Summary of Forest Practices Rules and Tier II Antidegradation Policy

1. Forest Practices Rules (FPR) Adopted in 2001 Were Consistent with Then-Existing Antidegradation Law

- The 2001 FPRs implemented the Forest and Fish Report and were understood to meet the State's Tier II antidegradation standards in place at the time (WAC 173-201A-070).
- That standard allowed some pollution of high-quality waters if:
  (1) it served an **Overriding Public Interest (OPI**),
  (2) **Reasonable BMPs** (best management practices) were applied, and
  (3) the water quality was still sufficient to **support existing uses.**
- **No 0.3°C limit** for temperature increases existed at that time.
- The Forest and Fish Report and its implementing rules explicitly included goals to meet water quality standards and antidegradation obligations.

2. Ecology's 2003 Tier II Regulation Recognized Forest Practices as a Water Pollution Control Program (WPCP)

- The new rule formalized **Tier II protections**, including the concept of measurable change (e.g., 0.3°C for temperature) as a **screening tool**, not a hard limit.
- Ecology **explicitly recognized** the Forest Practices Rules as a WPCP whose compliance with Tier II is ensured via a **robust Adaptive Management Program (AMP)**.
- L**owering of water quality is allowed** under Tier II if:
  (1) it is **necessary,** and
  (2) it serves the **OPI.**
- The AMP was meant to be the vehicle to demonstrate compliance, making project-specific Tier II reviews unnecessary.

3. Ecology's Post-2019 Misinterpretation of Tier II as a Hard Temperature Limit

- Beginning around 2019–2021, Ecology **reinterpreted the 0.3°C threshold** as a **hard temperature cap**, not a screening threshold—contradicting its own prior guidance.
- This reinterpretation:
  - Was used in **AMP Technical Workgroup** evaluations and the 2021 Final Report.
  - It shaped the **Majority Report** buffer proposal, claiming any increase above 0.3°C was a Tier II violation.
  - It appeared in **2022 CWA Assurances letters** and internal Ecology documents.
- This **misguided reinterpretation excluded viable alternatives** and likely undermined the legality of the AMP process and pending rulemaking.

4. Ecology's 2025 Tier II Analysis Acknowledges Prior Errors and Offers a Reset Opportunity

- Ecology's 2025 Tier II analysis correctly states:
  - Tier II allows **measurable lowering of water quality** if justified under necessity **and OPI**.
  - The 0.3°C value is **not a limit or violation**, but a **trigger for further analysis.**
- **This admission is an opportunity to reset the AMP process:**
  - **Clarify** that 0.3°C is a screening threshold, not a cap.
  - Return to the **original AMP mandate**: Assess whether current Np buffers **significantly impair** the ability of streams to meet water quality standards and Tier II protections.
  - Evaluate whether measurable warming is **necessary** and in the **public interes**t, consistent with WAC 173-201A-320(4).
  - Reconsider **all reasonable BMP alternatives**, not just the high-cost ones.