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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CASCADIA WILDLANDS,

Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

Respondent,

and

RESOURCES COALITION, INC.,

Intervenor.

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

The Department's assertion that RCW 77.55.091 ("Section .091") authorizes it to waive the HPA permit process for suction dredging and any other mining method is completely unsupported by the plain language of the statute, the statutory scheme, and the legislative history. The Department's interpretation fails under the plain meaning rule, which requires statutes to be read as a whole and in context, and requires exceptions to statutory schemes to be interpreted narrowly. Relying on one sentence to support its position, the Department ignores critical context both within Section .091 and in the broader statutory scheme of the Hydraulic Code, which is designed to protect fish. The Department ignores a legislative history that is replete with evidence that contradicts its position. As a result of the Department's strained and unsupported interpretation, the agency has failed to track riverbed mining to any meaningful degree for the last 20 years, undermining the Hydraulic Code and putting fish at greater risk of harm.

II. ARGUMENT

A. The Department's Arguments Fail Under the Plain Meaning Rule

When interpreting a statute, a court's fundamental objective is to determine and effectuate legislative intent. *Dep't of Ecology v. Campbell*

& *Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Analysis of legislative intent is governed by the plain meaning rule. Under the plain meaning rule the court is guided by the ordinary meaning of words, the basic rules of grammar, and statutory context. *Darkenwald v. Emp't Sec. Dep't*, 183 Wn.2d 237, 245, 350 P.3d 647 (2015). No deference is granted to the agency under this analysis. *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 409, 377 P.3d 199 (2016). Exceptions to statutory schemes are interpreted narrowly. *Swinomish Indian Tribal Comty. v. Dep't of Ecology*, 178 Wn.2d 571, 582, 311 P.3d 6 (2013).

1) *Section .091 is Not Silent on Suction Dredging*

The Department claims it is authorized to waive the HPA process for suction dredging because Section .091 is silent on the activity. The Department implies that its rule simply fills a gap in the statute because suction dredging is not addressed specifically by name. This argument ignores two critical facts: 1) the definition of small-scale mining is deliberately narrow, limiting small-scale mining to just four methods and expressly excluding suction dredging from that list; and 2) as an exception to the Hydraulic Code, Section .091 should be narrowly construed to give effect to the general requirement that hydraulic projects, like suction

dredging, require individual HPA permits.¹ Contrary to the Department's claim, Section .091 leaves no gap to fill when it comes to the Department's power to waive the HPA permit process.

Far from being silent on suction dredging, the omission of suction dredging from the small-scale mining definition loudly voices the Legislature's intent to limit the HPA permit waiver to the four methods enumerated in the definition. The Department offers no explanation as to why the Legislature defined small-scale prospecting and mining as "use of *only* the following methods: Pans, nonmotorized sluice boxes, concentrators, and minirocker boxes." RCW 77.55.011(21) (emphasis added). The Department's interpretation renders the term "only" superfluous, and flips Section .091 on its head. Rather than limiting its authority to waive the HPA permit for *only* the mining methods enumerated in the statute, the Department asserts that it has the authority to waive the HPA permit process for *any* mining activity. Had the Legislature intended the Department to wield the power it claims, it would not have included the term "only" in the definition of small-scale mining. The Department's interpretation ignores the use of "only" in the

¹ As in the Opening Brief, all references to "mining" incorporate the term "prospecting." For example, "small-scale mining" is shorthand for "small scale prospecting and mining."

definition, rendering the pivotal term superfluous. (Under the plain meaning rule courts must interpret the statute to give effect to all language, so as to render no portion superfluous. *Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010). The Department's failure to address this issue is telling.

The Department also ignores the general statutory scheme of the Hydraulic Code. Under the plain meaning rule, the statutory scheme must be taken into account, and exceptions to that scheme are interpreted narrowly so as to give effect to the broader scheme. *Swinomish*, 178 Wash.2d at 582. The fundamental rule under the Hydraulic Code is that an individual HPA permit is required for hydraulic projects. *See* RCW 77.55.021. Suction dredging and all forms of riverbed mining are hydraulic projects. Section .091 is an exception to the Hydraulic Code. As such, it should be narrowly interpreted to give effect to the broader scheme: the requirement of an HPA permit for the protection of fish. There is no need for Section .091 to specifically state that suction dredging (or any other hydraulic project for that matter) requires a permit because the statutory scheme already makes that fact perfectly clear; a permit is required for all hydraulic projects unless specifically exempted from the requirement.

