

Chapter 173-503 WAC
Instream resources protection program — lower and upper skagit water resources inventory area (wria 3 and 4)

Last Update: 5/15/06

WAC Sections

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DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-503-080 Policy statement for future permitting actions. [Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05) § 173-503-080, filed 3/14/01, effective 4/14/01.] Repealed by 06-11-070 (Order 05-15), filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW.

173-503-010
General provision.

These rules apply to waters within the Lower and Upper Skagit water resources inventory area (WRIA 3 and 4), as defined in WAC 173-500-040, excluding the Samish River subbasin, and any islands surrounded by saltwater including Fidalgo, Guemes, Cypress, Hope and Goat islands. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (Minimum water flows and levels), and chapter 173-500 WAC (Water resources management program).

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-010, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-010, filed 3/14/01, effective 4/14/01.]

173-503-020
Purpose.

The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Lower and Upper Skagit water resources inventory area, including the Cultus Mt. Tributaries, as defined in WAC 173-503-040, with instream flows and levels necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values, as well as recreation and water quality. In addition, these flows are necessary to satisfy stock watering objectives, consistent with RCW 90.22.040.

Chapter 90.54 RCW (Water Resources Act of 1971) requires that utilization and management of waters of the state be guided by a number of fundamentals, including:

Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all

other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial. (RCW 90.54.020(1))

The quality of the natural environment shall be protected and, where possible, enhanced, as follows:

Perennial rivers and streams of the state shall be retained with base flows necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(a))

Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(b))

In furtherance of these statutory objectives, this chapter creates a reservation of a limited amount of water for specific future uses. It establishes closures for tributaries, and sets forth conditions for future water right permitting.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW, 06-11-070 (Order 05-15), § 173-503-020, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC, 01-07-027 (Order 99-05), § 173-503-020, filed 3/14/01, effective 4/14/01.]

173-503-025

Definitions.

For the purposes of this chapter, the following definitions shall be used:

"Agricultural irrigation" means the application of water to crops grown for commercial agricultural purposes.

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means the process of legally acquiring the right to use specific amounts of water for beneficial uses, as consistent with the ground and surface water codes and other applicable water resource statutes. This term refers to both surface and ground water right permits and to ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

"Commercial/industrial use" means use of water for the purpose of business activities, including human domestic needs within the business property, manufacturing or production activities and maintenance of vegetated areas on the business property. For permit exempt commercial/industrial water ground water uses, it also means irrigation of agricultural products.

"Consumptive use" means a use of water whereby there is a diminishment of the water source.

"Department" means the Washington state department of ecology.

"Domestic water use" means, for the purposes of administering WAC 173-503-073 and 173-503-074 only, potable water to satisfy the human domestic needs of a household, including water used for drinking, bathing, sanitary purposes, cooking, laundering, maintenance of vegetation, care of household pets and incidental livestock, and other incidental uses. For permit-exempt domestic water use of ground water sources, total outdoor watering for multiple residences shall be consistent with the ground water permit exemption provisions in RCW 90.44.050.

"Incidental stock water use" means, for the purposes of administering WAC 173-503-073 and 173-503-074 only, sufficient water to care for small scale domestic livestock operations.

"Instream flow" means a stream flow level set in rule that is needed to protect and preserve fish, wildlife, scenic, aesthetic, recreational, water quality, and other environmental values, and navigational values. The term "instream flow" means a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or a minimum instream flow under chapter 90.82 RCW.

"Maximum average consumptive daily use" means the use of water measured over the highest period of use divided by the number of days in that period, less any applicable return flow recharge credit.

"Mitigation plan" means a scientifically sound plan voluntarily submitted by a proponent to offset the impacts of a proposed water use and must be approved by the department.

"Municipal water supplier" means an entity that supplies water for municipal water supply purposes. (RCW 90.03.015)

"Municipal water supply purposes" means a beneficial use of water as defined in RCW 90.03.015, including:

- (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year;
- (b) For governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or
- (c) Indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use.

"Nonconsumptive use" means a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source.

"Permit-exempt withdrawals" or **"permit exemption"** means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but which is otherwise subject to the ground water code.

"Public water system" means any system defined in RCW 70.119.020(8) which provides water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and excluding a system with four or fewer connections all of which serve residences on the same farm. This term includes group domestic systems.

"Reservation" means an allocation of water for future beneficial uses. The priority date of a given allocation from the reservation is the same as the effective date of rulemaking that established the reservation.

"Retail service area" means the area where a municipal water supplier currently provides direct water service and has documented plans to provide new water service.

"Scientifically sound" means adhering to the requirements of best available science as defined in WAC 365-195-905 (5)(a) and (b).

"Stream management unit" means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular instream flow level applies. Most of these units contain a control station.

"Stock water" means drinking water supply for the raising of livestock animals and associated uses of water related to care of stock animals.

"Subbasin management unit" means a stream segment, reach, or tributary basin, used to describe where a particular instream flow level, water reservation budget, or water diversion or withdrawal limit applies.

"Timely and reasonable manner" means the way in which potable water service can be provided by a public water system to a property as defined in local coordinated water system plans, or by public water systems, or by local legislative authorities.

"Withdrawal" means the extraction and use of ground water, or the diversion and use of surface water.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-025, filed 5/15/06, effective 6/15/06.]

173-503-030
Findings.

Ecology finds that:

(1) The magnitude or variability of flows are important in maintaining the aquatic ecosystem that sustains both fish and other valuable resources. Criteria to limit total withdrawals of water from the Lower Skagit River were developed to protect the aquatic ecosystem in the region covered by this rule.

(2) To protect the estuary area below river mile 8.1 the duration of flow inundation of at least one foot of depth, in selected estuary habitat, can be reduced no more than ten percent from existing conditions from the date of enactment of this regulation. This criterion applies to the period of February through August to withdrawals from the Skagit River. Total withdrawals greater than eight hundred thirty-six cubic feet per second during that period will result in a greater than ten percent deviation from existing conditions and therefore would result in harm to the fisheries resources and aquatic ecosystem in the region covered by this rule.

