



## MEMORANDUM OF UNDERSTANDING

Between:

**THE GOVERNMENT OF YUKON**

**(YG)**

And

**YUKON WATER BOARD**

**(YWB)**

(collectively, the "parties")

### 1. PREAMBLE

The Yukon Water Board ("YWB") was initially established by statute by the Government of Canada over three decades ago. On April 1, 2003, as a result of devolution of the federal Northern Affairs Program to Yukon government ("YG"), YG obtained control and administration of all rights in respect of water other than waters in federal conservation areas.<sup>1</sup> Post-devolution of the Northern Affairs Program, the YWB was continued by the *Waters Act* (Yukon).

In addition to the *Waters Act*, the YWB's role in managing the quality and quantity of water in Yukon has been codified in Chapter 14 of the Yukon First Nation Final Agreements ("Final Agreements") that have been entered into by eleven Yukon First Nations, the Government of Canada and the Government of Yukon.

Additional responsibilities and obligations of the YWB are identified in the *Yukon Environmental and Socio-economic Assessment Act* (Canada).

The objects of the YWB, as stated in section 10 of the *Waters Act*, are:

to provide for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit from them for all Canadians and for the residents of the Yukon in particular.

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<sup>1</sup> *Yukon Act*, S.C. 2002, c.7, subsection 48(2).

In carrying out these objects, the YWB and YG must be guided by the objective of Chapter 14 of the Yukon First Nation Final Agreements which is to maintain the water of the Yukon in a natural condition while providing for its sustainable use.

In addition to its responsibilities related to water, on April 1, 2003, the YWB was transferred certain functions of the Chief of Mining Land Use in relation to Class IV Placer Land Use Operations pursuant to subsection 99(5) of the *Placer Mining Act* (the "transfer of functions").

The parties to this MOU are committed to continuous improvement in regulatory processes related to both water quality and quantity and Class IV Placer Land Use Operations. To this end they have agreed to the following provisions.

## **2. PURPOSE**

2.1 This MOU is intended to promote greater clarity and understanding between the parties regarding:

2.1.1 their respective roles within Yukon's regulatory processes; and

2.1.2 their respective roles related to YWB Secretariat staffing and organizational administration.

2.2 This MOU is not intended to describe all functions of the YWB or YG; nor is it meant to describe or impact any relationship that the YWB or YG may have with any Yukon First Nation. This MOU also does not alter or in any manner change the legal obligations and responsibilities of either party.

## **3. REGULATORY PROCESS**

3.1 The parties acknowledge that they each have a valuable role to play in regulatory processes involving the use of water and the deposit of waste into water within Yukon and that while their roles are distinct and separate they are also interdependent and, to a degree, overlapping.

3.2 As provided in the *Yukon Act* (Canada), YG has administration and control of all rights in respect of waters in Yukon, other than waters in federal conservation areas. The YWB, an independent administrative tribunal, has the authority to issue, renew, amend, assign and cancel water licences under the *Waters Act*. In carrying out these functions, the YWB has specific obligations and responsibilities with regards to Yukon First Nations treaty rights and participation in the water licensing process as set out in the Yukon First Nations Final

## Agreements.

- 3.3 The parties agree that as a result of the transfer of authority of the functions of the Chief of Mining Land Use to the YWB both parties have obligations and responsibilities under the *Placer Mining Act*.
- 3.4 Given the nature of the parties' separate roles, obligations and responsibilities, the parties recognize the need for ongoing information exchange related to their respective areas of jurisdiction, particularly in relation to standards, guidelines, policies and processes.
- 3.5 The parties agree to respect each other's roles, responsibilities and obligations.
- 3.6 Subject to the *Waters Act*, the parties agree to work collaboratively to promote greater clarity and understanding between themselves on policy and legislative matters while ensuring that, in accordance with the principles of procedural fairness, the Board remains independent in exercising its decision-making functions related to the issuance, amendment, cancellation, assignment or renewal of water licences.
- 3.7 The parties agree to meet as often as is necessary, but in any event, no less than once a year to discuss matters of common interest and the matters outlined in this MOU.

## 4. YWB Staffing and Administration

- 4.1 The *Waters Act* provides that officers and employees from within the YG public service are to be provided by YG to provide administrative support to the YWB (the "Secretariat staff"). Both parties recognize that they have certain responsibilities in relation to these employees.
- 4.2 YG agrees that Secretariat staff will assist the YWB in carrying out its functions and responsibilities as Chief of Mining Land Use in relation to Class IV Placer Land Use Operations.
- 4.3 In order to maintain the impartiality, neutrality, fairness and integrity of the regulatory processes in which they both play a part, the parties agree to the following.
- 4.3.1 The Director of the Secretariat will provide day to day supervision and direction to the Secretariat staff, including setting priorities for the Secretariat staff. The Director will also be primarily responsible for operations of the Secretariat.
- 4.3.2 The Chair of the YWB and YG officials will meet upon the request of either and for greater certainty will meet no less than annually to discuss the priorities identified by the YWB for the upcoming year, to review the related financial and staffing requirements and to determine if the priorities and financial and staffing requirements can be accommodated within the budget of the YWB.

