Dave Roberts

I take strong issue with the statement the proposed rule will substantially enhance water temps.... r read the Data! See the attached thx Dave

Dept of Ecology

Draft Tier 2 comment proposed NP rule

For the record, I am a Natural Resource Professional and have practiced sound forestry for the last 44 years from Yreka CA. to Yakutat AK.

I would first like to comment on the Department of Ecology's inconsistent interpretation of Tier 2. · Ecology's interpretation of "new or expanded action" is inconsistent with a plain reading of WAC 173-201A-020, 320, and irreconcilable with prior FPB rule changes affecting water quality which did not trigger Tier II analysis.

· Official Ecology guidance defines "new or expanded actions" in ways that do not apply to Np buffer rulemaking, undermining Ecology's claim that the proposed rule triggers Tier II.

· Ecology said ≥0.3°C temp change is a violation of water quality standards, requiring new rulemaking; later shifted to allowing >0.3°C temp change under their preferred rule proposal.

· Ecology's shifting, selective Tier II interpretations appear designed to advance a predetermined outcome, lacking consistent rule-based justification.

o Forest Practices rules function as a Water Pollution Control Program (WPCP) under WAC 173-201A-320(6), since adoption of Forest Practices Rules in 2001.

o The Adaptive Management Program (AMP) already provides programmatic Tier II compliance.

o No credible legal basis to treat AMP-driven rule revisions as "new or expanded actions."

o Blurs required distinction between Tiers I, II, and III of the antidegradation policy, violating the federal Clean Water Act's three-tier framework.

· All AMP recommendations decreased pollution risk compared to the existing rule, yet alternatives were eliminated prior to analysis, ignoring proper Tier II procedural steps and potentially violated the Administrative Procedure Act (APA).

I would also like to comment on the Authorization / legality that has been applied· Ecology overstated its authority under RCWs 76.09.040 & 90.48.420, ignoring statutory direction to allow reasonable, transient, and short-term forest practice effects.

· The FPB does not need Ecology's agreement to develop rules, only to adopt them.

· Ecology excluded viable alternatives before analysis or public input.

COST (an understated four letter word)

· The proposal is expected to cause ~$1B in timberland losses and $5-$8B in regional economic impacts, unreasonable given no evidence of significant impairment of stream temperature resource objective for the AMP.

· Ecology dismissed more cost-effective alternatives without analysis, only compared preferred rule to an unscientifically supported 100' buffer alternative, inconsistent with RCW 76.09.370.

· IEc's economic analysis is biased, lacks rigor, showed excessive uncertainty (2-4x range in estimates), and ignored key factors like higher costs to small forest landowners (SFLs), with the least ability to bear the costs, and misidentified opportunity costs (e.g., carbon credits) as benefits, violating APA requirements of identifying the "least burdensome alternative."

· Ecology's argument that imposing the rule avoids greater costs from other potential regulations is **speculative and coercive**. Since Ecology is insisting on only one, high-cost alternative can be considered, compliance with 70A.02 RCW-Environmental Justice, is justified.

GOOD SCIENCE/BAD SCIENCE

· Hardrock & Softrock (HR, SR) studies showed weak/no link between shade and temperature change; key HR findings were omitted, 0% buffer treatment performed similarly to 100% buffer in terms of seven-day average daily max (7DADM) temperature.

· The objective of the HR and SR studies was to evaluate whether temperature exceeded Washington's water quality criteria, 16^{o} C, yet Ecology inappropriately assigned a false criterion of ≥0.3°C temp change as a violation of water quality standards, which is unlawful.

· Temperature results were oversimplified, ignoring context (e.g., treating all temperature change as the same), high variability, and 7DADM temperature ranges across treatments.

---· Studies were designed for average responses, not for site-specific factors; causal claims about landscape or canopy effects are unsupported.

· HR and SR studies covered rare harvest scenarios (<2% of typical operations), limiting relevance; ignored the HR and SR (2-8) study limitations, "Results should be applied with caution to Type N streams outside the selection criteria."

· Average temperature responses (0.6°C SR, 1.2°C HR) occurred only under specific, limited conditions for a limited amount of time; wide variability remained even under high canopy closure (>70%).No evidence provided that temperature responses under current rules cause significant biological harm or that warming meaningfully transfers downstream; no robust evidence connecting buffer changes with meaningful temperature gains.

· Ecology disregarded scientific uncertainties and future research needs identified by Np Technical Workgroup.

· HR study's amphibian findings do not support a causal link to temperature; broader literature shows inconsistent amphibian-buffer relationships.

· Ignored potential positive impacts on food webs from warmer temps or altered canopy.

· Tools for better temperature modeling exist but were not used by Ecology.

· The HR and SR studies demonstrated water quality criteria for temperature were met or exceeded >90% of the time, focus should not be on rare outliers with largest temp increases.

JUST TO SUMMARIZE!

---Ecology's inconsistent, evolving interpretations of Tier II, dismissal of scientifically supported alternatives, biased economic analysis, misuse of data/studies while ignoring other relevant science, and procedural violations **undermine the legitimacy of the rulemaking PROCESS.**

· Evidence strongly suggests current rules largely meet or exceed water temperature criteria, making substantial buffer expansions unnecessary and excessively burdensome.

· The process appears driven by policy preference rather than science or law, is regulatory overreach and risks stability; Ecology should align its role in the FPB's rule making process with a **plain reading** of the applicable laws/rules, objectively interpret all relevant scientific information, and support transparent and fair development and evaluation of all reasonable alternatives

THANKS FOR HEARING ME OUT…..Dave Roberts
