

Beryl Fredrickson (WWUC) (Beryl Fredrickson (WWUC))

Please see attached Washington Water Utility Council's comment letter.



Washington Water Utilities Council

December 5, 2025

Austin Melcher
Washington Department of Ecology
Water Resource Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Comments on Proposed Revisions to “Development Schedules for Water Right Changes and Transfers Policy and Interpretative Statement (POL 1280)”

The Washington Water Utilities Council (“WWUC”) appreciates the opportunity to review and comment on the Washington State Department of Ecology’s (“Ecology”) Public Review Draft of Policy 1280, “Development Schedules for Water Right Changes and Transfers Policy and Interpretive Statement.” The WWUC is the state association of over 200 Washington water utilities including cities, water districts, public utility districts, mutual and cooperative water utilities, and investor-owned water utilities. The water systems owned and operated by WWUC members provide drinking water to over 80 percent of the state’s population.

The WWUC offers the following comments to assist Ecology in refining Policy 1280. Our primary concerns relate to the Municipal Water Law and treatment of pumps and pipes certificates. Further, as drafted, the policy introduces ambiguity and creates questions of legal authority.

The WWUC’s members are dedicated to serving Washington’s growing population by ensuring an adequate quantity of high-quality potable water at the lowest economic and environmental cost. Policy 1280 is important to WWUC members as water utilities plan, finance, and construct infrastructure to serve dynamic communities over long horizons—but cannot control the pace or pattern of actual development within their service areas. At the same time, utilities across the state are being asked to prepare for population and economic growth as well as increasing variability in water availability. This growth and unpredictability place a high burden on our drinking water utilities. Development schedules and reasonable schedule extensions are

therefore essential tools for water utilities to coordinate lawful and responsible water right development with real-world conditions.

I. Legal and Technical Concerns

A. *Pumps and Pipes Certificates are Rights in Good Standing*

The WWUC supports Ecology’s goal of improving clarity around development schedules, but the draft policy’s treatment of pumps and pipes certificates is erroneous. Washington law recognizes that municipal rights evidenced by system capacity (pumps and pipes) certificates are rights in good standing—deemed perfected for municipal supply purposes even where not all quantities have yet been put to actual beneficial use.¹ The Washington Supreme Court reinforced this principle through case law, stating that pumps and pipes certificates “represent rights in good standing, i.e., the water rights are deemed perfected, even if the rights were not actually put to beneficial use.”² It would be inconsistent with the Water Code and Supreme Court precedent for Ecology to attempt to create a new pathway to rescind, diminish, or otherwise restrict those certificates via a policy and interpretive statement.

The draft also presents an internal inconsistency between Section 4 and Section 5.5. Section 4 suggests that superseding certificates issued for changes to pumps and pipes certificates would not include a development schedule. By contrast, Section 5.5 states that, when inchoate water is considered valid, Ecology will work with the applicant to set a reasonable change development schedule. These statements point in different directions. The WWUC understands based on Ecology’s comments at the November 10 Water Resources Advisory Committee that the Section 5.5 reference was intended to address a specific set of legacy issues associated with pumps and pipes certificate development schedules. The WWUC recommends that Ecology clarify this and reconcile these provisions in the policy by deferring to the view and preference of the municipal water supplier.

¹ See RCW 90.03.330(3) (“This subsection applies to the water right represented by a water right certificate issued prior to September 9, 2003, for municipal water supply purposes as defined in RCW 90.03.015 where the certificate was issued based on an administrative policy for issuing such certificates once works for diverting or withdrawing and distributing water for municipal supply purposes were constructed rather than after the water had been placed to actual beneficial use. Such a water right is a right in good standing.”).

² *Cornelius v. Washington Dep’t of Ecology*, 182 Wn.2d 574, 597, 344 P.3d 199 (2015) (internal quotations omitted) (citing RCW 90.03.330(3)).

The definitional framework also contributes to confusion. The draft policy’s treatment of the term “inchoate right”³ implies that a water right that has not been put to beneficial use “in part” is itself an “inchoate right.” This obscures the established understanding that a single water right can include both portions that have been put to beneficial use and inchoate portions. Additionally, the draft policy’s definition of “perfected right” as a right “put to beneficial use” does not account for the distinct municipal context in which pumps and pipes certificates are rights in good standing – i.e., deemed “perfected” in accordance with *Cornelius*. These definitional choices, when combined with development schedule language, could be read to authorize piecemeal erosion of pumps and pipes certificates.

