



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at http://apps.leg.wa.gov/wac/default.aspx?cite=82-05.

CONTACT INFORMATION (please type or print)

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COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
• Provide relevant examples.
• Include suggested language for a rule, if possible.
• Attach additional pages, if needed.
• Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: http://www.leg.wa.gov/CodeReviser/Documents/RClst.htm.

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INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule:

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is:

The rule is needed because:

The new rule would affect the following people or groups:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: WAC 220-660-300 & WAC 220-660-305

I am requesting the following change: See Attached

This change is needed because: See Attached

The effect of this rule change will be: See Attached

The rule is not clearly or simply stated: See attached

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

We are requesting that WAC 220-660-300 and WAC-220-660-305 be revised to reflect the direction given to WDFW when the legislature passed ESHB 1261. The premise of ESH1261 was to prohibit siphon aquatic mining (i.e., dredging – whether the equipment is driven mechanically or by gravity) that involves a discharge within the ordinary highwater mark of waters of the state. Any discharge of water from motorized mining equipment was determined by the legislature to violate the Clean Water Act. The legislature's direction was explicit; they required state agencies to regulate motorized mining equipment that involves a discharge to waters of the state. ESHB 1261 does not prohibit motorized mining operations that **do not** require a Hydraulic Project Approval (HPA) permit and/or **do not** involve a discharge to waters of the state. We petition to amend WAC-220-660-300 and WAC 220-660-305 to allow use of motorized mining equipment, including but not limited to recirculating systems, which involve no need for an HPA or discharge to waters of the state.

ESHB 1261 says nothing about using motorized equipment or gravity other than as the driving force used in SIPHON AQUATIC MINING and yet the rewrite of the gold and fish pamphlet (and WAC 220-660-300) removed the use of other motorized equipment that has nothing to do with suction aquatic mining. The legislature did not direct WDFW to eliminate the use of motorized equipment from the gold and fish pamphlet. WDFW were directed to remove motorized siphon and gravity siphon aquatic mining where the operation involves discharging wastewater within the ordinary highwater mark of waters of the state. Nothing in the bill directed action outside the ordinary highwater line.

We question the purpose of banning the use of mechanical equipment in the gold and fish pamphlet. This decision was made solely by WDFW and NOT directed by the legislature through ESHB 1261. The changes made are a clear violation of making it the "least burdensome manner" for small-scale miners to locate needed information to operate their claims in a legal manner (See RCW 77.55.091). There is no reference in the gold and fish pamphlet on how to locate the rules for the use of standard mechanical equipment used by small-scale miners. ADD THE RULES FOR THE USE OF MECHANICAL EQUIPMENT BACK INTO THE GOLD AND FISH PAMPHLET. Without clear direction, small-scale miners will make their own decisions.

Dennis E. Peterson

Chairman - WASHINGTON Small Miner's Action Group

We hereby request the following revisions and changes to WAC 220-660-300:

WAC 220-660-300(1) - Mineral prospecting description

- WAC 220-660-300(1)
Mineral prospecting projects excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment. ~~When prospectors locate valuable minerals through prospecting, they may attempt to recover larger quantities of the minerals using a variety of equipment, including suction dredges, high bankers, and heavy equipment.~~ The rules in this section apply to the use of pans; ~~nonmotorized~~ sluice boxes; ~~nonmotorized~~ concentrators; mini rocker boxes; and ~~hand-held~~ mineral prospecting tools. This section does not apply to metals mining and milling operations as defined in chapter 78.56 RCW. Motorized SIPHON AND GRAVITY SIPHON mineral prospecting methods including, but not limited to, suction dredging, are not authorized in this section. See WAC 220-660-305 for rules for motorized and gravity siphon methods.

WAC 220-660-300(2) - Mineral prospecting fish life concerns

- WAC 220-660-300(2)(a)
Fish life concerns: Mineral prospecting and mining activities can ~~IMPROVE AS WELL AS~~ harm fish life and habitat that supports fish life.
- WAC 220-660-300(2)(a)(i)
~~Mortality from the~~ physical effects of disturbing eggs or fry incubating within the bed; and
- WAC 220-660-300(2)(a)(ii)
~~Lower~~ CHANGED environmental productivity resulting from habitat modifications such as altered stream beds or lowered water quality.

