

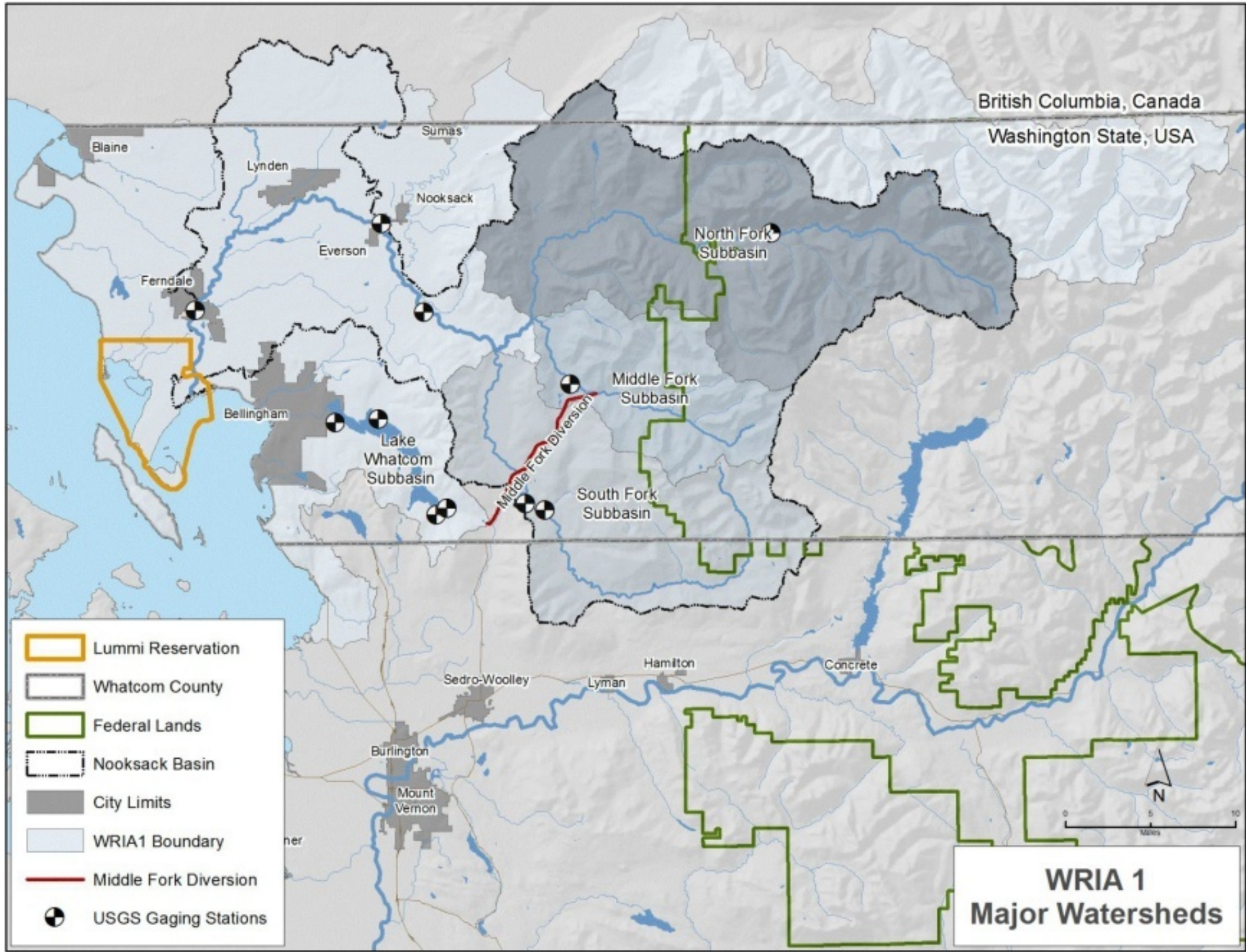
Tribal efforts to resolve ongoing water rights conflicts in the Nooksack River basin



