

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 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).

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 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 (~~and~~), including the Cultus Mt. Tributaries, 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 requirements, as 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 administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW.))~~ 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.

#### NEW SECTION

**WAC 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, manufacturing or production activities and maintenance of vegetated areas on the business property.

**"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, potable water to satisfy the human domestic needs of a household or business, including water used for drinking, bathing, sanitary purposes, cooking, laundering, care of household pets, 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.

**"Instream flow"** means a stream flow level set in rule that is needed to protect and preserve fish, wildlife, scenic, aesthetic, recreation, 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 the return flow recharge credit.

**"Mitigation plan"** means a scientifically sound plan voluntarily submitted by a project proponent to offset the impacts of a proposed water use and approved by the department. A mitigation plan can be submitted to the department for a stream, basin, reach, or other area. To gain departmental approval, a mitigation plan must show that the proposed withdrawal with mitigation in place provides water-for-water mitigation and will not impair senior water rights, including instream flow rights, diminish water quality or withdraw water from a legally closed source. The plan must include monitoring and reporting and provide mitigation for the duration of the water use.

**"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 established under RCW 43.20.260 which provides water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and 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.

**"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.

**"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 local legislative authorities.

**"Withdrawal"** means the appropriation or use of ground water, or the diversion or use of surface water.

NEW SECTION

**WAC 173-503-051 Stream closures.** (1) The department determines that, based on historical and current low flows and uses, water other than the water reserved under WAC 173-503-073, is not available for year-round appropriation from the tributary subbasin management units of the Skagit River identified as subject to closure in WAC 173-503-074. Therefore, the department has set aside a limited amount of water for future out-of-stream uses in these basins 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, those tributary subbasins identified as subject to closure shall thereby be closed without further action of the department, except for the Upper Skagit, Middle Skagit, and Lower Skagit subbasin management units.

(2) The department will notify the public of effective stream closures through publication of a notice in a newspaper of general circulation for the region.

(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.

NEW SECTION

**WAC 173-503-052 Upper Skagit River subbasin management units.** (1) The department determines that, based on historic and current low flows and current uses, there remains limited water available for year-round appropriation from certain tributary subbasins within the Water Resource Inventory Area 4, Upper Skagit Basin. Therefore, the department has set aside a limited amount of water for future out-of-stream uses in these basins that can be used under certain criteria described in WAC 173-503-073. The subbasin management units within the Upper Skagit River have been delineated in Figure 5 of WAC 173-503-120.

(2) 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 limited to a maximum average consumptive daily use of 0.04 cfs or 25,851 gallons per day. These uses will be debited against the Upper Skagit subbasin

reservation quantity.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-060 ((Ground—water-)) Future permitting actions.** ~~((If the department determines that there is hydraulic continuity between surface water and the proposed ground water source, a water right permit or certificate shall not be issued unless the department determines that withdrawal of ground water from the source aquifer would not interfere with stream flows during the period of stream closure or with maintenance of minimum instream flows. If such findings are made, then applications to appropriate public ground waters may be approved subject to the flows established in WAC 173-503-040(2).))~~ (1) Surface and ground water permits may be issued 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 and 173-503-074. If an application for water use from a reservation is approved, the department shall deduct the permitted amount from its record of water available from the reservation.

(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 applicant can demonstrate that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, or diminish water quality. The source of water for a mitigation plan shall not be from a legally closed source. 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 appropriated for 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 permit 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. 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 permit 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 identify such areas, the department will notify the public of these findings through publication of a *Skagit River Water Supply Bulletin*.

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

(3) Surface and ground water permits 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.

(4) No right 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 granted, except in cases where such rights will clearly serve

overriding considerations of the public interest, as stated in RCW 90.54.020 (3)(a).

(5) All future surface and ground water permit holders shall be required to install and maintain measuring devices (water source meters), in accordance with specifications provided by the department, and report the data to the department in accordance with the permit requirements. In addition, the department may require the permit holder to monitor stream flows and ground water levels.

