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Comment Letter on Ecology's Proposed "Consumptive and Nonconsumptive Water Use Policy and Interpretive Statement (POL 1020)" Update

VIA Electronic Submission

December 5, 2025

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

RE: POL-1020 Revision

Dear Director Sixkiller and Water Resources Program Staff:

The Northwest Hydroelectric Association (NWAHA) appreciates the opportunity to comment on the draft revision of *POL-1020: Consumptive and Nonconsumptive Water Use Policy and Interpretive Statement*.

NWAHA is a non-profit trade association that represents and advocates on behalf of the Northwest hydroelectric industry. NWAHA has over 130 members from all segments of the industry, including electric utilities, water districts, and other hydroelectric project owners and operators. Approximately one-third of NWAHA members are located in Washington. NWAHA is dedicated to the promotion of the Northwest region's waterpower as a clean, efficient energy source while protecting the fisheries and environmental quality that characterize the Northwest region.

Hydropower plays a critical role in providing carbon-free, reliable energy, supporting Washington's renewable portfolio standards, and keeping energy affordable.

Washington State has the highest proportion of hydroelectric projects in the nation and has more conventional hydroelectricity-generation capacity than any other state. Hydropower is the region's

largest power source.¹ 60,840 million kilowatt hours of energy was generated by hydropower projects in Washington in 2023.² The National Hydropower Association reports that 86% of the renewable energy generated in Washington comes from hydropower.³ Carbon-free hydropower provides over half of total utility generation in Washington even under low water conditions in the Pacific Northwest.⁴

The importance of hydropower is only increasing in Washington, as it is critical to the State's ability to meet the goal set by the Clean Energy Transformation Act, which requires electricity provided in-state to be entirely greenhouse gas free by 2045. At the same time as Washington seeks to transition to greenhouse gas free electricity, the demand for electricity is increasing. The 2025 Northwest Regional Forecast indicates electricity demand growth of an extraordinary magnitude over the next decade, with recent projections estimating an increase above 30 percent.⁵ Thus, meeting the State's climate goal will necessarily require the continued deployment of hydroelectric generating sources.

NWHA is concerned that some of the proposed revisions to POL-1020 may create regulatory uncertainty for existing hydropower operators and raise challenges for development of new hydropower, counter to the continuing need for reliable, affordable energy sources in Washington and to Washington's desire to promote carbon-free energy sources. NWHA is highlighting the provisions in the draft policy with the greatest potential to cause regulatory uncertainty for hydropower projects. NWHA requests that Ecology reconsider these aspects of the draft policy.

Impact on the Hydropower Industry

As discussed below, the draft policy's interpretation sets overly restrictive limits on "non-consumptive" uses. The draft policy appears to render almost every hydroelectric project a consumptive use of water through the way it: (1) treats evaporative losses; (2) defines water quality impacts as consumptive use; and (3) eliminates flexibility relating to time and place of water return. This is a reversal of Ecology's long-standing practice of issuing non-consumptive water rights to hydroelectric projects.

¹ Pacific Northwest Utilities Conference Committee, Northwest Regional Forecast of Power Loads and Resources, August 2025 through July 2035 at 8 ("2025 Northwest Regional Forecast"), <https://www.pnucc.org/wp-content/uploads/2025-PNUCC-Northwest-Regional-Forecast-final.pdf>.

² U.S. Energy Information Administration, Hydropower explained, <https://www.eia.gov/energyexplained/hydropower/where-hydropower-is-generated.php>

³ National Hydropower Association, Washington: Existing Hydropower, <https://www.hydro.org/map/hydro/?state=WA>.

⁴ 2025 Northwest Regional Forecast at 8-9 (the Northwest Regional Planning Area is the area defined by the Pacific Northwest Electric Power Planning and Conservation Act, including the states of Oregon, Washington, and Idaho; Montana west of the Continental Divide; portions of Nevada, Utah, and Wyoming that lie within the Columbia River drainage basin; and any rural electric cooperative customer not in the geographic area described above but served by Bonneville Power Administration on the effective date of the Act).

⁵ 2025 Northwest Regional Forecast at 5.

For existing hydroelectric projects that rely on non-consumptive water rights, the draft policy raises significant uncertainty because it fails to expressly foreclose the use of the policy to require modification of existing non-consumptive water rights. Without such clarification, the following questions remain open:

- (1) Whether Ecology or a third-party could assert that a project with a non-consumptive water right lacks the necessary water right for consumptive use.
- (2) Whether the policy could be used as a basis to require existing non-consumptive water right holders to obtain new consumptive use rights or amend their existing water rights.
- (3) If the project needs to make a change to its non-consumptive water right for other reasons in the future, whether Ecology could use the change application process as an opportunity to evaluate whether the consumptive use causes impairment of other water rights (including minimum instream flows).

