

Technical Working Group - Steering Committee

Pebble Project

March 26, 2009

Atwood Building Room 1270

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

As with all Technical Working Group (TWG) Meetings, the minutes reflect discussion of suggestions and concerns raised by individuals. Discussion does not reflect any decision making or consensus from the group (with the exception of the Steering Committee setting administrative TWG procedures for how meetings will be run.)

I. PRESENT:

Andrea Meyer (ADNR),

Tom Crafford (ADNR)

Charlotte MacCay (PLP)

Ken Taylor (PLP)

Jason Gray (PLP)

Scott Maclean (ADF&G)

John Pavitt (EPA)

Dave Casey (USACE)

Mike Daigneault (ADF&G)

Phil Brna (USFWS)

Doug Limpinsel (USFWS)

Jeanne Hanson (USFWS)

Debora Cooper (NPS)

Public:

Tim Troll (TNC)

Carol Ann Woody (Fisheries Research Consulting)

II. PROPOSED AGENDA

- Call to Order
- Approval of Agenda – Additional Agenda Items
- 20090116 Minutes – final edits, Approval?
- Project Update/Developments
 - Exploration Drilling remains on hold
 - 2009 Study Plans – status?
- Facilitation
 - PLP has no budget to fund professional facilitator
 - Tom Crafford willing to serve as moderator for Fish + TWG(s)
- February 20, 2009 “Uber” TWG Agency Mtg. (John Pavitt)
 - Minutes (Handout)
- TWGs
 - Fish TWG
 - Study recommendations Document
 - Other TWGs
 - Change of WQ parameter request
- Note taking
- Action Items from 20090116 SC Meeting
 - TWG Member Matrix – (Handout)
 - USGS MOU – still in progress
- New Action Items
- Next Steering Committee Meeting – when?
- Public Comment

III. PEBBLE PROJECT UPDATE

- Pebble just completed their ‘Stargate Review’. PLP brought in experts to review project design for economic and environmental risks. The outcome was that the engineers were sent back to do further work on the design. A Preliminary Feasibility Study Phase II design had been expected by December of 2008, but has now been delayed until July 2009. As a result of the delay in developing the Phase II design, PLP has slowed down the collection of environmental data until there is a better understanding of the potential project design. Environmental study design will be revisited in July.
- A lot of environmental data was collected last year. Consultants are focusing on QA/QC of the data, entering data into the database, and writing EBD chapters (particularly the Fish and Wetland EBD chapters).
- The EBD is anticipated to be complete in late 2010.
- Environmental studies in 2009. PLP will continue hydrology studies, Water quality studies (perhaps with fewer parameters), a couple fish studies, and some studies at the port on endangered species. PLP made a commitment to investigate the use of fish counting towers, along with a funding commitment to a graduate student working on the relationship between counting towers and aerial surveys. PLP will finish the rainbow trout telemetry study – the transmitters are nearing the end of their two-year battery life. The objective of this study is to determine fidelity to spawning and foraging areas. There will also be one wildlife brown bear survey which is a joint study project with ADF&G and ABR Consulting.

- Drilling in 2009. Additional geotechnical drilling will be needed, but this is on hold until we have a final design. There will be some condemnation drilling in potential tailings disposal areas that will likely occur between April and July. There is one deep diamond core hole that was not finished last year that may be completed during 2009. If there is a mine design ready in July, the PLP board will review geotechnical and hydrologic drilling plans for possible changes.
- Additional information on studies in 2009.
 - Continue monitoring the 29 continuous hydrology monitoring sites (includes USGS sites and APC sites)
 - Continue the 100+ instantaneous hydrology monitoring sites
 - Wetlands work will focus on entering past years' data. Wetlands mapping hoped to be completed this month. No wetlands field work.
 - Instream flow consultants will be continuing to work on the Instream Flow modeling, no additional field work in 2009.
- (Agency) It is important to maintain core stations for hydrology and water quality to preserve the long term record.
- (PLP) Hydrology will be ongoing. Water quality will be continued in some degree. In the next year we will be determining which stations should be continued and at what frequency for ongoing long term data.
- (Agency) Will the Water Quality TWG be engaged in those decisions?
- (PLP) Yes. At the last Water Quality TWG we started talking about these issues. It was decided that PLP and ADEC would have additional meetings to discuss this further and then report back to the TWG.
- (Agency) If water quality studies are disrupted it can diminish the power of analysis.
- (PLP) Data releases will continue, the next release is macroinvertebrate data.
- (PLP) PLP is also conducting air monitoring at Iliamna for PM₁₀. Eventually we will need to monitor for PM 10 at more remote sites. The Iliamna site is being used to conduct a side by side comparison study of the conventional air filter methods with newer automated instrumentation better suited for control. EPA has approved the new instrumentation, but ADEC is still evaluating its use. It is relatively expensive and won't likely be set up in remote locations until feasibility studies are underway. It is likely needed for the mine, road and port.
- (Agency) Air filter sampling can be very sensitive with lots of QA steps to adhere to.
- (PLP) There is little data about water quality following volcanic activity.
- (Agency) The Chuitna project stream water quality monitoring should provide some data related to this recent volcanic activity.
- (PLP) More information on exploration activity. PLP may attempt to complete the one exploration hole that was not started but not completed last year. We are investigating the condition of the hole. There will also be four other condemnation holes that are not intended to extend much beyond 2000' depth. The intent of these holes is to determine if there is any mineral interest in the areas being considered for tailings storage.