(3) Protection of the aquatic ecosystem of the estuary in the months of September through January requires that the total withdrawals of water from the Skagit River not exceed 1/10 of the fifty percent exceedance flow for each month, based on the period of record (1/1/41 - 12/31/95) for the U.S. Geological Survey (USGS) stream gage on the Skagit River near Mt. Vernon, WA (Sta. #12-2005-00) in order to maintain channel morphology and other estuarine and riverine functions. This equates to a low point of eight hundred thirty cubic feet per second during the month of September. Total withdrawals greater than eight hundred thirty cubic feet per second during the month of September will not protect and preserve fish, wildlife and other environmental values and therefore would be harmful to fisheries resources and the aquatic ecosystem in the region covered by this rule in violation of chapter 90.54 RCW.

(4) The rules setting minimum flows in the Lower and Upper Skagit River (WRIA 3 and 4) (WAC 173-503-040) and finding certain waters available (WAC 173-503-050) are necessary to protect and preserve wildlife, fish, scenic, aesthetic and other environmental values.

[Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-030, filed 3/14/01, effective 4/14/01.]

173-503-040
Establishment of instream flows.

(1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Stream Management Unit Name	Control Station by River Mile and Section, Township and Range; Latitude and Longitude	Stream Management Reach
Control Station No. Skagit Mainstem:		
Skagit River near Mt. Vernon, WA		From mouth of Skagit River

USGS Sta. #12-2005-00	River Mile (RM) 15.7	including tidal fluctuation to headwaters.*
Cultus Mountain Tributaries:		
Mundt Creek	Stream gage will be installed at RM 3.4 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Turner Creek	Stream gage will be installed at RM 4.2 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Gilligan Creek	Stream gage will be installed at RM 3.2 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Salmon Creek	Staff gage periodically recorded will be installed at RM 4.3 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.

*Other additional control stations and instream flows may be established in WRAs 3 & 4 to improve water management

(2) Instream flows are established for the stream management units in WAC 173-503-040(1) as follows (See Figures 1 through 3):

Instream Flows as measured at USGS Sta. #12-2005-00 (Instantaneous cubic feet per second)

USGS Sta. #12-2005-00		
Month	Day	Skagit River
Jan.	1-31	10,000
Feb.	1-29	10,000
Mar.	1-31	10,000
Apr.	1-30	12,000
May	1-31	12,000
Jun.	1-30	12,000
Jul.	1-31	10,000
Aug.	1-31	10,000
Sep.	1-30	10,000
Oct.	1-31	13,000
Nov.	1-15	13,000
	16-30	11,000
Dec.	1-15	11,000
	16-31	10,000

Instream Flows for Cultus Mountain Tributaries, WRIA 3 (Instantaneous cubic feet per second)

		RM 3.4	RM 4.2	RM 3.2	RM 4.3
Month	Day	Mundt Creek	Turner Creek	Gilligan Creek	Salmon Creek
Jan.	1-31	6.4	7.9	19.8	4.0
Feb.	1-29	6.4	5.4	19.8	4.0
Mar.	1-15	6.4	5.4	19.8	4.0
	16-31	9.4	5.4	27.7	4.0
Apr.	1-30	9.4	7.9	31.7	4.0
May	1-31	9.4	7.9	31.7	1.4
Jun.	1-30	9.4	4.9	31.7	1.4
Jul.	1-31	7.6	4.9	39.6	1.4
Aug.	1-31	7.6	4.9	39.6	1.4
Sep.	1-30	7.6	4.9	39.6	4.0
Oct.	1-31	7.6	7.9	23.8	4.0
Nov.	1-30	9.4	7.9	27.7	4.0
Dec.	1-31	9.4	7.9	27.7	4.0

(3) Instream flow hydrograph.

