

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

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DEPARTMENT OF NATURAL RESOURCES
OFFICE OF HABITAT MANAGEMENT & PERMITTING

Date Determination Issued: November 18, 2003
Date Determination Expires: April 31, 2004

Mr. J.P. Tangen, Attorney at Law
1600 A Street, Suite 310
Anchorage, AK 99501-5148

Dear Mr. Tangen:

RE: Equipment Stream Crossing; McCarthy Creek – Green Butte Road; McCarthy Creek.

Pursuant to AS 41.14.870(b) and AS 41.14.840, the Alaska Department of Natural Resources – Office of Habitat Management and Permitting (OHM&P) has reviewed your email application dated October 29, 2003 for authorization to make multiple stream crossings of McCarthy Creek along the historic McCarthy Creek – Green Butte wagon road for purposes of transporting supplies from McCarthy to the Motherload Mine. Up to six round trips are anticipated. Equipment to be used includes a sled and D-4 dozer. Your permit request was made on behalf of Joseph Pilgrim (Nava S. Sunstar), owner of the Motherload Mine.

AS 41.14.870 (Anadromous Fish Act) requires that an individual or government agency provide prior notice and obtain permit approval from OHMP “to construct a hydraulic project or use, divert, obstruct, pollute, or change the natural flow or bed” of a specified anadromous waterbody. All activities within or across specified anadromous waterbodies, including the use of vehicles or equipment in the waterway, require permit approval.

AS 41.14.840 (Fishway Act) requires that an individual or government agency notify and obtain authorization from OHMP for activities within or across a stream used by fish, both anadromous and resident species, if OHMP determines that such use or activity could represent an impediment to the efficient passage of fish.

At this time, McCarthy Creek is not legally specified as an anadromous waterbody pursuant to AS 41.14.870(a). We are aware that the U.S. National Park Service has conducted fish surveys in McCarthy Creek and captured Dolly Varden at all sample locations. One was a ripe 435 mm male that likely was anadromous. However, until such time as McCarthy Creek is legally specified, an AS 41.14.870 permit is not required. Be advised that this determination could change in the future if McCarthy Creek is legally specified under AS 41.14.870(a).

“Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans.”

Winter crossings of McCarthy Creek are not likely to create an impediment to the efficient passage of fish. Therefore, permit authorization under AS 41.14.840 is not required at this time. Be advised, however, that OHMP may order removal of any fish passage barrier caused by the equipment crossing, such as operating within the stream bed with the dozer blade down or creating rutting that impedes passage at low flow (french draining), pursuant to AS 41.14.860. In addition to the prescribed penalty provisions, this may include declaration of the barrier as a public nuisance subject to abatement.

Please be advised that this determination applies only to activities regulated by OHMP. This determination does not relieve you of the responsibility for securing other state, federal or local permits. You are still required to comply with all other applicable laws.

Please accept my apologies for the delay in responding to your request. Your email was addressed to robert_mclean@dnr.state.ak; whereas my email address is mac_mclean@dnr.state.ak.us. Please use the updated email address in any future correspondence.

Sincerely,

Dick LeFebvre, Deputy Commissioner

Electronic Final (Signed Original Sent Via Mail)

BY: Robert F. McLean, Area Office Manager
Office of Habitat Management and Permitting

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| cc: Elizabeth Barry, DOL, Anchorage | Dick Mylius, ADNR, Anchorage |
| Kerry Howard, OHMP, Juneau | Al Ott, OHMP, Fairbanks |
| Pete McGee, ADEC, Fairbanks | Don Kohler, COE, Anchorage |
| Steve Borell, AMA, Anchorage | Ann Rappoport, USFWS, Anchorage |
| Jeanne Hanson, NMFS, Anchorage | |

MAC: