

1 **Forest Practices Board**
2 **Special Board Meeting – October 31-November 1, 2022**
3 Type Np Water Buffer Workshop & Field Tour
4 Zoom Webinar and Room 172, Natural Resources Building, Olympia
5

6 **October 31, 2022**

7 **Members Present**

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

20 **Members Absent:**

21 Ben Serr, Designee for Director, Department of Commerce
22 Vickie Raines, Elected County Commissioner
23

24 **Staff**

25 Saboor Jawad, Adaptive Management Administrator
26 Karen Zirkle, Forest Regulation Assistant Division Manager
27 Marc Engel, Senior Policy Advisor
28 Patricia Anderson, Rules Coordinator
29 Phil Ferester, Senior Counsel
30

31 **WELCOME AND INTRODUCTIONS**

32 Chair Alex Smith called the Forest Practices Board (Board) meeting to order at 11:35 a.m. Board
33 Members and staff introduced themselves.
34

35 **OVERVIEW OF EXISTING TYPE NP WATER RULE**

36 Marc Engel, DNR, provided an overview of the current rule on Type Np water buffers. He said
37 current rules state that:

- 38 • Buffering is accomplished through a combination of sensitive sites and riparian management
39 zone (RMZ) buffers;
- 40 • Two-sided buffers are required for at least 50% of the length of Type Np stream;
- 41 • Buffers are 50- foot wide, two-sided, no-harvest buffers, measured horizontally from the
42 outer edge of bankfull width; and
- 43 • Length of the buffers are determined using the entire length of the Type Np stream starting at
44 the confluence of the Type Np water with either a Type S or F water.
45

46 He described the four-step process, which includes:

- 47 1. Determine the length of required buffer along each side of Type Np Water.
- 48 2. Locate and buffer all sensitive sites within the forest practices operating area.

3. If the percentage of Type Np buffer length is not met by protecting sensitive sites, add Type Np buffers in designated priority areas. This step also includes harvest considerations.
4. Apply the equipment limitation zone (ELZ) provisions. This also includes on-site mitigation if necessary.

TFW POLICY MAJORITY/MINORITY REPORT AND TYPE NP WATER BUFFER ALTERNATIVES

Saboor Jawad, Adaptive Management Program Administrator (AMPA), briefly described why the studies were conducted by CMER and provided an overview of the studies findings. He also described how the studies were designed to address the key questions on how the current rule is meeting the Type Np Water performance targets listed in Schedule L-1. Schedule L-1 outlines the key questions, resource objectives and performance targets for adaptive management.

CMER implemented two studies— Type N Hard Rock lithology Studies (Phase 1 and 2) and the Type N Soft Rock lithology study to answer the adaptive management question in Schedule L-1:

- Hard Rock Studies evaluated whether the riparian buffer prescriptions for Type N waters met the overall Performance Goals to support the long-term viability of stream-associated amphibians and met or exceeded Water Quality Temperature Standards.
- The Soft Rock Study evaluated whether riparian processes and functions are provided by Type N buffers.

Jawad provided the following timeline of activity leading up to today’s discussion:

- The Board approved TFW Policy’s recommendation in 2019 that action needed to be taken to address the Hard Rock Phase 1 study findings and to form a technical Np workgroup to assist Policy in developing a buffer alternative to address the findings.
- At TFW Policy’s November 2021 meeting, dispute was invoked for lack of progress on developing Type Np buffer options for Board consideration
- At their November 2021 meeting the Board approved filing of a CR101 informing the public that Board is considering rule making on the Type Np RMZ rules.
- In January 2022, TFW Policy received the phase 2 of the Hard Rock Study and the Soft Rock Study findings and their final reports.
- July 2022, TFW Policy determined by consensus that the findings for both studies warrant the same action, the development of Type Np buffer options, as the Hard Rock Study, Phase I.
- The Policy formal dispute, stage 2, concluded without consensus, on July 20, 2022. This required Policy caucuses to prepare a majority/minority reports for Board consideration.

The majority and minority recommendations are caucus position papers when consensus cannot be reached in stage 2 of a dispute. Per WAC 222-12-045(2)(h)(D), the Board makes the final determination regarding dispute resolution.

Brandon Austin, Department of Ecology, presented the majority recommendation on behalf of the Westside and Eastside Tribal Caucus, Conservation Caucus and Departments of Ecology and Fish and Wildlife.

