

Technical Working Group - Steering Committee

Pebble Project

January 16, 2009

Atwood Building Room 1860

Draft Minutes Recorded by Charlotte MacCay/Pebble Partnership (PLP)

I. PRESENT:

Andrea Meyer (ADNR)

Tom Crafford (ADNR)

Charlotte MacCay (PLP)

Scott Maclean (ADF&G)

John Pavitt (EPA)

Leroy Phillips (USACE)

Dave Casey (USACE)

Mike Daigneault (ADF&G)

Phil Brna (USFWS)

Frances Mann (USFWS)

Doug Limpinsel (NMFS)

Jeanne Hanson (NMFS)

Bud Rice (NPS)

Guests:

Ruth Hamilton Heese (Alaska Department of Law)

Brenda Holden (Information Insights)

II. PROPOSED AGENDA

- Call to Order
- Approval of Agenda – Additional Agenda Items
- 20081114 Minutes – final edits, Approval?
- USACE – SC member Leroy Phillips is headed to Idaho, Dave Casey is replacement
- Project Update/Developments
 - 2009 Study Plans – status?, timetable?
- Facilitation
 - Brenda Holden, Information Insights – brief presentation
 - Facilitation discussion – (needs, ideas, which TWG's?, etc.)
- Steering Committee (SC)
 - Dec. 2008 EPA response letter to NMFS
 - TWG Agency meeting?
- TWGs
 - Fish TWG
 - Guiding Principles Document
 - Jeff Estensen, Lead is leaving. New Lead?
 - Other TWGs?
- “Monitoring” – further discussion?
- Action Items form 20081114 SC Meeting
 - TWG Member Matrix – edits, changes, additions
 - USGS MOU – still in progress
- New Action Items
- Next Steering Committee Meeting – when?
- Public Comment

III. 20081114 MINUTES – FINAL EDITS

- (Agency) In addition to track changes to the edits, it was requested that the Steering Committee members be able to view the suggested edits before they were incorporated and to know who suggested which edits.
- (Agency) Subsequent mailings of the final minutes will include an attachment of all the edit comments that were submitted in their original state. This proposal will also help individuals track if their comments were received for consideration. An alternative of each member cc'ing the entire group with their comments was determined to be less organized and likely to cause “e-mail confusion”. It is suggested that each submittal of comments be cc'd to Andrea to help her compile the attachment.
- Members did not feel they had enough time to review the comments and approve the minutes at this meeting. If there are any further edits please submit them ASAP so these minutes may be finalized and posted.

IV. USACE

- (Agency) Leroy Phillips has taken a new job in Idaho. Serena Sweet who was Leroy's back up has also moved on to a different project. Dave Casey will be taking over USACE involvement with Pebble and participate on the Steering Committee. Katie McCafferty will take over some of the day to day responsibilities. Katie McCafferty works in Kenai for Dave Casey.
- (Agency) An e-mail was sent out, somewhat prematurely, that stated that USACE won't be participating in TWGs in the future. A formal letter is being written explaining that due to staff restraints the USACE will only be involved in the Steering Committee at this time. There are too many other projects requiring our resources to stay involved in all the TWGs. If USACE becomes the lead agency in the NEPA process, then USACE plans on having one person follow along throughout the process. At this time, USACE is not close to making any of these decisions. For some of the TWGs, USACE has no expertise to offer. USACE believes the TWG concept is good. USACE supports the State's effort, but the project seems stagnant at this time and the USACE has limited resources.
- (Agency) USACE does have some expertise to offer.
- (PLP) It is anticipated that when a wetland TWG is formed that USACE would probably participate.
- (Agency) Resources are limited for all agencies. The NMFS letter sent out in September brought up that issue.
- (Agency) The TWG process is excellent, unsure where it is going right now.
- (Agency) Some of the TWG members felt the process had downfalls such as not getting notes in a timely manner and not getting to see study design until after the field season had started. So a lot of agencies question the benefit of sending people to these meetings.
- (Agency) There is also concern that there is a perception that by participating in these meetings that it insinuates that the respective agency got what it needed out of the meeting.
- (PLP) The TWGs are evolving, the first round was rough, and included a lot of venting of past frustrations. Some of the groups are more constructive than others.
- (Agency) It is not USACE's position to never re-engage in the TWG's, but USACE will watch and evaluate when and if we want to participate.
- (Agency) There is a lot of personnel shuffling in USACE at this time. Leroy is transferring, Victor Ross may be transferring, Don Rice may be retiring, and the Colonel is transferring.
- (Agency) Background on Dave Casey – He has 16+ years in the Regulatory Program beginning in the Saint Paul District, 6 years on Anchorage, and has spent the last 7+ years in Kenai. Dave has worked at Corps headquarters on wetlands guidance, nationwide permits and other policy issues. Dave also spent 3 weeks at Donlin Creek Mine Project.
- (Agency) When PLP has an application to submit, USACE will review it under normal procedures.