- (PLP) About 2009 Study Plans. PLP originally set a schedule for budget approvals in January of 2009 to enable study plans to be ready for review early in the year. The Stargate review changed the schedule. We have been through four to five budget revisions and are just now contracting consultants for 2009. We do not have much in the way of study plans at this time.
 - The rainbow trout telemetry study will be completed this year.
 - ADF&G is in negotiations with APC for a lease that would allow the construction of a typical counting tower on the Upper Talarik that would be manned from late June through August with a focus on Sockeye, it may also work for Coho. If that tower works well, we may consider expanding the study to the North Fork Kaktuli and South Fork Kaktuli drainages in the future. The tower count study is a collaborative project with R2, ADF&G, and a college Graduate student. This is not a study that would typically be done for characterization, but we have heard your intense interest in having a tower count so we are going to try one and see how it goes. We will review the possibility of considering smolt out-migration in the future as well.
- (Agency) Is the wetlands effort complete?
- (PLP) There will be no wetlands field work this year. We are concentrating on completing the QA, data entry and mapping of existing data so other consultants who are dependent on that work can go forward. Wetlands field work for the general project outline has been completed. We may have possible further work in some lower parts of the drainage that need to be done in the future. We will ensure that we do that work on a scale that meets requirements, but perhaps not to the level done for the wetlands in the immediate project area. There have been studies done down to a ½ acre scale where at most projects wetlands work is typically done to a 20 acre scale. PLP need to settle on a scale that meets regulatory agency needs and our needs as well for the non –direct impact area, and resembles a more typical study scale.
- (Agency) A lesser scale might be appropriate outside of the impacted area. It is too early to say what that scale would be, it depends on the purpose i.e. characterization, cumulative impacts.
- (PLP) PLP needs to look at what we have so far, then sit with the USACE and see what else we need to do.
- (Agency) DNR received an appeal to the PLP exploration permit (application filed in December 2008, permit issued in February 2009) from the Trustees for Alaska representing Nunumtuk which is a consortium of eight villages and two individuals from Non Dalton. The appeal will be handled through a designated DNR appeals process. It is posted on the DNR website

IV. FACILITATION

- (Agency) There has been some past discussion of hiring a facilitator for some of the TWG meetings. PLP has stated that they have no budget to fund a professional facilitator, as we just heard, their budgets are reduced. If PLP is not intending to fund a facilitator in absence of a budget, I don't see any alternative unless any other organization has some means to do so.
- (Agency) There is not much happening for studies this year; do we anticipate many TWG meetings?

- (Agency) Generally speaking, if these types of meetings are suspended then later it requires a lot of effort to come back up to speed.
- (PLP) We expect Hydrology and Water Quality TWGs to meet because are doing field work this season, and doing some fish work too.
- (Agency) Who calls the meetings
- (PLP) The Leads call the meetings, but sometimes PLP lets the leads know we have information to discuss and ask the leads to call a meeting.
- (PLP) As consultants get further along processing data and analyzing data there may be some utility in the TWGs getting together.
- (Agency) The next Hydrology and Water Quality TWG meetings are contingent on the receipt of more results.
- (Agency) We could schedule the meetings based on when consultants estimate their work product to be done. It would be nice to have a ballpark idea of when the next meeting will be.
- (PLP) If engineering stays on schedule and has a project design in July then we may want meetings sometime after July. There may also be some things that come up before then.
- (Agency) Has any preference been stated regarding data release
- (Agency) There has been a two week timeline set in the past,
- (Agency) Please write that in the minutes.
- (Agency) The timeline has been written in the minutes in the past.
- (PLP) Sometimes we have been able to meet that timeline for some things, other time it has been difficult to get information out in time, but we are trying to meet that timeline.
- (Agency) There may be something in past minutes about postponing meetings until the data is ready.
- (PLP) In some instances, some meetings have been postponed until data were ready.
- (Agency) When do we think we will need another Steering Committee meeting? We have talked about doing these quarterly in the past. Mid-summer may be too soon given the reduced field season.
- (Agency) Plan for August if PLP expects a design in July. Will PLP be ready to share that design in August?
- (PLP) Hard to say, the expectation is that we will have something to share some time around then.
- (Agency) Set tentative Steering Committee meeting date for Wednesday, August 19th from 9 – 2. If the design isn't ready to be shared we can cancel if we need to.
- (Agency) Not sure about the schedule for upcoming individual TWG meetings. DNR had discussion regarding fish and instream flow and their possible need for a facilitator in light of no available budget for a professional

facilitator. DNR leadership suggested Tom Crafford serve as a moderator at least for the Fish TWG if that is the desire of the Fish TWG.

- (Agency) It's up in the air if there is an upcoming Fish TWG meeting. If there is, it's up to the Fish TWG to make the decision about a facilitator.

V. EPA SPONSORED AGENCY SENIOR STAFF TWG MEETING

- Minutes from the EPA-sponsored Agency Senior Staff TWG meeting were passed out to the Steering Committee.
- (Agency) On February 20, 2009 there was a meeting for the agencies that are participating in the TWG process. Marcia Combs of EPA invited all agencies to meet regarding common concerns in response to the EPA representative hearing complaints that the process was not working well. Rather than let things fester, it was decided to have a discussion regarding the TWG concerns with the intent to bring a summary of the meeting back to the Steering Committee which interacts with all the technical staff and has the role to help things run more smoothly. The group was made up of commissioners, deputy commissioners and other people at that level. There were about 15 people present. The wrap up was that the agencies each have different expectations and different concerns. There was a decision to invite PLP Senior Management for a follow up meeting on April 21, 2009.
- (PLP) John Shively indicated that he and Ken Taylor would attend, however, Ken Taylor will not be available on that date. Ken could participate by teleconference. Ken can make any date in the preceding week, but PLP is not asking for the group to change the date. Ken may send someone else familiar with the process such as Charlotte MacCay or Mike Smith.
- (Agency) We can look into the availability of meeting participants regarding a new date. Some agencies are willing to reschedule, others suggest stick with this date as a fall back with Ken participating by teleconference, but investigate other potential dates. Other dates will be investigated.
- The following bullets from the minutes were read:
 - Agency staff participating in TWGs are not getting the level of data they need to do the review they feel is needed;
 - Comments and suggestions offered by agencies are not consistently captured in meeting notes or study designs;
 - The Administrative record is inaccurate when agency comments and critiques are not captured in meeting notes;
 - Agencies can supplement the administrative record by documenting their concerns in correspondence to the federal action agency and/or to Pebble. But this does not address concerns that the public perceives the TWG process is working well for the agencies and will streamline the permitting process.
 - Agency participants are oftentimes not receiving advance copies of field studies and study designs. This means they are less likely to show up ready to offer technical comments at TWG meetings.
- (PLP) The minutes do reveal part of the underlying problem of having PLP and the agencies having different intent for the TWGs. It was never PLP's intent to create an administrative record through the TWGs. The TWGs were

meant to promote open discussion, not decisions or consensus. That is why, as we have discussed before, when minutes are recorded that we do not identify who made which comments they are only identified as “agency”, “PLP” or “consultant”.

