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P.O. Box 47696
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Subject: Ecology's Proposed 2025 Water Quality Management Plan to Control Nonpoint Sources of Pollution

Dear Department of Ecology,

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of more than four million acres of productive working forests, including timberland located in the coastal and inland regions of the state. Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U. S. and international markets. WFPA submits the following comments on the proposed May 2025 Water Quality Management Plan to Control Nonpoint Sources of Pollution, Publication 25-10-040.

Ecology's proposed 2025 nonpoint plan provides incomplete, inaccurate, and/or misleading information to the public and the Environmental Protection Agency (EPA) regarding the background and its role in managing nonpoint source pollution for forest practices. Ecology plays a subordinate role to the Forest Practices Board (FPB) as directed by the Legislature and consistent with the agreements in the Forest and Fish Report (FFR), to which the EPA is a signatory. Ecology inaccurately describes the premise of the FFR and of Clean Water Act (CWA) assurances, and in doing so attempts to elevate Ecology above EPA in administering the CWA and in providing CWA assurances by relying on the Forest Practices Rules as amended per the FFR and the Adaptive Management Program (AMP). Emblematically, Ecology's actions during the AMP process for the Western Washington Np buffer rulemaking - hijacking of the AMP vis a vis its novel misapplication of Antidegradation Tier II to coerce the FPB into accepting Ecology's policy preference for Np buffer changes - has effectively undermined the AMP and usurped the FPB authority for overseeing the AMP and evaluating resource objectives. In doing so, Ecology has also hijacked EPA's role as co-guarantor of CWA assurances and directly jeopardized EPA's reliance on the Forest Practices Rules and associated AMP to deprioritize Total Maximum Daily Loads (TMDLs). It is especially important to clarify that Washington's **Forest Practices Program is the State's only designated Water Pollution Control Program (WPCP)** under WAC 173-201A-320(2)(d) and approved by EPA. This designation makes forestry the only nonpoint sector in Washington with a federally recognized, enforceable regulatory program. Omitting this fact from the Nonpoint Plan misrepresents the foundation of Washington's Clean Water Act compliance framework.

Ecology Authority on the FPB

Section 2.1.2 Forest Practices Rules, pages 20-21, include reference and discussion of RCW 90.48.420 clarifying Ecology subordinate role for nonpoint source pollution arising from forest practices. Ecology says that it needs to *concur* with proposed Forest Practices Rules involving water quality protection prior to the FPB adoption of such rules. This language is imprecise. Both RCW 90.48.420(1) and RCW 76.9.040(2)(a) state the FPB shall adopt Forest Practices Rules pertaining to water quality after reaching agreement with Ecology with respect to these rules. Ecology's draft nonpoint plan suggests an elevated role as approval or veto authority over the FPB. This is not the

case. The FPB has sole authority to adopt Forest Practices Rules, including those pertaining to water quality. The FPB and Ecology must reach agreement prior to adoption. But Ecology cannot veto a proposed rule without basis, nor does the Legislature give Ecology authority to withhold its agreement with the FPB on proposed rules without basis. Further, the FPB cannot adopt proposed rules pertaining to water quality unless, through the FPB's scientifically based AMP, there is failure of resource objectives (i.e., as it relates to water quality, a showing that existing forest practices/rules *substantially impair* the capacity of aquatic habitat) which for stream temperature includes a functional objective of providing cool water and a performance target of meeting the designated use water quality standards[1]. The FPB cannot reach agreement with Ecology on adoption of proposed rules pertaining to water quality without this finding, and AMP studies to date indicate current Forest Practices Rules are meeting this resource objective. Therefore, Ecology has no statutory authority to unilaterally impose its preferred policy through control of forest practice rule *development*. If this were the case, there would be no need for the FPB and all Forest Practices Rules pertaining to water quality would be under the sole review authority of Ecology. Clearly not the Legislature's intent. Nor does Antidegradation Tier II imbue Ecology with veto power over the science-based AMP process directed by the FPB under RCW 76.09.370.