IV. PEBBLE UPDATE

- (PLP) Due to the world financial situation, the PLP board is carefully considering its financing and has delayed the approval of budgets. Unfortunately, since PLP does not know the extent of the 2009 studies to be conducted they are unable to provide the 2009 study plans in January as hoped. This does not mean that all studies are cancelled, some studies will continue, but it is unclear at this time which studies will be maintained. For this reason, PLP cancelled scheduled TWG meetings as we were not going to be able to discuss what commitments could be made regarding future studies. Some meetings have been rescheduled to follow up on specific topics, such as a cooperative effort to install a fish counting tower, and discussions on natural background site specific criteria.
- (Agency) We had been excited about the prospect of seeing the 2009 study plans earlier so that we could provide input before the field season started. We had high hopes for an early review.
- (PLP) PLP was also hoping for an early review, and had rearranged the budget approval schedule to better accommodate the early release of study plans, however the world financial situation does have its impacts. It is still possible to make changes late in the season, and changes have been made mid-season in the past as well.
- (Agency) Does this mean that we probably won't be seeing permit applications in early 2010?
- (PLP) It's probable that they will be delayed.

FACILITATION

- (Agency) One of the Action Item lists from the previous TWG Steering Committee meeting was to further investigate the potential to hire a facilitator to assist with the Fish TWG and other meetings as needed. A search for potential qualified facilitators led to the company *Information Insights (II)*. *II has been previously involved with the Governor's 2004 Town Hall Meetings, and more recently with the Tongass Roundtable – revisions to the Tongass Land Management Plan. Brenda Holden from II was present to tell the Steering Committee about II and their services.*
- (Brenda Holden) II has offices in Fairbanks and Anchorage. II is known, amongst other things, for planning the Public Health Summit, the work of Brian Rogers who founded II, and for working with the Marine Highway System. An example of the type of tool we can bring to the table is the Consensor voting tool. 'Consensor' is used to determine how close to consensus a group is through anonymous voting, and to prioritize time use of discussion.
- (PLP) Before we spend too much time talking about the potential use of the Consensor voting tool, it should be remembered that the TWGs do not vote, make decisions, or come to consensus, so it may not be a very useful tool in this setting.
- (Agency) Besides the TWG Guidelines and Protocols that II was given, II may want to review the first set of Steering Committee Minutes which is more detailed about how the TWGs work.
- (Agency) Some TWGs need a facilitator and some need accurate note taking.
- (Brenda Holden) II can adapt to the need of the group. II can facilitate, act as a chair, work with leaders to make sure they run a good meeting, do note-taking, and/or supervise the secretary of the group. If there are different comfort levels with different TWG groups, the facilitator role can vary from group to group. Brian Rogers is Acting

Chancellor at UAA, so Il doesn't have anyone doing mediation right now. Il's job may not be to work with you, but to help you find the right facilitator. Il coordinates projects, coordinates websites, does logistics support, provides support to chairpersons. Il works for native corporations, non-profits, government, and a wide range of clients. Il sometimes does research and analysis preparations for meetings.

