

Fish Barrier Removal Board – Meeting Notes**Date: August 18, 2020****Place: Online Meeting (due to requirements governing meetings by WA Governor Inslee)****Summary: Agenda items with formal action**

Item	Formal Action
Meeting notes from June 2020	Approved
Approval of project list for 2021-2023 biennium	Approved

Summary: Follow-up actions

Item	Follow-up
FBRB strategy subcommittee	Tom will organize a meeting to discuss proviso and other topics

Board Members/Alternates on phone:

Tom Jameson, Chair	Dave Caudill, RCO
Jane Wall, WSAC	Jeannie Abbott, GSRO
John Foltz, COR	Paul Wagner, DOT
Matt Curtis, WDFW	Carl Schroeder, AWC
Susan Kanzler, DOT	Joe Shramek, DNR

Staff:

Neil Aaland, Facilitator	Gina Piazza, WDFW
Alison Hart, WDFW	Dave Collins, WDFW
Christy Rains, WDFW	Gabrielle Stilwater, WDFW
Cade Roler, WDFW	

Others observing (some only signed in with short login names):

Aaron Rosenblum	Emily Derenne	Sarah Zaniewski
Ali Fitzgerald	Evan Lewis, King County	Steve Helvey
Alice Rubin, RCO	Jeanne Cushman	Steve Malloch, Western Water Futures, LCC
Bailey Thorniley	Jeff Dickison, Squaxin Island Tribe	TG (user-provided name)
Cassandra Weekes, WDFW	Jess Helsley, Wild Salmon Center	Tracy G.
Cheryl Baumann, Clallam County	Kathryn Moore, RCO	Wendy Brown, RCO
Christian Berg	Kristen Currens-MacKay Sposito	Wendy Clark-Getzin, JCPW
Cynthia Rossi	Olivia Vito	Call-in user
Daniel Howe, Snohomish County	Richard Vacirca, USFS	

Welcome/Introductions/Agenda Review: Meeting started at 9:00. Facilitator Neil Aaland reviewed the agenda. He explained that if anyone has public comment to offer, to e-mail it to FBRB@dfw.wa.gov. Comments will be read into the record.

Public Comment: One comment was received via e-mail from Jeff Dickison, Squaxin Island Tribe: “The Washington Department of Fish and Wildlife has a legal obligation to work with the co-managers, Tribes, to assure that each and every proposed project has been coordinated with the local Tribe and meets all appropriate design standards.” [Note: A response to this comment from WDFW is appended to these meeting notes.]

Old Business

Meeting notes: The meeting notes for the June meeting were approved as submitted.

Chair Update

- Introduced Susan Eugenis, who replaces Jon Brand as the WSAC member of the Board
- Showed Jon Brand’s gift, which will be mailed to him
- Updated on proviso: state budget is projected to be \$9 billion short over next 3 years. Governor asked agencies to hold on spending proviso monies. \$24 million was identified by agencies to be on hold. He does not yet know if the funding can be spent. There were 50 or so tasks in the proviso. He is in discussion internally to try and work on some of the tasks. On October 1, a draft report comes to the FBRB from WDFW; a joint report is due from FBRB and DOT by November 1. On January 15, the budget needs for the Board are submitted to the legislative budget committees. Tom will organize a meeting of the strategy group.
- Chinook inventory – a list of recommendations was in the report to the Governor. Two recommendations came to DFW. Tom had two biologists complete an inventory of potential Chinook obstructions. Approximately 2,000 barriers to chinook passage were identified. These are only the runs that Southern Resident Orcas rely on. Next step is to convene a meeting with DFW upper management and GSRO.
- Rulemaking update – rulemaking topics include fish screening, fish passage, and climate adaptive structures. CR-101 was filed in early July. First phase of outreach briefings has concluded. Now taking comments and beginning to organize them, identify policy direction and draft language. A business impact study is required, which depends on the available funding
- Cost increases/change orders – lot of work being done right now. Buford Creek is returning \$25,000. Two additional cost increases coming for 2017-19 funding. Unnamed tributary to Johnson Creek in Clallam County and Johnson Creek in Okanogan County. For 2019-2021 funds, two barriers on Fisher Creek, \$50,273 for the crossing at Cedardale Road and \$37,685 at Starbird Road. Tom anticipates more cost increases for 2019-2021 funding as designs progress and sponsors receive bids.
- FBRB has been asked to brief the GMA Interagency Work Group meeting on August 19.