He said this option requires all Type Np streams in western Washington to be buffered by a two-sided 75-foot no harvest buffer for the first 600 feet upstream from the F/N break, or for the lowest 600 ft. of the Type Np stream in the case of isolated Type Np streams which have no downstream

1 confluence. Upstream from the first 600 feet of a Type Np stream, the two-sided buffer width is
2 determined by the bankfull width of the stream (BFW).

3
4 He said where Type Np streams have a 3-foot BFW or greater, landowners are required to apply a
5 two-sided 75-foot buffer, where the inner 50-foot is a no harvest zone and the outer 25-foot zone can
6 be managed; or they can apply a two-sided 65-foot fixed-width no harvest buffer prescription.

7
8 Where Type Np streams average less than 3-foot BFW, landowners are required to apply a two-sided
9 50-foot fixed-width no harvest buffer.

10
11 The majority recommendation will still require application of all existing equipment limitation zones,
12 sensitive sites, forest practices hydraulic project, roads, yarding corridors, and unstable slope rules to
13 the full length of all Type Np waters.

14
15 He said the 75-foot management prescription applies upstream from the first 600 feet of a Type Np
16 stream for streams having a 3-foot BFW or greater. The management zone is limited to the outer 25
17 feet of the Type Np buffer. Harvest within the management zone would be an even spaced thinning
18 strategy where 50 percent of the trees must be retained. The majority proposal requires the thinning
19 strategy to be both implementable and enforceable.

20
21 He concluded by stating it is critical that monitoring and future evaluation be a part of the rule
22 package.

23
24 Darin Cramer, WFPA, presented the minority report on behalf of large and small landowners and
25 the counties. He presented the three components in their proposal.

- 26
- 27 • Prescription A - Area control prescription: Type Np stream basins greater than 30 acres and
28 85percent or more harvested over a five-year or less period require a 75-foot wide, two-
29 sided, unmanaged continuous buffer from the confluence of a Type S of F water to the
30 upper point of perennial flow.
 - 31 • Prescription B - 1,000-foot Buffer: Harvest adjacent to Type Np streams require a 75-foot
32 wide, two-sided, unmanaged buffer for 500 feet upstream from the confluence of a Type S
33 or F water and a 50-foot wide, two-sided, unmanaged buffer for the next 500 feet for a
34 total of 1,000 feet. If the 1,000-foot buffer and any other required leave areas due to
35 sensitive sites and/or unstable slopes do not provide a minimum of 50% of the total Np
36 stream length buffered, additional 50-foot buffers are required to meet the objective of 50
37 percent of the Np stream length buffered.
 - 38 • Prescription Small Forest Landowner: This option is the same as prescription A and B, except
39 the buffer configuration is a 50-foot wide, two-sided buffer with the outer 25 feet manageable
40 at the landowner's option. Small landowners who choose to manage within the outer 25 feet
41 buffer may remove half the available volume in a "thin from above" approach.

42 He concluded by adding the importance of monitoring the rules. He said it was a key
43 commitment of Forests and Fish in understanding the overall effectiveness of the rules being
44 implemented across the landscape.

45
46 Board member Cody Desautel asked whether the rising water temperature trend was compared
47 with a control group and if the rising water temperatures is purely a function of harvest or a
48 general trend see in Western Washington because of climate change. Cramer responded that

1 both the hard rock and soft rock studies had both treatments and controls. He said a monitoring
2 program should have been in place to determine the reason for the rising water temperatures.

3
4 Jawad added that the authors of the hard and soft rock studies concluded that the rising water
5 temperatures were the result of the harvest buffers based on the statistical analysis.

6
7 Board member Kelly McLain asked if the data used in the minority recommendations was also
8 used in the majority proposal. Austin responded any data gathered outside of the CMER
9 studies was not used in preparing the majority recommendations. However, the Np technical
10 work group report did evaluate other data and the development of the majority
11 recommendations was based on the work of the Np technical work group.

12
13 Board member Meghan Tuttle asked what would be accomplished by reopening Schedule L-1.
14 Austin responded the majority report recommendation that Schedule L-1 be reviewed to assure
15 consistency with the Ecology's anti-degradation standards is because that goal is not meeting
16 water quality standards. Goals need to be developed to address the resource protection objectives
17 and performance targets of the water quality standards. Cramer agreed with Austin and added
18 there are a number of other resource targets that need to be addressed that are similarly
19 complicated.