Further, in examining rules pertaining to nonpoint source pollution from forest practices, the Legislature, in RCW 90.48.420(1), gave Ecology explicit direction to consider certain unique factors related to forest practices, including uses of the receiving waters, diffusion, down-stream cooling, and reasonable transient and short-term effects resulting from forest practices. Ecology should also clarify its subordinate role for forest practices regulation as specified by the legislature. RCW 90.48.420(3) states Ecology may not establish a permit system pertaining to nonpoint source pollution arising from forest practices nor may it impose civil or criminal penalties for forest practices in full compliance with the Forest Practices Act and Rules. Thus, Ecology is not, as it suggests, fully authorized to take enforcement action "if needed to prevent damage to water quality." Finally, prior to taking any action under statutes or rules pertaining to water quality, regarding violations of water quality standards arising from forest practices (e.g., preparing TMDLs and/or other water quality plans and analysis under Ecology's rules), under RCW 90.48.420(4), Ecology must give notice to the Department of Natural Resources.

Clean Water Act

Section 2.3.1, page 35, Ecology states that it is authorized "to take all action necessary to secure to the state the benefits and to meet the requirements of the [Clean Water Act]." However, as noted above, per RCW 90.48.420(3), the Legislature explicitly forbade Ecology from establishing a permit regime related to nonpoint sources of pollution arising from forest practices and from taking criminal and civil penalty enforcement with respect to forest practices compliant with the Forest Practices Act and Rules, including DNR approvals and orders pursuant to the Act and Rules.

Antidegradation Tier II

Page 38, Ecology's Tier II Antidegradation summary provides an inaccurate description of its role for Forest Practices Rules. Contrary to Ecology's summary, the agency does not directly regulate forest practices activities under Forest Practices Rules. Rather the FPB adopts Forest Practices Rules and DNR implements and enforces those rules. Under the express terms of Ecology's Tier II Antidegradation rule, Forest Practices Rules are considered by the state and the EPA as an "other water pollution control program."[2] As an other water pollution control program (WPCP), the requirements of Tier II as they pertain to Forest Practices Rules are considered met via the FPB's AMP. WAC 173-201A-320(6). As a result, individual new or expanded forestry activities under the Forest Practices Rules do not require, and do not undergo, Ecology Tier II review. This should be clarified in Ecology's Nonpoint plan. On page 39 Ecology states that Washington's water quality standards, along with the Washington Pollution Control Act, provide Ecology with the tools to fully implement TMDLs. However, only the FPB can adopt rules regulating forest practices

[1] Forest Practices HCP Schedule L-1
[2] WAC 173-201A-320(2)(d)

and DNR is the administrator. As such, only the FPB and DNR have the regulatory framework to fully implement any TMDLs as they relate to forestry practices. This statement should be corrected to accurately reflect Ecology's subordinate role in regulating forestry as designed by the Legislature and consistent with the agreements, including with EPA, under the FFR.

Ecology has asserted the FPB's proposed Western Washington (WWA) Np buffer rule constitutes a "new or expanded action" requiring Tier II Antidegradation review under WAC 173-201A-320. This interpretation is inconsistent with the plain language of WACs 173-201A-020 and 320, ignores two decades of FPB and Ecology practice, and as mentioned above, conflicts with the original adoption of Forest Practices Rules as a WPCP. For two decades, the Forest Practices Rules have been considered a Tier II-compliant WPCP pursuant to WAC 173-201A-320(6), subject to the AMP. Compliance with Tier II has been programmatic.[3] At no time has Ecology treated AMP-driven amendments to Forest Practices Rules affecting water quality as "new or expanded actions." The proposed Np buffer rule, misguided as it is due to Ecology's legally flawed reinterpretation of Tier II as prohibiting measurable temperature change, is an AMP-generated modification of the existing WPCP, not an entirely new regulatory regime. Ecology's new position constitutes an unwarranted and unprecedented departure from established Tier II implementation.

