

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF FISH AND GAME

DIVISION OF HABITAT

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FISH HABITAT PERMIT FH08-I-0151

ISSUED: September 4, 2008

Mr. Clyde Gillespie, Surface Operations Manager
Couer Alaska Inc., Kensington Mine
3031 Clinton Drive, Suite 202
Juneau, Alaska 99801

RE: Kensington Mine – Restoring flow between Upper and Lower Slate Lakes
Slate Creek (Stream No. 115-20-10030)
T. 35 S., R. 62 E., S. 26, NW ¼, C.R.M. (Juneau D-4)

Dear Mr. Gillespie:

Pursuant to AS 16.05.841, the Alaska Department of Fish and Game (ADF&G), Division of Habitat, has reviewed your request to restore flow and downstream fish passage in Slate Creek (Stream No. 115-20-10030) between Upper and Lower Slate Lakes. Restoring flow and downstream fish passage in this creek is a component of a larger interim reclamation plan required pending a court decision on whether using Lower Slate Lake as a mine tailings storage impoundment is consistent with federal law.

Background:

In 2005 Couer Alaska Inc. was issued state and federal permits to use Lower Slate Lake as a mine tailings storage impoundment. ADNR, OHMP Fish Habitat permit FH05-I-0050 permitted diverting flow from the outlet of Upper Slate Lake around Slate Creek and Lower Slate Lake to facilitate construction of the tailings storage impoundment. However, the permit issued by the US Army Corps of Engineers was challenged in court. In 2008 the 9th Circuit Court of Appeals decided that use of the lake as a tailings impoundment was inconsistent with federal law and ordered the site restored. Couer Alaska appealed that decision to the US Supreme Court, which will issue a decision in early 2009. Pending that decision, Couer Alaska is seeking permits to perform required reclamation on Lower Slate Lake including restoring flow and fish passage between Upper and Lower Slate Lakes.

Project Description

As you described in an e-mail dated August 18, during our site visit on August 22, and a phone conversation on August 28 of this year, the project will include the following activities:

- Maintaining the water diversion structure at the outlet of Upper Slate Lake, but re-directing flow into the original channel of Slate Creek including construction of a plunge pool just below the diversion structure to dissipate energy from the dam outlet and restoration of a short section of stream bed now seeded with grass,
- Removal of merchantable timber and logging slash from the stream channel between the upper and lower lakes, and creation of several small pools in the channel, and
- Removal of a road bed and culvert and restoring the stream channel where the creek enters Lower Slate Lake.

Anadromous Fish Act and Coastal Consistency Requirements

Prior to its diversion, Slate Creek (Stream #115-20-10030) between Upper and Lower Slate Lakes, was recognized to provide downstream fish passage only for Dolly Varden char. Several small waterfalls prevented upstream passage. No timing restriction will be required for in-water work because the reach of Slate Creek to which flow will be restored is isolated from anadromous waters.

Your project is consistent with the Standards of the Alaska Coastal Management Program, per the final consistency determination dated April 25, 2005 (State ID No. AK 0406-13J).

In accordance with AS 16.05.841 and 11 AAC 110, your project is approved subject to the project description and the terms of this permit.

You must maintain the integrity of the water diversion structure and plunge pool for the life of the structure in accordance with the terms of this permit so that free passage of fish is assured. You must restore any obstruction to the free passage of fish to the satisfaction of the Division of Habitat.

You are responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved project. For any activity that significantly deviates from the approved plan, you shall notify the Division of Habitat and obtain written approval in the form of a permit amendment before beginning the activity. Any action that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of the Division of Habitat. Therefore, it is recommended you consult the Division of Habitat immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.871. This permit must be retained on site during construction. Please be advised that this determination applies only to activities regulated by the Division of Habitat; other agencies also may have jurisdiction under their respective authorities. This determination does not relieve you of your responsibility to secure other permits; state, federal, or local. You are still required to comply with all other applicable laws.

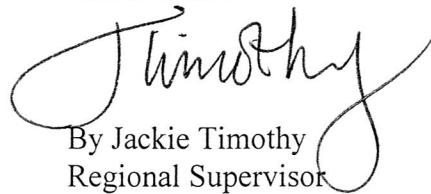
In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The Division

of Habitat reserves the right to require mitigation measures to correct disruption to fish created by the project which was a direct result of failure to comply with this permit or any applicable law.

You shall indemnify, save harmless, and defend the Division of Habitat, its agents, and its employees from any and all claims, actions or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or your performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the Division of Habitat's negligence.

If you have any questions regarding this permit, please contact me at (907) 465-4346 or email tom.schumacher@alaska.gov.

Sincerely,
Denby Lloyd
Commissioner



By Jackie Timothy
Regional Supervisor
Division of Habitat

Email cc:

Al Ott, DNR/OHMP, Fairbanks
Ryan Scott, ADF&G, Douglas
Brian Glynn, ADF&G, Douglas
Kevin Monagle, ADF&G, Douglas
Jim Anderson, ADNR, Juneau
Steve McGroarty, ADNR, Mines, Fairbanks
Brenda Krauss, DEC, Juneau
Erin Allee, DNR/DCOM, Juneau
John Leeds, COE, Juneau
Susan Walker, NMFS, Juneau
Richard Enriquez, USFWS, Juneau
Chris Meade, USEPA, Juneau
Teri Camery, Juneau Coastal District
Lt. Todd Sharp, AWT, Juneau