20
21 Board member Tuttle also questioned in the majority report, the reference to the streams that
22 were less than three feet, and the fact that they were not part of the hard rock or soft rock
23 studies. Austin responded that three foot was chosen because it was the minimum bankfull width
24 in the study sites.

25
26 **PUBLIC COMMENT ON THE MAJORITY/MINORITY REPORT AND TYPE NP**
27 **WATER BUFFER ALTERNATIVES**

28 Ray Entz, Kalispel Tribe of Indians, said the two Type Np studies indicated that the rule did not
29 protect water quality standards, specifically temperature. The majority of caucuses considered the
30 studies and technical recommendations from the Np workgroup to determine a reasonable option
31 that considered the potential impacts to economics. He said there is a disagreement with the
32 resource and economic objectives.

33
34 Kevin Godbout, Weyerhaeuser Company, described the process to develop the landowner
35 proposal was responsive to the CMER studies at the site scale and an adjustment of the
36 regulatory opportunity to improve the buffering at the landscape level. The "area control" option
37 was developed and is the only consensus option before the Board. He urged the Board to keep in
38 mind that the landowner proposal is responsive to the studies.

39
40 Jason Spadaro, Washington Forest Protection Association (WFPA), said forest landowners put a
41 high priority on maintaining cold and clean water coming off forestlands. He said as
42 conversations are held about other land uses and all watershed approaches, we need to remember
43 the successes that have been made in Forests and Fish, like the Forest Practices Habitat
44 Conservation Plan (FPHCP). The FPHCP comes with benefits of resource protection on a
45 landscape level with regulatory certainty for the landowners. He said the minority proposal
46 increases current protections from the current regulatory scheme, and monitoring data is needed
47 for further changes to rules.

1 Elaine Oneil, Washington Farm Forestry Association (WFFA), said the issue we are trying to
2 solve with this proposed rulemaking is one of exceeding a limit established by Department of
3 Ecology. She said the temperature rise was expected and anticipated in the original Forests and
4 Fish agreement and it appears that Ecology Director Watson is the only one that this is a problem
5 for because these streams mostly do not hit the threshold of 16 C (the designated use standard) to
6 protect salmon and with a little tweaking could avoid ever doing so. The majority proposal will
7 cost upwards of an additional half billion dollars in direct lost timber value plus additional costs
8 for extra roads and crossings. She encouraged the Board to read the entirety of the minority
9 proposal with an open mind. Many solutions are offered that still cost a lot but somewhat
10 mitigate the half billion dollars in lost revenue.

11
12 Peter Goldman, Washington Forest Law Center, said the Board needs to honor and defer to
13 Department of Ecology, and EPA’s discretion as to what proposed rule best protects water
14 quality and which rule prescription protects water quality. He also expressed disappointment
15 that DNR withdrew from the majority report at the 11th hour. If DNR had “technical” concerns
16 with the Majority report, it could have announced them at TFW Policy and sought to influence
17 the majority and minority’s decision.

18
19 Ken Miller, WFFA, said he understands Department of Ecology has an interest in seeing their
20 rules being followed and that industry has economic and regulatory stability interest that has led
21 them to offer up more leave trees based on questionable inferences from the Hard and Soft rock
22 studies. He questioned whether the rule needs to be changed or enforced considering there is no
23 known actual harm to resources. He asked the Board to include a “do nothing” option when
24 deciding on what needs to occur.

25
26 **BOARD DISCUSSION with** Brandon Austin, Department of Ecology; Cody Thomas,
27 Northwest Indian Fisheries Commission; Alec Brown, Conservation Caucus; Darin Cramer,
28 Washington Forest Protection Association; Ken Miller, Washington Farm Forestry Association;
29 and Court Stanley, Washington State Association of Counties

30
31 Chair Smith noted for the record that DNR is not planning to submit a proposal or
32 recommendation to the Board at this point. She said the Commissioner thought there were
33 questions that the science did not answer, understanding the study designs were not designed to
34 answer those questions, but left enough room for questions and that the two proposals
35 ultimately did not strike a balance between protecting water quality, and a consideration of the
36 economic hardships to landowners.

37
38 Board Member Rich Doenges asked how did TFW Policy work together to find commonalities
39 to bring forward the two proposals. Austin responded that once the Type Np technical work group
40 report was completed, TFW Policy attempted to hold meetings where the recommendations were
41 discussed based on the elements of the report. Each caucus had a suggestion/idea on where to
42 start.

43
44 Cramer added that positions were drawn long ago prior to the studies being completed that made
45 it hard for all to move beyond.