Figure 1

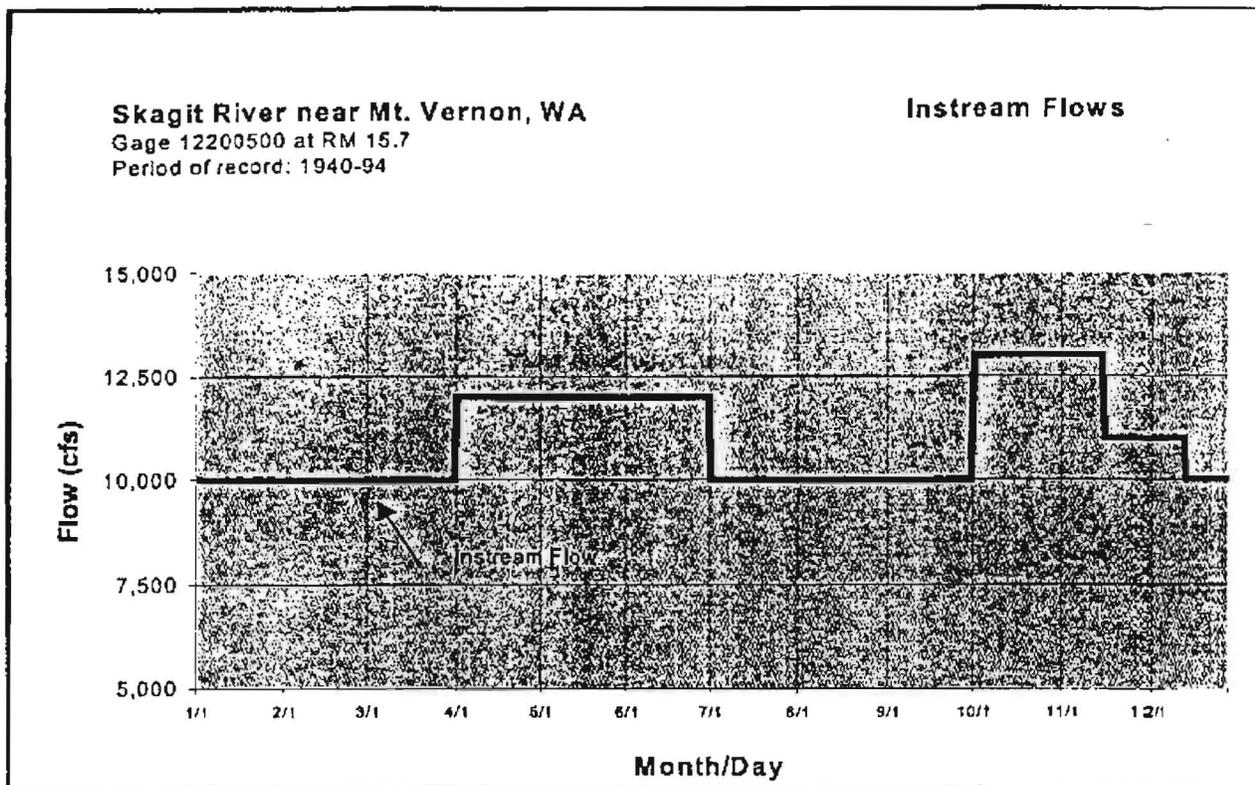


Figure 2

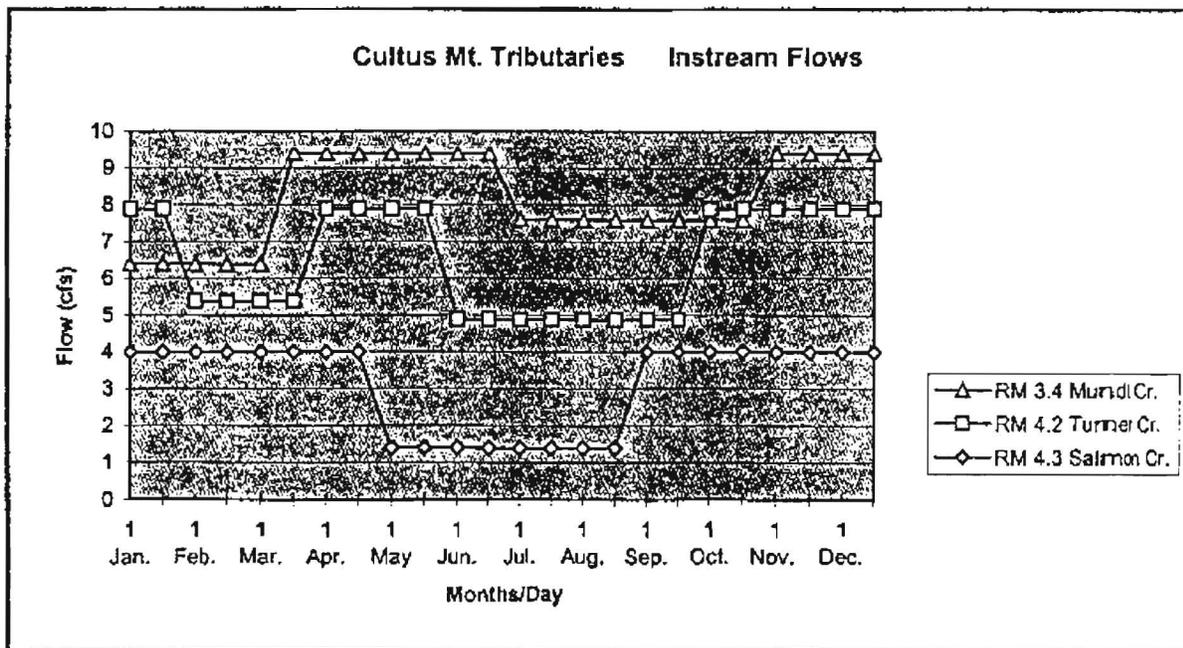
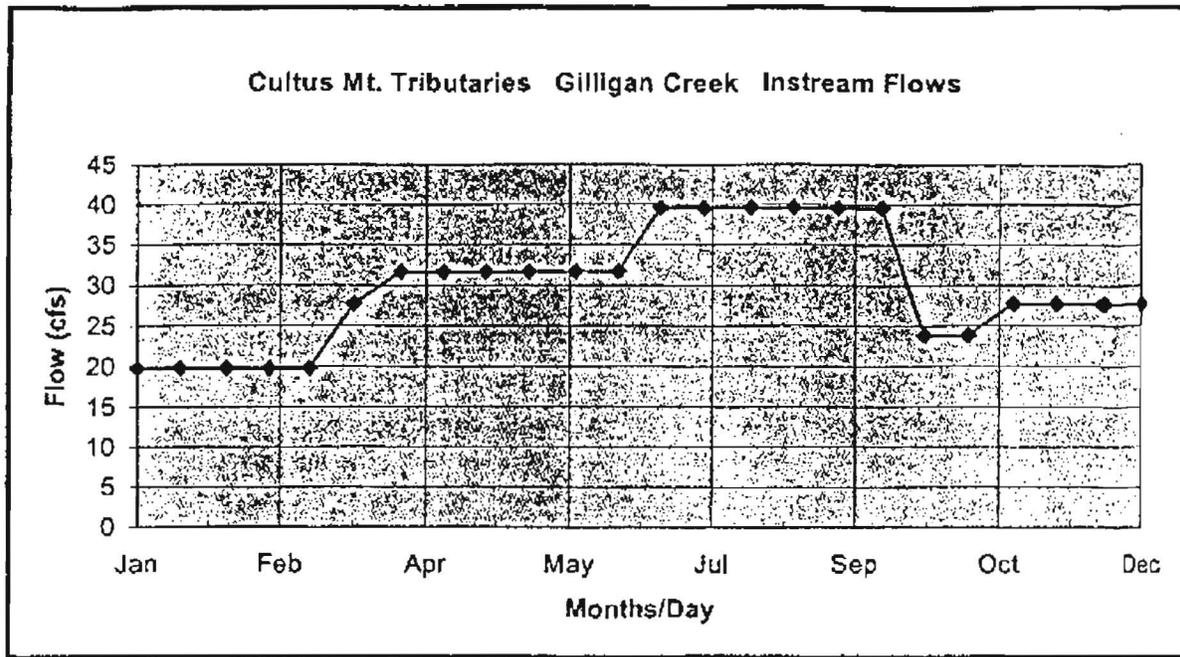


Figure 3



(4) The instream flow hydrographs, as represented in Figures 1 through 3 in WAC 173-503-040(3) shall be used for identification of instream flows.

