

May 15, 2026

Washington Department of Ecology  
300 Desmond Drive SE  
Lacey, WA 98503

Subject: Formal Comments on Draft Dam Safety Policy (POL-5XXX) and Interpretive Statement

Dear Dam Safety Office,

We appreciate the opportunity to provide comments on the public review draft of Policy POL-5XXX. While we recognize the Department of Ecology's commitment to dam safety, we wish to underscore the proposed policy exemption language for projects under the Federal Energy Regulatory Commission (FERC) regulations under 18 CFR Part 12 and the Federal Power Act (FPA).

The policy appropriately states recognition of Federal preemption and statutory exemption. "Under RCW 43.21A.068 and the Federal Power Act (FPA), dams or controlling works requiring a license or exemption from the Federal Energy Regulatory Commission (FERC) are explicitly exempt from the requirements of Chapter 173-175 WAC.

The clear statement of this exemption is fundamental to the Department's policy for the following reasons:

#### **Avoidance of Dual Regulatory Burden**

FERC-licensed projects are already subject to a comprehensive federal safety regime under 18 CFR Part 12, which includes high-frequency reporting, independent consultant inspections (Comprehensive Assessments and Periodic Inspections), and rigorous potential failure mode analyses.

Explicitly stating this exemption ensures that dam owners are not forced to navigate conflicting technical standards or redundant administrative requirements between state and federal authorities.

#### **Preservation of Exclusive Federal Jurisdiction**

Federal judicial precedent establishes that the Federal Power Act channels all liability for damages resulting from the operation of licensed projects solely to the licensee.

Any state assertion of 'residual authority' to regulate flows or take physical control of project works—as described in RCW 86.16.035 or WAC 173-175-610—must be applied in a manner that respects federal preemption. State intervention in the operational control of a FERC project would create untenable legal ambiguity regarding liability and could interfere with safety protocols established in a FERC-approved Emergency Action Plan (EAP).

### **Operational Consistency During Emergencies**

For FERC-licensed projects, the Chief Dam Safety Engineer (or Coordinator) has the primary federal responsibility for overseeing the project's safety and implementing emergency actions

The Department's policy defers to the FERC-approved safety framework to ensure that during critical flood events, there is a single, clear chain of command and that the licensee remains empowered to fulfill its federal mandates without conflicting state directives.

### **Records and Technical Deference**

In accordance with WAC 173-175-020(3), the Dam Safety Office (DSO) will not approve construction plans, charge review fees, or conduct state inspections for FERC projects, provided federal oversight is active.

The DSO serves primarily as a repository for information shared by FERC to ensure state emergency managers have access to necessary data while deferring to federal records retention and reporting rules

We appreciate that Ecology recognizes the importance to clearly define the boundaries of state authority in a manner that respects the federal preemption established by the FPA and the safety oversight framework of FERC.

Please do not hesitate to contact me at [tnelson@wpuda.org](mailto:tnelson@wpuda.org) or (360) 890-6681 if you would like to discuss any of these matters further.

Best regards,



Travis Nelson, Regulatory Affairs Manager  
Washington Public Utility Districts Association