In fact, the proposed nonpoint plan doesn't even mention WPCPs of which the Forest Practices Rules is the only one in the state. This programmatic approach to improve water quality by managing nonpoint pollution from forestry activities across 9+ million acres is the most successful plan Ecology has for water quality improvement. Compliance with the Forest Practices Rules has been consistently high, ranging from 94% - 100% in the last biennial compliance survey, with most prescriptions over 96%.[4] While a long term, broad scale water quality monitoring program has yet to be established in the AMP, as mentioned above, available data suggest the existing Forest Practices Rules are meeting the stream temperature performance target in Schedule L-1.[5],[6] This is far better performance than any temperature TMDL completed by Ecology. However, impaired streams on forestland subject to the Forest Practices Rules are classified as category 5 on the 303(d) list, meaning there is no water quality improvement plan underway, rather than 4(b) which is the classification for streams listed as impaired for temperature on other land uses which have a TMDL, even though it will take decades for many of those streams to theoretically meet designated use temperature standards. Selective and misleading presentation of information demonstrates Ecology's biased view towards private forestry and inability to act impartially and objectively in fulfilling its water quality responsibilities delegated by EPA and the Legislature. A critical element of the Clean Water Act assurances for Washington's Forest Practices Rules was the commitment to **landscape-scale status and trend monitoring** of water quality and habitat conditions. After more than 25 years, this monitoring framework has still not been implemented, leaving EPA without the core information it relied on in approving Washington's nonpoint program. The continued absence of status/trend monitoring undermines both adaptive management and the credibility of Washington's §319 assurances.

Further, Ecology's 2011 Supplemental Guidance on Implementing Tier II Antidegradation[7] defines a "new or expanded action" as individual permitting activity not previously authorized, expanded discharge duration, volume, location, or pollutant load. None of those conditions apply to the Np buffer rule proposal: the Np buffer rule making proposal modifies existing buffers under the existing Forest Practices Rules. New or expanded action is not even mentioned in the flow chart on page 2 of the guidance which describes the Tier II process for WPCPs.[8] Ecology's

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[3] Ecology, WAC 170-201A Surface Water Quality Standards for the State of Washington, Responsiveness Summary, (July 1, 2003) (hereafter "Ecology 2003 Responsiveness Summary).
[4] fp_como_2022_23_bien_rpt.pdf
[5] Schedule L-1
[6] 93% of all 7DADM temperature observations in the Hard Rock and Soft Rock studies met or were lower than the designated use temperature criteria of 16 °C; mean 7DADM stream temperature in a random sample of 50 WWA Np streams in 2008/09 was 14.5 °C.
[7] Ecology, Supplemental Guidance on Implementing Tier II Antidegradation (Sep. 2011) (hereafter "Tier II Supplemental Guidance").
[8] *Id*. p. 2.

unilateral decision to exercise Tier II jurisdiction outside the AMP framework now, and not in any of the Forest Practices Rule amendments since 2001, is unprecedented.

Finally, Ecology continues to evolve its rationale on treating the proposed Type Np buffer rule as a "a new or expanded action" by stating in the July 2025 draft tier II analysis that the proposed rule is equivalent to a "reissued" general permit.[9] This latest justification for triggering Tier II as a new or expanded action is also inconsistent with the plain language of WAC 173-201A-320(6), Schedule M-2 of the FFR, Ecology practice for prior FPB rule makings affecting water quality, and Ecology's 2011 Antidegradation Tier II Guidance. Pursuant to WAC 173-201A-320(6), Tier II requirements are considered met for Forest Practices Rules, including Type Np buffers, via its AMP. There is therefore no basis for Ecology to treat the proposed rule as "new or expanded action."[10] Moreover, if, as Ecology's Tier II Analysis suggests, proposed amendments to Forest Practices Rules are akin to reissued general permits, Ecology has no basis to conduct a standalone assessment of whether Type Np buffers (i.e., nonpoint source best management practices) as applied to forest practices are "necessary and in the overriding public interest". Like general permits, Ecology's Supplemental Guidance indicates that the programmatic framework of the Forest Practices Rules, including its Type Np buffers, is in the overriding public interest and that the Tier II Antidegradation regulation establishes a presumption that forest practices covered under WPCP are indeed necessary and in the overriding public interest.[11]

