

SENIOR TRUSTEE MEETING

May 30, 2006
Consolidated Information Center
Richland, WA
1:00– 4:00 p.m.

Attendees

1. KEITH KLEIN, DOE-RL
2. SHIRLEY OLINGER, DOE-ORP
3. GABRIEL BOHNEE, NT
4. BROOKLYN BAPTISTE, NT
5. KEN NILES, ODOE
6. MIKE GRAINEY, ODOE
7. STUART HARRIS, CTUIR
8. CRAIG O'CONNOR, NOAA
9. JEFF TAYER, WDFW
10. PHILIP RIGDON, YN
11. DAVID ALLEN, USFWS
12. POLLY ZEHM, WDOE (via telecon)

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Welcome & Introduction

Keith Klein welcomed everyone to the meeting and thanked them for coming on such short notice. He proceeded to explain that he had proposed having the Senior Trustees meet prior to the working level NRTC meeting to allow the Senior Trustees to establish policy and direction for the NRTC meetings. The basis for this was the rising level of frustration experienced at the NRTC meetings, as well as the emails recently exchanged amongst the workers, all resulting in a lack of productivity and increasing acrimony.

Summary

The first item of discussion was a review and status of the action items from the previous Senior Trustee meeting. Details are in the Discussion section of these minutes.

Much of the following time was spent discussing each person's perception of what has been occurring at the working level NRTC meetings, the interface between the NRTC members, and the impact of the litigation on the NRTC ability to be productive. There was also concern expressed by Trustees about DOE not yet integrating injury assessment into the various Ecological Risk Assessments being conducted at Hanford, and the lack of funding to pursue work suggested by the non-DOE Trustees. There was uniform agreement that first, the NRTC meetings had deteriorated and were not particularly productive, and second, the litigation concerns are having a distinct chilling effect on the working level NRTC members. The Senior Trustees concluded that as the actual Trustees they needed to take a stronger role in providing guidance and direction to their NRTC representatives, in fostering a stronger partnership and working relationship, and in developing a coherent path forward for the NRTC.

There was also consensus amongst the Senior Trustees that something needs to be done, maybe some form of a confidentiality agreement, to mitigate the impact of the ongoing litigation on the ability of the Council to discuss natural resources issues. This resulted in the action items and agreements documented below.

Actions/Agreements

1. Senior Trustees to define roles and boundaries, and what is or is not off limits to their respective NRTC representatives.
2. Senior Trustees will meet quarterly. The next meeting will be in August 2006 and will be hosted by Stuart Harris, CTUIR.
3. Senior trustees to review the three (3) proposals (Oregon's, DOE's & NOAA's) brought out at the May 30th meeting and be prepared to discuss them at the next Senior Trustee meeting.
4. Ecology to get a facilitator for the June 7-8, 2006 NRTC meeting if possible given the short notice.
5. RL to provide administrative support to the NRTC meetings.
6. In order for the NRTC meetings to be productive regardless of ongoing litigation, for the near term, advance agendas will be provided so the respective Trustees' attorneys can review the proposed agenda items and determine what items are acceptable for the NRTC members to work on without attorneys present at the meetings.
7. Senior Trustees will make every effort to have one or more of the Senior Trustees in attendance at the NRTC meetings.
8. Attorneys are to work on addressing a confidentiality agreement. (The Yakama Nation attorney has previously agreed to lead this effort.)

Discussion

Start @ 1306

ALL:

- Self introductions w/Polly participating via telephone

KEITH:

- Welcome
- Need to have Senior Trustees meet to establish policy, direction for the working level (NRTC) meetings which have become increasingly frustrating & unproductive
- Action item status from last Senior trustee meeting:
 1. DOE has funded NOAA \$450K for gap analysis by Ridolphi and Associates (NOAA Statement of Work);
 2. I in fact requested \$1.7M over target for FY07 to support the proposal developed by the Council.
 3. Feasibility of injury integration into ERAs continues to be an ongoing issue. CRAIG: yes the NRTC is also grappling with that now; it's unresolved
 4. DOE continues to involve Trustees in Ecological Risk Assessments. Due to excellent participation and comments, numerous changes have been made to the

Sample and Analysis Plans for both the River Corridor and the Central Plateau; Trustees are involved in various cleanup activities being conducted on site including IDF and ERDF, involved in groundwater workshops, and site ecological resource expert workshops.

