



3626 - 156th Street SW • Lynnwood, WA 98087-5021 • 425-743-4605 • 425-742-4562 Fax • www.awwd.com

September 11, 2023

Dear Washington State Department of Ecology:

Alderwood Water and Wastewater District (AWWD) is providing this comment letter on the Department of Ecology's (Ecology) Draft POL-2030 Update -- Municipal Water Law Interpretative and Policy Statement (Draft Policy). AWWD also generally concurs in the comment letter provided by the Washington Water Utilities Council (WWUC). We appreciate the opportunity to review the Draft Policy and urge Ecology to make the changes suggested by AWWD and WWUC to achieve the certainty and flexibility for municipal water rights that was intended by the Legislature in its adoption of the Municipal Water Law of 2003 (MWL).

AWWD is the largest water and sewer special purpose district in the state. In addition to its water service area with over 57,000 direct retail connections, AWWD also sells wholesale water to the cities of Edmonds, Lynnwood, and Mountlake Terrace (which are wholly or partially within AWWD's corporate boundary); and to the Clearview Water Supply Agency, Mukilteo Water & Wastewater District, and the Silver Lake Water & Sewer District with additional services and partnerships with the cities of Bothell, Brier and the Cross Valley Water District.

Protecting the health of our retail and wholesale customers and providing for the security of our public water and sewer systems and planned growth throughout our retail and wholesale service areas is our top priority. AWWD relies upon Ecology's management of water resources, including the interpretation and application of the MWL, to be consistent with state statutes and policy. While AWWD purchases water from City of Everett, it maintains public access to an AWWD well site and relies on the good standing of its groundwater rights to provide backup sources and emergency supply in the event of catastrophic loss of the Spada Lake water supply system.

In adopting the MWL, the Legislature intended to provide certainty and flexibility to municipal water rights and to clarify them. Instead of implementing the Legislature's intent, AWWD is concerned that the Draft Policy has created several new impediments to the certainty and flexibility of municipal water rights, many of which appear to lack statutory authority or case law confirmation of Ecology's interpretations. This in turn endangers AWWD's and other water suppliers' mission to serve the public and provide safe and adequate water for planned growth consistent with the GMA. It may also jeopardize

the development of housing and other essential public services to our rapidly growing population.

We strongly encourage Ecology to make the following corrections to POL 2030 before final issuance.

1. Original Intent. The Draft Policy's formulation and application of "original intent" exceeds Ecology's delegated authority from the Legislature. The Legislature did not include "original intent" as a statutory requirement for water right changes or trust water rights. See RCW 90.03.570, RCW 90.03.380, RCW 90.42.040, and RCW 90.44.100.
2. Good Standing, Relinquishment Protection, and Active Compliance. Section 4 of the Draft Policy mistakenly creates the impression that Ecology has ad hoc authority to determine the "good standing" and relinquishment status of MWSP (Municipal Water Supply Purposes) water rights outside of the strict enumeration of exceptions in RCW 90.03.330(2). RCW 90.03.330(3) is self-executing regarding the "good standing" qualification of MWSP water rights issued under the "pumps and pipes" certification method and does not provide or imply any other authority to Ecology to question the good standing or relinquishment status of such water rights. The courts have not approved Ecology's "active compliance" interpretation or its equivalent in Section 4 of the Draft Policy. The *Cornelius* decision expressly recognizes that the "good standing" provision in RCW 90.03.330(3) necessarily limits the scope of Ecology's tentative determination authority, and that the Legislature did not give Ecology authority to conduct a good standing "assessment" in its place. Please correct this problem in your final policy language by clarifying that certificates for MWSP water rights that qualify for "good standing" under RCW 90.03.330(3) remain in good standing and qualify for the relinquishment exemption unless and until one of the exceptions in subsection .330(2) is invoked, and by eliminating the requirement to put MWSP water rights to beneficial use once every five years to remain in good standing.

Thank you again for this opportunity to comment on the Draft Policy.

Sincerely,



John McClellan, PE
General Manager

C: Board of Commissioners