



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

December 3, 2025

Subject: Comments - Consumptive & Nonconsumptive Water Use (POL-1020)

Dear Mr. Noah Wentzel:

I write on behalf of the Yakama Nation Department of Natural Resources (YN-DNR) to express concerns regarding proposed changes to Policy-1020. We recognize the revisions to POL-1020 were made with the intent of clarifying the definition of impairment. We would like to provide the following comments/proposed revisions:

Section 3: Nonconsumptive Water Use, Surface Water:

The proposed language in Section 3 directly contradicts case law and leaves the waters of the state vulnerable to over-exploitation; specifically in the following line: "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." This appears to be a clarification of the "Exception to 2.B." in the current version of POL-1020.

POL-1020 was written in 1991, before the Postema, Foster, and Hirst cases provided further guidance on de minimis impacts to the system. The language in the proposed updates to POL-1020 appears to directly contradict the interpretations of de minimis provided by those cases. This policy instead looks to measurable impacts on the source water elevation. Defining consumptive use as use that affects, to a measurable degree, the surface level of a body of water leaves a significant volume of water available for "non-consumptive" use. We therefore propose that Ecology adopt language consistent with existing case law.

We appreciate the opportunity to comment and look forward to future discussions on the proposed language.

Thank you,

Philip Rigdon, Superintendent
Yakama Nation Department of Natural Resources