The definition of small-scale mining is specific and narrow. There is no need for the statute to specifically mention suction dredging or any other method of mining that is not included in the definition. All other forms of mining are excluded by use of the term “only.” Likewise, there is no need to specifically mention that suction dredging or any other hydraulic project requires an HPA permit because the Hydraulic Code already makes that fact clear. An HPA permit is the default rule under the Hydraulic Code, and caselaw requires a narrow interpretation of Section .091 to give effect to the broader scheme of the Hydraulic Code. Simply, Section .091 leaves no gap to fill regarding waiver of the HPA permit process. The Department’s argument to the contrary fails to address these critical aspects of the statute and caselaw.

2) The Department’s Interpretation of Subsection 3 Ignores Statutory Context, Disregarding the Interwoven Nature of the Statute and Undermining the Legislature’s Mandate to Continue to Issue HPA Permits

In an attempt to sidestep Section .091’s clear emphasis on small-scale mining, which by definition excludes suction dredging, the Department attempts to distinguish RCW 77.55.091(3) (“Subsection 3”) from the rest of the statute. To prevail, the Department must demonstrate that Subsection 3 grants the agency an authority that is distinct from the authority and structure of the rest of the statute – the authority to waive the

HPA permit for any mining method that it sees fit. The Department's attempt to distinguish Subsection 3 as a separate regulatory mandate fails because: 1) the language throughout Section .091 makes plain that the entire statute is woven together and the focus is on small-scale mining; and 2) the Department's interpretation undermines one of the Legislative mandates laid out in Subsection 3, the mandate for the Department to use the Gold & Fish Pamphlet to minimize the number of provisions in individual HPA permits.

The Department tries to distinguish Subsection 3 from the other provisions of the statute by stating that the phrase "small scale prospecting and mining" is not used. Though technically correct, the phrase in its entirety does not appear, this argument rings hollow when the entire statute is examined. Section .091 reads:

Small scale prospecting and mining—Rules.

(1) Small scale prospecting and mining shall not require a permit under this chapter if the prospecting is conducted in accordance with rules established by the department.

(2) By December 31, 1998, the department shall adopt rules applicable to small scale prospecting and mining activities subject to this section. The department shall develop the rules in cooperation with the recreational mining community and other interested parties.

(3) Within two months of adoption of the rules, the department shall distribute an updated gold and fish pamphlet that describes methods of mineral prospecting that are consistent with the department's rule. The pamphlet shall be written to clearly indicate the prospecting methods

that require a permit under this chapter and the prospecting methods that require compliance with the pamphlet. To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written permit issued under this chapter.

RCW 77.55.091

The first line of Subsection 3 reads, “Within two months of adoption of *the rules*, the department shall distribute an updated gold and fish pamphlet that describes methods of *mineral prospecting* that are consistent with *the department's rule*.” *Id.* (emphasis added). Reference to “the rules” and “the department’s rule” in this sentence can only reasonably be read to incorporate the rulemaking mandate of Subsections 1 and 2 into Subsection 3. *Id.* Subsections 1 and 2 order the Department to promulgate rules regarding “small scale prospecting and mining.” *Id.* There is no reference in these subsections to additional rulemaking outside of creating rules around the four mining methods enumerated in the definition of small-scale mining; they relate entirely and exclusively to small-scale mining. Given this context, it is apparent that the term “mineral prospecting” in the first sentence of Subsection 3 is shorthand for “small scale prospecting and mining.” *Id.* To argue that Subsection 3 is

distinct from Subsections 1 and 2 ignores statutory context and the interwoven nature of the provisions.²

Next, the Department argues that its decision to waive the HPA permit process for suction dredging complies with the mandate in the final sentence of Subsection 3 to “minimize the number of specific provisions of a written permit issued under this chapter.” *Id.* This argument is baseless. In fact, the opposite is true.

The sentence in question reads, “To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written permit issued under this chapter.” *Id.* This mandate clearly envisions that the Department will continue to give a significant number of “written permits,” i.e. individual HPA permits. *Id.* It is an effort by the Legislature to streamline the HPA process for riverbed mining. Under this mandate, the Department can cite the Gold & Fish Pamphlet for general mining rules, rather than include all the rules on each individual HPA permit.

