

Chapter 173-503 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—LOWER AND UPPER SKAGIT WATER RESOURCES INVENTORY AREA (WRIA 3 AND 4)

<p>WAC</p> <p>173-503-010 173-503-020 173-503-030 173-503-040 173-503-050 173-503-060 173-503-070 173-503-080 173-503-090 173-503-100</p>	<p>General provision. Purpose. Findings. Establishment of instream flows. Water availability determination. Ground water. Exemptions. Policy statement for future permitting actions. Enforcement. Regulation review.</p>	<p>173-503-074</p> <p>173-503-075</p> <p>173-503-081</p> <p>173-503-110</p> <p>173-503-116</p> <p>173-503-120</p> <p>173-503-130</p> <p>173-503-140</p> <p>173-503-150</p>	<p>Establishment of subbasin management units and reservation quantities by subbasin management unit. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-074, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Future stock watering. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-075, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Future changes and transfers. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-081, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Establishment of trust water rights program. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-110, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Incorporating new hydrologic investigations and information in rule. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-116, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Maps. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-120, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Appeals. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-130, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Regulation review. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-140, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Water rights subject to instream flows predating the reservations. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-150, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p>
DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER			
<p>173-503-025</p> <p>173-503-051</p> <p>173-503-052</p> <p>173-503-061</p> <p>173-503-071</p> <p>173-503-072</p> <p>173-503-073</p>	<p>Definitions. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-025, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Future stream closures. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-051, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Future out-of-stream uses in the Upper Skagit River subbasin management unit. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-052, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Baker River project settlement agreement flows. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-061, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Lakes and ponds. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-071, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Administrative requirements. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-072, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Water reservations. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-073, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p>	<p>173-503-081</p> <p>173-503-110</p> <p>173-503-116</p> <p>173-503-120</p> <p>173-503-130</p> <p>173-503-140</p> <p>173-503-150</p>	<p>Future changes and transfers. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-081, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Establishment of trust water rights program. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-110, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Incorporating new hydrologic investigations and information in rule. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-116, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Maps. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-120, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Appeals. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-130, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Regulation review. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-140, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p> <p>Water rights subject to instream flows predating the reservations. [Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-150, filed 5/15/06, effective 6/15/06.] Decodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of <i>Swinomish Tribal Comm'y v. Dep't Ecology</i>, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013).</p>

Reviser's note: The Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013), invalidated the 2006 amendments to chapter 173-503 WAC, adopted by the department of ecology Order No. 05-13, WSR 06-11-070 (May 15, 2006, effective June 15, 2006). See WSR 13-21-044, filed 10/9/13.

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, 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).

[Recodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013); Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-010, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. WSR 01-07-027 (Order 99-05), § 173-503-010, filed 3/14/01, effective 4/14/01.]

Reviser's note: The Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013), invalidated the 2006 amendments to chapter 173-503 WAC, adopted by the department of ecology Order No. 05-13, WSR 06-11-070 (May 15, 2006, effective June 15, 2006). See WSR 13-21-044, filed 10/9/13.

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 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.

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.

[Recodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013); Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-020, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. WSR 01-07-027 (Order 99-05), § 173-503-020, filed 3/14/01, effective 4/14/01.]

Reviser's note: The Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013), invalidated the 2006 amendments to chapter 173-503 WAC, adopted by the department of ecology Order No. 05-13, WSR 06-11-070 (May 15, 2006, effective June 15, 2006). See WSR 13-21-044, filed 10/9/13.

WAC 173-503-030 Findings. Ecology finds that:

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

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

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

(4) The rules setting minimum flows in the Lower and Upper Skagit River (WRIA 3 and 4) (WAC 173-503-040) and finding certain waters available (WAC 173-503-050) are

necessary to protect and preserve wildlife, fish, scenic, aesthetic and other environmental values.

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

WAC 173-503-040 Establishment of instream flows. (1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Stream Management Unit Name Control Station No.	Control Station by River Mile and Section, Township and Range; Latitude and Longitude	Stream Management Reach
Skagit Mainstem:		
Skagit River near Mt. Vernon, WA USGS Sta. #12-2005-00	River Mile (RM) 15.7	From mouth of Skagit River including tidal fluctuation to headwaters.*
Cultus Mountain Tributaries:		
Mundt Creek	Stream gage will be installed at RM 3.4 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Turner Creek	Stream gage will be installed at RM 4.2 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Gilligan Creek	Stream gage will be installed at RM 3.2 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Salmon Creek	Staff gage periodically recorded will be installed at RM 4.3 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.

