

# WRIA 1 Nooksack Watershed Water Availability



Nooksack River; Photo by Dan Farber, <https://flic.kr/p/gZiUe>

## Overview

- Introduction to WRIA 1
- Water Availability Factors
- Options for Acquiring Water
- Resources
- Map



What is a watershed?  
Washington is divided into 62 major watersheds or Water Resource Inventory Areas (WRIAs), which are areas that each capture precipitation and funnel rain and snowmelt through smaller subbasins into streams, tributaries, and rivers and typically drain to marine waters or the Columbia River.

## Introduction to WRIA 1

The Nooksack Watershed or Water Resource Inventory Area (WRIA) 1 is defined as the area that drains to the Nooksack River, but also includes the Sumas River. It is bounded by Bellingham Bay and the Strait of Georgia on the west and the Cascade Mountains on the east, in the western portion of Whatcom County and small portions of Skagit County.

The Nooksack River Mainstem is fed by the North, Middle, and South Forks of the Nooksack River. The watershed includes various other streams such as the Lummi River, and Dakota, Fishtrap, Bertrand, TenMile, and Whatcom creeks.

## How can I get water?

Depending on your proposal, you may have more than one option to acquire a reliable water supply:

- Connecting to an existing water system is usually the fastest and easiest option if your project is within the system’s service area.
- Using a permit-exempt well if you meet the limits under state law.
- Purchasing an existing water right and transferring it to the new use.
- Applying for a new water right, which may need mitigation.

See the *Options for Acquiring Water* section for more information about water right permit options and when to meet with Ecology staff.

Washington Water Law Waters of the state belong to the public and can't be owned by any one individual or group. Water right holders have the right to use water, from a set source, for a particular purpose, in a specific location.

The Department of Ecology is responsible for managing the water resources of the state, including issuing the right to use water as well as protecting the instream resources for the benefit of the public.

Washington water law is based on the “prior appropriation” system, often called “first in time, first in right.” New water rights may not harm older water rights. Applications for water from the same source must be processed in the order they are received, although there are certain exceptions.

#### Applicable Laws and Regulations

- [RCW 90.03](#): Washington Water Code
- [RCW 90.44](#): Regulation of Public Groundwaters
- [RCW 90.54](#): Water Resources Act of 1971
- [RCW 90.94](#): Streamflow Restoration
- [WAC 173-501](#): The Instream Flow Rule for WRIA 1

## Water Availability Factors

Due to Washington’s varied land uses, hydrology, and precipitation levels, water availability for new water right permits varies dramatically across the state. In the Nooksack Watershed, key factors affecting water availability include:

- Instream flow rule.
- Existing water rights, including unquantified Tribal rights.
- Existing court-approved settlements on Tribal reservations.
- Seawater intrusion.

### Instream flow rule

Instream flow rules are an element of water and river management that help maintain healthy ecosystems that support fish, communities, and economies. WRIA 1 has an instream flow rule (WAC 173-501), adopted to preserve the uses and values of individual rivers and streams within the WRIA.

The instream flow rule:

- Protects the river by settings minimum flow levels, which are like water rights for the stream. Instream flows do not put water in the streams and do not affect existing (senior) water rights.
- Creates year-round or seasonal closures for some streams, protecting existing flows from new appropriations.

RCW 90.94 allows new homes using permit-exempt groundwater to potentially impact instream flows and closures in this watershed.

### Existing water rights

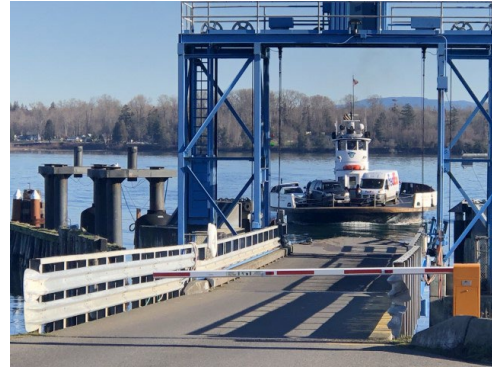
Water rights have been issued in the Nooksack Watershed for over 100 years, and as a result most water in the watershed is already legally spoken for or “appropriated.”