Climate Change

In Chapter 3, Considering Climate Change, page 54, Ecology states that its nonpoint work has a focus on establishing robust riparian areas in order to address and mitigate impacts of climate change on warming waters (per Ecology, warming that we are experiencing now and future anticipated warming). Does Ecology consider climate change and its impacts on warming waters a nonpoint source of pollution? If so, how is Ecology's plan, and it stated focus on establishing robust riparian areas, directed at entities it believes are primarily responsible for such nonpoint source pollution and BMPs necessary to address such nonpoint pollution? Or is Ecology's focus on robust buffers and climate considerations directed toward other entities? If other entities are paying the price for Ecology's focus on robust buffers to address and mitigate impacts of climate change, does Ecology have a plan to compensate those entities or provide pass-through grant funding?

There have been no AMP efforts to understand this issue on forestland subject to the Forest Practices Rules nor what, if anything, can be done through forestry best management practices (BMPs) to mitigate adverse effects. If there had been follow-through on the commitment to put a long-term, status/trend monitoring program in place at the outset of the FFR,[12] the AMP would be more informed on this topic. Using future potential harm for which no AMP information has been produced as a justification to increase regulatory protection is inconsistent with the Forest Practices Act and Rules and is incoherent from a risk management perspective. Such an approach only focuses on one

[9] Draft Western WA Type Np Tier II Antidegradation Analysis, p. 28 (July 2025) (hereafter "Tier II Analysis").
[10] By way of analogy, Ecology's Tier II approach for its 2025 industrial stormwater general permit, cites WAC 173-201A-320(6), stating "the antidegradation requirements of this section can be considered met for general permits and programs that have a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent of this section." Ecology, Industrial Stormwater General Permit- Fact Sheet, p. 16 (May 15, 2024). Ecology goes on to state "Since Ecology has chosen to address Tier II anti-degradation in accordance with WAC 173-201A-320(6), Ecology will not perform site-specific analyses of each "new or expanded action" proposed for coverage under the permit." *Id.* at 18. The Forest Practices Rules, as an WPCP, is no different. Tier II compliance for the Forest Practices Rules, including its Type Np buffers, is addressed by law in accordance with WAC 173-201A-320(6), which acknowledges Tier II antidegradation requirements are met through the AMP. Under this framework, individual "new or expanded actions" seeking coverage an authorization under the WPCP, will not require site-specific Tier II analysis. It's clear then that the "new or expanded actions" phrase is meant for individual activities seeking coverage under the Forest Practices Rules, not to the programmatic framework of the Forest Practices Rules, including its Type Np buffer restrictions, which is a WPCP that complies with Tier II requirements via the AMP.
[11] Tier II Supplemental Guidance, p. 17 and 20.
[12] See Schedule M-2 of the FFR and Monitoring Design for the Forestry Module of the Governor's Salmon Recovery Plan

element of risk and ignores all other risks (which exist on all sides), the feasibility of forestry BMPs in mitigating risks, and the costs/benefits of alternative courses of action. It is also incomprehensible that a potential future risk is prioritized over an actual risk, such as the existing 303(d) list of impaired water bodies.

Other Water Clean-up Projects

Does Ecology consider the Forest Practices Rules and their stream buffer requirements as an Advance Restoration Plan or Straight to Implementation Plan (STI)? If not, why not? Ecology says when it uses STI, compliance with the water quality standards is to be achieved no more than 10 years after start of the STI work and the lone exception is for parameters such as temperature, which might take longer because of the time it takes for trees to grow. How has Ecology considered this time horizon in its involvement in the Type Np buffer rulemaking process before the FPB? For instance, similar to its statement regarding the use and application of STI for temperature, has Ecology, in the context of Type Np buffers, considered unique factors related to forest practices, including reasonable transient and short-term effects resulting from forest practices, as required by RCW 90.48.420(1)? If not, why not?