5. DOE continues to work on changing the perception that we are not acting like a Trustee.

POLLY:

- What we need for our members is to define roles, boundaries
- Decide what's off-limits or not and tell our NRTC representatives
- Senior Trustees need to lay this out so the council can be productive; hope we can get to this today
- What can we resolve or at least agree to disagree and then get on with it
- Where obstacles exist are there things the Senior Trustees need to take action and remove or resolve
- Things are not working on the council level; need major changes for them to move forward
- Need to agree on funding level, how to proceed; we need to all buy in to what DOE does and how the council reviews

Note: note taker absent to fax handouts to Polly

MIKE:

- Handed out "State of Oregon Suggestions for Progress on Natural Resources Trustee Issues" (see attachment)

CRAIG:

- The Council very much has an "us versus them" on functional level
- Trustees brought in as a commenter, not a partner
- At the working level, things seem worse since the last Senior Trustee meeting; is it because we have not provided guidance or is it something else...
- Perception is DOE & DOE contractors have reached agreements/contracts and this shall not be set aside by the trustee council
- Need to imbue process with collegiality and partnership
- Senior trustees need to make it clear to their staff that it is a "Partnership" not "Fight"
- There is no forward momentum to rally round; perception is debate; working level trustees contributions have been relegated to those like what a Biological Technical Assistance Group would do; wasting time and money
- Lawsuit parameters are hampering Council dealings; workers need to be able to make comments without prejudice to litigation; need to get this separated
- Attorneys need to craft protection regarding what we say and do in the council meetings

GABRIEL:

- Tribes have status via CERCLA and Trustee
- Only been in this job about 13 months; slated to be Vice-Chair in September
- Communication is the key; frustrated – we provide comments but are they taken seriously? Are they answered?
- It's hard for DOE to figure out how to work with the Tribes
- Tribe wants to be part of the decision making

JEFF:

- We will have to come to agreement somewhere between our attorneys
- If we can't get around this we'll not be able to work

POLLY:

- What tools can we employ to get this out of our way and get work done?
- Can we use Confidentiality Agreements to get this legal issue/impact resolved so we can work?

CRAIG:

- Attorneys can probably come up what can or cannot be done
- We Senior Trustees if we agree on things need to make that clear to our staffs
- Leary of reaching a compromise

JEFF:

- Thinks there are examples of agreements out there that could be used as sample

DAVE:

- Conceptually good, but will it change matters
- Do we need a Confidentiality Agreement to reach resolution on Mike's (Oregon's) proposal?
- Two issues are 1) agree on what work to be done and 2) funding
- If DOE were not a Federal agency we'd have an account to charge our work to; accounts for "damage" assessments are used when we are dealing with private parties
- I asked my staff to tell me how we are doing; if we are not making meaningful progress should we stay engaged? It is about the funding and resources
- As for comments on the risk assessment, the staff says it looks like only some are being taken seriously

KEITH:

- I'm getting different feedback from my staff regarding how comments from your representatives are affecting things. We are getting good input from Council members on DQOs, SAPs, etc.
- I would also note that due to a variety of reasons, we are also getting more HQ attention on this whole area. This is a good thing because we are dealing with many important, complex issues and much is at stake. There is considerable widespread interest and sensitivities, and I need my HQ to be on

board to facilitate decision making and moving forward in these areas. In fact, I think this increased focus on these “end game” issues is healthy and a sign of real progress and momentum in our cleanup.

PHILIP:

- Lawsuit is because we have not had meaningful exchange/dialogue
- Yakamas live less than 30 miles from Hanford and are not going to stand by and watch what will impact our future generations
- You are not talking to us; we don't have enough staff; timelines are too short/strict; we are not satisfied with this
- We fish the River and eat more salmon than any one else; very concerned over the risks to the River
- If we can't get listened to on one level we will pursue it on another

STUART:

- Asked Keith to re-iterate his previous comment on the good/positive impact the council had had – Keith responded
- NRTC is asked to do something but then DOE repeatedly rejects the input
- Money is nice but not the most essential thing
- Folks are frustrated; staff's words and needs should be acted upon; it seems once contracts are signed etc we can't impact anything
- My guy is really passionate about this
- We need to get an idea of everyone's actual commitment

KEITH:

- My folks say you are having an impact with your comments (read a summary of just some of the more recent things which have been changed as a result of council member's comments (see Attachments)
- We can pay for “technical assistance”
- We can provide funding via Grants
- Trustee work is your responsibility however, and we can't pay for that
- Also, we are constrained by milestones (TPA), our contracts and contractual agreements, and taxpayers demands –

MIKE:

- Need a comprehensive plan with Trustee Council buy-in

KEITH:

- The policy should be on our (Senior Trustee) level; the Council members are our working staff

MIKE:

- How does DOE view the Council, as advisory or a partner?