WAC 220-660-300(3) General requirements

- WAC 220-660-300(3)(a)
A copy of the current Gold and Fish pamphlet is available from the department, and it contains the rules that a person must follow when using the pamphlet ~~as the~~ in lieu of an HPA for the mineral prospecting project. (NOTE: THE CURRENT VERSION OF THE "PAMPHLET" IS IN NO WAY AN HPA.)

WAC 220-660-300(4) - Mineral prospecting in fresh waters without timing restrictions

- WAC 220-660-300(4)(b)
When mineral prospecting without timing restrictions, a person may use only hand-held mineral prospecting tools and the following ~~nonmotorized~~ mineral prospecting equipment:
- WAC 220-660-300(4)(b)(ii)
Sluices, ~~nonmotorized~~ concentrators, mini rocker boxes, and ~~nonmotorized~~ mini high-bankers, with riffle areas totaling three square feet or less, including ganged equipment.
- WAC 220-660-300(4)(c)
A person may not use vehicle-mounted winches. A person may use one ~~nonmotorized~~ OR MORE hand-operated winch to move boulders or large woody material that is not embedded or located within the wetted perimeter. A person may use additional cables, chains, or ropes to stabilize boulders, or large woody material that is not embedded.
- WAC 220-660-300(4)(e)

A person may not disturb fish life or redds within the bed. If a person observes or encounters EMERGING fish life or redds within the bed, or actively spawning fish when ~~collecting or~~ processing aggregate, a person must relocate their operation. A person must avoid areas containing live freshwater mussels. If a person encounters live mussels during excavation, a person must relocate the operation.

- WAC 220-660-300(4)(f)(i)
A person may excavate ~~only~~ by hand ~~or~~ with ~~hand-held~~ mineral prospecting tools.
- WAC 220-660-300(4)(f)(vii)
~~A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind.~~
- WAC 220-660-300(4)(g)(ii)
A person may not stand on or process directly on redds, or disturb incubating fish life. A person may not allow tailings or visible sediment plumes (visibly muddy water) to enter redds or areas where fish life are ~~located~~ EMERGING within the bed.
- WAC 220-660-300(4)(g)(viii)
A person may operate ~~nonmotorized~~ mini high-bankers or other concentrators only outside the wetted perimeter. Water may not be supplied to the mini high-banker or concentrator by pump or gravity siphon from the wetted perimeter unless an HPA is obtained. If water is utilized from the wetted perimeter it can only be collected ~~only~~ from natural stream flow or from hand-held buckets ~~or containers and may not be supplied through a gravity siphon.~~ A person may not allow visible sediment or muddy water to enter the wetted perimeter. A second excavation site outside the wetted perimeter may be used as a water source and/or settling pond.
- WAC 220-660-300(4)(g)(xi)
If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division (IF YOU DON'T PROVIDE CONTACT INFORMATION – REMOVE THIS FROM RULE) of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

WAC 220-660-300(5) - Mineral prospecting in fresh waters with timing restrictions

- WAC 220-660-300(5)(b)
When mineral prospecting with timing restrictions, a person may use ~~only nonmotorized~~ hand-held mineral prospecting tools and the following mineral prospecting equipment:
- WAC 220-660-300(5)(b)(ii)
Sluices, nonmotorized concentrators, rocker boxes, and ~~non-motorized~~ high-bankers, with riffle areas totaling ten square feet or less, including ganged equipment. ~~Water may be supplied to the high banker or concentrator only from natural stream flow or from hand-held buckets or containers and may not be supplied through a gravity siphon;~~
- WAC 220-660-300(5)(d)
~~A person may not use vehicle-mounted winches. A person may use one nonmotorized hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.~~ REPLACE WITH TERMINOLOGY IN 220-660-305(f)
- WAC 220-660-300(5)(e)(i)

A person may use hand-held mineral prospecting tools; pans; or sluices, mini rocker boxes, or ~~nonmotorized~~ mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment, as close to other mineral prospecting equipment as desired.

