

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>16</u>	Amended	<u>5</u>	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Differences between the proposed and final rule

There are numerous changes from the rule amendment published with the CR 102, and this rule amendment adopted and published with the CR 103. The changes were made in response to comments as well as upon Ecology's initiative. All changes made are for rule amendment clarity to more precisely identify the rule amendment or requirement. The changes made do not change the substance or the intent of the rule.

173-503-020 Purpose. The words "as defined in chapter 173-503-040 WAC," were added after "Cultus Mt. Tributaries" as an editorial change for clarity. "Requirements as" after "stock watering" was replaced with "objectives" consistent with RCW 90.22.040.

173-503-025 Definitions. In the definition of "commercial/Industrial" water use, a sentence was added that includes irrigation of agricultural products as a purpose per the PCHB Kim decision. The sentence added is "For permit exempt commercial/industrial water ground water uses, it also means irrigation of agricultural products." In addition, "within the business property" was added for clarification of where the commercial/industrial water use will take place.

In the definition of "domestic water use", "only" was added before potable water for clarification. The words "or business" were removed from the definition because business has already been included in the definition for commercial/industrial. The words "maintenance and vegetation" and "incidental livestock" were added to the list of examples of domestic water uses to further clarify the definition.

The definition of "incidental stock water use" was added to allow small scale domestic stock (i.e. family horses) to be counted as domestic water use. This concept was developed so that we can allow small scale stock in tributaries while limiting larger operations to the mainstem areas only. Large stock water uses can now access a specific stock water reservation.

The words "any applicable" were added to the definition of "maximum average consumptive daily use" in front of "return flow recharge credit" and the word "the" was removed from the same location for clarification.

In the definition for "mitigation plan" the words "must be" were added before "approved by the department" to stress that Ecology approval must be gained prior to commencing a mitigation project in accordance with this rule. The remainder of this definition was removed to allow Ecology to approve scientifically sound plans as submitted by a proponent.

The definition of "public water system" replaced "established by RCW 43.20.260" with "defined by RCW 70.119.020(8)" in order to clear up confusion regarding the intended definition of public water as written in the rule amendment. Further, "excluding" was added before "a system with four or fewer" systems clarify that farms with four or fewer connection and single family residences are not considered to be public water systems.

The definition for "retail service area" was added in keeping with the meaning of the rule amendment and in accordance with public comments seeking clarification of sections of the rule amendment in which this term appears.

The definition for "stock water" was added in accordance with comments seeking clarification of relevant areas of the rule amendment as they pertain to current case law and the recent Attorney General Opinion.

In the definition of "withdrawal," "appropriation or" was replaced with "extraction and" and later "or" regarding surface water diversion was replaced with "and" in order to comport with the definition for consumptive water use.

173-503-051 Future Stream Closures. The title was changed to "future stream closures" from "stream closures" in order to clarify that streams will not be immediately closed if they will be closed at all.

In subsection (1) "uses, ...other than the water reserved under WAC 173-503-073, ... from the tributary subbasin management units of ... identified as subject to closure in WAC 173-503-074. Therefore," was changed to, "existing ... uses, ... is not available for year-round consumptive appropriation in ... basin. However, in order to provide for some limited future uses," as an editorial change for clarity and readability. "These basins" was replaced with "the subbasin management units of the Skagit River identified in WAC 173-503-074" because the language was merely implicit in its meaning. "And used by permitted or exempt use ... in WAC 173-503-074" was added as an editorial change for clarity and in order to specify that the rule amendment applies to permitted and permit exempt users alike, as is specifically stated in other sections of the rule. Finally, "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." was added for clarity on the future of the streams if or when a stream is closed.

In subsection (2) “for the region” was replaced with “in each affected county in WRIA 3 and 4.” Was added to clarify that all those affected by a change in the reservation will be notified as to the status of the reservations.

173-503-052 Future out of stream uses in the Upper Skagit River subbasin management units. The title was changed to “Future out of stream uses in the Upper Skagit Rive subbasin management units” in order to more clearly state the subject of the section.

In subsection (1) “The department determines that, based on historical and current low flows and 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... 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” was replaced by, “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 Upper Skagit subbasin management unit and important tributaries in this subbasin management unit identified.” This was done in order to make this section more succinct.

Subsection (2) was changed from a separate subsection to a continuation of subsection (1). The words “are cumulatively” were added before “limited to a maximum average consumptive daily use”. “.04 CFS or” was removed before the gpd number in keeping with section 074, which lists the tributary reservation amounts in gpd. “[I]n each tributary identified in Figure 5 of WAC 173-503-120. These uses must comply with the criteria described in WAC 173-503-073 and” was added before “will be debited” as editorial changes to clarify Ecology’s intent with regards to the limits of withdrawals in tributary areas.