The Nooksack Tribe and Lummi Indian Nation Reservation lands are located in WRIA 1. Federal Reserved Water Rights for the Tribe and Reservation are not quantified at this time, so availability of water within the watershed is undetermined.

The Tribes are concerned about maintaining necessary flows and fish habitat in the watershed. Water right applications and mitigation plans are routinely sent to the Tribes for review and comment.

## Lummi Peninsula

A 2009 settlement between the United States, Lummi Nation, Ecology, and landowners guides groundwater use on the Lummi Peninsula. The agreement resulted from a federal court case, *United States, Lummi Nation v. Ecology, et al.* It includes a description of water user responsibilities, water use limitations, metering, and chloride sampling requirements. Not all properties within the area are approved to drill a well or connect to an existing well. Please contact us if you have questions on the status of legal water availability on your property.



*Lummi Island Ferry.  
Photo by Tom Perkow, Department of Ecology.*

## Seawater intrusion

The movement of salt water into freshwater aquifers, known as seawater intrusion, is a concern for coastal areas of Puget Sound. Any groundwater withdrawals located in the coastal areas are evaluated for the risk of seawater intrusion into existing fresh groundwater supplies.

## Summary

Increasing demands for water over time, from ongoing population growth, agriculture, and other consumptive uses, as well as associated land use practices, have resulted in lower summer streamflows in many areas of the watershed. These decreases impact important resources for fisheries and general stream health. The impacts of climate change in WRIA 1 are also yet to be fully realized. However, it is apparent that water availability is limited throughout the Nooksack Watershed during the low flow season and year-round in certain areas.

## Options for Acquiring Water

### Permit-exempt options

State law, RCW 90.44.050, exempts the following uses from the water right permitting process:

- Single or group domestic uses (see [Domestic uses](#), later in this section.)
- Irrigation of limited non-commercial lawn or garden.
- Industrial purposes (such as water for a store, restaurant, or small industrial facility, or irrigation of a small commercial farm), not exceeding 5,000 gpd.
- Stockwater to provide drinking water for stock animals. Other stock-related purposes require a water right permit.

A project proposal is also limited to the use of one exemption for each type of use. For example, a housing subdivision cannot use a series of wells to exceed the 5,000 gpd limit or the half-acre of non-commercial lawn and garden. The entire subdivision, collectively, cannot exceed either limitation.

### Domestic uses

Enactment of RCW 90.94.020, on January 19, 2018, and the amendment of chapter 173-501 WAC, on June 27, 2020, affected new domestic permit-exempt well use in WRIA 1. The following table describes the general requirements for single and group domestic uses that rely on a permit-exempt well in WRIA 1, depending on when the permit-exempt well was drilled and when the home received its building permit:

**Table 1. Permit-exempt domestic use for an individual home or group use.**

Criteria	Well drilled and building permit issued after June 26, 2020	Well drilled between Jan. 19, 2018 and June 26, 2020 Or Building permit issued before June 27, 2020	Well drilled before Jan. 19, 2018
Water limitation per day	500 gpd indoor use	5,000 gpd	5,000 gpd
Annual average daily use limit per home	-	3,000 gpd*	-
Irrigation allowed per home	1/12 acre**	½ acre	½ acre
Total group use limits	3,000 gpd indoor use ½ acre of irrigation**	5,000 gpd ½ acre of irrigation	5,000 gpd ½ acre of irrigation
Read the fine print	<a href="#">WAC 173-501-065</a>	<a href="#">RCW 90.94.020</a>	<a href="#">RCW 90.44.050</a>

\*Includes both indoor use and outdoor irrigation.

\*\*During a state drought declaration for the area, outdoor irrigation may be limited to subsistence gardening only.

Please contact us if your project is located on the *Lummi Peninsula* to discuss the legal availability of water for your project.