- (Agency) Some members of the Steering Committee have concerns about how the minutes are recorded.
- (PLP) There are two things that need to be understood before we get into this discussion. 1.) This is meant to be open discussion and the use of a recorder or scribe will undermine that, and 2) It is not negotiable to Pebble that the notes are taken by another party.
- (Agency) The July 2007 Steering Committee minutes state that Charlotte MacCay will be the scribe unless someone else is designated by the TWG. The *draft* minutes had said that Charlotte would be the scribe, but then a member commented that it was also meant to allow for a member of the TWG to be designated if the group chose to, and the final minutes incorporated this change.
- (PLP) That was a change to the minutes that PLP did not agree with.
- (Agency) That is an example of the minutes not being captured correctly.
- (Brenda Holden) Il can set common expectation levels for the minutes. An example would be action item minutes that record who, what, when, or parking lot items – what issues are being set aside for further discussion at a later date. Il can also help frame the meeting and set the tone for communication, help determine what preparatory material is needed, or provide a neutral person to keep the space safe and productive. Il can help with planning by sending out information packets and minutes. Facilitate means a whole range of things to us.
- (Agency) The Steering Committee does not have a clear cut vision of the role we would have a facilitator play. The idea had come from some groups that were butting heads a lot. There are hopes that a facilitator can guide the group to obtain input of science which is the fundamental purpose of the TWGs. The goal is to make the TWGs a more meaningful process. Il had the best track record, and substantial capacity, enough people to provide availability when needed.
- (Brenda Holden) Who is the client?
- (Agency) The Steering Committee envisions an arrangement where the facilitator is paid by the Large Mine Permitting Team (LMPT). There may be some difficulties with state procurement rules and requirements for competitive bidding, but PLP would reimburse the State for the costs. An alternative would be for PLP to pay the facilitator directly.
- (Brenda Holden) If PLP pays, who directs the facilitator?
- (Agency) PLP would pay directly, but the facilitator would take direction from the Steering Committee.
- (Brenda Holden) Some groups only need to bring in a facilitator on an as-needed basis, anything from occasional to ongoing.
- (Agency) How much staff is located in Anchorage?
- (Brenda Holden) We are staff- heavy in Fairbanks, but it depends on what work is ongoing, sometimes.

- (PLP) PLP sees the need for those groups that are not functioning well. Some groups are constructive and don't need a facilitator. PLP is not interested in paying for someone to come in and take minutes. The objective is to find a meeting leader where needed.
- (Agency) There is an advantage of providing feedback to agencies and to Pebble.
- (Agency) The details in the Fish TWG are not always being expressed in the minutes. We need to try to eliminate some of the misinterpretation and capture the technical details. We are not assaulting anybody's ability to take notes.
- (Agency) The need for a facilitator is driven by the Fish TWG which is dysfunctional, not all TWGs need a facilitator.
- (Agency) Objection to labeling the Fish TWG as dysfunctional.
- (Agency) The agency members of the Fish TWG, when meeting on their own to develop the "Guiding Principles" document, have been one of the best team efforts I've ever seen.
- (Agency) There are some issues about the size of the TWGs. There is a lot of intense discussion that might be better served through smaller groups with intimate discussion. TWGs are supposed to be an opportunity to provide information on plans, science, and to share information and discussion. There are important comments to be recorded capturing the scientific guidance and concerns. These are not being recorded accurately.
- (PLP) There are very few changes to the minutes and often there are comments that the minutes captured everything well.
- (Brenda Holden) There can be different expectations of how notes are packaged. Taking notes is a thankless job. A suggestion would be for the group to give a summary in their words within the meeting, to capture an action list, create a parking lot for ideas that need more discussion. It could meet with the group to discuss how to best use their time. Determine what is the level of expertise they need for content, and discuss what is the balance of neutrality to depth of knowledge they need for the note taking.
- (Agency) The Fish TWG is a voluntary process. To move ahead with discussion we identified information gaps. All groups want additional information. In response the company set a schedule to release data, but it doesn't include the fish data. Some folks believe the process is broken. A group of agency members drafted a document of discussion points in the interest to have some dialogue to move ahead.
- (Agency) There are lots of trust issues.
- (Agency) Our agency got involved, we felt like we would get information on pre-project planning to understand possible impacts so help advise the project on how to avoid, minimize and mitigate instead of the usual back and forth of the submittal process. We have gone forward in good faith, but if that type of input is not being reflected accurately why are we becoming involved in that process?
- (Brenda Holden) These tips and suggestions, are you bringing them in writing? It is a lot to expect to capture them all out of discussion.
- (Agency) The group is supposed to function as an open dialogue with suggestions back in forth between PLP, the consultants, and the agencies. As an analogy, say you are building a house - you need a foundation, frame walls, and do the interior before you build a roof. It is difficult as a scientist to answer what kind of roof to use when you

don't know anything about the foundation or the walls. I don't know if a facilitator can take us there if we don't know what's inside.

