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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 95029-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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SPOKANE COUNTY, PIERCE COUNTY, DOUGLAS COUNTY,  
LEWIS COUNTY, and KITSAP COUNTY,

Appellants,

v.

STATE OF WASHINGTON DEPARTMENT OF FISH  
AND WILDLIFE,

Respondent.

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**RESPONDENT'S STATEMENT OF ADDITIONAL AUTHORITIES**

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**ADDITIONAL AUTHORITIES**

**Cases**

*In re Sehome Park Care Ctr., Inc.*,  
127 Wn.2d 774, 903 P.2d 443 (1995) .....1

*Does v. Washington State Patrol*,  
185 Wn.2d 363, 374 P.3d 63 (2016) .....1

**Other Authorities**

S.B. 5085, 53rd Leg., 1<sup>st</sup> Spec. Sess., § 1 (Wash. 1994) .....3

S.S.B. 5228, 65<sup>th</sup> Leg., Reg. Sess., §1 (Wash. 2018) .....1

S.B. 5632, 54<sup>th</sup> Leg., Reg. Sess., § 8, 1995 Wash. Laws .....3

S.B. 5862, 62<sup>nd</sup> Leg., 2<sup>nd</sup> Spec. Sess., § 102 (Wash. 2012) .....3

S.B. 6406, 62<sup>nd</sup> Leg., Reg. Sess., § 102, 2012 Wash. Laws .....2

Under RAP 10.8, Respondent, State of Washington Department of Fish and Wildlife respectfully submits the following statement of additional authorities in response to Appellants' Assignment of Error 2 and Issue 3.

In support of the argument in Respondents' Corrected Response to Appellants' Opening Brief at III.C.3, pp. 34-35, regarding legislative acquiescence to an agency's interpretation of a statute through rule-making: *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 780, 903 P.2d 443 (1995) (emphasizing legislative acquiescence to an agency's longstanding construction of a statute as a factor in statutory interpretation) (citing *Bennett v. Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990)).

In support of the argument in Respondents' Brief at II.B., pp. 12-13, regarding legislative intent on the geographic limit of HPA jurisdiction:

- *Does v. Washington State Patrol*, 185 Wn.2d 363, 381 ¶28, 374 P.3d 63 (2016) (considering a rejected amendment to a statute and explaining that the rejected amendment showed that the legislature knew how to draft the statute to accomplish the outcome Does advocated had the legislature wished to do so);
- 2017 Senate Bill 5228, §1 (proposing to amend RCW 77.55.011's definition by adding the underlined language: "Hydraulic project' means the construction or performance of

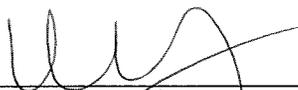
work at or below the ordinary high water line that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.” Bill was replaced by substitute bill creating a legislative task force to study the issue, and did not pass.);

- 2012 Senate Bill 6406 (original version), § 102 (proposing to create a new subsection in RCW 77.55.021 to require that a permit must be obtained for work occurring “at or below the ordinary high water line, including those components of the project located above the ordinary high water line *that are physically connected to those at or below the ordinary high water line* that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state;” and proposing a separate new subsection which would require an “application” to be filed for work occurring “above the ordinary high water line” if it falls within one of seven enumerated activities. (Emphasis added.) Later version omitting the proposed language passed, with partial veto, as Laws of 2012, ch. 1.);

- 2011 Substitute Senate Bill 5862, § 102 (proposing to amend RCW 77.55.021 to expressly limit HPA jurisdiction to work “[c]onducted at or below the ordinary high water line” and also to work that both (I) involved a “dike, levee, bridge, shoreline or streambank protection project, or mineral prospecting and mining activity,” and (II) was [c]onducted within a channel migration zone, one hundred year floodplain, or within two hundred feet landward of the ordinary high water line.” Bill did not pass.);
- 1995 Senate Bill 5632 (original version), § 8 (proposing to amend former RCW 75.20.100, the predecessor of RCW 77.55.021, to expressly limit HPA jurisdiction to “work that occurs at or below the mean higher high water line in salt water and estuaries or at or below the ordinary high water line in fresh water.” This language was stripped out in a subsequent version that was enacted by the legislature as Laws of 1995, ch. 402); and
- 1993 Senate Bill 5085, § 1 (proposing to amend former RCW 75.20.100 with the same language used in the original version of 1995 SB 5632, § 8, quoted above. Bill did not pass.).

RESPECTFULLY SUBMITTED this 10th day of September, 2018.

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## Transmittal Information

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