In addition to the pending Endangered Species Act (ESA) listings of pacific salmonids in the late 1990s, one of the other motivators for the 199 Forests & Fish (F&F) agreement was forested streams on 303(d) list of impaired water bodies. Fresh water streams are listed as impaired when they do not meet designated use water quality standards as specified in WAC 173-201A-200[13]. During the F&F era there was a different water body classification system and some of the water quality standards were different than they are today, but the same concept applied regarding listing of impaired water bodies. Once on the 303(d) list, Ecology prioritizes clean-up plans, or Total Maximum Daily Loads (TMDL) to address the impairment and once achieved removes the water body from the list. At the outset of F&F, there were approximately 154 impaired stream segments on forestland subject to the Forest Practices Rules, or approximately 4% of the total list of impairments.[14] The most common forestland impairments were exceedances of temperature, dissolved oxygen, and fine sediment designated use criteria.

Given the FFR resulted in substantial improvements to regulations, formalization of an AMP and other commitments, Ecology and the EPA provided CWA assurances as described in Schedule M-2 of the FFR.[15] Since no permit system analogous to ESA Section 10 existed in the CWA, Ecology and EPA used their discretionary authority to deprioritize TMDLs for forested stream segments on the 303(d) list. Ecology and EPA acknowledged the FFR rules represented a substantial improvement, would improve water quality in the short term and anticipated meeting water quality standards in the long term. Establishing a baseline dataset and monitoring water quality trends over time were deemed critical to evaluating these expectations. Ecology and EPA presumed ten years would be enough time to set AMP priorities, test some of the underlying assumptions of the regulatory framework and determine initial water quality trends. If monitoring over time demonstrated water quality standards were being met, stream segments could be removed from the 303(d) list of impaired water bodies.

The CWA assurance conditions described in Schedule M-2 were arguably met by 2009; however, Ecology determined not enough data were available to confidently determine water quality was trending in the right direction. Therefore, Ecology created the CWA assurances milestones, a lengthy list of AMP research and monitoring projects and Forest Practices administrative procedures they deemed necessary to maintain CWA assurances over the long term and presumably address 303(d) listed water body segments. The original milestone list has been modified a few times since 2009, but as of August 2025 there were a total of 33 AMP milestones and 23 administrative procedure milestones.[16] Of the 33 AMP milestones, 24 are complete and five are underway (88%), two are off track and one is not progressing. Of the 23 administrative milestones, 22 are complete and one is underway (100%). There are very few milestones left to complete and given that most have little to do with improving water quality and/or contain

[13] WAC 173-201A-200
[14] 2000 Washington State Water Quality Assessment Section 305(b) Report
[15] Forests & Fish Report Schedule M-2
[16] bc_fpb_cwa_20250813.pdf

unverified assumptions about contributing to understanding of water quality status/trends, what has been accomplished? Can we say anything about the status of water body segments on the 303(d) list? While there are more total impaired water body listings across all land uses today than there were when the FFR rules were put in place, the proportion of all listings found on forestland is approximately the same, about 4%. Since a monitoring program has not been established by Ecology or the AMP, we have no reliable information about listed water body segments or broader scale water quality status/trends. Ironically, landscape scale status/trend water quality monitoring is not a CWA assurance priority, it's noted as complete on the AMP milestone list.

While the FPB made monitoring a priority in 2022, there continues to be obfuscation and foot dragging in the AMP over establishing an ongoing monitoring program. Nearly three years after this FPB decision, an initial project scoping document has yet to be delivered to the Timber, Fish and Wildlife Policy Committee for consideration. In the best-case scenario, it'll take another two to three years to execute monitoring in the field, more than 25 years after the adoption of the FFR rules and nearly halfway through the term of the Forest Practices Habitat Conservation Plan. Water quality monitoring, as described by Ecology and EPA in Schedule M-2, is clearly not a priority as signified by the continued absence of emphasis in the CWA assurance milestone list. There is apparently even less interest in understanding the status of impaired water body segments on the 303(d) list. Instead, significant time/resources are being spent debating the application of Antidegradation Tier II to forested streams which are well below the designated use numeric temperature criteria. Washington's enforceable temperature standards are the **EPA-approved designated use numeric criteria** set forth in WAC 173-201A-200 and -600: 16°C (7DADMax) for core summer salmonid habitat, 17.5°C for salmonid rearing and migration, and 13°C for char spawning. These criteria, not the 0.3°C Tier II trigger, are the legal water quality standards under the Clean Water Act. The 0.3°C provision is only a review threshold for antidegradation purposes, not a criterion in itself. These streams are not on the 303(d) list, nor would they be if CWA assurances did not exist. This is a substantial case of misplaced priorities and is not consistent with the original intent of the FFR and CWA assurances.