- WAC 220-660-300(5)(e)(ii)
When operating any sluice or rocker box with a riffle area larger than three square feet (including ganged equipment), or ~~nonmotorized~~ high-banker, a person's equipment must be at least two hundred feet from all others also operating mineral prospecting equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is being used within that two hundred foot radius.
- WAC 220-660-300(5)(e)(iii)
When operating any sluice or rocker box with a riffle area larger than three square feet (including ganged equipment), or ~~nonmotorized~~ high-banker outside of the wetted perimeter that discharges tailings or wastewater to the wetted perimeter, a person's equipment must be at least two hundred feet from all others also operating mineral prospecting equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is being used within that two-hundred foot radius.
- WAC 220-660-300(5)(h)(i)
A person may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. A person may move large woody material and boulders located entirely within the frequent scour zone, but a person must keep them within the frequent scour zone. ~~A person may not cut large woody material.~~
- WAC 220-660-300(5)(j)
~~A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind~~
- WAC 220-660-300(5)(l)
~~A person must fill all excavation sites and level all tailing piles before moving to another excavation site or abandoning an excavation site.~~
- WAC 220-660-300(5)(p)(i)
At any location if a person uses pans; mini rocker boxes; ~~nonmotorized~~ mini high-bankers; or sluices or other ~~nonmotorized~~ concentrators with riffle areas three square feet or less, including ganged equipment.
- WAC 220-660-300(5)(p)(ii)
Only in the frequent scour zone or upland areas landward of the frequent scour zone if a person uses ~~nonmotorized~~ high-bankers with riffle areas totaling ten square feet or less, including ganged equipment; or sluices or rocker boxes that have riffle areas larger than three, but less than ten square feet, including ganged equipment. A person may not discharge tailings to the wetted perimeter when using this equipment. However, a person may discharge wastewater to the wetted perimeter if its entry point into the wetted perimeter is at least two hundred feet from any other wastewater discharge entry point.
- WAC 220-660-300(4)(q)(i)
At any location if a person uses pans; or sluices, ~~nonmotorized~~ concentrators, mini rocker boxes, and ~~nonmotorized~~ mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment. A person must classify the aggregate at the excavation site before processing with this equipment within the wetted perimeter or frequent scour zone.
- WAC 220-660-300(4)(q)(ii)

Only at an upland location landward of the frequent scour zone if a person uses ~~nonmotorized~~ high-bankers or rocker boxes. A person may not allow tailings or wastewater to enter the wetted perimeter ~~or frequent scour zone~~.

- WAC 220-660-300(5)(t)

If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division (IF YOU DON'T PROVIDE CONTACT INFORMATION – REMOVE THIS FROM RULE) of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

WAC 220-660-300(6) - Mineral prospecting on ocean beaches:

- WAC 220-660-300(6)(c)

No written or pamphlet HPA is required to mineral prospect south of the Copalis River, if a person operates landward of the upper limit of ghost shrimp burrowing in the beach; waterward of the ordinary high tide line; and a person does not use fresh water from fish-bearing streams during operations. See Figure 7.

- WAC 220-660-300(6)(d)

A person may use only nonmotorized hand-held mineral prospecting tools and the following nonmotorized mineral prospecting equipment:

- WAC 220-660-300(6)(d)(ii)

Sluices, ~~nonmotorized~~ concentrators, rocker boxes, and ~~non-motorized~~ high-bankers with riffle areas totaling ten square feet or less, including ganged equipment.

- WAC 220-660-300(6)(f)

~~Water may be supplied to a high banker or concentrator only from natural stream flow or from hand-held buckets or containers and may not be supplied through a gravity siphon.~~

- WAC 220-660-300(6)(g)

~~A person may not use vehicle-mounted winches. A person may use one nonmotorized hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them. REPLACE WITH TERMINOLOGY IN 220-660-305(f)~~

- WAC 220-660-300(6)(o)

If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division (IF YOU DON'T PROVIDE CONTACT INFORMATION – REMOVE THIS FROM RULE) of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

WAC 220-660-300(7) - Authorized work times by specific state waters for mineral prospecting and placer mining projects

- WAC 220-660-300(7) Title

Authorized work times WITHIN THE WETTED PERIMETER by specific state waters for mineral prospecting and placer mining projects

