



**Brian Abbott Fish Barrier Removal Board – October 2023 Meeting Summary**

**Date:** October 17, 2023

**Time:** 9:00 a.m. to 12:00 p.m.

**Location:** Virtual Meeting

**Summary: Formal Actions / Decisions**

Item	Formal Action
Meeting notes from August, 2023	Approved
De-obligate funds from the 2023-2025 FBRB Project List from projects once they are fully funded through PROTECT	Approved
Allow project sponsors who applied or are in the process of applying for PROTECT funds in 2023 to continue to apply for PROTECT funds in 2024.	Approved

**Summary: Follow-up Items and Next Steps**

Item	Follow-up
<b>September 2023 Summary Review</b>	The Board was provided more time to review the September 2023 Meeting Summary. A decision to approve the summary will be made at the next meeting on November 21.
<b>FBRB Cost Increase Analysis</b>	RCO and WDFW will provide the Board with an assessment of cost increases to date to help the Board decide if de-obligated funds should fund alternatives or be used for cost increase requests.
<b>Governor’s Office Guidance on RCW 70A.65.305</b>	Chair Jameson will update the Board with guidance from the Governor’s Office on implications of new pre-agreement Tribal consultation requirement (RCW 70A.65.305).
<b>Federal Funding Updates</b>	WDFW will keep the Board updated on the status of the FBRB project bundle submitted to NOAA’s <i>Restoring Fish Passage through Barrier Removal</i> grant program and the status of project sponsors seeking PROTECT funds.
<b>Future Decision: Returned Funds</b>	In November, the Board can decide on how returned funds move down the Project List to alternatives or are reserved for cost increase requests.

**Welcome/Introductions/Agenda Review:** Triangle Associates (Triangle) facilitator, Joy Juelson, called the meeting to order at 9:00 a.m. Chair Thomas Jameson, Washington Department of Fish and Wildlife (WDFW), welcomed attendees. Joy facilitated introductions with Board members and staff. A quorum was present.

**Public Comment:** None

**Old Business:** The notes for the FBRB August 2023 meeting were reviewed by the facilitator. A motion to approve the notes was made by Chair Jameson and seconded by April Magrane. The motion was approved with no objections. Due to extenuating circumstances, the Board was provided more time to review the September meeting notes, and a decision to approve will be made at the next meeting.

## General Updates

### *FBRB Membership & General Updates*

Board Chair, Thomas Jameson, shared the following staffing updates:

- Margen Carlson, WDFW, has accepted the position of WDFW's Director of Conservation and will step down as the WDFW Habitat Program Director. It could take several months to replace her position. Chair Jameson will update the Board once the position is filled.
- Steve Manlow is the new Board member representing the Council of Regions. Steve serves as the Director of the Lower Columbia Salmon Recovery Board.
- Casey Baldwin is stepping down as the Board member for the Colville Tribes. Casey was a founding member of the Board and has served as a member for 9 years. He will be replaced by John Box who is a fish biologist based in the Okanagan area and has 20 years of fisheries experience.

### *RCW 70A.65.305 Update: Tribal Consultation Requirement for Projects Receiving Carbon Tax Funds*

Chair Jameson shared that the Board was allocated \$48.4 million from the state legislature for its 2023-2025 Project List. Approximately \$21 million comes from the state's Climate Account.

After the FBRB released its 2025-2027 grant round request for proposals (RFP), RCO was notified by a representative from the Lummi Nation that RCW 70A.65.305 requires tribal consultation for any projects funded through the Climate Account. This requirement applies to all project sponsors *before* they submit their proposals. This RCW is new and came directly from the Governor's Office.

Currently, WDFW's Technical Review Team (TRT) has two touch points where they may coordinate with Tribes: 1) When assessing and scoring projects or 2) After a project is added to the FBRB's funded project list, the TRT will coordinate with Tribes and their biologists in the relevant area.

It is unclear if the 2025-2027 project list will be funded through the Climate Account and it is unclear what is required by the FBRB or project sponsors under this RCW. Chair Jameson will request the Governor's Office provide guidance on the implications of this RCW on the Board's grant program.

- In response to a question from Steve Manlow, Chair Jameson explained that the new pre-agreement tribal consultation requirement came out of an agreement between the Governor's Office and tribal nations. He advised that the safest course of action for sponsors is to assume that all restoration projects will be required to complete the tribal consultation.
- Erik Neatherlin, Governor's Salmon Recovery Office (GSRO), added that legislative directors from state agencies, the Salmon Recovery Funding Board (SRFB), the FBRB, and other funding boards that distribute money will need to coordinate and align on what the specific tribal consultation requirements are, to ensure that uniform guidance is given to sponsors.