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

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

Instream Flows as measured at USGS Sta. #12-2005-00 (Instantaneous cubic feet per second)		
Month	Day	USGS Sta. #12-2005-00 Skagit River
Jan.	1-31	10,000
Feb.	1-29	10,000
Mar.	1-31	10,000
Apr.	1-30	12,000
May	1-31	12,000
Jun.	1-30	12,000
Jul.	1-31	10,000
Aug.	1-31	10,000
Sep.	1-30	10,000
Oct.	1-31	13,000
Nov.	1-15	13,000
	16-30	11,000
Dec.	1-15	11,000
	16-31	10,000

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

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

(3) Instream flow hydrograph.

Figure 1

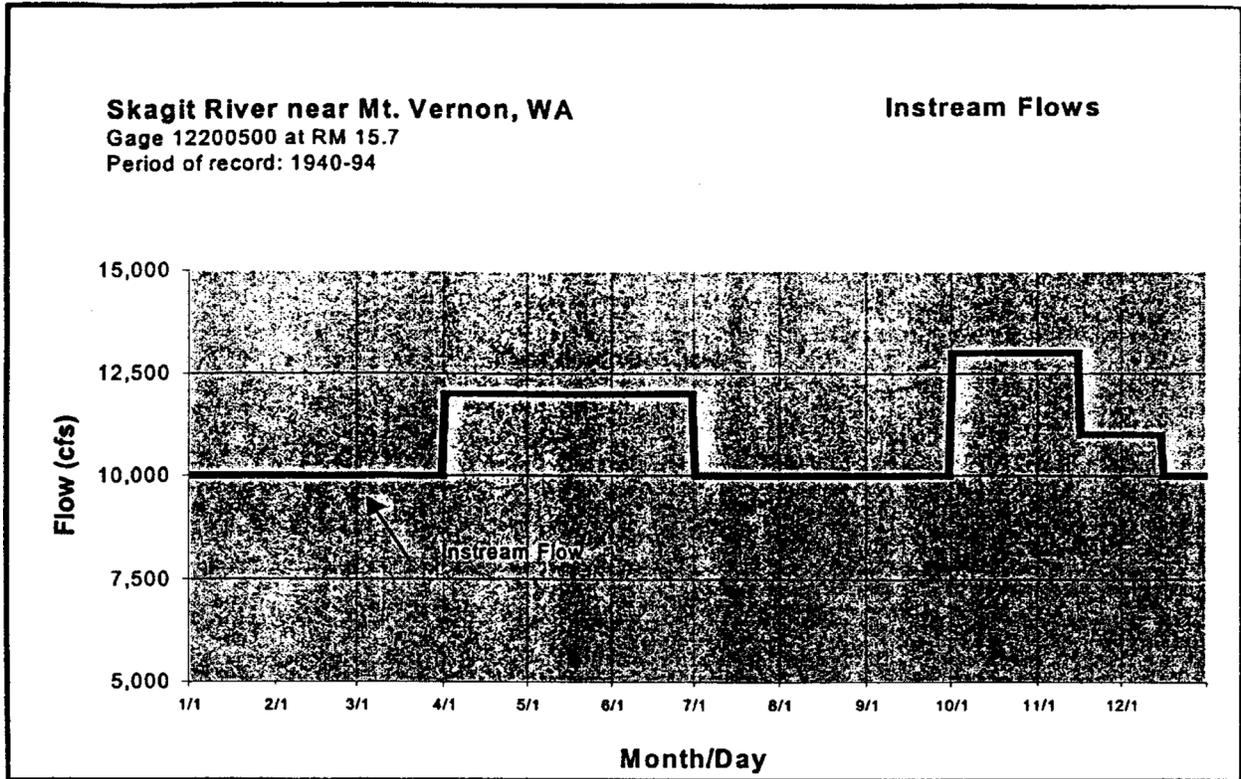


Figure 2

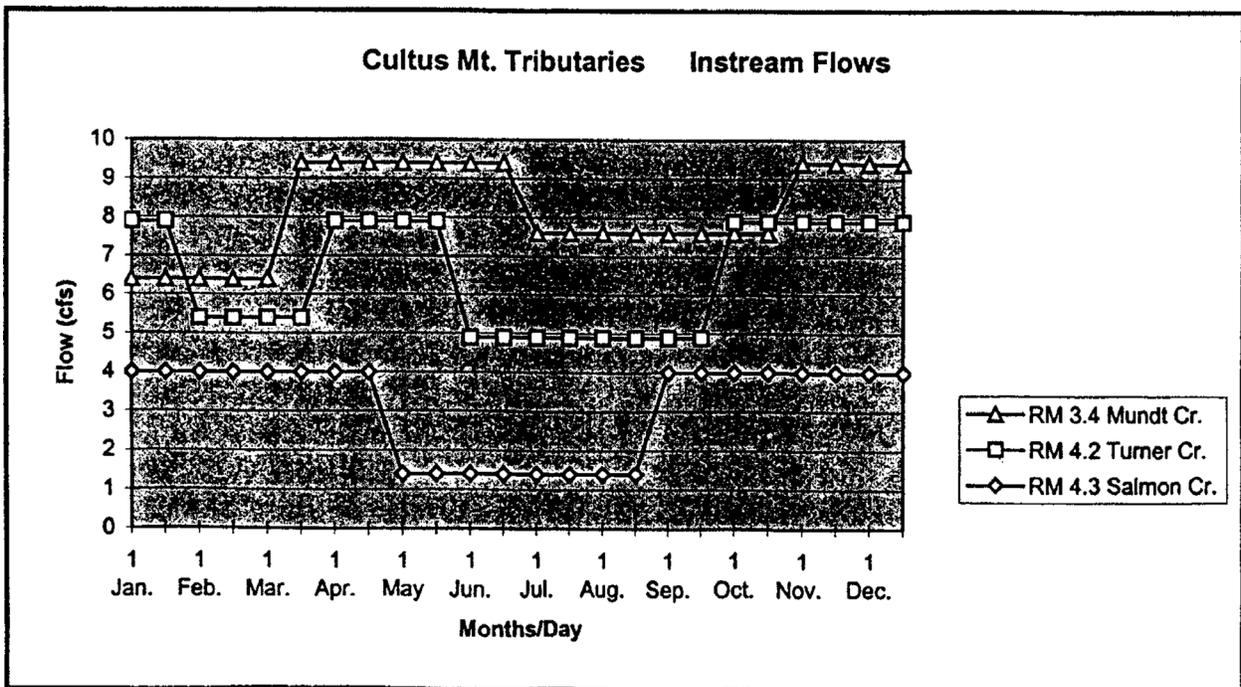
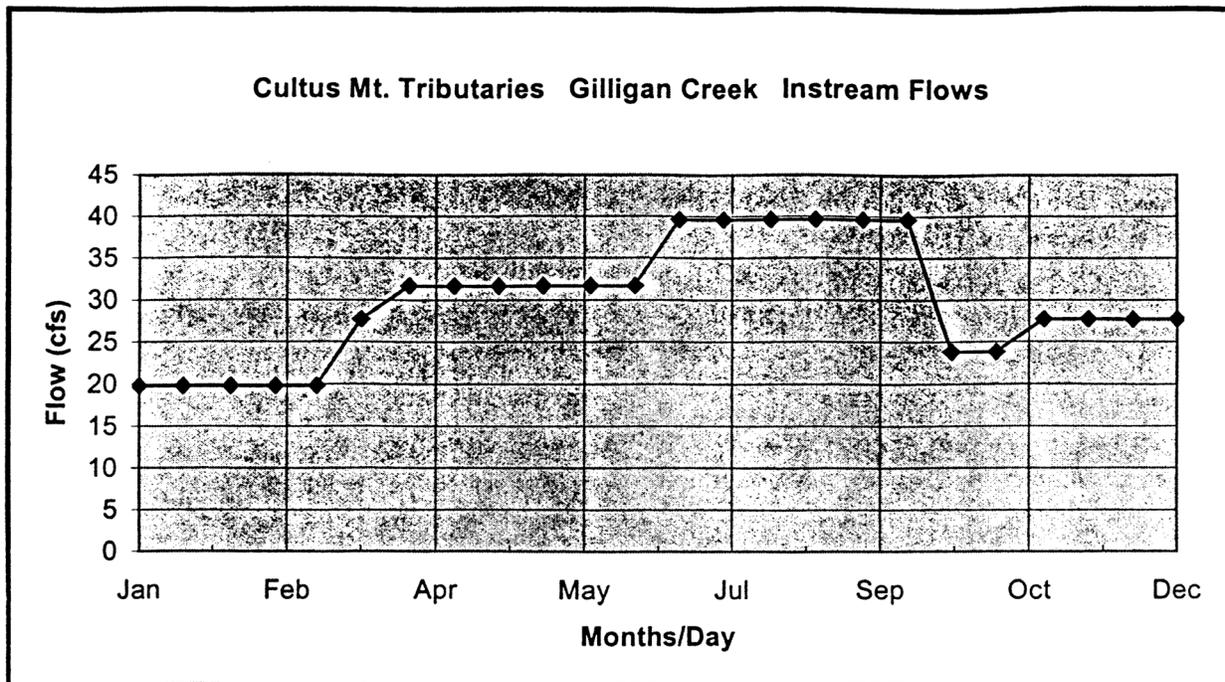


