

Water availability for Skagit basin landowners

The Skagit River Instream Flow Rule (WAC 173-503) went into effect April 14, 2001. The rule established instream flows to protect flow levels in the Skagit River and its tributaries. The rule was amended in 2006 to establish 25 surface and groundwater “reservations”, to allow future uninterrupted out-of-stream water uses.

On October 3, 2013, the Washington Supreme Court overturned the 2006 amendment, ruling that the Department of Ecology (Ecology) cannot establish water reservations through rulemaking where water was previously set aside to support stream flows for fish. ([Swinomish Indian Tribal Community v. Department of Ecology](#)). Without water reservations, water uses established after the adoption of the April 14, 2001 rule, including future uses, can be interrupted when dry spells impact protected stream flows.

To address current and future water resource needs, Ecology is working with local governments, tribes, water utilities, and land owners to develop sustainable water supply solutions in the Skagit basin.

Q: How can I find out if my property falls within the Skagit River Instream Flow Rule management area?

A: The Skagit River Instream Flow Rule applies to land within the Skagit River watershed, excluding the Samish River subbasin and Fidalgo Island. Refer to the map on the last page of this document, or contact Ecology staff directly.

Q: What does it mean to say a water right is “interruptible”?

A: An interruptible water right is one that – because it is junior in priority to other water rights, including instream flow levels – cannot be reliably used year-round. Senior water rights must be satisfied first, so more junior rights may be limited at certain times of the year.

MORE INFORMATION

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Keep informed of Skagit water solutions.

Ecology is working with local governments, Tribes, the PUD and other water systems, and affected property owners, to develop and implement water supply projects.

Sign up for the [Skagit Basin Water Solutions ListServ](#)

Read additional information on-line:

[Ecology's Skagit web site](#)

Special accommodations

If you need this document in a format for the visually impaired, call the Water Resources Program at 360-407-6872.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.



When the Skagit River falls below the instream flow levels, all junior water rights are subject to being turned off (interrupted) until the Skagit River meets the regulatory flow levels. The Skagit River has not met the flow levels prescribed in the rule an average of 95 days in each of the past 28 years. These low flow days are mostly concentrated in the late summer and early falls months.

Q: Does the Rule affect me if I started using water before April 14, 2001?

A: No. All water right permits, certificates, and statements of claims with priority dates earlier than April 14, 2001 – including permit-exempt water rights for wells put to use before April 14, 2001 – are senior in priority to the Skagit Instream Flow Rule. Senior water rights, for the quantity and type of use established before 2001, are not subject to the rule provisions. Changed or expanded uses developed after the rule’s adoption date are likely subject to the rule provisions.

Q: I started using water after April 14, 2001, but before the October 3, 2013 Supreme Court decision. What is the status of my water supply?

A: Ecology estimates that 475 homes and 8 businesses started using water between April 14, 2001 and October 3, 2013. At this point in time, if you are among these property and business owners, your water use will not be curtailed even if flows on the Skagit River fall below the instream flow levels set under the rule. With the support of the Swinomish Tribe, Ecology will not turn off water supply for these land owners and has pledged to find sources of mitigation water for those users that rely on reservation water.

Honoring these water uses is part of Ecology’s commitment to work with the community to develop short- and long-term water supply solutions in the basin. Ecology will contact these water users directly to provide more information.

Q: I drilled a well before April 14, 2001, but have not used the water. Am I subject to the Instream Flow Rule?

A: Likely, yes. A water right for a permit-exempt well is established when water is first put to use. For domestic water use, Ecology generally uses the date a building permit was approved to estimate the date of first use. If you began using water after April 14, 2001, or have not yet used your well, your water use is considered to be junior in priority to the Skagit Instream Flow Rule. It is therefore subject to the instream flows, under the water laws of our state.

Junior water users are subject to interruption when the Skagit River does not meet the instream flow levels set in the rule, unless mitigation is in place to compensate for the impacts of well pumping on stream flow levels.

Q: Can an interruptible water right be used for domestic water supply?

A: Generally, no. Domestic water supply requires continuous water supply of clean water. Department of Health officials are concerned about the reliability of water systems that use storage to save well water and then release it when the well cannot be used. The period of time a well could be interrupted is hard to predict, as stream flow levels fluctuate greatly and groundwater impacts to surface water lag several weeks after the water use. As a result, planning adequate and safe storage is challenging.

Despite these challenges, Ecology is evaluating the technical feasibility of storage options to use in conjunction with wells. Alternative water systems, like a roof-top rainwater catchment system or a water system using trucked water, may be ways to supplement an interruptible well, since these systems must include water treatment and adequate storage.

