



# Skagit County Planning & Development Services

DALE PERNULA, AICP *Director*

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## Statement for Permit Applicants & Public

December 11, 2013

Pursuant to RCW 19.27.097 and RCW 58.17.110, Skagit County cannot legally issue residential building permits or approve subdivision applications unless the applicant has a lawful water supply. Typically, the applicant either provides a letter of availability from a public water source such as PUD, or proposes to use a well. Under Washington law, the State of Washington regulates water and its availability for appropriation, determining whether an applicant's proposed use of a well is lawful.

In 2001, the State of Washington adopted an Instream Flow Rule for the Skagit River Basin, establishing minimum river and stream flows for salmon habitat. Although the 2001 Rule in draft form allocated water for rural landowners and agriculture, the published 2001 Rule failed to provide a water allocation for rural landowners or agriculture.

In 2006, the State amended the 2001 Rule in an effort to fix this problem, establishing a small allocation for rural landowners and agriculture in the Skagit River Basin and each of its tributaries (the "**2006 Amendment**").

In 2008, the Swinomish Indian Tribal Community ("**Swinomish**") filed suit against the State in an effort to invalidate the 2006 Amendment. On October 3, 2013, the Washington Supreme Court ruled in favor of Swinomish, invalidating the 2006 Amendment. *Swinomish v. State*, Wa. Sup. Ct. Case No. 87672-0.

As a result of the *Swinomish* lawsuit, the State Department of Ecology has communicated to Skagit County as follows:

*"Skagit County is legally required to stop issuing building permits and subdivision approvals in the Skagit Basin that rely on new wells, unless Ecology approves a plan for mitigation (or a plan for reliance on an alternative water source during times when the minimum instream flow requirements set in WAC 173-503 are not met)."*

In accordance with the State's foregoing statement, Skagit County is directing all building permit and subdivision applicants that propose to rely on new use of an exempt well within the Skagit Basin as their source of water to obtain Ecology's approval of the applicant's proposed water use prior to submittal of a permit or subdivision application to Skagit County.

If you have additional questions, please direct them to Jacque Klug, Department of Ecology, at (425) 649-7270, or by email at [jklu461@ecy.wa.gov](mailto:jklu461@ecy.wa.gov).