Yukon
Water Board

Office des eaux
du Yukon

YUKON WATER BOARD

OPERATIONS AND ADMINISTRATION MANUAL

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PART 1 GENERAL

1.1 PURPOSE

This Operations and Administration Manual (manual) is the consolidation of the Yukon Water Board's (Board) Rules, policies, guidelines and procedures. This manual provides current information about the administration and operation of the Board in a convenient and accessible format. By design, this manual intends to help readers better understand the structure, function, roles and responsibilities of the Board in water licensing and Class 4 placer mining operating plan approval processes.

This manual also describes the roles and responsibilities of participants in the water licensing and approval process. Readers are encouraged to contact the Yukon Water Board Secretariat (Secretariat) with any questions arising from this manual.

1.2 MANUAL ORGANIZATION

The manual consists of five sections.

- The first section provides an overview of the Board, the legislation enabling the Board's business as well as other relevant legislation, agreements and policy that describe the obligations and responsibilities of the Board.
- The Administration section details the Board's composition, roles and responsibilities.
- The Operations section describes how the Board conducts its business. This includes a description of Board meetings, licensing and operating plan approval decision-making and other relevant procedures and policy as they relate to the Board.
- The Information Management section details the management of information by the Board when conducting its business, as well as the record keeping and administrative functions of the Secretariat.
- The Rules section provides a standard that the Board relies on and follows to maintain procedural fairness and adhere to the principles of natural justice.

1.3 OVERVIEW OF THE YUKON WATER BOARD

1.3.1 History

The Yukon Territory Water Board first came about in 1972 with the *Northern Inland Waters Act (Canada)* which established the Board as the regulator of water in the Territories of Canada. It also set out a process to license water use and waste disposal projects. The Board was administered exclusively by the Federal government until the signing of the Umbrella Final Agreement (UFA) on May 29th, 1993 and implementation of the *Yukon First Nation Final Agreements* (YFNFA). The YFNFA identify the Board as the regulatory authority of water in Yukon and contains provisions for it functioning as a board. In June of 1993, after signing of the UFA, the federal legislation *Yukon Waters Act (Canada)* replaced the *Northern Inland Waters Act (Canada)* to address changes in territorial boundaries and creation of Nunavut. On April 1, 2003 the powers of the Federal government devolved

to the Yukon government at which time the current *Waters Act* (*WA*) replaced the *Yukon Waters Act (Canada)* as mirror legislation.

1.3.2 Responsibility

The *WA* maintains the Board as the sole regulator for the use of water and deposit of waste into water. The Board issues, renews, cancels and assigns water licences by way of delegation of authority from the Government of Yukon (YG) to adjudicate applications. Chapter 2 and Chapter 14 of the *UFA* further define the Board's role as a regulator of water in Yukon. The *Yukon Environmental and Socio-economic Assessment Act* (*YESAA)* also recognizes the existence of the Water Board as responsible for regulating water in Yukon.

1.3.3 Composition

Four to nine members make up the Board by appointment from the Commissioner in Executive Council. Membership nominees originate from the Government of Canada (GC), YG and Council of Yukon First Nations. The Minister of Executive Council Office designates a Chairperson and a Vice-Chairperson, respectively. Board members are not delegates of the parties who nominate them.

1.3.4 Natural Justice and Procedural Fairness

The Board is an administrative tribunal and adheres to the principles of natural justice and procedural fairness. The Board owes a duty of fairness to a person when it uses its decision-making powers under the law that affect the person's rights, privileges or interests. This duty is often called procedural fairness. It is important to know that the duty of fairness applies to procedure. It does not relate to the subject matter or the outcome of a decision. This means that when the Board is making decisions that affect a person's interests, the Board must follow certain procedures that help make sure the Board is being fair. Below are some examples of decision-making procedure requirements when a duty of fairness is owed:

1. **Reasonable notice and "knowing the case to be met."** A person affected by an administrative decision has the right to reasonable notice. Notice is a fundamental component of the administrative process and allows parties to possess enough information to allow them to make representations, present evidence and make arguments. Notice gives parties the opportunity to prepare.
2. **Right to a hearing and the opportunity to be heard.** There is no absolute right to a hearing. However, a person must be given an opportunity to put forward the person's case.
3. **Unbiased decision-maker.** A person is entitled to a decision from an unbiased decision-maker. Not only must the decision-maker be unbiased but it must also be free from the appearance of bias.
4. **The person who hears the case must decide the case.** The board members forming the panel who hear the case make the decisions in accordance with the Rules of Procedure (Appendix B.1).
5. **Right to reasons.** The decision-maker must give reasons for its decision.

The duty of fairness that is owed changes in different situations. Actions taken in one decision making process that meet the duty of fairness may not necessarily meet the duty of fairness in another. Generally, more procedural protection is needed when the decision has more serious potential consequences. Whether the duty of fairness is met in any given situation is decided based on the specific context of each case.

In order to enhance the Board's ability to adhere to principles of natural justice, the Board has made Rules of Procedure (Appendix B.1) and Conflict of Interest Rules (Appendix B.2)

1.3.5 Guiding Principles

The Board has established the following principles to guide its actions and decisions while conducting its business:

- Act openly, pursuant to the principles of procedural fairness and natural justice.
- Consider the precautionary principle when decision-making.
- Protect public health and safety and minimize risk to human life.
- Respect YFNFAs and Indigenous Rights in its decision making.
- Issue licences and approvals that are clear, enforceable and administratively consistent.
- Issue licences, approvals and their reasons supported by evidence and consistent with the objects of the Board.
- Implement YESAA Decision Documents, as required.
- Avoid, minimize or mitigate adverse environmental effects from the water licences and approvals it authorizes.
- Consider impacts on other applicants and authorized water users, consistent with obligations to the public.

1.4 Yukon Water Board Secretariat

Section 9 of the *WA* specifies that the Minister provide officers, employees, professional and technical advisors as well as administrative support for the proper conduct of the business of the Board. As a result, the YG public service commission resources form the Secretariat. A Memorandum of Understanding (MOU) between YG and the Board details the Secretariat's staffing and organizational administration. See section 1.6.1 for a description of the MOU.

1.4.1 Function

The Secretariat provides technical and administrative support to the Board and functions as the Boards' public-facing agency that facilitates the licensing and Class 4 placer operating plan approval process. The Secretariat has two main functions.

- Provide support for the day-to-day operations of the Board.
- Assist applicants through the application process in order to bring an adequate application before the Board.

In providing technical and administrative support to the Board, the Secretariat's duties also include:

- Providing information to public inquiries.

- Managing the Public Register.
- Accepting applications.
- Collecting fees.
- Procuring and managing technical consultants.
- Preparing application summaries and Board Packages for Board sittings.

1.4.2 Structure

The Secretariat has 13 staff that provide support to the Board's day-to-day business. Figure 1 illustrates the staffing and organizational structure of the Secretariat. The Secretariat is located at the main office of the Board at Suite 106, 419 Range Road in Whitehorse, Yukon.

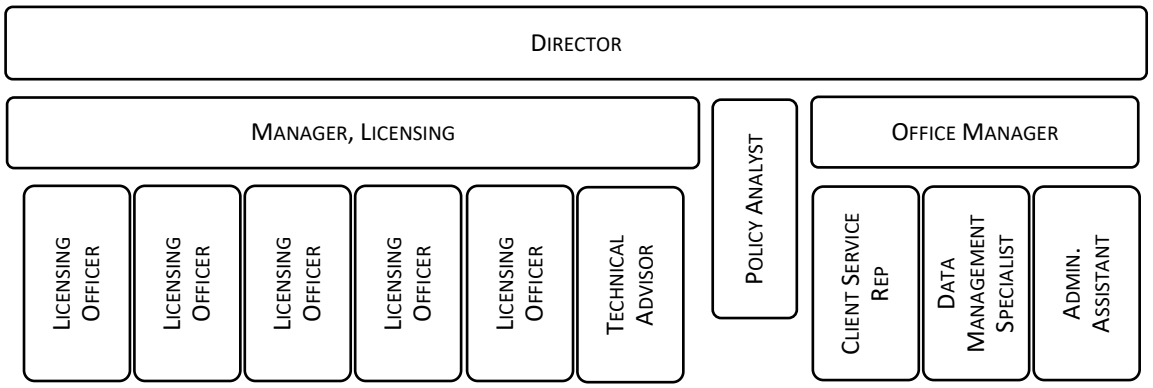


Figure 1. Board Secretariat staffing and organizational structure.

1.5 Relevant Legislation

The Board's jurisdiction is set out in the *WA*, Chapter 14 of the *YFNFA* and in the case of Class 4 placer mining operating plan approval, the *Placer Mining Act (PMA)*. *YESAA* also relates to the jurisdiction of the Board.

1.5.1 Waters Act and Waters Regulation

Waters Act

The *WA* establishes the Board as the regulator of the use of waters and the deposit of waste into waters in Yukon. The objects of the Board in the *WA* 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 the residents of the Yukon in particular." *S.Y. 2003, c.19, s.10.*

The *WA* sets out the authority of the Board to:

- Issue, renew, amend, assign or cancel licences.
- Require applicants supply information and studies in support of applications.

- Require security and compensation.
- Make recommendations to the Minister.
- Hold public hearings, having all the powers of a Board under the *Public Inquiries Act*.
- Provide notice of licence applications.
- Make Rules.
- Maintain a public Register.
- Issue Reasons for Decisions and Orders.

Waters Regulation

Part 1 of the *Waters Regulation* (*WR*) sets out the requirements when submitting an application for a water licence. These include the Schedule 4 form, specific information for a given undertaking, application fees, licensing criteria for type A or type B licences, water-use fees and the requirements for assignments and cancellations. Part 1 also sets out the purposes for which the Board may require security.

Part 2 of the *WR* concerns application reviews for quartz mining undertakings. This section sets out the requirements for application contents, administrative review, technical review, processing and notice.

Schedule 2 of the *WR* defines the types of undertakings for which Schedules 5 to 10 of the Regulation set licensing criteria. Schedules 5 to 10 set out the thresholds for activities requiring a water licence for:

- Schedule 5: Industrial undertakings
- Schedule 6: Placer mining undertakings
- Schedule 7: Quartz mining undertakings
- Schedule 8: Municipal undertakings
- Schedule 9: Power undertakings
- Schedule 10: Agriculture, conservation, recreational and miscellaneous undertakings

1.5.2 Umbrella Final Agreement and Yukon First Nation Final Agreements

The UFA was finalized in 1993 and is an agreement between Council of Yukon First Nations, YG and GC. The UFA is a framework within each of the 11 Yukon First Nation Final Agreements (YFNFA). Chapter 2 of the YFNFAs identify the Yukon Water Board as a Board and details provisions for the Board's functions. This includes provisions related to nomination and appointment of Yukon First Nation members, funding and training, adoption of bylaws and membership terms. Chapter 14 of the YFNFAs establishes the Board's role as the regulator of water in Yukon. It also sets out obligations and responsibilities that relate to water rights and interests of Yukon First Nations and Yukon Indian persons. The objective for the Board in Chapter 14 is to "*maintain the Water of the Yukon in a natural condition while providing for its sustainable use.*"(*UFA Ch. 14.1.1)*

1.5.3 Placer Mining Act

In 2003, YG transferred to the Board certain functions of the Chief of Placer Land Use (Chief) respecting Class 4 placer land use operations. Under the *PMA*, approval of a Class 4 placer land use

operation requires a water licence, or application for a water licence. The transfer of functions pursuant to section 99(5) of the *PMA*, includes authority to:

- Approve Class 4 operating plans.
- Require and determine the amount of security.
- Approve of an amendment or renewal of a Class 4 operating plan.
- Authorize an assignment of a Class 4 operating plan.

The intent of the transfer is to create administrative efficiency for Class 4 placer mining undertaking applications. A copy of YG's transfer of authority under the *PMA* is in Appendix A.3.

1.5.4 Yukon Environmental and Socio-Economic Assessment Act

The *Yukon Environmental and Socio-Economic Assessment Act* (*YESAA*) is federal legislation that sets out the environmental and socio-economic assessment framework in Yukon. It contains specific responsibilities and obligations of the Board when issuing licences and approvals while acting as Chief.

Section 83 of *YESAA* specifies that the Board must, as a territorial agency:

- Not undertake the project, require that it be undertaken or take any action that would enable it to be undertaken until the territorial minister has issued a Decision Document.
- To the extent of its authority, implement a Decision Document issued by a territorial minister in respect to the project.

Section 86 prohibits the Board from:

- Granting or renewing rights contrary to a Decision Document.
- Setting conditions that conflict with a Decision Document.

