

1 **Forest Practices Board**
2 **Regular Board Meeting – August 9, 2023**
3 ZoomWebinar and Room 172, Natural Resources Building
4

5 **Members Present:**

6 Alex Smith, Chair, Department of Natural Resources
7 Ben Serr, Designee for Director, Department of Commerce
8 Chris Conklin, Designee for Director, Department of Fish and Wildlife
9 Cody Desautel, General Public Member
10 Dave Herrera, General Public Member
11 Frank Chandler, General Public Member/Independent Logging Contractor
12 Kelly McLain, Designee for Director, Department of Agriculture
13 Meghan Tuttle, General Public Member
14 Pene Speaks, General Public Member
15 Rich Doenges, Designee for Director, Department of Ecology
16 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner
17 Wayne Thompson, Timber Product Union Member
18 Vickie Raines, Elected County Commissioner
19

20 **Staff**

21 Saboor Jawad, Forest Regulation Division Manager
22 Marc Engel, Senior Policy Advisor
23 Karen Zirkle, Assistant Division Manager, Policy and Services
24 Patricia Anderson, Rules Coordinator
25 Terry Pruit, Senior Counsel
26

27 **WELCOME AND INTRODUCTIONS**

28 Chair Alex Smith called the Forest Practices Board (Board) meeting to order at 9:05 a.m. Introductions of
29 Board members and staff were made.
30
31

32 **REPORT FROM THE CHAIR**

33 Chair Alex Smith shared staffing changes which included a new Assistant Deputy Supervisor, Katie
34 Allen, reporting to Chair Smith and a new Forest Regulation Assistant Division Manager for Operations,
35 Teresa Ann Ciapusci.
36

37 **APPROVAL OF MINUTES**

38 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board approve the May 10, 2023,
39 meeting minutes.
40

41 **SECONDED:** Meghan Tuttle
42

43 **ACTION:** Motion passed unanimously.
44

45 **BOARD DISCUSSION TO CONSIDER RESCISSION OF BOARD ACTION TO ACCEPT TYPE**
46 **NP WATER BUFFER RECOMMENDATIONS**

47 Chair Smith shared that the Board held a special meeting in April to discuss alleged process concerns
48 regarding the Board's November 2022 decision on Type Np buffers. The Board also discussed the alleged

1 process concerns at the May 2023 regular meeting and that any further Board action was postponed to this
2 meeting.

3
4 Chair Smith outlined the next steps:

- 5 • If the Board rescinds the November 2022 decision, then the Board will receive a summary of the TFW
6 Policy Committee Type Np majority and minority recommendations from the Adaptive Management
7 Program Administrator (AMPA). The Board would then consider taking a new action. Or,
- 8 • If the Board decides not to take any action, then the November 2022 Type Np buffer decision will
9 remain in effect and the following summary would be removed from today's agenda.

10
11 Board member Chris Conklin shared that since he was not a Board member leading up to the November
12 2022 vote that he will observe and listen during this discussion.

13
14 Chair Smith said from DNR's perspective, the concerns raised are enough of a concern that if the Board is
15 sued, the November 2022 vote could be considered or found to be invalid because of the process
16 concerns. DNR's preference is to do a re-vote.

17
18 Board member Steve Barnowe-Meyer said he believes clearing up the concern is important. He does not
19 believe the Board had an adequate discussion prior to the vote in November 2022 and now is an
20 opportunity to be more transparent with the public and the Board on why Board members are voting the
21 way they did.

22
23 Board member Dave Herrera expressed his concern for a revote and the decision the Tribes made on the
24 original vote. Their position was based on what they thought was the right thing to do and their
25 commitment to TFW and the Forests and Fish Report. He said there are concerns about the message a
26 revote sends, like the Board is changing its mind which is not the case. He requests to have the Board
27 discussion after public comment rather than before.

28
29 Board member Rich Doenges supports the Board's process on getting to the vote in November 2022. He
30 said in reviewing some of the comments from timber landowners, most were concerned about the TFW
31 process. He said the alleged process concerns are unfounded and that the TFW process worked as
32 intended.

33
34 Board member Vickie Raines said she was disappointed that several Board members had discussed their
35 votes ahead of the November 2022 meeting and that they were inappropriate, and she deemed unethical.
36 She said her position is that the Board rescind the vote and take a new vote.

37
38 **PUBLIC COMMENT ON BOARD ACTION TO RESCIND PRIOR VOTE ON TYPE NP**
39 **RECOMMENDATIONS**

40 Wayde Boyd, Washington Forest Protection Association (WFPA), said he supports the advancement of
41 the minority report with the majority report.

42
43 Cindy Mitchell, WFPA, said she supported moving the majority and minority report forward and takes
44 responsibility for the many letters sent to the Board by small forest landowners.