- (Brenda Holden) There seem to be trust issues, baggage and layers of concern.
- (Agency) I like the analogy, especially for the fish group. These people are scientists and need to follow a scientific process that is very linear. We can't talk about methods before we talk about objectives. There are a lot of confusion and trust issues.
- (Agency) Like counting towers, we haven't finished discussing if we need them so why are we having meetings about how to set one up?
- (Agency) A lot of groups start with the whining hour and the well is poisoned every time. This meeting we always talk about the minutes and say the same things over and over.
- (Agency) I don't think the Building a house analogy is an apt analogy. There are flaws in that analogy. Coming from the private sector before, my perspective is that you have building codes and standards and you can't begin to construct a building without a template, and guidelines, its changes along the way and is an iterative process, but you do have a dialogue from the get go. That's what this process should be, what's the applicable science that can be employed.
- (Agency) If it's not built to code it won't pass inspection.
- (PLP) These analogies are not carrying over. It's not clear what the analogy is referencing at times. It would be helpful to stay away from the analogy.
- (Agency) This is all pre-application. There are no hard and fast guidelines. All parties can walk away at any time.
- (Brenda Holden) If I were to draw a cartoon of this group it would show one person from PLP and a whole group of people targeting that person.
- (Agency) Often times there are 2-3 PLP people and 2- 3 consultants.
- (Agency) I am not against trying to work with Charlotte
- (Brenda Holden) There are a lot of side by side challenges. Some directed at each other.
- (Agency) There is a big gorilla in the room that we have fundamental disagreement about and that is: What is the end result? On one side is PLP's expectation for a permitted mine and on the other side is the No Action Alternative.
- (PLP) PLP is aware that in the NEPA process there is always the possibility of the final recommendation to be the No Action Alternative.
- (Agency) As a new member, who is the decision maker at a TWG?
- (Agency) There are none and this is an important point. The TWG cannot be a decision-making body. A pre-application decision-making body would be very challengeable.
- (Agency) This is totally an informative process. This is why we don't take votes.

- (PLP) It is always a gamble to determine what studies will be needed to permit a mine. The TWG provides more information so we can make an educated decision about what will probably be needed and be most useful, and it provides input to the permitting agency as to what other agencies would like them to consider in setting study requirements. In the end it is in the authority of the permitting agencies and sometimes the courts to decide what studies were needed.
- (Agency) Is it a verbatim issue?
- (PLP) No. We purposefully do not ID who said what to encourage open dialogue.
- (Agency) After 5 years of expressing concerns, do we need a consulting agency to ask us our concerns? There is an amazing amount of frustration by agencies and PLP, and we have still not clearly agreed what we will get out of all this.
- (Agency) Although this was the next discussion topic. There is written communication between EPA and NOAA on how to repair this process.
- (Agency) The concept was to provide agency input on what's the best science for baseline studies. The idea was that the technical experts would assemble to provide input. Some groups have strayed from the original intent and have become forums where every agency feels a need to have a representative present. In some cases, the TWGs are becoming the educator of the agencies, rather than receiving technical input from them.
- (PLP) PLP agrees. TWG members are not all experts. It takes the group off topic when members don't understand the subject matter. The original idea was for the groups to be 4 – 6 people with expertise in each group.
- (Agency) Is there a correlation between group size and the quality of the note taking?
- (Brenda Holden) There probably is.
- (Agency) This has turned into a situational interview for Brenda. Thank you.