1.6 Agreements, Transfers and Policy Directions

1.6.1 Governance Memorandum of Understanding

On November 9th, 2018, YG and the Board signed a Memorandum of Understanding (MOU). An updated MOU was signed on December 18th, 2023 and again on November 10th, 2026. The latest version is found in Appendix A.1. The intent of the MOU is to promote greater clarity and understanding between the parties regarding their respective roles in the regulatory process, in Secretariat staffing and organizational administration. The MOU does not describe all of the Board's functions nor those of YG, nor is it meant to describe or dictate any relationship that the Board or YG has with any Yukon First Nation. The MOU does not alter or change the legal obligations and responsibilities of either party.

1.6.2 Licensing Memorandum of Agreement

On June 30th, 2016, the Secretariat, YG Department of Energy, Mines and Resources and the Department of Environment signed the Licensing Memorandum of Agreement (MOA) in Appendix A.2. The MOA is meant to provide clarity to parties' roles and responsibilities when providing advice and determinations as to whether an activity requires a licence under the *WA*.

Applicants seek advice on occasion from the Secretariat and YG to determine if a proposed activity requires a licence. The MOA details the roles of the Secretariat and YG when providing this advice to

applicants carrying out or planning to carry out activities that require a water licence for water use or the deposit of waste to water.

1.6.3 Chief of Placer Land Use Operations Transfer of Authority Letter

YG transferred certain functions of the Chief on April 1, 2003 respecting Class 4 placer land use operations. A copy of the transfer letter from the Minister to the Board is in Appendix A.3.

1.6.4 Ministerial Policy Direction

Section 11 of the *WA* allows the Minister to give written policy directions to the Board concerning the carrying out of its functions under the *WA.* Policy directions do not apply to applications that, at the time the policy direction is given, are

- pending before the Board,
- approved, or
- awaiting approval by the Board.

If non-application of the policy would result in a licence that is inconsistent with another act or regulation, then the policy direction may be applied for above conditions. Written ministerial policy directions are found in Appendix D.1.

PART 2 ADMINISTRATION

2.1 BOARD MEMBERSHIP

2.1.1 Composition

Board membership is between four and nine members, appointed by the Commissioner in Executive Council (Cabinet of Yukon government). Appointment of members is for three-year terms. If a member leaves before their term is complete, appointment of the new member can only be for the remainder of that term.

CYFN nominates members as set out in the *YFNFAs*, while YG and the GC nominate members in accordance with the *WA.* Nominations for board membership is as follows:

- At least three members by the Minister (YG).
- One third of the members by Council for Yukon Indians.
- Remaining members by federal government (GC) departments directly involved in water management.

The Minister (YG), in consultation with the Board, designates the Chairperson and the Vice-Chairperson. Board members are not delegates of the parties who nominate them. The YFNFAs detail the nomination requirements from CYFN as well as the ability of the Minister to appoint a Chairperson and Vice-Chairperson from the Board's members.

2.1.2 Appointment of Members

The Commissioner in Executive Council appoints all board members. Appointments originate from the nominating agencies. In anticipation of an expiry of a member's appointment, the Board contacts YG up to six months before the expiry of a member's term. Board members also contact their nominating agency to discuss the appointment and term expiry.

2.1.3 Resignation of Members

When a member resigns prior to the expiry of their term, the member will notify their nominating agency of their resignation. The Board may discuss the resignation at the next meeting and decide to contact YG in relation to the resignation and appointment process for a replacement member.

Upon the resignation of a Chairperson or Vice-Chairperson, the resignation becomes an agenda item for the next board meeting. The Board will decide whether to initiate consultation with YG by providing a recommendation for a member to fulfill the Chairperson or Vice-Chairperson role, or request that YG initiate consultation with the Board on appointment of a new Chairperson or Vice-Chairperson.

2.2 BOARD MEMBERS ROLES AND RESPONSIBILITIES

Board members have important roles and responsibilities when conducting Board business. These roles and responsibilities are distinct for the Chairperson, Vice-Chairperson and other members.

2.2.1 Chairperson

The Chairperson has a variety of responsibilities. These include:

1. Acting as primary liaison with board members:
    a) Provides new board members with an orientation.
    b) Ensures board members are aware of and adhere to the Board's Rules (Appendix B).
    c) Provides for conflict resolution.
    d) Works with board members to assist them in being effective in their role.
2. Facilitating the conduct of board sittings.
    a) Presiding over all board sittings and public hearings, unless in conflict.
    b) Assisting the decision making process by seeking participation by all members.
    c) Ensuring a clear statement of Reasons for Decision.
    d) Ensuring that the Board remains impartial and adheres to statutory authority and common law, rules of natural justice and the Board's Rules (Appendix B).
    e) Ensuring that board members conduct themselves in a professional and respectful manner.
3. Selecting panel or sub-committee members in consultation with board members.
4. Advising the Minister on all matters pertaining to the objects of the Board as set out in the *WA*.
5. Attending to the business of the Board as it arises.
    a) Meeting with the Licensing Manager and Director prior to board sittings to discuss the agenda, content of the board package and other issues of importance.
    b) Discussing with the Director and approving a reasonable preparation time for board members in preparing for board sittings.
    c) Reviewing and editing licences, approvals and Reasons for Decision as well as draft Reasons for Decision, as required.
6. Representing the Board at conferences and meetings and in conversations or correspondence with government agencies and interest groups where the meetings are not specific to a licence or application.
7. Performing other duties, as required.

2.2.2 Vice-Chairperson

The Vice-Chairperson is responsible for fulfilling the Chairperson's duties when the Chairperson is absent. Otherwise, the Vice-Chairperson has the same roles and responsibilities as other board members.

2.2.3 Board members

The responsibilities of board members include:

1. Attending an orientation meeting.
2. Being knowledgeable of the Board's Rules (Appendix B), guidelines and policies.
3. Being prepared to attend and participate in all board sittings.
    a) Reading the board package material in advance of all sittings.

b) Bringing comments pertaining to typographical or grammatical errors within draft licences, spelling and grammar of draft licences to the attention of the Board and Secretariat.
c) Regularly reviewing the public register prior to and during deliberations for a licence proceeding.
d) Advising the Chairperson when attendance at a sitting is not possible in order to maintain quorum.

4. Communicating any perceived or real conflict of interest with the Chairperson as soon as possible.
5. Board meeting agenda
   a) Discussing the inclusion of potential agenda items with the Chairperson.
6. Board decisions.
   a) Participating in the decision-making during deliberation of an application.
   b) Adhere to conduct that is professional while remaining impartial and neutral.
7. Participating on a panel or sub-committees.

2.3 Sub-Committees of the Board

The Board may form sub-committees at any time to advance topics and issues relevant to Board's business. This includes the development of policies, guidelines, procedures or to advance administrative initiatives. Two to three board members may form a sub-committee. The Chairperson is normally one of the sub-committee members. The sub-committee works with the support of Secretariat staff.

2.4 Honoraria and Remuneration

Board members receive honoraria and are eligible for reimbursement of travel expenses for regular Board meetings, attending public hearings, training opportunities and other meetings. Board members submit travel claims to the Secretariat. Members receive a statement of all travel expense reimbursements and honoraria.

Honoraria and remuneration are paid in accordance with the YG General Administration Manual, Volume 1 Corporate Policies – General, Boards and Committees Policy 1.8 Guidance and Exemption #18-05. Travel expenses, including mileage, meals, accommodation and incidental expenses, are reimbursed in accordance with the travel directive of the YG Financial Administration Manual.

PART 3 OPERATIONS

3.1 BOARD MEETINGS

The Board schedules meetings to advance licence proceedings and to discuss the general management of its internal affairs and administration. Licence proceedings consist of the processing of water licence applications, applications for approval of Class 4 placer operating plans and the Board's deliberations on an application.

3.1.1 Scheduling

The Board schedules regular monthly board meetings and sets aside additional time if it is required. It also schedules more meetings when required.

3.1.2 Attendance

Meetings are held in-person, by teleconference or video conference. The Secretariat provides the meeting and conference connection details to board members. The Board's Rules of Procedure in Appendix B.1 set out the requirements for decision-making and quorum and ability to meet in-person, by teleconference or video conference.

3.1.3 Agenda

The Secretariat develops the draft agenda for board meetings. The Chairperson provides input to the draft agenda and approves it. Board members adopt the final agenda at the start of a meeting. The Board may add, remove or alter items in the agenda before adopting it.

3.1.4 Minutes

The Secretariat takes minutes for every Board meeting except for in-camera sessions. The Chairperson presents the minutes for adoption at the next regularly scheduled sitting. The board package includes a draft copy of the previous meeting's minutes. Minutes are kept as confidential for the purposes of deliberative secrecy.

3.1.5 Recordings

Subject to the Board's approval of no recordings, the Secretariat makes an audio recording of meetings. The audio recordings are maintained until the Board adopts the relevant minutes.

3.1.6 In-Camera Meetings

The Board may hold in-camera discussions during regularly scheduled board meetings. Non-board members are not present for in-camera discussions, including Secretariat staff unless the Board invites participation. In-camera sessions are confidential and minutes taken are not part of the regular meeting minutes in section 3.1.4. During in-camera sessions, the Board discusses sensitive matters within its jurisdiction and may include topics such as:

- Board and Secretariat performance.

- Governance.
- Conflict of Interest.
- Board member discipline.
- Chair and/or Vice-Chair selection.

The Chair raises the opportunity for in-camera sessions during the Board's adoption of the agenda (section 3.1.3). The Chair is responsible for ensuring in-camera meeting minutes are taken, reviewed, approved and maintained in a secure fashion. Appendix C.2 contains the Board's guidelines for in-camera meetings.

3.1.7 Delegations and Presentations

The Board accepts delegations and presentations that do not relate to individual applications before the Board. The Secretariat makes presentation and delegation arrangements in advance of the regularly scheduled board meeting. Delegates wishing to make a presentation to the Board should contact the Secretariat.

3.1.8 Decision Making

The Board makes decisions by consensus. In this context, "consensus" means a general meeting of minds. Consensus does not always mean that everyone is in complete agreement, but rather that the members of the panel find a solution that all members can accept and that no members strongly oppose. Failing consensus, members of the panel will decide by majority vote in accordance with the Rules of Procedure (Appendix B.1). All decisions also require quorum under the Rules of Procedure in Appendix B.1.

Finality of Decisions

As a general rule, once the Board as an administrative tribunal decides an issue, that decision is final. This common law finality doctrine is defined as *"having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further authority."*[1] Furthermore, section 25 of the *WA* states that every decision or order of the Board is final and conclusive.

There is more than one exception to the finality doctrine. The Board may correct clerical errors, accidental slips or omissions, ambiguities, or non-substantive "slips" or mistakes. The Board processes these changes as an administrative correction (see section 3.1.9). A party who disagrees with a decision by the Board may seek judicial review or leave to appeal under s.26 (1) of the *WA*.

3.1.9 Administrative Corrections

On behalf of the Board, the Chairperson may make an administrative correction in a licence, order or Reasons for Decision to correct for a non-substantive slip or mistake. Before making an administrative correction, the Chairperson reviews the licence proceeding minutes, the Register, notes and the audio recording, if available. On evidence of a slip or mistake, the Chairperson may make an administrative

[1] Black's Law Dictionary (6th ed)

correction. Such corrections may include typographical mistakes, numbering errors or inserting words to provide clarification. Administrative corrections are ones that do not change the meaning or intent of the Board's decisions.

3.1.10 Member Participation

A board member who misses any part of the deliberations during a licence proceeding shall not participate in any further deliberations in that proceeding. A board member with approval of the Board may remain in the meeting room during the deliberations for training purposes.

Board members that recuse themselves or when the Conflict of Interest Rules (Appendix B.2) disqualify their participation, do not remain in the meeting room during the deliberations.

3.1.11 Board Package

The Secretariat compiles and prepares information packages for each board member for the board meeting. The package contains summary information for the board meeting, licence applications and Class 4 placer mining land use approval (MLUA) applications. Information in board packages is confidential. Board members get the digital form of the package from the Water Board's secure website.

3.1.12 Water Licence Application Review

Board members review applications for:

- new licences,
- amendments to existing licences,
- assignments of licences,
- renewal of licences, or
- cancellation of licences.

When reviewing an application for a licence, board members examine the information in the Register. The Board has different options available to it depending on the application and licence type. The Board can during their deliberations:

- Approve a draft licence as presented.
- Make changes to a draft licence.
- Table an application to allow further study of the Register.
- Request further information from an applicant, interveners, Secretariat staff, consultants or legal.
- Call a public hearing on an application.
- Deny the issuance of a licence.

3.1.13 Class 4 Placer Mining Land Use Operating Plans Review

Acting as Chief of Placer Land Use at the time of licencing, the Board reviews operating plans for Class 4 placer mining operations requiring a MLUA. Applicants submit applications and operating plans for either:

- New operating plan approval,

- Renewal,
- Amendment, or
- Assignment.

In reviewing MLUA applications, the Board has the following options depending on the application type. The Board, as Chief, can:

- Approve an operating plan, subject to additional conditions.
- Assign an operating plan.
- Renew an operating plan.
- Not approve an operating plan and return it to the applicant.
- Hold a public hearing regarding an operating plan.