- (Agency) If an agency makes a suggestion on a study design, but the suggestion doesn't show up in the study design, it could appear that the agency bought into the original design.
- (PLP) PLP doesn't expect anyone to buy into the study design. TWGs are meant to be a less formal process [than an administrative record] set up to invite an exchange of open ideas from experts without committing to a position, opinion, or course of action. Each agency has their own administrative record process to follow if they want to create an administrative record on an issue.
- (Agency) There is concern that individual specialists are not being heard and we are afraid it will be implied that they changed their mind when they make a statement later.
- (PLP) The purpose of the minutes is to capture what we did last time, where we left off. The minutes are not in any way, shape, or form an administrative record. We will respond formally to any letter and that will be the administrative record.
- (PLP) If you look at past TWG minutes, most of the minutes that came out after the first round of meetings have a disclaimer at the top that states: *“As with all Technical Working Group (TWG) Meetings, the minutes reflect discussion of suggestions and concerns raised by individuals. Discussion does not reflect any decision making or consensus from the group (with the exception of electing a lead).”* At times I forget to include this disclaimer, in which case anyone reviewing the notes should remind me to put this in. This statement was added to help clarify for the agencies, and particularly the public that these notes are not representative of any decisions; they are not an administrative record.
- (Agency) I agree the intent was not to establish an administrative record. There has been frustration on the adequacy of the minutes and frustration with wanting more data. This is a totally voluntary effort on PLPs part. When permits start then the administrative record will start. If we want to establish an administrative record before then we will need to write letters.
- (Agency) Agencies can supplement concerns in letters. There is a public perception that we are all working together. A public assumption that therefore we must have known about what was being done and the studies went forward so we must have approved of the studies. This is not always the case.
- (Agency) If you look at the DNR website it states the function is to discuss the studies, the study design, scope of the study etc... with agencies submitting ideas. It leads to the public perception that the agencies and the TWG are in agreement and that concerns have been addressed
- (Agency) The website should maybe state more clearly what the TWGs are for. That PLP will listen to opinions and may or may not do anything as a result.
- (Agency) We went over possible solutions in the minutes. One idea was that concerns should be sent in written form to PLP and cc'd to the federal action agency and posted at the DNR site for public record of input. It shows we are engaged and raising issues. There is some concern of posting too much correspondence.
- (PLP) What does federal action agency mean?

- (Agency) It could be the USACE who would be the NEPA lead agency.
- (Agency) At this point there is no lead agency – there is no NEPA process yet.
- (Agency) Agreed it would be a more appropriate term in the future when NEPA has been triggered.
- (Agency) PLP should provide study plans in advance so participants can come prepared.
- (PLP) We agree to the need to do that. We don't always have the plans from the consultants yet to do that. We should have 2009 Study plans in August. There are two ways to look at this, we could have TWG input to the Study Plans before they are published, interacting with the consultants to design the scope of study; or we can submit the Study Plans to the TWG for follow up comments.
- (Agency) Each TWG has needs specific to the subject. Need for the TWG members to have a full understanding of what work has been performed to date. There may need to be multiple meetings for various TWGs, educating results, presenting designs, agencies may need to absorb that for awhile. In no way in a two week period can we review and give suggestions.
- (Agency) This may be TWG specific, Water quality may not take a lot to review whereas fish is a whole different ball game.
- (PLP) Water quality can also be very involved.
- (Agency) It is a function of the Steering Committee to formulate a plan for the TWGs, more than just saying we need data two weeks before a meeting.
- (Agency) TWG members need a minimum of two week's time to digest information, but more may be needed. It's certainly up to the TWG members to suggest more time for review.

VI. DEFINITION OF TWGS

- A copy of the DNR webpage was printed and passed out to all members. It reads: *Pebble Project Technical Working Groups (TWGs) are being established to facilitate coordinated agency involvement relating to the environmental and project design studies for NEPA and subsequent project permitting. TWGs will be advisory groups that provide suggestions related to baseline studies for the Pebble Project, and will help determine scope of studies, geographical extent, methodologies and means to best coordinate study efforts*.
- (PLP) The words "will help determine" may be what's at issue here.
- (Agency) Advise changing the TWG to fit the statement, not fit the statement to the TWGs.
- (Agency) Pebble is still in the pre-application phase. These decisions are made by PLP. Post application the decisions in a large part are made by the lead agency for NEPA.
- (Agency) Change the statement so as to reflect current practice and avoid confusion with public perception. Advocate that it is a free flow of ideas, a non-regulatory process, that there is no consensus.
- (Agency) There has been a lot of effort to make this as non-suggestive as possible.

- (Agency) Notes should be capturing that many agencies have the opinion that the purpose of the TWG as is written on the webpage is not always occurring.
- (Agency) Maybe we should review the protocols
- (Agency) Should we change the protocol or change the performance to meet the protocol?
- (Agency) It is really a question of influence or say of resource experts. If it is a free flow of ideas and not a setting for resource specialists then add sentences that say free flowing, non-binding, voluntary process, started with the goodwill of PLP
- (Agency) Can we ask the public in attendance their perception?
- (Agency) We can ask these individuals their personal opinion, that does not mean they represent the “public”.
- (Carol Ann Woody) What people would like to have happen is for the agencies to set up studies to adequately characterize and capture cumulative effects. I would advocate that agency input be considered. There is limited public participation. People in villages don’t really understand this process, it’s a hard process for them to follow. They believe agencies are watching closely and holding Pebble to high standards. They keep hearing “beyond compliance” and “best science”.
- (PLP) When we have lots of specialists on TWGs and the Steering Committee, there are a lot of different ideas. They may not all be compatible and then you may not see what is suggested being included. There are two options Brainstorm in TWG with colleagues or send a letter outlining ideas. If you send a letter you will get a response and that should lessen frustration over feeling that your voice is not being heard.
- (Agency) Input is not acknowledged and not included in the following years work.
- (Agency) In the protocols under seeking issue clarification and resolution – it should be captured that those records were discussed and whether they will be adopted should be addressed. I worked in the initial planning of TWGs and thought it was about a free-flow of ideas but also to identify issues and have them addressed to avoid the back and forth of letter writing to keep the project moving ahead. Documenting ideas and responding to ideas within TWGs would minimize letter writing.
- (PLP) Some TWGs are doing very well with good discussions taking place such as in the water quality TWG and this can help the need for formal letters.
- (PLP) In responding to ADF&G’s previous comments, (which were sent in before I came to Pebble and took too long to get a response out) I discovered that we did incorporate many of the suggestions in ADF&G’s letters.
- (Agency) Data release affects how productive TWGs are, the ability to evaluate as a basis for discussion.
- (Agency) Agencies don’t just want raw data
- (PLP) Agreed some TWGs have results to discuss; others, such as fish, we haven’t even started drafting those EBD chapters. We know that raw data isn’t really cutting it, but don’t always have data evaluated to release. TWGs like wildlife are dependent on the completion of the wetlands mapping before they can do any evaluation.

