



DEPARTMENT OF
NATURAL
RESOURCES

OFFICE OF THE
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MEMORANDUM

February 28, 2024

To: Forest Practices Board

FROM: Saboor Jawad, Forest Regulation Division Manager

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SUBJECT: Monthly Progress Update: Developing Rule Materials for Water Typing System Rule and Type Np Waters Buffer Rule

DNR is implementing a series of Board decisions on two rules: the permanent Water Typing System Rule (WTR), and the Type Np Water buffer rule (Type Np). Staff are also following Board guidance on sequencing the rule development work. This memo is a monthly progress update to the Board.

For each rule, staff are developing the following materials:

- Administrative rule language
- Spatial analysis
- Preliminary cost-benefit analysis (CBA)
- Preliminary Small Business Economic Impact Statement (SBEIS)
- State Environmental Policy Act (SEPA) analysis
- Board Manual technical guidance

The rule packet materials are requirements of the Administrative Procedures Act (APA); the Regulatory Fairness Act (RFA); and the State environmental Policy Act (SEPA). Spatial analysis is not a rule requirement but its results partially informs the CBA and SEPA. Board Manual guidance is required under the Forest Practices Rules, and is included to help understand how the rule requirements would be applied during the public comment period.

The following is a summary of progress as of this update:

- 1- **Rule Language:** The January memo acknowledged staff has coordinated with stakeholders the development of rule language for both rules. Though this effort is largely complete, the Board accepted at the February meeting that staff will edit each rule for clarification and to assure full implementation. Revised rule language will be shared with stakeholders by email. Staff are not planning to reconvene stakeholder

group for rule language drafting. The Board, however, will receive the revised rule language in a future monthly update.

- *Water Typing System Rule:* Following the board discussion at the February 2024 regular meeting, staff will revise the WTR rule language to 1) align the definition of Off-Channel Habitat with prior Board decisions on the subject; and 2) clarify barrier and obstacle language associated with the Potential Habitat Break (PHB) Options.
- *Type Np Water buffer rule:* Staff is clarifying the protections of the Type Np Water buffer rules to assure all elements of the sensitive site protections are applied within the Type Np buffers; and, to assure appropriate clarifying language and formatting will facilitate full implementation of the Type Np rules in the new WAC 222-30-0211 or -024 *Western Washington riparian protections for Type Np and Ns Waters.*

- 2- **Spatial Analysis:** DNR continues to work closely with the contractor for the spatial analysis for both the water typing system and Type Np Water buffer rules. Spatial analysis has continued to be a challenging process requiring numerous reviews of spatial products for quality and precision.

Staff expect this iterative process to continue until completion with an anticipated completion date of 8th March for the water typing system rule, and 22nd March for the Type Np Water buffer rule. DNR staff plans to share the final draft spatial analysis and all data and products along with a detailed methodology once DNR accepts deliverables under this contract and the work is entirely complete. TFW stakeholders will be provided up to two weeks each for both Water Typing and Type Np analysis to review and provide written comments on the final report. Afterwards, the final draft will be shared with the Board and forwarded for use in the CBA for each rulemaking. On spatial analysis, unless directed otherwise by the Board, DNR staff will follow the above stakeholder engagement strategy.

CBA and SBEIS: DNR has entered into a contract with Industrial Economics to complete the preliminary CBA and SBEIS. The DNR stakeholder economist workgroup continues to meet for the WTR. The group met on February 22, 2024 to begin work to establish the priorities and timeline for review of the results of the spatial analysis and the CBA process.

In parallel, DNR issued a Request for Qualifications and Quotes (RFQQ) to solicit bids for Type Np CBA. The bids are expected 24th March and contract to be issued in April 2024.

- 3- **SEPA:** Initial screening continues for the preparation of the SEPA for WTR and will be conducted by DNR staff with the Board Chair, as the Responsible Official, issuing a threshold determination by July 2024.

DNR staff is also discussing the SEPA process for the Type Np rulemaking, staff intends to issue RFQQ to review all potential environmental impacts of the Type Np rulemaking.

If DNR staff conducts the SEPA analysis and the Responsible Official makes a Determination of Non-Significance, the current estimated completion date is November 2024. If the threshold determination is of a significant adverse environmental impact, DNR will establish a contract to bring expertise in to conduct an environmental impact analysis and issue an EIS. Recent agency EIS efforts are taking upwards of two years and over \$250k to complete, depending on complexity. See attachment A for an illustration of the timeline and sequence of work.