- WAC 220-660-300(7) Table 1 Heading

Mineral Prospecting IN THE WETTED PERIMETER is Allowed Only Between These Dates

We are requesting the following revisions and changes in WAC 220-660-305:

- WAC 220-660-305(1)
Description: Mineral prospecting involving motorized SIPHON or gravity siphon equipment are projects that excavate, process, or classify aggregate using ~~small motorized equipment or pumps. Such methods include, but are not limited to, suction dredges, dryland dredges, power sluice/suction dredge combinations, motorized high bankers or power sluices, trommels, and spiral wheels. These projects also include methods using gravity siphons that supply~~ water for excavating, processing, or classifying aggregate by means of vacuum created by water flowing through a tube or hose, such as gravity dredges ~~or nonmotorized high bankers~~. Bulb sniffers are not considered motorized SIPHON or gravity siphon equipment. The rules in this section apply to using motorized or gravity siphon equipment. See WAC 220-660-300 for mineral prospecting with other types of equipment.
- WAC 220-660-305(2)
Fish life concerns: Mineral prospecting involving motorized SIPHON or gravity siphon equipment can harm fish life and habitat that supports fish life.
- WAC 220-660-305(3)(a)(ii)
~~(ii) Mortality from passing vulnerable fish through equipment; and~~ THERE IS NO PROOF FOR THIS – WHAT IS YOUR REFERENCES?
- WAC 220-660-305(3)(c)
The department minimizes impacts by restricting the type of mining equipment allowed, limiting excavation ~~zones~~ TIMING within streams, and setting allowable timing windows.
- WAC 220-660-305(3)(a)
Before conducting any mineral prospecting involving motorized SIPHON or gravity siphon equipment, a person must obtain the approval of the department through the issuance of a standard, single-site written HPA or standard, multisite written HPA as described in WAC 220-660-050. The department must deny an HPA when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. The department may apply saltwater provisions to written HPAs for tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam.
- WAC 220-660-305(5)(a)
A person may operate motorized SIPHON or gravity siphon equipment in waters of the state only with the mineral prospecting equipment limitations identified in this section and during the times identified in the written HPA.
- WAC 220-660-305(5)(b)
When mining using motorized SIPHON or gravity siphon equipment, a person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:
- WAC 220-660-305(5)(b)(ii)
~~Spiral wheels~~ SPIRAL WHEELS ARE NOT MECHANICAL SIPHON NOR GRAVITY SIPHON EQUIPMENT
- WAC 220-660-305(5)(b)(iii)
Concentrators ~~and high bankers~~ with riffle areas totaling ten square feet or less, including ganged equipment;

- WAC 220-660-305(5)(b)(vii)
~~Power sluice/suction dredge combinations, when configured and used as high bankers or power sluices, that have riffle areas totaling ten square feet or less, including ganged equipment and pump hoses with inside diameters of four inches or less;~~
- WAC 220-660-305(5)(b)(viii)
~~High bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.~~
- WAC 220-660-305(5)(c)
The Washington department of ecology determines where motorized SIPHON or gravity siphon equipment listed in the previous provision may be used. Contact the Washington department of ecology water quality program for information about the locations where the use of motorized SIPHON or gravity siphon equipment is allowed.
- WAC 220-660-305(5)(f)
~~A person may not use vehicle-mounted winches. A person may use one motorized winch and one nonmotorized hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them. WHY ISN'T THIS ALLOWED ELSEWHERE IN 220-660-300?~~
- WAC 220-660-305(5)(g)(i)
A person may use mini high-bankers with riffle areas totaling three square feet or ~~less~~ MORE, including ganged equipment, as close to other mineral prospecting equipment as desired. SEE 220-660-300(5)(e)(i)?
- WAC 220-660-305(5)(g)(ii)
When operating motorized SIPHON or gravity siphon equipment ~~other than that identified in (g)(i) of this subsection,~~ a person's equipment must be at least two hundred feet from all others also operating any type of motorized SIPHON or gravity siphon equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is operating within that two hundred foot radius.
- WAC 220-660-305(5)(h)(i)
All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter or frequent scour zone. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment from the body of water, and contact the Washington military department emergency management division (IF YOU DON'T PROVIDE CONTACT INFORMATION – REMOVE THIS FROM RULE). A person may not return the equipment to the water until the problem is corrected. A person must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.
- WAC 220-660-305(5)(m)
A person may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. A person may move large woody material and boulders located entirely within the frequent scour zone, but a person must keep them within the frequent scour zone. ~~A person may not cut large woody material.~~ SEE THE NOTE ON 220-660-305(5)(n).
- WAC 220-660-305(5)(n)
~~A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind.~~ THERE ARE OTHER RULES OUTSIDE THE OHWL THAT WE FOLLOW IN REGARDS TO FEDERAL MINING CLAIMS ON USFS AND BLM PUBLIC LANDS.