Other updates

- 2017-2019 funding: The Legislature had funded \$19.7 million for the first 13 projects. There have been both under-runs and over-runs. The budget currently has a surplus. He has been working with RCO to push leftover funding to projects funded in 19-21, which frees up current funding for potential cost increases. This can be done for current projects listed as alternates in 17-19. There are about 5 projects. Jeannie asked that in the future include a table of changes. John Foltz and Carl thanked Tom for the update.
- Culvert case injunction and fish use assessment – AG is working with DFW and DOT. Injunction looks at fish use in a different way than what is typically done for WDFW’s hydraulic project approval process. This should not affect FBRB work.

Final Project List

Matt presented this topic and showed a PowerPoint presentation. We have a total of \$66.8 million in requests, more than we have ever received. Questions and comments on the list:

- Matt can provide a running total, per John Foltz request
- Joe said drawing a line might mean some investments do not continue
 - Matt wonders if previously funded should get extra consideration, that was not considered in this ranking; Joe thinks that should not necessarily be a factor
- Matt said only 5 out of 110 submittals were ineligible; after working through applications we ended up with 88 projects
- Susan Kanzler asked about web maps; DFW can provide but not ready yet. Susan suggested that WDFW include corrected barriers in the web map along with existing fish passage barriers in WDFW's database.
- Matt has questions for the Board about five projects, and he started working through those
- #1 is Harper Estuary in Kitsap County, with several issues; he recommends leaving it on the list
 - There are several items that are not fundable including a pedestrian pathway.
 - Carl thinks leaving it on the list for the fish passage pieces
- #2 is McDonald Creek in Clallam County, which has a long and contentious history. There is a recent hydraulic violation. Could potentially be funding a know violator. Proponents have not been responsive to comments from the DFW regulatory authority.
 - Cheryl Bauman asked to speak; Clallam County is the sponsor. The project has a long and contentious history. They have used facilitation to get to a project design. Proposal gets us 75% of the way, even if it is not a full removal of a barrier. Irrigators have a senior water right. She does not want to lose another 10 years to poor fish passage at the site. The project is permitted and close to final design.
 - Matt has heard the same things Cheryl just noted; he is supportive of leaving the project on the list because the ecological benefits are still high regardless of the limitations in design.
 - John Foltz thinks this is challenging and he is supportive of leaving the project on the list. He asked about the status of the violation; Matt is not sure.
 - Tom said the agency will be in conflict with this; he reminded the Board of the Pilchuck project where the Homeowners Association does not want to remove a dam. He does not feel great about providing this funding for McDonald Creek.
 - Carl is not comfortable assuming that the state will prevail in the violation, and basing a grant decision on the violation.
 - Cheryl noted that Ecology's regional manager has viewed the site. They have been working on this for over a decade. She also noted that the Jamestown S'Klallam Tribe is supportive of the project.
- #3 is Coal Creek, ranked 72 out of 88
 - This project is proposing to remove a set of weirs and constructing a roughened channel that ties into a set of barrier weirs directly upstream owned by King County.
 - Carl suggested conditioning this based on working out an alternative with King County coming on board
 - Evan Lewis with King County said they have been coordinating on this with the city; looking at a lot of work on sewage lines in the area
 - Paul thinks the coordination is a concern; there is low gain for this project
 - Matt recommends keeping the project on the list but have the technical review team work with sponsor on coordinating further with King County.
- #4 is Ruby Creek – three barrier culverts. This project is proposing work beyond the water crossing structures, including removing reed canary grass and stream channel restoration.
 - Carl thinks it looks like a big aesthetic improvement but seems beyond fish passage and wonders if this is within our mission.

