



# SIERRA PACIFIC INDUSTRIES

14353 McFarland Rd. • Mt. Vernon, WA 98273 • (360) 424-7619 • Fax (360) 428-6834

August 18, 2025

Ms. Marla Koberstein                      also at: <https://wq.ecology.commentinput.com/?id=juMmcHx2Ff>  
Watershed Management Section  
Washington Department of Ecology  
PO Box 47696  
Olympia, WA 98504-7696

## **Re: Draft Tier II Antidegradation Analysis WWA Type Np Buffer Rule**

Dear Ms. Koberstein:

Sierra Pacific Industries is a third generation, family-owned company in the forest products business. We built and now operate four state-of-the-art sawmills in Washington which manufacture dimension lumber and other products for domestic consumption. Our direct employment is over 1,000, predominantly in rural communities and predominantly in well-paying jobs. We sustainably manage over 300,000 acres of forestland for a supply of raw materials. We also process logs from a wide variety of other small and large landowners, public and private. Our manufacturing facilities in Aberdeen, Burlington, Centralia, and Shelton, have historically relied upon and continue to source raw materials from throughout western Washington, including timber harvested from private, State, and federal lands.

The Forest and Fish Agreement, its science-based Adaptive Management Program, and the carefully structured balance between resource goals and industry viability, which is embedded in State law, were the foundation for choosing Washington to expand our business. Starting in 2001 we have invested over \$1 billion in this State. Among these resource goals is compliance with the Washington Water Quality Standards for Surface Waters, as codified in WAC 173-201A. We are committed to meeting or exceeding the standards therein for the benefit of the citizens of the State of Washington with respect to public health, public enjoyment, and aquatic life. We write today to express concerns, both procedural and substantive, with the proposed Type Np Buffer Rule ("proposed rule") and with the Draft Tier II Antidegradation Analysis ("Draft Analysis").

The proposal is likely to have significant adverse effects on the ability to conduct land management activities, the production of raw materials from resource lands, and rural employment and economies. The Washington Department of Natural Resources (WDNR) Draft Cost-Benefit Analysis and State Environmental Policy Act Checklist acknowledge but do not adequately address the consequences of the proposed action, the costs thereof, nor identify appropriate mitigation. To the extent that the Draft Tier II Analysis relies upon the WDNR documents it is thus similarly flawed. Finally, Washington Department of Ecology's ("Ecology") determination that benefits of the proposed rule exceed the costs is arbitrary and would fail the requirement to select the least burdensome alternative.

We strongly urge Ecology to apply its criteria correctly, to remedy its incomplete and inaccurate analyses, conduct a thorough and explicit cost-benefit analysis, and make a revised recommendation after considering public comment. The following are issues of particular concern in the Draft Analysis:

**1) The proposed rule and Draft Analysis rely upon an inconsistent and incorrect standard**

The proposed rule is based on a flawed, and likely illegal, premise which Ecology repeatedly articulated to the Forest Practices Board (“Board”) and within the Adaptive Management Program, namely, that the ephemeral, spatially-limited warming of streams reported in the Hardrock Study constituted a violation of the Washington Water Quality Standards. The Draft Analysis, however, is not based on this premise. Through several years of deliberation and rulemaking, Ecology stated that any measurable warming in Tier II waters was impermissible and that only its preferred policy outcome (*i.e.*, the proposed rule) was an acceptable solution. For example, the May 21, 2021, report of the Technical Type Np Prescription Workgroup commissioned by TFW Policy states that it was directed as follows:

*the state water quality measurable change standards permit no temperature increase of 0.3°C or greater (WAC 173-201A-200, -300-320). The workgroup was tasked with developing buffer options that address the temperature issue. (emphasis added)*

The artificial constraint that stream temperatures may not experience human-caused increases greater than 0.3 degrees is repeated throughout the technical workgroup report, and the recommendations therein were predicated on that outcome.

At the October 31, 2022, special meeting of the Forest Practice Board, Brandon Austin, representing Ecology, presented his department’s policy position (the “Majority Report”, which derives from the technical workgroup report and is the basis of the proposed rule ) and stated:

*“...the anti-degradation standards are an element of Tier II waters that require efforts to repair the impairment of any waters of high quality that don't exceed the designated use criteria. These waters are not allowed to warm more than 0.3 degrees Celsius and the standards apply to all Tier II waters, whether they contain fish or not.” (emphasis added)*

At the August 9, 2023, meeting of the Forest Practice Board, Rich Doenges, Designee for Director of Ecology, asserted:

*(E)cology is stating that including the minority report just wouldn't meet our requirements on the Clean Water Act to continue to protect water quality. Because the buffer in that minority report does not provide enough protection to ensure temperature doesn't get warmer than what's allowed under current standards...(E)cology's position is that the minority report is not protective enough of water quality. And so it wouldn't be able to sign off on that. (emphasis added)*

Without the benefit of any analysis (let alone the Draft Analysis which was not initiated until nearly two years after Mr. Doenges’ statement), Doenges and Ecology pre-determined that no other buffer configuration besides the Majority Report would address the perceived issue, meet antidegradation requirements, or fulfill the Board’s obligations under State law. Further, Ecology voted to preclude *any* further evaluation (whether Tier II, SEPA, cost-benefit) of alternatives, including the six others provided by the Np Technical Workgroup, the joint recommendations of Washington Association of Counties (WSAC) Washington Farm Forestry Association (WFFA), Washington Forest Protection Association (WFPA) (the so-called “Minority Report”), and the buffer proposal advanced by Northwest Indian Fisheries Commission representing western Washington tribes, each of which represented a legitimate proposal developed under the Adaptive Management Program.

