

## REASONS FOR DECISION

WATER USE APPLICATION AG06-030

Alan and Mary Young  
Km 1458 Alaska Highway

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

The purpose of the application is to obtain a maximum quantity of 1,950 cubic metres of water per day from an existing abandoned beaver pond to irrigate crops.

Notice of this application was provided in accordance with the requirements of the *Waters Act*. In response, the Board received interventions from the following parties:

Ta'an Kwäch'än Council; and  
Fisheries and Oceans Canada.

Ta'an Kwäch'än Council did not provide any recommendations in regard to this project. The Board did not receive a request for a public hearing. The applicant did not respond to the interventions.

In making licensing decisions pertaining to this application, the Board took into account the *Waters Act*, *Waters Regulation*, the application, recommendations from the interveners, the Board's standard licence requirements, Mining Map 105D/13, 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 that is included in the water use register. As per section 86 of YESAA, the Board is also satisfied that the issuance of licence AG06-030 is not contrary to the terms and conditions included in the Decision Document; however, the Board noted that the Decision Document did not include any justification or rationale for the terms and conditions that were accepted by the Decision Body. The terms and conditions included in the Decision Document restricted the Board’s ability to completely fulfill the Board's responsibility to make licensing decisions under the *Waters Act*.

The Board noted that the Licensee, after reviewing the requirements of the Decision Document, updated the water use application to ensure that the application was consistent with the terms and conditions of the Decision Document.

The Board also provides the following comments pertaining to the terms and conditions of the Decision Document:

“The proponent shall use standard flow monitoring practices to monitor the inflow and outflow of the beaver pond by taking measurements during the proposed period of water withdrawal in May, June and July.”

The Board determined that this is a water licensing decision that should have been left up to the Board to deliberate; however, to ensure that the water licence is not contrary to the Decision Document, the Board included Part E in the licence which provides the station locations, conditions for monitoring flows and reporting. The Board noted that the Licensee committed to follow this condition of the Decision Document; however, the Licensee noted in the application that, “The proponent must restrict water use rates to less than 22% of median monthly flows as measured at the highway culvert crossing.” The Board concluded that Decision Document requires flows to be measured at the inflow and outflow of the existing beaver pond and reflected this in the water use licence to assist the Licensee in determining the median monthly natural flow.

The Board determined that the licence will stipulate that the inflow and outflow measurements of the beaver dam be used to calculate the median monthly natural flow as referred to in the Decision Document.

“The proponent shall use standard flow monitoring practices to monitor the rate of water withdrawal from the beaver pond.”

To ensure that the rate of water withdrawal is accurately gauged, the Board included a condition in the licence which requires the water pipeline to be equipped with a flow meter.

“The proponent shall ensure the rate of water withdrawal from the beaver pond is under 22% of the median monthly natural flow.”

The YESAA Evaluation Report, which is included in the register, does not provide justification for the reference of “22%”. From the summary of comments received by the YESAB Designated Office, it appears that GY-Environment suggested using a “recommended guideline 22% of median monthly natural flow *during low flow month*” (emphasis added). The Board noted that considerations for allowing or restricting proposed water uses lies with the Board. By including this term or condition in the Decision Document, the Board is required to ensure that any resulting licence is not contrary to the Decision Document. Government of Yukon – Environment and any other interested parties should be providing detailed recommendations pertaining to the use of water and deposit of waste directly to the Board. The Board is very reluctant to issue a water use licence that is not readily enforceable by including conditions that reference percentages of water that can be used, as this can only be determined post season after the water has been used by the Licensee.

### **DFO**

DFO recommended that screens be provided on the water intake. The Board agreed with this recommendation and included a condition in the licence that requires fish screens on the water intake and the mesh size criteria for the screen.

DFO recommended that the maximum withdrawal rate should not exceed 22% of the median monthly natural flow during the period of withdrawal of May 15 to July 15 annually. The Board noted that this is also a requirement of the Decision Document. The Board included clause 28 in the licence which will satisfy the DFO recommendation.

DFO recommended that flow measurements be monitored. The Board included Part E in the licence for flow monitoring, which provides the station locations, conditions for monitoring flows and reporting.

### **Expiry Date of Licence**

The Board noted that the Licensee proposed an expiry date of September 2033. The Board deliberated on this application in April 2008 and determined that the proposed term would be in excess of 25 years. The *Waters Act* allows the Board to issue a licence for a term that does not exceed 25 years. The Board determined that the expiry date of the licence will be April 9, 2033, which is based on the date that the Board reviewed the application.

### **Flow Monitoring**

The Board noted that the Decision Document requires the Licensee to monitor the inflow and outflow of the beaver pond by taking measurements during the proposed period of withdrawal in May, June and July. The Board included a requirement for the Licensee to monitor flows during these three months, at a minimum. It is at the Licensee's discretion to conduct additional flow monitoring should they choose to do so; however, the Licensee is required to advise the Board of any changes to the flow monitoring program that is required by the licence.

### **UFA-Chapter 14**

Map 105D13 is included in the Kwanlin Dun First Nation Final Agreement. Kwanlin Dun First Nation did not intervene to the Board regarding this project.

Mining Map 105D/13 was reviewed by the Board for settlement land. The map indicates settlement land parcel S-99B, which is included in the Kwanlin Dun Final Agreement. The

Board determined that the settlement land parcel is adjacent to the unnamed creek that the abandoned beaver pond drains into, before the creek drains into the Takhini River. There are no parcels where water is flowing on or through settlement land.

In review of the proposed quantity of water and rate of water to be used, the Licensee has proposed to obtain a maximum quantity of 1,950 cubic metres of water per day from the abandoned beaver pond. The Decision Document requires the Licensee to ensure that water withdrawals from the abandoned beaver pond are less than 22% of the median monthly natural flow. The Board concluded that this would result in 78% or more of the available water remaining in the abandoned pond, as well as, the unnamed creek located downstream of the beaver pond. Depending on the amount of water that is available in the existing beaver pond during the irrigation season, the amount being withdrawn may be less than the quantity proposed for licensing. The Board concluded that the proposed water use, as well as, the conditions included in the licence will ensure that the project will not substantially alter the quantity of water flowing adjacent to settlement land parcel S-99B.

In review of the quality of water flowing adjacent to settlement land parcel S-99B, the Licensee has not proposed to deposit a waste to the watercourse. The Board concluded that the undertaking will not substantially alter the quality of water flowing adjacent to settlement land parcel S-99B.

In conclusion, the Board determined that this project will not substantially alter the quantity, quality or rate of flow of water flowing on, through or adjacent to settlement land, including seasonal rate of flow.



Chairperson  
Yukon Water Board

April 21, 2008

Date