

Kittitas County (Arden Thomas)

December 5, 2025

Dear Water Resources Program Staff:

Thank you for the opportunity to comment on the draft updates to Policy 1020 ("POL-1020") addressing the interpretation of "consumptive use" and "diminishment." I appreciate Ecology's efforts to improve clarity, consistency, and documentation of current practices. However, I am concerned that certain aspects of the draft policy, as written, could unintentionally limit water-right flexibility, undermine mitigation programs, and blur the critical distinction between defining a consumptive use and making an impairment determination .

I respectfully submit the following concerns:

1. Consumptive use definitions must remain distinct from impairment determinations
Both the current and draft policies suggest that any measurable change in quantity, timing, or quality constitutes a consumptive use and, by implication, automatically reduces water availability for other uses. While consumptive-use definitions are important for identifying how a diversion interacts with the source, they are not equivalent to an impairment determination.

Under Washington Water Law, impairment must be evaluated on a case-specific basis, considering senior water rights, site-specific hydrology, and actual impacts. Treating every minor change in quantity, timing, or quality as automatically reducing water availability risks creating a de facto new impairment standard.

POL-1020 language should make these distinctions clear.

2. Postema and Foster standards should not be applied to basins without instream-flow rules

The Postema and Foster decisions are important parts of Washington water law, but the situations they address are very specific: both cases involved basins where instream flows or closures are set by rule and function as senior water rights. In these basins, even very small timing or flow changes can legally constitute impairment.

Maintaining this distinction is essential for the continued effectiveness of mitigation programs such as those used in Kittitas County. The County has invested heavily in acquiring and banking water rights to offset new groundwater uses, and these programs depend on the existing regulatory framework remaining intact. Applying rule-based standards in non-rule basins would create new barriers that were not contemplated by the Legislature or the courts and could jeopardize these investments.

Additionally, in the Yakima Basin new groundwater and surface water storage projects are being pursued to meet current and future water supply needs, for both instream and out-of-stream needs. Policy updates should ensure that the draft's expanded definitions are not unintentionally applied in ways that change how mitigation works in areas without instream-flow rules.

3. Expanded consumptive-use criteria could inadvertently constrain mitigation and storage projects

The draft policy classifies a use as consumptive if water is:

- Not returned at the time of diversion,
- Returned with reduced quality (including temperature), or
- Returned in reduced quantity.

While these factors are relevant for impairment analysis, using them as automatic triggers for consumptive-use classification could:

- Mischaracterize otherwise fully mitigated projects as consuming water,
- Reduce flexibility for storage, aquifer recharge, and flow-management projects, and
- Increase the regulatory burden on mitigation programs that rely on timing and quality offsets rather than instantaneous return flows.

For example, municipal effluent returns, aquifer recharge, managed reservoirs, and irrigation return flows all involve timing differences that are hydrologically accounted for during impairment review. Automatically treating these as consumptive uses risks making many mitigation-based projects infeasible, not because of actual hydrologic harm, but because the definitional threshold is impossible to meet.

4. Water-quality and municipal groundwater pumping considerations should be addressed through impairment analysis, not by definitional presumption

Draft POL-1020 states that a use is consumptive if it "results in a water-quality reduction (including temperature) that reduces availability of the water source to serve other water uses." While water quality is an important factor in impairment analyses, embedding it as an automatic trigger for consumptive use raises significant concerns.

For example, groundwater pumping for municipal and domestic uses. —often involve return flows with minor timing or water-quality differences, could be classified as consumptive simply because they temporarily alter flow, temperature, or other water-quality parameters, even if these changes do not impair senior rights. Under such a broad interpretation, all municipal groundwater uses could be considered fully consumptive by default, creating unnecessary barriers for water supply projects that are otherwise fully mitigated or hydrologically neutral.

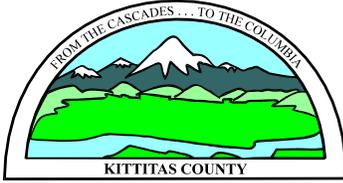
Water-quality impacts and return-flow timing should continue to be considered as part of site-specific impairment analyses, rather than automatically defining a use as consumptive. This ensures that municipal projects and other mitigated water uses are evaluated based on actual hydrologic impacts and legal availability, rather than a generalized definitional presumption.

Thank you again for the opportunity to provide input on the draft updates to POL-1020. We appreciate Ecology's continued efforts to clarify policy and ensure consistent application of Washington water law. We look forward to working collaboratively with the Department to ensure that the policy supports both the protection of senior water rights and the practical implementation of mitigation programs that provide for sustainable water use across the state.

Thank you for your consideration.

Sincerely,

Arden Thomas
Water Resource Manager, Kittitas County Public Works



KITTITAS COUNTY

DEPARTMENT OF PUBLIC WORKS

Arden Thomas, Water Resources Manager

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¹ Ecology stated at the November 10, 2025 Water Resources Advisory Committee (WRAC) meeting that the policy update would not affect or modify the current impairment standard.

create new barriers that were not contemplated by the Legislature or the courts and could jeopardize these investments.

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