**Path Forward:** Chair Jameson will update the Board with guidance from the Governor's Office on implications of new pre-agreement Tribal consultation requirement (RCW 70A.65.305).

### ***National Oceanic and Atmospheric Administration (NOAA) Grant Application Update***

Chair Jameson shared that WDFW successfully submitted a bundle of nine unfunded FBRB projects to NOAA's *Restoring Fish Passage through Barrier Removal grant program*. The total grant request for this bundle is \$11.7 million of federal fiscal year (FFY)24 funding. WDFW will track the application and share updates when available as well as the status of sponsors seeking PROTECT funds (see item below).

***Path Forward:*** WDFW will keep the Board updated on the status of the FBRB project bundle submitted to NOAA's Restoring Fish Passage through Barrier Removal grant program and the status of project sponsors seeking PROTECT funds.

### ***Culvert Case Injunction December 7 Meeting Update***

Chair Jameson provided an overview of the Culvert Case Injunction, which requires WDFW, DNR, State Parks, and WSDOT to make state-owned, fish blocking culverts passable by 2030. This obligation is estimated to cost \$4 billion. Every year, state agencies hold an annual meeting with the Stevens Treaty Tribes to discuss the injunction's implementation. This year's meeting will be held on December 7, 2023. The meeting is not open to the public.

### **Update on Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Project Funding**

Chair Jameson explained the PROTECT program is a US Department of Transportation program that uses Federal Highway Administration (FHWA) funding to support projects for cities, counties, and Tribes. There are strict and challenging federal requirements project sponsors must meet to have FHWA funds obligated to their projects. Throughout late 2022 and 2023, the FBRB coordinated with nine eligible project sponsors to seek nearly \$25million of PROTECT funds for project design and implementation.

As of this meeting, only six sponsors are on track to have \$7 million obligated in FFY23. Eligible project sponsors who did not complete their applications have an opportunity to continue seeking PROTECT funding next year. Chair Jameson led a review of the Board's PROTECT Project Spreadsheet, noting that highlighted cells indicate projects that want to pursue PROTECT funding. After reviewing the list, the Board recommended eligible sponsors continue seeking the remaining PROTECT funds.

- Susan Eugenis, Washington State Association of Counties, shared that, as a sponsor, her team will continue trying to meet the federal funding requirements. If they are unable to complete obligation by November, they might pause their application and resume for the next year of PROTECT funds.

***Decision:*** A motion was made by Steve Manlow to allow project sponsors who applied or are in the process of applying for PROTECT funds in 2023 to continue to apply for PROTECT funds in 2024. The motion was seconded by Carl Schroeder, Association of Washington Cities and approved with no objections.

### ***Path Forward for De-Obligated PROTECT Funds***

John Foltz, RCO, proposed that once a project successfully receives funds from another funding source or voluntarily withdraws their proposal, they can no longer be funded under their FBRB funding agreements. These projects must terminate their contracts, and the funds they return to the FBRB become de-obligated. Currently, \$3.4 million were returned from projects that were funded through PROTECT

and were above the Board's 2023-2025 funding line. The Board discussed whether to support RCO terminating agreements and de-obligating remaining funds from successful PROTECT applications.

#### *Board Questions and Discussion*

- Steve Manlow observed that cost increases affect sponsors' ability to get projects on the ground in a timely fashion, adding that providing cost increases as needed for highly ranked projects should always be prioritized.
- John Foltz added that the sooner the Board can let sponsors know that funds are heading their way, the better. He asked the Board to consider whether the Board wants to reserve some of the returned funds for cost increases, or if the Board wants to fund alternates down the 2023-2025 Project List. This question will be moved to a decision at the November meeting.
- Carl Schroeder, Association of Washington Cities, expressed support for de-obligating the funds. He also requested additional information on the anticipated cost increases for this funding cycle.

**Decision:** A motion was made by Carl Schroeder to allow project sponsors who applied or are in the process of applying for PROTECT funds in 2023 to continue to apply for PROTECT funds in 2024. The motion was seconded by Chair Jameson and approved without

**Path Forward:** RCO and WDFW will provide the Board with an assessment of cost increases to date to help the Board decide if de-obligated funds should fund alternatives or be used for cost increase requests.

**Path Forward:** In November, the Board can decide on how returned funds move down the Project List to alternatives or are reserved for cost increase requests.

#### **Update on 2025-2027 Grant Round and Manual 22**

John Foltz and Casey Costello, WDFW, shared updates on the 2025-2027 Grant Round, which opened on October 2, 2023, and will remain open until January 18, 2024. An Application Workshop was held on October 5, 2023. The updated Manual 22, Workshop materials, and a recording of the workshop are available on [RCO's FBRB grant webpage](#).

