

YUKON WATER BOARD
REASONS FOR DECISION
Water Use Application PM08-600, Cliff Andrews
and Mining Land Use Approval AP08600

The Yukon Water Board (“the board”) has made licensing decisions with respect to water use application PM08-600 for a type B licence for a placer mining undertaking and mining land use approval AP08600.

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:

Government of Yukon, Energy, Mines and Resources, Client Services and Inspections Branch (“GY”); and Tr’ondëk Hwëch’in

No party requested a public hearing. The applicant did respond to the Tr’ondëk Hwëch’in intervention.

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, Territorial Resources Base Map 1150/14, Chapter 14 of the Umbrella Final Agreement (“UFA”) and board policies.

Separation of Grants

The board was advised that Settlement Land parcel R-20A separates the grants and that the Licensee provided an agreement from Tr’ondëk Hwëch’in and that the agreement allows for the use of water on Settlement Land R-20A. The board agreed that with the agreement in place between the Licensee and Tr’ondëk Hwëch’in that the information provided is consistent with the Board’s policy that all grants be contiguous and where the applicant does not own the grants, an agreement must be provided as part of the application.

GY

GY provided the effluent standards stipulated in the Klondike River Watershed Authorization and included that the point of compliance should be measured at a point in the effluent flow immediately before it enters the natural stream flow. The board did not include a effluent discharge standard or compliance point in the licence, as the applicant stated within the application that there would be no discharge to the watercourse.

Tr'ondëk Hwëch'in

Tr'ondëk Hwëch'in recommended that all fuel stored and utilized should be bermed. The Placer Mining Land Use Approval includes standard condition for the berming of fuel storage areas.

Tr'ondëk Hwëch'in recommended that they be contacted in the event of a fuel spill. The board has included in the Placer Mining Land Use Approval as a standard clause if the operation is on Tr'ondëk Hwëch'in Settlement Lands, that the operator contact Tr'ondëk Hwëch'in in the event of fuel spill.

Tr'ondëk Hwëch'in 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.

Tr'ondëk Hwëch'in recommended that any timber larger than 15 centimetres in diameter should be salvaged. The board noted that under the Placer Mining Act, the applicant has the right to use timber for mining purposes and did not include this recommendation in the licence.

Tr'ondëk Hwëch'in recommended that existing access should be used where possible and scouting of proposed routes for best location. Tr'ondëk Hwëch'in also would like to be contacted for approval in writing for the location of routes, prior to construction of any roads. The board noted that any roads off grants would require a Land Use permit. The board, also noted that roads can be constructed on the grants and that there are standard conditions in the Placer Mining Land Use approval for roads.

Tr'ondëk Hwëch'in recommended that reclamation should be completed in a timely fashion. The board noted that both the licence and approval include typical conditions approval for reclamation of the site.

Tr'ondëk Hwëch'in would like a written plan for the removal of equipment, materials and the final clean up and restoration. The board noted that the licensee provided within the application, plans for the removal of equipment, materials and reclamation of the site. The licence and approval also include typical conditions at decommissioning requiring the operator or Licensee to remove everything and for reclamation of the site. The board expects the Licensee to comply with the conditions of the licence and approval.

Tr'ondëk Hwëch'in recommended that the applicant should notify the First Nation 30 days prior to demolishing or destroying any structures, so Tr'ondëk Hwëch'in may have first option of retaining the structures for future use. The board noted that the typical conditions in the approval require the operator to remove everything from the site. The board did not include this recommendation in the licence or approval. The applicant may choose to discuss this with the Tr'ondëk Hwëch'in. This is not a term of the licence.

Tr'ondëk Hwëch'in commented that a TH Land Use Permit would be issued for Settlement Land R-20A. Tr'ondëk Hwëch'in indicated that no pay gravels, sluicing or camp facilities would be located on Settlement Land R-20A. The board noted that the Placer Mining Land Use Approval would not apply on Tr'ondëk Hwëch'in Settlement Land R-20A, but the water use licence will apply on Settlement Land R-20A. The Placer Mining Land Use Approval will continue to apply on the grants. Tr'ondëk Hwëch'in Land Use Permit will apply on Settlement Land.

The board discussed jurisdiction on Settlement Land and agreed that certain aspects of land use is completely within a First Nations' jurisdiction. The board included the standard condition in the licence and approval that states that "no condition of the water use licence or approval limits the application of any federal, territorial, first nation or municipal legislation."

The board also cautions the Licensee, that although this licence did not include all of Tr'ondek Hwech'ins' recommendations, in either the water use licence or approval, that Tr'ondëk Hwëch'in may have included conditions in its land use permit for land use activities on Settlement Land R-20A.

Applicants Response to Tr'ondëk Hwëch'in

The board noted that the Licensee responded to the intervention from Tr'ondëk Hwëch'in and indicated that they are aware of all recommendations and wish to abide by the requests as set out by the First Nation on Settlement Land.

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, and determined that the proposed 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.

In reaching this conclusion, the following was considered:

These grants are separated by Settlement Land R-20A and the applicant has an agreement with Tr'ondëk Hwëch'in to include the R20-A Settlement Land in the water use licence. Tr'ondëk Hwëch'in notified the Board that a permit will be issued for the proposed mining land use activities on the R-20 A Settlement Land.

With an agreement in place between Tr'ondëk Hwëch'in and Cliff Andrews regarding the R-20A Settlement Land and the notice from Tr'ondëk Hwëch'in that a permit will also be issued, the Board concluded that the quantity, or rate of flow of water flowing on, through, or adjacent to Settlement Land, including seasonal rate of flow will not be substantially altered.

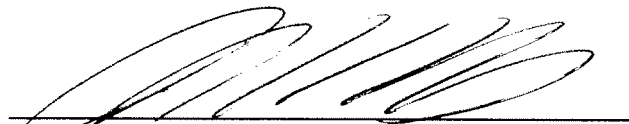
In regards to the quality of water, the Fisheries and Oceans Canada Authorization for the Klondike River Watershed includes effluent quality standards. These standards have been included in the licence. With the inclusion of the effluent quality standards in the licence the Board concluded that the proposed operation will not substantially alter the quality of water that is flowing on, through or adjacent to Settlement Land.

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 PM08-600 and the Placer Mining Land Use Approval AP08600.



Chairperson
Yukon Water Board

Sept. 19, 2008
Date