173-503-060 Future Water Rights. The title was changed to “Future Water Rights” in order to corroborate with the rule amendment that exempt and non-exempt water rights alike are covered under the rule.

In subsection (1) “rights, including permit exempt uses under 90.44.050 RCW, may be obtained” was added after “surface and ground water” in consideration of public comments, and as an editorial change to clarify the applicability of these provisions to permitted and permit exempt users alike.

In subsection (1)(b), “173-503-075” was added after “173-503-074” to reflect the change in which a separate reservation was created for stockwatering. “In an application for ... a reservation is approved, the department shall deduct its permitted amount from” was removed and “The department shall deduct the” was added as an editorial change for succinctness and clarity. Further, “as described in WAC 173-503-073” was added as an editorial change for specificity. “173-503-075 was added to the end of this subsection for the above reason.

In subsection (1)(c) “applicant” was changed to “proponent” and “to the department’s satisfaction” was added after “demonstrate to” and “adversely impact instream resources,” was added before “or diminish water quality” in accordance with several comments made, which felt that the standards listed that a mitigation plan must meet were set too low or left too vague. The sentence “The source of water for a mitigation plan shall not be from a legally closed source.” since Ecology retains approval authority for the mitigation plans and it will make a determination on the legal availability of the source water when it reviews the proposed mitigation plan.

In subsection (1)(d) “or withdraw water from a legally closed basin” was added after “will not impair senior water rights” to clarify what was only implied in the rule. “A ground water permit” was replaced by “a ground water right” in keeping with the intent of the rule amendment to include both permit and permit exempt water uses. “Sufficiently” was added in the sentence allowing for changes in rule amendment application in the event of new scientific information to give clarity as to the standard by which the scientific information will be judged. A final sentence was added to the rule amendment stating “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” in order to explicate which parts of the rule amendment will be applied differently in light of new scientific information, which was merely implied in the rule amendment proposal.

Two editorial changes were made in subsection (2) to be consistent with other areas of the rule. In the first one, “public water supply” was changed to “public water system” in order to be consistent with section 073, the definitions section and the purpose of the rule. The words “municipal or” were removed before both references to “public water system” because municipal water systems are subset of public water systems and thus covered by this term. Additionally “that can provide timely and reasonable water service as defined in WAC 173-503-025” was added to be consistent with public water connection requirements in section 073.

In subsection (3) “permits” was changed to “appropriations” to be consistent with the fact that permitted and permit exempt users alike will be subject to the reservations. “If the water source is located in a closed subbasin, a water right can only be obtained under conditions 1(a),(c) or (d) of this section” was added to clarify the water rights of water users located within the various tributaries and streams and is consistent with the rule amendment.

In subsection, (4) the word “right” was replaced by “appropriation” as an editorial change and for clarification. The statement “serve overriding considerations of the public interest” was replaced by “meet the standards set forth by RCW 90.54.020”, on the request of commenters.

In subsection (5), the words “permit holders” were removed and “appropriations” was put in their place as an editorial change and for clarification. Further, the language “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” was removed. The language was replaced by “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.” and an editorial change to clarify metering requirements, as several commenters showed confusion as to what would be expected of them. Ecology has retained the authority to require single residence permit exempt users to meter in the future, and believes that the data from metering of group B water systems will provide Ecology with an idea of actual water usage on single residence water uses.

173-503-061 Baker River project settlement agreement flows. The language “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” was removed. The language was replaced by “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” and “173-503-074, and 173-503-075” was added to the end as an editorial change to clarify the department’s intent based on public comments received and in accordance with the removal of Stockwater from section 073 reservations.

173-503-073 Water Reservations. In subsection (1) a new sentence was added stating, “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.” This sentence was added as an editorial change to clarify Ecology’s permitting authority. This sentence does not change or expand Ecology’s authority.

In subsection (1)(a) the words “10 cubic feet per second (cfs)” before “is available for agricultural irrigation purposes” was removed. This clarifies the amount of water reserved under agricultural irrigation reservation as 3,564 acre feet annually (equivalent to 10 cfs diverted continuously through the irrigation season) and Ecology would not be limiting all withdrawals under this reservation to an instantaneous withdrawal rate of 10 cfs. Similarly, “of water” was added after “3,564 acre feet” as an editorial change for clarification.

In subsection (1)(b), “stockwatering” was removed from the section which still covers the “domestic, municipal, and commercial/industrial” reservation. The stockwatering reservation has been moved to section 075 in response to several public comments to make stockwatering a separate reservation, and does not raise the overall reservation values. “Fifteen cubic feet per second (15 cfs) or 10,840 acre-feet annually” was also removed and replaced with “a maximum average consumptive daily use of 9,370,208 gallons per day” to account for the removal of stockwatering from the domestic, municipal, and commercial/industrial reservation, and the change in the reservation number is reflected in the stockwatering reservation in section 075. Similarly, the new language clarifies that the reservation will be accounted for using the maximum average consumptive daily use (withdrawal amount minus any applicable septic recharge). The change from cubic feet per second and acre-feet annually to gallons per day is for clarification and because more people understand the concept of gallons per day.