- 4.3.3 The Chair of the YWB, as the immediate supervisor of the Secretariat Director, will direct and monitor the performance of the Secretariat Director and develop, in consultation with the Director and the members of the YWB, the Performance Development Plan for the Director. The Chair will review the Performance Development Plan with the appropriate YG officials before it is approved to ensure that the Plan is consistent with YG policies, practices and directives.
- 4.3.4 The Chair will recommend the level of performance and a specific range of performance award, if any, annually for the Secretariat Director in accordance with the Performance Development Plan process and principles established by YG. In advance of making a recommendation, the Chair and the appropriate YG officials will discuss any limitations or restrictions related to performance and performance awards developed for that year by YG and the Chair will ensure that recommendations regarding performance and performance awards are consistent with the identified limitations or restrictions.
- 4.3.5 The Chair of the YWB will be a member of the recruitment panel for Secretariat Director. YG agrees that it will not appoint an individual to the position of Secretariat Director over the objections of the Chair.
- 4.3.6 The Secretariat Director will be a member of any recruitment panel for all other Secretariat staff.
- 4.3.7 All hiring will occur following YG recruitment procedures and practices and will be subject to any applicable constraints flowing from the collective agreement between YG and the Public Service Alliance of Canada, as amended from time to time.
- 4.3.7 The Secretariat Director will be responsible for monitoring, reviewing and directing the overall performance and duties of Secretariat staff. Performance reviews will be carried out by the Secretariat Director, in consultation with the YWB Chair. If any disciplinary action is required for any of the Secretariat staff, the Secretariat Director will review the matter with the Chair of the YWB and the appropriate YG official prior to initiating the disciplinary action. All disciplinary action must be in accordance with any applicable laws and the appropriate YG policies, procedures and directives.
- 4.3.8 Secretariat staff will perform their duties in accordance with the reasonable expectations of any other YG employee and the Secretariat will conduct its affairs in accordance with all of the financial and human resource policies, practices and procedures applicable to all other YG employees.
- 4.3.9 The *Public Service Act* and other legislation applicable to other members of the YG public service will apply to Secretariat staff. At levels comparable to other employees of YG, all employee benefits, opportunities and support will be provided to Secretariat staff.

4.3.10 To ensure that the operations of the Secretariat are being carried out in accordance with YG financial and human resource policies, practices and procedures, the Secretariat Director will meet regularly with the appropriate YG officials to review these matters and the Director will ensure that all Secretariat staff implement and respect all YG financial and human resource policies, practices and procedures.

4.3.11 YG will provide support to the YWB and Secretariat staff in respect of records management, information technology and financial management comparable to the support provided to branches and departments of YG.

## **5. CONFIDENTIAL INFORMATION – USE OF COMPUTER SERVERS**

5.1 In order for the YWB to conduct its business in a more economical manner, YG will provide the YWB with access to YG servers. Subject to paragraph 5.2, the parties agree that even though YG owns these servers, information related to the deliberations of the YWB on applications for water licenses, meeting minutes and correspondence of the YWB is confidential information of the YWB and will not be accessed by YG without the prior written approval of the YWB.

5.2 The YWB will ensure that all use of YG provided computers and electronic networks by the YWB and Secretariat staff complies with all applicable laws and YG policies, programs and directives regarding the use of computers and electronic networks.

## **6. DISPUTE RESOLUTION**

6.1 In the event of disagreement between the parties in relation to anything set out in this MOU, the parties agree to engage in open and cooperative discussions to settle the disagreement. For greater certainty, if the dispute involves Secretariat staff, the dispute will be resolved in accordance with all applicable laws and following YG employer-employee grievance and disciplinary procedures, practices and directives.

## **7. PERIOD, REVIEW AND AMENDMENT**

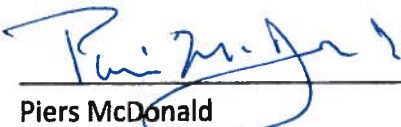
7.1 This MOU is in effect from the date that it is signed and remains in effect until terminated, in writing, by one of the parties.

7.2 This MOU will be subject to periodic review and may be amended at any time by mutual consent of the parties.

## 8. TRANSPARENCY

8.1 The parties agree that this MOU will also be available to the public, upon request, and will be included on the website maintained by the YWB.

Dated at Whitehorse, Yukon, this 9 day of NOVEMBER, 2018.

  
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Sandy Silver  
Premier of Yukon  
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Piers McDonald  
Chair, Yukon Water Board