



December 04, 2025

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

Re: Comment Letter on Public Review Draft: Development Schedules for Water Right Changes and Transfers Policy and Interpretive Statement, POL 1280

Dear Mr. Melcher,

On behalf of the Seattle Public Utilities and Seattle City Light (“Seattle”), we are providing comments on the Public Review Policy Draft Development Schedules for Water Right Changes and Transfers Policy and Interpretive Statement, POL 1280 (“Draft Policy”).

We appreciate the opportunity to comment on the Department of Ecology’s (“Ecology”) Draft Policy. We commend Ecology on its clarification of the development schedule process when a water right is authorized for a change, and in particular recognizing that in certain circumstances a superseding certificate may be issued immediately upon the approval of the change.

As a general comment, we suggest the Draft Policy be reviewed in regard to clarity and length. We believe it can convey much of the guidance with less explanation, which would make it clearer and easier to apply. In this regard, Seattle provides the following comments on specific language in the Draft Policy.

Sec. 1.1 Definitions

Ecology should review the definitions in Section 1.1 and ensure they are consistent with other adopted policies, including POL 1050 (Extension of Time on Water Right Permits), POL 1010 (Administration of the Trust Water Rights Program) and POL 2030 (Municipal Water Law Interpretive and Policy Statement). If there are differences in the definitions, clearly explain the same so there will be no confusion. By way of example:

Due Diligence: Ecology defines the term "due diligence." The term “due diligence” is not included in statute and is confusing. Both POL 1050 and POL 2030 use the term “reasonable diligence”. The statute authorizing extensions uses the term “reasonably necessary”. RCW 90.03.320. We recommend Ecology use reasonable diligence as defined in POL 1050.

Good Faith: This term is defined differently in POL 1050. We recommend the POL 1050 definition is used.

Inchoate Right: This definition implies that a water right that has not been put to beneficial use “in part” is an “inchoate right.” This is confusing as a water right may have inchoate and non-inchoate portions. POL 2030 defines “inchoate” as “The portion of a water right that has not yet been perfected through actual beneficial use of water.” Also, while the term “inchoate” is used, the term “inchoate right” is not used in POL 2030. We recommend deleting this term from the Draft Policy.

Perfected Right: Defined as a “water right that has been put to beneficial use.” But see *Cornelius v. Ecology*, 182 Wn.2d 574, 601 (2015) (“rights represented by system capacity certificates for municipal supply purposes are rights “in good standing,” i.e. the rights are deemed perfected, even if they were not actually put to beneficial use”). Further, the term “perfected right” is not otherwise used in the policy. We recommend deleting it.

Public Interest: This definition is not the same as in POL 1050, although it is the same as the definition in POL 1010. We recommend that the definition in the Draft Policy be retained. We further recommend that Ecology apply public interest consistently in all its decisions where public interest is one of the criteria.

Section 3 Development Schedules

In determining development schedules for cities and towns, it is critical the Draft Policy recognize that municipalities cannot control the pace of the growth and the actual development and demand for water and energy within their respective service areas. Seattle, like other cities and towns, must plan growth and water/energy demand based on the best predictions possible. Development schedules must recognize the unpredictability of determining water/energy demand and, therefore, it is essential that the schedules are flexible, particularly with long term schedules.

Section 5.1 Permanent Changes and Transfers

For the first time the term “non-speculative” is used in Ecology’s policies. We recommend it is deleted or defined in the Draft Policy.

There is a disconnect with the language in Section 4, Section 5.1 and Section 5.5 regarding development schedules when making change decisions on pumps and pipes certificates. Section 4 provides these would not include development schedules. Sections 5.1 and 5.5 are inconsistent with the language in Section 4. We recommend that Ecology provide a consistent policy with regard to pumps and pipes certificates that provides for the issuance of development schedules that are long term to provide the flexibility needed for municipal water suppliers.

Section 5.5 Municipal Changes and Transfers

The second paragraph includes the term “original intent”. In response to comments on the Draft Municipal Policy 2030, Seattle objected to the concept of original intent in considering applications to change municipal water rights. We reassert that objection, as original intent is not grounded in statute and is inappropriately used in this draft policy as well. We recommend it is

deleted from the Draft Policy. Further, if the water right is eligible for change, the concept of “original intent” is not a valid consideration in setting a development schedule for a change.

It is not clear what this sentence means in the second paragraph of Section 5.5; "When setting a change development schedule, Ecology will work with the applicant to differentiate, where possible, work to complete the change from work required to complete the original project." We recommend it is rewritten to clarify its intent.

It is also not clear what this sentence means in the third paragraph of Section 5.5; "Ecology should consider provisions that will provide documentation of the change development schedule for future water system planning purposes." We recommend it is rewritten to clarify its intent.

We recommend a reference to RCW 90.03.330 confirming that system capacity certificates represent “right[s] in good standing.” RCW 90.03.330(3).

While the City continues to have concerns and objections with Section 5 in POL 2030 as reflected in our June 10, 2024, comment letter, we recommend Ecology still clarify any distinction between POL 2030 Section 5 and Draft POL 1280 Section 5.5.

Section 7

The last bullet point includes a capitalized term “Change Verification” form, which is undefined. We recommend that it is defined.

Section 8.2

Section 8 addresses extensions for change development schedules. However, Subsection 8.1 addresses cancellation of a change or transfer authorization. Subsection 8.1 may not be appropriate under Section 8. We also find the second paragraph under this subsection to be confusing. We recommend it is rewritten to clarify its intent.

Section 9.2 Municipal Water Supply Purpose

The policy states that RCW 90.14.140(2)(d) provides that a water right "claimed for municipal water supply purposes under chapter 90.03 RCW" is exempt from relinquishment. We agree with this statement. However, the sentence that follows is confusing. It states: “A conversion of use to municipal water supply authorized by a change development schedule can be covered under this relinquishment exemption, so long as the water right is held by a municipal water supplier, has been changed to municipal supply purposes, is used for municipal purposes, and the project is pursued with diligence.” This appears to be Ecology’s interpretation in POL 2030 that a municipal water right must always be actively using water for municipal purposes as defined in RCW 90.03.015, i.e. “active compliance”, which Seattle strongly objects to as reflected in its comments on the Draft POL 2030. We recommend Ecology delete this sentence, which is not related to determining the development schedule.

Finally, we recommend the Draft Policy specifically state that it will be applied prospectively and not retroactively to past change decisions. This includes honoring the development schedules in past change decisions.

Thank you again for the opportunity to comment on the Draft Policy. We hope our comments are of assistance to you. Please do not hesitate to reach out to clarify anything we've included in our letter. Seattle shares Ecology's goal to have clear and objective guidance.

Sincerely,



[Alex Chen \(12/04/2025 15:07:40 PST\)](#)

Alex Chen, Deputy Director of Water Line of
Business & Shared Services Branch
Seattle Public Utilities



[Mike Haynes \(12/04/2025 16:58:48 PST\)](#)

Mike Haynes, Chief Operating Officer
Seattle City Light