(5) Future consumptive water right permits issued hereafter for diversion of surface water in the Lower and Upper Skagit (WRIA 3 and 4) and perennial tributaries, and withdrawal of ground water in hydraulic continuity with surface water in the Skagit River and perennial tributaries, shall be expressly subject to instream flows established in WAC 173-503-040 (1) through (3) as measured at the appropriate gage, and also subject to WAC 173-503-060.

(6) Future consumptive water rights issued to applications pending at the effective date of the regulation are superior in priority date but shall be conditioned on the instream flows established in WAC 173-503-040 (1) through (3). (RCW 90.03.247)

[Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-040, filed 3/14/01, effective 4/14/01.]

173-503-050

Water availability determination.

(1) The department has made a determination that two hundred cubic feet per second is available to be appropriated through ground water withdrawal or surface water diversion for further instantaneous consumptive appropriation in the Lower and Upper Skagit watershed (WRIA 3 and 4). These waters are available for appropriation, subject to existing rights, exemptions in WAC 173-503-070, and instream flows in WAC 173-503-040(2). This determination was based upon review of existing water right records and existing water use, and is consistent with the findings section (WAC 173-503-030) of this regulation.

(2) The department advises that water rights issued to appropriate these waters determined to be available by this rule will be interruptible rights.

(3) After these instantaneous diversion or withdrawal of the 200 cfs quantities identified in subsection (1) of this section have been allocated by ecology, the Lower and Upper Skagit Watershed (WRIA 3 and 4) shall be withdrawn from further consumptive appropriations. This rule may be reopened to further consumptive appropriation only if further information demonstrates that such appropriations can be made consistent with the finding section (WAC 173-503-030) and the instream flow section (WAC 173-503-040). If further information demonstrates that the amount in the availability determination set forth in subsection (1) of this section should have been less than two hundred cubic feet per second, ecology will not be bound by the two hundred cubic feet per second number when processing individual water right applications.

[Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-050, filed 3/14/01, effective 4/14/01.]

173-503-051

Future stream closures.

(1) The department determines that, based on historical and current low flows and existing water uses, water is not available for year-round consumptive

appropriation in the Skagit River basin. However, in order to provide for some limited future out-of-stream uses, the department has set aside a limited amount of water for future out-of-stream uses in the subbasin management units of the Skagit River identified in WAC 173-503-074 that can be used under certain criteria described in WAC 173-503-073. When and if the full amount of the reserved quantities are allocated and used by permitted or exempt use, those subbasins identified as subject to closure in WAC 173-503-074 shall thereby be closed without further action of the department, except for the Upper Skagit, Middle Skagit, and Lower Skagit subbasin management units, which will remain open to out-of-stream uses subject to instream flows. If subsequent water use information indicates that the basin can be reopened, the department shall notify the public and local governments of the change in the status of the basin as provided for below.

(2) The department will notify the public of effective subbasin closures and reopening of subbasins through publication of a notice in a newspaper of general circulation in each affected county in WRIA 3 and 4.

(3) Exceptions to the closures and instream flow requirements are provided in WAC 173-503-060, 173-503-073, 173-503-074 and 173-503-075.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW 06-11-070 (Order 05-15), § 173-503-051, filed 5/15/06, effective 6/15/06.]

173-503-052

Future out-of-stream uses in the Upper Skagit River subbasin management unit.

In order to allow for some limited future out-of-stream uses while protecting instream resources in the Upper Skagit River subbasin management unit, the department has set aside a limited amount of water for future out-of-stream uses in the Upper Skagit subbasin management unit and important tributaries in this subbasin management unit identified in Figure 5 of WAC 173-503-120.

All appropriations in each Upper Skagit tributary subbasin identified in Figure 5 of WAC 173-503-120 are to be from ground water sources only and are cumulatively limited to a maximum average consumptive daily use of 25,851 gallons per day in each tributary basin identified in Figure 5 of WAC 173-503-120. These uses must comply with the criteria described in WAC 173-503-073 and will be debited against the Upper Skagit subbasin reservation quantity.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW 06-11-070 (Order 05-15), § 173-503-052, filed 5/15/06, effective 6/15/06.]

173-503-060

Future water rights.

(1) Surface and ground water rights, including permit exempt uses under RCW 90.44.050, may be obtained that are not subject to the instream flows established in WAC 173-503-040 and closures established in WAC 173-503-051 if all statutory requirements are met and if any of the following situations apply:

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter.

(b) The water use qualifies for the reservations established in this chapter. The proposed use from the reservation must be consistent with all the conditions outlined in WAC 173-503-073, 173-503-074 and 173-503-075. The department shall deduct the water use from its record of water available from the reservations as described in WAC 173-503-073 and 173-503-075.

(c) The applicant or governmental agency elects to submit a scientifically sound mitigation plan and it is approved by the department. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a subbasin. A mitigation plan may be approved if the proponent can demonstrate to the department's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or diminish water quality. An approved mitigation plan shall include a monitoring and reporting plan, including a quality assurance/quality control plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. Except for closed basins, if monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the use of water under the water right shall then be subject to the instream flows until the department finds the mitigation plan is effective. In the case of a closed basin, if monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan.

(d) A proposed ground water use will not impair senior water rights or withdraw water from a legally closed basin. Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, future ground water withdrawals may capture water that would result in impacts to surface water flows and levels in the Skagit River basin. A ground water right that is not subject to the instream flows or closures may only be approved if an applicant can demonstrate, through scientifically sound studies and technical analysis, and to the satisfaction of the department, that the proposed use will not cause impairment to existing water rights, including the instream flows set in this chapter or withdraw water from a legally closed source. The department acknowledges that additional scientific investigations may identify areas where water may be used without impairing the instream flows set in this chapter. If future scientifically sound investigations sufficiently identify such areas, the department will notify the public of these findings through publication of a *Skagit River Water Supply Bulletin*, and will account for uses under the reservations in WAC 173-503-073, 173-503-074 and 173-503-075 in accordance with these findings.

