

REASONS FOR DECISION

WATER USE APPLICATION AG01-023
LeBarge Ranch & Outfitters Ltd.
Mile 12.5 Klondike Highway

The Yukon Territory Water Board ("the Board") has concluded deliberations pertaining to Water Use Licence Application for a Type B Licence for an agricultural undertaking. LeBarge Ranch & Outfitters Ltd. ("LeBarge Ranch") intends to obtain from Horse Creek and convey the water for the purpose of crop irrigation.

Public notice of this application was provided in accordance with the requirements of the Yukon Waters Act. In response, the Board received interventions from:

Indian and Northern Affairs-Water Resources ("DIAND"),
Fisheries and Oceans Canada ("DFO"),
Government of Yukon-Environment ("YTG"), and
Ta'an Kwäch'än Council ("TKC").

The Board did not receive a request for a public hearing.

Prior to making licensing decisions, the Board undertook an environmental assessment of this project, pursuant to the Canadian Environmental Assessment Act ("CEAA"). The Board is satisfied that the project is not likely to cause significant adverse environmental effects.

In making licensing decisions pertaining to this application, the Board took into account the application itself, the Environmental Assessment, the recommendations of interveners, water use licence AG98-015 reasons for decision, the Board's standard licence requirements and Board policies.

Spillways

The water use licence contains a requirement for the Licensee to maintain the existing spillways around the beaver dams that provide a migration channel for fish. The Licence also defines what the spillways represent. This licence requirement is intended to apply to the beaver dams that are downstream of the water intake and on property that the Licensee has the right to enter upon and use for purposes of this undertaking. The Board determined that existing fish passage should be maintained and that there should be sufficient flow to protect fish habitat downstream of the water intake, by maintaining the spillways and by ensuring that there will be a minimum of 300 mm of water continuously flowing above the invert of the spillway during irrigation. The onus will be placed on the Licensee to monitor the spillways to ensure that they are free of debris, maintain the minimum flows of the spillways and to regulate the amount of water that is obtained for irrigation in order to comply with this licence condition during the entire irrigation period.

Watershed Management Plan

A study of the water supply and a watershed plan may provide useful information for future users of Horse Creek. However, the Board has previously recommended through licensing decisions pertaining to AG98-015 that it is not within the Board's jurisdiction to undertake such a plan. Several years have passed since the Board reached its' decisions pertaining to AG98-015, providing ample opportunity for a watershed management plan to be conducted. DFO and other interested parties are encouraged to contact DIAND to enlist their assistance on this matter.

In addition to LeBarge Ranch, there is currently one other licensed user of Horse Creek which is Sourdough Sodbusters. Domestic users are also known to obtain water from Horse Creek between the two licensed undertakings. Sourdough Sodbusters, the domestic users and a parcel of TKC settlement land are all located upstream of the LeBarge Ranch undertaking.

The potential environmental impact that could occur from this project pertains to the water flow below the site of the LeBarge Ranch water pump intake. Horse Creek flows through property owned by LeBarge Ranch and the creek is mainly inhabited by beavers and arctic grayling and some waterfowl. LeBarge Ranch is the last user on Horse Creek before it drains into Shallow Bay. The licence requirement for the Licensee to maintain the spillways will provide adequate mitigation for fish during periods of irrigation. Water will continue to flow downstream of the water pump intake and the spillways around the beaver dams will be maintained by the Licensee to provide a continuous water flow for fish and fish habitat. The Licence requires a minimum of 300mm of water to flow over the invert of the spillway before the Licensee can obtain the water required for irrigation.

DIAND requested that the Board table this application until further informal discussions were held regarding water use rates for Horse Creek users. The Board determined that it is not appropriate to hamper this applicants undertaking by the failure of others to carry out, in a timely fashion, studies they had identified many years previous and that the Board had encouraged them to complete. The Board has adopted an alternative that requires a minimum flow past the applicant's water withdrawal point.

Chapter 14 of the Umbrella Final Agreement

The settlement land is upstream of the operation and will not be affected by this undertaking. There are no parcels of settlement land downstream of the proposed undertaking, therefore, the Boards obligation under Chapter 14 is not triggered for this undertaking. The Board also considered whether drawing down water in the beaver ponds might cause effects upstream on TKC settlement land but concluded this was not likely.

Buffer Strip

TKC recommended that a 30 metre buffer strip be maintained between the areas where herbicides are applied and any watercourse. Buffer strips are a standard licence requirement when the application of fertilizer and herbicides are proposed in the application. The requirement for a 30 metre buffer strip has been included in the water use licence.

Term of Licence

The Licensee applied for a 25 year licence. TKC recommended a term of 2 to 5 years. In the applicant's response to this recommendation, the applicant stated that the operation of LeBarge Ranch requires a minimum licence term of 10 years for the agricultural operation to be financially feasible for seasonal operation. The 10 year term will provide sufficient time for the completion of the watershed management plan by DIAND and other interested parties. If there is a need to reassess the water use based on the results of the watershed management plan it can be done through a request to amend the licence.

Fertilizer and Herbicide Use

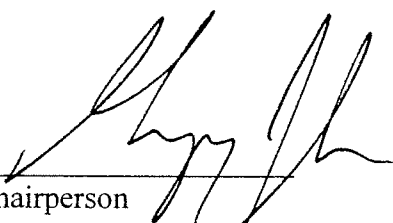
The applicant is required to record information that pertains to the uses of the fertilizers and/or herbicides that are described in the application. All recorded information will be included in the annual report. The requirement for a 30 metre buffer strip is intended to mitigate against any potential for the fertilizer and/or herbicide to reach any watercourse through surface runoff.

Fuel Spill Contingency Plan

DIAND did not provide recommendations for fuel spill plan. The standard licence condition for fuel spills has been included in the licence. This is a standard licence requirement that is included in all water use licenses.

Other Laws

No term of this licence limits the application of any other Federal, Territorial, First Nation or Municipal legislation. Without limiting the generality of this statement, but in order to provide further clarification, the Board notes that the Licence does not constitute approval or authorization pursuant to the Fisheries Act.



Chairperson
Yukon Territory Water Board

June 21, 2002

Date