In subsection (2)(a), “a source in” was removed before “the Lower, Middle or Upper Skagit” as an editorial change for clarification.

In subsection (2)(c) “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” was added at the end of the subsection to clarify Ecology’s permitting requirement.

In subsection (2)(e), “water user must install and maintain a water” was added before “a measuring device” and replaced “must be installed and maintained on the water source” as an editorial change for clarification. “The user or other designated local entity must” was added before “report the data to the department” for clarification of the reporting requirement, which was requested by several commenters.

In subsection (2)(g), the words “has been relinquished” have been added after “has been abandoned” to give agricultural irrigators the ability to add the unused portion of their water right to the reservation prior to when abandonment conditions have been met. In keeping with this change, “upon notification of abandonment” has been changed to “once the department is notified of the discontinuation.”

In subsections (3) and (3)(a) “stock watering” was removed as a purpose of use. Ecology is proposing to allow incidental stock water use (small scale livestock operations) as part of domestic water use. A small quantity of domestic reservation (0.5 cfs/340,000 gpd) will be set aside for a separate stock water reservation.

In subsection (3)(b) “based on the subbasin management units established in” was replaced with “and used consistent with” for clarity and succinctness. In the next sentence, “and” was removed and replaced with “Such use of the reservation,” which is the start of a new sentence, and the update was an editing change for clarity. A new sentence was added, stating “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.” This sentence does not change or add a requirement, but clarifies that the requirements in this section are consistent with other sections of the rule. The words, “the following conditions are met” were added after “if” as an editorial change for clarity. The conditions “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; (2) the appropriation complies with the conditions of the reservation, and (3) the appropriation” were added as an editorial change for clarity and do not change the requirements created by the rule. “Use of the source” was removed before the new language “(3) the appropriation” was added for clarity. Finally, “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.” was removed because it would be redundant in meaning to the language added in this subsection and detailed above.

In subsection (3)(c), “Domestic” was removed before the word “water” to clarify that subsection (3) does not only pertain to domestic water uses, but also municipal and commercial/industrial water uses.

In subsection (3)(d), “of this reservation, except for permit exempt appropriations serving a single residence,” was added and “including permit exempt users, under the reservation” was removed, effectively removing single residence exempt well users from the metering requirement in order that Ecology can focus on enforcement of metering compliance of larger water users and single residence exempt wells will be deducted from the reservation at 350 gpd or 175 if they are served by a septic system. “The water user” was replaced by “Water users required to measure their water use” was replaced in keeping with the above change. “The department may require additional users to measure their water use, if the department determines that water supplies require further monitoring” was added as a final sentence to allow for Ecology to require single residence exempt well users to meter their wells if there is reason to believe that the gallons per day use exceeds or is less than 350 gpd.

In subsection (3)(f), “for a potable water supply” was added after “a new withdrawal” for clarity and consistency with other sections of the rule amendment and in response to several comments from non-potable water users stating confusion over whether they would be required to seek public water system connection. “Municipal” water system was replaced with “public” water system in two locations because municipal water systems are a subset of public water systems. “Obtain a letter from a” was replaced with “present written evidence to the department that water service cannot be provided in a timely and reasonable manner by a” in keeping with several commenter’s who stated that public water suppliers do not often deny potential water connections through a letter and in keeping with standard practices of Skagit County. Similarly, “was denied. Such a denial” was replaced with “cannot be provided in this manner. This determination” in keeping with comments stating that a public water connection is not always denied as such, and the language was updated in keeping with the rule’s intent.

In subsection (3)(g) “users” was replaced by “appropriations under this reservation” as an editorial change for clarification.

Subsection 3(h) was added, stating “All users of this reservation, including permit exempt users, must inform Ecology, 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 Ecology the change in the wastewater disposal system in a timely manner.” This provision allows Ecology to request information to assist us in administering the rule, specifically applicability of septic recharge credit.

In subsection (4) “or a subsequent owner” was added before “seeking water” to emphasize that following the conditions of the reservation is the responsibility of subsequent owners in addition to the user which established the appropriation. This does not change or add a requirement and is consistent with the law of prior appropriation.

In subsection (5) “identified as subject to closure in WAC 173-503-074” was added after “subbasin management units” as an editorial change for clarity. “New water sources” was replaced by “Upon closure, new appropriations” as an editorial change for clarity. A final sentence was added to the first paragraph of this subsection stating “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.” For clarity and in response to several comments requesting information on how the public will be notified when basins are closed or if or when they could be reopened.