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

#### NEW SECTION

**WAC 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 will provide a significant benefit to salmonids and instream resources. Therefore, the department will as part of its public interest review of new water right applications ensure that no reduction in the mitigation benefits associated with the flow release provisions of the hydropower license for the Baker project will result from approval of such applications; however, this provision shall not apply to new water right applications or permit exempt water rights under RCW 90.44.050 that are processed and approved under a reservation provided for in WAC 173-503-073.

#### NEW SECTION

**WAC 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.

NEW SECTION

**WAC 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).

NEW SECTION

**WAC 173-503-073 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:

(a) Agricultural irrigation reservation. A reservation of ten cubic feet per second (10 cfs) or 3,564 acre-feet annually, is available for agricultural irrigation purposes not subject to the instream flows.

(b) Domestic, municipal, commercial/industrial and stockwatering water supply reservation. A reservation of fifteen cubic feet per second (15 cfs) or 10,840 acre-feet annually, is available for domestic, municipal, stock watering 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 a source in 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.

(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 measuring device (water source meters) must be installed and maintained on the water source in accordance with specifications provided by the department and 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 or has been abandoned, the department will credit the quantity of water previously used back to the reservation for that purpose, upon notification of abandonment to the department.

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

(a) The reservation shall be only for the purpose of domestic water use, municipal, commercial/industrial, or stockwatering 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 based on the subbasin management units established in 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 and is subject to availability of water in the reservation and the conditions of use of the reservation. A surface water

source can be used only if: The source is located in the Upper, Middle or Lower Skagit subbasin management units; the source meets the conditions of the reservation, and use of the source is approved by the department through a water right permit. For sources located in identified tributaries in the Upper Skagit subbasin management unit in Figure 5 of WAC 173-503-120, water use is limited to only ground water sources, and is limited to a maximum daily use of 0.4 cfs or 25,851 gallons per day, debited from the total Upper Skagit subbasin management unit reservation.

(c) Domestic 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, including permit exempt users, under the reservation shall install and maintain a measuring device (water source meter), in accordance with specifications provided by the department. The water user 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.

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

(f) A new withdrawal under this reservation is not allowed in areas where a municipal 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 municipal system, the applicant must obtain a letter from a public water supplier prior to drilling a well which states that service was denied. Such a denial shall be consistent with the criteria listed in RCW 43.20.260.

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

(4) It shall be the responsibility of an applicant for a building permit or subdivision approval seeking 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 are closed, except for the Upper, Middle and Lower Skagit subbasin management units. New water sources, 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.

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, and any subbasin management units that have been fully allocated and from which water is no longer available under these reservations.

(6) If a water use authorized from the reservations 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, stock watering, 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, regardless of whether the source is an interruptible or uninterruptible water use. The department will account for water use under the reservation based on actual measured water use. If actual measuring data are not available, the department will account for water use using 800 gallons per day for each domestic or municipal connection or 5,000 gallons per day for a commercial/industrial use, until 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 availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents.

(c) For water users using on-site septic systems, fifty percent of the water used will be credited to the reservations for recharge from on-site septic systems. The on-site septic system credit will be removed for water users that are subsequently converted to sewer systems.