- WAC 220-660-305(5)(p)
A person must fill all excavation sites and level all tailing piles WITHIN THE ORDINARY HIGHWATER LINE before moving to another excavation site or abandoning an excavation site.
- WAC 220-660-305(5)(s)(i) WHY IS THIS SECTION HERE. SEE 220-660-300????
At any location if a person uses pans; spiral wheels; mini high bankers; or other concentrators with riffle areas totaling three square feet or less, including ganged equipment.
- WAC 220-660-305(5)(s)(ii)
~~Only in the frequent scour zone or upland areas landward of the frequent scour zone if a person uses power sluice/suction dredge combinations, high bankers, or power sluices with riffle areas totaling ten square feet or less, including ganged equipment; or sluices or rocker boxes that have riffle areas totaling more than three but less than ten square feet, including ganged equipment. A person may not discharge tailings to the wetted perimeter when using this equipment. However, you may discharge wastewater to the wetted perimeter if its entry point into the wetted perimeter is at least two hundred feet from any other wastewater discharge entry point~~
- WAC 220-660-305(5)(t) THIS SECTION SHOULD BE IN 220-660-300
A person may process aggregate collected from the upland areas landward of the frequent scour zone:
- WAC 220-660-305(5)(t)(i)
At any location if a person uses pans; spiral wheels; concentrators; or mini high bankers with riffle areas totaling three square feet or less, including ganged equipment. A person must classify the aggregate at the collection or excavation site prior to processing with this equipment within the wetted perimeter or frequent scour zone;
- WAC 220-660-305(5)(t)(ii)
~~Only at an upland location landward of the frequent scour zone if a person uses power sluice/suction dredge combinations, high bankers, or power sluices. A person may not discharge tailings or wastewater into the wetted perimeter or frequent scour zone.~~
- WAC 220-660-305(5)(u)
A person may use pressurized water only for redistributing dredge tailings within the wetted perimeter, for crevicing using a dryland dredge, or for introducing water under low pressure to an excavation site from the nozzle of a dryland dredge. ~~No other use of pressurized water is permitted.~~ SEE 220-660-305-(v)
- WAC 220-660-305(5)(y)
If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately stop operations and notify the department and the Washington military department emergency management division (IF YOU DON'T PROVIDE CONTACT INFORMATION – REMOVE THIS FROM RULE) of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

WAC 220-660-305(6) Mineral prospecting involving motorized SIPHON or gravity siphon equipment on ocean beaches

- WAC 220-660-305(6)
A person may operate motorized SIPHON or gravity siphon equipment year-round on ocean beaches of the state. A person must follow the rules listed below:
- WAC 220-660-305(6)(b)
When operating motorized SIPHON or gravity siphon equipment, a person may use ~~only hand-held mineral prospecting tools and~~ the equipment authorized in subsection (5)(b) of this section.
- WAC 220-660-305(6)(d)
~~A person may not use vehicle mounted winches. A person may use one nonmotorized hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.~~ REPLACE WITH TERMINOLOGY IN 220-660-305(f)
- WAC 220-660-305(6)(j)
~~A person may use pressurized water only for redistributing dredge tailings within the wetted perimeter. No other use of pressurized water is permitted.~~ THIS DOESN'T BELONG HERE
- WAC 220-660-305(6)(l)
If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately stop operations and notify the department, and the Washington military department emergency management division (IF YOU DON'T PROVIDE CONTACT INFORMATION – REMOVE THIS FROM RULE) of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

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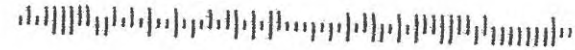
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WDFW
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Szvetecz



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