This uncertainty may subsequently impair and impede federal relicensing efforts for many of Washington's hydropower projects. At relicensing, hydropower operators are required to affirm they hold sufficient water rights to continue operating their projects. However, if Ecology now considers essentially all hydropower operations to be consumptive uses by virtue of the temperature, timing and location restrictions in Draft POL-1020, it is not clear that hydropower operators will be able to represent they hold sufficient rights when those existing rights have always been defined as nonconsumptive.

Comments on Section 2: Consumptive Use of Groundwater and Surface Water

Draft POL-1020 proposes several revisions to Ecology's existing policy that are a complete reversal of Ecology's past treatment of water use in hydropower projects. This sets up the potential for inconsistency between the existing non-consumptive water rights of hydropower projects and Ecology's current interpretation.

1. Evaporative Losses

Under the prior policy, Ecology did not classify a use as consumptive merely because the use increased evaporation rate. Draft POL-1020 reverses this position, and asserts that "[e]vaporative loss due to impoundment may . . . result in consumptive use." Hydropower projects often involve the impoundment of water. In reversing its position on the treatment of evaporative losses, the draft policy could result in the reclassification of many hydropower projects from non-consumptive to consumptive use and stand as an undue barrier to future hydropower projects that require impoundment of water. NWAHA requests that Ecology revert the language regarding evaporation to the language existing under the prior policy.

2. Temperature & Water Quality Generally

Grafting a quality component into the water rights policy is not appropriate or necessary. Draft POL-1020 states that water use is considered consumptive if “it results in a water quality reduction (including temperature) that reduces availability of the water source to serve other water uses.” NWA is concerned about the use of water quality impacts as a stand-alone determinative factor of whether a use is consumptive. First, doing so is not necessary because, regardless of whether a use is consumptive or non-consumptive, Ecology considers whether issuing the water right is detrimental to the public interest,⁶ which includes consideration of water quality.⁷ Water quality is also regulated separately, through an extensive state and federal permitting and regulatory framework that includes impacts associated with temperature. In the context of hydropower projects, all federally licensed hydroelectric projects are required to obtain Clean Water Act Section 401 Water Quality Certification (“401 Certificate”) from Ecology. The 401 Certificate addresses water quality impacts, including temperature, caused by discharges from a project.

Use of water quality impacts as a stand-alone determinative factor of whether a use is consumptive is also inconsistent with Washington statutes and regulations. RCW 90.03.380 defines “annual consumptive quantity” based on the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows. This recognizes that consumptive use necessarily involves a change in the *quantity* of water available in the source. Treating a water quality impact, absent any diminishment in the quantity of water, as consumptive use is irreconcilable with RCW 90.03.380.

Doing so is also inconsistent with Ecology’s own regulations. For example, WAC 173-500-050 defines “consumptive use” as “use of water whereby there is a diminishment of the water source,” with no reference to water quality as a determinative factor of consumptiveness or diminishment. Numerous basin rules define nonconsumptive use disjunctively, as use where either there is no diversion or withdrawal, or there is no diminishment of the amount or quality of the source. Thus, these rules recognize that a use may be non-consumptive merely by the lack of diversion or withdrawal, irrespective of water quality impacts.⁸

Draft POL 1020, by expanding the scope of “diminishment” to include changes in water quality absent any change in quantity of water, threatens to impair existing water rights by reclassifying nonconsumptive uses as consumptive based on water quality impacts alone. This would have significant impacts on the water rights held by hydropower operators because dam operations can result in cooler or warmer downstream temperatures, depending on time of year and dam operations.⁹ Thus, many existing hydropower water rights could potentially be rendered

⁶ RCW 90.03.290

⁷ See, e.g., *Ctr. for Env’t L. v. Washington Dep’t of Ecology*, 196 Wash. App. 360, 375, 383 P.3d 608, 615 (2016); *Concerned Morningside Citizens v. State of Washington, Department of Ecology*, 2003 WL 22505701, at *8; Dep’t of Ecology, Publication 23-11-003 at 21.

⁸ See WAC 173-532-020 (WRIA 32), WAC 173-527-020 (WRIA 27), & WAC 173-528-020 (WRIA 28).

⁹ EPA, Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load (Aug. 13, 2021) at 2, <https://www.epa.gov/system/files/documents/2022-06/tmdl-columbia-snake-temperature-errata-update->

“consumptive” even if the temperature impacts of the project have no relationship to the quantity of water used.

NWHA respectfully requests that Ecology remove the provision that defines consumptive use based on water quality impacts alone and redirect its efforts to maintain water quality through the appropriate legal processes provided by state and federal water quality laws. To do otherwise would result in significant uncertainty for water rights holders, as well as the very real possibility of duplicative, inconsistent, and conflicting regulation of water quality.

3. Timing

Draft POL-1020 defines as consumptive use withdrawals of water “not returned to the original source at the time water is diverted.” Further, Draft POL-1020 provides that use is consumptive for “any interval of time that water is withdrawn and not returned, and non-consumptive uses are limited to those when water is returned “immediately” to the source. This timing limitation, which requires instantaneous return of flows to the same point of diversion to qualify as non-consumptive, threatens to convert all diversions for power generation to consumptive uses. This policy interpretation contradicts the historical understanding, as confirmed through certificated water rights issued for hydroelectric projects throughout Washington, that water diverted for power generation and then returned to the source in the same volume is a nonconsumptive use.