- (Agency) The TWG process is not perfect, we're probably not going to get what we want (data) but it is an opportunity to have some involvement.
- (Agency) There should be no tolerance for misrepresentation, not actual or by omission. I think omission is what's occurring. The process should be 100% accurate as displayed on the web. It is a PLP process until an application is submitted.
- (Agency) We are not trying to lead the public anywhere. I admit to frustration that no matter how often we say nothing is binding and that this is pre-process, it keeps coming back to a misperception about our roles. How far do we have to go? Public perception is not the overriding goal of the TWG, we need to get past worrying about perception.
- (Agency) Maybe just change wording. Delete the words "help determine" and "advisory group"
- (Agency) This process is far better than one of the other large mine projects, at least there is a forum for discussion.
- (Agency) This is not an administrative record. There is no formal pre-application process like for FERC. But the process does let us interact if set up like this. As PLP noted, the notes do not include who said what.
- (PLP) The disclaimer I read before was added to most of the recent minutes to address that the TWGs are not a reflection of consensus.
- (Agency) The disclaimer that is included at the beginning of the minutes should be put at the very front of the DNR Pebble TWG web page so that it is 100% clear to the public what the TWGs are.
- (Agency) We need to look at the big picture, some TWGs are functioning fine, do not judge the entire TWG process by the worst case.
- (PLP) The best functioning TWGs do have the most data – we recognize that.
- (Agency) Does PLP have a feel for the UBER meeting?
- (PLP) The members of the UBER meeting are higher ups that have not been down in the weeds, the minutes reflect that with the references to administrative records. They are responding to the most vocal complaints and frustrations. We understand the frustration regarding what's accessible right now for information, and how responses in the past have left room for improvement. I was not present in the room or privy to room dynamics so it's hard to have a feel for the group.
- (Agency) Administrative records are different for each agency. These are issues that were brought up and different solutions that were identified. No one thing was picked. Each agency participates at their own appropriate level and do what they need to do for their own administrative record and documentation.
- (Agency) Signing something as an administrative record before permit applications are submitted is termed "pre-decisional".
- (PLP) PLP is not asking for permitting decisions at this stage. This is a consultation phase of prefeasibility only, we are not asking for regulatory judgment. Typically an administrative record is established when a project application

is submitted and NEPA kicks off. It is important to ensure the administrative record follows process correctly when it is established.

- (Agency) The intent of the TWGs is to foster a free exchange of ideas and allow a forum to prevent the hesitancy to speak.
- (Agency) The protocols need to be reworked. In some of the TWGs there may be different interpretations of the protocols.
- (Agency) Suggestion to reiterate the TWG guidelines at each TWG meeting
- (Agency) TWG members should also review the first set of Steering Committee minutes which further discuss the guidelines.
- (PLP) The minutes do more to address the 'no consensus' issue.
- (Agency) Suggestion for an e-mail discussion of the guidelines prior to the next Steering Committee meeting.
- (Agency) Suggestion for a central point of contact.
- (Agency) Suggestion to devote a Steering Committee Meeting to protocols and guidelines. This may be helpful for some of the newer members
- (PLP) Regarding the next UBER TWG meeting on the 21st, is there an agenda?
- (Agency) Not yet. We will include a summation of this meeting and discuss the extent groups need to be involved to see if the process works.
- (Agency - Steering Committee Lead) Let's set a data for the Steering Committee Protocol meeting with an established timeline to get comments.
 - Meeting on May 20th (Need projector and screen so we can edit a word program)
 - Draft revised protocols to be reviewed, with the minutes and presented for how it could be amended to better address what we think the minutes should be. This to be distributed by April 9 (Charlotte Maccay to prepare the first take since it is PLP's process)
 - Comments on the revised draft to Tom Crafford/Andrea Meyer by May 1st.

VII. FISH/MARINE TWG DRAFT LIST OF RECOMMENDATIONS

- (PLP) About two weeks ago, PLP received a draft list of Study recommendations from the Fish, Instream Flow and Marine TWG members. There was a lot of work put into the document. PLP will respond in detail, but it will take an extended amount of time. The document states that these recommendations and principles are a "consensus" which violates the protocols of the TWG process which is supposed to be an open dialogue. PLP was not a part of this dialogue. The recommendations are not attributed to an agency, and it was done outside of the TWG process. We have drafted a letter to Tom Crafford as the Lead of the Steering Committee and the head of the Large Mine

Permitting Team. Tom will receive this letter next week and it expresses concern for receiving a document of discussion outside of the TWG process and not attributable to any agency. The letter asks for help in avoiding this type of thing in the future. As we work through the TWGs we need to keep a two-way exchange of ideas at the table together.

