

YUKON WATER BOARD  
REASONS FOR DECISION  
Water Use Application PM08-595, Daniel Brock  
and Mining Land Use Approval AP08595

The Yukon Water Board (“the board”) has made licensing decisions with respect to water use application PM08-595 for a type B licence for a placer mining undertaking and mining land use approval AP08595.

The purpose of the application is to obtain a water use licence to obtain and store water, 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”); and  
Government of Yukon, Energy, Mines and Resources, Mineral Resources (“GY”); and  
Tr’ondëk Hwëch’in (“TH”).

Tr’ondëk Hwëch’in requested a public hearing. The applicant did not respond 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. The board is satisfied that the licence and approval are not contrary to the YESAA Decision Document, as per section 86 of YESAA.

Neither the applicant or 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.

In making licensing decisions pertaining to this application, the board took into account the *Waters Act*, *Waters Regulation*, the application, the YESAA Decision Document, recommendations from the interveners, the board's standard licence requirements, Mining Claims Map 1150/14, Chapter 14 of the Umbrella Final Agreement (“UFA”) and board policies.

**DFO**

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 provided standard recommendations to ensure that spring freshet is not routed through work areas. The typical conditions prohibiting spring freshet from being routed through work areas has been included in the licence.

DFO has recommended that permanent diversions should be constructed according to the Fish Habitat requirements for the Moderate-Low classification. The board has included criteria for the Moderate-Low classification in the licence.

### **GY**

GY recommended that a clay liner should not be used for secondary containment, unless it has been laboratory tested and the results submitted to Client Services and Inspections, Government of Yukon. GY also recommended that the clay liner should be engineered by a certified engineer registered in the Yukon. The board noted that the standard conditions in the Mining Land Use Approval requires secondary containment to be constructed of material impervious to petroleum products and it is left up to the Licensee to determine how this is accomplished and ensure whatever materials are used that they comply with this condition.

### **Tr'ondëk Hwëch'in**

TH recommended that a public hearing should be held to determine any legal ramifications by permanently diverting Adams Creek from its original channel and the boundaries of Settlement Land R-20A, which in this case, it is described as having a southerly boundary of the northerly bank of Adams Creek.

TH recommended that the hearing would also help to determine who has mineral rights, as there is a titled property overlapping with this grant in licence PM08-595. The title grants the rights for all mines and minerals in or upon the said land, other than coal mines, but including gold and silver to the property owners.

The board determined that a public hearing is not required for this application as the board determined that sufficient information has been provided by all parties to assist the board in making licensing decisions.

TH would like to be notified if a spill occurs on Settlement Land. The board included a condition in the approval that the Licensee contact TH in the event of a fuel spill.

TH recommended that reclamation work be done in a timely fashion. The board expects all applicants to conduct their mining operations using the practices indicated within their application and practices which are environmentally sound. In review of the water use application and the Placer Mining Land Use application, the board examines the approach proposed and either approves it or imposes conditions that may differ from the approach proposed by the Licensee, the board expects the Licensee to comply with the conditions of the licence and approval.

TH recommended that they should be notified if any evidence of archaeological sites or burial grounds are discovered. The Placer Mining Land Use Approval requires the licensee to contact the Chief of Placer Land Use if any evidence is found of an archaeological site or burial ground.

Protection of the site from further disturbance is required until authorization is given by the Chief of Placer Land Use. The board has previously been advised that the Chief of Placer Land Use is required to contact the affected First Nation. The board also encourages the licensee to contact the affected First Nation.

### **Chapter 14 of the UFA**

The board examined the proposed use of water as it relates to Chapter 14 of the UFA, 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:

Part of the grant is on Settlement Land R-20A. Settlement Parcel R-20A is described as, having a northwesterly boundary of the southeasterly bank of the Yukon River, as a southerly boundary the northerly bank of Adams Creek, as a easterly boundary, in part, the most westerly boundary of either the official baseline of Bonanza Creek or the westerly boundary of a 60 metre right-of-way for the road known as the Bonanza Road and as a northerly boundary, in part, the southerly bank of the Klondike River.

The Licensee has proposed the use of approximately 4,364 cubic metres of water per day during the mining season. There is approximately 95,040 cubic metres of water per day available in Adams Creek during normal flows. The proposed use of water is approximately 5% of the total flow in Adams Creek. Therefore, the board determined that the quantity of water, flowing on, through or adjacent to settlement land will not be substantially altered.

The Licensee requested instream settling, which the board determined could substantially alter the quality of water flowing adjacent to Settlement Land. The board determined that the substantial alteration would be for a maximum of five months of the year.

The Licensee also requested a permanent diversion of Adams Creek, which the board determined could substantially alter the water flowing adjacent to Settlement Land.

