

REASONS FOR DECISION

WATER USE APPLICATION AG06-029
(AMEND. TO AG04-028)
GORDON SINCLAIR
FLAT CREEK

The Yukon Water Board (the board) has concluded deliberations pertaining to Water Use Application AG06-029 to amend Type B Licence AG04-028 for an agricultural undertaking.

The purpose of the application is to obtain authorization to modify the bed and banks of Flat Creek by installing a small weir, a small bypass channel and a static self-cleaning inclined screen to comply with the condition of water use licence AG04-028. The Licensee provided supporting information from Agriculture Canada-Prairie Farm Rehabilitation Administration that provides argument that the proposed changes to the undertaking will provide the most efficient means of complying with the licence conditions. The Licensee also confirmed that an engineered design of the intake construction can be provided prior to initiating work.

In making licensing decisions pertaining to this application, the board also took into account the *Waters Act* (the Act), *Waters Regulation*, the application, recommendations from the interveners, the board's standard licence requirements, Territorial Resources Base Maps 105D/13 and 105D/14, Chapter 14 of the Umbrella Final Agreement and board policies.

Notice of this application was provided in accordance with the requirements of the Act. The public notice was published in the February 16, 2007 local newspapers and the deadline for comments was February 26, 2007. In response, the board received interventions from the following parties:

Laberge Renewable Resources Council (Laberge RRC), and
Government of Yukon-Environment (GY).

The board did not receive a request for a public hearing. The application was scheduled to be considered at the March board meeting. However, the Laberge RRC argued that this application was important to the Laberge RRC, and that they required more time to respond. The Laberge RRC requested that the deadline be extended to March 16, 2007. In response, the applicant argued that a delay to April would be unfair. As a compromise, the deadline was extended to March 16 and a special meeting of the board was scheduled for March 19. The deadline passed without any further interventions being received from the Laberge RRC.

GY intervened to recommend that the works be conducted according to an engineered design that was provided with the application, the YESAA Decision Document and DFO to ensure that the modifications do not allow water use at lower levels than intended. GY further recommended that as-built drawings of the installation, including photographs, be submitted to the board upon completion of construction.

Since the applicant proposed to provide engineered designs of the works prior to initiating the works, the board determined that the licence will include a condition which requires final detailed design drawings that are to be sealed by a Professional Engineer licensed to practice in the Yukon. The licence also requires the designs to be submitted to the Board a minimum of 10 days prior to the commencement of construction. The board also determined not to include the requirement for as-built design drawings, as photographs of the completed works will be sufficient confirmation that the works have been completed as authorized by the licence.

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) that is included in the water use register. As per section 86 of YESAA, the board is satisfied that the issuance of licence AG06-029 is not contrary to the terms and conditions included in the Decision Document. However, the board noted that the Decision Document included terms and conditions which restricted the board's ability to make licensing decisions under the *Act*. The board respectfully requests that when considering conditions for a Decision Document, that the Decision Bodies carefully consider the objects of the board, as set out in the Act, and allow the board to fulfill its responsibilities under the Act by including conditions in a Decision Document that are not regulatory in nature or impact the design of structures that are being considered by the board for licensing.

The Decision Document also includes conditions which impact on the design of the bed and bank modifications, such as lining the by-pass channel with rocks. Regarding the requirement for the by-pass channel to be lined with rocks, the Decision Document has restricted options of a Professional Engineer to design the structures to acceptable standards and practices. In considering the design of the structures, the Professional Engineer may have considered various alternatives to ensure that erosion does not occur within the by-pass channel. Options have been limited, as the Professional Engineer must include a rock lining for that channel.

The Board has included in the licence, the requirement for the submission of final design drawings prepared by a Professional Engineer licensed to practice in Yukon. By requiring a Professional Engineer to design the structures, the Board has the assurance that the structures will be built to acceptable engineering standards and practices to achieve compliance with the conditions of the licence.

Amendments

The board approved the Licensee's application to amend water use licence AG04-028 to authorize modifications to the bed or bank of Flat Creek. The licence was amended to allow the modifications to the bed or bank of Flat Creek and to update existing conditions in the licence to reflect the works that are authorized and the monitoring that is required by the licence.

UFA-Chapter 14

During the review of the existing licence, AG04-028, the board examined the water use of this operation as it relates to Chapter 14 of the Umbrella Final Agreement, as to quantity, quality and rate of flow of water flowing on, through or adjacent to settlement land, including seasonal rate of flow. With the inclusion of conditions within the water use licence, the board determined that the quantity, quality and rate of flow of water flowing on, through or adjacent to settlement land, including seasonal rate of flow would not be substantially altered.

In review of water use application AG06-029 (amend. to AG04-028), the Licensee proposed to amend the licence to allow bed and bank modifications. The board concluded that the intent of the proposed modifications is to comply with the conditions of licence AG04-028 and the proposed amendments will be financially feasible for the Licensee to carry out the undertaking. The board further determined that the modifications proposed in application AG06-029 will meet the conditions that were included in water use licence AG04-028 and the proposed works will not substantially alter the quantity, quality of water flowing on through or adjacent to settlement land, including seasonal rate of flow.

Chairperson
Yukon Water Board

Date