3.2 Confidential Information

Parties wishing to submit confidential information to the Board must:

- Submit the request in writing stating that the information be kept confidential.
- Clearly explain the justification for the request.
- Separate the confidential information from any other information the parties provide.
- Include a non-confidential summary of the information with enough detail to convey a reasonable understanding of the substance of the information.

After the submission of the information and confidentiality request, the Board decides if the information will be kept confidential. If the Board decides the information will be kept confidential, the Board:

- Notifies the parties of the decision, in writing.
- Does not include the information on the register; and
- Includes a non-confidential summary on the register.

If the Board decides the information will not be kept confidential, the Board notifies the parties in writing and provides them with an opportunity to withdraw the information.

3.3 Water Licensing Process

In fulfilling the Board's authority pursuant to the *WA*, *YESAA* and the YFNFA's, the Board follows a process for licensing water use and deposit of waste to water. The framework for the water licensing process is set out in the *WA* and *WR* as well as in the Board's Rules of Procedure (Appendix B.1). In most circumstances, the licensing process starts with the submission of an application to the Secretariat for a new, renewal, amendment, cancellation or assignment. The following sections describe the phases of the licensing process as illustrated in Figure 2.

3.3.1 Application Submission

The licensing process starts when an applicant submits a complete application to the Secretariat that is in the form and contains the information prescribed by the *WR* (section 14 (1) of the *WA)* and any

necessary information to the satisfaction of the Secretariat. Applicants submit applications to the Secretariat either in paper or digital copy to the Secretariat's office or using the online registry, WATERLINE. Application forms and guidance documents are available on the website or in hard copy at the Board's office.

New or renewal applications

For a new or renewal of a licence application, the application consists of:

- The application form set out in Schedule 4 of the *WR.*
- Contains all the information identified in Schedule 4.
- Payment of application fee and any outstanding water use fees.
- Be accompanied by a deposit equal to any annual water use fee that would be payable for the applicable undertaking (see section 3.3.3).
- All other information specified in section 5(2) of the WR.
- A *YESAA* Decision Document that includes an assessment of activities in the application and allows the project to proceed (see section 1.5.4 and section 3.5) if required.

Amendment application

Applications for amendment consist of the items specified by the *WR* detailed above, and must also identify:

- Licence condition(s) that the licensee is seeking to amend.
- Rationale and justification of the reasons for the amendment, including a description of:
    - The change in the licensee's operations requiring an amendment of the licence.
    - New evidence supporting the amendment.

An application for amendment to a licence is not an opportunity to revisit Board decisions during previous licence proceedings.

Assignment application

The Board can authorize the assignment of a licence pursuant to section 17(1) of the *WA.* An assignment occurs when there is a sale or disposition of any right, title or interest of a license from one owner to another. Applications for assignment are not an opportunity to make any amendments to the licence. The Board also uses the assignment process to change names on a licence. The Board authorizes an assignment when it is satisfied of:

- The sale or disposition is in accordance to the conditions agreed to by the licensee, and
- the operation of the undertaking by the new owner (assignee).

The assignment application form is available on the website or at the Secretariat's office. To apply for authorization for assignment, the licensee must submit to the Secretariat:

- A complete application form.
- Complete declarations with signatures for both the licensee (assignor) and new owner (assignee).
- Any additional information on the application form.

An application for an assignment of a licence does not require a new YESAA assessment and Decision Document.

Cancellation

The Board is able to cancel a licence pursuant to section 16 (1) (c) of the *WA*. Cancellation of a licence may occur

- on application of the licensee,
- after a failure to exercise rights for three consecutive years, or
- where cancellation is in the is a public interest.

A licensee can apply to cancel their licence by submitting a cancellation application form to the Secretariat. Cancellation forms are available on the website or in hard copy at the Secretariats' office.

3.3.2 Adequacy Review

After the Secretariat receives a complete application, the adequacy review phase begins. Adequacy review is the process completed by the Secretariat to determine whether an application is clear, accurate, and contains sufficient information for the Board to understand the nature and effects of the appurtenant undertaking, as well as to allow a person to reasonably understand and provide comments to the Board on the application.

In the adequacy review phase, the Secretariat accepts the application and reviews it for:

- completeness,
- accuracy,
- consistency, and
- payment of application fee, current and any other outstanding water use fees.

The Secretariat may ask an applicant for additional information, clarification, or details about the application in accordance with the Rules of Procedure (Appendix B.1). If an applicant does not to provide the information, the Secretariat may seek a decision from the Board on the matter.

For quartz undertakings, the adequacy review period consists of the administrative and technical reviews detailed in Part B of the *WR*.

The public comment phase starts once the Secretariat deems the application adequate and public notification of the application begins. This is also the start of the licence proceedings set out in the Rules of Procedure (Appendix B.1).

3.3.3 Fees

The Board issues water licences subject to the payment of outstanding fees pursuant to section 12 (1) of the *WA*. Section 5 of the WR sets out that an application be accompanied by a deposit equal to any water use fee that would apply in the first year of the licence.

The criteria for calculating water use fees is set out in section 8 of the WR for agricultural, industrial, quartz mining, miscellaneous, placer mining and power undertakings. The maximum water use in an application is the basis for calculating the water use fee.

In order for an application to proceed through the licensing process, the applicant must pay all application fees and outstanding fees.

3.3.4 Licence Proceedings

A licence proceeding is the process by which the Board arrives at a final decision on the issuance, renewal, amendment, assignment or cancellation of a licence. A licence proceeding for an application begins when

- the Secretariat deems the application adequate; and
- advertisement of the public comment period starts.

In most circumstances, a licence proceeding consists of the Board's actions in relation to sections 12, 13, 15, 16 and 19 to 24 of the *WA*.

3.3.5 Notice of Application

The Board provides notice to the public of applications made to it by publishing a notice in newspapers in general circulation in the area affected and on WATERLINE. The advertisement may contain application information including:

- Application number.
- Applicant or licensee.
- Water source location.
- Deposit of waste location.
- Type of undertaking.
- Period for public comment.
- Public Hearing date and location (if held).

In addition to the Board's responsibilities under the WA to issue notice of water licence applications, it has obligations under Chapter 14 of the YFNFAs to notify the Yukon First Nation and any Yukon First Nation Person enrolled under that Final Agreement of water licence applications. To meet these obligations, the Board emails notice of water licence applications to Yukon First Nations whose traditional territory the proposed undertaking is located within.

The *WA* requires a minimum of a 35-day public notice period if a public hearing is held. When a public hearing is not held, the Board is unable to act on the application until at least ten days after the application's advertisement. The notice requirements may be different when the Board processes an application for an amendment on an emergency basis (see section 3.6).

3.3.6 Required Public Hearing

The *WA* requires the Board to hold a public hearing for the:

- Issuance of a type A licence.
- Amendment of a type A licence, where the use, flow, quality of water or term of licence is altered.

- Cancellation of a type A licence.
- Cancellation of a type B licence, where the licensee fails to exercise their rights for three consecutive years.
- Cancellation of a type B licence, where it appears to the Board to be in the public interest.

3.3.7 Disposition of a Public Hearing

The Board, with consent of the applicant, may dispose of the requirement for a public hearing if it does not receive any notices of intention to appear and make representations at a public hearing at least ten days in advance of the scheduled hearing date.

3.3.8 Optional Public Hearing – Public Interest

The *WA* enables the Board to hold a public hearing if it is in the public interest for:

- Issuance, renewal or amendment to a type B licence.
- Amendment to a type A licence where use, flow, quality or term of the licence does not change.
- Cancellation of a type B licence, on application of the licensee.

3.3.9 No Public Hearing Required

The Board is not required to hold public hearings for:

- 60-day licence renewals.
- Licence amendment on an emergency basis (see section 3.6), with the consent of the Minister.

3.3.10 Information Requests

Section 14 (2) of the *WA* requires the Board to seek information from applicants enabling it to evaluate any qualitative and quantitative effects to waters. To fulfill this duty, the Board may use information requests to seek clarification or additional information from an applicant during a licence proceeding. An applicant is required to provide information to the satisfaction of the Board in order for it to adjudicate the application and advance the water licensing process. The Rules of Procedure (Appendix B.1) detail the process and options for the Board when an applicant or party to a licence proceed fail to provide information during a licence proceeding.

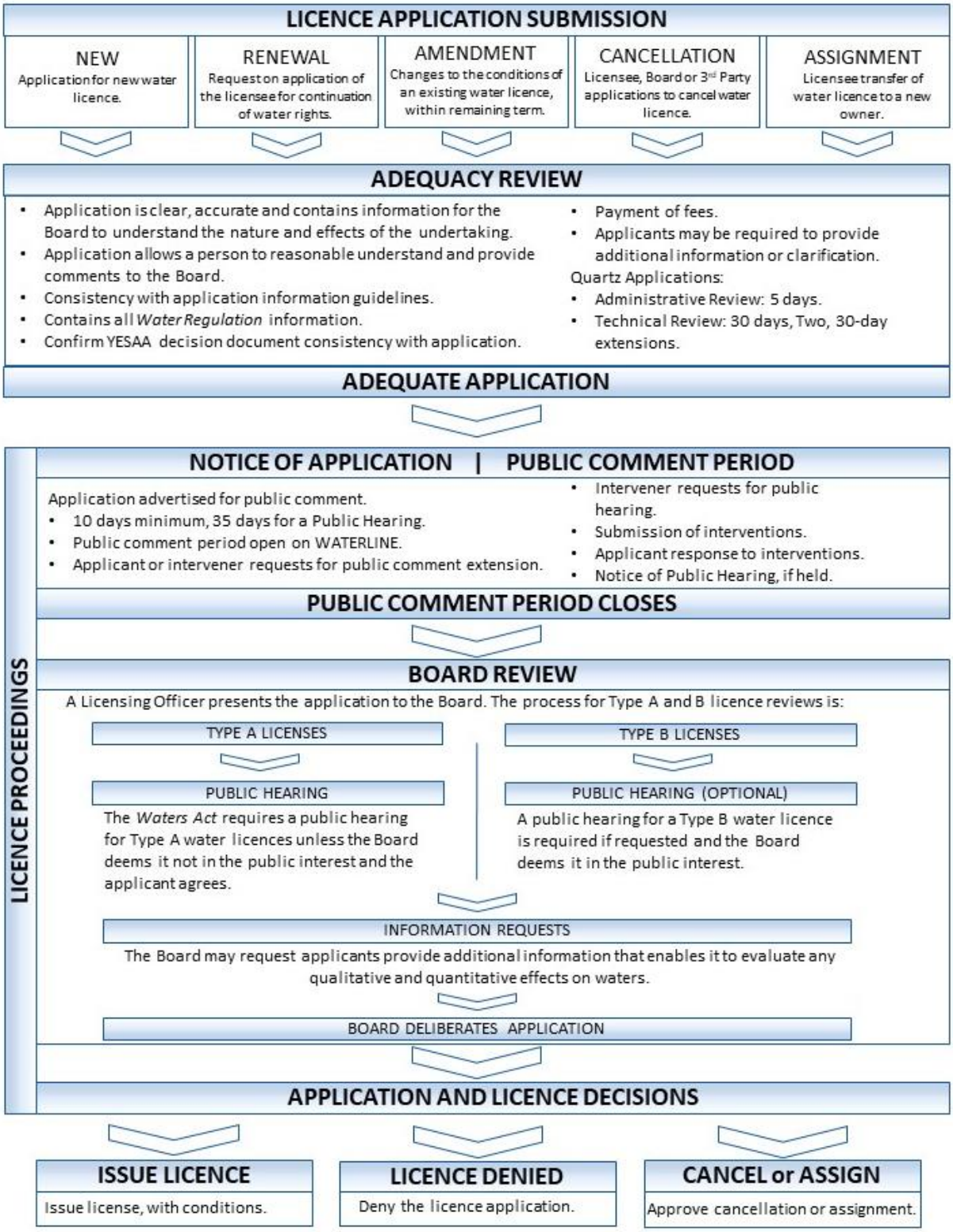
3.3.11 Consultant Deliverables

The Board may commission professional and technical advisors (Consultants) to provide it with advice or expert opinion during proceedings. The Consultant deliverables will be placed on the public register as evidence. The applicant or licensee will be given an opportunity to respond to the information, within a time specified by the Board, before the Board makes a decision. Applicant's or licensee's responses will be reviewed as evidence by the Board and placed on the public register.

3.3.12 Board Deliberations

Deliberations of the Board consist of the dialogue and adjudication about an application. The principle of deliberative secrecy applies to Board deliberations. Deliberative secrecy protects the discussions the Board has during the deliberation. The Board considers all the evidence and its legislated responsibilities under the *WA, YFNFA's* and *YESAA* when decision-making.

Figure 2. Water Licensing Process for Applications made to the Board.