² The Department asserts that “mineral prospecting” is a distinct term from “small scale prospecting and mining,” citing the general principle that when the Legislature uses two different words in the same statute, courts presume those words have different meanings. However, the Department declines to define “mineral prospecting” and articulate how it is different from “small scale prospecting and mining” in this context. This is because there is no reasonable alternative definition for “mineral prospecting.”

The Department's interpretation of Subsection 3 renders this mandate superfluous. The Department has not *minimized* the number of provisions in HPA permits by waiving the HPA permit process for suction dredging, it has *entirely eliminated* HPA permits and the written provisions within those permits. Simply put, the Department cannot minimize the number of written provisions in permits through a policy that does away with permits altogether. The Department's claim that its interpretation is supported by this provision is inapposite.

The Department cannot escape the fact that its interpretation relies on a single sentence in Subsection 3, "The pamphlet shall be written to clearly indicate the prospecting methods that require a permit under this chapter and the prospecting methods that require compliance with the pamphlet." *Id.* The Department's utter reliance on this one sentence and disregard of the rest of the statute is contrary to the plain meaning rule, which requires all provisions within a statute to be read in context, not in isolation.

3) *The Court is Not Required to Read Small-Scale into Subsection 3 for Cascadia to Prevail*

The Department claims that Cascadia's interpretation of Section .091 requires the Court to read the words "small-scale" into Subsection 3. This is not the case. Cascadia's interpretation is entirely consistent with

Section .091 as written. The Department's argument illustrates its own flawed reading of Section .091, and fails to acknowledge the layers of regulation within the Gold & Fish Pamphlet.

The Department argues that for Cascadia to prevail the Court must read the phrase "small-scale" into the one sentence the agency relies on to support its position, "The pamphlet shall be written to clearly indicate the prospecting methods that require a permit under this chapter and the ["small-scale"] prospecting methods that require compliance with the pamphlet." *Id.* (bracketed "small-scale" quote added). The Department relies on this sentence to argue that because the broader term "prospecting" is used instead of the narrower term, "small scale prospecting and mining," the Legislature granted the Department the authority to determine which mining methods "require compliance with the pamphlet." *Id.* Because it is authorized to determine which methods must comply with the pamphlet, the Department claims that it is authorized to determine which methods require an HPA permit. In taking this position, the Department has left to the faulty conclusion that "*compliance with the pamphlet*" is equivalent to "*exempt from the HPA permit requirement.*" *Id.* The phrases are not the same. The Department's conclusion fails to recognize how the Gold & Fish Pamphlet functions.

The Gold & Fish Pamphlet includes rules that apply to and must be followed by both small-scale miners, who are exempt from the HPA permit process, and non-small-scale miners, who are required to obtain an HPA permit. The last sentence of Subsection 3 demonstrates clear Legislative intent for the Pamphlet to serve as a rulebook for miners who are still required to obtain HPA permits. (“To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written permit issued under this chapter.” *Id.*). In other words, “compliance with the pamphlet” does not exclusively relate to small-scale mining and does not mean “exempt from the HPA permit requirement.” *Id.* Miners that require an HPA permit and miners that are exempt from the HPA are both required to comply with the Pamphlet.

Because of this fact, use of the broader term “prospecting” makes sense in Subsection 3. Contrary to the Department’s claim, the Court need not read “small-scale” into the provision because “prospecting” accurately describes the scope of the rulemaking laid out in Section .091 and the function of the Gold & Fish Pamphlet. “Prospecting methods that require compliance with the pamphlet” include both small-scale methods and non-small-scale methods. *Id.* “Compliance with the pamphlet” is not an

exclusive reference to small-scale mining methods or methods that are exempt from the HPA permit process. *Id.*

Far from a broad grant of authority for the Department to exclude any method of mining that it deems fit from the HPA permit, Subsection 3 should be interpreted to simply describe the layers of regulation found in the Gold & Fish Pamphlet. The Court does not have to read “small-scale” into Subsection 3 to come to this conclusion, and the Department’s argument to the contrary illustrates the faulty premise on which its position rests.