45
46 Jason Spadaro, WFPA, stated the majority proposal for Type Np streams should be forwarded with the
47 minority report. He said this is supported by the desire to commit to comprehensive monitoring of stream
48 temperatures.

1 Ken Miller, Washington Farm Forestry Association (WFFA), said he supports all the recommendations
2 brought forward from TFW Policy caucuses and a do over for the vote in the hopes that both the minority
3 and majority reports will be accepted by the Board.
4

5 Darin Cramer, WFFA, said after the November vote there is a loss of confidence in the adaptive
6 management system from the landowners, and they are seeking a course correction. He requests the Board
7 rescind the vote and advance both the majority and minority proposals forward for analysis.
8

9 Dr. Elaine Oneil, WFFA, said she has heard from many small forest landowners that they have already
10 given up 50 percent of their land and some even more. The small landowners see this situation as unfair
11 and unwarranted. She requests the Board rescind the November vote and reconsider both the majority and
12 minority reports.
13

14 Jim Peters, Western Washington Tribes, strongly encouraged the Board to support the decision made at
15 their November 2022. He said the western Washington tribes may not always agree with the Board's
16 decision but will never pursue any threats of litigation as they have agreed to and respect the process
17 established during the Forests and Fish negotiations.
18

19 Rico Vinh, Conservation Caucus, said the Board should not hold a revote because nothing has changed
20 the underlying science behind the majority and minority report. He also said that the majority proposal is
21 a compromise position based on the best available science. In contrast, he said the science makes it clear
22 that the minority proposal will not meet water quality standards.
23

24 Vince McGowan, Department of Ecology, said the Board took on the responsibility to ensure
25 Washington's high-quality waters are not allowed to deteriorate or become less healthy due to forest
26 practices. The majority proposal put forward by the Departments of Fish and Wildlife and Ecology,
27 Eastside tribes, Westside tribes, and the conservation caucus is based on the Type Np Technical Work
28 Group's top recommendations. Department of Ecology supports these recommendations because they
29 have the highest likelihood of protecting water quality while still considering the impact to landowners
30 and providing a practical path forward. He said the minority proposal does not align with the Type Np
31 Technical Work Group recommendations and would allow Washington waters to continue to warm, due
32 to inadequate forest protections. It falls far short of what is needed to protect water quality under the
33 Forest Practices Act. Department of Ecology would not support a rule based on the minority proposal.
34

35 Endre Szalay, K & L Gates LLP, said the November 2022 vote should be rescinded and the Board should
36 openly deliberate whether Type Np buffers impair stream capacity to meet water quality standards and
37 what standards are relevant to answering this question. He said the Board should also discuss the minority
38 recommendations which increases water quality protections.
39

40 Peter Goldman, Washington Forest Law Center (WFLC), urged the Board to not rescind the decision
41 made at the November 2022 meeting. He said a rescission of the vote undermines the process that led up
42 to the Board's historic November 2022 vote which was preceded by 15 years of stakeholder and multi-
43 agency effort and guided by the Department of Ecology whose obligation is to protect water quality.
44

45 Tim Thompson, Thompson Consulting Group, said there should be a robust debate around the science to
46 understand the varying degrees of risk. He urged the Board to take the time to resolve differences and for
47 everyone to come together.
48

1 Fred Cayou, Swinomish Indian Tribal Community, said he supports the decision made in November
2 2022. He described how the Swinomish tribe are gaining on salmon recovery and asked the Board to not
3 rescind their vote.

4
5 Ray Entz, Kalispel Tribe, urged the Board to stand by their original decision of November 2022. He said
6 stakeholders are watching how Board members vote and what the rationale is if they change their vote. He
7 supports the original decision and the process set out in the basic principles of the TFW Agreement and
8 the Adaptive Management Program.

9
10 Curt Veldhuisen, Skagit River System Cooperative, said the Adaptive Management Program is an
11 elegant and practical system, where science-based practices are implemented and tested to allow further
12 refinement. One of the purposes for this process is to separate difficult regulatory decisions from political
13 wins and financial advantages. The technical experts that worked on the recommendations did an
14 excellent job, incorporating landowner concerns while achieving the level of water protection that they
15 were asked to address. He requested the Board honor the many steps taken, to the action in November
16 2022.

17
18 Paula Swedeen, Conservation Northwest, requests the Board stay the course and not rescind the decision
19 on Type Np rulemaking. She asks the Board to respect the expertise of the Department of Ecology, as the
20 authority and responsibility they have to protect our state's water quality and have done that job with
21 integrity for decades.

22
23 **POTENTIAL DECISION TO RESCIND BOARD ACTION ON TYPE NP WATER BUFFER**
24 **RECOMMENDATIONS**

25 Chair Smith said she appreciates all the public comments. The integrity of the Board's decisions is
26 important to DNR. DNR would certainly not support rescission if they didn't feel, based on the
27 assessment of the risks associated with the alleged Open Public Meetings Act violation, that there wasn't a
28 legitimate risk associated with a potential violation. Also, something that came out of the public
29 comments that she really appreciated is the emphasis on having a robust debate and discussing the
30 technical issues associated with the Type Np buffers.