3.3.13 Licensing Decisions

The Board makes licensing decisions for applications made to it. The Board is able to issue licences, deny an application for a licence, cancel or assign a licence, and issue orders. The Board provides Reasons for Decisions for each decision it makes. Reasons for Decision are publically available and posted to WATERLINE under the application file number.

3.4 Class 4 Placer Mining Land Use Approval Process

The Board processes applications for approval of Class 4 placer mining operating plans at the same time as water licence applications. The following sections describe the process the Board follows for applications for approval of Class 4 placer mining operating plans and is illustrated in Figure 3. This process starts with the submission of an application for approval, renewal or assignment of an operating plan.

3.4.1 Application Submission

The approval process starts when a person submits a complete application form to the Secretariat that contains all the information set out by the *PMLUR*. The Secretariat may require additional information as to ensure the application is clear, complete and consistent with the water licence application. Applicants submit applications in either paper or digital copy to the Secretariat's office or using WATERLINE. Application forms and guidance documents are available on the website or in hard copy at the Secretariat's office.

New or Renewal Applications for Operating Plan Approval

An applicant seeking approval of a new operating plan must submit an application that includes:

- Name, address and telephone number of the applicant.
- A description of the natural characteristics of the area where the operation is to be carried out.
- A map clearly showing the area, including:
    - The location and extent of the operation.
    - The areas to be reclaimed.
    - The location of bodies of water and streams.
    - The location of lands that are subject to the rights and interests held by other parties in the area of the operation, where those rights or interests are known by the applicant; and
    - The proposed access routes and, if known by the applicant, the existing access routes.
- The start date of the operation and its anticipated duration;
- A description of the activities to be undertaken, including the operating procedures to be used by the operator to mitigate any adverse environmental effects; and

- A description of any consultations, including consultations with First Nations, held concerning the proposed operating plan.

Application for Amendment of an Operating Plan

An application for amendment to an approved operating plan includes:

- Complete application form with sections complete that pertain to the amendment being sought.
- Description of the amendments required to the operating plan.
- Payment of application fees.

Application for Assignment of an Operating Plan

The Board is able to authorize the assignment of approved operating plans. An assignment occurs when there is a sale or disposition of an operating plan. An application for an assignment consists of:

- Complete application form, signed by the assignor and the assignee.
- Undertaking (promise) by the assignee to assume all the obligations containing in the approved operating plan on the effective date of the assignment
- Payment of the fee.

3.4.2 Adequacy Review

After the Secretariat receives a complete application, the adequacy review phase begins. Adequacy review is the process completed by the Secretariat to determine whether an application is clear, accurate, and contains sufficient information for the Board to understand the nature and effects of implementing the operating plan, as well as to allow a person to reasonably understand and provide comments to the Board on the application.

The Secretariat reviews the operating plan an applicant submits for adequacy. In its review, the Secretariat checks for:

- completeness,
- accuracy,
- consistency, and
- payment of application fee.

The Secretariat may ask an applicant for additional information, clarification, or details about the application in accordance with the Rules of Procedure (Appendix B.1). If an applicant does not provide the information, the Secretariat may seek a decision from the Board on the matter.

The public comment phase begins once the Secretariat deems the application adequate and the public notice starts.

3.4.3 Fees

An applicant seeking approval of Class 4 operating plan must pay the applicable fee from Schedule 2 of the *PMLUR*.

3.4.4 Public Notice

The Secretariat provides public notice for applicants seeking approval of a Class 4 placer mining operating plan. This notice occurs simultaneously with the water licence application notice once the application is deemed adequate. The notice is published in newspapers as well as on WATERLINE. The notice includes:

- application number,
- applicant name,
- water source location, and
- deadline for public comments.

The public notice the Secretariat provides intends to fulfill the applicant's notice requirements to direct interested parties to give comments to the Chief in the *PMLUR*.

3.4.5 Review & Information Requests

After the public notice and comment period has closed for an application, the Board begins their review of the operating plan. In their review, the Board considers the information from the Class 4 mining land use approval application form, the operating plan, and information from public comments. During its review, the Board is required to:

(a) Determine the adverse environmental or socio-economic effects, if any.
(b) Determine if the operating plan appropriately mitigates any adverse effects.

In fulfilling the requirements to determine adverse effects and appropriate mitigations, the Board may seek additional information or clarification during their review. An applicant is required to provide information to the satisfaction of the Board in order for it to complete their review of the application for approval of the operating plan. The Rules of Procedure (Appendix B.1) details the process and options for the Board when an applicant or party to a proceeding fail to provide information during that proceeding.

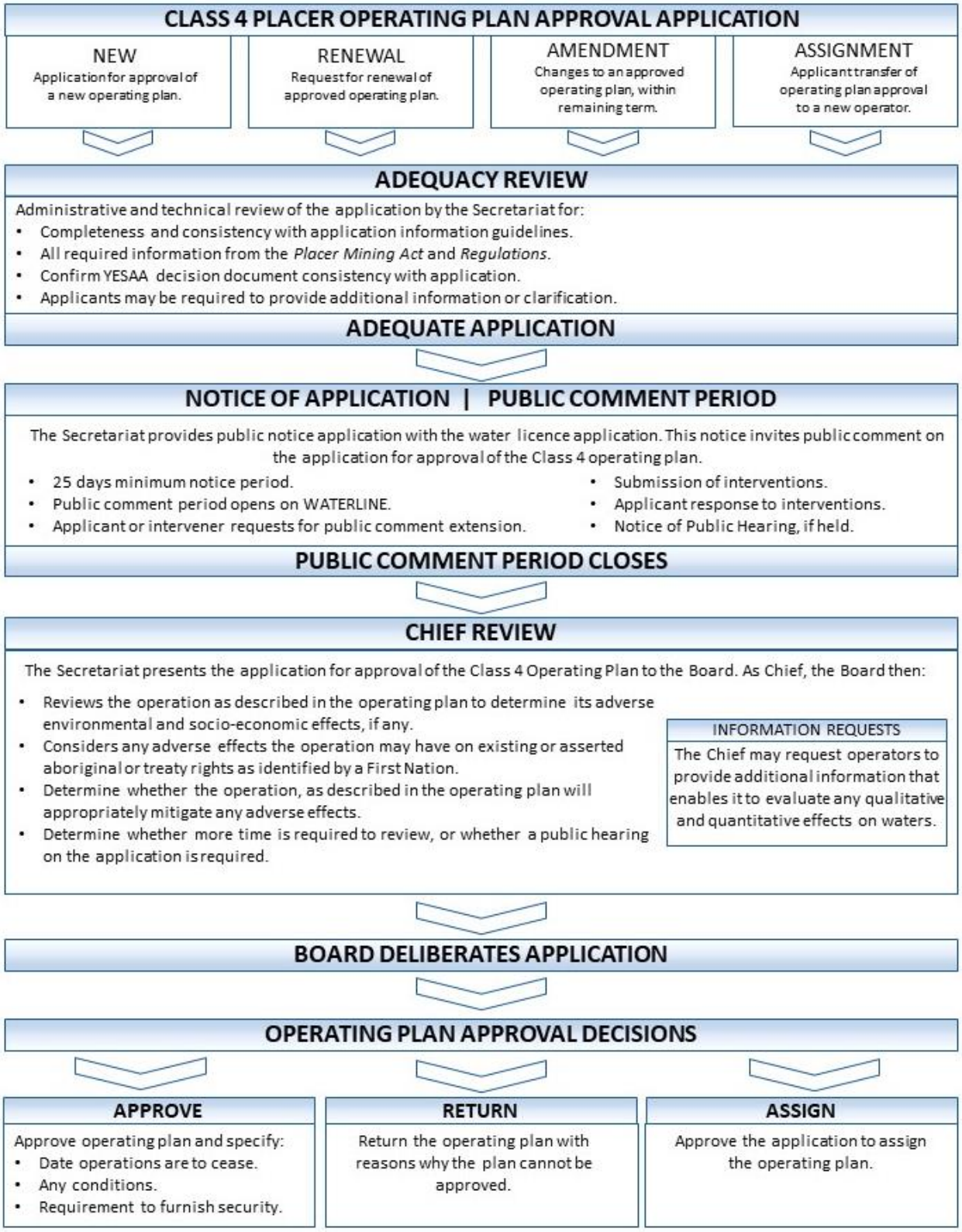
3.4.6 Decisions

After the review of the operating plan and appurtenant information, the Board makes decisions about the approval of the operating plan. In these decisions, the Board is able to:

- Approve the operating plan.
- Approve the operating plan with conditions.
- Notify the operator that more time is required to review the extent of adverse effects of the operating plan.
- Advise the applicant that a public hearing is required.
- Return the operating plan to the application with reasons for why it is not approved.

The Board provides Reasons for Decisions for each decision it makes. Reasons for Decision are publically available and posted to WATERLINE under the application file number.

Figure 3. Class 4 Placer Operating Plan Approval Process



3.5 YESAA Decision Document

The Board is prohibited from issuing a water licence or approving a Class 4 operating plan without a YESAA Decision Document that allows the project to proceed to the regulatory phase. For activities with no specific exception in Part 9 of schedule 1 in the *Assessable Activities, Exceptions and Executive Committee Projects Regulations*, Section 83 of *YESAA* prohibits the Board from issuing a licence until the Minister issues a Decision Document (see section 1.5.4). Because of this prohibition, the Board must only issue a licence or approve of a Class 4 placer mining operating plan when a Decision Document allows it to proceed.

3.5.1 New Decision Document Required

In most circumstances, an application for *amendment* or *renewal* of an existing water licence or Class 4 placer operating plan approval proposes activities beyond the scope of the assessment and Decision Document that informed the existing licence or approval. A new assessment report and Decision Document should accompany such applications. Examples of a change in scope from the assessment and Decision Document are:

- Change in temporal scope (timelines) of the undertaking.
- Increases in spatial scope of the undertaking.
- Addition of assessable activities.
- Change to water withdrawal or discharge locations.
- Addition of a new water source(s).
- Addition of a deposit of waste, or a new constituent to the waste.
- New or change in location for discharge of waste.
- Change to water treatment methods, including new or unproven technologies.
- For quartz undertakings, accessing new ore bodies.

3.5.2 Existing Decision Document

An application for an amendment or renewal of an existing water licence or approval of a Class 4 operating plan may not require a new Decision Document if, for example:

- The Decision Document does not contain a limiting temporal scope.
- The Decision Document conditions do not contain a temporal limitation.
- There are no new or changes in assessable activities.
- A new land-use plan has not been completed for the region;
- The footprint of the project remains unchanged.

An application for an assignment of a licence does not require a new *YESAA* assessment and Decision Document.

3.5.3 Decision Document Determination Process

During the adequacy review of an application (see section 3.3.2), the Secretariat reviews the applicable Decision Document to evaluate if it allows the Board to undertake the licensing or approval process related to the undertaking as described in the application. In the circumstances

where the applicable *YESAA* Decision Document appears to the Secretariat to not allow the undertaking to proceed, the Secretariat seeks a decision from the Board on the matter in accordance with the Rules of Procedure (Appendix B.1).

The Board reviews and evaluates the application and Decision Document and decides if the Decision Document allows the undertaking to proceed. Reasons for Decision describe the Decision Document determination and are included on the Register.

3.6 Application for Amendment on Emergency Basis Process

The *WA* enables the Board to modify the licensing process as it relates to obligations for holding a public hearing pursuant to section 19 and when providing notice pursuant to section 21 of the *WA* for emergencies. Part 1, section 1.1. of the Rules of Procedure (Appendix B.1) provide a definition of an emergency and sets out how the Board processes an application for amendment on an emergency basis. The Board's responsibilities in the YFNFAs and consideration of Indigenous Rights are not modified when processing an application for amendment on an emergency basis.

3.6.1 Application

A licensee who makes an application for an amendment of a licence on an emergency basis must provide, in addition to a complete application in accordance with the Rules of Procedure (Appendix B.1):

- a description of the circumstances and how they meet the threshold of an emergency, and
- the specific condition(s) in the licence requiring amendment.

3.6.2 Emergency Determination

The onus is on the licensee to satisfy the Board that the amendment application meets the definition of emergency. If the Board decides the application for an amendment constitutes an emergency, they process the application in accordance with its Rules of Procedure (Appendix B.1). The Board may prioritize the application if the circumstances meet the threshold for an emergency. This may include convening outside of regularly scheduled board meetings or prioritizing the application on a board meeting agenda.

3.6.3 YESAA

Section 49 of YESAA indicates that an activity undertaken either under the *Emergencies Act* or in response to an emergency (when it is in the interest of public welfare, health or safety or of protecting property or the environment that the activity be undertaken immediately) does not require assessment. The Board may proceed with amending a licence on an emergency basis without a Decision Document as long as the actions fulfill the provisions of *YESAA* for emergencies.

