

Lauren Huckaba

Please find the attached comment letter from Avista Corporation regarding the draft Policy update: Consumptive and Non-Consumptive Water Use Policy (POL-1020).

Submitted Electronically
December 3rd, 2025

Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: POL-1020 Revision

Dear Director Sixkiller and Water Resources Program Staff,

Avista Corporation appreciates the opportunity to provide comments on the Public Review Draft of Consumptive and Nonconsumptive Water Use, POL 1020 (“Draft Policy”). We recognize the Department of Ecology’s efforts to clarify the interpretation of consumptive and nonconsumptive water use, which is critical for both municipal supply and hydropower operations. In regard specifically to Avista’s facilities, these comments supplement the letter submitted by the Northwest Hydroelectric Association (NWEA), which Avista fully endorses.

Avista is headquartered in Spokane, Washington, and operates a diverse energy portfolio in the Inland Northwest, with hydropower as a cornerstone resource. Our eight hydroelectric projects—six on the Spokane River and two on the Clark Fork River—collectively supply nearly half of Avista’s electricity generation, serving more than 400,000 customers across Washington, Idaho, and Montana. Avista strives for operational excellence and responsible water stewardship, supporting policies that protect water resources and deliver safe, reliable, affordable energy to the communities we serve.

We respectfully offer the following comments and recommendations for your consideration:

First, we recommend that the Draft Policy explicitly state that determinations of nonconsumptive use for existing water right certificates, permits, and any future changes or extensions be applied prospectively, not retroactively. Retroactive application could create uncertainty and conflict with established rights, contrary to principles of fairness and predictability in administrative law. This approach aligns with the Administrative Procedure Act (APA), which requires clarity and notice for regulated entities (RCW 34.05).

Second, the Draft Policy should align with existing definitions in WAC 173-500-050(5) and (9), which define “consumptive use” and “nonconsumptive use” respectively.¹ Maintaining consistency with these definitions ensures regulatory stability and avoids unintended reinterpretations that could jeopardize operational certainty for hydropower facilities.

Third, the Draft Policy introduces changes to the definition of consumptive use, including considerations of water quality and return flow proximity. We recommend retaining the established definitions in WAC 173-500-050(5) and providing clear guidance on any proposed changes. Expanding the definition without rulemaking could conflict with APA requirements for public participation and transparency, creating risk for utilities that depend on predictable standards to maintain reliable service.

Consumptive use should remain a quantitative analysis based on actual loss at the source, as recognized in WAC 173-500-050(5). Introducing qualitative factors such as water quality or modeling impacts may create uncertainty, potentially leading to inconsistent application across projects and threatening the ability to plan for dependable water and power delivery.

The Draft Policy should clarify how standards such as “diminished to any degree in quantity” and “any interval of time” will be determined and applied. Without clear metrics, these terms could be interpreted inconsistently, undermining predictability and compliance. We suggest Ecology provide examples or thresholds to guide implementation so utilities can continue to meet customer needs without disruption.

Finally, any further definitions or substantive changes should be promulgated through the formal rulemaking process under the APA (RCW 34.05), ensuring compliance with procedural requirements and stakeholder engagement. This approach promotes transparency, legal defensibility, and operational certainty for providers responsible for reliable water and power supplies.

Additional Considerations

In reviewing the Draft Policy and its summary of changes, we emphasize the need for clarity and consistency to maintain dependable energy production and protect community interests. Several provisions require refinement to align with existing policy frameworks and formal rulemaking procedures:

- **Evaporative Loss from Impoundments (Section 3):** Including evaporation in nonconsumptive impoundments introduces uncertainty and could retroactively affect hydropower operations. Clear guidance on quantification methods and alignment with

¹ Ecology’s reliance on *Foster v. Ecology*, 184 Wn.2d 465 (2015), for the proposed revisions appears misplaced, as the decision did not address consumptive use. Instead, Foster focused on mitigation requirements for instream flows.”

WAC 173-500-050 definitions is essential to ensure operational predictability and avoid unintended reinterpretation that could disrupt reliable energy delivery.

- **Injection Well Permitting and UIC Program Alignment (Section 4):** Updates referencing WAC 173-218 should include explicit guidance on how these changes interact with current practices. Consistency is critical to avoid confusion and maintain the reliability of water management systems that support energy generation and community needs.
- **Concurrent Use of Groundwater and Surface Water (Section 5):** While the Draft Policy clarifies review and approval processes, it lacks defined impairment criteria and practical examples. Establishing these standards will promote predictable application, safeguard resource availability.
- **Cross-reference to POL-2010:** Adding references to POL-2010 for defining water sources should not introduce new obligations without formal rulemaking under APA (RCW 34.05). Maintaining procedural transparency and stakeholder engagement is vital for regulatory certainty and ensuring compliance.

We appreciate Ecology's commitment to transparent and effective water resource management. Thank you for the opportunity to provide our comments. Please feel free to contact us with any questions or to discuss these recommendations further.

Sincerely,

Lauren Huckaba

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