KEITH:

- I'd like to put a proposal on the table that I think would represent a major step forward and help resolve some of our current issues. Basically, I am proposing to start doing a Pre-Assessment screen in the 2009-2010 timeframe for areas along the River Corridor.
- Did this for the 1100 Area some time ago and it was very helpful
- If you think there is merit, I will bring a rough template to this table next meeting.

STUART:

- We missed the FY2008 budget cycle

KEITH:

- No, I requested funds in FY08 and that is a matter of public record. DOE's budget request is still being developed through the Executive Branches' budget process whereby it tries to balance all the various requests against what is available. You should be aware though, that FY08 is expected to be very tight. We had to request over target funding to cover all of our required compliance items in FY08

DAVE:

- What is this pre-assessment screen?

SHIRLEY:

- It's the first part of an Injury Assessment to determine if you need to do a full Injury Assessment

KEITH:

- We are following the DOI process, trying to minimize injury by factoring potential inquiries with our selection of clean-up remedies using the five DOI criteria (see attachment)

DAVE:

- What are you doing between now and then?

SHIRLEY:

- We do ERAs between now and then, continue clean-up, use Ridolphi to identify the gaps

DAVE:

- How does this relate to Mike's (Oregon's) proposal?

SHIRLEY:

- Dilemma we have is the River Corridor is further along; no interim actions for the Central Plateau so we have more time there...timing to do the pre-assessment screening is the dilemma

KEITH:

- Actually my proposal is going one step beyond what Mike has proposed and actually starting to engage the injury assessment process as cleanup in the various areas near completion, but we still have our remediation contractors fully mobilized.

MIKE: you need to bring to the trustee council as a major task to review and sign off

BREAK @1447:

RESUME @1505

CRAIG:

- I also have a proposal to put on the table.
- Adequate information in River Corridor to move forward with a restoration plan
- You can do that without prejudice; make conservative estimates of injury and restoration
- This is not an atypical method/system for NOAA; restoration drives NOAA's efforts
- I have a draft restoration plan (see attachment) to hand out which goes even further than Keith's
- Draft plan blends restoration and remedial actions together
- Ultimate goal is to restore resources injured by a release
- I plan to send this to all of you by letter

KEITH:

- Intriguing, might be something in this for everyone
- In our remaining time, there are still several things we need to discuss. We need to chart a path forward on these proposals (Oregon's, DOE's and NOAA's) and to provide guidance to the Trustee Council for their next meeting on June 7-8, 2006
- I also note there is a workshop scheduled for later this week and I am hearing rumors that many of your staff are boycotting it. Do any of you know anything about this?

POLLY:

- We certainly aren't boycotting the workshop, but our person, John Price, has a HAB meeting which conflicts
- This workshop was short notice and we were not prepared to give input

KEN:

- Likewise, short notice, not a boycott
- Too much information to review
- Too short a timeframe to provide comments

KEITH:

- I just want to make clear the purpose of this workshop. This was for WCH to present their proposed baseline plan. We are trying to get out of the reacting mode and give folks baseline planning information very early in the process and to get input. This early involvement is exactly what you have been saying we need more of.
- With regard to FY2007 funding we can't make any promises since we don't yet have an appropriations, but we will still do what we can to support proposed tasks; don't get too discouraged because the Council request was not explicitly called out in the President's budget
- Another item relative to upcoming meeting I would like to discuss is having someone from my HQ attend. Klein proceeded to explain how DOE, and other Federal agencies have an organization that advocates for alternate dispute resolution; Kathleen Binder is the head of this HQ organization and he thought it would be very helpful to invite her to observe the June 7-8 meeting of the NRTC. He also proposed and discussed the merits of using a facilitator for future meetings.

