

# **Highlights of Skagit Instream Flow Rule and Implementation Settlement Agreement**

**May 22, 2006**

## **Scope**

Applies to WRIAs 3 and 4, except Samish Basin and saltwater islands.

Applies to all water use except the following:

- Water supply provided from water reservations
- Groundwater use that won't cause impairment, as determined by scientific studies (including USGS groundwater study)
- Water use under approved, scientifically-sound mitigation plans.

## **Tributary Water Budgets**

2% of 7Q10 in each tributary.

Debits are calculated as follows:

- 350 gpd per residence assumed, but adjusted based on actual meter data where available.

Credits are provided as follows:

- 50% of total withdrawal for return flows, except where sewer system exports wastewater outside basin.
- 50% recharge credit for all new PUD connections since 2001.
- Fisher and Carpenter basins combined for purposes of crediting new hookups in Carpenter Creek basin to offset new withdrawals in Fisher Creek basin.

## **Water Reservations**

Separate water reservations established as follows:

- Domestic water supply (14.5 cfs)
- Irrigation (3,564 af)
- Stockwater (324,000 gpd)

Water right permit required for irrigation water use from reservation

Skagit County will establish a Citizens' Advisory Committee to recommend water use from the mainstem water reservations, and Ecology will seek input from the Advisory Committee when making water allocations

### **USGS Groundwater Study**

Study will identify areas where groundwater withdrawals won't cause impairment to instream flows.

Skagit County will manage USGS contract.

Skagit County and Ecology will share funding commitment for non-federal cost share.

Ecology will update Skagit Basin and tributary basin mapping based on USGS study results.

### **Implementation**

Skagit County will make good faith effort to implement Skagit Instream Flow Rule, as follows:

- Adopt implementing ordinances no later than December 31, 2006, including provisions relating to public notice of subdivision and building permit applications.
- Initiate appropriate enforcement actions for non-compliance with County ordinances.

Ecology will request \$150,000 legislative appropriation for Skagit County for one-time implementation costs.

No outdoor water use restrictions.

Ecology and Skagit County will negotiate interlocal agreement for implementation within 180 days of rule adoption.

Interlocal agreement will specify permit tracking and reporting procedures, and a basis for implementation cost reimbursement.

Metering required for all public water systems, and new and expanding public water systems in tributary basins will be required to provide annual reports of monthly water use data.

No metering required for individual wells (although Ecology may require metering of individual wells in the future if conditions warrant additional metering).

### **Litigation Settlement**

Skagit County to dismiss its appeal of the 2001 instream flow rule, with prejudice as to its procedural claims limited by RCW 34.05.375.

Skagit County agrees not to file an appeal of the 2001 Skagit Instream Flow Rule to assert substantive claims, and agrees not to file an appeal of the 2006 Rule Amendment for five years following the effective date of the Order of Dismissal, unless a judicial determination is made that –

- all or a portion of the 2006 rule amendment, the settlement agreement, the interagency agreement, or County implementing ordinances is invalid;
- Ecology has breached the interagency agreement, the settlement agreement, violated the rule, or failed to take any action required of it under the Skagit Instream Flow Rule; or
- Ecology has unreasonably withheld any approval required under the Skagit Instream Flow Rule, as amended, the Interlocal Agreement or this Settlement Agreement.

Ecology and Skagit County agree that, prior to filing any appeal or other action seeking judicial review of the instream flow rule or any of the agreements or county ordinances to implement the instream flow rule, the County or Ecology would submit the matter to alternative dispute resolution. This provision applies to all claims arising under or related to the rule, the rule amendment, County implementing ordinances, the interagency agreement and the settlement agreement.

Alternative dispute resolution includes –

- 60-day notice to the other party of intent to seek judicial review;
- two-party negotiation, with a mutually-agreeable facilitator at the request of either party; and
- non-binding arbitration.

Unless otherwise entitled to appeal, the County will seek to intervene in support of the Skagit Instream Flow Rule, as amended, in the event the rule or rule amendment is appealed or otherwise challenged by another person or entity.

Ecology will seek to intervene in support of Skagit County's implementing ordinances in the event the ordinances are appealed or otherwise challenged by another person or entity.