31
32 Board member Pene Speaks said that she was doing her due diligence as a new member to understand the
33 relevant studies, legal framework and cooperative framework to inform her own decision at the November
34 2022 meeting. She said the process has brought the Board in the right direction to this decision with
35 science and does not support rescinding the vote.

36
37 Board member Dave Herrera said he feels a chilling effect in doing his job as a Board member from the
38 threat of litigation. He said this rescission request makes it feel like the Board will get sued if the
39 stakeholders don't like what they say, which may have negative future impacts. He stated that just like
40 Department of Fish and Wildlife is the authority on the gray squirrel, Ecology is the authority on water
41 quality and the Forest Practices Act is an extension of that obligation to meet and protect water quality
42 standards. He acknowledged the possible economic impact to small landowners with respect to the larger
43 impact to the resource and supports the majority report and the TFW process.

44
45 Board member Doenges said that the personal risk to the Board members presented by the concerns about
46 the Open Public Meeting Act is potentially threatening making the bigger decision to protect the resource.
47 He summarized the time taken to go through this process and is concerned that this is breaking down the

1 TFW process. He does not support a rescission and a revote because of the abundant scientific basis for
2 the decision made to put forward the majority report.

3
4 Board member Barnowe-Meyer is in support of a more robust discussion because that opportunity was
5 missed before the November 2022 vote. He said he is concerned that the studies are not representative of
6 the issues that are being addressed in the majority and minority reports. He said he supports a larger
7 discussion about variable buffers and more review of both reports.

8
9 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board rescind the Board's November 9,
10 2022, vote that approved the majority report on Type Np Water Buffer recommendation
11 and advanced it to rule making.

12
13 **SECONDED:** Vickie Raines

14
15 Board Discussion:
16 None.

17
18 **ACTION:** Motion passed (7 Support (Serr, Smith, Barnowe-Meyer, Raines, Thompson, Tuttle,
19 Chandler) /5 Oppose (Speaks, Doenges, McLain, Herrera, Desautel) / 1 abstention
20 (Conklin)

21 **DEPARTMENT OF ECOLOGY'S TIER II PROCESS**

22
23 Brandon Austin, Department of Ecology, presented the Tier II process for the Type Np rule making. The
24 Tier II process ensures waters of a higher quality than the criteria assigned are not measurably degraded
25 unless necessary and in the overriding public interest.

26
27 The process is as follows:

- 28 • Department of Ecology prepares Tier II Analysis per WAC 173-201A-320 upon completion of draft
29 rule language, Small Business Economic Impact Statement and the preliminary Cost Benefit Analysis.
30 The analyses will describe how the proposed rule meets antidegradation requirements and in the
31 overriding public interest.
- 32 • The analysis will be available to the public for review and comment during the public hearings
33 process for the rule.
- 34 • Department of Ecology will update the analysis as necessary based on comments received.
- 35 • Final Tier II Analysis presented to the Forest Practices Board prior to the filing of a CR103. Any
36 changes to the draft rule language prior to Board approval may require an additional change to the
37 Tier II Analysis.

38
39 Chair Smith asks for the specific criteria in WAC. Austin responds that there is a list of criteria that is
40 used but does not have the complete list on hand.

41
42 Board member Doenges said the antidegradation language was not in the water quality standards until
43 after TFW was initiated. Draft language for Tier II was added in 2006. He will follow up with the detail of
44 the historical account of this process.

45
46 Chair Smith asks for clarification on the process of moving to the Tier II process. Austin states it is a
47 unique process and there has not been a lot of use of the Tier II analysis.

1 Board member Barnowe-Meyer asked if a Tier II analysis has ever been done prior to now for the existing
2 Np rule. Austin stated that a Tier II analysis has not ever been done for any Forest Practices rule. He
3 explains that for previous rulemaking the process was not in place to do the analysis. He also stated there
4 has not been rulemaking that warranted the Tier II analysis.

5
6 Board member Barnowe-Meyer also asks for clarification whether 0.3-degrees C is a trigger or a limit. He
7 said his understanding of Austin’s statement is that the Tier II process is a Department of Ecology
8 practice but not a Board function and the majority report addresses what science has shown to be the best
9 prescription to prevent a temperature violation. Austin said it’s both, but need to stick with what meets
10 water quality standards. Department of Ecology gave the Type Np Technical workgroup several factors to
11 consider.