(2) Before the department can approve a water right application for a new public water system under subsection (1)(b), (c), or (d) of this section, the applicant must also demonstrate that there are no other public water systems in the same proposed retail service area that can provide timely and reasonable water service as defined in WAC 173-503-025. If domestic potable water can be provided by another public water system, the department shall reject the water right application.

(3) Surface and ground water appropriations may be issued in subbasins identified in WAC 173-503-074 that are subject to the instream flows and subject to the maximum water availability determination of two hundred cubic feet per second pursuant to WAC 173-503-050. The applicant must adequately demonstrate to the satisfaction of the department that the proposed withdrawal can be managed to avoid impairment of the instream flows established in WAC 173-503-040. The project proponent must also describe how its water needs will be met when water use is curtailed. If the water

source is located in a closed subbasin, a water right can only be obtained under conditions in subsection (1)(a), (c) or (d) of this section.

(4) No appropriation to withdraw, divert or store the public surface or ground waters of the Skagit River basin that conflicts with the provisions of this chapter will hereafter be commenced, except in cases where such rights will clearly meet the standards set forth in RCW 90.54.020 (3)(a).

(5) All future surface and ground water appropriations shall be measured through installation and maintenance of appropriate measuring device(s) (water source meters), except for permit exempt uses serving a single residence. Water users required to measure water use must provide a reasonable right of inspection, allow access for the meter to be read, and report the data to the department or a local entity the department designates. The department may require additional users to measure water use, if the department determines that water supplies warrant further monitoring.

(6) Any authorization for new beneficial uses must require development on a timeline that shows reasonable progress and due diligence.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-060, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-060, filed 3/14/01, effective 4/14/01.]

173-503-061

Baker River project settlement agreement flows.

The department acknowledges that the project releases submitted to the Federal Energy Regulatory Commission for relicense of Puget Sound Energy's Baker River project are a necessary component to adequately mitigate for the ongoing impacts of Baker River project operations. Therefore, in order to prevent detriment to the public interest, new permits for withdrawals or diversions that would impact the portion of the Skagit River basin between Sedro Woolley up to and including the Baker River, will only be issued if the applicant can demonstrate that there will be no measurable reduction in the mitigation benefits associated with the flow release provisions associated with the Baker River relicense. However, this provision shall not apply to new appropriations that are obtained under a reservation provided for in WAC 173-503-073, 173-503-074 and 173-503-075.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-061, filed 5/15/06, effective 6/15/06.]

173-503-070

Exemptions.

(1) Nothing in this chapter shall affect existing water rights, including perfected riparian rights, federal Indian and non-Indian reserved rights, or other appropriative rights existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any hydroelectric or water storage reservoir or related facilities.

(2) Nonconsumptive uses which are compatible with the intent of this chapter may be approved.

[Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-070, filed 3/14/01, effective 4/14/01.]

173-503-071

Lakes and ponds.

RCW 90.54.020 (3)(a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced, and lakes and ponds shall be retained substantially in their natural condition. Future withdrawals that would not be consistent with this requirement shall be denied.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-071, filed 5/15/06, effective 6/15/06.]

173-503-072

Administrative requirements.

In administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW. Additionally, all agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of this chapter (RCW 90.54.090).

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-072, filed 5/15/06, effective 6/15/06.]

Water reservations.

(1) The department has weighed the public interest supported by providing a limited amount of water for domestic supply, commercial/industrial supply, municipal supply, stock watering and agricultural irrigation with the potential for negative impact to instream resources. The department finds that the public interest advanced by these limited reservations clearly overrides the potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a).) Critical to the department's finding that the public interest overrides the negative impacts is the limited nature of the reservations. The department does not anticipate the ability to make additional future reservations given the volume of water previously allocated in the basin for out-of-stream uses and the distressed condition of the fishery resource. Further reservations would be expected to exceed "potential" negative impacts and create actual negative impacts.

Based on this finding, the department hereby reserves specific quantities of an amount of surface and ground water, which can be allocated for specific future beneficial uses. These reservations of water are not subject to the instream flows established in WAC 173-503-040 or closures established in WAC 173-503-051. Uses of the water under the reservation are available only if all the conditions set forth in this section are fully complied with. The department reserves its authority to review an application for new water use under the reservation in light of new information that may reflect upon or alter its current findings of availability, beneficial use, impairment, and/or public interest.

(a) Agricultural irrigation reservation. A reservation of 3,564 acre-feet of water annually, is available for agricultural irrigation purposes not subject to the instream flows.

(b) Domestic, municipal, and commercial/industrial water supply reservation. A reservation of a maximum average consumptive daily use of 9,370,208 gallons per day of water is available for domestic, municipal, or commercial/industrial water supply not subject to the instream flows.

(2) Conditions for use of the reserved agricultural irrigation water are as follows:

(a) The reservation is available for both ground and surface water and is only available from the Lower, Middle or Upper Skagit River subbasin management units.

(b) The reservation shall be only for the purpose of agricultural irrigation, as defined in WAC 173-503-025.

(c) A water right for use from the reservation must be obtained from the department. The department will condition uses under the reservation to minimize the instantaneous impact of withdrawals on instream flows. Such conditions may include requiring efficient conveyance and irrigation methods or irrigation scheduling.

(d) Water use will be authorized for only the irrigation season, unless the applicant can demonstrate to the department's satisfaction a need for a continuous, year-round, irrigation demand.

(e) A water user must install and maintain a water measuring device (water source meters) in accordance with specifications provided by the department. The user or other designated local entity must report the data to the department in accordance with the permit requirements.

(f) The department will maintain an estimate of the amount of water used from the reservation based on water rights issued by the department and actual measured water use.

(g) Agricultural irrigation water rights obtained under this reservation are limited to irrigation purposes only. The purpose of use of a water right obtained under the agricultural irrigation reservation cannot be changed. In the event that the water use authorized under a water right from the reservation is no longer desired, has been abandoned, or has been relinquished, the department will credit the quantity of water previously used back to the reservation for that purpose, once the department is notified of the discontinuation.