Kara Kuhlman, Water Resources Manager

Lummi Natural Resources Department

karak@lummi-nsn.gov, (360) 312-2128



Takeaways

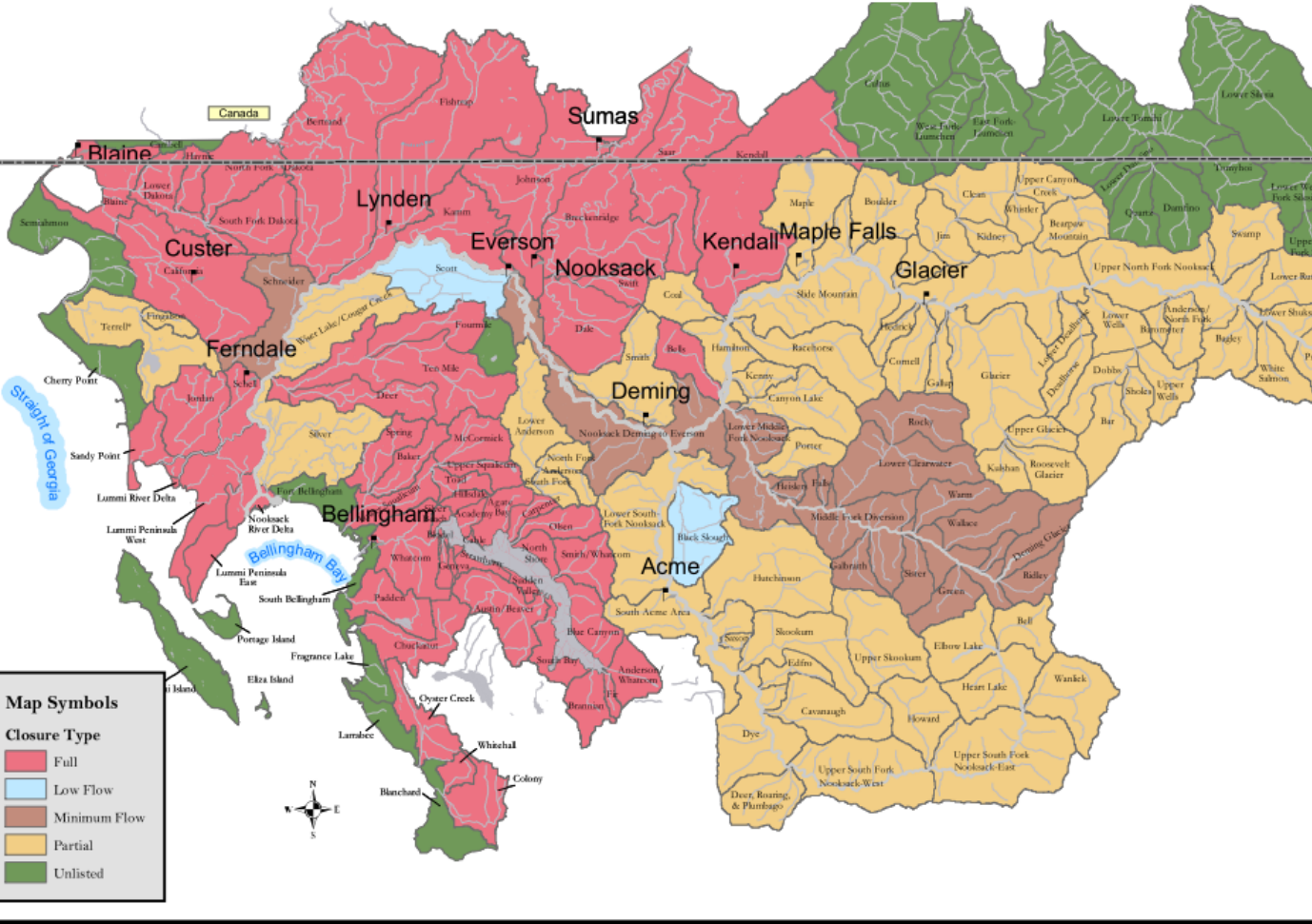
- Water is a limited resource, resolving water rights is a priority
- Tribes have the most senior water rights in the basin
- Many attempts have been made to resolve water rights issues
- Adjudication is urgently needed now to bring lasting solutions

Tribal Water Rights

- Federal Reserved Water Rights are based on interpretation of Indian treaties by the U.S. Supreme Court
- The Lummi Nation has a right to an adequate quantity and quality of water sufficient to support the purposes of the reservation as a permanent, economically viable homeland for the Lummi People
- The Lummi Nation has a right to an adequate quantity and quality of water necessary to support a sustainable, harvestable surplus of salmon and shellfish sufficient to support the Lummi Schelangen (“way of life”)