- (Agency) If the TWGs are going to work it needs to be that way.
- (Agency) This document is a product of several members who participate in three TWGs. The letter was sent to Tom before PLP for Tom's input, there was no direct feedback. As acting lead for the Fish and Marine TWGs, I saw it as an effort to try and respond to PLP's need for articulation of the basis for study recommendations. It fits the TWG purpose to identify information gaps. The fundamental effort was a function of the lack of progress reports, results, and analyses to these disciplines. It raises the question of it is worthwhile to hold TWG meetings without results and analyses. Can any of these be discussed without results and analyses before a meeting? I propose that PLP propose a meeting of what could be provided to help the discussion on these recommendations.
- (Agency) This came out of making suggestions and getting no response and no formal reply for four years. Oftentimes PLP asks us to elaborate on the justification for suggestions. We sat down and said what ideally we would like to have the knowledge of, and what level of accuracy we want. It's providing clarity and justification.
- (Agency) Some things get different interpretations of meaning and intent.
- (Agency) These are study objective for PLP's consideration, I will note that the Steering Committee lead did state concern about the consensus statement. There is nothing in the protocols about consensus.
- (Agency) It may be in the minutes.
- (Agency) Note that the draft is a consensus of purpose, not a consensus of recommendations. We acknowledge that there are differences among specialists. It is not a formal agency recommendation.
- (Agency) The list of recommendations was a result of the November TWG where PLP presented a strawman to the agencies for fish study recommendations. The agencies decided obvious discussion was needed on objectives. The agencies provided PLP with an early draft, but that meeting was cancelled because of the LP budget issues. The document is a draft, we expect to make changes. My agency does not buy into everything. The guiding principles are a consensus, the recommendations are not a consensus.
- (Agency) Different specialists may have different expertise that the other agencies don't have.
- (Agency) At first we were just looking at objectives. Different regulators have different understandings.
- (Agency) Opinions are open to changing part of the TWG process, there is interest in further discussing these ideas.
- (Agency) It became increasingly clear when we talk with PLP consultants regarding study plans that there was never any clear agreement on what study objectives were. We needed to formulate objective with PLP so we all have the same goal. It is not a formal recommendation from any agency and certainly we understand your concern. We understand that this is a pre-permitting process, but it would be irresponsible to not make the recommendations now.

- (PLP) We would prefer to look at objectives for groups of recommendations, not to go through the merits and concerns with each one. We could look at a group of them and decide if they are attainable objectives and then work through some modification of them. We are not finding fault with all of them, in fact we are doing many of them already. We do want a continuing dialogue not people drawing lines in the sand.
- (Agency) This is not meant to be a line in the sand.
- (Agency) We should differentiate between what is required for NEPA, for permitting, and what is non-required, but desirable.
- (Agency) We had that in an early draft, but it quickly became an issue for attorneys, and there are no clear answers according to our attorneys.
- (Agency) Repeating what I heard earlier by PLP: this is an informal process in which there is an exchange of ideas and opinions – open to changing with time and new data. This document is part of this process.
- (PLP) PLP will follow up with a response letter to Tom Crafford and then develop a clear response to the recommendations to set the course for further discussion.
- (PLP) What is being said around the table about these recommendations conflicts to how this list of recommendations and principles is characterized in the Uber TWG meeting minutes for February 20, 2009, page four, third paragraph which refers to this list of recommendations and principles as ‘the protocol’: “ For the agencies, the protocol is their part of the administrative record. It will identify that “these are the questions we’ll want answered before issuing a permit...”” This wording in the minutes is part of what causes our concern.
- (Agency) Several agencies concurred that the minutes are inaccurate and reflect a misunderstanding of the recommendations as protocols. There was discussion of the Uber TWG correcting their minutes.
- (Agency) There was a proposal for the Steering Committee to possibly have a discussion on the guiding principles section of the document separate from the specific recommendations listed within that document.
- (PLP) PLP will consider this possibility and get back to the group.
- (Agency) There is a preference to set up this discussion sooner than later. Field personnel will be heading out as early as mid-April, most by early to mid-May.

VIII. CHANGE OF PARAMETERS IN WATER QUALITY STUDIES

- (Agency) DEC, DNR, ADF&G and EPA are all looking at a request made by PLP to change some of the parameters in the water quality studies. This was a process outside of the TWG.
- (PLP) There was discussion at the last Water Quality TWG about changing some of the parameters, this was a follow up with the regulating agency following that discussion. We are suggesting that after five years of data collection that we would like to remove from the study parameters that are not of concern, and not showing natural levels that are higher than the water quality standards. It also discusses adding radioactive parameters to the study for the next year as was suggested by an agency during a water quality TWG.

- (Agency) The question was raised why the request was made outside of the TWG process, and how writing a letter to ADEC is different from the TWG members working on the list of recommendations outside of the TWG process.
- (PLP) PLP was going through the appropriate regulatory channels to the agency with authority. ADEC approves that Quality Assurance Project Plan which lists the parameters in the study, so we wanted to run the list past ADEC before revising this QAPP. It's similar to if I needed a Title 16 permit for a stream crossing, we may discuss it in a TWG, but I would go to ADF&G outside of the TWG process to obtain the permit.
- (Public) Public interest was stated in accessing the letter from PLP to ADEC on the water quality parameters.
- (PLP) PLP stated their preference that protocol be followed where the public refrains from speaking until the end of the meeting.

IX. NOTETAKING

- (Agency) The suggestion was made that the topic of notetaking be tabled. There was general agreement to do so.

X. ADDITIONAL DISCUSSION ON GUIDING PRINCIPLES

- (Agency) The Guiding Principles in the List of recommendations may apply to other TWGs, there was a lot of discussion that we need to share these objectives with the other TWGs for them to think about.
- (Agency) There has occasionally been discussion with the other TWGs on this topic. Should the Steering Committee tell other TWGs to also adopt these guiding principles?
- (Agency) Should the concept of guiding principles be set by the individual TWGs or the Steering Committee? Incorporate the guidelines into the protocols?
- (PLP) The principles may not work as well for all disciplines. Although the Socio-economic and Cultural Resource TWGs have not met yet, it is anticipated that these TWGs may be formed one day. If so, these principles may not work well for their study matter.
- (Agency) The Steering Committee could suggest that when TWGs meet in the future that they review the Guiding Principles for consideration.
- (Steering Committee Lead) I am interested in seeing the TWGs put energy into technical comments. I don't want us to get bogged down into policy document.
- (Agency) The intent is to form scientifically valid objectives.
- (Agency) The federal agencies are aware that as a result of the Guiding Principle/List of Recommendations document that PLP met separately with State agencies. This breeds ill will and bad feelings.
- (Agency) USACE does not share this concern about inclusion with the state agencies. It is fine if PLP meets with individual agencies. Where does it get us to bring this up?
- (Agency) When we have a multiple agency document and PLP talks to State agencies only it appears they are trying to roll the State agencies.