(3) Conditions for use of the reserved domestic, municipal, and commercial/industrial water reservation are as follows:

(a) The reservation shall be only for the purpose of domestic, municipal, or commercial/industrial water use as defined in WAC 173-503-025. It is available to users exempt from the permitting process and to users requiring a water right, as outlined in WAC 173-503-060.

(b) This reserve of water shall be allocated and used consistent with WAC 173-503-074. The water source must be a ground water well if the source is located in a subbasin management unit tributary to the Skagit River. Such use of the reservation is subject to availability of water in the reservation and the conditions of use of the reservation. For water sources located in identified tributaries in the Upper Skagit subbasin management unit in Figure 5 of WAC 173-503-120, water withdrawals must meet the restrictions described in WAC 173-503-052. A surface water source can be used only if the following conditions are met:

(i) The source is located in the Upper, Middle or Lower Skagit subbasin management units, or the applicant demonstrates to the department that surface water is the only physically available source of water that can be obtained in the tributary subbasin;

(ii) The appropriation complies with the conditions of the reservation; and

(iii) The appropriation is approved by the department through a water right permit.

(c) Water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.

(d) All users of this reservation, except for permit exempt appropriations serving a single residence, shall install and maintain a measuring device (water source meter), in accordance with specifications provided by the department. Water users required to measure their water use must provide a reasonable right of inspection, allow the meter to be read, and report the data to the department or a designated local entity. The department may require additional users to measure their water use, if the department determines that water supplies require further monitoring.

(e) This reservation shall be administered and accounted for by the department and local governmental authorities.

(f) A new withdrawal for potable water supply under this reservation is not allowed in areas where a public water system has been established and a connection can be provided in a timely and reasonable manner. If an applicant for a building permit or subdivision approval cannot obtain water through a public water system, the applicant must present written evidence to the department that water service cannot be provided in a timely and reasonable manner by a public water supplier prior to drilling a well. This determination shall be consistent with the criteria listed in RCW 43.20.260.

(g) For appropriations under this reservation utilizing a permit-exempt ground water source, water use shall be consistent with the provisions in RCW 90.44.050.

(h) All users of this reservation, including permit exempt users, which would like to obtain the septic recharge credit must state, at the time of the appropriation of water, the type of wastewater disposal system for the property or properties that the appropriation serves. If the initial wastewater disposal system is a septic system, and the property or properties subsequently connect(s) to a sewer system, the users of the appropriation must report to the department the change in the wastewater disposal system in a timely manner.

(4) It shall be the responsibility of an applicant for a building permit or subdivision approval seeking water, or a subsequent owner using water under the reservation to comply with the conditions in WAC 173-503-073(3) and all other conditions of this chapter.

(5) The reservations are a one-time, finite resource. Once the reservations are fully allocated, they are no longer available and the subbasin management units identified as subject to closure in WAC 173-503-074 are closed, except for the Upper, Middle and Lower Skagit subbasin management units. Upon closure, new appropriations, including permit exempt wells, may be available only under the provisions in WAC 173-503-060, 173-503-081, 173-503-100 and 173-503-110. If subsequent water use information indicates that the basin can be reopened, the department shall notify the public and local governments of the change in the status of the basin as described below.

The department shall notify the appropriate county, in writing, when it determines that fifty percent, seventy-five percent, and one hundred percent of the reservation for each subbasin management unit has been allocated. The department shall also issue a public notice annually in a newspaper of general circulation for the region that shows the amount of reserved water for each subbasin management unit that has been allocated, remains unallocated, any subbasin management units that have been fully allocated and from which water is no longer available under these reservations, and any subbasin management units that are reopened.

(6) If an appropriation from a reservation is not in compliance with any condition of these reservations, the department may take action consistent with WAC 173-503-090.

(7)(a) A record of all withdrawals from the domestic, municipal, and commercial/industrial reservation shall be maintained by the department. The record will readily show both the allocated and unallocated quantities of water that are in reserved status.

(b) All uses of this reservation shall be debited against the reservation. The department will account for water use under the reservation based on actual measured water use or a standard quantity. If actual measuring data are not available, the department will deduct the authorized quantities under water right permits or certificates from the reservation. For permit exempt appropriations, the department will deduct a standard amount of 350 gallons per day for each domestic or residential service connection in a group domestic water system. The standard amount will be adjusted periodically based on reported water use to reflect the maximum average daily use before any recharge credit for those users that are required to measure and report water use. The department will deduct 5,000 gallons per day for each commercial/industrial use, unless actual measured use is available. Additionally, the department reserves the right to account for water use based on the best available information contained in well logs, water approvals issued by local jurisdictions, water rights issued by the department, public water system approvals or other documents.

(c) For water users using individual and community on-site septic systems, fifty percent of the water used will be credited to the reservations for recharge from on-site septic systems provided that the water user's point of withdrawal is not located in the service area of a sewer provider's adopted general sewer plan as defined in WAC 173-240-050(3). The septic system credit will be removed for water users of the reservation that are subsequently converted to sewer systems whose discharge is located outside of the basin of origin. If water users are subsequently converted to sewer from septic systems, total water uses under the reservation in the applicable subbasin shall remain below the maximum average consumptive daily use limits in the applicable subbasin. Actions to remain in compliance with maximum average consumptive daily use limits could include: Reducing the number of withdrawals under the appropriate subbasin reservation, reducing actual water use, providing an equal quantity of imported water to the subbasin as has been provided through septic recharge return flow allowance, implementing a department approved mitigation plan, or by connecting to water sources from outside of the subbasin.

(d) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, the department will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to the department that the well or surface water source has been decommissioned through written certification.

[Statutory Authority: Chapters 43 27A, 90 54, 90 22, and 90 82 RCW. 06-11-070 (Order 05-15), § 173-503-073, filed 5/15/06, effective 6/15/06.]