On page 92, Ecology states that compliance with the 2009 corrective milestones is intended to demonstrate sufficient progress to satisfy the CWA assurances and the adaptive management provisions of the state water quality standards, citing WAC 173-201A-510(3). This WAC section states that "Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented" and "Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria." WAC 173-201A-510(3)(b)(c). Given the "adaptive management provisions of the state water quality standards" focus on BMPs applied to prevent violation of water quality criteria, why then has Ecology's involvement and direction in the Np buffer AMP and rulemaking process been focused on BMPs driven by Ecology's interpretation of Tier II Antidegradation rather than compliance with water quality criteria?

On page 93, Ecology states that "the timeline was not met." However, the timeline for completion of the Hardrock study was formally extended to September 2021. At the August 14, 2019, FPB Meeting, Board Member Bellon noted that the Clean Water Act assurances were scheduled to expire at the end of 2019 and indicated that the Department of Ecology may consider a short-term extension of the assurances given the charter's important work and anticipated schedule.[17] Unfortunately, this updated date was not carried into Director Bellon's CWA Assurances letter, which left the misleading impression that forestry stakeholders failed to meet their obligations. In fact, the study was completed in June 2021 within the extended timeframe, and the delay was the result of approved extensions due to COVID-19 disruptions and workgroup logistics—not inaction by the forestry community.

[17] bc_fpb_mtgmaterial_20190814.pdf - see table on page 3 of the Type N Workgroup Charter.

Tier II and the AMP/FPB Process On WWA NP Buffers

Ecology has inconsistently applied its own temperature rules to justify Tier II review and the specific buffer prescriptions in the proposed Np buffer rulemaking process. During the AMP's evaluation of Np buffers and alternative buffer options for proposed rulemaking, Ecology staff repeatedly - and inaccurately -asserted that Tier II prohibited forest practices from causing any measurable temperature increase (≥0.3°C) on Type Np waters and therefore studies showing measurable temperature change from application of existing Type Np buffers constitute a "violation" of Tier II requirements.[18]

This radical interpretation, however, is a drastic departure from the plain language of Tier II and Ecology's own long-standing interpretation of Tier II. Tier II, which has been around for decades, has never before been used to prohibit all measurable temperature change as dictated by Ecology in developing the proposed rule. As Ecology explained in 2003 when it developed the current iteration of its Tier II regulation, temperature increase that does not violate water quality criteria is not a violation of Tier II nor state water quality law:

> Allowing degradation that doesn't violate the water quality criteria established to protect uses is consistent with state and federal laws and regulations on antidegradation. Tier II just ensures that such degradation is necessary and that it provides compensating public benefits.[19]

And regarding the "measurable change" concept, Ecology explained in 2003 that it was simply a screening tool to determine which discharges subject to the Tier II law warrant Tier II *review*:

> The measurability factors are just a screen for sorting out which discharges are significant enough to warrant a Tier II review. It is not intended to capture every one, and the water quality criteria are in place to guard against tipping the balance for the health of a waterway.[20]

Therefore, Tier II expressly allows actions that have measurable temperature change where underlying criteria are met and such actions are necessary and have compensating public benefits. Measurable temperature change does not exceed or violate Tier II requirements; measurable change is simply one of the Tier II screening tools to determine whether Tier II analysis applies at all.