Q: Will my water supply be impacted if I am served by a public water system like the Skagit Public Utility District (PUD)?

A: No. Properties served by public water systems, like the Skagit PUD, are not affected by the Skagit Instream Flow Rule. This rule applies to privately-owned groundwater wells, for water uses that were not established prior to the effective date of the rule, April 14, 2001.

Q: I am interested in mitigation. What is the process for mitigation project approval?

A: “Mitigation” means compensating for water use so that drawing from a well does not interfere with the instream flows. In coordination with local governments, water utilities, tribes, and the public, Ecology is actively pursuing a range of large and small mitigation projects that will offset large classes of domestic water uses in the Skagit Basin. Ecology anticipates that it will be announcing draft mitigation proposals for public comment. The draft mitigation proposals will include the terms of mitigation and the process for landowners to obtain mitigation credits. After considering all comments, Ecology will issue its final mitigation decision.

Ecology will also evaluate proposals for mitigation projects submitted by individual land owners. It is Ecology’s policy that adverse effects to the state’s water resources be mitigated “in-kind”, “in-time,” and “in-place.” This means that mitigation should offset adverse effects by releasing an equal quantity of suitable water into the same water system at roughly the same time as the adverse impact.

If you are interested in a site-specific mitigation proposal, contact Ecology staff to discuss your project. Ecology can provide mitigation guidance and will identify the likely timeline for review as well as challenges that need to be addressed in the proposal.

Q: Isn't domestic groundwater use exempt from regulation?

A: Domestic groundwater use is only exempt from needing a water right permit. Under Washington water law, permit-exempt groundwater uses are still water rights subject to the same restrictions as water right permits and certificates, including the priority system for water rights. The Supreme Court made clear in the Swinomish decision that all water rights established after April 14, 2001 are junior in priority to the instream flows established in the Skagit Instream Flow Rule. This is now the law of the state of Washington that Ecology is bound to follow.

Q: Why is the state concerned about domestic water use? Doesn't most of the domestic water get recharged through a septic system?

A: Although domestic water use in rural areas uses a small amount of water, the cumulative impact of many domestic water users can together impair stream flows, especially in tributaries. Hydrogeologic studies and computer models show that domestic wells impact stream flows in the Skagit Basin.

The Washington Supreme Court has ruled in several cases that, even if the impairments to regulatory stream flows are small, senior instream flows are entitled to protection from the cumulative impact of later-established domestic wells. Ecology recognizes much of indoor domestic water use is recharged back to the watershed through septic systems, and takes this into consideration when calculating credit for the recharge water when developing mitigation. Domestic water used for lawns and gardens does not recharge through septic systems and is mostly lost through evaporation and lawn and plant growth.

Q: What options exist for Skagit landowners affected by the Rule?

A: Skagit basin landowners who wish to use a well, but did not establish use of a well before the April 14, 2001 Skagit Instream Flow Rule, have several options they can pursue. The feasibility of the following options will vary based on location and other factors:

- Hook up to the Skagit PUD or another local public water system.
- Acquire and transfer a senior water right within the same basin as your proposed project.
- Develop a rainwater catchment system or obtain a trucked water supply to serve your domestic or commercial needs.

And, as mentioned earlier, landowners can develop an individual mitigation proposal or wait for Ecology to establish basin-wide mitigation options.

Q: Please provide an overall context and timeline for the Skagit Rule.

A: Water use in Washington is regulated through a permit and certificate system, with exceptions for certain uses such as domestic supply from wells. Our water law is based on "first in time,

first in right,” known as the prior appropriation doctrine. Under this system, water users that receive water rights first have priority over water rights established later. The priority system applies to all water rights, including permit-exempt groundwater uses.