EPA RESPONSE TO NOAA'S LETTER

- (Agency) In previous meeting notes for the Steering Committee there was correspondence from NOAA to EPA identifying some concerns about TWGs. Michael Gearheard, director of Water and Watersheds at EPA Region X responded acknowledging having similar concerns. The concern is widespread. EPA wants the process to work and has suggested convening a meeting without Pebble for the purpose of sharing concerns about the TWG process and the guiding principles, and then communicating back to Pebble in a unified way. EPA endeavors to make things work better. The meeting would be in mid-late February, maybe February 19th. The attendees will not be at the staff level, but at the Deputy Commissioner type of level.
- (PLP) I think it will be difficult to fix something without including a major player.
- (Agency) The agencies represent the public and the statutes, they have something in common and come at this from a different perspective. We can settle on priorities and manage what we want to deliver. Michael Gearheard has been appointed Acting Assistant Regional Administrator and Michelle Pirzadeh has been appointed Acting Regional Administrator for EPA Region X.
- (PLP) Having meetings separately seems to undermine the cooperative intent of the TWG groups.

- (Agency) This is not a meeting about TWGs, it's a meeting to determine if agencies should be dedicating resources to TWGs at this stage. Other topics should be how many people should be at these meetings and how to move them along more smoothly.
- (Agency) Agencies have a right to meet with the other agencies. No one surrendered any authority to engage in meeting outside the TWGs.
- (Agency) The intent is not to beat up on Pebble but to keep everything above board and to keep staff from wasting time.
- (PLP) It would be especially helpful if the topic of how many people needed to be at a meeting was discussed so that we could get the TWGs back down to a more workable size.

FISH TWG DRAFT GUIDING PRINCIPLES DOCUMENT

- (PLP) PLP's concern with this document is that it started out being about agency authority and consensus. It was a very strong list of suggestions, some very unrealistic in PLP's view, made by a consensus group. The TWGs are not a consensus or agreement setting group. The document did not present suggestions with pros and cons, did not address what was feasible and many suggestions had no rationale.
- (Agency) PLP presented their strawman on monitoring, this was a similar effort.
- (PLP) The strawman on monitoring was different in that it clearly stated that no-one was endorsing it, it was just a list of ideas to start from, ideas that came from agencies as well as from PLP.
- (Agency) This was not a consensus, but a set of guiding principles and technical input. The TWG is supposed to provide technical input and now PLP is resistant to that technical input. The purpose of scientific agencies is to tell you we need X data at a certain point in the future. It was a list of basic objectives.
- (PLP) There were very few specific objectives in the paper. The column for the rationale was often only used to list the species to be included in the study. It did not address why the study needed to be conducted.
- (Agency) The title has changed, it is no longer called Guiding Principles.
- (Agency) The document was meant to be a list of discussion points, a working draft. Look at it as an agenda for discussion. It was a product of frustration with the lack of data. It's something tangible that folks can work with.
- (Agency) We can ignore it and do it again when permits are applied for. A large component is the lack of response to the past correspondence. We do understand that PLP is now preparing a draft response.
- (PLP) There is a draft response to the past agency questions. I can say that while it effectively does not help you, there has always been a genuine effort to answer the agency questions. A draft has been under development for many years. I have not been a part of developing that document, but it has been worked on extensively. It's just that there were a lot of questions that took a long time to answer, and by the time they got them all answered some of them would be outdated, and it developed into a cyclical problem to try and answer all questions, be up to date, and ensure there were no errors in the answers.