4. Bypass

The revised definition of “bypass” also removes important flexibility under the prior policy for hydropower projects. In particular, existing POL-1020 notes that “a water use may be consumptive to a specific reach of a stream” when water is diverted and then returned to the same source “not in close proximity to the point of diversion.” Thus, the existing policy recognizes that a use may still be non-consumptive where it does not return water to precisely the same location as where it is diverted. The draft policy removes this language and further limits non-consumptive uses by noting that “water use is consumptive” when diverted and returned to the source “at a point downstream of the point of diversion.”

The removal of this flexibility will render nearly all hydropower projects as consumptive uses of water. Even run-of-river hydropower projects often divert water from the river into a canal or penstock leading to the powerhouse, where it is used for generation and then returned to the river.¹⁰ Furthermore, this definition may also render diversions for fish hatchery and construction use consumptive as well, despite the fact that these uses have historically been viewed as non-consumptive.

[05102022.pdf](#).

¹⁰ See *Consumers Energy Co.*, 140 FERC ¶ 62076, 64183 (2012) (describing typical run-of-river hydropower project).

Section 3: Nonconsumptive Water Use, Surface Water

Draft POL-1020 includes one limited concession to hydropower uses in Section 3, leaving unmodified the language in the existing policy that non-consumptive water use includes “[w]ater use in hydroelectric projects when the water is not diverted away from the natural confines of the river or stream channel.” Ecology goes on to note that these operations are “commonly called run-of-the-river projects.” However, this exception is too restrictive to be successfully applied, particularly in light of the changes noted above that are likely to render most hydropower operations as consumptive uses. As explained above, even run-of-river hydropower projects divert water from the river into a canal or penstock leading to the powerhouse.

Further, Ecology’s understanding of run-of-river projects is at odds with how the Federal Energy Regulatory Commission (FERC), the federal entity tasked with nationwide regulation of hydroelectric projects, conceives of “run-of-the-river” projects. FERC has repeatedly clarified that run-of-river projects will typically make use of a reservoir and do not require that water remain in the “natural confines of the river.” Indeed, FERC consistently characterizes run-of-river projects as follows:

A run-of-river mode of operation is defined as outflows from the project approximately equal to inflows to the project impoundment, as determined by maintaining the impoundment headwater elevation within the fluctuation limits specified in [the project’s FERC license].¹¹

FERC considers a project to be “run-of-river” if the project’s inflows are approximately equal to its outflows based on maintaining a certain reservoir impoundment elevation. Ecology’s very narrow definition for run-of-river hydroelectric projects is therefore at odds with FERC’s interpretation of run-of-river projects. The result is that nearly all hydroelectric projects could be deemed consumptive uses under the draft policy.

It appears that draft POL-1020 may be attempting to account for Washington’s longstanding interpretation that hydropower water uses are nonconsumptive by including a provision that “water use can be classified as nonconsumptive when water is diverted and returned to a lake, reservoir, or Columbia River pool system from which it is diverted and the source water elevation is not affected by the diversion.” However, this provision is unclear as to how, if at all, it relates to the facilities typically used by hydropower projects. This provision should be significantly revised to provide clarity on the intended purpose of this provision and how it relates to hydropower projects.

¹¹ *Id.*

Recommendations

Based on the foregoing concerns, NWAHA respectfully requests the following revisions:

- (1) POL-1020 should remove the provision identifying water quality impacts as “consumptive” uses.
- (2) POL-1020 should be revised to carve out hydropower use from this policy or to add a section specifically addressing the unique attributes of use of water for electric generation that would maintain consistency with Ecology’s prior practice of treating use of water for hydropower purposes as non-consumptive.
- (3) Confirm in POL-1020 that non-consumptive water rights previously issued for the purpose of power generation are valid and in good standing, and that POL-1020 does not modify or require modification of these existing rights.
- (4) Confirm that non-consumptive water rights previously issued, or approved but not yet perfected, for the purpose of power generation may be exercised according to the original purpose for which they were issued.

Conclusion

NWAHA supports Ecology’s efforts to ensure the protection, sustainable use and continued availability of Washington State’s water resources. Ecology’s efforts to clarify the scope of consumptive water use is intrinsically related to Washington’s carbon-free energy goals because of the large role that hydropower plays in Washington’s energy supply. Ecology’s policy revisions should not create regulatory uncertainty or otherwise undermine the important and historical role that hydropower has played in meeting Washington’s energy needs in its policy revisions. Improved clarity on how water rights used for power generation are treated under draft POL-1020 will ensure that the vital role played by hydropower in Washington’s ecological and energy goals is not impaired.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenna Vaughn". The signature is fluid and cursive, with a large, stylized initial 'B'.

Brenna Vaughn
Executive Director, NWAHA