In subsection (6), “a water use authorized from the reservations” was changed to “an appropriation from a reservation” as an editorial change and in keeping with the rest of the rule, which includes permit exempt wells.

In subsection (7)(a) the words “stock watering” were removed in keeping with subsection (1) in which the reservation for stock watering was removed.

In subsection (7)(b) the words “regardless of whether the use is an interruptible or uninterruptible water right” was removed because the previous phrase “ All uses of this reservation shall be debited against the reservation” gives Ecology the authority to account for the water use under the reservation based upon the type of proposed use. The word “source” was changed to “use” in the first sentence as an editorial change for clarification. In the next sentence “or a standard amount” was added after “actual measured data” in order to make this section consistent with other sections of the rule. “Account for water use using 800” was replaced with “deduct the authorized quantities under water right permits or certificates from the reservation. For permit exempt appropriations, the department will initially deduct a standard amount of 350” to comport with several comments challenging the 800 gallons per day amount as far exceeding that which is actually used by residents of the Skagit River Basin. “Municipal” was changed to “residential service” for clarity. “Or” after “connection” was replaced with “in a group domestic water system. The standard amount will be adjusted periodically to reflect the maximum average daily use before any recharge credit. The department will deduct” to clarify Ecology’s reservation accounting. In the same sentence, “a” was replaced with “each” and “until” was changed to “unless” as editorial changes and for clarity as to Ecology’s intent. “Availability certificates issued by the counties” was change to “approvals issued by local jurisdictions” after it came to Ecology’s attention that not all counties in the Skagit River Basin issue availability certificates.

In subsection (7)(c) “individual and community” was added in response to several comments requesting clarification on the sort of septic systems covered under the recharge credit. “On-site” was removed before “septic system credit” as an editorial change, and “of the reservation” was added to the same sentence as an editorial change and for clarity. After “converted to sewer systems” “whose discharge is located outside the basin of origin” was added because sewer systems with a discharge within the basin or origin would add to the basin similarly to septic systems. New language was added to the end of the subsection stating, “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 newly sewered basin. 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 an Ecology approved mitigation plan, or by connecting to water sources from outside of the subbasin.” This language was added to present water users subject to the reservation with options for continuing to use only a portion of the reservation after a sewer connection and does not add a new requirement.

In subsection (7)(d) “or relinquishes” was added to provide water users an alternative to abandoning a water right in order to add water to the reservation and allows the water right to vest more immediately. “/or debited from the reservation, upon demonstration to the department that the well or surface water source has been decommissioned through written certification.” was added to replace “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.” as an editorial change for clarification that the writing does not have to be in the form of a certification.

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

A sentence was added stating, “Appropriations established after April 14, 2001 will be debited from the reserved quantities in accordance with the provisions contained in WAC 173-503-060 and WAC 173-503-073.” This sentence was added as an editorial change for clarification and does not add or change a requirement under the rule. The column in the chart showing the maximum average consumptive daily use in cubic feet per second was removed because it was redundant in its content to the column showing the maximum average consumptive daily use in gallons per day. Carpenter and Fisher Creek basins were combined based on further hydrological review.

173-503-075 Future Stock Watering. Language was added stating: “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.

(1) 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.” A separate reservation for stockwatering was created because of the difficulty of accounting for stockwatering usage. The reservations were not raised or lowered due to this change. The language was also added to clarify that permit exempt stock water users will not have to measure water use, Ecology will account for their use using stock inventory reports.

173-503-116 Incorporating new hydrologic investigations and information in rule. The word “scientific” was added before “findings” to clarify that Ecology would only update it’s accounting of the reservations given scientific findings, which is also consistent with section 060. A sentence was added stating “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” to clarify that the section applies only to the accounting of the reservations. Finally, “this rule in the bulletin” was replaced with “maps described in WAC 173-503-120” to clarify the process for updating the maps.

173-503-120 Maps. The words “and will be updated as information becomes available as provided under WAC 173-503-116” to comport with the change to section 116. The maps in figures 4 and 5 were updated to reflect the combining of Fisher and Carpenter Creeks in section 074 and to make the maps more readable.

173-503-150 Water rights subject to instream flows predating the reservations. The words, “including permit exempt commercial/industrial irrigation users,” were added to conform to the rest of the rule amendment which treats permit and permit exempt uses alike. “household water use for the Skagit River basin for domestic water uses” was removed and replaced with “of 350 gpd,” as an editorial change for clarity. “Water use records are available” was replaced by “the department determines that other information demonstrate an alternative water use quantity should be deducted. Mitigation credits, including but not limited to, the recharge credit described in section 173-503-073(7), apply to these water uses, if appropriate.” This change was made for clarity and to comport with sections 060 and 073 allowing water users of the reservation recharge credit for septic systems and to mitigate reservation withdrawal with approved mitigation plans.