Because of the potential for substantial alteration to the quality of water and the alteration of the creek channel, the following considerations were made by the board, as per Chapter 14 of the Umbrella Final Agreement:

#### Notice given to the affected Yukon First Nation (section 14.8.3.1):

Tr'ondek Hwech'in was provided notice of the application, and was sent a copy of the application by July 2, 2008. Tr'ondëk Hwëch'in intervened to the board on July 25, 2008.

#### Alternative which could reasonably satisfy the requirements of the applicant (section 14.8.3.2 (a)):

Adams Creek, in the area of this grant, is narrow with steep valley sides, with no room to build out-of-stream settling facilities or room to build a bypass around instream settling facilities. In this area, there is no alternative to building instream settling facilities.

Adams Creek will need to be moved from its present location, to enable the applicant to mine the original creek channel. In this instance there is an alternative to ensure that Adams Creek be placed back into the original channel at decommissioning of the site.

No reasonable measures to avoid the interference (section 14.8.3.2 (b)):

Adams Creek in the area of this grant is too narrow with steep valley sides, with no room to build out-of-stream settling facilities. The applicant will need to build instream settling facilities. Therefore, there is no reasonable measures whereby the applicant could avoid the interference.

Effect of water use on fish, wildlife and their habitats (section 14.8.4.1):

Adams Creek is considered a Freshwater Fisheries Production Zone stream with an Extensive Development designation pursuant to the Klondike River Watershed Authorization of Placer Mining Works or undertakings Affecting Fish Habitat for Specified Stream in the Yukon Territory. Based on this information, the Board concluded that with the project being completed according to what is stated in the worksheets and the mitigation measures that are incorporated into the project plan, the project is not likely to result in the harmful alteration, disruption or destruction of fish habitat.

Adams Creek on this grant is narrow, leaving no room to build out-of-stream settling facilities. The portion of Adams Creek that the applicant proposed to use for instream settling and the use of only one grant which is approximately 500 feet in length, leaves ample room on either side of the grant where wildlife could use the water. Therefore, it could be concluded that there would be no effect on water use on wildlife or their habitat.

Effects of Water Use on the Yukon First Nation or on a Yukon Indian Person (section 14.8.4.2):

Tr'ondëk Hwëch'in intervened on this application and indicated that the proposed operation could effect the Yukon First Nation, by allowing for a permanent diversion which would result in the Yukon First Nation no longer having access to the water within Adams Creek.

Tr'ondëk Hwëch'in provided mitigation that would be acceptable and allow the Yukon First Nation to access the water within Adams Creek, by ensuring that Adams Creek is placed back into the original creek channel at final decommissioning. By placing the creek in a different location during mining of the grant would not prohibit the First Nation for accessing the water. If the creek is to be relocated into the original channel at final decommissioning, the effect on the Yukon First Nation would be until the grant has been mined out.

Tr'ondëk Hwëch'in did not indicate that there would be an effect of water use on a Yukon Indian Person. Therefore, the Board concluded that there is no information on which to conclude that an effect is likely.

Determination:

There is no information available to prove loss or damage to the Yukon First Nation or Yukon Indian Person, by issuing a licence that interferes with the quality of water flowing adjacent to Settlement Land R20A or diverting Adams Creek during active mining of the grant. (section 14.8.5)

To help mitigate the effects on quality of water flowing adjacent to settlement land, the board included conditions in the licence that require the Licensee, prior to seasonal closure and also to prevent flood damage during freshet, to:

- a) temporarily prevent water from entering the instream settling facilities; then
- b) draw off or otherwise remove the water from the instream settling facilities; then
- c) mechanically remove accumulated sediment from the instream settling facilities; then
- d) open all dams and dikes so as to ensure unrestricted creek flow.

Any material that is removed from the settling facilities shall be stockpiled at a location and in such a manner so as to not affect water quality in any watercourse.

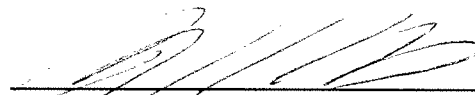
To help mitigate the effects on diverting the watercourse, the licence requires the Licensee at final decommissioning and/or expiry of this licence to ensure that the creek is placed back into the original creek channel location.

**YESAA Decision Document:**

The board reviewed the YESAA Decision Document for conditions that would be applicable to water related activities and noted that a licence cannot be issued that is contrary to a YESAA Decision Document.

**Conclusion:**

The board has approved the issuance of Water Use Licence PM08-595 and the Placer Mining Land Use Approval AP08595.

  
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Chairperson  
Yukon Water Board

Sept 17, 2008  
Date