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HOUSE BILL 2820

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State of Washington

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2000 Regular Session

By Representatives G. Chandler, B. Chandler, Lisk and Skinner

Read first time 01/21/2000. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to classification, jurisdiction, and use of  
2 irrigation district conveyance and drainage facilities; amending RCW  
3 75.20.100; and adding a new section to chapter 90.48 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW  
6 to read as follows:

7 Rules adopted by the department under RCW 90.48.260 that may impact  
8 a federal reclamation project constructed by the United States in  
9 accordance with state and federal law shall be consistent with  
10 authorized project purposes and shall not impair authorized project  
11 contracts or interfere with the construction, operation, or maintenance  
12 of project facilities.

13 The department shall, cooperatively with the United States bureau  
14 of reclamation and federal reclamation project irrigation districts,  
15 adopt water quality classifications for agriculture and warm water  
16 fisheries, adopt rules that consider and reflect the use of constructed  
17 storage and conveyance facilities and other water transport systems  
18 used for authorized project purposes, and adopt rules that consider and  
19 reflect the unique site-specific characteristics of the arid and

1 semiarid regions of the state of Washington where federal reclamation  
2 projects are located.

3 **Sec. 2.** RCW 75.20.100 and 1998 c 190 s 87 are each amended to read  
4 as follows:

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

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

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

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

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

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

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

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

36 (3)(a) The department may issue an expedited written permit in  
37 those instances where normal permit processing would result in  
38 significant hardship for the applicant or unacceptable damage to the

1 environment. In cases of imminent danger, the department shall issue  
2 an expedited written permit, upon request, for work to repair existing  
3 structures, move obstructions, restore banks, protect property, or  
4 protect fish resources. Expedited permit requests require a complete  
5 written application as provided in subsection (2)(b) of this section  
6 and shall be issued within fifteen calendar days of the receipt of a  
7 complete written application. Approval of an expedited permit is valid  
8 for up to sixty days from the date of issuance.

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

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

16 (d) The department or the county legislative authority may  
17 determine if an imminent danger exists. The county legislative  
18 authority shall notify the department, in writing, if it determines  
19 that an imminent danger exists.

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

31 (5)(a) In case of an emergency arising from weather or stream flow  
32 conditions or other natural conditions, the department, through its  
33 authorized representatives, shall issue immediately, upon request, oral  
34 approval for removing any obstructions, repairing existing structures,  
35 restoring stream banks, or to protect property threatened by the stream  
36 or a change in the stream flow without the necessity of obtaining a  
37 written approval prior to commencing work. Conditions of an oral  
38 approval to protect fish life shall be established by the department  
39 and reduced to writing within thirty days and complied with as provided

1 for in this section. Oral approval shall be granted immediately, upon  
2 request, for a stream crossing during an emergency situation.

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

6 (c) The department or the county legislative authority may declare  
7 and continue an emergency when one or more of the criteria under (b) of  
8 this subsection are met. The county legislative authority shall  
9 immediately notify the department if it declares an emergency under  
10 this subsection.

11 (6) The department shall, at the request of a county, develop five-  
12 year maintenance approval agreements, consistent with comprehensive  
13 flood control management plans adopted under the authority of RCW  
14 86.12.200, or other watershed plan approved by a county legislative  
15 authority, to allow for work on public and private property for bank  
16 stabilization, bridge repair, removal of sand bars and debris, channel  
17 maintenance, and other flood damage repair and reduction activity under  
18 agreed-upon conditions and times without obtaining permits for specific  
19 projects.

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

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

32 (8) For the purposes of this section and RCW 75.20.103, "bed" means  
33 the land below the ordinary high water lines of state waters. ((This  
34 definition does not include irrigation ditches, canals, storm water  
35 run-off devices, or other artificial watercourses except where they  
36 exist in a natural watercourse that has been altered by man.)) "Bed"  
37 and "waters of the state" do not include irrigation canals, ditches,  
38 facilities, laterals, drainage ditches, wasteways, storm water run-off  
39 facilities or other artificial, man-altered watercourses that use

1 natural watercourses if the natural watercourse, before irrigation  
2 development or being altered by man, only conveyed storm event or  
3 intermittent, seasonal run-off, or snowmelt and would not, before  
4 irrigation development or alteration, have for at least twelve months  
5 each year contained fish life.

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.

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