

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF HABITAT

SEAN PARNELL, GOVERNOR

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March 9, 2010

Cook Inletkeeper  
Mr. Dennis Gann  
P.O. Box 3269  
Homer, AK 99603

Dear Mr. Gann:

On behalf of the Commissioner thank you for your letter dated February 17, 2010 and your interest in the proposed Chuitna Coal Project. The proposed coal mine and associated facilities will require numerous state and federal authorizations including Title 16 Fish Habitat Permits from the Alaska Department of Fish and Game (ADF&G). The Division of Habitat is responsible for coordinating the ADF&G's review of the Chuitna Coal Project. We have been working closely with staff from the Divisions of Wildlife Conservation, Sport Fish, Commercial Fisheries, and Subsistence to review baseline studies, permit applications, NEPA documents, and any information related to the construction, operation, and closure of the proposed coal mine.

Your interpretation of the ADF&G's statutory authority under AS 16.05.871 (Protection of fish and game) is correct. Pursuant to AS 16.05.871(b), any person or government agency that desires to "use, divert, obstruct, or change the natural flow or bed" of a specified water body or requires the use of "wheeled, tracked, or excavating equipment" in a specified water body is required to notify the ADF&G of the proposed project. The ADF&G will review the plans and specifications and determine whether the proposed project provides for the proper protection of fish and game. This statute does not expressly prohibit any specific activities from taking place in a specified anadromous water body. As you mentioned, many of the streams in the proposed project area are specified in the *2009 Catalog of waters important for spawning, rearing, or migration of anadromous fishes* (Johnson and Klein, Special Publication No. 09-03).

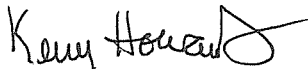
At this time, the ADF&G has received permit applications and issued Fish Habitat Permits for certain activities associated with baseline data collection related to the Chuitna Coal Project. We have not received permit applications or formal notice of any mining activities or mine-related facilities. The Alaska Department of Natural Resources (ADNR) has received applications and issued permits under the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) for exploration related to the Chuitna Coal Project. Sections of the ASCMCRA permit applications for coal mining and associated facilities have been submitted to the ADNR

over the past 5 years. However, most of the submittals are not finalized and are in the process of being revised by the applicant. When the ADNOR receives a complete ASCMCRA permit application for the proposed mine and associated facilities, we will work closely with ADNOR to review the permit applications.

ADF&G is an active member of the state's large mine permitting team. In this role, we are cooperatively working with ADNOR and the Alaska Department of Environmental Conservation (ADEC) to review baseline data, recommend additional baseline studies, and determine whether the information provided by the applicant is consistent with the requirements in ASCMCRA and is sufficient for state agencies to proceed with reviewing permit applications under their respective statutory authorities. At this point in the project review, ADF&G is keenly interested in ASCMCRA requirements related to hydrology, fish, and wildlife information, the fish and wildlife protection plan, the reclamation plan, and the hydrologic balance plan.

Thank you again for your interest in the proposed Chuitna Coal Project and our statutory authority under AS 16.05.871. The ADF&G is committed to its mission to protect, maintain, and improve the fish, game, and aquatic plant resources of the state, and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle. Within the context of that mission, the Division of Habitat will continue to preserve the state's fish and wildlife resources while balancing other state interests. If you have additional questions or concerns about our AS 16.05.871 authority and review process for the proposed Chuitna Coal Project, please contact Megan Marie at 267-2446 or Michael Daigneault at 267-2172.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry Howard", with a stylized flourish at the end.

Kerry Howard,  
Director