Associated Earth Sciences, Inc. (Jay Chennault)

Thank you for the opportunity to comment on the draft policy and interpretive statement POL-1210. Please find the attached comments.

Comments on Evaluation of Changes to Enable Irrigation of Additional Acreage or the Addition of New Purposes of Use to Existing Water Rights Policy and Interpretive Statement - Draft, September 2026, Policy Number: POL-1210 Publication: 26-11-109

Provided by: Associated Earth Sciences, Inc., October 23, 2026

Thank you for the opportunity to comment on the draft policy and interpretive statement. It is clear in the tracked changes version of the draft document that the only substantive change to the existing policy statement is the addition of a new potential requirement in the review of the project's consumptive use for groundwater permits: Section 3: Evaluation 4) c) which reads:

> *c) Ecology may require additional information when necessary to demonstrate that the proposed change can be feasibly implemented without increasing the right's ACQ. This could include circumstances in which the ACQ calculated under PRO-1210 is insufficient to meet the proposed change's total crop irrigation requirement, as determined using methods described in GUID-1210.*
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> *The decision to request additional information will be based on Ecology's staff's best professional judgement. Supporting information must be rooted in the best available science, such as peer-reviewed literature or a site-specific assessment conducted by a qualified professional. Applicants may also provide corroborating information, including documentation of specific irrigation technologies, specialized crop characteristics, or other relevant operational conditions.*

In AESI's recent experience with the processing of water right change applications through cost-reimbursement (CR), Ecology's Northwest Regional Office (NWRO) has been attempting to implement this new proposed policy change for nearly a year. The results have been incredibly frustrating for both applicants and CR contractors working on water right changes, particularly in Water Resources Inventory Area (WRIA) 1. Over approximately the last year, NWRO staff have indicated that information outlined in 4) c) would be required to process the application. During that time, the NWRO insisted that this requirement did not represent a new or shift in existing policy. That was clearly untrue, as now Ecology has issued this draft Policy POL-1210.

General Questions:

<u>What is the goal of the addition of 4) c) to POL-1210?</u>

<u>What existing problem is Ecology trying to solve with the addition of 4) c) to POL-1210?</u>

Comments and experiences related to the specifics of 4) c) are provided below:

1. *Ecology may require additional information when necessary to demonstrate that the proposed change can be feasibly implemented without increasing the right's ACQ.*

   An applicant is already required to demonstrate they aren't increasing the right's ACQ, so this part of the proposed policy statement hinges on the word "feasibly". What does "feasible" mean in this context? The term is vague and will certainly lead to inconsistent application of this policy if implemented. Does "feasible" mean there is enough irrigation water to ensure that the crop will survive a season? Or does "feasible" mean that there is enough water to meet certain crop production metrics? If so, what are those metrics? Do those metrics need to be met every year, only during average temperature/precipitation years, or at least once every 5 years? Does "feasible" mean that there is enough water for crop to survive or thrive during extreme droughts? Does "feasible" mean the same thing for all crops? Are the specific economics of the applicant's farm operation considered in the assessment of what is "feasible"? Is the farmer's own risk assessment/risk tolerance considered in what is "feasible"? In the end, isn't it the applicant/farmer who is best equipped to decide what is or is not "feasible"?

2. *This could include circumstances in which the ACQ calculated under PRO-1210 is insufficient to meet the proposed change's total crop irrigation requirement, as determined using methods described in GUID-1210.*

   The annual crop irrigation requirement (CIR) using the methods described in GUID-1210 can vary by 100% or more from one year to the next for the same crop depending on precipitation and temperature during the growing season. Does the ACQ need to be higher than the CIR during all years? Most years? Dry years? Wet years? How are the inherent uncertainties in the ACQ calculations under the various methods outlined in GUID-1210 considered in this comparison between the ACQ and the CIR?

3. *The decision to request additional information will be based on Ecology's staff's best professional judgement.*

   Who at Ecology will be making these decisions? What systems will Ecology implement to ensure that these decisions will be made consistently across all WRIAs and Regions, and for all crop types? Will Ecology's decision be appealable?

4. *Supporting information must be rooted in the best available science, such as peer-reviewed literature or a site-specific assessment conducted by a qualified professional.*

   The implication of this statement is that if a peer-reviewed research document is not available or specific enough for the proposed application then a site-specific study will be required.

   In our recent experience in WRIA 1 an applicant/farmer with a degree in Plant Science from the Department of Agricultural Sciences at the University of British Columbia who has been working as a registered member of the British Columbia Institute of Agrologists (P.Ag) since 1986 had their expertise dismissed and they were not considered a "qualified professional" in this context by Ecology because they were also the applicant. Most moderate- to large-scale farming operations that we have experience with in WRIA 1 employ agronomists. The implication of this part of the proposed policy is that farms and farmers with degrees and certifications and decades of experience farming the specific crops in the specific areas related to an application are forced to find and hire a "qualified professional" to complete this required site-specific study. No details on what this site-specific study needs to include are provided in POL-1210 or any other document that we can find.

   In another instance in WRIA 1, Ecology staff suggested during a pre-application meeting the potential applicant consult with an "irrigation engineer" to provide supporting information. It is unclear what constitutes an "irrigation engineer" for Ecology. In our experience in WRIA 1, most farmers utilize their own staff and work with an irrigation specialist at a local farm equipment retailer to help them design and implement their irrigation systems. Would this irrigation specialist be considered a qualified professional even though they aren't a professional engineer?

   Some farmers in WRIA 1 are also considering initiating a multi-year research project to develop a peer-reviewed paper specific to their crop and irrigation methods in an attempt to satisfy this requirement. The result of this requirement will add years and tens of thousands of dollars to a water right change process that already takes 2-3 years and approximately $50,000 or more to complete.

5. *Applicants may also provide corroborating information, including documentation of specific irrigation technologies, specialized crop characteristics, or other relevant operational conditions.*

   The implications of this part of the policy are unclear. Is it up to the applicant to decide if this corroborating information is required? Can this information be provided and used in lieu of peer-reviewed literature or site-specific assessment? Can Ecology require this information to be provided?

Final Thoughts:

In our experience in WRIA 1, the NWRO has been attempting to implement this new policy on applications that propose additional irrigation acres for nearly a year. It has led to incredible uncertainty about if and how applicants can procced with these types of applications that have been previously processed successfully for decades. In applications to increase the irrigation acres, farmers are already required to meet the ACQ standard and meter and report their water use. In these applications, farmers are essentially voluntarily offering to "do more, with less". They are offering to grow more food, using less water than they are currently using. The proposed 4) c) of POL-1210 creates a new regulatory barrier to doing more with the limited water resources that are available.

The purpose of the proposed 4) c) of POL-1210, although not stated, appears to be based on the notion that metering and reporting water use is an insufficient means of policing those who are utilizing deficit irrigation, and imposing these new requirements will somehow ensure that farmers will comply with their water use limitations in the future. Metering and reporting provisions are standard in all change ROEs. AESI has been involved in more than 70 change applications that were processed and approved with additional irrigation acres using deficit irrigation since 2013. We are aware of no compliance issues or overuse of water that has resulted from these changes. Implementing the proposed 4) c) of POL-1210 creates yet another administrative barrier to water users seeking the flexibility to utilize their water rights as efficiently as possible.