Bureau of Reclamation to promote irrigated agriculture in 17 Western States. Pub. L. No. 161 (1902); 43 U.S.C. Ch. 12.
- The federal government is required to comply with state law to obtain water rights for Reclamation projects under Sec. 8 of the Act (43 U.S.C. Sec. 383).

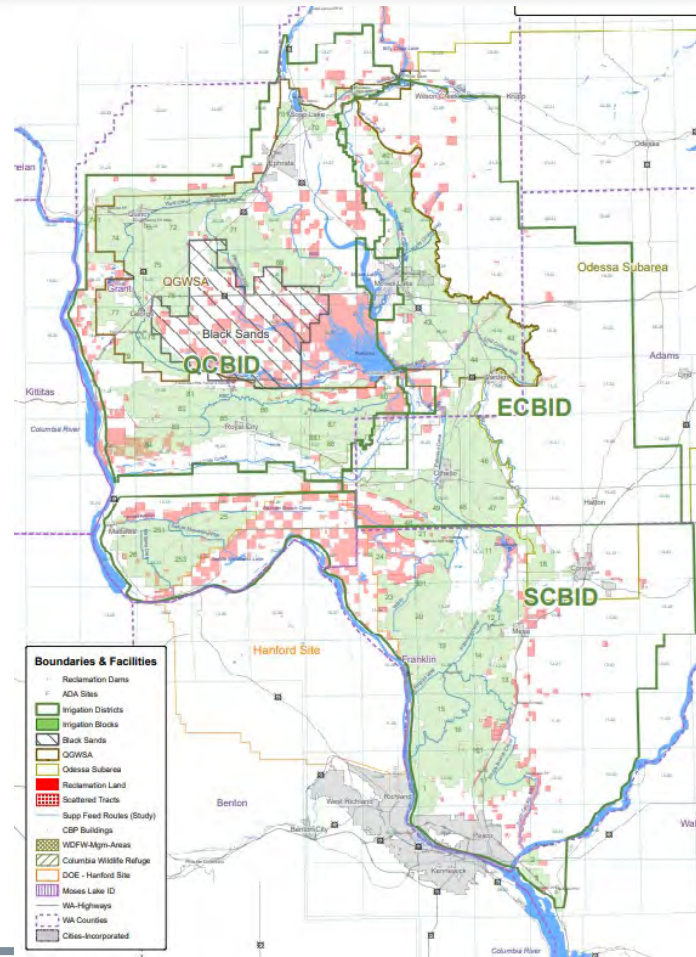
# Reclamation Projects in WA



# Columbia Basin Project

- Authorized for 1,029,000 acres
- Currently serves 671,000 acres
- Includes Grand Coulee Dam, Lake Roosevelt, three powerplants, 300 miles of main canals, 2,000 miles of laterals, and 3,500 miles of drains and wasteways
- Water delivery is operated and maintained by three CBP irrigation districts.

