



Skagit County Board of Commissioners

Ron Wesen, First District

Peter Browning, Second District

Lisa Janicki, Third District

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Submitted through Department of Ecology's Online Portal: [Draft Tier II Analysis of Forest Practices Board's draft rule](#)

To whom it may concern,

Thank you for the opportunity to comment on the Department of Ecology's (Ecology) Draft Tier II Antidegradation Analysis regarding the Type Np Buffer Rule. Skagit County appreciates the commitment Ecology has towards maintaining Washington's clean waters. However, we now find Ecology's determinations and actions **exceptionally disturbing**, and we question whether Tier II analysis was legally triggered for the Np Buffer rulemaking, and whether the forest practice rules are currently non-compliant with the Washington Pollution Control Program (WPCP). A commitment to clean cool waters was made and met by the implementation of the forest practices rules through the Adaptive Management Program (AMP). The AMP, which was designed to be science-based, is a law implementing practices that currently have Type Np streams meeting the Tier II criteria. Ecology's actions have 1. changed its interpretation of the water quality standards for antidegradation (which was intended to be used in streams that exceed the minimum standards); 2. implemented a full-blown Tier II analysis (never done on forest practices rules before); 3. manipulated of the Forest Practice Board (FPB) in its determination of what proposal would be acceptable (**without analysis of alternatives and additional proposals**); and 4. ignored the requirement, which is in law, to find the least burdensome alternative.

The platform from which Ecology is acting has changed both in the evaluation of tiered waters and in its interpretation of what constitutes a need to change. It was Ecology who dedicated the forest practice rules as a WPCP, which doesn't require a Tier II analysis. This evaluation has not previously occurred in the AMP, and it also appears as if Ecology is now interpreting Tier II waters as if they were Tier III waters. Prior to and since 2017, through the development of the Np Buffer proposals, Ecology has shifted its interpretation of the Clean Water Antidegradation Tier II 0.3° C temperature increase policy, from a 'limit' to a 'trigger' for more analysis. Prior to the November 2022 FPB meeting, Skagit County, specifically Commissioner Browning, met with the previous Department of Ecology Director, Dr. Watson, in October of 2021 to discuss the 0.3 ° C temperature increase as a **trigger** rather than a strict **limit** to do further analysis. The County also pointed to WAC 173-201A-320 (4) and (5), 173-201A-410 (short-term modifications) and 173-201A-420 (variances) for avenues that could both protect water quality and working forests with outcomes that would be far less burdensome on our economy. These statutes clearly give Ecology the discretion to temporarily lower water quality criteria with stipulations. However, both Dr. Watson and her FPB appointee, Rich Doenges, told the County that Ecology had no wiggle room as it was a 'limit' and therefore, to meet the Clean Water Act Assurances (CWAA), anything less than a continuous 75'- 125' buffer width on Type Np streams would be unacceptable. And then May 14, 2025, Ecology again shifted its interpretation of the policy acknowledging the 0.3° C temperature increase was a 'trigger' for more analysis.

The FPB was given the same message as Skagit County at its November 2022 meeting, with Ecology asserting that only its proposal would satisfy the CWAA and be the sole way to enable Type Np buffer rulemaking to move forward. We believe the FPB, feeling it had no choice, was swayed to approve only Ecology's proposal to initiate rulemaking without considering other alternatives. This was an insincere move by Ecology, which deflated the

possibilities for a rule that would meet the water quality standards, the legislative intentions of the AMP, be far less burdensome on our communities and protect working forests.

The implementation of the proposed Np buffer rule has significant impacts on Skagit County's economy and social well-being. Annually, Skagit County receives approximately \$9.5 million in taxes with \$169,175,000 in wages earned through the forest industry. The projected outcome from the cost benefit analysis (CBA) for the proposed Type Np buffer, regardless of which of the 3 studies are utilized, is **devastating to our rural communities**. The costs run in the billions for western Washington. In Skagit County, the analysis done by the University of Washington (UW) shows approximately a 9,000 acre change in the amount of newly buffered Type Np streams, which equates to about 4%-5% of our current harvestable acres (230 acres). Extrapolating out, this then equates to an immediate stumpage value loss of \$98,440,721 and a timber excise tax impact \$4,922,036. This is far from being a "least burdensome" outcome, it is not "in the overriding public interest" and it far exceeds the unsubstantiated benefits proclaimed by DNR's contractor, Industrial Economics Corp (IEC), in its report.

In closing, we ask Ecology to reconsider the following, 1. whether Tier II analysis was legally triggered by the Np buffer rulemaking and 2. to support the science-based, legally bound, AMP as the avenue to work towards an outcome that continues to protect water quality, working forests, and our communities that encompasses site-specific approaches and solutions. We believe Ecology needs to acknowledge that the Forest Practice Rules provide the Tier II compliance and that the Administrative Procedures Act, the Forest Practice Rules and the Water Quality Standards Affected by Forest Practices need to systematically work together in order to have successful long-term stewardship without economically burdensome results. Understanding each other's issues is essential for trust and continued working relationships.

Thank you for your consideration.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Lisa Janicki, Chair

Ron Wesen, Commissioner

Peter Browning, Commissioner