4) The Department’s Interpretation Undermines the Hydraulic Code by Ignoring Best Science and Common Sense Practices Recommended in its Own White Paper

The Department describes in detail the protections for fish outlined in the Gold & Fish Pamphlet. The implication is that the Department’s interpretation is consistent with the statutory purpose of the Hydraulic Code: the protection of fish. This argument ignores the fact that the Department’s interpretation directly contradicts a White Paper, commissioned by the Department, recommending that the agency begin tracking small-scale mining activity in order to better understand the cumulative and long-term impacts of mining on fish. The Department’s position cannot be squared with the principle of statutory interpretation that exceptions to statutory provisions should be narrowly construed to

give effect to the broader statutory scheme. *Swinomish*, 178 Wash.2d at 582.

Submitted to the Department in 2006, the White Paper represented an overview of the best available science on the impacts of mining on fish. SUPPAR-010. The White Paper singled out suction dredging as the most harmful form of riverbed mining due to the “volume of material processed.” SUPPAR-084. The Paper noted that there were significant data gaps regarding the impacts of mining on fish, stating, “a level of uncertainty remains concerning a thorough evaluation of the impacts.” SUPPAR-086. According to the Paper, the long-term impacts of repeated suction dredging in a single area had not been fully investigated. SUPPAR-089. Repeatedly noting that the Department collected little to no information on small-scale mining activity, the Paper concluded that more information was critical to fully assessing the cumulative impacts of mining. SUPPAR-098. The White Paper recommended tracking small-scale mining activities in an effort to better understand these impacts. *Id.*

By waiving the HPA permit process for suction dredging, the Department eliminated a vital tracking tool: the HPA application. When applying for an HPA permit, a miner is required to submit a general plan, informing the Department where they intend to mine, what methods they intend to use, how many linear feet they intend to disturb, and a general

time window of when they intend to conduct the activity. *See Beatty v. Dep't of Fish and Wildlife*, 142 Wn.App. 426, 434, 341 P.3d 291 (Div. III, 2015) (listing Department requirements for an HPA permit for a suction dredging operation); *see also* RCW 77.55.21(2)(a). As the Department's own White Paper concluded, this information is critical to assessing the long-term impacts of suction dredging on fish. Instead of heeding this common sense recommendation, to simply collect information in order to learn more about mining's impacts, the Department strains to read Section .091 in a manner that keeps the agency and people of the state in the dark. Far from narrowly interpreting Section .091 in an effort to uphold the purpose of the Hydraulic Code and protect fish, the Department stakes out a broad view of its own power and abrogates its statutory duty.

5) *The Gold & Fish Pamphlet is Not a Permit for Suction Dredging*

The Department argues that the Gold & Fish Pamphlet is a permit, casually asserting as much in its Introduction. For support, the Department cites the aquatic noxious weed exception as an example of the Legislature expressly allowing a pamphlet to serve as an HPA permit. The Department also cites the definition of "pamphlet hydraulic project" to bolster its claim. Though it is true that the Gold & Fish Pamphlet serves in lieu of an individual HPA permit for the four enumerated

methods of small-scale mining, the Pamphlet does not serve as a permit for methods that fall outside that definition. Both of the Department's arguments fail.

The difference between an individual HPA permit and a pamphlet serving as an HPA permit is significant. RCW 77.55.021 lays out the requirements of an individual HPA permit, which include an application that contains a general plan for the project and a plan to protect fish. RCW 77.55.021(2)(a). Through the HPA application process, the Department keeps a record of all hydraulic projects.

Where the Legislature has given the Department authority to use a pamphlet as a general permit, it has expressly said so. The aquatic noxious weed exception, RCW 77.55.081, was enacted by the Legislature two years prior to Section .091. In the aquatic noxious weed exception, the Legislature is crystal clear in its intention for a pamphlet to serve in lieu of an HPA permit, giving the Department a broad directive to develop rules for the removal of noxious weeds, ordering the Department to create and distribute a pamphlet, and stating, "The pamphlet serves as the permit". RCW 77.55.081(1). No such directive appears in Section .091, despite the fact that it was enacted two years later.

The Department also cites the definition of "pamphlet hydraulic project" as evidence that the Gold & Fish Pamphlet should be viewed as

an HPA permit. *See* RCW 77.55.011(17). This argument is circular and ignores the fact that this provision was added to the definitions section of the Hydraulic Code in 2012, fifteen years after Section .091 was enacted. The definition states that “pamphlet hydraulic projects” include “mineral prospecting and mining conducted under the gold and fish pamphlet authorized by 77.55.091.” *Id.* Under a plain reading of the statute, Section .091 does not authorize the Department to exclude suction dredging from the HPA process.

