



**Yukon
Water Board**

*Office des eaux
du Yukon*

June 22, 2007

Kevin McDonnell, V-310
Chief, Water Resources Section
Government of Yukon, Environment
Box 2703
Whitehorse, YT Y1A 2C6

Re: Water Use Application QZ06-074, Elsa Reclamation and Development Company Ltd.

I have been asked to respond to your letter of June 19, 2007 regarding this application.

I have reviewed the file on this application, and note that very early in the process our office invited Water Resources to participate in a discussion about whether this application was a type A or a Type B. Your office declined. Subsequent to that, the Applicant provided their rationale for why a Type B licence would be appropriate.

Based on the information on file, and lacking sufficient argument to the contrary, Ms. Boutilier determined that this application would be processed as an application for a type B licence, and she advised the Applicant of this decision in her April 12, 2007 letter.

It is possible that, through our public process, any party could come forward on any application and present an argument that a type B application should actually be a type A application. If that were to happen, and if the board accepted the argument, then a type B licence would not be issued. Several options would then be available, depending on how the Applicant wanted to proceed. The most efficient approach would be to simply set a public hearing date and give notice of public hearing for a type A application. But at the end of the day, the Applicant would make the decision about what they wanted to do with their application.

Regardless of the path that the Applicant might choose, changing from a type B to a type A would result in some delay that could be avoided if the question was resolved before public notice - which is precisely what Ms. Boutilier tried to accomplish last fall.

The April 12 letter to the Applicant had to do with adequacy review. In the part of the letter that talked about the issue of A or B, Ms. Boutilier was alerting the Applicant to the possibility that a party might come forward during the processing of that type B application to argue that the project fell within the parameters of a type A. Although your office declined to participate in the early discussion about B vs A, our office was aware that this was a concern at Government of Yukon, and alerting the Applicant to this possibility served the interests of fairness and efficiency.

The status of the application, at the time of her letter, and today, is that this is an application for a type B licence and the application is not yet adequate for public review.

With respect, it appears that much of your letter, and certainly all of Part B, is premised on an incorrect interpretation of a letter that was sent from our office to the Applicant. Perhaps, rather than perpetuating this confusion by including this letter in the water use register, you may want to redraft the letter and submit, instead, a letter that focusses on your perspective on the question of type B vs type A. Since the application is not yet adequate for public review, your arguments on that matter, as well as any response from the Applicant, will be considered before public notice is provided.

In order to keep our records current, it would be helpful to have a response on this question within a week. Do you want the June 19 letter to be included in the water use register, or would you prefer to send a revised letter now that you know that the application type is determined prior to public notice?

In summary:

- Based on the information that we have on our records, this application has been proceeding as an application for a type B licence.
- When the application is adequate, public notice will be provided. The public notice will (in fact, must) identify if this is an application for a type A or a Type B.
- If a party, after adequacy and public notice, argues that the application does not fall within the parameters of a B, and if the Board, through the public and fair process identified in our rules, including consideration of the applicant's position, determines that this is the case, then the licence will not be issued.
- It would be far more efficient to resolve the A vs B issue before public notice and, now that you have provided your interpretation, we will share it with the applicant and give it appropriate consideration. However, you may, if you wish, revise the letter to focus on the pertinent issue and to remove the misinterpretation of Ms. Boutilier's April 12 correspondence.

In any event, please note for future reference that any correspondence to the water board about an application must include a clear indication that a copy has been sent to the Applicant.



Judi White, Manager
Yukon Water Board

cc B. Thrall, Elsa Reclamation and Development Corporation / Access Consulting
(June 19/07 letter from K. McDonnell attached)