



Brian Abbott Fish Barrier Removal Board – November 2023 Meeting Summary

Date: November 21, 2023

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

Location: Virtual Meeting

Summary: Formal Actions / Decisions

| Item | Formal Action |
|---|---------------|
| Board Decision: Meeting notes from September and October 2023 | Approved |
| Board Decision - Modified Option 2 for de-obligated funds: Reserve \$1.75M in returned funds for cost increases and permit staff to offer any unobligated funds, returned or declined, as they become available to alternate projects in ranked order. | Approved |

Summary: Follow-up Items and Next Steps

| Item | Follow-up |
|---|--|
| PROTECT Request for Proposals (RFP) | WDFW will update the PROTECT RFP based on feedback provided by the Board at this meeting. If Board members have additional comments for consideration, please email Christy Rains (christy.rains@dfw.wa.gov) ASAP. |
| Federal Funding Applications | WDFW and RCO will keep the Board updated on the status of project sponsors seeking PROTECT funds and the FBRB’s project bundle submitted to NOAA. |
| Status of Returned Funds | RCO and WDFW will keep the Board updated on the status of returned funds and whether the funds are reserved for cost increases or advanced to alternate down the ranked project list. |
| Governor’s Office Guidance on RCW 70A.65.305 | Once WDFW receives input from the Governor’s Office on RCW 70A.65.305, they will update the Board at a future meeting. |

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. Alex Sweetser, Triangle, facilitated introductions with Board members and staff. A quorum was present.

Public Comment: One public comment was received asking how to access meeting summaries from past FBRB meetings. All summaries and meeting materials are available on the [FBRB webpage](#) under the meeting calendar.

Old Business: The notes for the FBRB September 2023 and October 2023 meetings were reviewed by the facilitator. A motion to approve the September 2023 summary was made by Jeannie Abbott, Governor’s Salmon Recovery Office (GSRO) and seconded by Chair Jameson. The motion was approved with no objections. A motion to approve the October 2023 summary was made by Susan Kanzler, Washington State Department of Transportation (WSDOT), and seconded by Chair Jameson. The motion was approved with no objections.

General Updates

Fish Passage Strategy Updates

Last month, Jane Atha, WDFW, presented a status update of ongoing Science Panel meetings to the Board (see [October meeting handouts](#)). The Science Panel has been narrowing down the optimization approach at both the watershed and regional level. Future meetings are planned with the WDFW Leadership Team, including the new deputy director.

WDFW Fish Passage Rulemaking

Gabrielle Stilwater, WDFW, shared that since her presentation to the Board last month (see [October meeting handouts](#)), the rules were presented to the WDFW Commission (Commission) on October 27, 2023 as part of a public hearing. Now, WDFW is preparing for an anticipated final briefing with the Commission in December 2023. Following the final briefing, the Commission will decide on the rules. Additionally, the official public comment period concluded on October 30, 2023. WDFW is working through public comments and will produce a summary of comments (CES).

- In response to a question from Karen Zirkle, Department of Natural Resources (DNR), Gabrielle noted the CES is expected to be available following the Commission’s next meeting.
- In response to a question from Carl Schroeder, Association of Washington Cities (AWC), Gabrielle explained the Commission typically votes on new rules within a few days of their meetings.

National Oceanic and Atmospheric Administration (NOAA) Grant Application Update

Chair Jameson shared that WDFW successfully submitted a bundle of nine (9) 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 (see item below).

If successful, the Recreation and Conservation Office (RCO) has agreed to manage the grant funds. Based on NOAA’s timeline last year, a funding decision is anticipated for late January 2024.

Path Forward: WDFW and RCO will keep the Board updated on the status of the FBRB’s project bundle submitted to NOAA.

Culvert Case Injunction December 7 Meeting Update

The Culvert Case Injunction requires WDFW, Department of Natural Resources (DNR), State Parks, and Washington State Department of Transportation (WSDOT) to make state-owned, fish blocking culverts passable in western Washington by 2030. Chair Jameson shared that the Seattle Times, in collaboration with WSDOT, published an article on November 19, 2023, highlighting that costs for barrier removals to meet the injunction obligation have risen substantially. WSDOT’s initial estimate to meet their

obligations was \$3.8 billion. However, due to inflation, the costs of gas, construction materials, and labor have greatly increased leading to an estimated shortfall of approximately \$4 billion. This effort is recognized as the largest fish passage correction initiative program in the world.

Annually, WDFW, DNR, State Parks, and WSDOT meet with the Steven Treaties Tribes to discuss the injunction's implementation. This year's meeting will be on December 7 and will be facilitated by Chair Jameson. Due to ongoing litigation, the meeting is not open to the public. Around 120 invitations were sent out for this event, with 70 people expected to attend in person. Approximately a third of the attendees are anticipated to be tribal attorneys. This year's meeting will largely focus on concerns related to costs and the execution of the work.