The Department’s assertion that the Gold & Fish Pamphlet is an HPA permit is unsupported by the plain language of the statute.

B. If Section .091 is Ambiguous, then the Legislative History Emphatically Refutes the Department’s Interpretation

If the Court determines that Section .091 is ambiguous, then it may turn to legislative history to determine legislative intent. *Campbell & Gwinn*, 146 Wn.2d at 12. The Department uses a creative argument to claim that the legislative history cited in Cascadia’s Opening Brief carries no weight, arguing that the Background section in a Bill Report does nothing more than articulate the status quo. Though Cascadia takes issue with this argument, it need not dispute its merits because there is ample evidence of legislative intent elsewhere, all of it supporting Cascadia’s interpretation.

For the first piece of evidence, the Court need look no further than the very passage from the Final Bill Report that the Department cites in its Response. Claiming that the Final Bill Report does not reference suction dredging, the Department cites the Summary, which states, “the Department of Fish and Wildlife is directed to adopt a rule to regulate *small scale prospecting activities.*” Final B. Rep., Substitute H.B. 1565, 55 Leg., Reg. Sess., (Wash. 1997) (emphasis added) (*See* Appendix D, Appellant’s Opening Br., APP070). Though the Department is correct that this statement and the Summary do not specifically mention suction dredging, it uses the term “small scale prospecting,” a term that the Legislature defined as *only* panning, nonmotorized sluices, concentrators, and minirocker boxes. RCW 77.55.011(21). There is no need to specifically reference suction dredging and any other form of mining that falls outside of the four enumerated methods because they have been expressly excluded from the definition.

The second piece of evidence is found in the Historical Bill Report in a section entitled, Summary of the Bill. The Department concedes that this section of the Bill Report summarizes the impacts of the bill, and the Legislature’s summary could not be more clear. The section reads:

“Small-scale mineral prospecting activities using specified hand tools and non-motorized equipment do not require a written HPA permit if the provisions of the department’s gold and fish pamphlet

are followed. A written HPA permit *is required* for activities using certain motorized equipment and *for dredging equipment* with a suction nozzle with a diameter of four inches or less.”

H.B. Rep., Substitute H.B. 1565, 55 Leg., Reg. Sess., (Wash. 1997) (as amended by the Senate) (emphasis added) (*See Appendix D, Appellant’s Opening Br., APP072*)

Finally, sequential drafts of the original legislation provide further support for Cascadia’s position. *See Clarke Decl., CP 92-97* (attached at Appendix A). Section .091 was initially enacted as SHB 1565 in 1997. At the time, the Legislature considered, but did not pass, a version of the bill that *included* suction dredging in the small-scale mining definition. In contrast, the version of the bill that did pass added the word “only” to the small-scale mining definition, removed references to “dredging,” and further modified sluices with the word “nonmotorized.” *Id.* The Conference Report for SHB 1565 states that, while other options were considered and rejected, “All dredging requires an HPA, no change in current law.” *Id. See Spokane Health Dist. v. Brockett*, 120 Wn.2d 140, 153, 839 P.2d 324 (1992) (considering sequential drafts appropriate in determining legislative intent).

Even if the Court agrees with the Department’s argument that statements in the Background section of a Bill Report do not constitute legislative intent, there is strong evidence throughout the legislative record

of the Legislature's deliberate intent for the Department to continue to require an HPA permit for suction dredging. The Department points to nothing in the record that says otherwise.

C. The Department's Interpretation is Not Substantially Justified, Cascadia is Entitled to Attorney Fees

Should Cascadia prevail in its appeal, recovery of attorney fees and costs is warranted under RCW 4.84.350. Under this statute, the court shall award attorney fees and costs to a qualified prevailing party unless the court finds that the government was substantially justified or circumstances make an award unjust. RCW 4.84.350(1). The amount awarded under this statute is capped at \$25,000. RCW 4.84.350(2). The Department does not challenge whether Cascadia is a qualified party, but does argue that it is substantially justified, claiming that it acted in good faith and its interpretation of Section .091 has been unchallenged for 20 years. Both of these arguments fail.