1985 Instream Flow Rule (Ecology)

WRIA 1 Water Right Allocation Status



Climate Change in the Nooksack (UW CIG)



STREAMFLOW
10-YEAR MINIMUM

Decrease in the lowest summer streamflow volume (7Q10 flows) projected by the 2080s. (-13 to -38%)



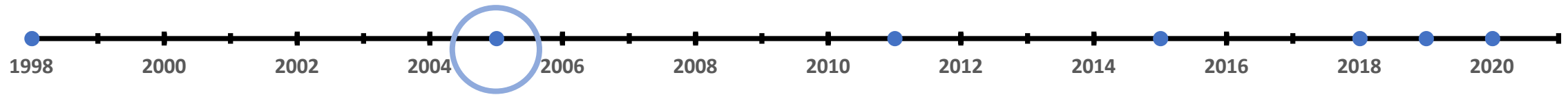
STREAM
TEMPERATURE

Increase in mean August water temperature by the 2040s.



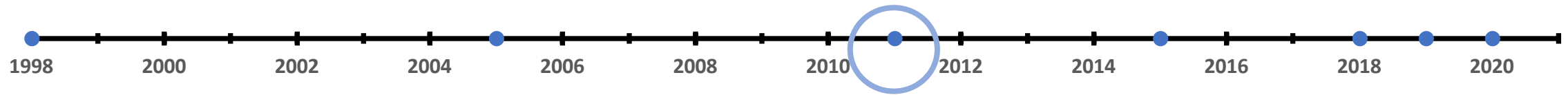
1998 Watershed Planning Act (RCW 90.82)

- WRIA-1 Watershed Management Project
- Tribes participated as Initiating Government pursuant to MOU
- Technical Teams (e.g., Fish Habitat, Instream Flow)



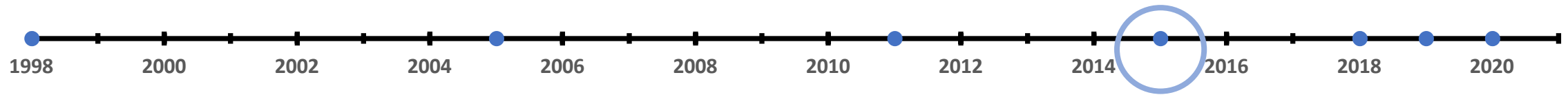
2005 WRIA-1 Watershed Management Plan

- Plan completed
- Initial technical work nearing completion
- Pilot negotiations launched (Bertrand Creek, 3-Forks)



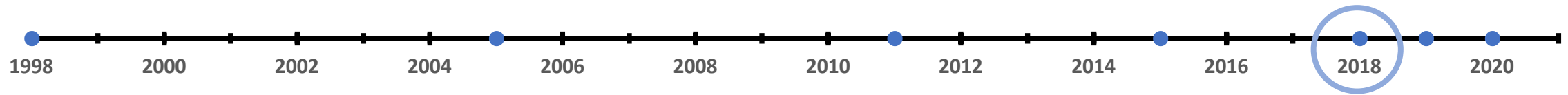
2011 Tribes submit litigation requests to United States

- Nooksack Indian Tribe and Lummi Nation seek quantification of tribal water rights in Federal court



2015 Lummi Water Settlement Initiative (a.k.a. 5-Elements Plan)

- (1) Instream flows for fish
- (2) Habitat restoration for salmon and shellfish
- (3) Water quality improvements
- (4) Water supply for out-of-stream users
- (5) Accountability



2018 Streamflow Restoration (RCW 90.94; a.k.a. “Hirst-fix”)

- Hirst Decision
- Legislation requires update to WRIA-1 Watershed Management Plan
- Plan update not completed by deadline
- Ecology Rulemaking



2019/2020 Tribes file adjudication petitions with State

- Nooksack Indian Tribe and Lummi Nation petition Washington State to commence a general stream adjudication of surface waters and related groundwaters of WRIA-1

Summary

- History indicates that adjudication is needed.
- Closing thoughts:
 - Ongoing efforts of the WRIA-1 Watershed Management Project will still be needed during and after adjudication.
 - It can be done, evidenced by successful implementation of the Lummi Peninsula Groundwater Settlement Agreement.