- (Agency) The Guiding Principles need to be talked about all together. People will be enthusiastic to speculate on motives for meeting only with the State agencies.
- (PLP) The PLP personnel who were at that meeting aren't here to discuss it. I can't provide any insight, I wasn't there.
- (Agency) It's worth reiterating when we entered into this process, nothing in the TWG process restricts anyone's ability to interact with any other agency or authority. Your dissatisfaction should be duly recorded. PLP is free to talk to whoever they want to.
- (Agency) Yes, and PLP has talked to federal agencies without the state agencies on such issues as endangered species and marine mammals, but if it's a multi-agency product for the TWG and PLP goes only to the State then that backs the feds in a corner and the document becomes a federal document.

ACTION ITEMS FROM LAST MEEING

- Finalize the contact matrix. A draft matrix was handed out for review.
 - USACE is going to develop a TWG e-mail box so that the contact emails for the TWGs are not affected by personnel changes.
- USGS MOU: Funding through the LMPT for their participation, particularly with geochemistry. The DNR attorney has been too busy with the legislative session to attend to this issue as of yet.
 - (Agency) Why does PLP provide funding to USGS and not other federal agencies?
 - (Agency) USGS has expertise that would be useful to the TWGs. They do not have any regulatory authority to conflict with the funding agreement.
 - (Agency) If that discussion is occurring with one federal agency, then all the federal agencies should be involved to see if they could use TWG funding as well.
 - (Agency) This was discussed within USFWS, but it would be illegal because we have a regulatory role.
 - (Agency) NPS does not have a regulatory role in this context.
 - (Agency) USGS has the expertise to help the federal family so that the other federal agencies don't need to go out and pay for private expertise.
 - (Agency) USFWS will be the lead for the interior department for NEPA comments. Funding for USGS involvement will cause the USFWS to review USGS comments to see if there is any conflict of interest, i.e. if their comments would lead to more work for USGS then those comments need to be carefully considered.
 - (Agency) USGS takes money on stream gages already. Their expertise would be very helpful. USGS has the best groundwater experts in the world.

NEW ACTION ITEMS

- Steering Committee Protocol meeting with an established timeline to get comments.
 - Meeting on May 20th (Need projector and screen so we can edit a word program)
 - Draft revised protocols to be reviewed, with the minutes and presented for how it could be amended to better address what we think the minutes should be. This to be distributed by April 9 (Charlotte Maccay to prepare the first take since it is PLP's process)
 - Comments on the revised draft to Tom Crafford/Andrea Meyer by May 1st.
- PLP will consider the proposal for the Steering Committee to have a discussion on the guiding principles section of the document separate from the specific recommendations listed within that document.
- Post this disclaimer at the top of the DNR Pebble Project TWG webpage: *As with all Technical Working Group (TWG) Meetings, the minutes reflect discussion of suggestions and concerns raised by individuals. Discussion does not reflect any decision making or consensus from the group (with the exception of electing a lead).*
- John Pavitt to maintain the April 21 Uber TWG meeting, while concurrently investigating the possibility of a meeting on an earlier date.
- John Pavitt to correct/clarify the Uber TWG meeting minutes regarding the intent of the List of Recommendations and Guidelines.

PUBLIC COMMENT

- (Tim Troll) Despite the angst within the TWGs, The Nature Conservancy (TNC) feels that the TWGs are probably the best forum for the hard questions to get asked and for discussion to occur. If the TWGs feel that an independent consultant/facilitator would be helpful, TNC may be willing to try and provide funding for that to happen. This would need to be discussed further within TNC. I am interested in what's going on and would like to see the process continue.
 - (Agency) that might be good for the Fish TWG. The others I'm in, even the Instream Flow Habitat Modeling TWG are not very contentious.
 - (Agency) Each TWG could discuss their preference.
 - (Tim Troll) It would be helpful if this could be decided soon
- (Tim Troll) TNC will meet with PLP to discuss summer study plans soon so we don't duplicate efforts. We are considering some anadromous fish surveys. We are concerned about groundwater connections and talking with the University of Montana about some studies. Our field season is probably about 3-4 weeks in August.

Meeting Notes

(Finalized by John Pavitt, EPA, March 30, 2009)

Agency Discussion of Pebble Limited Partnership, Technical Working Groups (TWG's).
February 20, 2009

Anchorage Federal Building, Conference Room 154 (MML # 907-271-6338)

This meeting was scheduled by invitation from Marcia Combes, Director, US EPA, Alaska Operations Office.

Attending

National Park Service: Debora Cooper

National Marine Fisheries Service: Jeanne Hanson, Heather Blough, Doug Limpinsel,
Brian Lance

US Army Corps of Engineers: Bill Keller, Dave Casey

US Environmental Protection Agency: Greg Kellogg, John Pavitt, Patty McGrath (telephone)

US Fish and Wildlife Service: Ann Rappoport, Francis Mann

AK Department of Environmental Conservation: Lynn Kent

AK Department of Fish and Game: Kerry Howard, Michael Daigneault, Al Ott (telephone)

AK Department of Natural Resources: Ed Fogels, Tom Crafford

Review of Meeting Agenda (Attached)

Welcome (Greg Kellogg, US EPA).

EPA's role is changing in relation to the proposed development, considering EPA's delegation of the NPDES program to the State of Alaska. The purpose of this meeting is to affirm our expectations of Pebble Limited Partnership (PLP) in the Technical Working Group (TWG) process. Our relationship with PLP is changing over time and we need to be aware of that.

Purpose of the Meeting (John Pavitt, US EPA).

As EPA's Project Manager for the PLP project, he's been hearing from agency TWG participants that the process is not working well for them. They feel as if their comments, suggestions and questions are not being reflected in the record of study plans, data collected and meeting notes. When the TWG's were started, we established Operating Protocols and Guidelines (handout) which laid out a process of communications, and our expectations of how it would work. This meeting is an opportunity to reaffirm those guidelines and communicate back to PLP and hopefully get the process working better.

Introductions (around the room).

