



PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY

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December 4, 2025

Via Ecology's Online Comment Portal

Washington State Department of Ecology
Water Resources Program
300 Desmond Dr. SE
Lacey, WA 98503

Re: Comments on Ecology POL-1020 (Publication 25-11-104)

Dear Director Sixkiller and Water Resources Program Staff:

Chelan PUD is a Washington State public utility district formed in 1936 by local voters who wanted affordable power for both rural and urban residents. Our three hydropower projects in Central Washington total about 2,000 megawatts of capacity and deliver approximately 1100 average megawatts of clean, renewable energy. For decades, we have relied on our hydropower system, which generates surplus power to sell throughout the Northwest after serving our 50,000 local customers. We are also a municipal water supplier that holds numerous water rights for several different purposes, including public water supply, fish propagation, wildlife enhancement, public parks and other recreational facilities, hydropower generation, reservoir management, and instream flows. Many of these purposes are inherent to our work as they support either core business functions or act as mitigation for our long-term hydropower project licenses issued by the Federal Energy Regulatory Commission ("FERC") to generate hydroelectric power.

Chelan PUD shares the concerns expressed by the Washington Water Utilities Council (WWUC), the Northwest Hydroelectric Association (NWEHA), and the City of Tacoma concerning Ecology's October 2025 draft Policy 1020 (Consumptive and Nonconsumptive Water Use Policy and Interpretive Statement) ("Draft Policy").

Ecology's proposed Draft Policy would impact Chelan PUD's planning, operations, and decision-making regarding its water rights portfolio. Below we highlight three fundamental issues with Ecology's Draft Policy.

Far-reaching Regulatory Consequences

Ecology's Draft Policy could affect hydropower facilities, hatcheries, riparian enhancement projects, instream habitat projects, and other uses predicated on long-established regulatory characterizations of "consumptive use" and "nonconsumptive use." Those regulatory labels were neither intended nor understood to embody precise scientific determinations. If implemented, Ecology's Draft Policy would upend the well-settled consensus that certain types of water uses are "nonconsumptive" for regulatory purposes. Ecology does not appear to have considered all the regulatory implications and unintended real-world consequences of transforming a regulatory label into a molecule-by-molecule scientific determination. For example, some evaporative loss has always been inherent in impoundments (particularly impoundments for hydropower projects) treated as nonconsumptive under Ecology's regulations (as acknowledged in existing POL-1020 at 2). Ecology's proposed Draft Policy would preclude the "nonconsumptive" label for such uses. In addition, it is inherently contradictory to insist, that the Draft Policy does not change the relevant regulatory definitions AND that the Draft Policy will be applied prospectively only. If Ecology retroactively applies this new molecule-by-molecule determination for consumptive use, it will undermine existing water rights that have historically been considered nonconsumptive and could jeopardize the continued generation of carbon free energy that is vital for achieving the state's clean energy goals. The impact of a retroactive application of the Draft Policy to hydropower water rights (including FERC compliance implications) is addressed at length in the City of Tacoma's and NWA's respective comment letters. We urge Ecology to give those comments serious consideration.

Violation of the Administrative Procedure Act

Ecology's explicit purpose for Policy 1020 is to "expand upon" the definitions of "consumptive use" and "nonconsumptive use" in WAC 173-500-050(5) and (9). Those definitions are part of the foundation for numerous basin regulations applicable within individual WRIsAs. As other commenters point out, Ecology's new Draft Policy does not just "expand upon" those definitions; it alters them significantly. This is not an appropriate use of an interpretive or policy statement under RCW 34.05.230. The APA requires Ecology to use the rulemaking process to promulgate a "rule" – a term defined in RCW 34.05.010(16) to include the amendment of a prior rule. The Draft Policy should be revised to exclude all changes that go beyond policy making and enter the rule making space.

Misplaced Reliance on *Foster*

Ecology identifies *Foster v. Ecology*, 184 Wn.2d 465 (2015) as part of the basis for its of updated interpretation of "consumptive" and "nonconsumptive" use. *Foster* involved Ecology's approval of a groundwater withdrawal affecting surface water in the Nisqually and Deschutes basins. The permit unquestionably involved consumptive use. The Court did not address "consumptive" use, "nonconsumptive" use, impoundments, pools in river or lake systems, or evaporative loss nor did the Court interpret the definitions in WAC 173-500-050. The only issue before the Court was Ecology's authority to approve a groundwater permit under RCW 90.54.020(3)(a) based on

“overriding considerations of the public interest” (OCPI). The opinion has attracted significant criticism due to its premise that the word “withdrawal” as used in the Water Code does not include permanent appropriations of water. However, *Foster* does not compel and does not even support Ecology’s redefinition of “consumptive” and “nonconsumptive” use.

Conclusion

Chelan PUD encourages Ecology to withdraw or significantly revise its proposed Draft Policy. Because hydropower provides a significant share of the state’s carbon-free electricity, any refinement of the definition of consumptive water use should be closely scrutinized so as to not introduce uncertainty or impact the generation of hydropower necessary to meet the state’s energy demands. Clear guidance on how water rights associated with power generation are addressed under draft POL-1020 will help ensure that hydropower continues to support both Washington’s environmental priorities and its energy portfolio.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Alene Underwood". The signature is fluid and cursive, with the first name being more prominent.

Alene Underwood
Director of Natural Resources