Figure 3



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

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

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

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

WAC 173-503-050 Water availability determination.

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

(10/9/13)

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

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

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

WAC 173-503-060 Ground water. 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).

[Recodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme

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Court of the State of Washington No. 87672-0 (October 3, 2013); Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-060, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. WSR 01-07-027 (Order 99-05), § 173-503-060, filed 3/14/01, effective 4/14/01.]

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WAC 173-503-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, including perfected riparian rights, federal Indian and non-Indian reserved rights, or other appropriative rights existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any hydroelectric or water storage reservoir or related facilities.

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

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

WAC 173-503-080 Policy statement for future permitting actions. (1) No rights to divert or store public surface waters of WRIA 3 and 4 which would conflict with the provisions of this chapter shall hereafter be granted, except as provided in RCW 90.54.020 (3)(a).

(2) Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate minimum instream flow in all perennial streams and rivers as well as the water levels in all lakes in the Lower and Upper Skagit watershed (WRIA 3 and 4) by encouraging the use of alternative sources of water which include:

- (a) Reuse;
- (b) Artificial recharge and recovery;
- (c) Conservation; and
- (d) Acquisition of existing water rights.

[Recodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013); repealed by WSR 06-11-070 (Order 05-15), filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. WSR 01-07-027 (Order 99-05), § 173-503-080, filed 3/14/01, effective 4/14/01.]

Reviser's note: The Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013), invalidated the 2006 amendments to chapter 173-503 WAC, adopted by the department of ecology Order No. 05-13, WSR 06-11-070 (May 15, 2006, effective June 15, 2006). See WSR 13-21-044, filed 10/9/13.

WAC 173-503-090 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.

[Recodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013); Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-090, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. WSR 01-07-027 (Order 99-05), § 173-503-090, filed 3/14/01, effective 4/14/01.]

Reviser's note: The Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013), invalidated the 2006 amendments to chapter 173-503 WAC, adopted by the department of ecology Order No. 05-13, WSR 06-11-070 (May 15, 2006, effective June 15, 2006). See WSR 13-21-044, filed 10/9/13.

WAC 173-503-100 Regulation review. 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.

[Recodified by WSR 13-21-044, filed 10/9/13, by order of the Supreme Court in the matter of *Swinomish Tribal Comm'y v. Dep't Ecology*, Supreme Court of the State of Washington No. 87672-0 (October 3, 2013); Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 06-11-070 (Order 05-15), § 173-503-100, filed 5/15/06, effective 6/15/06. Statutory Authority: Chapters 90.54 and 90.22 RCW, and chapter 173-500 WAC. WSR 01-07-027 (Order 99-05), § 173-503-100, filed 3/14/01, effective 4/14/01.]

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