12
13 Chair Smith said that there is a scenario that Department of Ecology doesn’t get to the overriding public
14 interest analysis unless a rule proposal clearly meets water quality. Austin said that the process and
15 presentation is blind to the issues. It’s not whether it is a Type Np or future rulemaking, it’s that it has the
16 potential to impact water quality, this is the process that would be used.

17
18 Board member Conklin clarifies that he heard Department of Ecology’s interpretation of antidegradation,
19 and the process and that Tier II analysis doesn’t apply to the current rule and that the starting point for
20 Ecology after adaptive management and science is showing that the current rule doesn’t meet the
21 expectation of not exceeding 0.3-degree C. We need to start with something that will meet this water
22 quality standard.

23
24 Board member Meghan Tuttle asked when a rule change would trigger a Tier II analysis. Austin
25 responded that it would be when the rule had the potential to impact water quality.

26
27 Board member Tuttle asked why the minority proposal would not be consistent with water quality
28 standards as protective enough. Austin asked to delay the conversation until later and affirms that there
29 has been no Tier II analysis on any of the proposals.

30
31 Board member Tuttle asked what is the Board’s decision-making authority if the rule doesn’t meet the
32 Tier II process? Terry Pruit, Attorney General’s Office, responded that with any rule, if Ecology doesn’t
33 agree, then the rule would not pass.

34
35 **SUMMARY OF TYPE NP BUFFER MAJORITY/MINORITY RECOMMENDATIONS**

36 Lori Clark, Adaptive Management Program Administrator, provided a timeline of events leading up to the
37 Board’s November 2022 action.

- 38 • December 2021 the conservation caucus invoked Stage One of the dispute resolution process citing
39 the lack of progress from TFW Policy on the development of the Type Np buffer alternatives.
40 • March 2022 the conservation caucus invoked Stage Two of the dispute resolution process as TFW
41 Policy was unable to reach a consensus decision on the Type Np buffer alternative recommendation
42 for the Board within the 150-day timeline.

43
44 Clark provided an overview of the completed Type Np buffer CMER studies which included:

- 45 • Buffer integrity – Shade Effectiveness (Amphibian), 2018
46 • Westside Type N Buffer Characteristics, Integrity and Function (BCIF), 2019
47 • Extensive Riparian Status and Trends Temperature Monitoring – Type N/F (Westside and Eastside),
48 2019

- 1 • Type N Experimental Buffer Treatment in Hard Rock Lithology, Phases 1 and 2, 2018 and 2022
- 2 • Type N Experimental Buffer Treatment in Soft Rock Lithology, 2022

3
4 Clark also provided a summary of the Hard and Soft Rock Studies findings related to temperature:

- 5 • Studies provided two temperature response metrics: Maximum Monthly Temperature Response (MMTR) and Seven Day Temperature Response (7DTR). The 7DTR increased in all buffer treatments.
- 6 • The studies showed temperature responses were due to harvest. Shade was the main driver of temperature response.

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11 The Type Np Technical Workgroup provided the following recommendations for TFW Policy’s consideration:

- 12 • Adopt a combination of the following three alternatives which the workgroup evaluated for stream temperature, economic impact, and wind throw:
 - 13 • A continuous 75-foot buffer with managed outer 25-foot zone.
 - 14 • A continuous buffer that varied from 25-to-75 feet based on stream orientation.
 - 15 • A site-specific buffer that retains that portion of buffer that provides effective shade.
- 16 • The workgroup noted that the second and third alternatives are experimental and that not all landowners would be able to apply them without assistance.

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20
21 Clark presented a summary of TFW Policy’s Majority/Minority recommendations.

22 Minority:

- 23 • Prescription A: 75-foot, two-sided, unmanaged continuous buffer when an Np basin greater than 30 acres is to be harvested 85 percent or more over a five-year period.
- 24 • Prescription B: 75-foot, two-sided, unmanaged buffer for the first 500 feet upstream of the Type F/N Water break and a 50-foot wide, two-sided, unmanaged buffer for the next 500 feet.
- 25 • Retain the equipment limitation zone (ELZ) and sensitive site buffers.
- 26 • Additional 50-foot buffers would be required if an operating area is 2,000 feet upstream of Type F/N Water break and the Type Np stream length is more than 2,000 feet and if 50-percent buffer objective is not met within the ELZ and sensitive site buffers.

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32 Majority:

33 *Option 1:* 75-foot wide, two-sided, no-harvest buffer on all Type Np streams for the first 600 feet upstream of Type F/N Water break or for the lowest 600 feet for isolated Type Np streams. Upstream from the first 600 feet, bankfull width (BFW) determines the width of a two-sided buffer:

34 Two options for Type Np streams greater than 3 feet BFW:

- 35 • Two-sided 75-foot buffer with the outer 25 feet manageable; or a 65-foot, two-sided, fixed-width, no-harvest buffer.
- 36 • For Type Np streams less than 3-foot BFW, a two-sided, 50-foot, fixed-width, no-harvest buffer.

