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FOR IMMEDIATE RELEASE
Feb. 22, 2021

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Media Advisory: Oral argument tomorrow in BIAW’s suit against the governor and Dept. of Fish & Wildlife

OLYMPIA...The Court of Appeals for Division Two will hear oral arguments tomorrow in a case brought by the Building Industry Association of Washington against the Governor and the Department of Fish and Wildlife (DF&W). BIAW alleges the Governor violated the Washington State Constitution when he vetoed a subsection of [HB 1579](#), passed during the 2019 legislative session.

What: Building Industry Association of Washington v. Governor Jay Inslee et al.

When: 9 am, Feb. 23, 2021—TVW stream starts at 9:30 am

Where: Oral arguments in the Division Two Court of Appeals will be [streamed on TVW](#)

HB 1579 implemented recommendations from the Southern Resident Killer Whale Task Force, including increasing civil penalties for violations of the statute that regulates coastal construction from \$100 per violation to up to \$10,000 per violation.

The legislation linked the penalty increases to a provision “directing the Conservation Commission (Commission) to initiate demonstration projects to test river management strategies that protect agricultural lands, fish life, and public infrastructure and recreational access.” The Governor vetoed this subsection.

The Washington State Constitution specifically requires that the governor veto sections in their entirety, rather than subsections. If BIAW prevails, the court could strike down penalty increase. BIAW’s General Counsel Jackson Maynard will handle the argument for BIAW and the Attorney General’s office will represent the state.

“The state constitution is really clear that the governor can’t “partially veto” a bill except in rare instances,” Maynard said. “If the governor wins, he will be able to veto subsections of legislation to fit his agenda whenever he disagrees with the policy in a law—even after it has already passed the Legislature.”

As a result of these illegal actions, Maynard explained, there is confusion about the authority of the DF&W to implement the bill through enforcement and rule-making.

The bill repealed the existing ability of the DF&W to fine for violations and the governor vetoed the new authority. As a result, it is unclear whether and how the department can issue civil fines at all.

“The governor’s actions have raised a number of questions on constitutionality, enforcement and rulemaking authority that need to be cleared up as soon as possible, to give predictability and certainty

to the process for our members,” Maynard said. “As it stands, due to this great uncertainty, BIAW members have been forced to put projects on hold or pass them up all together.”

Legal documents:

- [Amicus Brief](#) (State Senators Steve Hobbs, Steve O'Ban, Michael Padden, and Kevin Van De Wege)
- [Appellant's Brief](#)
- [Reply Brief](#)
- [Respondents' Brief](#)
- [Respondents' Answer to Amicus Brief](#)

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The Building Industry Association of Washington is the voice of the housing industry as the state’s largest trade association with nearly 8,000 member companies directly and indirectly employing approximately 188,000 people. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. Learn more at: www.biaw.com