Main Office: 360.466.3163
Facsimile: 360.466.5309

Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

August 6, 2025

Jon Kenning, Ph.D., Water Quality Program
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Via email: jon.kenning@ecy.wa.gov

Re: Ecology's tier II antidegradation analysis for the proposed Np buffer rule

Dear Dr. Kenning,

The Swinomish Indian Tribal Community (the "Tribe" or "Swinomish") has reviewed Ecology's tier II antidegradation analysis for the Forest Practices Board's Np buffer rule. While we are concerned the proposed rule may increase stream temperatures in some instances, **the Tribe strongly supports the outcomes of the tier II analysis and urges Ecology not to waver in its determination to enforce strong water quality rules in forest lands despite industry pressure**. We believe that:

- the best available science synthesized in the tier II report demonstrates unequivocally the need for increased buffer length and width on Np streams,
- spurious interpretations of the antidegradation standard should be rebutted, and
- Ecology plays a key role in defending the integrity of the adaptive management program.

In the following, we highlight key issues we believe support Ecology's tier II analysis that should be emphasized by Ecology at all appropriate opportunities.

Background and setting for the Tribe's comments

The Swinomish Indian Tribal Community is a Federally-recognized tribe and a political successor in interest to certain tribes and bands that signed the 1855 Treaty of Point Elliott, which reserved for the Tribe the right to hunt, fish and gather within our usual and accustomed territory and established the Swinomish Reservation on Fidalgo Island in Skagit County, Washington. The Swinomish Reservation sits at the mouth of the Skagit River, the largest river system draining to Puget Sound and the only river in the lower 48 states that still has all species of wild Pacific salmon and steelhead spawning in its waters. Since time immemorial, the

Swinomish Tribe and its predecessors have stewarded and utilized the landscapes of our ancestral homeland in northern Puget Sound to support the Swinomish way of life, and we will continue to steward and use these landscapes far into the future.

Since the signing of the Treaty, our forests and streams have experienced significant degradation and destruction due to mismanagement and over-harvest, resulting in losses of high-quality habitat for the fish, wildlife and plant species we depend upon for cultural and economic sustainability. In recent years, we have made modest progress in restoring lost habitat function along with many valued partners including the Department of Ecology. However, significant threats remain and new threats are emerging: climate change, catastrophic fire, larger floods, intensifying recreation and insect outbreaks to name a few. A theme that unites our natural resources and that underpins our restoration and recovery strategies is ensuring the water quality that salmon need, and protecting the forests that our waters flow through. This explains our key interest in ensuring water is protected for our use, the use of our children and future generations, and the use of all Washingtonians.

Best science supports longer and wider buffers, is robust and must be defended.

The best available science performed over a number of years is robust and clearly shows that riparian buffers on Np streams need to be longer and wider. We believe it is essential that Ecology defend this best available science.

Industry lobbying groups have tried to smear the adaptive management program (AMP) science supporting the proposed rule changes. They have used spurious technical arguments to cast doubt on the hardrock and softrock studies. However, both of these peer-reviewed studies demonstrated unequivocal increases in stream temperature following harvest in locations proximal to the experimental clearcuts as well as in downstream locations where fish may be present. The latter point is of great importance to us given our Tribe's key economic, subsistence, and cultural interests in the fisheries supported by high quality water.

Chief among industry's technical complaints is that the hardrock and softrock studies consisted of only a handful of study locations and therefore the findings should not be extrapolated to western Washington. Consistent with this is their insistence that rulemaking should not proceed before studies are conducted using an 'extensive monitoring' design in which many streams are measured across the landscape.

Ecology should reject these spurious complaints. Participants in the AMP, including representatives from industry, chose the before-after-control-impact (BACI) study design for the hardrock and softrock studies because of the ability of this design to isolate the effects of timber harvest from other sources of variability in stream temperature. As an 'intensive monitoring' design, it was necessary to restrict the number of monitored sites due to staffing, access, and other logistical and financial constraints. If an extensive landscape-scale approach had been pursued, the sources of variability introduced by the abundance of site-specific factors at each study site would have precluded a determination of the effect size of timber harvest on stream temperature. In that situation, industry would now be arguing from the other side, pointing out the limitations of extensive monitoring and demanding new studies following the BACI

approach to demonstrate effect size. The summary presented in Ecology's tier II analysis is thorough, represents high-quality multi-stakeholder efforts, and clearly demonstrates the need for larger buffers to meet anti-degradation standards and achieve water quality for salmon. **Therefore, we urge Ecology to strongly defend the science and reject industry's baseless attempts to undermine it.**

Spurious interpretations of the antidegradation standard must be rebutted.

Following the release of Ecology's draft tier II antidegradation analysis, industry representatives argued in oral comments before the Forest Practices Board that the report demonstrated an admission by Ecology that a 0.3°C change in stream temperature represented a threshold for additional analysis, not a limit that may never be exceeded. This debate references WAC 173-201A-320, which defines tier II protections, the measurable change standard of 0.3 °C, and the necessary and overriding public interest analysis required when the measurable change standard is expected to be violated by a new or expanded action.

It is industry's contention that the inclusion of a necessary and overriding public interest analysis in the draft tier II report constitutes an admission that the measurable change standard may be exceeded if Ecology deems it to be in the public interest. Industry further contends that the current Np buffer rule, or the rule proposed by the minority caucuses during dispute resolution, could be evaluated and found to be in the public interest despite allowing stream temperature increases.

The idea that the current rule and/or the minority proposed rule could be in the overriding public interest and should therefore be considered by the Board is an illogical extrapolation and should be strongly rebutted by Ecology. TFW Policy cannot knowingly develop, and the Board cannot knowingly sanction, a rule that violates state water quality standards.

Best available science strongly supports the finding that continuation of the current rule or enactment of the minority proposed rule would violate the measurable change standard by raising stream temperatures above the 0.3° threshold. Therefore, the Board's decision to consider only the majority proposal represented a good faith effort to enact a rule consistent with state water quality laws. Ecology's overriding public interest analysis follows this good faith effort but *cannot* be used to justify proposals that clearly violate the measurable change standard. **We believe Ecology should clearly articulate this dynamic related to the antidegradation standard and the overriding public interest analysis.**

Defending the integrity of the Adaptive Management Program is essential.

The Tribe calls on Ecology and our partners to renounce legal threats to the Np buffer rulemaking process and disavow efforts to undermine the scientific findings produced by the multi-stakeholder AMP. These and other components of public pressure campaigns aimed at Ecology, the Forest Practices Board and the Department of Natural Resources seek to undermine the efficacy of adaptive management and therefore the Forest Practices Habitat Conservation Plan. These tactics should be strongly rejected.

Further, we are concerned that these dynamics may threaten the Timber, Fish and Wildlife Agreement, which forms the basis for tribal inclusion in regulating forest practices in Washington. Ecology has the duty to protect and restore the State's water quality and enforce the Clean Water Act, and thus plays a critical role in maintaining an effective regulatory environment for water quality protections. It is imperative that Ecology strongly and clearly rebut the baseless claims of scientific inadequacy and misinterpretations of the antidegradation standard.

We commend Ecology for your leadership on the Np buffer issue, and urge you to continue to push for strong water quality rules in Np streams for the benefit of salmon, the Swinomish Tribal Community and all the people of Washington State.

Sincerely,

Amy Trainer, Environmental Policy Director
Swinomish Indian Tribal Community