37 All existing ELZ, sensitive sites, forest practices hydraulic project, roads, yarding corridors and unstable slope rules will continue to be applied to the full length of the Type Np stream.

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43 *Option 2:* A 75-foot, two-sided, unmanaged continuous buffer when a Type Np Water basin greater than 30 acres is to be harvested 85 percent or more over a five-year period.

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1 **BOARD DISCUSSION ON TFW POLICY COMMITTEE’S TYPE NP MAJORITY/MINORITY**
2 **RECOMMENDATIONS**

3 Board member Speaks summarized that the Board has had much discussion about the two studies. She
4 said that they went into the field to look at examples of buffers to see what these applications might look
5 like on the ground and to prompt discussion, and they have all had the opportunity to ask questions and be
6 brought up to speed.

7
8 Chair Smith expressed that there should have been more conversation as they were making the decision
9 about buffers initially.

10
11 Clark’s impression is that this process has taken a long time, but everyone has done a really good job at
12 following the process and states that transparency of this process is very important to have decisions that
13 hold.

14
15 **PUBLIC COMMENT ON TYPE NP MAJORITY/MINORITY RECOMMENDATIONS**

16 Peter Goldman, WFLC, urged Board members to vote the same as they did in November 2022. He stated
17 the presentation demonstrated the extensive science and policy analysis that preceded the majority and
18 minority reports. Only the majority report meets most of the CWA antidegradation standards and it will
19 need to undergo a Tier II analysis. He urged the Board to continue the same path and suggested the
20 minority stakeholders to participate in the rule making.

21
22 Ray Entz, Kalispel Tribe, said he is concerned about the integrity of the TFW program and does not think
23 the minority recommendations are enough to protect the resource. He said if we are going to nitpick the
24 open public meetings act, there may be bigger concerns with Board member conflicts.

25
26 Wayde Boyd, WFPA, said it is imperative that trust is restored and maintained to protect the integrity of
27 the science based adaptive management program. Partnerships need to be maintained and sticking with
28 their principles will get us to a successful conclusion. He supports forwarding both proposals to build and
29 develop the trust that was had and to continue to advance progress in TFW and Forests and Fish.

30
31 Robert Bass, WFPA, expressed his observation that people are not listening to each other or hearing what
32 the others are saying. He is concerned about the contention and that it is not in the spirit of TFW.

33
34 Cindy Mitchell, WFPA, summarized her long-time involvement and experience in the process to protect
35 water quality. She said the Tier II analysis is the process to involve the public and that Ecology’s attorney
36 agrees that 0.3-degrees C for Tier II waters is a trigger. She concludes that as she seeks for clarity, it is a
37 matter of law and interpretation.

38
39 Doug Cooper, Hampton Lumber, said he is in support of collaboration, science, and negotiation. He asked
40 the Board to consider all the alternatives that are of interest to the stakeholders. He is concerned that the
41 majority report will come with a great deal of cost to the industry and job losses. He requested the Board
42 advance both reports forward.

43
44 Jason Spadaro, WFPA, said he supports advancing both the majority and minority report. He said both
45 reports should be evaluated for costs to landowners and meeting water quality standards. It is his concern
46 that both majority and minority reports have merits and by only advancing one, options for rulemaking
47 are limited.

48

1 Ken Miller, WFFA, urged the Board to respect the collaborative aspirations of the Adaptive Management
2 Program by advancing both majority and minority recommendations for further evaluation. He said the
3 stream length options and the buffers for both proposals are worthy of further consideration and provide
4 small forest landowners with what they need for managing their forestland.
5

6 Dan Brown, Environmental Protection Agency (EPA), reiterated the testimony they provided to the Board
7 in November 2022. He said EPA is ultimately responsible for the implementation and enforcement of the
8 CWA throughout the nation, he is not representing the agency in a regulatory role. Brown affirmed what
9 antidegradation means in the context of the CWA which is to prevent degradation of water quality and to
10 maintain water quality that supports beneficial water uses, such as salmon and habitat. The Board's
11 decision on Type Np streams relates to the goal in Schedule L-1 of the Forests and Fish Report that
12 aquatic habitat meet or exceed water quality standards, including antidegradation. The State of
13 Washington established its antidegradation in rules consistent with the CWA and the state is responsible
14 for applying its policy and rules. He said EPA is confident that the Department of Ecology's efforts to
15 enforce its antidegradation policy is consistent with both the letter and the spirit of the CWA.
16

17 Darin Cramer, WFPA, said that the adaptive management process was followed with some possible
18 constraints, but the interpretation of treating measureable temperature change as a limit, a water quality
19 standard that cannot be exceeded is not true. He said based on several examples of data, a reasonable
20 conclusion is that current rule could pass a Tier II test. However, only advancing the majority report limits
21 the alternatives possible for protecting water quality and adopting a rule.
22

