



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

December 4, 2025

Subject: Development Schedules for Water Right Changes & Transfers (POL-1280)

Dear Mr. Austin Melcher:

I write on behalf of the Yakama Nation Department of Natural Resources to express concerns regarding the proposed changes to Policy-1280. We submit the following comments regarding the use of a development schedule to “re-perfect” a water right and the implications of this approach.

While we recognize Ecology’s intent to provide clarification, we must emphasize that this tool has often been applied in situations where the extent and validity of water rights could not be sufficiently demonstrated. This was the case with the COIC water right transfer CS4-35001J@1, where the history of use and supporting analysis were inadequate to justify the change. Given the complexity of that scenario, Ecology elected to employ a development schedule with evaluation to address concerns raised by the Yakama Nation, Trout Unlimited, WDFW, CELP, and others. The following language is found in in COIC Change ROE, CS4-35001J@1 (Page 4):

Development Schedule, Irrigation Management Plan and Subsequent Changes: The development schedule is designed to allow for completion of the Project, including testing, within the 10-year timeline. The 10-year period is expected to accommodate years when water use by COIC members may vary, including during severe droughts and high fire risk seasons. During the 10-year development schedule, COIC shall track water use by its shareholder members and customers through an irrigation management plan and, every two years, provide data to Ecology’s Office of Columbia River evidencing beneficial use, to include metering records, aerial photos of the place of use, photos of water use (irrigation) not visible from satellite imagery, detailed maps of water use, etc. Upon completion of the 10-year development schedule, COIC shall select the single highest year of use for the proof of appropriation process. During the pendency of the development schedule, unless Ecology otherwise agrees, COIC shall not propose new uses for its water rights other than for COIC and its shareholder members and customers for irrigation. COIC may choose to temporarily donate portions of its water right to trust, but only water put to beneficial use during the 10-year development schedule will be considered as evidence towards the final determination of irrigated acres. Additionally, COIC’s new water delivery system may not add deliveries to properties that do not already have access to irrigation water from COIC. This precludes the expansion of COIC laterals and other delivery infrastructure not related to the Project and

downstream diversion change. Following the completion of the project and issuance of a certificate, COIC may apply for changes to any new purpose(s) of uses consistent with Washington law.

Proof of Appropriation: Consistent with the 10-year development schedule set forth above (unless hereafter extended by Ecology), COIC must file a Proof of Appropriation of Water form (PA) with Ecology. The PA shall document that the project is complete and identify the quantity of water that has been put to full beneficial use (perfected). After filing the PA, in lieu of a Certified Water Rights Examiner, Ecology shall conduct an inspection of COIC's water use known as a "proof exam". Ecology's proof exam will verify the extent of water use under this change authorization. The final water right document, a water right certificate, may then be issued by Ecology based upon the findings of the Department. Statutory county and state filing fees may apply prior to certificate issuance. COIC and Ecology have agreed that, after this change authorization has been completed through proof of appropriation, any quantity of water not perfected for irrigation below the maximum 420 irrigated acres, 8 cfs, 1,319 afy is attributable to COIC surplus water used by the Leavenworth National Fish Hatchery (LNFH) and shall be changed to instream flow purposes and permanently conveyed to Trust as non-consumptive water to benefit the instream flows of Icicle Creek. If COIC Proves beneficial use at a peak instantaneous flow rate of 8 cfs, then Ecology may enter into a Trust Water Agreement (TWA) with COIC that would include a monthly schedule of trust water for instream flows attributable to previous spill and ditch leakage, plus an additional annual quantity of water attributed to water that is not perfected for irrigation. Any schedule developed in a TWA shall be based on actual instantaneous metering data and not estimated water use.

Without the use of this tool, the project would not have advanced and could have likely resulted in litigation. Regardless of Ecology's reinterpretation of Policy-1280, Yakama Nation expects Ecology to honor the commitments made as part of the COIC Change ROE CS4-35001J@1 and other Change ROEs that utilize similar approaches.

We appreciate the opportunity to provide these comments and look forward to continued dialogue on this issue.

Thank you,



Philip Rigdon, Superintendent
Yakama Nation Department of Natural Resources