- (Agency) We attached the SMART objectives as an appendix because we realized that some of the list didn't meet SMART objectives. Then there was a lot of mistrust generated because PLP went and talked to ADF&G and DNR without including the other agencies. Then PLP cancelled the TWG and wouldn't discuss the paper.
- (PLP) The Fish TWG was not the only TWG cancelled and it was not because of the paper. It was because we did not have a budget approval as expected and could not commit to what we could or could not do this season, so we didn't want to waste anyone's time. So we cancelled all the TWGs. But you have pointed out a major disconnect that is important. From the outside, it appeared that by including the SMART objectives with the list of recommendations, that the group felt the recommendations did already meet the SMART objectives. It is helpful to know that you did not feel they met the SMART objectives and perhaps this should be more clearly stated. From the outside it did not appear to be a discussion paper, because it was prefaced with statements of authority and a statement of consensus. It appeared to be a list of studies that all the members agreed should be implemented. Realizing we had this misunderstanding is important.
- (Agency) Would it facilitate the group to work with only official members?
- (Agency) Different divisions within agencies have different areas of expertise.
- (Agency) Guiding principles seem philosophical and may need to be part of a higher level meeting.
- (Agency) The new draft is responsive to these concerns.
- (Agency) Instream Flow and the Marine Fish TWGs also wanted to be included in preparing this paper. There is so much overlap between the Fish TWG and the Instream Flow TWG.
- (PLP) That is why the Instream Flow group is a subset of the Fish TWG. Sometimes the groups need to be together, but sometimes the Instream Flow group is reviewing very specific technical aspects that the rest of the Fish TWG doesn't necessarily understand or want to be part of, so then the two groups need to pull apart.
- (Agency) Sometimes might there be a subset of the Fish TWG that might need a facilitator?
- (Agency) Often times an agency has multiple members present at a meeting, if there were only one it would keep things less complicated.
- (Agency) There are several divisions within the agency and they all have separate expertise. Getting their concerns and comments helps move things forward.
- (Agency) It may be premature to consider heading small groups with a facilitator before the Agency TWG meeting.
- (Agency) In past experience, when large projects work with one division of an agency and leave out the other divisions, the divisions that were left out tended to torpedo the progress already made. It did not bode well for the project.
- (Agency) It was originally set up so that there was only one seat at the table per agency, and the others sat in the background and then you could bring them to the table and give them your seat at the point needed. It limited the discussion but gave agencies a chance to share background.
- (PLP) In a less literal way, you don't have to actually change seats, but the member at the table would ask to let their co-worker speak, but when they were done they were no longer part of the interchange unless the official member brought them back into the discussion.

- (Agency) Do we need a facilitated meeting for a small fish TWG to go through the next draft of the document with the company discussing the needs, merits etc.?
- (Brenda Holden) If all parties agree on ground rules, a facilitator could run the ground rules as a neutral party. Otherwise if there is room for resentment there is room for sabotage.
- (PLP) With the frequent changing of members to the TWGs, there are often members who are not yet familiar with the guidelines, protocols, etc. A neutral party could be helpful to impose these rules.

NOTETAKING

The note-taking issue was discussed while discussing facilitation earlier in the meeting and was left effectively unresolved with a fundamental disagreement between the agencies and PLP. Issues include objectivity, capability and timeliness.

- (Agency) We would like to see an objective note-taker brought in.
- (PLP) There is no such thing as an objective note taker, if they know enough about the project to follow along taking notes, then they have an opinion on the project. The TWG has the opportunity to comment and edit the notes. So far there have been very few changes suggested and several comments from team leaders and members that the notes were well done.
- (Agency) Could the PLP representative go back and discuss internally if PLP wants to take the position that the role of note-taker has to be a PLP role?
- (PLP) This decision did come from internal discussions. I do not make off -the-cuff definitive statements. This is the PLP directive.
- (Agency) If a facilitator is going to facilitate the Fish TWG could they also take the notes?
- (PLP) That would require a second facilitator, and PLP is not interested in funding that position.
- (PLP) Instead of discussing this again within the TWG Steering Committee, we may want to check the guidelines to see if there were provisions to elevate this type of disagreement.

PUBLIC COMMENT

- Ruth Hamilton Heese (Alaska Department of Law) An alternative to taking everyone's e-mails and attaching them to drafts, and recognizing that PLP does not want to fund another person, would be to record the meetings on cassette.

ACTION ITEMS

- Tom Crafford to investigate how to hire Information Insights as a facilitator. He will look into the possibility of existing contracts that could be extended, throughout the State agencies, as well as the state procurement procedure. The aim is to have a plan by February 15, 2009
- Charlotte MacCay to investigate protocol for elevating the issue of note-taking. February 1, 2009

NEXT MEETING

- In February, there are TWG meetings for Hydrology and Water Quality and for Instream Flow
- If the issue of note-taking is not elevated, then it will be further discussed at the next meeting.
- The MOU with USGS will also be on the agenda.
- Next meeting date Thursday, March 26, 2009 from 9:00 AM – 2:00 PM
- Lunch will be provided