23 John Gold, Sierra Pacific Industries, summarized the investments his company has made in the state of
24 Washington for the improvements to roads and the goals of salmon recovery. He supports the
25 advancement of both the majority and minority report proposals to the next phase of rulemaking.
26

27 Court Stanley, Washington State Association of Counties, said the Adaptive Management Program has
28 been well designed and provides a balanced approach to current science. Prescriptions should be
29 monitored to affirm that they are working and if not, adaptive management is used to change the
30 approach. He asserts that the Board cannot make an informed decision until a comparison of costs and
31 benefits is done. He asked that both proposals be put forward for rulemaking.
32

33 Kendra Smith, Skagit County, said Skagit County Commissioners are in favor of forwarding both the
34 minority and majority reports because there are more alternatives and options for solutions.
35

36 Adrian Miller, Weyerhaeuser, referenced his comment from November 2022 and restated their desire for
37 the Board to advance both the majority and minority reports in order to provide increased opportunity to
38 find elements in both proposals to use in the rulemaking. He emphasized the importance of incorporating
39 a monitoring program and including data sets from outside the forested ecosystem.
40

41 Dr. Elaine Oneil, WFFA, said an evaluation of the minority report needs to be included in this
42 rulemaking. She said WFFA joined in 1999 to protect salmon and expressed her dismay in the impression
43 that her organization is not doing its job in forest management. There is evidence from monitoring of
44 operational forestry that there isn't degradation. She is concerned that this rulemaking will lead to small
45 forest landowners no longer being able to practice forestry on their land because of the potential
46 restrictions.
47

1 Jim Peters, Northwest Indian Fisheries Commission, said that nothing has changed since the vote in
2 November 2022 and the Western Washington Tribes are in support of the majority report going forward.
3 He said they depend on an intact ecosystem to continue to exist on the land as they have forever. This
4 process is important to the Western Washington Tribes and have a negotiated treaty right to be co-
5 managers and make decisions about how the resource is managed.

6
7 Chris Mendoza, Conservation Caucus, details the amount of data throughout Western Washington
8 watersheds that is available for a Tier II process, from thermistors placed at 50 sites. There are
9 background levels that hard rock studies were considerably cooler. He suggested broader information be
10 included from sites on industrial lands and using CMER support in this pursuit.

11
12 Amy Trainer, Swinomish Tribe, said they are firm in their expectations that the Adaptive Management
13 Program that was agreed to by all parties needs to be adhered to, it needs to be honored, and it needs to be
14 followed. Those promises and agreements made years ago need to still be enforced. She asked the Board
15 to not rescind their action from November 2022.

16 **TYPE NP WATER BUFFER MAJORITY/MINORITY RECOMMENDATIONS**

17 Board member Doenges said the CWA requires designated uses, water quality criteria and
18 antidegradation. In 1987 and 1990 Congress amended the CWA to require more specificity in
19 antidegradation. Ecology responded with more specific rules in 1992. That rule change did not allow for
20 any degradation in water quality in waters that were better than the numeric criteria, so that would not
21 affect the high-quality waters that are being discussed today. In 2003, Ecology added language to instead
22 limit degradation with measurable change-- in this case for temperature 0.3-degrees C and then that
23 change was approved by EPA in 2006.

24
25
26 Chair Smith emphasized that DNR considers the rescission of this vote to be abnormal and a result of
27 credible concerns about the Open Public Meetings Act. Also, DNR's position was in favor of moving
28 both majority and minority reports forward, and that remains the position today. She said DNR
29 acknowledged that there was uncertainty associated with the CMER studies when applied across a
30 broader landscape and that the CMER studies did not tell us definitively what the buffer widths and buffer
31 lengths should be. She said if the Board can make more incremental changes that will meet the resource
32 needs, then that is less likely to cause dissension and lead to the kind of threat around litigation. Chair
33 Smith said the goal is having more information which is better than having less information. If the
34 majority report is the only way to go or is the only one Ecology supports, moving forward both
35 recommendations does not prevent that from happening and that majority report may just emerge as the
36 preferred option out of the rule making process, a process that would have considered all options and
37 alternatives.

38
39 Board member Conklin said it's a disagreement about the interpretation of the rules and that it shouldn't
40 be adversarial. Department of Ecology oversees this interpretation of the law. It would be better if there
41 was a resolution on this interpretation, but there is not one. Ecology has said the minority report does not
42 meet the law, and Department of Fish and Wildlife will follow that lead which will drive our vote. He
43 expressed a desire for a way to resolution but noted that it will not happen but thinks the important thing
44 today is having the conversation about the disagreement.