# CBP Irrigation Districts





# Grand Coulee Dam





# John Keys Pump Plant



# Keys Pump Plant Dedication

## May 12, 2009

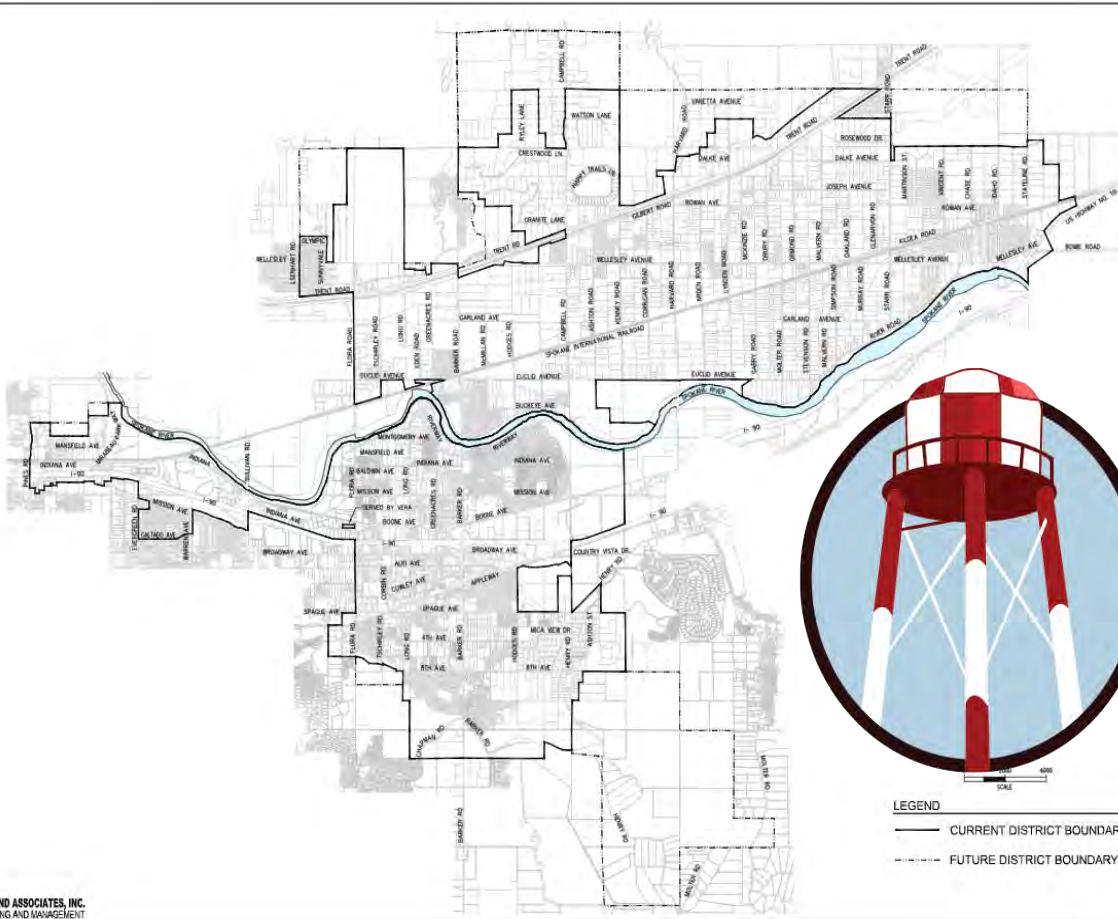


# Spokane Valley Project

- Serves 7,200 acres of domestic, municipal and industrial needs east of Spokane.
- The Bureau of Reclamation replaced the old diversion and canal system from the Spokane River with deep wells, pumping plants and pressure distribution lines.
- Operated and maintained by Consolidated Irrigation District No. 19.



# Consolidated Irrigation District



## CONSOLIDATED IRRIGATION DISTRICT 19

# The McCarran Amendment

- Waiver of sovereign immunity for general water right adjudications; must be comprehensive. 43 U.S.C. Sec. 666.
- Can sue the United States to make claims and defend in state courts; no fees.
- Claims can include state law-based claims (e.g., Reclamation projects) and federal reserved right claims (for federal lands).

# Federal Reserved Water Rights Doctrine

- When Congress reserves lands, it impliedly reserves water for those lands.
- Water reserved for Indian reservations.  
*Winters v. U.S.*, 207 U.S. 564 (1908)
- Extended to other federal reservations.  
*Arizona v. California*, 373 U.S. 546 (1963)
- For primary purposes/minimum amount.  
*U.S. v. New Mexico*, 438 U.S. 696 (1978).

# Columbia River Treaty

- U.S./Canada agreement to coordinate flood risk management and hydropower.
- Under existing Treaty, flood risk management changes this September.
- System-wide flood control in the U.S. includes Grand Coulee/Lake Roosevelt.





# Endangered Species Act

- Under ESA Sec. 7, federal action agencies consult with federal fisheries agencies regarding potential jeopardy to species caused by operation of federal dams.
- A biological opinion is issued to the action agencies with terms and conditions.
- The Columbia River System Operations BiOp has been challenged in federal court.

# Clean Water Act

- No discharge of pollutants to WOTUS without a National Pollutant Discharge Elimination System (NPDES) permit. (CWA Secs. 301/402; see exemptions).
- Ecology runs the NPDES permit program in WA; U.S. Army Corps of Engineers grants dredge and fill permits (Sec. 404).
- Ecology-issued water quality standards are subject to EPA review/approval.

# For more information or questions, please contact:

Norman M. Semanko  
PARSONS BEHLE & LATIMER  
800 West Main Street, Suite 1300  
Boise, ID 83702  
Direct: 208.562.4909  
Cell: 208.863.7921  
Fax: 208.562.4901  
[nsemanko@parsonsbehle.com](mailto:nsemanko@parsonsbehle.com)  
[www.parsonsbehle.com](http://www.parsonsbehle.com)