



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Eastern Arctic Area

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Your file *Votre référence*

NWB1LIP00008

Our file *Notre référence*

NU-05-0021

April 25, 2006

Mr. Phillipe DiPizzo
Nunavut Water Board
P.O. Box 119
Gjoa Haven, NU
X0A 0H0

Dear Mr. DiPizzo:

Subject: Abandonment and Restoration, Lupin Mine Tailings Containment Area – DFO follow-up to NWB Technical Meeting.

Fisheries and Oceans Canada (DFO) is writing in response to your letter of April 18, 2006 requesting submissions from parties on outstanding issues following the technical meeting held on April 11, 2006 in Yellowknife on the Abandonment and Restoration of the Lupin mine tailings containment area.

As general introduction, the Constitution Act (1982) provides the federal government with exclusive authority for seacoast and inland fisheries within Canada's territorial boundaries. Fisheries and Oceans Canada exercises this authority under the *Fisheries Act*. Specifically, DFO is responsible for the management and protection of fish (including marine mammals) and their habitats. The primary mechanism for fish habitat protection in Canada is section 35 of the *Fisheries Act* which states that no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat, unless it is authorized by the Minister or under regulation made under the Act.

DFO has considered the information provided by Kinross in both their written submission of March 31, 2006, and during the technical meeting in Yellowknife and provides the following comments to the Nunavut Water Board with respect to our responsibilities to protect fish and fish habitat.

DFO is generally satisfied with the responses provided by Kinross on a number of issues, specifically those related to potential impacts to fish and fish habitat related to culvert removal, tailings line removal and blasting activity. Based on the responses provided by Kinross, none of these activities is likely to impact on fish habitat since the work will not be occurring in or near fish bearing watercourses.

Although DFO is satisfied with the responses from Kinross on the above noted issues, DFO has a number of outstanding concerns that will require further clarification and/or investigation by Kinross to determine the potential impacts on fish and fish habitat from the proposed work.

The most pressing of these issues relates to the deficiencies in the level of information on, and assessment of potential impacts to fish and fish habitat associated with the breaching of water control structures at the tailings containment area. Specifically DFO is concerned that there could be impacts to fish habitat in seep creek due to changes in hydrologic regime from the breach.

As such, DFO has the following information requests:

- Kinross undertake an assessment of the potential impacts on fish and fish habitat in Seep Creek associated with the breach of Dam 1A and Dam 2.
 - This assessment should include, but is not necessarily limited to an assessment of channel shape, stability, hydrologic regime and habitat availability pre and post construction.
- In determining which dam to breach Kinross should take the potential impacts to fish and fish habitat into consideration;
- Once the preferred dam breaching option has been chosen, Kinross should identify how impacts to fish and fish habitat might be mitigated;
- Detailed plans and specifications should be provided on the how the engineered breach will occur, any proposed channel construction or modifications, and how the site will be stabilized.

In addition, DFO understands that the construction schedule provided by Kinross in their March 31, 2006 response to information requests may be influenced by the short winter road season experienced this year. As such, DFO requests that Kinross provide an up to date schedule of proposed activities associated with the above noted studies and proposed closure plans.

Based on the level of information provided to date, DFO has been unable to determine whether an authorization under Section 35(2) of the *Fisheries Act* is necessary. As such, it is recommended that Kinross submit the requested information and work closely with DFO to allow for us to make this determination, and undertake any necessary regulatory requirements as expeditiously as possible.

I trust this is helpful to both the Nunavut Water Board in your continued review of this application, and to Kinross Gold Corporation in the further development of your proposal. If there are any questions, or if clarification is required please contact the undersigned at (867) 979-8007 or by fax at (867) 979-8039.

Regards,

Original Signed By:

Tania Gordanier
Habitat Management Biologist

Cc: Mike Tansey, Reclamation Manager – Lupin Min
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