For the Department to be substantially justified its action must have a reasonable basis in both law and fact such that it would satisfy a reasonable person. *See H&HP'ship v. Dep't of Ecology*, 115 Wn.App.164, 171, 62 P.3d 510 (Div. II, 2003) (quoting *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn.App.1, 19, 979 P.2d 929 (Div. I, 1999)). The unreasonableness of the Department's position is found

wherever the Court looks. It is found when reading Section .091, where the Department relied on one sentence and flipped the statutory structure on its head to claim that it could waive the permit process for *any* mining method. It is found in the Department's absurd conclusion that its power is limitless when it comes to waiving the HPA permit process for mining. It is found in the Department's disregard for the legislative definition of small-scale mining. It is found in its disregard of the White Paper, which it commissioned and represented a synopsis of the best available science. It is found in its failure to review and abide by the legislative history, which is rife with evidence of the Department's flawed interpretation.

The Department claims that it is justified because no one has challenged its interpretation in 20 years. If anything this simply illustrates more unreasonableness. It represents 20 years of missing data on mining in the state, and 20 years of the Department failing to question its own interpretation despite new developments like the White Paper in 2006.

The Department makes a bare assertion that it acted in good faith, but this argument applies the wrong legal standard and is contradicted by the record. There is evidence that the Department took its position, not in an attempt to fulfill the purpose of the Hydraulic Code and protect fish, not in an effort to follow the true intent of the Legislature, but in order to reduce its workload. In a presentation on the history of the agency's regulation of

mining given to the Department's Commission, Pat Chapman, a Regulatory Services Coordinator who worked for the Department when it decided to waive suction dredging from the permit process said the following about the Department's procedure during that time:

One of the things we did that were different – that was different than previous pamphlets was that *we went beyond what the Legislature required*. What the Legislature required was no permits other than the pamphlet for pan sluice boxes, mini rocker boxes, and mini high-bankers and other small concentrators. *We decided since we're issuing hundreds of permits for dredging, why not include those in the pamphlet?* And so that's what we did, that and high banking. So we eliminated virtually 95 percent of the requirement for individual permits at that time.

AR-3961-62 (emphasis added). While one may sympathize with an overwhelmed government agency, that agency does not have the authority to circumvent clear legislative directives and is certainly not substantially justified in doing so.

If Cascadia prevails, then it should be awarded fees and costs as the Department cannot substantially justify its strained interpretation.

III. CONCLUSION

The Department's interpretation of Section .091 cannot be reconciled with the plain reading of the statute or the legislative history. The agency's rule waiving the HPA permit process for mining methods that fall outside of the four enumerated methods in the small-scale mining definition exceeds the Department's authority under the statute. Further,

the Department's position is not substantially justified. The Court must invalidate WAC 220-660-300, and award attorney fees and costs to Cascadia.

RESPECTFULLY SUBMITTED this 17th day of May, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 17th day of May, 2019, I caused a true and correct copy of the above Appellant's Reply Brief to be served on the following in the manner indicated below:

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Appendix A

Declaration of Bill Clarke – Legislative History
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<input type="checkbox"/> EXPEDITE
<input checked="" type="checkbox"/> No Hearing set
<input type="checkbox"/> Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

5
6
7 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
8 FOR THE COUNTY OF THURSTON

9 CASCADIA WILDLANDS,
10 Petitioner,
11 vs.
12 WASHINGTON DEPARTMENT OF FISH
13 AND WILDLIFE,
14 Respondents, and
15 RESOURCES COALITION, INC.,
 Intervenor.

Case No.: 17-2-03912-34

DECLARATION OF BILL CLARKE

16 I, Bill Clarke, being over 18 years of age and of sound mind, Declare:

17 1. I am Bill Clarke, a resident of Olympia, WA, residing at 819 Governor Stevens
18 Avenue SE, Olympia, WA, 98501.

19
20 2. I am attorney licensed to practice law in Washington State, WSBA #28800, with
21 office address of 1501 Capitol Way, Suite 203, Olympia, WA, 98501.

DECLARATION OF BILL CLARKE - 1

Petitioner's Opening Brief - &h.C

1 3. On Tuesday, February 6, I personally visited the Washington State Archives, located
2 at 1129 Washington St SE, Olympia, WA 98501.

3
4 4. At Washington State Archives, I personally reviewed the complete legislative history
5 file for SHB 1565, legislation passed by the Washington Legislature in 1997 regarding
6 regulation of "small scale mining and prospecting" by the Washington Department of
7 Fish and Wildlife (WDFW).

