

YUKON WATER BOARD
REASONS FOR DECISION
Water Use Application PM06-536, Eureka Placers Ltd.
and Mining Land Use Approval AP06536

The Yukon Water Board (“the board”) has made licensing decisions with respect to water use application PM06-536 for a type B licence for a placer mining undertaking and mining land use approval AP06536.

The purpose of the application is to obtain a water use licence in order to obtain water, store/alter the flow of water, divert water, modify the bed or bank of a watercourse, to deposit a waste and to obtain an approved placer mining land use operating plan.

Notice of the application was provided in accordance with the requirements of the *Waters Act* and the *Placer Mining Land Use Regulation*. In response, the board received interventions from the following parties:

Fisheries and Oceans Canada (“DFO”);
Government of Yukon, Energy, Mines and Resources, Mining Land Use (“GY-MLU”) supporting the recommendation of GY-CSI; and
Government of Yukon, Energy, Mines and Resources, Client Services & Inspections (“GY-CSI”).

No party requested a public hearing. The applicant responded to the interventions.

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 PM06-536 is not contrary to the terms and conditions included in the Decision Document; however, the board noted that the Decision Document restricted the board’s ability to make licensing decisions under the *Waters Act*.

The board determined that the following conditions of the Decision Document will not be included in the licence:

“All channels are constructed and restored consistent with the *Guidelines for the Design and Construction of Stream Channels for Yukon Placer Mined Streams* (or any other successor guidebook of mitigation measures for placer mining in the Yukon).”

The board determined that this condition would not be included in the licence as it does not provide specific information that pertains to this mining operation and it would be difficult for Government of Yukon to enforce a licence that required compliance with this guidebook. The board determined that the recommendations provided by DFO, through the board’s process, were specific to this mining operation and have been included in the licence.

“The Permittee shall equip each camp with bear deterrent devices and maintain such devices in good working order throughout the duration of camp occupancy. The District Conservation Officer can be contacted for any necessary information regarding bear deterrent devices.”

The board determined that bear deterrent devices are not pertinent to either water use or mining land use and this condition has not been included in the licence or the approval.

In making licensing decisions pertaining to this application, the board also took into account the *Waters Act*, *Waters Regulation*, the application, recommendations from the interveners, the Decision Document, the board’s standard licence requirements, Territorial Resources Base Maps 1150/10c and 1150/10d, Chapter 14 of the Umbrella Final Agreement (“UFA”) and board policies.

Neither the applicant nor the YESAA Decision Document proposed any alternative approaches to the operating conditions in the *Placer Mining Land Use Regulation*. These operating conditions have been incorporated into the Placer Land Use Approval for a Class 4 Operating Plan.

DFO

The effluent standard recommended by DFO is the same standard as referenced in the Yukon Placer Authorization (YPA). The YPA is an authorization under the *Fisheries Act* for the harmful alteration, disruption or destruction of fish and fish habitat in certain streams, or portions of streams, in the Yukon for placer mining works and undertakings, subject to compliance with the standards of allowable sediment discharge. The board has adopted the YPA as policy for the minimum allowable discharge standard. The effluent discharge standards and operating standards, which are stipulated in the YPA and the Fish Habitat Restoration Plan, have been incorporated in the licence.

DFO provided standard recommendations for fuel, lubricants, cleansers, solvents and similar chemicals or substances to be transported, stored and disposed of in such a way as to ensure that they are not deposited in, or allowed to be deposited in, waters. The typical condition to transport, store and dispose of fuels, lubricants, cleansers, solvents and similar chemicals or substances in such a way as to ensure that they are not deposited in, or allowed to be deposited in, waters has been included in the licence.

DFO has provided standard recommendations that all diversions, ditches, drains, dams, or any structure built or otherwise effected is able to withstand seasonal floods. The typical condition that requires all diversions, ditches, drains, dams or any structure built or otherwise affected to be constructed to withstand seasonal floods has been included in the licence.

DFO recommended that diversions be permitted in the licence. The board accepted the recommendation of DFO and has included authorization for the construction of diversions in the licence.

DFO has provided standard recommendations to ensure that spring freshet is not routed through work areas, except the in-stream reservoirs provided the effluent standard is met. The board determined that the licence will allow spring freshet to be routed through the in-stream reservoirs; however, the licence will not require the effluent standard to be met as any sediment present within the water column during spring freshet will not be a result of any active mining. DFO recommended that in-stream settling be permitted. The board accepted the recommendation of DFO and has included authorization for the construction of in-stream settling facilities in the licence.

DFO provided specific recommendations for diversions channels. The board has included DFO's recommendations in the licence pertaining to diversion channel width, depth, grade, habitat structures and stability of the banks.

DFO has provided recommendations for the use of fish screens on all water intakes when withdrawing water. The board has included fish screens in all licences when withdrawing water from a fish stream.

DFO recommended that the height of cross valley dams should not exceed 1.5 m, which is consistent with the requirements of the last licence. In response, the applicant advised that the previous licence included a 1.5 m restriction for cross valley dams, but also grandfathered previously constructed dams that exceeded that height. The board noted that this operation has been ongoing for several years, through a number of licences. The most recent licence, PM01-236 expired in November 2006, and was included in this water use register. The board determined that a clause will be included in clause 14 of licence PM06-536 to allow for the use of cross valley dams that were constructed prior to June 21, 2002 which exceed the 1.5 m height and which are deemed to be adequate by the Inspector.

In determining the June 21, 2002 date, the board referred to the effective date of licence PM01-236 and determined that the cross valley dams authorized under clause 12 of that licence would have existed at the time the board issued that licence and would not have applied to any cross valley dams constructed after the effective date of that licence.

The board also noted for the purpose of clarification that the height restrictions for cross valley dams does not apply to other constructed structures. The board has not included a restriction in the licence for the height of other structures; however, the board expects the Licensee to construct all other structures as described in the water use application.

GY-CSI

This application was tabled at the April 2007 meeting due to concerns expressed by GY-CSI regarding the applicant's failure to comply with reclamation requirements in a previous licence. The Licensee responded to the GY-CSI intervention to advise the board that he intended complete any reclamation work required by GY-CSI so that the board could continue and make a decision on the application.

The Licensee has now completed the outstanding work, and a letter from GY confirming that their concerns have been addressed has been provided to the board.

Reclamation Plan

Previous licences included a requirement for the Licensee to submit a plan of reclamation to be carried out each year throughout the term of the licences. The plan was required to be submitted to the board at least 14 days prior to the planned start of mining. The applicant noted that it was not always possible to access the claims covered by the licence in the early spring due to the snow and glaciation in the area limiting access.

The board has included the requirement for the submission of the plan of reclamation in licence PM06-536; however, to allow some flexibility for the Licensee the board has allowed for the submission of the plan either at seasonal closure of each operating season or at least 14 days prior to the planned start of mining. The board advises the Licensee to ensure that the plan include the proposed dates that reclamation will be carried out, as required by clause 5 of the licence.

Chapter 14 of the Umbrella Final Agreement

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:

Map 1150/10 is included in the Tr'ondëk Hwëch'in Final Agreement. Mining maps 1150/10c and 1150/10d were reviewed for Settlement Land. The maps do not indicate the presence of any Settlement Land in the area of Eureka Creek or the Indian River. Based on this information, the board concluded that the mining operation 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.

Original signed by Chairperson

July 18, 2007

Chairperson
Yukon Water Board

Date