

Sarah Mack

Please see attached comments.

Comment on Draft POL-1280 update 12/5/2025

Sarah E. Mack, Foster Garvey PC

The topic of development schedules for water right changes is better addressed through the APA rulemaking process than through an interpretive or policy statement. Policy 1280 was originally issued over sixteen years ago. RCW 34.05.230(1) provides: “To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.” Notwithstanding its label as an “advisory” or “non-binding” policy, Ecology’s proposed policy update contains numerous definitions and detailed prescriptions for various regulatory scenarios. Rulemaking is the appropriate way to establish “the process and criteria” for setting development schedules and evaluating requests for extensions. The rulemaking process – with its more robust public review and opportunity for judicial scrutiny – is necessary to ensure that any such criteria are consistent with the requirements established by the Legislature in the Water Code, e.g., RCW 90.03.320.

Furthermore, Ecology should stick to the topic at hand. Section 9 of the draft policy update (“Relationship of Change Development Schedules to Relinquishment and Abandonment”) contains numerous misstatements of the law on topics which are at best only tangentially related to development schedules.

- As just one example, in Section 9.2 Ecology states that the municipal exemption from relinquishment for nonuse can cover a water right authorized for change under a development schedule “so long as the water right . . . is *used* for municipal purposes” (emphasis added). Notwithstanding Ecology’s repeated assertion of its woebegone “active compliance” notion, nothing in RCW 90.14.140(2)(d), RCW 90.03.015(4), or relevant caselaw requires a water right claimed for municipal water supply purposes to be “used” for the relinquishment exemption to apply.

Ecology has already issued a policy and interpretive statement on “The Relinquishment, Rescission, and Abandonment of Water Rights” (POL-1060, revised December 2019). It seems unnecessary and inappropriate for Ecology to use a *different* administrative policy to opine (correctly or incorrectly) on relinquishment exemptions under RCW 90.14.140(2). (Here as well, Ecology should promulgate rules and regulations addressing application of the relinquishment statutes, as the Legislature authorized in RCW 90.14.230.)

Thank you for considering my comments, and please don’t hesitate to reach out if you have any questions or would like to discuss my concerns in more detail.