



PORT GAMBLE S'KLALLAM TRIBE
NATURAL RESOURCES DEPARTMENT
31912 Little Boston Rd. NE – Kingston, WA 98346

December 5, 2025

Ria Berns, Program Manager
Water Resources Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: Comment on Ecology's Draft Update to POL-1020, Consumptive and Nonconsumptive Water Use Policy and Interpretive Statement

Dear Ms. Berns,

The Port Gamble S'Klallam Tribe ("Tribe") respectfully submits these comments in response to the Department of Ecology's ("Ecology") draft update to POL-1020, Consumptive and Nonconsumptive Water Use Policy and Interpretive Statement. The Tribe is a federally recognized tribe with reserved aboriginal fishing rights under the 1855 Treaty of Point No Point. 12 Stat. 933; *United States v. Washington*, 459 F.Supp. 1020, 1039 (W.D. Wash. 1978). Dating to time immemorial, the Tribe and its members have held deep ancestral ties to their traditional use areas including both the Tribe's current reservation on the Kitsap Peninsula and its off-reservation usual and accustomed fishing and hunting grounds. The Tribe's reservation confirms its federal reserved water rights necessary to fulfill the purpose of the reservation as a permanent homeland for its people. *Winters v. United States*, 207 U.S. 564 (1908). Based on its members' unique historic relationship with and knowledge of its natural resources, the Tribe regularly participates in state administrative processes to ensure that tribal interests are accounted for and protected in state environmental decision making.

The Tribe's reading of the draft update to POL-1020 is that the changes from the prior iteration of the policy are minimal. According to Ecology's presentation on November 10, 2025, the purpose of the update is to remove smaller consumptive uses from non-consumptive water uses. The Tribe is generally supportive of this purpose to the extent it is implemented consistent with the *Foster* decision.

Section 2 of the draft update defines water use as consumptive "if it results in the water source being made smaller or less to any degree in quantity, rate of flow, or



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availability of other users.” Section 4 states in relevant part, “[w]ater that is returned to the source must meet water quality standards for the source.” The policy does not define the phrase, “source water quality standards.” Tension between Section 2 and Section 4 may cause confusion in the implementation of the policy. It is unclear which source water quality standards Ecology is referring to and how this language interacts with the broader standard in Section 2. If the source standard contemplated in Section 4 requires the same water quality as the temporarily appropriated water then the language in Sections 4 and 2 are the same and the sentence in Section 4 quoted above is unnecessary. But, for example, if the source standard sets thresholds for specific contaminants that are lower than the existing water quality, then Section 4 is narrower than Section 2, and there may be a diminishment in water quality despite compliance with the source standard without being considered consumptive under the policy. This is because source water quality standards under Section 4 are likely to be narrower and specific to particular pollutants, whereas the non-diminishment requirement under Section 2 is clearer and applies to all types of pollutants or conditions. Therefore, the more specific language in Section 4 is not sufficient on its own and should be omitted to avoid confusion.

In addition, it is inaccurate to characterize all run-of-the-river projects as non-consumptive as doing so ignores their impact on water quality. While run-of-the-river projects may have less impact on a water quantity or a stream’s hydroregime in comparison to a storage or reservoir project, run-of-the-river projects nonetheless allow sediment and the pollutants contained in it to accumulate behind the project and diminish water quality. Run-of-the-river projects also effect temperature, and dissolved oxygen levels, all of which are important components of water quality. If run-of-the-river projects are intended to be an exception under the policy, they should be identified as such.

The Tribe appreciates Ecology’s full consideration and incorporation of the Tribe’s comments.

Sincerely,

/s/ Benjamin Harrison

cc: Roma Call, Director, Natural Resources Department, Port Gamble S’Klallam Tribe
Steven Moe, Director, Legal Department, Port Gamble S’Klallam Tribe