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

NEW SECTION

**WAC 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.

**Table 1**

Subbasin Management Unit	Location	Reservation Quantity	
		Maximum average consumptive daily use in cubic feet per second	Maximum average consumptive daily use in gallons per day
*Denotes basins subject to future closure under WAC 173-503-051	Approximate point where the stream meets a connecting water body		
Alder Creek*	NE 1/4, SW 1/4, Sec. 18, T35N, R7E (RM 41.7)	0.126	81,430
Anderson/Parker/Sorenson creeks*	Sec. 26, T35N, R5E (flows into slough on south side of Skagit River)	0.031	20,034
Careys Creek*	NE 1/4, SW 1/4, Sec. 14, T35N, R6E	0.018	11,633
Carpenter Creek*	NE 1/4, Sec. 30, T33N, R4E	0.01	6,463
Childs/Tank creeks*	Sec. 13, T35N, R5E (flows into Minkler Lake)	0.028	18,096
Coal Creek*	NW 1/4, SE 1/4, Sec. 21, T35N, R5E (flows into Skiyou Slough)	0.029	18,742
Cumberland Creek*	SW 1/4, SE 1/4, Sec. 14, T35N, R6E (RM 39.9)	0.04	25,851
Day Creek*	NE 1/4, Sec. 20, T35N, R6E	0.204	131,839
Fisher Creek*	NE 1/4, Sec. 30, T33N, R4E	0.008	5,170
Gilligan Creek*	SE 1/4, SE 1/4, Sec. 27, T35N, R5E (RM 28.4)	0.04	25,851
Grandy Creek*	NE 1/4, SE 1/4, Sec. 15, T35N, R7E (RM 45.6)	0.228	147,350

Hansen Creek*	SE 1/4, Sec. 30, T35N, R5E (RM 24.2)	0.059	38,130
Jones Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E (RM 35.1)	0.104	67,212
Loretta Creek*	SW 1/4, Sec. 22, T35N, R6E	0.018	11,633
Mannser Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E	0.024	15,511
Morgan Creek*	NE 1/4, NE 1/4, Sec. 25, T35N, R5E (flows into slough on south side of Skagit River)	0.021	13,572
Muddy Creek*	SW 1/4, NW 1/4, Sec. 14, T35N, R6E (flows into Davis Slough)	0.044	28,436
Nookachamps Creek - East Fork*	Sec. 10, T34N, R4E	0.022	14,218
Nookachamps Creek - Upper*	Sec. 10, T34N, R4E	0.019	12,279
O'Toole Creek*	NW 1/4, NW 1/4, Sec. 21, T35N, R7E (RM 43.6)	0.036	23,266
Red Cabin Creek*	NW 1/4, NW 1/4, Sec. 15, T35N, R6E (flows into Jims Slough)	0.066	42,653
Salmon/Stevens creeks*	SE 1/4, SE 1/4, Sec. 28, T35N, R5E	0.008	5,170
Skagit - Lower	From the Skagit River at the east edge of Sec. 30, T35N, R5E downstream to the mouth	8.631	5,578,103
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	2.158	1,394,655
Skagit - Upper <sup>2</sup>	Water Resource Inventory Area 4 (Upper Skagit) excluding Grandy Creek subbasin management unit	3.0	1,938,816
Wiseman Creek*	NW 1/4, SW 1/4, Sec. 23, T35N, R5E	0.028	18,095

Total Reservation		15	9,694,208
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©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 0.04 cfs or 25,851 gallons per day. These uses will be debited against the Upper Skagit tributary subbasin reservation quantity.

NEW SECTION

**WAC 173-503-075 Future stock watering.** 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.

NEW SECTION

**WAC 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 instream flows hereby established, will not be injured or impaired under the provisions of RCW 90.03.380 or 90.44.100.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-090 ((Enforcement.)) Compliance and enforcement.** ((In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 43.83B.335, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.)) (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 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.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

**WAC 173-503-100 (~~Regulation review.~~) Alternative sources of water.** (~~Review of the rules in this chapter may be initiated by the department of ecology whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department of ecology to require review.~~) (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.

NEW SECTION

**WAC 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.

NEW SECTION

**WAC 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 findings in a *Skagit River Water Resources Supply Bulletin* and outline a process for updating this rule in the bulletin.

NEW SECTION

**WAC 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.

Figure 4





NEW SECTION

**WAC 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.

NEW SECTION

**WAC 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.

NEW SECTION

**WAC 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 will be debited against the subbasin reservations at an amount equal to the maximum average consumptive daily household water use for the Skagit River basin for domestic water uses, and an amount of 5,000 gpd for commercial/industrial uses, unless actual water use records are available.

REPEALER

The following section of the Washington Administrative Code  
is repealed:

WAC 173-503-080

Policy statement for future  
permitting actions.