3.6.4 Ministerial Consent

With consent of the Minister, the Board is not obligated to provide notice under section 21 (1) of the *WA* nor hold a public hearing pursuant to section 19 of the *WA*. The Board seeks consent by writing a letter to the Minister after making a determination on the amendment, explaining the Board's determination of the emergency basis and that it requires the Minister's approval to issue the licence amendment.

3.7 Interventions

The Board's Rules of Procedure (Appendix B.1) describe the processing of interventions for licence and approval applications and proceedings. Any person can submit an intervention once a public notice and comment period has been published.

3.7.1 Content

The information in an intervention should directly address intervener's issues and concerns. Interventions must stand on their own, directly relate to the application and minimize reliance on references to content or particulars from another intervention or public document. Interveners may refer to information from public documents and Indigenous Knowledge in accordance with the Rules of Procedure (Appendix B.1).

3.7.2 Late Interventions

The Board's Rules of Procedure (Appendix B.1) govern the processing of interventions received after the deadline date. The Board decides whether to accept or reject an intervention received after the published deadline.

An intervener that submits an intervention after the deadline date should also provide a rationale for the intervention's lateness. Parties have an opportunity to provide their views to the Board about the fairness of accepting the intervention, its relevancy and reliability, and if they intend to respond to the intervention should the Board accept it. The Board evaluates the late intervention as well as any comments received from the parties in deciding whether to accept or reject it.

If the Board accepts the late intervention it is included in the Register and on WATERLINE. At that time, the Board adjourns the proceeding in order to allow for parties to respond to the late intervention. The Secretariat advises parties of the timelines for which responses to the information. The Board considers the late intervention information and responses to it during their deliberations about the application. The Reasons for Decision explain the Board's rationale and consideration of late interventions.

If the Board does not accept a late intervention, it does not consider the interventions' information during the application deliberations. The Secretariat does not add the intervention to the Register nor WATERLINE. The Board responds to the Party providing the late intervention with reasons for its decision in not accepting the information.

3.8 Public Hearings

The Board uses an inquiry-based hearing model to seek out, obtain, clarify and confirm information for the Board to use when making decisions. This is also an opportunity for any member of the public to make a statement to the Board.

The *WA* also sets out the circumstances when the Board must hold a public hearing respecting an application or issue. Section 20 of the *WA* permits the Board to hold public hearings in Yukon where the Board considers appropriate. The Board may adjourn public hearings from time to time and from place to place. When holding a public hearing, the Board has all the powers as a Board under the *Public Inquiries Act*.

The Section 10 (2) of *PMLUR* also enables the Board, acting as Chief of Placer Mining Land Use, to hold a public hearing about an application for approval of a Class 4 placer mining operating plan.

3.8.1 Hearing in the Public Interest

Section 19 (1) of the *WA* permits the Board to hold a hearing in connection with any matter relating to its objects. The Board may hold a Hearing in the Public Interest to seek information, views or perspectives on issues related to its objects in the *WA*. Hearings in the Public Interest do not relate to specific applications made to the Board, rather, they relate more broadly to issues before the Board.

3.8.2 Water Licence Application Hearing

Section 19 (2) of the *WA* sets out the circumstances when the Board may hold a public hearing respecting an application. The Board follows the procedures set out in its Rules of Procedure (Appendix B.1) when holding a public hearing on an application made to it. These rules include the order of appearance and content of representations at a public hearing.

At a public hearing, the *Public Inquiries Act* enables the Board to summon any person as a witness and require that person give evidence by oath or affirmation and to produce documents or things. The *Public Inquiries Act* also gives the Board the same powers as a court of record in civil cases, including the powers to:

- Enforce attendance at a public hearing.
- Compel to give evidence.
- Compel to produce documents or things.

3.8.3 Technical Pre-Hearing Conference

Technical pre-hearing conferences may occur with parties prior to an application's public hearing to clarify technical issues, acquire a better understanding of the views of the parties or to obtain further information. The Rules of Procedure (Appendix B.1) set out the process for technical pre-hearing conferences and its outcome. A transcript is made of the technical pre-hearing conference and included in the Register.

3.8.4 Administrative Pre-Hearing Conference

Administrative pre-hearing conferences deal with administrative issues with parties prior to a public hearing. Attendance at a pre-hearing conference is not mandatory. At a pre-hearing conference, the Chairperson reviews the public hearing procedures, scheduling and its timing with the participants. The Chairperson may also clarify and narrow the issues for the hearing, explore admission of facts, or identify the need for additional information. The conference is also an opportunity to introduce the parties, their name, title and correct pronouns to use during the proceeding.

A record of an administrative pre-hearing conference is made by the Secretariat and included in the Register following the conference. Any directions made by the Board during the pre-hearing conference are included in the record.

3.9 Compensation

In accordance with the Board's Rules of Procedure (Appendix B.1), a person who wishes to make a claim for compensation must do so in accordance with the Board's *Compensation Guidelines* in Appendix C.3.

3.10 Review and Approval Process

On occasion, the Board includes conditions in a licence that require licensees to submit plans, studies, designs or programs to the Board for review and approval before their implementation. The Board's Rules of Procedure (Appendix B.1) set out the process for review and approval as a condition in a licence. The *WA* allows the Board to include in a licence any conditions that it considers appropriate, including:

- Conditions relating to construction of work.
- Undertaking studies.
- Submission of plans.
- Undertaking monitoring programs.

Appendix E.1 describes the process the Board uses for review and approval of documents when it is a condition in a licence. Once the Board approves a document, the approved document forms part of the licence and the licensee must implement it, if necessary, as specified in the licence. By design, the process gives the Board ongoing oversight of the water licences that it issues and flexibility in the way in which it considers the material.

Review and approval of a document by the Board may, in certain circumstances, lead to an amendment to a licence. For example, if a document demonstrates a change to authorized activities that could affect the use of water, the protection of water, or the deposit of waste into water, an amendment to a licence may be required. The review and approval process is not a substitute for the licence amendment process set out in the *WA*.

3.11 Orders

The Board has the authority to issue orders under the *WA* and Chapter 14 of the *YFNFA's*. An order of the Board is a legal way the Board can use to demand the production of information or to require security, among other things. If the Board issues an order, the person to whom the order is directed is expected to fulfill the requirements of the order. The Rules of Procedure (Appendix B.1) describe the possible actions the Board may take if a person fails to comply with an order. An order and a licence are separate.

The Board issues reasons for decision for orders it issues pursuant to section 24 of the *WA* and, as with decisions by the Board, orders are final and conclusive (see section 25 of the *WA*).

3.12 Reasons for Decision

Section 24 of the *WA* requires the Board to issue and make available to the public written reasons for its decisions and orders relating to a licence or application. The Board makes public the Reasons for Decision for each water licence, MLUA and order it issues. The reasons accompany the licence in the Register and are published under the licence number on WATERLINE. The reasons explain the decision, the evidence used to support the decision and why the Board reached its decision in a licence proceeding, approval of an operating plan or in the issuance of an order.

3.13 Site Visits

The Board may participate in site visits in order to assist board members in understanding of a project, proposed project, issue or licence. Site visits may occur when there is or is not an application before the Board.

3.13.1 Site Visit where there is no application

If the Board decides to have a site visit where there is no application before the Board, the Secretariat arranges for the site visit after the Board's approval. The Secretariat advises the Licensee, if applicable, of the Board's wishes.

During the site visit, the Licensee (or their representatives) may meet the Board and Secretariat. The Licensee may explain the project and answers questions from board members and Secretariat during the site visit.

3.13.2 Site Visit where there is an application

A site visit where there is an application before the Board only occurs after the close of the application's public comment period and with all interveners present. A site visit is done in a manner consistent with procedural fairness and principles of natural justice as to avoid a reasonable apprehension of bias. All information exchanged during the site visit must be capable of being heard by the Board, the Secretariat and Interveners present.

The Secretariat arranges the details of the site visit and advises the Applicant. The Secretariat advises the Applicant that:

- There may be questions from the Board during the site visit.
- Interveners will be present and may ask questions.

The Secretariat provides notice to all interveners of the location and potential date for a site visit. Interveners bear their own expense when attending a site visit. The site visit only proceeds if the applicant and all interveners are present. The Board may issue directions to attendees for procedures to follow during the site visit.

During a site visit, the Applicant is able to explain the project and answer questions from the board members, Secretariat and Interveners. The Secretariat will document the site visit by taking notes, photographs and video recordings. These documents do not form part of the Register nor are they introduced at a hearing, if held.

3.14 Training

The Board maintains an annual training plan that considers training opportunities on relevant topics. These training opportunities are maintained on a training calendar an updated on an annual basis. The training sessions are to assist the members with fulfilling the responsibilities of the Board. Training is also encouraged in Ch. 2.12 of the UFA to promote the ability of the Board in completing its business. Board members can present training options to the Chairperson for consideration in the annual training plan and calendar.

PART 4 INFORMATION MANAGEMENT

4.1 PUBLIC REGISTER

Section 23 of the *WA* specifies that the Board maintain a public register at its main office in a form prescribed by the *WR*. Section 13 of the *WR* state the register must include:

- A copy of the application and of all supporting documents.
- All records from any public hearing.
- A copy of the licence and the reasons for the decision.
- All correspondence and documents submitted to the Board in respect of compliance with the conditions of any licence issued in respect of the application.

The Board's Rules of Procedure (Appendix B.1) set out the information that must be included in the Register. The Board maintains the Register both at its main office and on WATERLINE. The Register is available for public access during normal working hours and continuously on WATERLINE.

The Register contains the documents and information the Board considers as evidence in its deliberations. The Board does not consider other documents not in the Register other than the Board's own policies, guidelines, past practice or public documents. The Board may request an applicant or licensee submit a copy of a public document to the Register.

4.2 WATERLINE

The Board's WATERLINE is an online registry and platform for the records and information management during the water licencing process. WATERLINE performs the following functions:

- Accepts submissions of water licence applications.
- Tracks applications through the licensing process.
- Makes notifications and allows public comment on water licence applications.
- Houses water licences, Reasons for Decision, licensee documents, reports and plans.
- Facilitates licensee reporting, data and information transfer to water licence enforcement.

WATERLINE is publicly accessible and no information on it is confidential.

4.2.1 WATERLINE Terms of Use

The Board does not accept documents containing unlawful, abusive, libelous, frivolous or vexatious content on WATERLINE. Submissions containing this type of content violates the Terms of Use for WATERLINE. The Board may use its discretion in removing such material in accordance with its Rules of Procedure (Appendix B.1).

The Secretariat may also upload information to WATERLINE on behalf of an applicant or licensee at its discretion. In doing so, the Board is not responsible for any of the material nor do they represent the views or opinions of the Board.

The Board does not have an obligation to investigate a complaint regarding the filing of any information. However, the Board may investigate complaints and take any actions it deems appropriate in the circumstances, including, without limitation, removing the offending material from the WATERLINE.

The Board, by way of the Secretariat may review material before posting to WATERLINE to confirm it meets the Terms of Use. If the Board refuses information for those reasons, the person filing the material receives notification and may file new material that is compliant with the Terms of Use.

4.3 Yukon Water Board Website

The Board maintains a public-facing website www.yukonwaterboard.ca. The website provides a central source of information for applicants, interveners and the public as well as link to WATERLINE.

PART 5 RULES

Section 22 of the *WA* and section 2.12.2.10 of the YFNFA enable the Board to make Rules. The Board also relies on its Rules, as far as practical, to fulfill its obligations to perform a duty or function under the *PMA*.

Section 22 of the *WA* enables the Board to make Rules respecting:

- Its sittings.
- Quorum, with approval of the Minister.
- The procedure for making representations and complaints.
- Conduct of hearings and manner of conducting business before it.
- Carrying on of its work.
- Management of internal affairs.
- Duties of the officers and employees provided by the Minister.

5.1 RULE MAKING

When making new or amending existing Rules, the Chairperson brings to the Board:

- The text of the proposed new Rule or the amendment to the existing Rules;
- The purpose of the new Rule or amendment;
- A description of the effect of the new Rule or amendment;
- A copy of any Rules for repeal, if replaced by a new Rule or amendment; and
- A recommendation about whether the Board should seek public comments.

The Board may seek comments from members of the public, stakeholders and other governments on new Rules or amendment to its current Rules. Once the Board approves new or amendments to Rules, it publishes them on the website. A notice to the public includes a description of the Rules and the date the new Rule, or amendment to, comes into effect.

5.2 RULES OF PROCEDURE

The Rules of Procedure are in Appendix B.1. These Rules guide the conduct of the Board in relation to applications, licences, its sittings and matters before it.

5.3 CONFLICT OF INTEREST

The Conflict of Interest Rules are in Appendix B.2. These Rules direct the Board and assist members in fulfilling their duties in a manner that is fair and unbiased in both practice and appearance.

