December 4, 2025

Lora Flores
Policy Support Section Manager
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: Comments on Draft Consumptive and Non-Consumptive Water Use Policy (POL-1020)

Dear Lora Flores:

The Snoqualmie Indian Tribe [Tribe] is a federally recognized sovereign Indian Tribe and a signatory to the Treaty of Point Elliott of 1855 in which it reserved to itself certain rights and privileges and ceded certain lands to the United States. As a signatory to the Treaty of Point Elliott, the Tribe specifically reserved to itself, among other things, the right to fish at usual and accustomed areas and the "privilege of hunting and gathering roots and berries on open and unclaimed lands" off-reservation throughout the modern-day state of Washington. Treaty of Point Elliott, art. V, 12 Stat. 928. The Snoqualmie people have stewarded the waters of Tribal ancestral lands since time immemorial, and the Tribe seeks to work collaboratively with the Department of Ecology to protect these waters, both environmental and cultural resources, for future generations.

We appreciate the efforts put forth By Ecology in the revisions to Policy 1020 to strengthen and clarify the definitions of consumptive and nonconsumptive water uses. This rule is critical to provide meaningful guidance for users in order to protect instream flows and aquatic resources that we rely on for our health and livelihoods. We appreciate that Ecology has explicitly included the impacts on water quality, including temperature, in determining whether a use qualifies as non-consumptive.

We do, however, have some concerns about the proposed revisions, and offer some recommendations to improve the efficacy of the draft policy language. First, we recommend the inclusion of a table that provides examples of both consumptive and nonconsumptive uses. In Section 3a, the policy describes nonconsumptive projects where water is not diverted from the river as run-of-the-river hydroelectric projects. However, in the commonly used definition of

"run-of-river" projects, these types of projects frequently divert water through a separate conveyance or penstock since the turbine(s) is/are not typically located within the river or stream channel, and the projects then release that water downstream. Clarification, specific examples, and guidelines are needed to clarify when these projects would be considered consumptive versus nonconsumptive. Snoqualmie Tribe contends that based on precedent, these projects must be considered consumptive at least for the segment of stream that is bypassed by the diversion.

Additionally, while Section 2 defines a use as consumptive when there is a reduction in quantity and quality of water, Section 3 defines a use as nonconsumptive provided return flows meet water quality standards. This discrepancy could allow for the significant degradation of water quality, as long as water quality standards were still met. In keeping with non-degradation policies, this should instead state that nonconsumptive "return flows do not degrade water quality." Nonconsumptive uses should not be allowed to add pollution up to just below a given threshold; they should add no pollution whatsoever in order to be considered nonconsumptive.

We also recommend clarification in Section 3b as to what level of evaporative loss due to impoundment would qualify as a consumptive use (Section 3b). Evaporative loss **does** impact the volume of return flows. The existing sentence should be removed or revised and should instead state that any discrepancy between outflow and inflow water volume, due to evaporative loss or otherwise, must be evaluated and quantified and is considered a consumptive use.

Lastly, additional information is needed in Section 5 to clarify when the concurrent use of groundwater and surface water would be considered consumptive versus nonconsumptive. A table providing examples would also be useful to clarify how certain common uses would be classified, such as treatment of contaminated groundwater (e.g. a plume of contaminated groundwater moving toward a waterbody is captured, treated, and discharged into a shallow aquifer that has a direct connection to that waterbody) or through a managed aquifer recharge project. It should also be explicitly stated that this section does not apply to withdrawals from confined aquifers, given they are separated by impermeable materials that would prevent the natural movement of water between the surface and groundwater on any reasonable timescale. It should also clarify if this section to applies to semi-confined aquifers and on what timescale "immediately after use" refers to. We recommend within one hour as a reasonable threshold for returning water after use to be considered "concurrent," and that this should be informed by pumping tests at each site considered. Lastly, please include that establishing hydraulic

continuity should be approved by Ecology, **in consultation** with potentially affected Tribes per Executive Order 25-10.

These changes to the policy are needed to uphold Tribal sovereign & inherent and treaty rights, and to protect water resources now and for future generations. Thank you for the opportunity to comment on this policy.

Sincerely,

Signed by:
Matt Baerwalde
166598E8B57F4ED...

Matthew J. Baerwalde
Senior Environmental Policy Analyst