46
47 Board member Doenges asked Austin to explain how the anti-degradation standards apply in the
48 forested environment. Austin replied the anti-degradation standards have been part of the water

1 quality standards since 1992. He said the anti-degradation standards are an element of tier two
2 waters that require efforts to repair the impairment of any waters of high quality that don't exceed
3 the designated use criteria. These waters are not allowed to warm more than 0.3 degrees Celsius
4 and the standards apply to all Tier two waters, whether they contain fish or not.
5

6 Chair Smith asked what the Department of Ecology would achieve by conducting a Tier two
7 analysis. Austin replied there's a number of factors that are looked at once there's a proposed rule
8 to determine whether the waters meet the water quality standard of 0.3 C, and if they don't,
9 Ecology must determine if the rise in stream temperature is necessary and by how much the
10 temperature rise will not meet the standard.
11

12 Austin stated if a rule making was initiated (CR-102) and a Tier 2 analysis failed to meet the
13 anti-degradation standards, Department of Ecology and the Board would need to work together
14 to ensure the rule proposal is acceptable to Ecology.
15

16 Board member Steve Barnowe-Meyer asked why there is not a different prescription for small
17 forest landowners in the majority recommendation. Alec Brown responded that it did come up
18 during Stage two of dispute resolution but one was never presented. Therefore, the caucuses
19 never developed one. Austin said the results of the study did not have an allowance for reducing
20 the width of the buffers; is very site specific and the alternate plan process is available. Cody
21 Thomas added the Eastside proposal did have a small forest landowner component early on in
22 the discussions but it did not go any further.
23

24 Board member Pene Speaks asked if there was agreement on the study design of the Hard rock
25 and Soft rock studies and why there is disagreement with the results. Cramer responded there
26 was agreement on the study designs and we are not in disagreement with the results. It is how you
27 interpret and apply those results in the policy environment.
28

29 Board member Barnowe-Meyer suggested TFW Policy review the Type Np technical report for
30 additional opportunities to make use of the Hard and Soft Rock study data to further inform or
31 identify future Type Np studies including extensive monitoring.
32

33 Board member Jeff Davis said our system is designed to look back and test decisions that were
34 made over twenty years ago which he stated is a bit worrisome, and he questioned whether there
35 is a do- loop in the process. He is hoping that the effectiveness monitoring study will be forward
36 looking forward in its design because the streams are warming up, no matter what, because of
37 climate change.
38

39 Austin said the two Type N studies produced enough information to make a recommendation on a
40 rule change and all the caucuses agree that more monitoring needs to happen. He stated a rule
41 change needs to happen and then the adaptive management program will study the change.
42

43 Chair Smith asked if there were any conversations on implementation and enforcement
44 regarding Prescription A. Cramer responded that it was brought up many times but the details
45 were never discussed. Cramer said TFW Policy is confident they could figure it out if the
46 Board chose this prescription.
47
48

1 **OVERVIEW OF FIELD TOUR**

2 Marc Engel, DNR, provided an overview of the field tour sites. He said the tour would be on
3 Port Blakely Tree Farm. Board members and members of the public who are attending will meet
4 in the visitor parking area at 8:30 a.m. Tour packets will be handed out tomorrow morning.
5

6 The tour will include the majority and minority alternatives as well as the current rule flagged
7 out on the ground.
8

9 **EXECUTIVE SESSION**

10 None.

11

12 Meeting adjourned at 2:35 p.m.

1 Day Two – Field Tour

2 **Members Present**

3 Alex Smith, Chair, Department of Natural Resources

4 Dave Herrera, General Public Member

5 Kelly McLain, Designee for Director, Department of Agriculture

6 Meghan Tuttle, General Public Member

7 Pene Speaks, General Public Member

8 Rich Doenges, Designee for Director, Department of Ecology

9 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner

10 Wayne Thompson, Timber Product Union Member

11

12 **Members Absent:**

13 Ben Serr, Designee for Director, Department of Commerce

14 Cody Desautel, General Public Member

15 Frank Chandler, General Public Member/Independent Logging Contractor

16 Jeff Davis, Designee for Director, Department of Fish and Wildlife

17 Vickie Raines, Elected County Commissioner

18

19 The Forest Practices Board visited Port Blakely Tree Farm to see how the current Type Np water
20 buffer rules are applied in the field and alternatives for how the rule could be modified in the
21 future.

22

23 Tour concluded at 2 p.m.