PART 6 APPENDICES

Appendix A. Inter-agency Agreements

MEMORANDUM OF UNDERSTANDING

Between:
THE GOVERNMENT OF YUKON

And
YUKON WATER BOARD

(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 the Government of Yukon ("YG"), YG obtained control and administration of all rights in respect of water other than waters in federal conservation areas.[1] Post-devolution of the Northern Affairs Program, the YWB was continued under the *Waters Act* (Yukon).

The YWB has a mandate under both the *Waters Act* and the Yukon First Nation Final Agreements ("Final Agreements").

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.

In addition, the YWB's role in managing the quality and quantity of water in Yukon is codified in Chapter 14 of the Final Agreements that have been entered into by eleven Yukon First Nations, the Government of Canada and the Government of Yukon.

[1] *Yukon Act,* S.C. 2002, c.7, subsection 48(2).

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

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 4 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 4 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, assign, renew, amend 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 Final

Agreements.

3.4 As a result of the transfer of functions of the Chief of Mining Land Use to the YWB, both parties have obligations and responsibilities under the *Placer Mining Act.*

3.5 Given the nature of the parties' separate, independent roles, obligations and responsibilities, the parties recognize the need for ongoing discussions outside of specific regulatory or adjudicative YWB proceedings related to their respective areas of jurisdiction, particularly in relation to standards, guidelines, policies and processes.

3.6 The parties agree to respect each other's roles, responsibilities and obligations.

3.7 The parties acknowledge that the YWB is independent in its decision-making. In accordance with the principles of procedural fairness, the YWB and the Secretariat staff will not discuss or share non-public information about specific regulatory or adjudicative YWB proceedings with YG or other parties.

3.8 Subject to the *Waters Act* and Chapter 14, 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 YWB remains independent in exercising its decision-making functions related to water use disputes as well as the issuance, amendment, cancellation, assignment or renewal of water licences.

4. YWB STAFFING, FINANCES, AND ADMINISTRATION

4.1 The *Waters Act* establishes that the Minister of Executive Council Office ("Minister") shall provide staff to the YWB from within the public service as necessary for the proper conduct of the business of the YWB (the "Secretariat staff"). Both parties recognize that they have certain responsibilities in relation to the Secretariat staff.

4.2 The parties agree that Secretariat staff will assist the YWB in carrying out its functions as Chief of Placer Land Use in relation to Class 4 placer land use operations. The Secretariat staff includes a legal counsel position independent of YG's Department of Justice, who provides legal services to the YWB and the Secretariat.

4.3 The parties agree that the responsibilities of YG, as it relates to Secretariat staff and administration of the YWB, include ensuring that the provisions of the *Public Service Act* and *Financial Administration Act*, and related policies and procedures, are upheld.

4.4 The parties further agree that once Secretariat staff employees are provided by YG to support the YWB, the employees, while performing their duties necessary to conduct the

business of the YWB, as described by the employees' job descriptions and/or Rules, if any, developed by the YWB pursuant to section 22(d) of the Act, report directly to the YWB.

4.5 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.

4.5.1 The Director 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.

4.5.2 The Chair 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.

4.5.3 The Chair will be a member of the recruitment panel for the Director. YG agrees that it will not appoint an individual to the position of Director over the objections of the Chair.

4.5.4 Subject to the *Public Service Act*, the Chair will provide day-to-day supervision of the Director in relation to their duties to the YWB. As such the Chair will direct and monitor the performance of the Director and develop, in consultation with the Director and the members of the YWB, a recommended Performance Development Plan for the Director for consideration of the relevant YG officials. The Chair will review the Performance Development Plan with the appropriate YG officials before it is approved by YG to ensure that the Plan is consistent with YG policies, practices and directives.

4.5.5 The Chair will recommend for consideration of the relevant YG officials the level of performance and a specific range of performance award, if any, annually for the 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.

4.5.6 The parties agree that all performance management discussions and any disciplinary action taken in respect of the Director will be done in accordance with the Discipline and Grievance Processes set out in Section M: Conditions of Employment for Managers, Legal Officers and Deputy Ministers.

4.5.7 The parties further agree, in so far as the *Public Service Act*, YG financial and

human resources, policies and procedures permit, neither YG officials nor the Chair will engage in performance management or discipline discussions with the Director without having invited the other party to attend and participate.

4.5.8 For clarity, the use of the term Chair throughout this MOU includes the Vice Chair in the absence or unavailability of the Chair.

4.5.9 YG agrees that it will not take any disciplinary action, including the removal of an individual from the position of Director, without meaningfully consulting the Chair.

4.5.10 For clarity, meaningful consultation includes:

a) informing the Chair of YG's intention to enter into discussions with or take disciplinary action against the Director;
b) providing the Chair with the basis and rationale on which YG intends to enter into discussions with or take disciplinary action against the Director;
c) providing a minimum of 5 days for the Chair to consider YG's basis and rationale and provide views to YG.

4.5.11 The Director will be a member of any recruitment panel for all other Secretariat staff.

4.5.12 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.

4.5.13 Subject to the *Public Service Act*, the 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 Director, in consultation with the Chair. If any disciplinary action is required for any of the Secretariat staff, the Director will review the matter with the Chair 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.

4.5.14 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.

4.5.15 The parties agree that the *Public Service Act* and other legislation applicable to other members of the YG public service will apply to Secretariat staff.

4.5.16 At levels comparable to other employees of YG, all employee benefits,

opportunities and support will be provided to Secretariat staff.

4.5.17 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 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.

4.5.18 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. In addition, where requested by the Director and as appropriate while maintaining the independence of the YWB and its functions, YG will also discuss with the Director how it may provide additional administrative, policy, or communications support to the Secretariat.

4.5.19 When requested by YG, the Secretariat will provide information as needed to support YG's development of communications materials. YG will provide an opportunity for the Director to conduct a timely review of such materials before they are released.

4.6 The parties acknowledge that the Minister is accountable to the Yukon Legislative Assembly for the budget and financial activities of the YWB.

4.7 The Director will ensure that all financial authorities and approvals sought above determined thresholds for the Director shall be brought forward to the relevant YG officials after consultation with the Chair.

4.8 The YWB will prepare an annual report in a manner determined by the Minister to be tabled annually in the Legislative Assembly by the Minister and posted publicly to the YWB website.

4.9 The YWB acknowledges that the YG internal auditor is authorized to audit in accordance with its authority under the *Financial Administration Act* and may undertake audits in accordance with these authorities. YG agrees to consult with the Chair regarding the outcomes of any audit reports.

5. POLICY

5.1 The parties acknowledge that the Minister has the authority to provide binding policy direction to the YWB under the *Waters Act* and subject to the exceptions in the *Waters*

Act or Chapter 14 of the Final Agreements, the YWB must comply with those policy directions. In situations where binding policy direction is given to the YWB, the parties agree that both the YWB as well as Secretariat staff must follow that policy direction.

5.2 The parties agree that the YWB will make all written policy directions publicly available on the YWB website.

5.3 In the absence of such binding ministerial policy direction, however, the parties agree that YWB has the discretion to develop policies that promote the objects of the *Waters Act* and the YWB's mandate under Chapter 14.

5.4 For greater clarity, except in situations where binding ministerial policy direction has been given to the YWB, the parties after that if a YWB policy related to the business of the YWB conflicts with a YG policy or guideline, the YWB Chair and YG's ADM Strategic Corporate Services will meet to discuss the matter.

5.5 The YWB agrees that it will consult YG on rules issued per s.22 (d) of the *Waters Act* to ensure that the rules do not place Secretariat staff in conflict with the terms and conditions of their employment.

6. CONFIDENTIAL INFORMATION – USE OF COMPUTER SERVERS

6.1 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.

6.2 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.

7. DISPUTE RESOLUTION

7.1 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.

7.2 For greater certainty, if the dispute involves the Director or Secretariat staff, the dispute will be resolved in accordance with all applicable laws, this MOU, and following the applicable YG employer-employee grievance and disciplinary procedures, practices and

directives.

8. PERIOD, REVIEW AND AMENDMENT

8.1 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.

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

8.3 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.

9. TRANSPARENCY

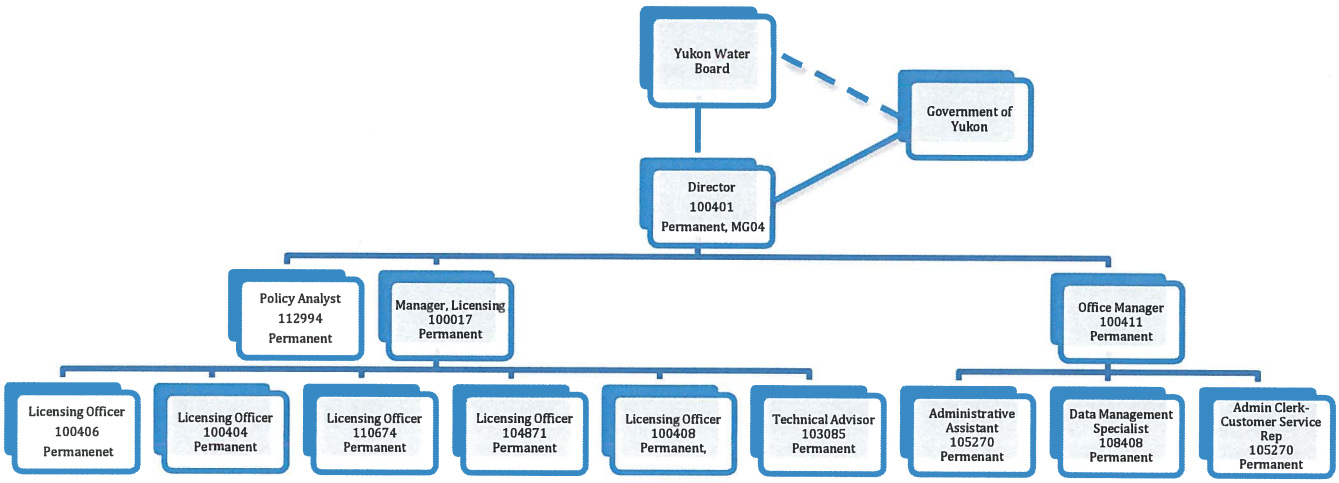
9.1 The parties agree that this MOU will also be available to the public, upon request, and will be included on the website maintained by the YWB.

Dated at Whitehorse, Yukon, this 10 day of November, 2026.

The Honourable Currie Dixon
Premier of Yukon

Brooke Rudolph
Chair, Yukon Water Board

Organizational Chart



signifies communication line

signifies reporting line

A.2. MOA Regarding Water Licensing Requirements

MEMORANDUM OF AGREEMENT
REGARDING WATER LICENSING REQUIREMENTS

BETWEEN

YUKON WATER BOARD SECRETARIAT

AND
DEPARTMENT OF ENERGY, MINES AND RESOURCES
COMPLIANCE MONITORING AND INSPECTIONS BRANCH

AND
DEPARTMENT OF ENVIRONMENT
ENVIRONMENTAL PROGRAMS BRANCH

(collectively the "Parties")

1. PURPOSE

From time to time, each of the three parties is asked whether an activity requires a licence to be issued under the *Waters Act*[1] (the "Act"). The purpose of this Memorandum of Agreement (the "MOA") is to clearly establish the roles and responsibilities of the three Parties and to set out a process to assist the Parties in providing advice and determinations to individuals and corporations in these situations.

2. BACKGROUND

The Act establishes that it is an offence to

a) use or permit the use of water in a water management area; and
b) deposit or permit the deposit of waste into any waters in a water management area or in any other place under conditions in which the waste, or any other waste that results from the deposit of that waste, may enter any waters in a water management area;

except in accordance with the conditions of a licence or as authorized by regulations made under the Act.

[1] S.Y. 2003, c. 19.

The determination as to whether any given activity requires a licence to comply with the Act or is authorized by regulations is ultimately a decision made as a result of applying the law as stated in the Act to the facts. This determination can be made upon submission of an application for a licence. However, from a practical perspective, the Parties are frequently asked for advice whether or not a current or proposed activity requires a licence or is authorized by the regulations. The Parties developed this MOA to clarify their respective roles in providing advice to individuals and corporations carrying out or planning to carry out activities that may involve the use of water or the deposit of waste into water.

3. DEFINITIONS

In this MOA,
"inspector" means a person designated under subsection 33(1) of the Act as an inspector; and
"licensing officer" means a person employed in the public service of Yukon government as a licensing officer with the Yukon Water Board Secretariat.

For other terms used in this MOA, the definitions in the Act and the regulations apply.

4. PRINCIPLES

This MOA will be implemented by the Parties in accordance with the following principles:

- Transparency between the Parties in the exchange of information and providing advice.
- Respect for the legislative mandate of each of the Parties as set out in the Act and in policy.
- Effective and efficient delivery of advice and recommendations to individuals and corporations seeking such advice.
- Flexibility in implementing the MOA to accommodate changing circumstances and experiences gained during the provision of advice.