### Permit options

If your project cannot access water from an existing water purveyor and doesn't qualify for use of a permit-exempt well, you will need to:

- Apply for **and receive** a new water right, or
- Acquire an existing water right and apply for **and receive** a change or transfer for the new use, new point of withdrawal/diversion, and/or new place of use.



**Ecology asks anyone who needs a water right** (new, change, or transfer) to submit the pre-application consultation form and meet with us to review your water supply needs and project proposal. See the [Resources](#) section for links to forms and other information.

### Change or transfer an existing water right

It can be easier to buy an existing water right and change the purpose and/or place of use. It is important that the water right be in good standing by regular use over its lifetime. Changing a water right can be challenging if the change creates a new or different impact on a stream.

### New water right

Acquiring new water rights within areas regulated by instream flows or closures will likely be a very difficult and expensive process. It may require hiring a qualified professional to develop a comprehensive mitigation and monitoring plan. This does not guarantee approval of a water right. Mitigation can be any action or group of actions that addresses the impact of the water withdrawal or diversion on instream flows or other senior water rights.

Water right permits may also be approvable in areas with instream flow regulations for interruptible and non-consumptive uses.

Mitigation refers to measures taken to prevent any impact on streamflow during the period that water is not available, by either:

- Halting the diversion or withdrawal, or
- Replacing the water taken—in-time and in-place.

A common form of mitigation is to purchase and retire an existing water right upstream from the new use.

### Processing options

Waiting for your water right application to be processed can take years. An option to speed up the process:

- Submit your new or change water right application through the [Cost Reimbursement Program](#).

For more information on this and other options, refer to [Alternatives for Water Right Application Processing](#).

You can discuss all of your options to supply water to your project at your pre-application consultation with Ecology. To schedule, submit the [pre-application consultation form](#).

## Resources

### Contact Information

Ecology Northwest Regional Office  
15700 Dayton Ave N  
Shoreline, WA 98133  
(206) 594-0000

Bellingham Field Office  
913 Squalicum Way #101  
Bellingham, WA 98225  
(360) 255-4400

### More Information

Visit our website for the most current information.  
[ecology.wa.gov/Water-Shorelines/Water-supply](https://ecology.wa.gov/Water-Shorelines/Water-supply)

Publications and forms are searchable in the  
online database.  
[ecology.wa.gov/publications](https://ecology.wa.gov/publications)

### Forms

- [Water Right Pre-Application Consultation form](#),  
Form ECY 070-440 <https://apps.ecology.wa.gov/publications/summarypages/ecy070440.html>
- [Application for a New Water Right](#),  
Form ECY 040-114 <https://apps.ecology.wa.gov/publications/summarypages/ecy040114.html>
- [Application to Change or Transfer a Water Right or Claim](#),  
Form ECY 040-197 <https://apps.ecology.wa.gov/publications/summarypages/ecy040197.html>

### Publications

- [Frequently Asked Questions: WRIA 1 Rulemaking Amendment to Chapter 173-501 WAC](#)  
Publication 19-11-081 <https://apps.ecology.wa.gov/publications/SummaryPages/1911081.html>
- [Cost Reimbursement Program](#), Publication 05-11-016  
<https://apps.ecology.wa.gov/publications/SummaryPages/0511016.html>
- [Alternatives for Water Right Application Processing](#), Publication 11-11-067  
<https://apps.ecology.wa.gov/publications/SummaryPages/1111067.html>
- [Focus on: The Groundwater Permit Exemption](#), Publication 19-11-090  
<https://apps.ecology.wa.gov/publications/SummaryPages/1911090.html>

### Website – [ecology.wa.gov](https://ecology.wa.gov)

- Visit the [water rights permits page](#) for more information and helpful links.  
<https://ecology.wa.gov/WaterRightPermits>
- Use the [Water Rights Search](#) to locate and research water rights on land parcels anywhere in the state.  
<https://appswr.ecology.wa.gov/WaterRightsSearch>

### ADA accommodations

To request an ADA accommodation, contact Ecology by phone at 360-407-6872, or visit <https://ecology.wa.gov/accessibility>. For Relay Service or TTY call 711 or 877-833-6341.

# Map

