

2 E2SHB 1893 - S AMD TO EQWR COMM AMD (S-2595.2/99) - 332
3 By Senators Benton, Morton, T. Sheldon and Shin

4 ADOPTED 4//99

5 On page 13, after line 2 of the amendment, insert the following:

6 "Sec. 13. RCW 75.20.100 and 1998 c 190 s 87 are each amended to
7 read as follows:

8 (1) In the event that any person or government agency desires to
9 construct any form of hydraulic project or perform other work that will
10 use, divert, obstruct, or change the natural flow or bed of any of the
11 salt or fresh waters of the state, such person or government agency
12 shall, before commencing construction or work thereon and to ensure the
13 proper protection of fish life, secure the approval of the department
14 as to the adequacy of the means proposed for the protection of fish
15 life. This approval shall not be unreasonably withheld.

16 (2)(a) Except as provided in RCW 75.20.1001, the department shall
17 grant or deny approval of a standard permit within forty-five calendar
18 days of the receipt of a complete application and notice of compliance
19 with any applicable requirements of the state environmental policy act,
20 made in the manner prescribed in this section.

21 (b) The applicant may document receipt of application by filing in
22 person or by registered mail. A complete application for approval
23 shall contain general plans for the overall project, complete plans and
24 specifications of the proposed construction or work within the mean
25 higher high water line in salt water or within the ordinary high water
26 line in fresh water, and complete plans and specifications for the
27 proper protection of fish life.

28 (c) The forty-five day requirement shall be suspended if:

29 (i) After ten working days of receipt of the application, the
30 applicant remains unavailable or unable to arrange for a timely field
31 evaluation of the proposed project;

32 (ii) The site is physically inaccessible for inspection; or

33 (iii) The applicant requests delay. Immediately upon determination
34 that the forty-five day period is suspended, the department shall
35 notify the applicant in writing of the reasons for the delay.

1 (d) For purposes of this section, "standard permit" means a written
2 permit issued by the department when the conditions under subsections
3 (3) and (5)(b) of this section are not met.

4 (3)(a) The department may issue an expedited written permit in
5 those instances where normal permit processing would result in
6 significant hardship for the applicant or unacceptable damage to the
7 environment. In cases of imminent danger, the department shall issue
8 an expedited written permit, upon request, for work to repair existing
9 structures, move obstructions, restore banks, protect property, or
10 protect fish resources. Expedited permit requests require a complete
11 written application as provided in subsection (2)(b) of this section
12 and shall be issued within fifteen calendar days of the receipt of a
13 complete written application. Approval of an expedited permit is valid
14 for up to sixty days from the date of issuance.

15 (b) For the purposes of this subsection, "imminent danger" means a
16 threat by weather, water flow, or other natural conditions that is
17 likely to occur within sixty days of a request for a permit
18 application.

19 (c) The department may not require the provisions of the state
20 environmental policy act, chapter 43.21C RCW, to be met as a condition
21 of issuing a permit under this subsection.

22 (d) The department or the county legislative authority may
23 determine if an imminent danger exists. The county legislative
24 authority shall notify the department, in writing, if it determines
25 that an imminent danger exists.

26 (4) Approval of a standard permit is valid for a period of up to
27 five years from date of issuance. The permittee must demonstrate
28 substantial progress on construction of that portion of the project
29 relating to the approval within two years of the date of issuance. If
30 the department denies approval, the department shall provide the
31 applicant, in writing, a statement of the specific reasons why and how
32 the proposed project would adversely affect fish life based on sound
33 science and applicable documentation. Protection of fish life shall be
34 the only ground upon which approval may be denied or conditioned.
35 Chapter 34.05 RCW applies to any denial of project approval,
36 conditional approval, or requirements for project modification upon
37 which approval may be contingent.

38 (5)(a) In case of an emergency arising from weather or stream flow
39 conditions or other natural conditions, the department, through its

1 authorized representatives, shall issue immediately, upon request, oral
2 approval for removing any obstructions, repairing existing structures,
3 restoring stream banks, or to protect property threatened by the stream
4 or a change in the stream flow without the necessity of obtaining a
5 written approval prior to commencing work. Conditions of an oral
6 approval to protect fish life shall be established by the department
7 and reduced to writing within thirty days and complied with as provided
8 for in this section. Oral approval shall be granted immediately, upon
9 request, for a stream crossing during an emergency situation.

