ASSUMABLE WATERS
Association of State Wetland Managers

November 6, 2020

Defining Federal Clean Water Act Section 404(g)(1) Waters
Eric Metz & Randy Sounhein, Department of State Lands (DSL)

404 (g) Waters (30 July 2019 Memo)

❖ <u>Non-assumable (or retained) waters include</u>:

A. Waters that are jurisdictional under Section 10 of the Rivers and Harbors Act (RHA) of 1899, provided that:

   1. Retained waters include tidal waters shoreward to their mean highwater mark, or mean higher highwater mark on the west coast, and
   2. Retained waters do not include those waters that qualify as "navigable" solely because they were "used in the past" to transport interstate or foreign commerce; and

B. Wetlands adjacent to waters retained under a. above, landward to an administrative boundary agreed upon by the state or tribe and the Corps.

Problem Statement

❖ <u>Map retained waters</u> (navigable riverways, navigable harbors and bays and all tidally influenced waters)

❖ <u>Map wetlands adjacent to retained waters</u>
  - ✓Provide as much precision as technically possible
  - ✓Ensure that mapping is accessible to the public
  - ✓Minimize case-by-case determinations
  - ✓Allow applicant to self-identify need for Corps permit
  - ✓Use web tools

Current Status

❖ DSL has reached an informal agreement with the Corps, pending release of 404(g) draft rule ("partial assumption" currently not authorized)

❖ Used existing RHA Section 10 lists as a starting point.

❖ https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/jurisdiction/Navigable_US_Waters_Oregon_1993.pdf

Navigable Waters

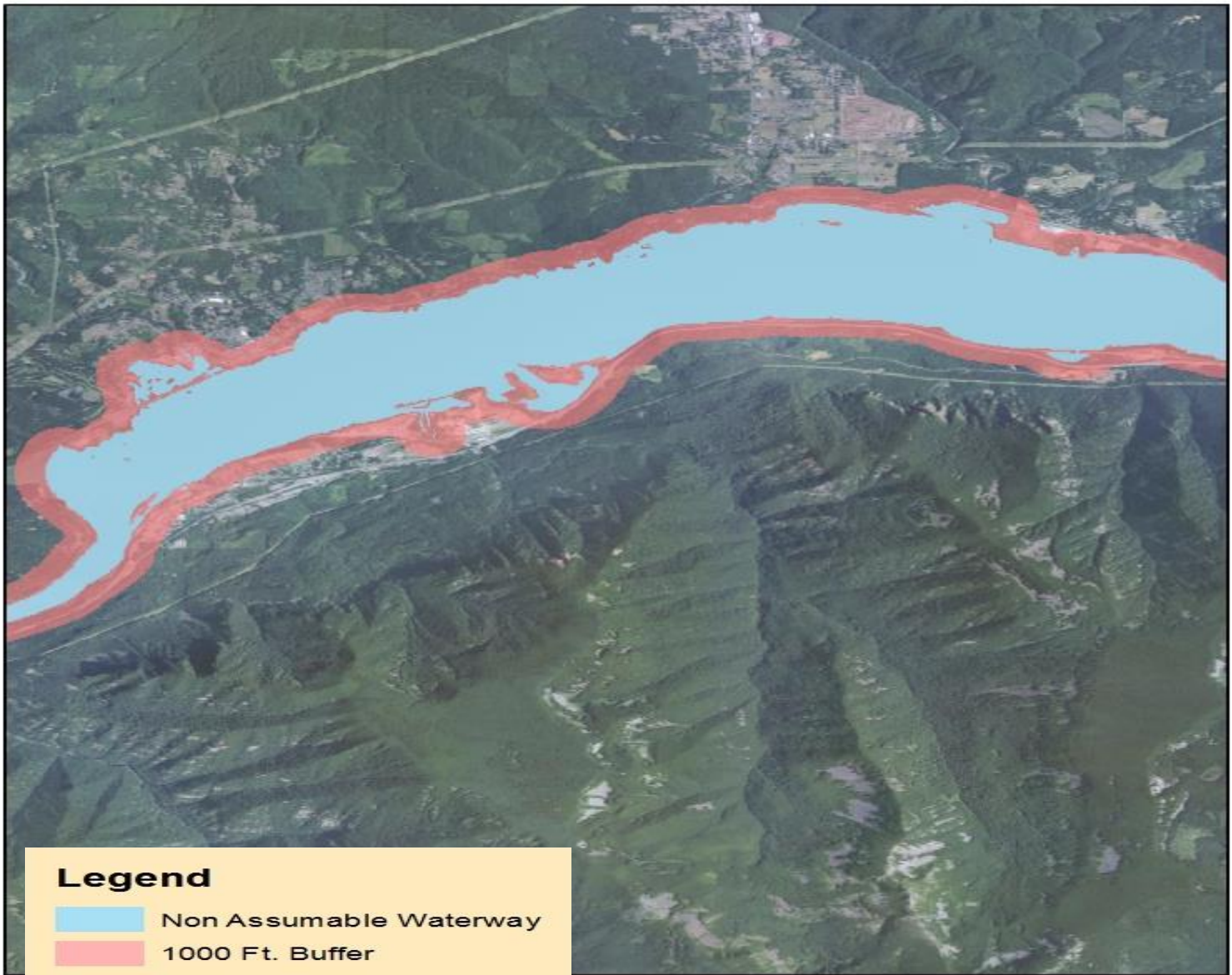❖ Final breakdown of Federal waters—126 non-assumable waters