General Comments

Tom Crafford (AK DNR). Tom recalled the origins of the TWG's, which began at the request of Northern Dynasty (ND). ND advocated the formation of TWG's as forums for discussion of technical issues related to conducting studies of the proposed mine site. For example, when sampling fish tissue, should tissue be collected with skin, or with skin off of samples? The Steering Committee worked on setting Operating Protocols and Guidelines

(see meeting agenda attachment), and struggled with how to deal with conflict in the TWG's. He said the expectation of the Steering Committee was not that there'd be consensus, but rather that opinions would be freely expressed. He said the Steering Committee also sought a balance of getting TWG participants to freely express their thoughts and getting public input, and settled on making meetings open to the public and they are given the opportunity at the end of meetings to make a statement or ask questions.

He described the current process for recording TWG discussions: Charlotte is the note taker; Charlotte distributes notes to the respective TWG lead; the TWG lead distributes notes to the TWG for review and comment; TWG lead responsible for final product, which is posted on DNR website.

DNR has MOU with Pebble; Pebble pays DNR for engaging in this process. For that reason, the TWG's are led by state representatives.

He also said the TWG's are working at different levels of quality, in the sense that some are working reasonably well, while others are experiencing more conflict and are not making progress. He said some TWG's are more winding up educating the agency participants, as opposed to getting comments from the agencies.

Discussion of Issues Affecting the Performance of TWG's

Ed Fogels (AK DNR) said that this is not the "normal" process. Usually, mining companies don't share this much information this early on and ask for agency input. He referenced the Donlin Mine as an example; indicating agencies were not involved in an pre-application review for this project.

Patty McGrath (US EPA) said there's a fine line between early review of data and doing a National Environmental Policy Act (NEPA) review. She said that four baseline environmental documents were reviewed for the Donlin mine. She wondered when PLP would actually be submitting a permit application.

Jeanne Hanson (NMFS) said it's not so unusual for a developer to give data early on and gave an example of the BP, Endicott development. She said agencies reviewed baseline data and commented on *how* the developer was collecting data.

Fogels said we don't usually view data early on in the process.

Debora Cooper (NPS) asked if there is the perception that PLP controls the process.

Crafford thought that perception is not held by the agencies. He said the schedule for PLP submitting a permit application seems to be slipping from mid-2009 until mid-2010, and perhaps even further out.

Lynn Kent (ADEC) said that if the agencies don't get involved early and give input, then there's a risk of significant delay when PLP does apply for a permit. The agency that doesn't

get involved early on risks being accused of being the source of a delay in getting the application processed.

Frances Mann (USFWS) agreed that is a risk. If the reviewing agencies say “you’ve collected the wrong data” at the time of permit application, then of course the company will be frustrated.

Ann Rappoport (USFWS) said that on the surface, it looks like the TWG process is working, but substantively the data is not there to do our review. We need to document our concerns with data for the record.

Heather Blough (NMFS) asked if the PLP management is present during TWG meetings or if the TWG’s are relying on Charlotte (and meeting notes) to communicate agency concerns to PLP management.

Tom said that the PLP representative is primarily Charlotte McCay. Additional PLP managers have participated from time to time. Tom said it’s important to remember that in this process, agencies are preserving their rights to be critical on baseline data at a later point, regardless of having participated in the TWG process. In essence, he said, nothing in the TWG meetings constitutes agency approval of PLP’s study plans.

Deb discussed the issue of note-taking at TWG meetings. She said that if PLP controls the meeting notes, then that affects the Administrative Record of the discussion that took place, and may not show the entire dialog. The record will be inaccurate.

Lynn suggested we make the effort to paper our decisions. For example, by sending a letter to PLP to say we’re commenting on the data, we’re not accepting the data (or some portion of it). That way, the record will reflect that we made the comment, even if meeting notes don’t show it. She also questioned whether DNR should post such agency records as well as TWG meeting notes.

Ann said there is a danger of just relying on meeting notes, because they could give the illusion of consensus, when that’s not the case.

Ed said that if anyone believes the meeting notes are inaccurate, DNR will take them down from their web site.

Tom said the Steering Committee has discussed having a professional note taker.

John said that the Steering Committee had a professional facilitator make a presentation at the January meeting. He described the services they can provide to help organize and run meetings, including note taking.

Tom said that after the presentation, he approached PLP and asked if they’d pay for this service. They (PLP) are worried about the added cost.

Debra questioned whether the agencies could pool monies to cover the cost of a transcriptionist.

Heather asked who is the TWG process supposed to be serving. If this is to help PLP prepare for permitting, then they are the party that would most benefit from meeting notes that accurately capture the concerns of the TWG's and should be responsible for paying for that service.

Francis said that until they apply for a permit, there is little we can make them do. Because the process hasn't been working well, the agencies have been hampered in the review of the data. That's why the Fish TWG is developing "Study Objectives and Agency Recommendations," so the process will work better in the future. For the agencies, submitting these recommendations is their part of the administrative record. It will identify that "these are the questions we'll want answered before issuing a permit..." The document was provided to PLP, and was to be discussed at a Fish TWG meeting, but that meeting was cancelled. The document is currently being revised, and will again be circulated to all Fish TWG members, including PLP

Doug Limpinsel (NMFS) said the agency study recommendations for the Fish TWG are still under development, and will suggest studies, with specific objectives, justification for those objectives and suggested levels of precision and accuracy in the results, which the agencies will need to make informed decisions.

Jeanne, getting back to Lynn's idea of papering the record, asked the group: should we have multiple agencies signing these letters to PLP? If we develop a group letter, then is it necessary to go through legal review? If so, it could take a long time to get that out. Ed said he likes the idea of sending a specific letter as issues arise, as opposed to developing group letters.

Greg said, getting back to his original comments, that we are establishing a relationship with PLP. He said each agency comes at this with different perspectives and each has different needs for what to get out of it in the end. He said we each need to decide what we need in order to continue, and to decide if we're not getting what we need out of it, as ACOE did (by withdrawing from the TWG's). By staying engaged, we all have an opportunity to shape the outcome.

Break

After resuming the meeting, John summarized the discussions so far that morning. After discussing the scope of the problem agencies are experiencing with the TWG process, two possible solutions were identified. One idea is to revise a TWG protocol to list expectations and highlight the agency recommendations for collecting data, such as the process the Fish TWG is undertaking. The other suggestion was that individual agencies send letters to PLP when they have a specific issue that they want to make sure is reflected in the record.

Patty said EPA has already sent letters to PLP on specific issues, so that's not unusual. She said EPA always prefaces the letter with a disclaimer that "the project, as it appears now..." because the company's plans can and have changed.