To ensure consistency with Washington law, the updated policy should accurately account for the status of pumps and pipes certificates and avoid interpretations that could be read to rescind inchoate portions of such rights in conflict with statute and case law.

B. “Original Intent” Should Not Control Development Schedules for Municipal Changes

The draft Policy 1280 incorrectly attempts to introduce the concept of “original intent” in Section 5.5 to guide development schedule setting for municipal changes and transfers. As discussed above, this section is ambiguous and appears to conflict with Section 4. The addition of “original intent” – a term that lacks any statutory basis – in the context of a right that is eligible for change creates internal conflict within the draft policy and is counter to the Water Code. The Water Code authorizes many types of changes without regard to the so-called “original intent” underlying existing water rights. If a change application meets the statutory criteria, the “original intent” at the time of the historical certificate issuance should not be used to restrict the development schedule or the scope of changes to municipal water rights. If the Legislature had intended to constrain water right changes based on “original intent” it would have said so. Accordingly, Ecology should remove the term “original intent” from the policy.

C. Legal Authority and the Use of Definitions in Agency Determinations

The draft policy states that its definitions are provided for common understanding and are not for legal use. However, the policy language and Ecology’s past practices do not provide any assurance that these definitions will *not* be used to inform or defend significant, binding Ecology decisions. If Ecology intends to rely on defined terms to make determinations with

³ Notably, although defined, the term “inchoate right” does not appear in the body of the draft policy.

significant impacts on water utilities, the definitions must align with statute and case law and be used consistently across policies.

Additionally, the WWUC is concerned with Ecology's apparent attempt to interpret or narrow the determined future development ("DFD") exemption from relinquishment through policy text. Statutory exemptions from relinquishment cannot lawfully be redefined or constrained indirectly through policy. Ecology, the Pollution Control Hearings Board, and the courts must apply statutory terms and case law precedent to relinquishment determinations on a case-by-case basis. At a minimum, Ecology should confine its interpretations of RCW 90.14.140 to POL-1060 ("The Relinquishment, Rescission, and Abandonment of Water Rights").

Finally, the draft policy's introduction of the undefined term "non-speculative" in Section 5.1 risks introducing additional and unwarranted restrictions to change development schedules. The term is unclear and introduces unnecessary uncertainty into the process. Accordingly, Ecology should remove the term "non-speculative" from the policy.

D. Clarity, Consistency, and Cross-Policy Alignment

Clarity and internal consistency are essential to predictable administration. Several definitions in the draft either do not align with existing policy language or are not used in the operative provisions that follow. This invites confusion and unnecessary disputes. The WWUC recommends that Ecology:

- Align definitions with existing statutory language and with policy language where those terms are used across policies.
- Remove definitions that are not used in the operative text.
- Eliminate or revise definitions that conflict with the recognized treatment of municipal pumps and pipes certificates as rights in good standing.
- Resolve the tension between Section 4 and Section 5.5 on pumps and pipes certificates.
- Address ambiguity and inconsistent use of terms throughout the draft policy.

II. Conclusion

The WWUC appreciates Ecology's efforts to improve transparency and predictability in development schedule administration. To avoid unintended impairment of municipal water rights and to ensure consistency with statute and case law, the WWUC respectfully requests that Ecology revise Policy 1280 to: recognize pumps and pipes certificates as rights in good standing; align definitions with existing policy and legal authority; eliminate the use of "original intent" and

WWUC Comments on Proposed Revisions to POL 1280
December 5, 2025

“non-speculative”; and avoid policy-level reinterpretation of the DFD exemption to relinquishment. We welcome continued engagement to ensure that Policy 1280 supports sound municipal water supply development and faithful implementation of Washington water law.

While we understand that you are not intending to prepare a response to comment document, we would appreciate your specific response to the points in this letter. We appreciate your consideration of these comments and welcome continued dialogue.

Sincerely,

A handwritten signature in blue ink that reads "Beryl C. Fredrickson". The signature is written in a cursive, flowing style.

Beryl Fredrickson, Chair, Washington Water Utilities Council

cc: Casey Sixkiller, Department of Ecology Director
Ria Burns, Department of Ecology Water Resources Program Manager
Holly Myers, Department of Health Drinking Water Director