❖ **111** Navigable Rivers (in addition to all tidal waters) (October 1993)

❖ **15** Navigable Harbors and Bays (October 1993)

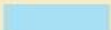# Non-Assumable Rivers and Harbors (does not show all tidal waters)

Columbia River—Determining Adjacency Straightforward

Legend

Non Assumable Waterway

1000 Ft. Buffer

0   5,000   10,000   20,000 Feet
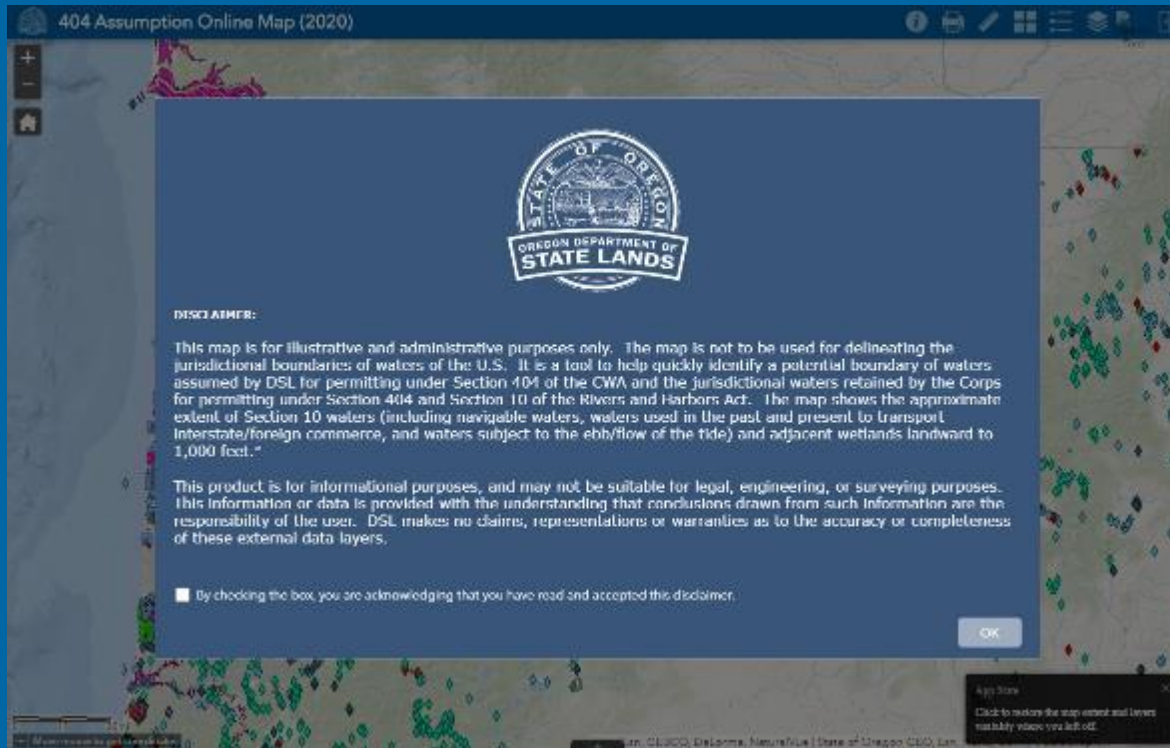
Willamette River—Determining Adjacency Complex

404 Assumption Online Map (2020)

https://maps.dsl.state.or.us/404assumption/