**173-503-074
Establishment of subbasin management units and reservation quantities by subbasin management unit.**

The department hereby establishes the following subbasin management units. The boundaries of the management units are shown on the maps in WAC 173-503-120. Table 1 shows the approximate location and maximum average consumptive daily use of reserved water that can be withdrawn for each management unit. Appropriations established after April 14, 2001, will be debited from the reserved quantities in accordance with the provisions contained in WAC 173-503-060, 173-503-073 and 173-503-150.

Subbasin Management Unit	Table 1 Location	Reservation Quantity
*Denotes basins subject to future closure under WAC 173-503-051	Approximate point where the stream meets a connecting water body	Maximum average consumptive daily use in gallons per day
Alder Creek*	NE 1/4, SW 1/4, Sec. 18, T35N, R7E (RM 41.7)	81,430
Anderson/Parker/	Sec. 26, T35N, R5E (flows into slough on south side of Skagit River)	20,034
Sorenson creeks*		
Careys Creek*	NE 1/4, SW 1/4, Sec. 14,	11,633

	T35N, R6E	
Carpenter/Fisher Creek*	NE 1/4, Sec. 30, T33N, R4E	11,633
Childs/Tank creeks*	Sec. 13, T35N, R5E (flows into Minkler Lake)	18,096
Coal Creek*	NW 1/4, SE 1/4, Sec. 21, T35N, R5E (flows into Skiyou Slough)	18,742
Cumberland Creek*	SW 1/4, SE 1/4, Sec. 14, T35N, R6E (RM 39.9)	25,851
Day Creek*	NE 1/4, Sec. 20, T35N, R6E	131,839
Gilligan Creek*	SE 1/4, SE 1/4, Sec. 27, T35N, R5E (RM 28.4)	25,851
Grandy Creek*	NE 1/4, SE 1/4, Sec. 15, T35N, R7E (RM 45.6)	147,350
Hansen Creek*	SE 1/4, Sec. 30, T35N, R5E (RM 24.2)	38,130
Jones Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E (RM 35.1)	67,212
Loretta Creek*	SW 1/4, Sec. 22, T35N, R6E	11,633
Mannser Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E	15,511
Morgan Creek*	NE 1/4, NE 1/4, Sec. 25, T35N, R5E (flows into slough on south side of Skagit River)	13,572
Muddy Creek*	SW 1/4, NW 1/4, Sec. 14, T35N, R6E (flows into Davis Slough)	28,436
Nookachamps Creek - East Fork*	Sec. 10, T34N, R4E	14,218
Nookachamps Creek - Upper*	Sec. 10, T34N, R4E	12,279
O'Toole Creek*	NW 1/4, NW 1/4, Sec. 21, T35N, R7E (RM 43.6)	23,266
Red Cabin Creek*	NW 1/4, NW 1/4, Sec. 15, T35N, R6E (flows into Jims Slough)	42,653
Salmon/Stevens creeks*	SE 1/4, SE 1/4, Sec. 28, T35N, R5E	5,170
Skagit - Lower	From the Skagit River at the east edge of Sec. 30, T35N, R5E downstream to the mouth	5,254,103
Skagit - Middle	From the Skagit River at the west edge of Sec. 29, T35N, R5E to the Skagit River at the east edge of Sec. 21, T35N, R7E	1,394,655
Skagit - Upper♦	Water Resource Inventory Area 4 (Upper Skagit) excluding Grandy Creek subbasin management unit	1,938,816
Wiseman Creek*	NW 1/4, SW 1/4, Sec. 23, T35N, R5E	18,095
Total Reservation		9,370,208

♦All uses in each Upper Skagit tributary subbasin identified in Figure 5 of WAC 173-503-120 are limited to a maximum average consumptive daily use of 25,851 gallons per day. These uses will be debited against the Upper Skagit tributary subbasin reservation quantity.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-074, filed 5/15/06, effective 6/15/06.]

173-503-075
Future stock watering.

(1) Consistent with RCW 90.22.240, the department retains sufficient minimum flows or levels in streams, lakes, or other public waters to provide adequate waters in such water sources to satisfy stock watering requirements for stock on riparian grazing lands. Future permit exempt stock water uses and future stock water uses requiring a water right can be obtained as outlined below.

A reservation of 324,000 gallons per day of water is reserved for new stock water uses not subject to instream flows. It is available to users exempt

from the permitting process and to users requiring a water right. Users of this reservation would be limited to a source within the Lower, Middle and Upper Skagit subbasins and must use the source only for stock watering purposes. Future permit exempt stock water users would not have to measure and report their water use, although the department encourages water withdrawal measuring. The department would measure and account for permit exempt stock water appropriations using stock inventory reports or actual measuring data, if such data exist. New stock water sources using surface water can be authorized under this reservation if authorized under an approved water right from the department. Measurement requirements for these appropriations would be outlined in the water right permit.

(2) Chapter 173-503 WAC shall be implemented consistent with RCW 90.22.040 and the department's policy that encourages direct stock water uses from streams to remove livestock from streams for the purpose of protecting water quality and stream habitat. This applies to both existing and new stock water rights.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-075, filed 5/15/06, effective 6/15/06.]

173-503-081

Future changes and transfers.

No changes or transfers to existing surface or ground water rights in the Skagit River basin shall hereafter be granted that conflict with the purposes or provisions of this chapter. Any change or transfer proposals can be approved only if there is a finding that existing rights, including instreamflows hereby established, will not be injured or impaired under the provisions of RCW 90.03.380 or 90.44.100.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-081, filed 5/15/06, effective 6/15/06.]

173-503-090

Compliance and enforcement.

(1) In accordance with RCW 90.03.605, in order to obtain compliance with this chapter, the department shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When the department determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in egregious cases involving potential harm to other water rights or to the environment. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-090, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. 01-07-027 (Order 99-05), § 173-503-090, filed 3/14/01, effective 4/14/01.]

173-503-100

Alternative sources of water.

(1) The legislature has long acknowledged that water supply and availability around the state are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource (RCW 90.54.090 (1)(a)). This chapter provides limited exceptions for new uses in the Skagit River basin.