45
46 Board member Barnowe-Meyer states that he sees the issue from the standpoint of a grandfather with the
47 desire to pass on to future generations, a place with clean water and a healthy ecosystem. He describes the
48 difficulty in site determination for the hard rock study and the desire to have a much more extensive view

1 of what is going on with Type Np streams, but harvest operations in western Washington on different
2 lithologies were only a very tiny sample. He supports advancing both reports for the rule making
3 analyses.

4
5 Board member McLain said it's difficult to talk about the value of ambient background monitoring, but
6 she thinks all would agree that if there was 15 years of data across the State in all sorts of different
7 forestry environments this conversation would be very different. It's needed and vitally important.

8
9 Board member Speaks said that erring on the side of environmental protection will benefit everyone and
10 the decisions today should not be motivated so much by economics as by protecting the opportunity to
11 have a healthy environment farther into the future. She is in favor of forwarding only the majority report.

12
13 Board member Thompson said he is concerned about the viability of rural communities and the people
14 that live and work there. He supports both reports moving forward in order to reach a solution.

15
16 Board member Barnowe-Meyer reiterated that the studies were intended to understand how well the rules
17 are protecting water temperatures and there is still more being done to learn about temperature impacts to
18 amphibians post-harvest.

19
20 Board member Doenges said the Water Quality Program has been consistent in talking about buffers and
21 has an understanding of what is needed to protect water temperature and other water quality parameters.
22 He states the rulemaking process will give everyone the opportunity to give more input as well as conduct
23 impact studies to address economic issues.

24
25 Board member Serr asked if Department of Ecology has additional data and studies to inform this process
26 that the Board would benefit from. He said he is concerned that the Board has not asked all the right
27 questions but is ready to move forward with the information they have with the majority report.

28
29 Board member Speaks agrees with Board member Serr. She said rulemaking is not a scientific process, it
30 is a different process that evaluates monetary impacts. Moving forward with only the majority report is
31 the right thing to do.

32
33 Board member Herrera said their understanding is the minority report will not provide an adequate level
34 of protection to meet water quality standards which is critical to them. The tribes have signed on to this
35 process to ensure that the protections for habitat that are needed to have in place get done.

36
37 Board member Chandler said he supports moving both proposals forward to gain better understanding of
38 the impacts.

39
40 Chair Smith states she is unclear how Ecology has determined that the minority report will not meet water
41 quality standards since there is not a CMER study that indicates this. If the assertion was based on outside
42 scientific literature, it would have been good to hear from TFW Policy about how that would apply to
43 Washington landscapes and harvest practices. She said it feels like a prejudgment of a process that hasn't
44 even happened.

45
46 Board member Doenges restates the assertion that the minority proposal would not be protective enough
47 of water quality to meet the CWA standards.

48

1 **MOTION:** Dave Herrera moved the Forest Practices Board approve the majority report
2 recommendations from the TFW Policy Committee Type Np buffer dispute for inclusion
3 in the draft Type Np buffer rule and associated analysis in preparation for Board action to
4 initiate rule making through the filing of the Proposed Rule Making (CR102).
5

6 **SECONDED:** Rich Doenges
7

8 Discussion:
9 Board member Conklin said he still believes there is a fundamental dispute regarding the interpretation of
10 Ecology’s Tier II rule that has not been resolved. However, Department of Fish and Wildlife will support
11 Ecology interpretation.
12

13 **ACTION:** Motion passed (7 Support (Speaks, Serr, Doenges, McLain, Conklin, Herrera, Desautel) / 6
14 Oppose (Smith, Barnowe-Meyer, Raines, Tuttle, Thompson, Chandler).
15

16 **REVISED MASTER PROJECT SCHEDULE**

17 Lori Clark, AMPA, presented the revised Master Project Schedule to the Board (MPS) for approval.
18 She said TFW Policy supports the presented MPS. She shared 17.9 million dollars was requested and 17.4
19 million dollars was received, slight decrease in the amount of appropriation and allocation.
20

21 Board member McLain asked if there is a need for more funds and can a request be made. Clark explains
22 the deadline to do so has passed.
23

24 Board member Tuttle asked about the variance moving forward. Clark said that she could not address that
25 right now but can give more specifics in a few months.
26

27 **PUBLIC COMMENT ON MASTER PROJECT SCHEDULE**

28 Darin Cramer, WFPA, said that TFW Policy is fully prepared to take on the contingency plan that could
29 balance the budget. While not right now it is likely they will have a balanced budget in several months’
30 time. He addressed the Forests and Fish Support account, which statutorily is capped at \$8.5m per
31 biennium that is generated by the industry surcharge on the business and occupation tax with the
32 remaining dollars from General Fund-State. He said there are opportunities to look at what the money is
33 used for to see if more mileage can be gained by way of projects. He said some money is used for
34 participation-passed on to support agency operations.
35

36 **REVISED MASTER PROJECT SCHEDULE**

37 **MOTION:** Meghan Tuttle moved the Forest Practices Board approve the revised 23-25 Master Project
38 Schedule.
39

40 **SECONDED:** Pene Speaks / Wayne Thompson
41

42 Board Discussion:
43 None.
44

45 **ACTION:** Motion passed unanimously (Herrera not available for vote.)
46
47
48

1 **MARBLED MURRELET RULE MAKING**

2 Marc Engel, DNR, presented the proposed rule amendments related to the Marbled Murrelet. The
3 proposed changes were a result of a consensus process through WDFW’s Marbled Murrelet Working
4 Group. The Board accepted the recommendations and approved an Expedited Rule Making process. The
5 comment period closed on July 25, 2023, without any written objections.