KEN:

- If DOE has enough money to spend on a facilitator I'd rather you took that money and provided better administrative support

POLLY:

- I'd support a separate facilitator versus having my technical staff doing double duty and not being able to devote time to either one adequately.
- Worth investment to bring some one in to move things along

MIKE:

- We need a neutral person to facilitate

KEITH:

- I think many of you know Mike Goddu, he is a good facilitator but I don't know if we could get him on such short notice
- There are actually several good facilitators available (general agreement from others & noting various companies that had provided good facilitators)
- Having a facilitator and improving Administrative support are not mutually exclusive.

POLLY:

- I will get his name to Larry and we will see what we can do to get a facilitator for this next NRTC meeting
- I'll contact some of you to get names of other facilitators that we could contact and see what we can do for the June meeting

GENERAL:

- Why are attorneys going to the NRTC meetings anyway

- Get the agenda out in time for each of us to have our respective attorney determine if the proposed topics are okay
- Any items the attorneys feel cannot be discussed without them being present can be taken off the agenda
- It looks like there are still more than enough items to be covered and worked to fill the entire meeting schedule

Attachments

1. Agenda
2. Attendance sign in sheet
3. Previous action items
4. Mike Grainey's (Oregon) proposal
5. Summary examples of NRTC comment impacts
6. DOI Five Criteria
7. Craig O'Connor's (NOAA) proposal

Senior Trustee Meeting Agenda

May 30, 2006
1:00 PM to 4:00 PM
Room 210 of CIC

- | | |
|-------------------|--|
| 1:00 PM – 1:30 PM | Welcome and review of actions from last meeting |
| 1:30 PM – 2:30 PM | Discussions <ul style="list-style-type: none">• What has been working• What can be done better• What their agency hopes to get out of this meeting |
| 2:30 PM – 2:45 PM | Break |
| 2:45 PM – 3:00 PM | DOE proposal for Pre-Assessment Screens - Path forward |
| 3:00 PM – 4:00 PM | Next Steps <ol style="list-style-type: none">1. Upcoming June 7&8 Trustee Meeting<ul style="list-style-type: none">• Agenda• Involvement of Senior Trustees in future meetings• Possible facilitator for trustee meeting2. Upcoming risk assessments3. Potential Funding/Technical Assistance for FY07 |

ATTENDANCE SIGN-IN SHEET

Senior Trustee Meeting
30 May 2006

Attendees	Email
1. Shirley J. Olinger	shirley-j-olinger@orp.doe.gov
2. Keith Klein	KEITH_A_KLEIN@RI.GOV
3. Gabriel Bohner	gabeb@nceperce.org
4. Brooklyn Baptiste	brooklynb@nceperce.org
5. Ken Niles	Ken.niles@state.or.us
6. MIKE GRAINEY	michael.w.grainey@state.or.us
7. Stuart Harris	stuartharris@ctvir.com
8. CRAIG O'CONNOR	CRAIG.O'CONNOR@NOTA.GOV
9. Jeff TAYLOR	TAYLORJT@DFW.WA.GOV
10. PHILIP RIGDON	philip.don@yaxuma.com
11. David Allen	david-allen@fws.gov
12. Polly Behm (via phone)	ecology

PREVIOUS ACTION ITEM RESPONSES

Accomplishments since the last Senior Trustee Meeting held in March 2005.

- DOE has funded NOAA \$450K for data compilation and technical assistance from Mary Baker. Actions are proceeding in accordance with the Statement of Work with NOAA. The data compilation should be completed this summer.
- DOE has requested of Congress \$1.7M over target. Trustees participated in developing the request.
- DOE continues to involve the Trustees in the Ecological Risk Assessments and due to excellent participation by the Trustees changes have been made to the sample and analysis plans for both the River Corridor and the Central Plateau.
- The Trustees are involved in the various cleanup activities being conducted on site including IDF and ERDF and have been involved in groundwater workshops and site ecological resources expert workshops.