#### **Fish Passage Strategy Updates**

Jane Atha, WDFW, shared a presentation on the Fish Passage Strategy (see [October meeting handouts](#)). The presentation included an overview of the Strategy's intended purpose and goals, the Strategy's development timeline, initial findings from a situational assessment conducted by Triangle Associates, and a review of the Science Panel leading Strategy development.

#### *Board Questions and Discussion*

- In response to a question from Erik Neatherlin, Jane shared that WDFW has not heard much from the Tribes about the Strategy to date but noted that it is still early and that many Tribes involved in the injunction are likely watching how things progress. The State communicates Strategy updates to the Tribes through Jim Wood, who is WDFW's tribal liaison. He coordinates questions from the Tribes and any meetings that need to take place between WDFW and the Tribes.
- In response to a question from Carl Schroeder, Jane shared that the WDFW's approach to species prioritization will likely be generalized. The Strategy's Science Panel is proposing generalized prioritization metrics based on the benefit steelhead, salmon, and other listed species. Once

priorities are set for listed species ecologically, WDFW will be able to layer in additional considerations, such as the number of barriers in a system.

- Steve Manlow added that regional organizations work within regional recovery scenarios that prescribe different recovery targets for different listed species. It will be important for the statewide Strategy to align with regional approaches to avoid leading project sponsors in different directions.

### **WDFW Fish Passage Rulemaking Updates: New Flows, Fishways, and Screening Statutes (RCW 77.57)**

Gabrielle Stilwater, WDFW, provided an presentation on RCW 77.57, are known as the new Flows, Fishways and Screening Statutes (see [October meeting handouts](#)). The presentation included background on the need for the rules, key definitions, and an overview of the rule proposal.

#### *Board Questions and Discussion*

- In response to a question by Carl Schoeder, Gabrielle explained WDFW plans to prioritize corrections largely based on the results of the Fish Passage Strategy. WDFW will need to be mindful of staff capacity and resources while simultaneously being targeted and thoughtful on which fish barriers to prioritize. Chair Jameson added that although many fish barriers exist, they are not all created equal. So, the agency will likely focus enforcement and corrections on projects with the biggest benefit.
- Gabrielle responded to a question from Steve Manlow about the interplay between these new statutes and the Forest and Fish Rules. She noted that The Forest and Fish Rules will be impacted by any changes to the Hydraulic Code (RCW 77.55). An update to RCW 77.55 is anticipated after RCW 77.57 is enacted. WDFW has been working closely with the Washington Department of Natural Resources (DNR) on the relationship between RCW 77.57, RCW 77.55, and the Forest and Fish Rules.
- Carl Schroeder thanked Gabrielle and Tom for presenting and expressed interest in seeing the actual rule in greater detail.

More information on this rulemaking, as well as the final rules language, is available at [WDFW's Fish Passage Rule Making website](#). The webpage includes instructions on how to provide public comments.

### **Project and Policy Issues & Opportunities**

None.

### **Discussion: Upcoming Engagement Opportunities**

- Chair Jameson plans on attending the Washington County Leaders Meeting in Spokane on November 11.

**Adjourn:** The meeting adjourned at 12:00 p.m.

**Next Meeting: Virtual Meeting on November 21, 2023.**

## ATTENDANCE

### Board Members/Alternates:

April Magrane, Washington State Department of Transportation (WSDOT)	John Box, Colville Tribes
Axel Swanson, Washington State Association of Counties	Steve Manlow, Council of Regions
Carl Schroeder, Association of Washington Cities	Susan Eugenis, Washington State Association of Counties
Chair Thomas Jameson, Washington Department of Fish and Wildlife (WDFW)	Susan Kanzler, WSDOT
Erik Neatherlin, Governor's Salmon Recovery Office (GSRO)	Tim Resseguie, Yakima Nation

### WDFW, RCO Staff and Triangle Facilitation Team:

Christopher Clemons, WDFW	Alice Rubin, Recreation and Conservation Office (RCO)
Daniel Coffman, WDFW	John Foltz, RCO
David Collins, WDFW	Josh Lambert, RCO
Gabrielle Stilwater, WDFW	Josh McKinney, RCO
Jane Atha, WDFW	
Joel Ingram, WDFW	Alyssa Bonini, Facilitation Support
Melissa Erkel, WDFW	Joy Juelson, Facilitation Support

### Others observing:

Adam Brown	Evan Lewis	Mike Reicher
Daniel Howe	Jim Heytvelt	Tracey Gilson