



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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April 24, 2025

TO: Forest Practices Board

FROM: Chris Briggs, Forestry Policy Lead, Washington Department of Ecology *CB*

SUBJECT: Update on Preliminary Findings of Ecology's Draft Tier II Antidegradation Analysis for the Board's Type Np Waters Buffer Rule

This memo provides a status update, summary of available preliminary draft findings, and next steps for Ecology's Clean Water Act/Water Quality Standards Tier II Antidegradation Analysis for the Forest Practices Board's draft western Washington Type Non-fish, Perennial (Np) Waters Buffer rule. As mentioned previously, there are specific requirements the Board and Ecology must follow under the Washington State Administrative Procedure Act (APA) (RCW 34.05.328) rule development process and for the Tier II analysis (WAC 173-201A-320).

Status update:

Ecology has made significant progress in completing the preliminary draft western Washington Type Np Buffer Rule Tier II Analysis. Due to the sequencing and timing of recently completed preliminary Board APA rulemaking materials, the schedule has provided insufficient time to incorporate all relevant preliminary APA rulemaking material findings and complete internal agency review for approval of our draft prior to the May 14th FPB meeting mailing. As a reminder, the completed preliminary APA rulemaking items, primarily the final preliminary cost benefit analysis and final preliminary small business economic impact statement, inform Ecology's Tier II analysis. Ecology's goal is to provide a presentation at the Board's May 14th meeting to share our preliminary draft findings. Following the May 14th meeting, Ecology plans to provide the Board with the preliminary draft Tier II Analysis, including time for Board review, prior to June 6th, 2025.

Summary of Current Preliminary Draft Findings:

Ecology is conducting a Tier II antidegradation analysis on the Board's proposed western Washington Type Np Waters Buffer rule. This proposed rule represents a new or expanded action associated with the State Forest Practices Rules, which fall under the "Other water pollution control programs authorized, implemented, or administered by Ecology" (WAC 173-201A-320(2)).

Ecology has made a preliminary draft determination that the proposed buffer rule is likely to meet water quality standards, including Tier II antidegradation protections, in many instances. Ecology finds the proposed rule represents a substantial step forward in water quality protection by way of establishing continuous and more protective buffers compared to baseline rule conditions. We expect a significant amount of Type Np waters will likely be protected from warming beyond the Tier II measurable change threshold of 0.3°C under the proposed rule. However, under certain site-specific conditions, we have simultaneously determined some Type Np waters are likely to warm beyond 0.3°C.

In areas where Type Np waters may continue to warm beyond 0.3°C under the proposed rule, we anticipate the magnitude and duration of the temperature response will be less than the baseline rule conditions. There will also likely be a reduction in the distribution of these waters across the landscape. Critically, we also acknowledge a range of uncertainty with the proposed Type Np buffer prescriptions and expect the effectiveness of each buffer scenario, in the proposed rule, to vary due to regional environmental differences and site-specific factors. Ecology reviewed relevant CMER studies and other best available science to inform our measurable change determination.

Ecology's measurable change determination prompts the Tier II necessary and overriding public interest (OPI) analysis in WAC 173-201A-320(4). The final preliminary economic analyses provided by DNR are key to informing the OPI analysis.

Next steps:

- Ecology looks forward to presenting at the Board's May 14th meeting and sharing further details of our preliminary draft Tier II Analysis.
- Ecology plans to provide our preliminary draft Tier II Analysis report to the Board, including time for Board review, prior to June 6th, 2025.
- Should the Board decide to move forward with a CR-102 for the western Washington Type Np Waters Buffer Rule on June 6th, 2025, Ecology will coordinate with DNR to release the draft Type Np Tier II Analysis for Tribal and public review concurrent with the CR-102 filing, as required by WAC 173-201A-320(2).
- Following a Tier II public review process, Ecology will notify the Board of any significant changes to the analysis. Ecology will publish the final Tier II analysis prior to the Board voting on final rule adoption.

Please contact me if you have any questions or concerns at (360) 890-5882.

cc: Saboor Jawad, DNR Forest Regulation Division Manager
Dan Brown, EPA Northwest Forest Geographic Program Lead