Oregon

Theodore R. Kulongoski, Governor



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ENERGY

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State of Oregon Suggestions for Progress on Natural Resource Trustee Issues 5/30/06

1. USDOE-Richland should develop a coherent path forward for planning and conducting integrated, site-wide, ecological risk assessments. All Trustees should be involved in planning from the earliest stages and in monitoring the assessments as they proceed.
 - USDOE-Richland should develop comprehensive yearly schedules and goals for assessments to be completed by all contractors.
 - USDOE-Richland should provide Trustees yearly reports on the status of assessments underway and on the results of assessments completed.
 - The Trustees should participate in all future DQO planning, not just in the early interviews.
 - USDOE Richland should ensure that risk assessments provide adequate data for evaluating possible risk, and show compliance with EPA guidance and USDOE policy on integration of injury and risk assessment.
 - All Trustees should be included in discussion/planning workshops where issues such as sample sizes and reference site locations are discussed, before plans are too far along to be changed.
 - Review by the Trustees should be built into assessment schedules and reflected in USDOE contracts.
 - Contractor assessments should be subject to peer review and/or reviewed by other independent contractors retained by Trustees for the purpose of independent evaluation.
2. USDOE should seek funds in the FY 2007 and FY 2008 budgets for data gathering and analysis projects that are responsive to the comprehensive sitewide schedule. Examples of this work should include:
 - funding for the proposed chromium effects follow-on studies proposed by USGS;
 - completion of the data gap analysis being undertaken by Ridolfi and Associates.

USDOE should seek approval to increase funding for trustee work scope by \$1.7 million over current natural resource activities in 2007 and by \$2.8 million in FY 2008. USDOE will also develop out-year funding proposals in cooperation with the other Natural resource Trustees. Other Trustees should fully support USDOE's funding requests. Funding for these and future fiscal years should be included in the base budget, not the above-target budget, as quickly as possible.

EXAMPLES OF NRTC COMMENT IMPACTS

100 Area and 300 Area Component of the RCBRA Sampling and Analysis Plan Comment Resolution Discussions

Study Design Improvements Resulting from Stakeholder Recommendations

- ❖ Additional reference sites selected based on input from USFWS and Ecology
- ❖ 24 investigation areas added to study (65 in Draft A, revised to 89 in Rev. 0)
 - 10 additional “elevated” sites to characterize Cr-VI, Sr-90, and U plumes
 - 10 additional “low-medium sites to characterize Cr-VI, Sr-90, and U plumes
 - 2 additional reference sites for Substrate 1
 - 2 additional reference sites for Substrate 2
- ❖ Clam tube exposure period extended from 90 to at least 180 days
- ❖ Revised study design for sediment toxicity testing for aquatic plants
 - Sediment toxicity testing using AEWES (1989) with yellow nutsedge
 - Included contingencies for bok choy and reed canarygrass as potential alternatives
- ❖ Inclusion of amphibian tissue collection
- ❖ Performance assessment for multi-increment sampling included
- ❖ Elaboration of investigation area selection criteria, size, and shape
- ❖ Litterbags removed from sample design
- ❖ Increased number of samples collected in Upland area:
 - Multi-increment soil samples increased from 30 to 55 (Table 3-4)
 - Plant samples increased from 45 to 60 (Table 3-5)
 - Invertebrate samples increased from 15 to 30 (Table 3-5)
- ❖ Number of Upland toxicity tests increased from 15 to 30 (Table 3-6)
- ❖ Increased number of samples collected in Riparian area:
 - Multi-increment soil samples increased from 15 to 27 (Table 3-7)
 - Included 15 additional discrete samples for potential T&E habitat (Table 3-7)
 - Plant samples reduced from 45 to 30 to allow for sampling of amphibians (Table 3-8)
 - Collection of 10 amphibian (tadpole) samples collected opportunistically added to study design (Table 3-8)
- ❖ Number of Riparian soil toxicity tests for plants increased from 15 to 30 (Table 3-9)

- ❖ Increased number of samples collected in near-shore aquatic area (Table 3-10):
 - Increased porewater samples from 39 to 43
 - Increased surface water samples from 39 to 43
 - Increased sediment samples from 20 to 43

- ❖ Increased number of near-shore biota samples collected (Tables 3-11 & 3-12)
 - Increased aquatic macroinvertebrate rock baskets from 15 to 27
 - Increased clam tubes from 15 to 54
 - Fish sample collection revised to include full suite contaminant analysis, liver analysis for uranium, and organ histopathology (Table 3-12)

- ❖ *Total number of near-shore aquatic toxicity tests increased from 45 to 148!* (Table 3-13)

General Changes

- ❖ Tables 1-1 & 1-2 more complete/descriptive of analytical methods/indicator contaminants for various media
- ❖ Table 3-4 clarified to identify investigation areas and number of samples collected

TITLE 43--PUBLIC LANDS: INTERIOR

PART 11_NATURAL RESOURCE DAMAGE ASSESSMENTS--Table of Contents

Subpart B_Preassessment Phase

Sec. 11.23 Preassessment screen--general.