5. ROLES AND RESPONSIBILITIES

The MOA seeks to encourage consistency, efficiency and inter-agency cooperation by drawing upon the expertise of the Parties and their respective roles and responsibilities:

- The Yukon Water Board Secretariat can provide advice to individuals and corporations from a licensing perspective. This advice is provided on behalf of the Yukon Water Board, who has the jurisdiction to issue, amend, renew or cancel a

licence. Upon receipt of an application, the Yukon Water Board will determine whether any current or proposed activity requires a licence (or amendment to, or renewal of, a licence).

- Inspectors are responsible for ensuring compliance with the Act. As part of this role, inspectors are authorized to determine whether an activity is in contravention of the Act, the regulations, or any condition of a licence. Inspectors can provide advice to individuals and corporations from a perspective of ensuring compliance.

6. PROVISION OF ADVICE

Collaboration

In accordance with the principles set out above, the Parties agree to work cooperatively in formulating timely responses to individuals and corporations to be provided as advice on whether any current or proposed activity requires a licence (or amendment to a licence) issued under the Act or is authorized by regulations made under the Act.

The Parties may develop criteria or guidance to ensure consistency for such responses, and, on a case-by-case basis, may decide which of the Parties have a role in formulating responses, and which of the Parties will take the lead in providing a response on a case by case basis.

Advice

If, in the course of carrying out their duties, inspectors or licensing officers are asked for advice on whether any current or proposed activity requires a licence (or amendment to a licence), they may offer such advice. Inspectors and licensing officers will remain mindful however of the need for interagency cooperation between the Parties and to the extent possible ensure that unless the situation is exigent or routine, they work cooperatively with the other Parties before providing advice on the need (or not) for a licence. Upon providing such advice, the respective agency will provide summarized information to the members of the Trilateral Cooperation Committee established under Article 7 of this MOA, regarding the advice provided.

Legal Advice

The Parties should, to the extent required and practical in the circumstances, seek the advice and input of legal counsel prior to providing advice to individuals and corporations should any uncertainties or inconsistencies arise in respect of such advice.

7. TRILATERAL COOPERATION COMMITTEE

The Parties agree to establish a Trilateral Cooperation Committee as a forum to review water licensing issues and questions, to cooperatively formulate responses to questions regarding water licence requirements, and to share water licensing information, advice and determinations provided by each Party. The Committee may also develop criteria or guidance documents as required. Each of the Parties will designate a representative to be a member on the Committee.

The Committee shall establish Terms of Reference for its work and activities, including mandate, scope and meeting frequency. The Committee shall ensure that the Terms of Reference are reviewed and amended as required to reflect the procedures of the Committee, and the roles and responsibilities of the involved agencies.

8. PERIOD, REVIEW AND AMENDMENT OF MOA

8.1. This MOA is in effect from the date it is signed and remains in effect until terminated, in writing, by one or more of the Parties.

8.2. This MOA will be reviewed annually by the Directors of the three agencies collectively described as the "Parties".

8.3. Any amendment to this MOA will be in writing and signed by all Parties before such an amendment takes effect.

Signed and approved on behalf of:

The Yukon Water Board Secretariat, as represented by the Director of the Yukon Water Board Secretariat

Director,
Yukon Water Board Secretariat

June 30/16
Date

The Department of Environment, as represented by the Director of the Environmental Programs Branch

Director,
Environmental Programs Branch

June 29/16.
Date

The Department of Energy, Mines and Resources as represented by the Director of the Compliance Monitoring and Inspections Branch

Director,
Compliance Monitoring and Inspections Branch

Jun 29/16
Date

A.3. PLACER MINING LAND USE DELEGATION LETTER, APRIL 1, 2003.

Office of the Minister
Box 2703, Whitehorse, Yukon Y1A 2C6

April 1, 2003

Yukon Water Board A-419
419 Range Road, Suite 106
Whitehorse, YT
Y1A 3V1

Dear Board Members:

Pursuant to section 99(5) of the *Placer Mining Act,* (Act) certain functions of the Chief of Placer Land Use (Chief), respecting Class 4 placer land use operations, are hereby transferred to the Yukon Territory Water Board, namely:

- the approval by the Chief of Class 4 operating plans pursuant to sections 102(4)(a), 102(4)(c) and 102(4)(d);

- the power of the Chief to require and determine the amount of security pursuant to section 106(1) in accordance with the regulations made under paragraph 116(m) and in a form prescribed by or pursuant to those regulations or in a form satisfactory to the Minister of Energy, Mines and Resources;

- the approval by the Chief of an amendment to or renewal of a Class 4 operating plan pursuant to section 108(1); and

- the authorization by the Chief of an assignment of a Class 4 operating plan pursuant to section 110(1)

For ease of reference, the foregoing provisions of the Act are set out in the enclosure to this letter (ANNEX).

The Yukon Water Board will carry out all of the functions listed above in accordance with all relevant sections of Part 2 of the Act, and any amendments thereto, and in accordance with the Placer *Mining Land Use Regulations*, and any other applicable law, including the *Yukon Environmental Assessment Act.*

The Yukon Water Board and the Yukon Water Board Secretariat will work closely with the office of the Chief to harmonize procedures and policies and to ensure consistent application of the legislation.

It is recommended that the Yukon Water Board and the Chief meet at least annually to review the effectiveness of the transfer and to resolve any issues that may arise.

The implementation of this delegation, pursuant to section 99(5) of the Act is intended to improve the administrative process applicable to Class 4 placer land use operations.

Your willingness to take on the transferred functions is appreciated.

Yours sincerely,

Archie Lang,
Minister of Energy Mines and Resources
Yukon Government

Placer Mining Act
Part 2
Land Use and Reclamation

102 (4) No person shall engage in a Class 4 placer land use operation except

(a) in accordance with an operating plan approved by the Chief, on written application by that person, after paragraphs (c) and (d) have been complied with;

(c) after notifying the public of the planned placer land use operation, in the manner directed by the Chief; and

(d) after a public consultation, if any, required by the Chief and held in accordance with the directions of the Chief.

106 (1) Where there is a risk of significant adverse environmental effect from a planned Class 2, Class 3 or Class 4 placer land use operation, the person giving the Class 2 Notification, the applicant for approval of an operating plan, the holder of an approved operating plan, or the prospective assignee of an approved operating plan, as the case may be, may be required by the Chief to furnish and maintain security with the Minister, in an amount specified in, or determined in accordance with, the regulations made under paragraph 116(m) and in a form prescribed by or pursuant to those regulations or a form satisfactory to the Minister.

108 (1) The Chief may, on written application by the holder of an approved operating plan, approve an amendment to, or renewal of, that plan.

110 (1) The Chief shall, on written application by the holder of an approved operating plan, authorise the assignment of that plan if

(a) the prospective assignee

(i) undertakes in writing to comply with the plan, and

(ii) furnishes any security that is required from the prospective assignee pursuant to section 106; and

(b) the Chief is satisfied that the assignment would not be likely to result in a contravention of any condition of the plan or of any provision of this Part or the regulations.

116 The Commissioner in Executive Council may make regulations

(m) respecting

(i) the amount of security that may be required to be furnished and maintained under section 106, which regulations may empower the Chief to fix the amount of the security subject to a maximum specified in, or determined in accordance with, those regulations,

(ii) the review of any amount of security fixed by the Chief, and

(iii) the form and the terms of the security;

Appendix B. Rules

B.1. Rules of Procedure

YUKON WATER BOARD RULES OF PROCEDURE

These Rules are made under the authority of Section 22 of the *Waters Act* and section 2.12.2.10 of the Yukon First Nations Final Agreements.

PART 1 INTERPRETATION

1.1 Definitions
1.2 Terms defined in the Act, regulation or Yukon First Nation Final Agreement
1.3 Headings
1.4 Words in singular and plural
1.5 Panel of the Board

PART 2 GENERAL

2.1 Authorized representative
2.2 Categories of undertakings
2.3 Computation of time
2.4 Interpretation
2.5 Variation of Rules
2.6 Extension or abridgement of time
2.7 Request for abridgement of time
2.8 Notice
2.9 Non-compliance

PART 3 QUORUM

PART 4 DECISION MAKING

PART 5 TECHNICAL OBJECTIONS

PART 6 SUBMISSION OF DOCUMENTS

6.1 Method of submission
6.2 Electronic submission
6.3 Responsibility of person
6.4 Date of submission
6.5 Contents
6.6 Prohibited content
6.7 Striking of documents

PART 7 PUBLIC DOCUMENTS

7.1 Party may use
7.2 Relevant and specific
7.3 Board not required to consider
7.4 Party may contest
7.5 Not a public document

PART 8 LICENCE PROCEEDING

8.1 Not open to the public
8.2 Commencement
A. Licence proceeding commenced by an application
8.3 Contents of applications
8.4 Contents of applications - assignment
8.5 Contents of applications - cancellation
8.6 Sufficient information
8.7 Information request by the Board
8.8 Paper copies
8.9 Additional paper copies
8.10 Electronic copies required – Type A
8.11 Electronic copies upon request – Type B
8.12 Adequacy and YESAA decision document preliminary review
8.13 Secretariat may require information
8.14 Applicant to provide information
8.15 Board decision – Information not provided
8.16 Board decision – YESAA Decision Document
8.17 Technical workshop
8.18 Not open to the public
8.19 Notice
A. (i) Amendment – emergency basis
8.20 Decision on emergency
8.21 Priority
8.22 Board decision or public notice

8.23 Public Notice
8.24 Seeking comments - deadline
8.25 Response to comments
8.26 Information request by the Board
B. Licence proceedings commenced by the Board
8.27 Board initiated
8.28 Request
8.29 Notice
8.30 Part 11 applies
8.31 Submission by licensee
8.32 Deadline for submission
8.33 Contents of submission
8.34 Deadline Date

PART 9 CHAPTER 14 – YUKON FIRST NATION FINAL AGREEMENT

9.1 Notice - method
9.2 Water Use Disputes Application by Yukon First Nation – alternatives or measures to avoid
9.3 Application by Yukon First Nation – compliance or unforeseen impacts
9.4 Application by Yukon First Nation – compensation
9.5 Application by Yukon Indian Person
9.6 Information request
9.7 Notice to licensee
9.8 Submission by licensee
9.9 Deadline for submission
9.10 Contents of submission
9.11 Information request
9.12 Hearing
9.13 Applicant and licensee to be invited
9.14 Not open to the public
9.15 Interim order

PART 10 COMPENSATION

10.1 Claim for compensation – *Waters Act* or a Yukon First Nation Final Agreement
10.2 Application to amend a compensation order - Yukon First Nation Final Agreement
10.3 Changing circumstances
10.4 Notice
10.5 Submission
10.6 Information request

PART 11 INTERVENTION

11.1 Submission
11.2 Deadline for intervention
11.3 Request for extension of deadline
11.4 Contents of request
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PART 1 INTERPRETATION

Definitions

1.1 In these Rules,

"Act" means the *Waters Act*;

"application" means a written request to the Board for the issuance, amendment, renewal, cancellation, assignment of a licence or a written request to the Board under Chapter 14 of a First Nation Final Agreement;

"applicant" means a person who makes an application to the Board;

"authorized representative" means the person who is empowered to act for or represent another person;

"business day" means a day that is neither a Saturday, Sunday nor a holiday;

"Board" means the Yukon Water Board;

"Chairperson" means the Chairperson of the Board or, in the absence of the Chairperson, the Vice-Chairperson;

"claim" means a written request for compensation made under Part 10;

"document" means a piece of written, printed, or electronic matter that provides information including, but not limited to, a book, journal, sound recording, video, film, photograph, chart, graph, map, plan, survey, model or report;

"emergency" means a sudden, unexpected situation requiring immediate action in which there is a probability of adverse environmental or social impact;

"government" includes a Yukon First Nation government;

"holiday" means any of the following:

New Year's Day
Heritage Day
Good Friday
Easter Monday
Victoria Day
Indigenous Peoples Day
Canada Day
Discovery Day
Labour Day
Thanksgiving Day
Remembrance Day

Christmas Day
Boxing Day

"intervener" means a person who has filed an intervention under Part 11;

"intervention" means a written statement made by an intervener;

"licence" means a licence issued under the Act;

"licensee" means a person who holds a licence;

"licence proceeding" means the process by which the Board comes to a final decision on the issuance, renewal, amendment, assignment or cancellation of a licence;

"or" includes "and";

"panel of the Board" means the members of the Board who participate in a licence proceeding, a security determination process or a review and approval process;

"party" means a person who is an applicant, a claimant, an intervener or a licensee;

"person" includes an individual, association, partnership, society, board, committee, council, organization, corporation, municipality, government, or agency of a government;

"public document" means a document made available for public reference and use;

"public hearing" means the proceeding referred to in section 19 of the Act;

"register" means the register referred to in section 23 of the Act;

"regulation" means the *Waters Regulation*;

"secretariat" means the officers and staff of the Board as referred to in section 9 of the Act; and

"Indigenous knowledge" means the stories, history, skills, observations and understandings about the environment, and about the relationship of living beings with one another and the environment, that has been and continues to be accumulated over generations by Indigenous peoples.

