

REASONS FOR DECISION

WATER USE APPLICATION MS06-258

Government of Yukon

Shakwak Project at Km 1700 to 1707.7

The Yukon Water Board (“the Board”) has concluded deliberations pertaining to Water Use Licence Application MS06-258 for a Type B Licence for a miscellaneous undertaking.

The purpose of the application is to upgrade approximately 7.7 kilometres of the Alaska Highway as part of the Shakwak Project. The beginning of this project will be at km 1700 and end at km 1707.7. Realignment of the highway will require the removal and decommissioning of an existing channel of the Slims River, which runs parallel to the current road embankment south of Slims River Bridge. A new channel will be constructed in the dry, which will run parallel to the existing channel and slightly away from the new road embankment. When waters are reintroduced into the new channel, measures will be taken to ensure that all fish are removed and the original channel is decommissioned. The project also includes infill of Kluane Lake at 4 locations.

Notice of this application was provided in accordance with the requirements of the *Waters Act*. In response, the Board received an intervention from White River First Nation.

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 also took into account the *Waters Act*, *Waters Regulation*, the application, recommendations from the intervener, the Board’s standard licence requirements, Chapter 14 of the Umbrella Final Agreement and Board policies.

White River First Nation

White River First Nation would like fish habitat compensation to be carried out within their traditional territory. They would also like to be consulted regarding the fish habitat compensation plan.

The Board noted that the applicant indicated within the application that they are in the process of coordinating a fish habitat compensation plan with the Department of Fisheries and Oceans (DFO). The Board noted that consultation pertaining to the fish habitat compensation plan with White River First Nation will be the responsibility of the applicant and DFO, as this would not be in the Board’s jurisdiction. However, should the work required for carrying out the fish habitat compensation require a water licence or an amendment to this licence, then White River First Nation will also be notified during the Boards’ process at that time.

Fuelling of Equipment

The applicant provided an argument that it would be impractical to re-fuel some stationary equipment outside of the 30 metre distance, which is the typical distance that the board includes as a minimum requirement in most water use licences. The Decision Document allows for refuelling within 30 metres of a water body “where it is impractical due to the size or use of the equipment and then only if specified procedures outlined in the contractor’s Environmental Management Plan are followed and the proposed activity is approved by the HPW Engineer in advance.”

The inconvenience of moving equipment a safe distance from the wetted perimeter of Kluane Lake is not sufficient justification to satisfy the board that the quality of water will be protected in the event of a petroleum/hazardous material spill. The board has included a condition in the licence that requires cranes, excavators, compactors and water pumps to be refuelled a minimum of 15 metres from the wetted perimeter of Kluane Lake to protect water quality in the event of a spill. Any spill directly into/adjacent to the waters of Kluane Lake may have a significant impact on water quality and fish habitat. The board is satisfied that the inclusion of this condition is not contrary to the Decision Document, as it will still allow the Contractor and the HPW Engineer to implement other procedures in addition to this licence condition.

YESAA

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 this licence is not contrary to the conditions included in the Decision Document. The Board noted that the Decision Document included conditions which severely restricted the board’s ability to make licensing decisions under the *Waters Act* (“Act”). The Board respectfully requests that when considering conditions for the Decision Document, that 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.

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:

Territorial Resources Base Map 115G/2 and Mining Claims Map 115G/7 were reviewed for settlement land. White River First Nation does not have a final agreement and therefore no settlement land at this time. However, Map 115G/7 indicates Kluane First Nation settlement

land parcel C-11B is in the Destruction Bay area near the project location but water is not flowing on, through, or adjacent to this land parcel.

The project activities include adding rip-rap and granular material into the foreshore of Kluane Lake and the use of water for dust control and road compaction. The Board determined that the quantity of water available in Kluane Lake and the proposed use of 500 cubic metres per day, does not amount to a significant amount of water been taken from Kluane Lake, therefore the quantity and rate of flow, including seasonal rate of flow of water in Kluane Lake will not be substantially altered.

The conditions of the licence will minimize sediment inputs to the water of Kluane Lake and the channel of the Slims River. With the inclusion of these conditions and the mitigation proposed by the Licensee the Board determined that the quality of water will not be substantially altered.

In review of the locations of settlement land in comparison to the purpose of the project and the methodology to be used to carry out construction of the road improvements, it can be concluded 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

Date