

Stefany Zelepuza

Please see attached the Washington Public Utility Districts Association's comments on the proposed revisions to POL-1280.

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Austin Melcher
Washington Department of Ecology
Water Resource Program
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RE: Comments on Proposed Revisions to “Development Schedules for Water Right Changes and Transfers Policy and Interpretative Statement (POL 1280)”

Dear Austin:

The Washington Public Utility Districts Association (WPUDA) appreciates the opportunity to comment on the Department of Ecology’s (“Ecology”) proposed revisions to the “Development Schedules for Water Right Changes and Transfers Policy and Interpretative Statement” (“POL 1280”). WPUDA represents 27 public utility districts across Washington State, 17 of which provide municipal water supply to communities throughout the state. We also participated in the development of comments submitted by the Washington Water Utility Council (WWUC) and fully support the WWUC comments.

WPUDA supports Ecology’s goal of improving clarity and consistency around the use of development schedules as an important tool for coordinating water right development with water utilities. Our primary concerns with the proposed revisions relate to the treatment of the Municipal Water Law and the characterization of inchoate municipal water rights.

1. Definitions (*Section 1.1*)

For purposes of clarity and consistency across water-related policies, we recommend that Ecology align key definitions with statutory language and existing policy frameworks.

“Beneficial use.”

The term “beneficial use” appears throughout the draft policy but is not defined. We recommend adding a definition consistent with RCW 90.03.550 and other relevant Ecology policies, including recognition of beneficial uses associated with municipal water supply, instream needs, and environmental obligations.

“Inchoate right.”

The draft definition suggests that a water right not fully perfected is entirely inchoate, rather

than recognizing that a single right may include both perfected and inchoate portions. We recommend clarifying the definition as follows: *“A water right in good standing that has not yet been put to beneficial use, in part or in whole.”*

“Original intent.”

This term does not appear in statute and did not exist in the prior version of POL 1280. Its introduction is inconsistent with the nature of water right changes and conflicts with the Municipal Water Law’s framework, in which a change application that meets statutory criteria should not be constrained by historical “intent” at the time of the original certificate. If Ecology chooses to retain this term, WPUDA supports the WWUC recommendation to amend it in a manner consistent with Ecology’s treatment in POL 2030, including explicit recognition that “original intent” encompasses subsequent lawful modifications to municipal service areas.

“Public interest evaluation.”

The definition unnecessarily incorporates an extensive list of environmental and aesthetic considerations. We recommend removing the sentence referencing environmental, recreational, and aesthetic effects, and adding reference to municipal water supply uses that are in the public interest, as outlined in RCW 90.03.550—including uses benefiting fish and wildlife, water quality, instream resources, or environmental obligations under watershed plans, habitat conservation plans, or FERC hydropower licenses.

2. Length of Change Development Schedules *(Section 5)*

The proposed policy establishes a five-year limit for seasonal and short-term temporary changes. This limit is not supported by statute. We request that Ecology remove the phrase “less than 5 years” from Section 5.2.

3. Relinquishment *(Section 9)*

WPUDA appreciates the clear acknowledgment in Section 9.2 that “municipal water supply purpose rights are exempt from relinquishment.”

However, the section also states that “the water right holder must put the full amount of water to beneficial use at least once every five years.” This requirement is not present in statute and is inconsistent with both RCW 90.14 and the Municipal Water Law. We request removal of this language.

4. Municipal Water Rights *(Section 5.5)*

This content should not be located in Section 5. Because it addresses foundational programmatic elements, it is more appropriately placed in Section 2.

Additionally:

- The title incorrectly cites RCW 90.03.386. The correct citation for this section is RCW 90.03.570 (“Change or transfer of an unperfected surface water right for municipal water supply purposes”).
- The section references RCW 90.03.320 and POL 2030 regarding inchoate rights but should additionally—and prominently—reference RCW 90.03.570, which governs changes to unperfected municipal water rights.
- The requirement that a change development schedule must be “consistent with the original intent and scope of the remaining project” is not supported by statute and conflicts with the Municipal Water Law’s central purpose of providing “certainty and flexibility of municipal water rights.”

Conclusion

WPUDA supports Ecology’s objective of providing clearer guidance on the use of development schedules for water right changes and transfers. However, several elements of the proposed revisions introduce uncertainty for municipal water rights holders and are not supported by statute. We respectfully request that Ecology revise the draft policy to ensure consistency with the Municipal Water Law, provide workable definitions, and avoid introducing non-statutory constraints on municipal water systems and inchoate water rights.

Thank you for your consideration of the above comments. We look forward to continued discussion on this important issue. Please feel free to contact me with any questions.

Sincerely,

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