10 (b) For purposes of this section and RCW 75.20.103, "emergency"
11 means an immediate threat to life, the public, property, or of
12 environmental degradation.

13 (c) The department or the county legislative authority may declare
14 and continue an emergency when one or more of the criteria under (b) of
15 this subsection are met. The county legislative authority shall
16 immediately notify the department if it declares an emergency under
17 this subsection.

18 (6) The department shall, at the request of a county, develop five-
19 year maintenance approval agreements, consistent with comprehensive
20 flood control management plans adopted under the authority of RCW
21 86.12.200, or other watershed plan approved by a county legislative
22 authority, to allow for work on public and private property for bank
23 stabilization, bridge repair, removal of sand bars and debris, channel
24 maintenance, and other flood damage repair and reduction activity under
25 agreed-upon conditions and times without obtaining permits for specific
26 projects.

27 (7) This section shall not apply to the construction of any form of
28 hydraulic project or other work which diverts water for agricultural
29 irrigation or stock watering purposes authorized under or recognized as
30 being valid by the state's water codes, or when such hydraulic project
31 or other work is associated with streambank stabilization to protect
32 farm and agricultural land as defined in RCW 84.34.020. These
33 irrigation or stock watering diversion and streambank stabilization
34 projects shall be governed by RCW 75.20.103.

35 A landscape management plan approved by the department and the
36 department of natural resources under RCW 76.09.350(2), shall serve as
37 a hydraulic project approval for the life of the plan if fish are
38 selected as one of the public resources for coverage under such a plan.

1 (8) For the purposes of this section and RCW 75.20.103, "bed" means
2 the land below the ordinary high water lines of state waters. This
3 definition does not include irrigation ditches, canals, storm water
4 run-off devices, or other artificial watercourses except where they
5 exist in a natural watercourse that has been altered by man.

6 (9) The phrase "to construct any form of hydraulic project or
7 perform other work" does not include the act of driving across an
8 established ford. Driving across streams or on wetted stream beds at
9 areas other than established fords requires approval. Work within the
10 ordinary high water line of state waters to construct or repair a ford
11 or crossing requires approval.

12 This section does not apply to small scale prospecting and mining
13 activities, which are governed by section 14 of this act.

14 NEW SECTION. Sec. 14. A new section is added to chapter 75.20 RCW
15 to read as follows:

16 (1) Small scale prospecting and mining is exempt from the
17 provisions of this chapter, provided that aggregate containing fish
18 eggs or fry are not collected or processed at any time.

19 (2) Small scale prospecting and mining may take place landward of
20 the ordinary high water mark of any stream at any time of the year, if
21 such activity does not require an approved plan of operation on public
22 lands provided for in 43 C.F.R. Sec. 3830 through 3850 or 36 C.F.R.
23 Sec. 228 subpart A as they existed on the effective date of this
24 section.

25 (3) For the purposes of this chapter, "small scale prospecting and
26 mining" means the use of methods such as pans, sluice boxes,
27 concentrators, and minirocker boxes for the discovery and recovery of
28 minerals at or below the ordinary high water mark."

29 Renumber the remaining sections consecutively and correct any
30 internal references accordingly.

31 On page 14, after line 22 of the amendment, strike all of section
32 16 and insert the following:

33 "NEW SECTION. Sec. 16. Sections 13, 14, and 15 of this act are
34 necessary for the immediate preservation of the public peace, health,
35 or safety, or support of the state government and its existing public

1 institutions. Sections 13 and 14 of this act take effect immediately
2 and section 15 of this act takes effect June 29, 1999."

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5 ADOPTED 4/89/99

6 On page 14, line 32 of the title amendment, after "90.60.100,"
7 insert "75.20.100," and beginning on line 33 of the title amendment,
8 after "90.60 RCW;" strike "adding a new section to chapter 75.20 RCW;"
9 and insert "adding new sections to chapter 75.20 RCW;"

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