

Water Availability for Skagit Basin Landowners

Frequently asked questions

The Skagit River Instream Flow Rule (chapter 173-503 WAC) 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 uninterruptible 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 streamflows 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 streamflows.

To address current and future water resource needs, Ecology worked with local governments, Tribes, water utilities, and landowners to develop sustainable water supply solutions in limited areas of 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 is junior in priority to other water rights, including instream flow levels. Since senior water rights must be

satisfied first, junior rights may be limited at certain times of the year and cannot reliably be counted on for regular use.

When the Skagit River falls below the established instream flow, all water rights junior to the instream flow 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 fall months, and are expected to increase in frequency and duration due to climate change.

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. In recent years, Ecology adopted the Skagit River Basin Mitigation Plan, which provides a legal source of water for those who began using water during this time. Property

owners in this category should have received a Proof of Mitigated Water Supply document from Ecology as proof of a legal water source.

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 established under RCW 90.44.050 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.

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 a continuous 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.

Alternative water systems, like a roof-top rainwater catchment system or a water system using trucked water, may be ways to provide sufficient water to meet domestic water needs.

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 withdrawing from a well does not interfere with the instream flows. In coordination with local governments, water utilities, Tribes, and the public, Ecology adopted two mitigation programs that provide water for future domestic development in limited areas of the Skagit Watershed. These programs are limited to certain areas close to the Skagit River and near Big Lake.

To find out if a particular property may benefit from these mitigation programs, please visit Ecology’s Skagit River Basin webpage at <https://ecology.wa.gov/Water-Shorelines/Water-supply/Protecting-stream-flows/Instream-flow-implementation/Skagit-River-basin>.

Ecology also evaluates proposals for mitigation projects submitted by individual landowners. State law requires water resource mitigation occur “in-kind,” “in-time,” and “in-place.” This means that mitigation should offset adverse effects by releasing an equal or greater quantity of suitable water into the same water system at 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 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 its [decision](#)¹ that all water rights established after April 14, 2001 are junior in priority to the instream flows established in the

¹ <https://www.courts.wa.gov/opinions/pdf/876720.pdf>

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 streamflows, especially in tributaries. Hydrogeologic studies and computer models show that domestic wells impact streamflows in the Skagit Basin.

The Washington Supreme Court has ruled in several cases that, even if the impairments to regulatory streamflows are small, senior instream flows are entitled to protection from the cumulative impact of later-established users, including 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.
- Develop a water system through one of Ecology's Mitigation Programs mentioned above.
- 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.
- Submit an individual mitigation proposal to Ecology.

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

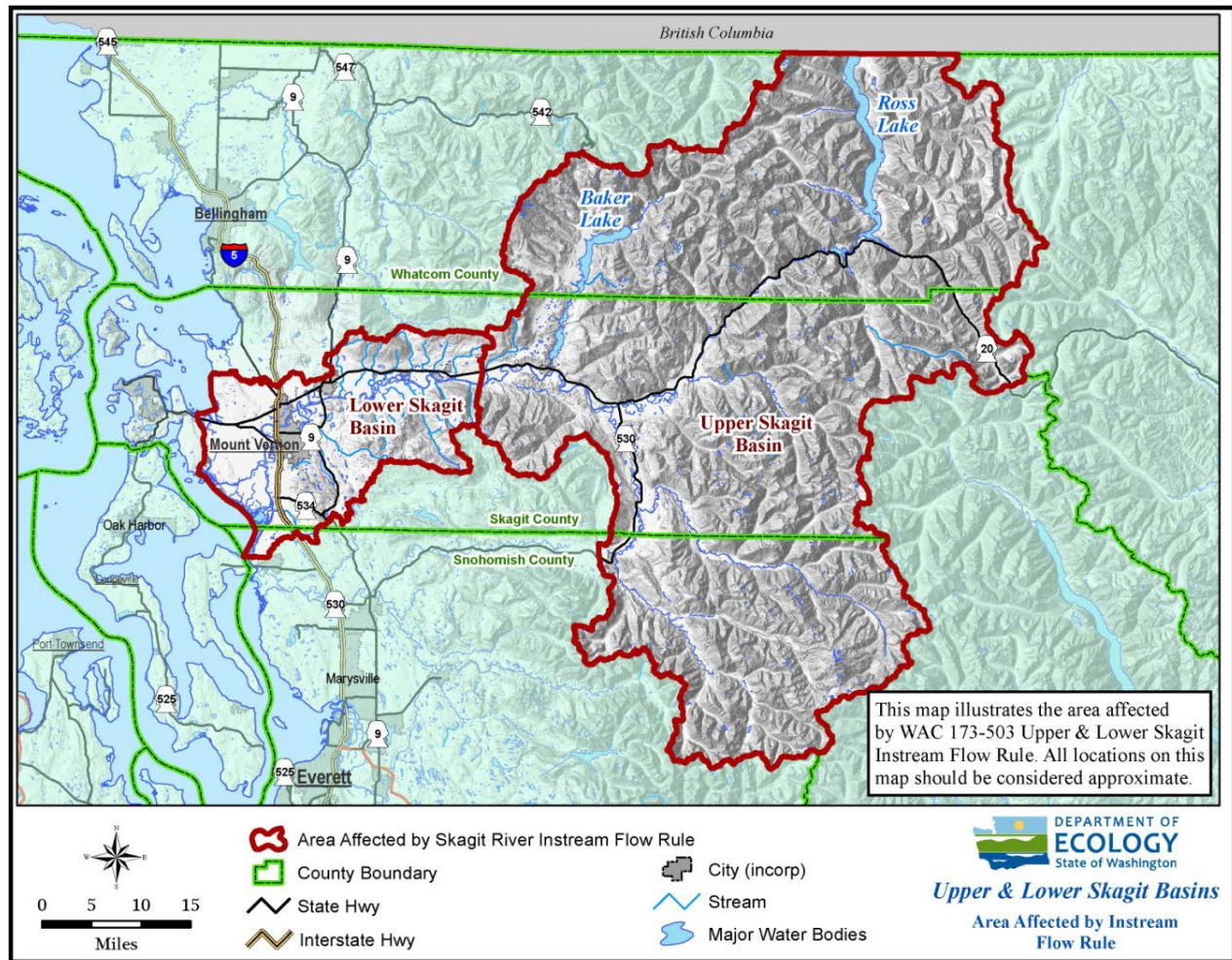
A: Water use in Washington is regulated through a permit and certificate system, with exceptions for certain uses such as domestic supply from wells. Our water law is based on "first in time, first in right," known as the prior appropriation doctrine. Under this system, water users that receive water 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 adopted in law; reservations of water for future uses that provide uninterruptible water supply for well users throughout the watershed established.
- *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.

Figure 1 Upper and Lower Skagit Basins: Area affected by the instream flow rule



More detailed maps are available on-line. For specific questions, contact Ecology's Northwest Regional Office.

Related Information

- [Skagit website](#)²
- [Skagit basin water availability](#)³



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

² <https://ecology.wa.gov/water-shorelines/water-supply/protecting-stream-flows/instream-flow-implementation/skagit-river-basin>

³ <https://ecology.wa.gov/Water-Shorelines/Water-supply/Protecting-stream-flows/Instream-flow-implementation/Skagit-River-basin/Water-supply>