Funding Path Forward for De-obligated Funds

Expected Returned Funds

John Foltz, RCO, explained that the Legislature does not provide the FBRB funds for cost increases. Instead, cost increases are funded through returned funds from sponsors. Sponsors will return funds if they need to withdraw their project, receive funds from other funding sources, or they complete their project underbudget. After funding projects 32-35 with returned funds, the Board has almost \$1.8 million in returned funds remaining.

Several project sponsors are seeking *Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation* (PROTECT) funds, which 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. Based on the status of project sponsor applications, there is a high likelihood that approximately an additional \$7.7 million will be returned from sponsors anticipated to receive PROTECT funds.

John Foltz shared that based on current and anticipated returned funds, the Board could soon have a total of \$13 million in returned funds.

Questions and Discussion

- In response to a question from Carl Schoeder, John noted there is not a discrete timeline for obligating returned funds. Christy Rains, WDFW, clarified that projects take three to four years to implement and RCO's goal is to minimize returned and reappropriated funds. So, retained funds for cost increases are carefully balanced with providing funds to projects that are ready to be implemented.
- Jeannie Abbott proposed \$1.75 million of returned funds are retained for cost increase requests and any remaining funds would be used to fund alternates on the 2023-2025 project list.
- Josh Lambert, RCO, noted it is important to make sure the amount of "unobligated funds" (not in an active project agreement) is kept as low as possible when RCO requests reappropriation every two years. He clarified that obligated funds are actively being applied to projects and it is best to spend returned funds before the funds can be reappropriated.

Cost Increase Analysis

Chair Jameson walked through a handout showing the percentage of cost increase requests from project sponsors in previous biennium (see [November 2023 meeting materials](#)). He explained cost increases were high in the FBRB's first grant round because not of the projects had completed designs. The next two biennium were relatively accurate. It is too soon to receive cost increase requests for this biennium. To better understand what cost increases may look like over the next two years, he explained project

sponsors raised their projected project costs for PROTECT and NOAA grant requests were 23.4% and 13.35% respectively.

Discussion: How to Handle De-obligated Funds

John Foltz provided three potential options for the path forward:

- **Option 1:** Do nothing currently and re-evaluate in January (no motion necessary).
- **Option 2:** Move to reserve \$1.5M in returned funds for cost increases and permit staff to offer any unobligated funds, returned or declined, as they become available to alternate projects in ranked order.
- **Option 3:** Move to offer any unobligated funds, returned or declined, as they become available to alternate projects in ranked order.

John explained WDFW and RCO staff's recommendation is Option 2.

Questions and Discussion

- Steve Manlow, Council of Regions, suggested the Board's approach should honor the prioritization of the list so that the highest ranked projects can be completed. Given the uncertainty of future cost increase requests, he recommended some funds be retained for cost increase requests from the highest ranked projects.
- Susan Eugenis, Washington State Association of Counties (WSAC), noted Cowlitz County anticipates cost increases for their projects around March or April 2024. Based on her experience, she anticipates several more this spring once projects go to bid.
- Carl Schroeder suggested providing immediately available funds to alternates since no cost increase requests have been received and more returned funds are anticipated.
- John Foltz noted the Board has historically provided cost increase request funds on a first come, first serve basis. These requests are often time-bound, and the requested funds are required for sponsors to move their projects forward. Additionally, the Board has a limited ability to move funds across different biennium and cost increases have been used to avoid appropriation of returned funds.
- After discussing the options, Board members agreed to advance with Option 2 and to modify the funds retained for cost increase requests to \$1.75 million.

Decision: A motion was made by Jeannie Abbott to reserve \$1.75M in returned funds for cost increases and permit staff to offer any unobligated funds, returned or declined, as they become available to alternate projects in ranked order. The motion was seconded by Susan Kanzler and approved with no objections.

PROTECT Draft Request for Proposals (RFP)

Christy Rains summarized WSDOT Local Programs has \$75 million available through PROTECT to provide to eligible projects. Throughout late 2022 and 2023, the FBRB coordinated with nine eligible project sponsors to seek nearly \$25million of these PROTECT funds for project design and implementation. However, not all projects met the requirements to be allocated funds this fiscal year (FY). The remaining \$50 million is available for eligible sponsors in future fiscal years including those that missed the FY23 deadline.

Christy explained that the Board has exhausted its eligible projects on the 2023-2025 project list. To solicit more projects, Local Programs will manage the grant and will solicit projects for the remaining funds with the assistance of WDFW and its Technical Review Team. WDFW developed a draft RFP,

which include a modified version of the FBRB's Scoring Criteria to determine if proposed projects meet the FBRB's requirements (see [November 2023 meeting handouts](#)).

Christy walked through the RFP and noted that the criteria in the will not be used to rank the projects for funding unless applications total over \$50 million.