(2) However, there is a continuing need for ongoing and reliable sources for new water uses. The need dictates the continued development and use of alternative sources of water. Alternative sources of water of equal or better quality than the proposed source have the potential to be used, where appropriate to improve stream flows for fish, to offset impacts of withdrawals on stream flows and provide sources of water for future out-of-stream uses. Alternative sources include, but are not limited to:

- Reuse of reclaimed water;
- Artificial recharge and recovery;
- Multipurpose water storage facilities;
- Conservation and efficiency measures applied to existing uses and the transfer of saved water;
- Acquisition of existing water rights; and
- Establishment of a trust water rights program.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW, 06-11-070 (Order 05-15), § 173-503-100, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC, 01-07-027 (Order 99-05), § 173-503-100, filed 3/14/01, effective 4/14/01.]

173-503-110

Establishment of trust water rights program.

(1) The department may establish a trust water rights program to facilitate the acquisition of existing water rights through purchases, long-term leases, donations and conserved water saved through state and federally funded conservation projects.

(2) The determination of how much water should be allocated between future out-of-stream uses and the restoration and enhancement of instream flows will be made at the time the water is acquired and deposited into the trust water rights program.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW, 06-11-070 (Order 05-15), § 173-503-110, filed 5/15/06, effective 6/15/06.]

173-503-116

Incorporating new hydrologic investigations and information in rule.

The Skagit River basin and estuary is a complex river system. Consequently, the department acknowledges that additional hydrologic investigations, ground and surface water modeling, and fisheries studies may enhance scientific understanding of the hydrology and ecology of the Skagit River system. If further scientific investigations produce results that indicate the findings and conditions of this chapter should be updated, the department will publish, after consultation with local and tribal governments, the scientific findings in a *Skagit River Water Resources Supply Bulletin* and will account for uses under the reservations in WAC 173-503-073, 173-503-074 and 173-503-075 in accordance with these findings. If necessary, the department will outline a process for updating maps described in WAC 173-503-120.

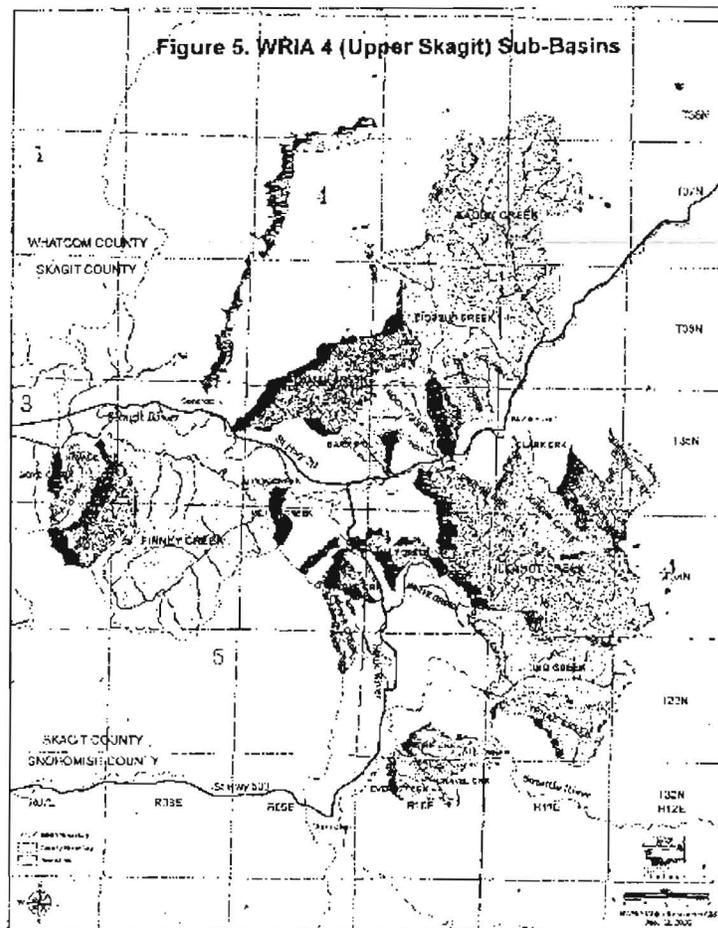
[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW, 06-11-070 (Order 05-15), § 173-503-116, filed 5/15/06, effective 6/15/06.]

173-503-120

Maps.

For the purposes of administering this chapter, the boundaries of the Skagit River basin and subbasin management units contained in Figures 4 and 5 are presumed to accurately reflect the basin hydrology and will be updated as information becomes available as provided under WAC 173-503-115.

Figure 4



[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-120, filed 5/15/06, effective 6/15/06.]

173-503-130
Appeals.

All final written decisions of the department pertaining to water right permits, regulatory orders, and related water right decisions made pursuant to this chapter can be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-130, filed 5/15/06, effective 6/15/06.]

173-503-140
Regulation review.

Review of the rules in this chapter may be initiated by the department whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department to require review.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-140, filed 5/15/06, effective 6/15/06.]

173-503-150

Water rights subject to instream flows predating the reservations.

All water rights established after this amendment shall be subject to the provisions of this chapter as now amended. Water rights that were established after April 14, 2001, the original effective date of this chapter, but that were established prior to the effective date of the reservations contained in WAC 173-503-073, and 173-503-074, may participate in the appropriate reservation provided they agree to change their priority date to that of the reservations. The department assumes that these water rights established during this period will participate under the reservation, unless the water user notifies the department otherwise in writing. For accounting purposes, these water rights, including permit exempt commercial/industrial irrigation users, will be debited against the subbasin reservations at an amount equal to the maximum average consumptive daily water use of 350 gpd, and an amount of 5,000 gpd for commercial/industrial uses, unless the department determines that other information demonstrates an alternative water use quantity should be deducted. Mitigation credits, including, but not limited to, the recharge credit described in WAC 173-503-073(7), apply to these water uses, if appropriate.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. 06-11-070 (Order 05-15), § 173-503-150, filed 5/15/06, effective 6/15/06.]

SCANNED