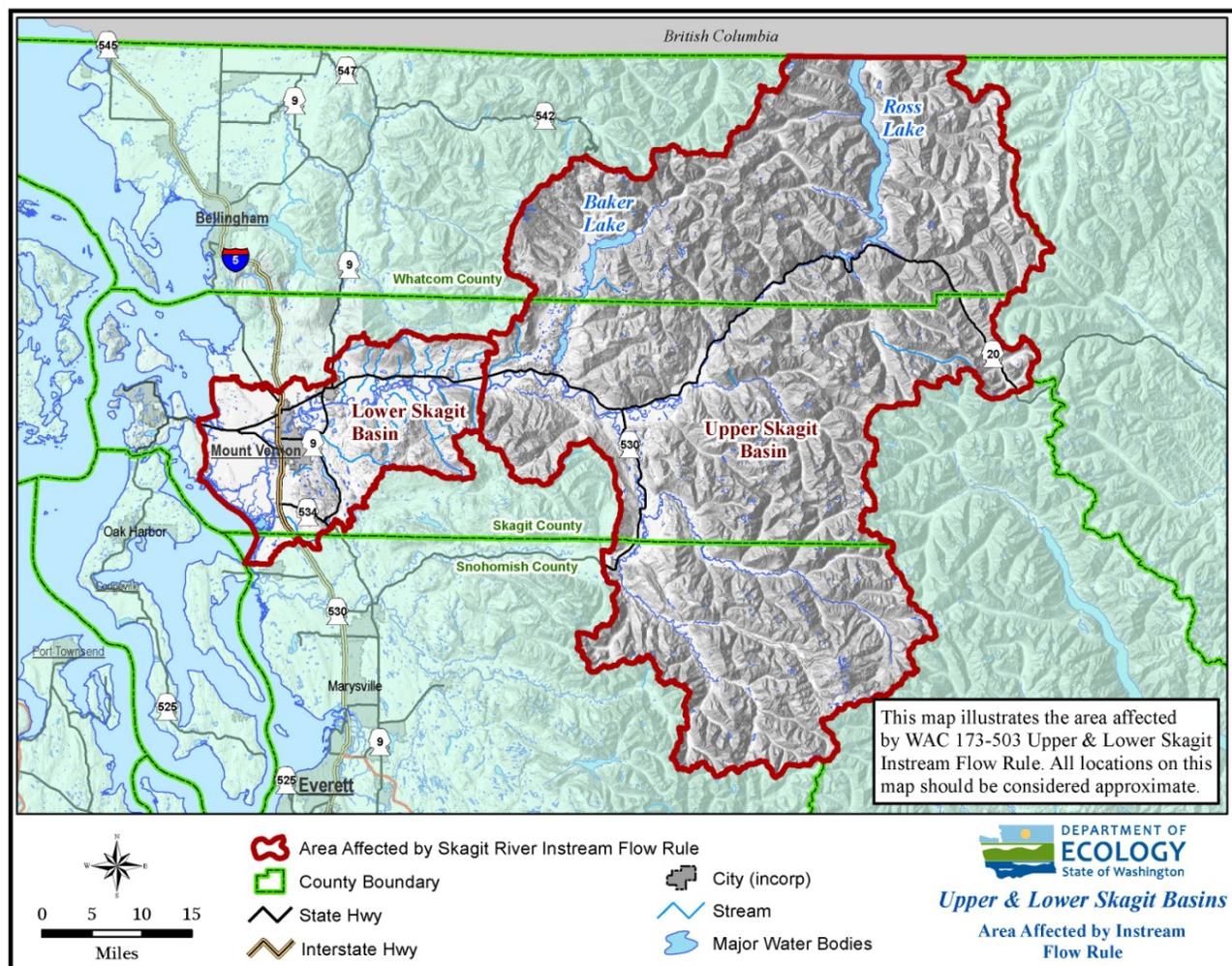
The Skagit Instream Flow Rule was adopted in law on April 14, 2001. This rule functions like a water right for the Skagit River, with an April 14, 2001 priority date. Water uses established after April 14, 2001 are “junior” to the rule and therefore are subject to being interrupted when instream flow levels are not met.

Skagit Instream Flow Rule Timeline

- *December 1996*: Stakeholders sign Memorandum of Understanding committing to establish Skagit River instream flows.
- *April 14, 2001*: Skagit Instream Flow Rule adopted in law.
- *April 2003*: Skagit County challenges the 2001 Rule and requests Ecology to provide water supply for rural wells that could be used even when senior instream flows are not met.
- *May 2006*: Amendments to Skagit Instream Flow Rule were adopted in law; establishes reservations of water for future uses that provide uninterrupted water supply for well users throughout the watershed.
- *June 2008*: Swinomish Tribe challenges the validity of the 2006 Rule amendments.
- *October 3, 2013*: Washington Supreme Court overturns the 2006 Skagit Instream Flow amendments.

Refer to the map on the next page to see the areas of the Skagit basin affected by the Instream Flow Rule.

Upper and Lower Skagit Basins Area Affected by Instream Flow Rule



More detailed maps are available on-line. For specific questions, contact Ecology’s Northwest Regional Office. (See sidebar on page one for web site address and contact information.)