- 4- **Board Manual Guidance:** For WTR, work on developing Board Manual Section 23 is underway. DNR will convene a stakeholder group to accomplish this component. Work on amending Board Manual Section 7 for the Type Np rule will start in August 2024.

Attachment A illustrates the rule making timeline as well as denotes all completed and ongoing activities. While no major delays have occurred, the following are likely sources and reasons for any potential delay in rule material development: 1) all contracted work including cost-benefit analysis and spatial analysis requiring both DNR quality assurance and, where applicable, stakeholder review; 2) all work items requiring additional stakeholder engagement and public review; 3) potential delays in negotiating contracts and completing procurement processes (i.e., RFP, RFQQ and etc.); and 4) a SEPA determination of significance requiring an Environmental Impact Statement.

Please reach out to me if you have any questions. You are also welcome to reach out to the following DNR staff:

- 1- Marc Engel, Senior Policy Advisor (marc.engel@dnr.wa.gov)
- 2- Karen Zirkle, Assistant Division Manager Policy and Landowner Services (karen.zirkle@dnrwa.gov)
- 3- Maggie Franquemont, Policy Program Manager (Maggie.franquemont@dnr.wa.gov)

Attachments:

- A- Rule making timeline



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Attachment A: Rule Making Timeline

Rule and Rule Materials	% Complete	Status	Feb-24	May-24	Aug-24	Nov-24	Feb-25	May-25	Aug-25	Nov-25	Feb-26	May-26	Aug-26	Nov-26
Water Typing Rule														
Rule Language	100%	Complete. <i>Minor revisions needed</i>												
Synthetic Streams Spatial Analysis														
Conduct Spatial analysis	60%	Ongoing												
Draft Report including methodology available for stakeholder review	0%	planned												
Cost Benefit Analysis & SBEIS	10%													
Conduct Analysis		ongoing												
Preliminary CBA & SBEIS Complete		planned												
Final CBA & SBEIS Complete		planned												
SEPA Analysis	0%													
SEPA Analysis (timeline reflects a DNS ONLY)		Planned												
Final SEPA Determination signed before FPB CR102 approval		Planned												
SEPA public comment period		Planned												
Concise Explanatory Statement	0%	Planned												

Initiate Rulemaking	0%	Planned												
CR102, public meetings, public comment,														
CR103 adopts rule by the FPB & approves BM23														
Rule in effect within 30 days														
Rule and Rule Materials	% Complete	Status	Feb-24	May-24	Aug-24	Nov-24	Feb-25	May-25	Aug-25	Nov-25	Feb-26	May-26	Aug-26	Nov-26
Type Np Buffer Rule w/SEPA DNS														
Rule Language	100%	Complete <i>Minor edits/revisions needed</i>												
Synthetic Streams Spatial Analysis	40%													
Conduct Spatial analysis		Ongoing												
Draft Report including methodology available for stakeholder review														
SEPA Analysis	0%													
DNS														
Final SEPA Determination signed before FPB CR102 approval														
SEPA public comment period														
Cost Benefit Analysis & SBEIS	0%													
Conduct Analysis														
Preliminary CBA & SBEIS Complete														
Final CBA & SBEIS Complete														
Concise Explanatory Statement	0%													

Initiate Rulemaking	0%													
CR102, public meetings, public comment, etc.														
CR103 adopts rule by the FPB & approves BM23														
Rull in effect within 30 days														
Rule and Rule Materials	% Complete	Status	Feb-24	May-24	Aug-24	Nov-24	Feb-25	May-25	Aug-25	Nov-25	Feb-26	May-26	Aug-26	Nov-26
Type Np Buffer Rule w/SEPA DS and EIS														
DS and EIS														
Final SEPA Determination signed before FPB CR102 approval														
SEPA public comment period														
Cost Benefit Analysis & SBEIS	0%													
Conduct Analysis														
Preliminary CBA & SBEIS Complete														
Final CBA & SBEIS Complete														
Concise Explanatory Statement	0%													
Initiate Rulemaking	0%													
CR102, public meetings, public comment, etc.														
CR103 adopts rule by the FPB & approves BM23														
30 days rule official														



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