With the release of its Draft Analysis, Ecology acknowledges a fundamentally and materially different obligation under the Water Quality Standards, namely that warming more than 0.3 degrees is, in fact, permissible. And furthermore, that “the proposed rule is still likely to result in water temperature increases of 0.3<sup>0</sup> C or greater under certain regional and site-specific conditions.” **With that**

**clarification--and in our opinion correct interpretation of the applicable requirements==it is imperative that the Draft Analysis be revised to include other buffer configurations (including the current rule) and for Ecology to determine the least burdensome alternative which (in the words of its executive summary) is “likely to protect many Type Np waters across the landscape from warming beyond 0.3° C.”**

**2) The Draft Analysis errs in assuming that there is a new or expanded action**

The Draft Analysis correctly states that the Forest Practice Rules, considered in whole, represent an “other water pollution control program”, citing WAC 173-201A-320. However, the Draft Analysis fails to explain what the new or expanded action is in this instance. Rather, the Draft Analysis makes the circular and illogical assertion that the proposed rule (which Ecology insisted the Board was required to initiate) is itself the new or expanded action. This contorted reading contrasts with a plain English understanding of an “action” per WAC 173-201A-010: “broadly any human projects or activities.” There are no new activities at the present time, rather the continued implementation of harvest prescriptions which Ecology previously approved under a Tier II analysis. **The Draft Analysis should be revised to explain the action that triggers the new Tier II review.**

The Draft Analysis states that Ecology’s Supplemental Guidance on Implementing Tier II Antidegradation (Publication 11-10-073) requires “an antidegradation evaluation is conducted as part of any rule making affecting water quality related requirements in the forest practices system.” If, in fact , the 2011 guidance is consistent with rule, it begs the question why the proposed rule is undergoing a Tier II analysis yet Ecology has not conducted such an analysis on any other Board rule making affecting water quality since the guidance was published (Forest Biomass, Riparian Open Space, and Watershed Analysis, 2011; Extension of RMAP Performance, 2011; Forestry Riparian Easement Program, 2012; Forest Practices Hydraulic Projects, 2013; Unstable Slopes Information in FPAs, 2015; Type F Water Typing System, 2025) and since the antidegradation rules were updated in 2003 (Small Landowner RMAPs, 2006; Perennial Initiation Points, 2006;Desired Future Conditions, 2009). For Ecology to conduct a Tier II review in some circumstance but not others appears arbitrary and capricious. **The Draft Analysis should be revised to explain what criteria necessitates Tier II review in the present instance but not the other instances of rulemaking affecting water quality.**

**3) The Draft Analysis is deficient in examination of alternatives**

The Draft Analysis considers only two options: the proposed rule, which as described above was predicated on a different (more restrictive) standard of no measurable warming; and a hypothetical scenario with even larger (100 foot) buffers. By limiting itself to these two, Ecology has failed to consider an appropriate range of alternatives which might accomplish the Draft Analysis’ stated outcome of a rule “likely to protect many Type Np waters across the landscape from warming beyond 0.3° C”. **The Draft Analysis should be revised to include a range of buffers which bracket the proposed rule in order that meaningful comparisons can be drawn.**

**4) The Draft Analysis ignores statutory legislative intent in evaluating necessary and overriding public interest**

The Draft Analysis compares the costs of the proposed rule with the hypothetical scenario with even larger (100 foot) buffers, concluding that the former imposes more reasonable costs. This misses the mark. The legislature expressed intent quite clearly at RCW 76.09.370 that proposed rule changes should maintain timber industry viability and further salmon recovery. The \$ 2 billion dollar direct cost, the reduction in annual timber supply by more than 100 million board feet, and the ripple effect on supply chain infrastructure directly harm industry viability. The proposed rule purports to address an

ecologically insignificant, temporary and spatially-limited temperature increase in headwater streams without a contextual evaluation of compliance of the current rule with aquatic life temperature criteria (WAC 173-201A-200). No meaningful evaluation has been offered how the current rule compromises salmon recovery or how the proposed rule would aid in salmon recovery. **The Draft Analysis should be revised to explain how the legislature framed the necessary and overriding public interest, and only then recommend changes *necessary* to promote salmon recovery.**

Respectfully,

A handwritten signature in black ink, appearing to read 'John D. Gold', written in a cursive style.

John D. Gold,

Burlington District Manager