Tom asked the group if the focus should be to 1) judge the adequacy of the studies to meet baseline-quality data, or 2) provide technical comments on study designs.

Debora said let's send specific letters with specific data needs, as they come up.

Jeanne suggested if there is general agreement that DNR should post agency correspondence along with TWG meeting notes, then we could start by requesting DNR post the correspondence the agencies have already sent the EPA and Pebble regarding the proposed project and the TWG process. This would help alleviate concerns about the public record.

John said that posting agency comments benefits the public and compared that to an EPA program – the Toxics Release Inventory (TRI). Under the TRI program, companies must report their releases to the environment, and the information is publicly available. The reporting companies thereby have an incentive to reduce their releases because the public is looking at the information. The same could be true for the TWG's – if agency comments are posted, then it would seem more likely they would address those comments promptly. If nothing else, it shows the public that we are actively reviewing the study plans and are engaged.

Tom said the process to post letters would be to send a copy to him and Andrea Meyer at DNR, and they would post them on the Pebble TWG web page. He said that so far, our discussions in this meeting today have centered on the TWG process, but what about the issue on agency staff feeling like they're not getting the data they need?

Lynn said the data is under the control of PLP. Our review is limited to what they provide us.

Ed asked if agencies aren't getting data to review, then what's happening at the TWG meetings?

Francis said USFWS experience at the Fish TWG meetings was that they were not getting the data they needed, and in response have worked to draft the "Study Objectives and Agency Recommendations" mentioned earlier. However, there was a recent Fish TWG meeting that was supposed to be discussing methods for counting fish from towers. FWS does not believe that this activity will provide useful data, so informed PLP they would not attend this particular TWG meeting.

Tom and Jeanne said that we can't make decisions on the adequacy of baseline until we know how PLP intends to develop the mine, but we can decide if the study design is adequate.

Heather asked for more context for Tom's earlier comment, that some TWG's are educating the agency members, instead of the agency participants providing technical comments.

Ann said this is something she's heard before, too. She said that agency staff are not given field study reports in advance of TWG meetings, so of course when the meeting takes place they haven't reviewed the information in advance.

Tom said that's a valid criticism. There have been multiple examples of that.

Ed said to consider that maybe the right people are not attending the TWG's. Perhaps we could share subject experts.

Jeanne said that's an issue that should be tabled for the Steering Committee.

NPDES Delegation to the State of Alaska

Lynn said EPA has approved the State Pollutant Discharge Elimination System (SPDES) request for delegation. Permit applications from dischargers are coming to the State. Lynn said the big difference between the State issuing a discharge permit vs. EPA, is that a State permit will not trigger NEPA review. She said that means USACE will probably be the NEPA lead agency, and not EPA.

She said EPA's remaining responsibility will be to have an oversight role, such as reviewing State discharge permits. EPA can object (pull) a State permit if the differences don't get resolved.

Patty said EPA has to be a NEPA reviewer for every EIS. Generally, EPA does not get involved as early as compared to when we're the lead agency. She said we rate draft Environmental Impact Statements, and a low rating from EPA means it will be appealed to the Council on Environmental Quality.

Wrap Up

The meeting participants acknowledged that the agencies don't all have the same expectations about what they want and need to get out of the TWG process as it moves forward. Therefore, specific concerns about TWG's differ from agency to agency. Each agency needs to decide for itself if the level of effort they're investing is worthwhile. USACE went through this evaluation recently and decided to step back from the TWG's and only participate in the Steering Committee. The group supported having a follow up meeting in about two months, allowing time for the next meeting of the TWG Steering Committee to consider the outcome of today's meeting. The follow up to this meeting would invite senior management from PLP to attend. The purpose of that meeting would be to communicate agency concerns about the TWG process and recommend improvements.

Tom Crafford volunteered to contact John Shively, PLP CEO, and invite him to our follow up meeting.

The meeting participants discussed a number of concerns about the PLP TWG process.

These concerns include:

- Agency staff participating in TWG's are not getting the level of data they need to do the review they feel is needed;
- Comments and suggestions offered by agencies are not consistently captured in meeting notes and/or study designs;
- The administrative record is inaccurate when agency comments and critiques are not captured in meeting notes;
- Agencies can supplement the administrative record by documenting their concerns in correspondence to the federal action agency and/or to Pebble. But this does not address concerns that the public perceives the TWG process is working well for the agencies and will streamline the permitting process.
- Agency participants are oftentimes not receiving advance copies of field studies and study designs. This means they are less likely to show up ready to offer technical comments at TWG meetings,
- Other?

Possible Solutions include:

- To bolster the administrative/public record, agencies can
 - submit letters to PLP (or the federal action agency, as appropriate) identifying specific concerns about data quality, study designs or other issues as they come up;
 - Notify DNR if they believe TWG meeting notes are inaccurate
 - Re-work protocols to address concerns in a more general, systematic way. This approach is more likely to succeed when there is broad agreement across agencies on the issues for a TWG.
 - Request DNR post agency correspondence on the TWG website
- PLP should provide TWG participants with field studies and study designs in advance, so they can come prepared to offer technical comments;
- Agencies should examine whether they have the right people attending, in those cases where TWG participants are in the role of being educated by the consultants, rather than providing technical comments.
 - Agencies can consider sharing experts, rather than each providing staff.
 - This topic will be added to the agenda of the next Steering Committee meeting, scheduled for March 26, 2009

Next Agency Meeting: Tuesday April 21, 2009. 9:00 am – 12 noon. John Shively will be invited.

Meeting Agenda

Agency Discussion of the Pebble Limited Partnership, Technical Working Groups (TWG)
Anchorage Federal Building, Conference Room 154 (MML # 907-271-6338)
Friday, February 20, 2009

Purpose of Meeting

Affirming agency expectations for the Pebble Ltd Partnership (PLP), Technical Working Group (TWG) process. Each agency has dedicated significant time and resources to participate. Should this level of commitment continue? If not, when should we reengage?

Introductions

Each agency's role and responsibility in relation to the Pebble project (both now and in future).

Problem statement

Quick review of the Guiding Principles (see handout)

Desired Outcome

How do we want this process to work?

Summary and Recommendation for Communicating back to PLP