6
7 Engel requested adoption of the rules with a delayed effective date of January 1, 2024. This delayed
8 effective date will allow for Board Manual Sections 14 and 15 to be completed and approved by the
9 Board, followed by training of staff.

10
11 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board adopt the expedited rule proposal
12 that amends WACs 222-10-042, 222-12-090, 222-16-010, 222-16-080 relating to marbled
13 murrelet by filing a CR-103 Rule Making Order with the Office of the Code Reviser. He
14 further moved for a delayed effective date of January 1, 2024, to allow for training and
15 education of public and staff.

16
17 **SECONDED:** Chris Conklin

18
19 Board Discussion:

20 Board member Raines said that Grays Harbor County is committed to growing older and larger timber
21 and possibly has more suitable marbled murrelet habitat than adjacent landowners. The lowering of the
22 diameter of hemlock creates a possible disincentive for landowners. She thanked Engel and Court Stanley
23 for taking the time to meet with the Grays Harbor County forester.

24
25 Board member Conklin said he is in favor of the open dialogue for making smart decisions. He thanked
26 the work group for the work in such a collaborative environment.

27
28 **ACTION:** Motion passed unanimously (Herrera not available for vote.)

29
30 **BOARD MANUAL SECTION 21 GUIDELINES FOR SMALL FOREST LANDOWNER**
31 **ALTERNATE PLANS**

32 Marc Engel, DNR, summarized the revisions to Board Manual Section 21 as a good outcome for a very
33 long process. It started as a proposal initiation that went to dispute resolution through stage 2.

34
35 Section 21 has a new Part 1 entirely focused on guidance for small forest landowners. This guidance
36 acknowledges that alternate plans are available to small forest landowners to address the greater impacts
37 of the forests and fish rules within the rule identified riparian management zones. Engel said the board
38 manual section still needs updated illustrations and graphics including an updated FEMAT curve. Once
39 these have been added the board manual section will be posted to the website and disseminated.

40
41 **PUBLIC COMMENT ON BOARD MANUAL SECTION 21**

42 Ken Miller, WFFA, said this effort got off to a rocky start but through a reliance on long standing
43 relationships and the dispute resolution process, resulted in a guidance document that is better than the
44 originally envisioned by the Small Forest Landowner Advisory Committee. He urged the Board to
45 approve the updates to Board Manual Section 21 to help the small forest landowners.

46
47

1 **BOARD MANUAL SECTION 21 GUIDELINES FOR SMALL FOREST LANDOWNER**
2 **ALTERNATE PLANS**

3 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board approve the recommended
4 changes to Board Manual Section 21. He further moved the Board allow staff to add
5 illustrations and make minor editorial changes prior to distribution.
6

7 **SECONDED:** Ben Serr
8

9 Board Discussion:
10 None.
11

12 **ACTION:** Motion passed unanimously (DH not available for vote).
13

14 **GENERAL PUBLIC COMMENT**

15 Ken Miller, WFFA, said he still believes in the collaborative vision of forests and fish and still has hope
16 for more win-win outcomes. He referred to his written comment “Make Love, Not War” that depicts a
17 better pathway forward.
18

19 Robert Mitchell said instead of arguing about 50 versus 75-foot buffers, argue about how to fund bigger
20 buffers with revenue generated from financial markets along the lines of Idaho’s Land Endowment Fund.
21

22 The following agenda topics were moved to the November meeting:

- 23 ■ Board Manual Section 14 Survey Protocol for Marbled Murrelet and Section 15 Marbled Murrelet
24 Nesting Platforms
 - 25 ■ Clean Water Act Milestone Update
 - 26 ■ TFW Policy Committee Priorities
 - 27 ■ Rule Making and Board Manual Update
 - 28 ■ Board’s 2023 Work Plan
 - 29 ■ Staff Reports
 - 30 ● Adaptive Management Program Update
 - 31 ● Small Forest Landowner Office Update
 - 32 ● TFW Policy Committee Update
 - 33 ● Upland Wildlife Update
 - 34 ● Western Gray Squirrel Annual Report
- 35

36 **EXECUTIVE SESSION**

37 None.
38

39 Meeting adjourned at 5:05 p.m.
40