After years of misleading the AMP and the FPB, Ecology's Draft Tier II analysis now concedes measurable temperature increases *greater than* 0.3°C are permissible within the context of Ecology's preferred Np buffer

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[18] See e.g., Technical Type Np Prescription Workgroup, Review of current and proposed riparian management zone prescriptions in meeting westside Washington State anti-degradation temperature criterion, Final Report, p. 3 (May 20, 2021) ("The state water quality measurable change standards permit no temperature increase of 0.3°C or greater," citing WAC 173-201A-320); Triangle Associates, Final Report for Type Np Buffer Dispute, p. 4-5 (September 12, 2022) ("[t]he central disagreement among the parties was regarding the amount of change in buffer prescriptions that would be needed from current rules to meet the anti-degradation water quality temperature standard" and "increased buffer widths and lengths needed to result in less than .3-degree Celsius increase [, i.e., "measurable change,"] in stream temperatures (to meet anti-degradation standards)."); Type Np Majority Recommendations to the Forest Practices Board, p.7, 8, (October 2022) ("studies found that all of the riparian buffer treatment options resulted in a stream temperature increase greater than 0.3°C, exceeding the WQS."; "Tier II applies to waters that are not impaired where lowering of water quality is allowed to a limited extent, defined for temperature as not greater than 'measurable change' defined as 0.3° C."; "the majority caucuses understand warming of Type Np streams should be limited to 0.3°C in accordance with the state's Tier II antidegradation standards."); Ecology Director Letter to FPB re CWA Assurances, p. 3 (November 30, 2022) ("studies demonstrated that all riparian buffer treatment options resulted in temperature increases that greatly exceeded the allowable increase of 0.3 degrees Celsius."; The 0.3 degree Celsius limit is based on Washington's antidegradation water quality standard. WAC 173-201A-320(3)(a)").

[19] Ecology 2003 Responsiveness Summary, p. 108.

[20] *Id*. at 103.

alternative.[21] This shift reveals the ≥0.3°C temperature change threshold was never a lawful limit, but a policy preference deployed early to improperly constrain the AMP and FPB consideration of alternatives. Ecology's assertion that non-preferred alternatives would fail to meet state water quality standards lacks evidentiary support, conflicts with Hard Rock and Soft Rock study findings, undermines transparency, the scientifically based AMP, and public confidence. The AMP is subject to a **consensus-based decision framework** established under the Forests & Fish Law. TFW Policy must strive for consensus in its recommendations to the FPB, and where consensus is not possible, majority and minority positions must be forwarded together. This safeguard is fundamental to ensuring that science is translated into rulemaking in a balanced way and that no single agency, including Ecology, may unilaterally dictate outcomes.

Conclusion

Thank you for the opportunity to comment. WFPA encourages Ecology to take a hard look at how the background and its role in managing nonpoint source pollution for forest practices is depicted. Incomplete, inaccurate, and/or misleading descriptions damages Ecology's credibility, undermines public confidence and sends a strong signal to those who otherwise would be a partner in managing nonpoint pollution and improving water quality in the State of Washington.

Sincerely,

Darin D Cramer

Sr. Director of Forest Policy
Washington Forest Protection Association

Cc: Emma Pokon, Regional Administrator, EPA Region 10

[21] *See e.g.,* Tier II Analysis at 87 ("Based on our review, following potential implementation of the proposed buffer prescriptions, we anticipate some Type Np streams will exhibit warming beyond 0.3°C following timber harvest activities due to regional and site-specific factors, likely to last no longer than two years. . . . Ecology finds it necessary and in the overriding public interest to allow the Forest Practices Board to adopt the proposed rule, thereby continuing to incur a level of risk, and likely exceeding Tier II measurable change temperature thresholds in some areas."). While Ecology now concedes that Tier II does not prohibit measurable temperature change, it is worth noting that the Tier II Analysis repeatedly and inaccurately refers to measurable change as exceeding a threshold or exceeding Tier II requirements. This is false. The Measurable change "standard" is simply a screening tool or eligibility criteria for whether Tier II analysis applies at all. In fact, a project proponent can assume measurable change rather than providing supporting data so that it can move straight to Tier II review. Tier II Supplemental Guidance, p. 7.