

YUKON WATER BOARD REASONS FOR DECISION

Water Use Application AG10-064, Ann-Marie and Gerry Stockley Yukon River

The Yukon Water Board (“the Board”) has concluded deliberations pertaining to Water Use Licence Application AG10-064 for a type B licence for an agricultural undertaking.

The purpose of the application is to obtain a maximum quantity of 11,781 cubic metres of water per day from the Yukon River to cultivate and irrigate fields for hay production and construct, install and maintain a floating dock for the purpose of obtaining water.

Public Notice

Notice of this application was provided in accordance with the requirements of the *Waters Act*. The Notice was published on November 12, 2010 and included a deadline date of November 22, 2010 for interested parties or the public to submit an intervention to the Board. In response, the Board received a late intervention from the Department of Fisheries and Oceans on November 24, 2010. This intervention was not considered in the Board’s review of and decisions for this application.

It is recommended that all parties wishing to intervene on an application, in order to ensure acceptance by the Board, submit their interventions on or before the deadline for Public Comment.

The Board did not receive a request for a public hearing. The applicant did not respond to the intervention.

In making licensing decisions pertaining to this application, the Board took into account the *Waters Act*, *Waters Regulation*, the application, the Board’s standard licence requirements, Map 105 D /14, the *Yukon Environmental and Socio-economic Assessment Act* (“YESAA”) Decision Document, Chapter 14 of the Umbrella Final Agreement (“UFA”) and Board policies.

Environmental Assessment

This application required an environmental assessment under the *Yukon Environmental and Socio-economic Assessment Act* (“YESAA”).

Prior to making licensing decisions, the Board reviewed the YESAA Decision Document (“Decision Document”), project #2010-0205 that is included in the water use register. As per section 86 of YESAA, the Board was satisfied that the issuance of licence AG10-064 is not contrary to the terms and conditions listed in the YESAA Decision Document.

In deliberation of the application and the conditions of the Decision Document which are referenced below, the Board made the following determinations:

Condition 1 of the Decision Document requires that disturbance of riparian vegetations must be minimized. The Board determined that the standard erosion control terms in clauses 21 & 22 of the water use licence will satisfy this requirement.

Condition 2 of the Decision Document states that sediment stored/stockpile on-site must be 10 metres from the edge of the river bank. The Board determined that the standard erosion control terms in clauses 25 & 26 of the water use licence will satisfy both of these requirements.

Condition 3 of the Decision Documents requires that no heavy equipment shall be used within 10 metres of the ordinary high water when/if the ground is not frozen. The Board determined that clause 22 of the water use licence will satisfy this requirement.

Condition 4 of the Decision Document relates to the construction of a berm around the pump house and requires that it be built with a slope angle so as to prevent erosion of sediments. The Board determined it was not necessary to specify a slope for the berm. The Board was of the opinion that the Licensee is responsible to ensure that the berm is constructed with a slope that ensures no erosion of sediment into the watercourse.

Condition 5 of the Decision Document requires that no work shall occur in excessively wet conditions as a measure to prevent the rutting and/or gouging of the ground. The Board determined it was best to remain silent with respect to the Decision Document's recommendation relating to work in "excessively wet conditions". It was noted by the Board that there is a lack of clarity as to which work the Decision Document was referring to and the Board is reluctant to include conditions that are not readily enforceable.

Condition 6 of the Decision Document requires that the trail be constructed so that surface water channelling is prevented. The Board was satisfied that water use licence clauses 25 & 26 will fulfil this requirement.

Condition 7 regarding the use only clean material which is free of sediment for placement along the river bank are encompassed by the *Waters Act* and licence provision which prohibit the deposit of waste except as permitted by this licence.

Condition 8, relating to the construction of the dock, requires the Licensee to perform work in accordance to Department of Fisheries and Ocean's *Pacific Region Operational Statement: Dock and Boathouse Construction in Freshwater Systems*. The Board did not specifically address this condition in the water use licence, however; the Board noted the Operation Statement was a document which the Licensee must abide by.

Condition 9, relating to work performed within the riparian area of the Yukon River, requires the Licensee to conduct such work in accordance to Department of Fisheries and Ocean's *Pacific Region Operational Statements: Maintenance of Riparian Vegetation in Existing Rights of Way*. The Board was of the opinion that this condition would not be reflected in the water use licence, however; the Board was of the opinion that the operational statement named above is a document which the Licensee must abide by.

Licensing Decisions:

Fuel Storage and Transfer

In order to have enforceable licence conditions, the Board determined that the standard water use licence clause which states: "Fuel, lubricants, hydraulic fluids, coolants and similar substances shall be stored and/or transferred a minimum of 30 metres from the Natural Boundary of any Watercourse, in such a way that said substances are not deposited in or allowed to be deposited in waters", would be separated into two water use licence clauses.

Whereas, clause 12 of the water use licence stipulates that fuel storage shall be a minimum of 30 metres from the Natural Boundary of any Watercourse, clause 13 of the water use licence, on the other hand, stipulates that fuel shall be transferred a minimum of 10 metres from the Natural Boundary of any Watercourse. The Board was of the opinion that, since the pump will be placed 10 metres from the ordinary high water mark, it would not be realistic to have fuel transfer take place 30 metres from the Natural Boundary of the Yukon River.

Fertilizer and Herbicide Use

The applicant is required to record the information that pertains to uses of fertilizers and/ or herbicides that are described in the application. The requirement for a 10 metre buffer strip is intended to mitigate against any potential for the fertilizer and/or herbicide to reach the Yukon River through surface run off.

The Licensee did not include the use of pesticides in the water use application. It must be noted that the use of pesticides is not authorized by the water use licence; however, the Board determined that, should the Licensee find it necessary to use pesticides in the future, the Licensee would be required to apply for an amendment to water use licence AG10-064.

Expiry Date of Licence

The Board noted that the Licensee proposed an expiry date of 25 years. The Board approved the issuance of a licence for a term not exceeding 25 years as allowed for in the *Waters Act*. The Board determined that the expiry date of the licence will be December 1, 2035, which is based on the date that the Board reviewed the application.

UFA-Chapter 14

The Board examined the proposed use of water as it relates to Chapter 14 of the Umbrella Final Agreement, as to quantity, quality, or rate of flow of water flowing on, through or adjacent to Settlement Land, including seasonal rate of flow, as follows:

- *Ta an Kwäch än Council Final Agreement and Map 105D/14*
 - The map indicates there are many parcels of Settlement Land in the area. The two closest parcels are TKCR-29B and TKC C-2B. Parcel TKCR-29B is adjacent to the titled land of the Licensee and is located across the Yukon River with the Yukon River forming the boundary of the Settlement Land. Parcel TKC C-2B is the nearest downstream parcel of land and is located approximately 3 kilometres downstream of Lot 1361.
- *Water Flow Estimates and Water Use*
 - According to the estimates provided in the application, the requested water to be used is less than 1% of the flow of the Yukon River during the months proposed for irrigation.
- *Water Quality*
 - The Applicant has not proposed a deposit of waste.

Given the flow rate estimate and the fact the application did not propose a deposit of waste to the watercourse, the Board concluded that the proposed operation will not substantially alter the quantity, quality of rate of flow of water flowing on, through or adjacent to Settlement Land, including seasonal rate of flow.

Conclusion

The Board has relied on the representations, warranties and undertakings provided by the Licensee in the material filed in the application. The Board has approved the issuance of Water Use Licence AG10-064.



Chairperson
Yukon Water Board

December 9, 2011
Date