- Gina said could remove some pieces. The riparian plantings might be key if we remove reed canary grass.
- Dave agrees with Carl, some of the constructed wetlands might not be related. Removing the reed canary grass seems necessary
- Paul thinks keeping the funding for crossing structures; try to separate fish passage and request they seek other funding for other items
- Matt wanted Gina and Cade to weight in
- Gina said the Conservation District has been studying reed canary grass removal methods and this proposes a new method. Cade agrees and suggests asking for a monitoring plan
- John supports reed canary grass removal at this structure along with structural improvements;
- Carl thinks conferring with technical team regarding addressing reed canary grass; use other fund sources
- #5 is two projects, the tidegate projects we have seen in past meetings – one in Wahkiakum County and one in King County. Gilliam Creek in King County cannot do full removal as previously requested; it would only be closed 2% of the time. This gets ½ mile gain in habitat. The Wahkiakum project would result in 8 miles of gain. Discussion points for Gilliam Creek:
 - Concerns about this project
 - Is there any opportunity for other funding sources so FBRB is not only one?
 - Is this a high priority project for other reasons?
 - Consider conditioning because of cost
 - We are a specialized grant program; some projects do not quite fit
 - Paul wonders if the investment is appropriate
 - Dave is uncomfortable but suggests funding design; this opens the door for implementation – BUT best to decide now if the board is comfortable providing funding so it does not leave a stranded investment.
 - John Foltz agrees with the general conversation and thinks not removing the project but looking further into it
 - He wonders if there is support for requiring a higher level of match
 - Carl suggests putting it on the alternate list.

The Board discussed whether to forward the entire project list of \$66.8 million. After considering, the decision is to forward the entire list. It is important to ask for full amount to demonstrate the need.

Neil proposed a motion:

- Forward the entire project list with these amendments:
 - Harper Estuary project stays on the list for the fish passage elements
 - McDonald Creek project stays on the list with condition requiring a monitoring and maintenance plan; needs to identify who is responsible for the monitoring plan
 - Keep Coal Creek on the list but have technical review team work with sponsors on both barriers
 - Ruby Creek stays on the list; have technical team review reed canary grass removal at this structure along with structural improvements; consider riparian improvements only for those areas adjacent to structural improvements
 - Tidegate project for Wahkiakum stays on the list;
 - Gilliam Creek in King county proposed by the City of Tukwila will not move forward for funding consideration.
 - Technical Review Team will work with the sponsor to provide feedback for future grant rounds.

- Carl so moved; Paul seconded. The motion passed unanimously.

Meeting adjourned at 12:20 p.m.

Next meeting: Tuesday, September 15, 2020 – likely online meeting

**WDFW Response to Jeff Dickson Comment (provided during public comment period)
August 19, 2020**

During our FBRB meeting yesterday [August 18], Jeff Dickson participated as a member of the public. Jeff made the following comment that he wanted included in the public record of the meeting.

“The Washington Department of Fish and Wildlife has a legal obligation to work with the co-managers, Tribes, to assure that each and every proposed project has been coordinated with the local Tribe and meets all appropriate design standards.”

In my subsequent conversations with Matt Curtis and Randi Thurston, the manager of Habitat’s Protection Division, I want to set the record straight as I have confirmed that Jeff’s statement is inaccurate. WDFW does not have a *legal* obligation to work with tribes on every proposed project. Out of respect for tribal nations we do our best to coordinate and consult with tribes on non-injunction fish passage projects.

There is no legal obligation under RCWs 77.55 or 77.57, and our understanding is co-management required under the Boldt does not extend to habitat. WDFW’s Habitat Program has made it a priority to work collaboratively with all Tribes but except for the culvert injunction it is not because the law requires us too. We have codified in the hydraulic rules the 7-day review period. WDFW may consider but is not required to incorporate tribal recommendations into the permit.

220-660-050(11)(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

Tom Jameson LTC, (USA Retired)
Washington Department of Fish and Wildlife
Habitat Program – Fish Passage and Screening Division Manager