(a) Requirement. Before beginning any assessment efforts under this part, except as provided for under the emergency restoration provisions of Sec. 11.21 of this part, the authorized official shall complete a preassessment screen and make a determination as to whether an assessment under this part shall be carried out.

(b) Purpose. The purpose of the preassessment screen is to provide a rapid review of readily available information that focuses on resources for which the Federal or State agency or Indian tribe may assert trusteeship under section 107(f) or section 126(d) of CERCLA. This review should ensure that there is a reasonable probability of making a successful claim before monies and efforts are expended in carrying out an assessment.

(c) Determination. When the authorized official has decided to proceed with an assessment under this part, the authorized official shall document the decision in terms of the criteria provided in paragraph (e) of this section in a Preassessment Screen Determination. This Preassessment Screen Determination shall be included in the Report of Assessment described in Sec. 11.90 of this part.

(d) Content. The preassessment screen shall be conducted in accordance with the guidance provided in this section and in Sec. 11.24--Preassessment screen--information on the site and Sec. 11.25--Preassessment screen--preliminary identification of resources potentially at risk, of this part.

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(e) Criteria. Based on information gathered pursuant to the preassessment screen and on information gathered pursuant to the NCP, the authorized official shall make a preliminary determination that all of the following criteria are met before proceeding with an assessment:

- (1) A discharge of oil or a release of a hazardous substance has occurred;
- (2) Natural resources for which the Federal or State agency or Indian tribe may assert trusteeship under CERCLA have been or are likely to have been adversely affected by the discharge or release;
- (3) The quantity and concentration of the discharged oil or released hazardous substance is sufficient to potentially cause injury, as that

term is used in this part, to those natural resources;

(4) Data sufficient to pursue an assessment are readily available or likely to be obtained at reasonable cost; and

(5) Response actions, if any, carried out or planned do not or will not sufficiently remedy the injury to natural resources without further action.

DRAFT (highly conceptual)

Restoration Plan
Hanford Nuclear Reservation
Outline
May 30, 2006

1. Purpose of and Need for Restoration (framework)
 - a. CERCLA requirements
 - b. Role of natural resource trustees
 - c. NRDA goals and objectives
 - i. Protect natural resources from future harm (source control and cleanup)
 - ii. Compensate public for loss of services
 - iii. Provide a functioning and sustainable ecosystem
 - iv. Coordinate restoration with ongoing and other efforts
 - v. Involve the public

 2. Affected Environment
 - a. Key Resources with potential injuries
 - i. Fish
 - ii. Groundwater
 - iii. Aquatic habitat
 - iv. Scrub/shrub habitat
 - v. Birds
 - vi. Mammals
 - vii. Other
 - b. Plans for cleanup and protection
 - c. Habitat Types and Functions that could benefit from restoration (describe services provided by habitat type)
 - i. Riverine
 1. nearshore
 2. islands
 3. channels
 - ii. Riparian habitat
 - iii. Scrub/shrub
 - d. General restoration options
 - i. Habitat acquisition
 - ii. Improvements to aquatic habitat
 - iii. Improvements to shrub/scrub/upland habitat
 - iv. Improvements to riparian habitats

 3. Project Development/Selection
 - a. Planning (steps involved)
 - b. Screening and selection criteria
 - c. Initial inventory of potential restoration sites and projects
-

- d. Performance criteria
 - e. Coordination with other agencies, plans, and programs
4. Analysis of Restoration Alternatives (how projects meet selection criteria, impacts, and benefits of projects)
- a. Description of preferred projects
 - b. Other options considered
 - c. Restoration summary
5. Project Implementation
- a. Project management
 - b. Permitting and regulatory compliance
 - c. Property access/acquisition
 - d. Engineering design/cost analysis
 - e. Monitoring and documentation
 - f. Adaptive management and contingency planning
 - g. Long term stewardship
 - h. Outreach