

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF HABITAT

SEAN PARNELL, GOVERNOR

1300 COLLEGE ROAD
FAIRBANKS, AK 99701-1551
PHONE: (907) 459-7289
FAX: (907) 459-7303

FISH HABITAT PERMIT FH06-III-0163, Amendment 1

ISSUED: May 18, 2010
EXPIRES: Upon Closure and
Abandonment of the Pogo Project

Mr. Todd Roth
General Manager
Sumitomo Metal Mining Pogo LLC
P.O. Box 145
Delta Junction, Alaska 99737

Dear Mr. Roth:

RE: Pogo Mine Water Withdrawal
Shaw Creek
Section 3, T6S, R12E, FM

Pursuant to AS 16.05.841 (Fishway Act), the Alaska Department of Fish and Game (ADF&G), Division of Habitat, is amending Fish Habitat Permit FH06-III-0163 authorizing water withdrawal from Shaw Creek for consistency with other water withdrawal permits from fish-bearing streams along the Pogo Road.

Fish Resources

Shaw Creek supports Arctic grayling, round whitefish, and slimy sculpin in the area of your proposed water withdrawal. Your project as proposed has the potential to obstruct the efficient passage and movement of fish.

Determination

In accordance with AS 16.05.841, project approval is hereby given subject to the project description above and the following stipulation:

- (1) Water withdrawal intakes shall be screened with a maximum mesh size of 0.1 inch from May 1 to July 15 to prevent intake or impingement of Arctic grayling fry. At other times of the year, water withdrawal intakes shall be screened with a maximum of 0.25 inch mesh. Water velocity at any given point along the intake screen shall not exceed 0.5 ft per second. Screens aligned parallel to the stream current will require the least maintenance and will be least likely to impinge fish.

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 any deviation from the approved plan is being considered.

For the purpose of inspecting or monitoring compliance with any condition of this permit, you shall give an authorized representative of the state free and unobstructed access, at safe and reasonable times, to the permit site. You shall furnish whatever assistance and information as the authorized representative reasonably requires for monitoring and inspection purposes.

This letter constitutes a permit issued under the authority of AS 16.05.841 and must be retained on site during project activities. 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 and game created by the project and which was a direct result of the failure to comply with this permit or any applicable law.

You shall indemnify, save harmless, and defend the department, 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 department's negligence.

Any questions or concerns about this permit may be directed to Habitat Biologist Jack Winters at 459-7285 or emailed to jack.winters@alaska.gov.

Sincerely,

Denby S. Lloyd, Commissioner

A handwritten signature in black ink, appearing to read "Robert F. McLean". The signature is written in a cursive, somewhat stylized font.

BY: Robert F. "Mac" McLean, Regional Supervisor
Division of Habitat
Department of Fish and Game

ecc: Jack DeMarchi, ADNR, Fairbanks
Tim Pilon, ADEC, Fairbanks
Steve McGroarty, ADNR, Fairbanks
Chris Milles, ADNR, Fairbanks
Brent Martellaro, ADNR, Fairbanks
Kelli Westphal, ADNR, Anchorage
Al Ott, ADF&G, Fairbanks
Tom Taube, ADF&G, Fairbanks
NOAA Fisheries, Anchorage
Jewel Bennett, USFWS, Fairbanks

RFM:jfw