Questions and Discussion:

- Susan Eugenis suggested adding a project evaluation question for projects having a design funded through the FBRB if ranking is required. Christy agreed applications with reviewed and approved designs would speed up the implementation process.
- Carl Schroeder asked if the Board would be comfortable putting projects forward that have not been scored. Christy agreed with this concern and acknowledged the risk, especially if the Technical Review Team (TRT) does not conduct site visits for PROTECT applicants.
- Chair Jameson reiterated that while there are risks, PROTECT funds have already been provided to the state and it can be employed more readily than the Board's funds. It is estimated to take project sponsors six months to two years to meet federal requirements for PROTECT whereas it can take the Board over two years to receive applications, assess and review them, score and rank them, and finally, receive funds from the legislature.
- Steve Manlow made several suggestions to the RFP. This included:
 - The ranking for multiple species could be increased.
 - The Salmon Recovery Board (SRFB) has a process where projects of concern cannot move forward. A similar system could be used on this RFP.
 - A minimum scoring threshold could be added as a requirement for applicants, or a threshold could be based on project costs vs benefits.
- Carl suggested adding a project evaluation question for projects that are part of a regional recovery plan or were reviewed through other processes.
- Christy reiterated that PROTECT funding is time-limited and it is unclear how long and remaining funds will be available after this year.

Path Forward: WDFW will update the PROTECT RFP based on feedback provided by the Board at this meeting. If Board members have additional comments for consideration, please email Christy Rains (christy.rains@dfw.wa.gov) ASAP.

Project Spotlight: Nelson Dam

John Foltz and Casey Costello, WDFW, gave a presentation on the Nelson Dam Barrier Correction. Casey explained the Nelson Dam blocked an entire WRIA and was estimated to block 223 miles of critical anadromous habitat. John Foltz noted the upper watershed has some of the most climate resilient systems in the Yakia Basin. The project was completed in 2023. A drone fly through of the project site produced by the project sponsors is available at [this YouTube link](#).

Questions and Discussion:

- In response to a question from Jane Atha on if there is any monitoring of the dam removal, especially for geomorphology changes or sediment retention, Casey noted WDFW is not monitoring the site. However, the City of Yakima is monitoring for flood risk and downstream conditions. John added the Yakima Basin Flood Control District will also be monitoring aspects outside the project.
- In response to a question from John Box, Colville Tribes, Casey explained WDFW implemented a year-round riverside bypass, which allowed the project to be completed in a faster timeframe.

- In response to a question from David Collins, WDFW, Casey explained some work was done to strengthen the existing road and Powerhouse Road was prepared for replacement.

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

Chair Jameson reviewed with the Board received an allocation of \$48.4 million from the state legislature for its 2023-2025 Project List, with approximately \$21 million originating 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.

Chair Jameson explained the intent of this RCW was to create a program managed by Ecology where Tribes would receive funds to hire staff to conduct consultation for major energy projects. However, the terminology "major energy projects" was not included in the final RCW. Negotiations and internal work to clarify the RCW are still ongoing between agencies with grant programs that maybe affected and the Governor's Office.

Chair Jameson noted this RCW will not apply to projects on the Board's current project list, but it is unclear how this will impact projects applying for Board funding in the future.

Path Forward: Once WDFW receives input from the Governor's Office on RCW 70A.65.305, they will update the Board at a future meeting.

Project and Policy Issues & Opportunities

None.

Discussion: Upcoming Engagement Opportunities

- Joel Ingram, WDFW, gave a brief overview of the September 2023 site visits to the City of Bellingham and Skagit County.

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

Next Meeting: Virtual Meeting on January 17, 2023.

ATTENDANCE

Board Members/Alternates:

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| Carl Schroeder, Association of Washington Cities | John Box, Colville Tribes |
| Chair Thomas Jameson, Washington Department of Fish and Wildlife (WDFW) | Karen Zirkle, Department of Natural Resources (DNR) |
| Christy Rains, WDFW | Steve Manlow, Council of Regions |
| Erik Neatherlin, Governor's Salmon Recovery Office (GSRO) | Susan Eugenis, Washington State Association of Counties |
| Jeannie Abbott, GSRO | Susan Kanzler, Washington State Department of Transportation (WSDOT) |

WDFW, RCO Staff and Triangle Facilitation Team:

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|---------------------------|--|
| Adam Fleming, WDFW | Kaylee Kautz, WDFW |
| Amber Martens, WDFW | Melissa Erkel, WDFW |
| Casey Costello, WDFW | Elizabeth Butler, Recreation and Conservation Office (RCO) |
| Daniel Coffman, WDFW | John Foltz, RCO |
| David Collins, WDFW | Josh Lambert, RCO |
| Gabrielle Stilwater, WDFW | Eli Asher, GSRO |
| Jane Atha, WDFW | |
| Joel Ingram, WDFW | Alex Sweetser, Facilitation Support |
| Julie Grobelny, WDFW | Joy Juelson, Facilitation Support |

Others observing:

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|-----------------|---------------|-----------------|
| Adam Brown | Evan Lewis | Katie Sherer |
| Collen Swafford | Jeremy Deemer | Kevin Long |
| Daniel Howe | Jim Heytvelt | Call-in User x1 |
| Elena Fernandez | | |