8 5. Exhibit 1 to this Declaration is a true and correct copy of a table from the legislative
9 history file, comparing two different versions of SHB 1565. This table compares the
10 methods of mining that would be allowed under the Gold & Pamphlet, versus the types of
11 mining that would require an individual Hydraulic Project Approval (HPA) from
12 WDFW.

13
14 6. Exhibit 2 to this Declaration is a true and correct copy of a summary table prepared to
15 explain the final agreement of the conference committee, which resolved differences
16 between the House and Senate versions of the bill. This table lists those methods of
17 mining eligible for coverage under the Gold & Fish Pamphlet, compared to methods of
18 mining that would be subject to issuance of an HPA.
19
20
21

DECLARATION OF BILL CLARKE - 2

1 7. Exhibit 3 to this Declaration is a true and correct copy of a legislator's floor speech
2 explaining the contents of the bill, including the statement "Dredging remains regulated
3 by the hydraulic code."

4
5 Executed in Olympia, Washington on February 14, 2018.

6 
7

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DECLARATION OF BILL CLARKE - 3

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SHB 1565 SMALL SCALE MINING COMPARISON

Topic	Sub House Bill 1565	Sub Senate Bill 1565
Gold Pans Mini-Rockerboxes Non-Motorized Sluice Boxes	No HPA needed if comply with "Gold and Fish" pamphlet	No HPA needed if streambanks not undercut or no disturbance of live rooted woody plants
Concentrators	Not covered	No HPA need under same conditions as above
New Small Scale Mining Rules	Develop in cooperation with recreational miners by December 31, 1998	Not needed
Permits for Small Scale Mining Needing HPA	Must be issued or denied in 30 days	No permits needed unless streambank undercutting occurs or disturbance of live rooted woody plants
New Gold and Fish Pamphlet	Issued within 2 months of new rules	Not needed
Dredging	Motorized dredges greater than 4 inches in diameter require HPA	All dredging requires HPA
Protection for Fish Life	Provided by terms of "Gold and Fish" pamphlet	At discretion of small scale miners
Amendments	None proposed	Senator Denton: small scale mining not exempt from HPA if adult salmonids, eggs, or alevins are displaced Small scale mining redefined: ^{foot} sluice boxes must be less than 6" long concentrators must be non-motorized

SHB 1565 SMALL SCALE MINING CONFERENCE REPORT

Topic	Conference Report
Intent	Small scale mining to be regulated in least burdensome manner consistent with fish management objectives and Federal Endangered Species Act
Gold Pans Mini-Rockerboxes Non-Motorized Sluice Boxes Concentrators	No HPA needed if comply with "Gold and Fish" pamphlet
New Small Scale Mining Rules	Develop in cooperation with recreational miners by December 31, 1998
New Gold and Fish Pamphlet	Issued within 2 months of new rules
Dredging	All dredging requires HPA, no change in current law
Protection for Fish Life	Provided by terms of "Gold and Fish" pamphlet

SHB 1565 chart

6x 2

FLOOR NOTES

SHB 1565

An act relating to small scale prospecting and mining

MOTION: Mr. President, I move the committee amendment be adopted.

REASON FOR STRIKING AMENDMENT

- ▶ **Removes small scale mining from hydraulic code regulation**
 - 1) **pans**
 - 2) **sluice boxes**
 - 3) **concentrators**
 - 4) **mini-rocker boxes**

MOTION: Mr. President, I move the title amendment be adopted

MOTION: Mr. President, I move that the rules be suspended, that SHB Bill 1565 be advanced to third reading, the second reading considered the third, and that the bill be placed on final passage.

WHAT THE BILL DOES

- ▶ **Allows small scale mining to be exempt from regulation if:**
 - 1) **stream banks are not undercut**
 - 2) **rooted live woody plants are not disturbed**
- ▶ **Dredging remains regulated by the hydraulic code**

WHY THE BILL IS NEEDED

- ▶ **Miners want to be able to practice small scale mining or prospecting without regulation**

Ex. 3

May 17, 2019 - 12:10 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52643-3
Appellate Court Case Title: Cascadia Wildlands, Appellant v. Fish and Wildlife, Respondent
Superior Court Case Number: 17-2-03912-5

The following documents have been uploaded:

- 526433_Answer_Reply_Reply_to_Motion_20190517120835D2452198_1553.pdf
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