Terms defined in the Act, regulation or Yukon First Nation Final Agreement

1.2 Unless otherwise defined in these Rules, a word or term defined in the Act, regulation, or a Yukon First Nation Final Agreement has the same meaning when used in these Rules.

Headings

1.3 The headings preceding each section in these Rules are included for convenience only and do not form part of the Rules.

Words in singular and plural

1.4 In these Rules, words in the singular include the plural, and words in the plural include the singular.

Panel of the Board

1.5 In these Rules, a reference to the Board includes a panel of the Board if the context so requires.

PART 2 GENERAL

Authorized representative

2.1 In these Rules a reference to an applicant, intervener or claimant includes the authorized representative of the applicant, intervener or claimant.

Categories of undertakings

2.2 The Board, in its sole discretion, may determine to which category of undertakings an application corresponds.

Computation of time

2.3 Subject to section 2.4, in these Rules, if the time for doing an act falls or expires on a Saturday, Sunday or holiday, the act may be done on the day next following that is not a Saturday, Sunday or holiday.

Interpretation

2.4 If a holiday falls on a Saturday or Sunday and the business day next following the holiday is designated as a non-working day in lieu of the holiday, the time for doing an act may be done on the next business day.

Variation of Rules

2.5 Subject to the rules of procedural fairness, the Board may vary these Rules or any part of the Rules during a licence proceeding, a security determination process or a review and approval process.

Extension or abridgement of time

2.6 On its own initiative or in response to a request by a party or potential intervener, the Board may extend or abridge the time fixed by these Rules or the time fixed by the Board.

Request for abridgement of time

2.7 If a party or potential intervener wishes to make a request to extend or abridge the time fixed by these Rules or the time fixed by the Board, the request must be made prior to the expiration of the time so fixed.

Notice

2.8 If the Board varies the Rules under section 2.5 or extends or abridges time under section 2.6, the Board must:

(a) immediately notify all parties or potential interveners of the variance, extension or abridgement;

(b) if necessary, issue directions in respect of the procedure to be followed as a result of the variance, extension or abridgement; or

(c) fix the time that has been extended or abridged taking into consideration the fair conduct of a licence proceeding, security determination process or a review and approval process.

Non-compliance

2.9 If a party, intervener or person

(a) fails to comply with these Rules, an order, a direction or a written request from the Board; or

(b) causes undue delay;

the Board may

(i) deem the party, intervener or person to have accepted all of the material facts set out in information provided by another party, intervener or person;

(ii) determine that a party, intervener or a person is not entitled to present evidence or make submissions;

(iii) proceed in the party's, intervener's or person's absence without any further notice to the party, intervener or person;

(iv) make a decision based solely on the information before it; or

(v) make an order it considers appropriate.

PART 3 QUORUM

3.1 A quorum of the Board is three members as approved on September 15, 2005 by the Minister in accordance with section 22(b) of the Act.

3.2 For greater certainty, in the absence of quorum, no decision must be made by the Board, other than to obtain quorum or adjourn or recess a licence proceeding, security determination process or a review and approval process.

PART 4 DECISION MAKING

4.1 The Board may make decisions in person, by email, teleconference or video conference.

4.2 If one member of the Board requests that a decision be made either by video conference or in person rather than by email or teleconference, the Board must make reasonable efforts to meet by video conference or in person.

4.3 In the event that the Board is unable to come to a consensus decision, the Board will determine the decision by means of a majority vote.

PART 5 TECHNICAL OBJECTIONS

5.1 An objection based on a technical irregularity or a defect in form does not invalidate a licence proceeding, security determination process or a review and approval process.

PART 6 SUBMISSION OF DOCUMENTS

Method of submission

6.1 A person may submit a document to the Board by hand delivery, mail, courier, facsimile, or by electronic means.

Electronic submission

6.2 If a person submits a document to the Board by electronic means, the person must submit the document to ywb@yukonwaterboard.ca or to Waterline.

Responsibility of person

6.3 It is the responsibility of the person submitting the document to confirm its receipt by the Board.

Date of submission

6.4 A document submitted to the Board after 4:30 pm Yukon Standard Time (YST) is deemed to be submitted on the next business day.

Contents

6.5 When submitting a document to the Board, a person must include the following information:

(a) the person's name;

(b) mailing address, including postal code;

(c) email address, if available; and

(d) telephone number.

Prohibited content

6.6 No person may submit a document that contains unlawful, abusive, libelous, frivolous or vexatious content.

Striking of documents

6.7 The Board may, by order, amend or strike all or any part of a document that, in its opinion, may prejudice a fair disposition of a licence proceeding, security determination process or review and approval process.

PART 7 PUBLIC DOCUMENTS

Party may use

7.1 Unless otherwise directed by the Board, a party may cite, refer to or quote from a public document without providing copies of that public document to the Board or the other parties.

Relevant and specific

7.2 If a party wishes to cite, refer to or quote from a public document, the party must indicate to the Board

(a) the title of the document;

(b) the specific reference, citation or quotation on which the party is relying;

(c) the location of the document in the public domain; and

(d) the document's relevance.

Board not required to consider

7.3 If a party fails to comply with section 7.2, the Board is not required to consider the public document from which the party is citing or quoting or to which the party is referring.

Party may contest

7.4 A party who believes that a document of the type mentioned in section 7.1 is not a public document may make a written submission to that effect to the Board.

Not a public document

7.5 If the Board determines that a document is not a public document, it may require the party citing, quoting from or referring to the document to submit one or more copies of the document to the Board and to the other parties.

PART 8 LICENCE PROCEEDING

Not open to the public

8.1 Subject to Part 16, and unless the Board directs otherwise, a licence proceeding is not open to the public.

Commencement

8.2 A licence proceeding is commenced on the date:

(a) an application is determined to be adequate under section 8.12;

(b) the Board determines that the criteria for an amendment on an emergency basis set out in section 8.20 are met; or

(c) the Board initiates a proceeding under section 8.27.

A. Licence proceeding commenced by an application

Contents of applications

8.3 An application, other than an application for an assignment or cancellation of a licence, must include:

(a) a completed application form pertaining to that particular undertaking;

(b) the information required by the regulation;

(c) a description of

(i) how the applicant intends to use waters and if this use will affect another licensee or a person described in section 12 (4) of the Act,

(ii) in the case of an amendment, any changes to the use of waters; and

(iii) any deposit of waste to waters;

(d) a description of the probable qualitative and quantitative effects of the undertaking on waters and how the applicant proposes to mitigate any adverse effects;

(e) the name(s) of the Yukon First Nation(s) if the project is situated or might have adverse effects within a Yukon First Nation's traditional territory;

(f) a copy of a compensation agreement between the applicant and another licensee or other person whose application for a water licence would take precedence under section 27 of the Act;

(g) proof of any compensation paid or to be paid by the applicant to a person described in section 12 (4) of the Act or section 14.12 of a Yukon First Nation Final Agreement;

(h) confirmation that the applicant has adequate resources to be financially responsible for:

(i) carrying out the work under the licence, or any proposed changes to this work;

(ii) maintenance and restoration of the work site; and

(iii) the cost of decommissioning, including the cost of any temporary closures;

(i) other information that is required by these Rules or by the Board.

Contents of applications - assignment

8.4 An application for an assignment of a licence, must include:

(a) a completed application form;

(b) the information required by the regulation;

(c) information pertaining to the sale, transfer or lease of the appurtenant undertaking or any other agreement that is relevant to the sale, transfer or lease of the appurtenant undertaking; and, if applicable,

(i) the name and address of the proposed assignee;

(ii) the assignors' written agreement to assign the licence; and

(iii) the assignee's written agreement to assume responsibility for the licence.

Contents of applications - cancellation

8.5 An application for cancellation of a licence, must include:

(a) a completed application form;

(b) the information required by the regulation;

(c) a description of rehabilitation that has been completed;

(d) details of any outstanding decommissioning activities that are required by the licence; and

(e) a proposal for how the outstanding decommissioning requirements, if any, will be met.

Sufficient information

8.6 An application must be clear, accurate and contain sufficient information for the Board to understand the nature and effects of the appurtenant undertaking as well as to allow a person to reasonably understand and provide comments to the Board on the application.

Information request by the Board

8.7 During a licence proceeding the Board may, by order, require an applicant or a licensee to provide information, particulars or documents and must set a deadline date by which the information, particulars or documents must be submitted.

Paper copies

8.8 Upon request by the Board, an applicant must provide to the Board an unbound paper copy of an application of a quality that can be reproduced by a photocopier.

Additional paper copies

8.9 The Board may require an applicant to provide additional paper copies of an application.

Electronic copies required – Type A

8.10 In respect of Type A applications, an applicant must provide to the Board an electronic searchable Adobe PDF copy of the application.

Electronic copies upon request – Type B

8.11 In respect of Type B applications, upon request by the Board an applicant must provide to the Board an electronic searchable Adobe PDF copy of an application.

Adequacy and YESAA decision document preliminary review

8.12 Upon the submission of an application the secretariat must determine if the application is adequate by

(a) examining the application to determine whether it is clear and accurate and contains the information set out in sections 8.3, 8.4 or 8.5; and

(b) reviewing the applicable YESAA decision document to evaluate whether or not the decision document allows the appurtenant undertaking to proceed.

Secretariat may require information

8.13 If the secretariat determines that the application does not meet the criteria set out in paragraph 8.12(a) the secretariat may require an applicant, in writing or in person, to provide further clarity, accuracy, information, particulars or documents.

Applicant to provide information

8.14 An applicant must provide the clarifications, information, particulars or documents requested under section 8.13 to the satisfaction of the secretariat.

Board decision – Information not provided

8.15 If an applicant does not provide the clarifications, information, particulars or documents requested under section 8.13 to the satisfaction of the secretariat, the secretariat must seek a decision from the Board on the matter.

Board decision – YESAA Decision Document

8.16 If the secretariat believes that the applicable YESAA decision document does not allow the appurtenant undertaking to proceed, the secretariat must seek a decision from the Board on the matter.

Technical workshop

8.17 Following the submission of an application or a submission under section 8.31 and prior to making a determination of adequacy under section 8.12, the secretariat may hold a technical workshop for the following purposes:

(a) to clarify technical issues; or

(b) to obtain further information.

Not open to the public

8.18 A technical workshop is not open to the public.

Notice

8.19 If the secretariat determines that an application is adequate, the Board must, except in the case of an application for an amendment on an emergency basis, publish notice of each application that complies with sections 8.3, 8.4 or 8.5 in accordance with section 21(1) of the Act and on Waterline.

A. (i) Amendment – emergency basis

Decision on emergency

8.20 Upon submission of an application for an amendment on an emergency basis, the Board must determine whether the circumstances described in the application meet the threshold of an emergency and must inform the applicant, in writing, of its decision.

Priority

8.21 If the Board determines that the circumstances described in the application meet the threshold of an emergency, the Board may prioritise the licence proceeding for the application.

Board decision or public notice

8.22 If the Board determines that the circumstances described in the application meet the threshold of an emergency, the Board may

(a) make a decision;

(b) publish notice of the application in the manner set out in section 21(1) of the Act and on Waterline; or

(c) seek comments on the application from the parties who intervened in the initial licence proceeding.

Public Notice

8.23 If the Board publishes notice under paragraph 8.22(b), Part 11 applies with such modifications as the circumstances require.

Seeking comments - deadline

8.24 If the Board seeks comments under paragraph 8.22(c), the Board must set a deadline date by which comments must be received.

Response to comments

8.25 If comments have been submitted under a request made under paragraph 8.22(c), an applicant may submit to the Board a written response to the comments.

Information request by the Board

8.26 The Board may, by order, require an applicant for an amendment on an emergency basis to provide information, particulars or documents and must set a deadline date by which the information, particulars or documents must be submitted.

B. Licence proceedings commenced by the Board

Board initiated

8.27 On its own initiative or at the written request of a person, if the Board is satisfied that it is in the public interest, the Board may initiate licence proceedings to cancel, renew or amend a licence.

Request

8.28 If a person wishes to request that the Board initiate a licence proceeding under section 8.27, the request must include

(a) the person's name, email address, mailing address (including postal code), and telephone number and fax numbers (if applicable);

(b) a clear statement of the reasons the person believes the request to be in the public interest; and

(c) information or documents that support the request.

Notice

8.29 If the Board initiates a licence proceeding under section 8.27, the Board must give written notice to the licensee and publish notice of the licence proceeding in accordance with section 21(1) of the Act.

Part 11 applies

8.30 If the Board publishes notice under section 8.29, Part 11 applies with such modifications as the circumstances require.

Submission by licensee

8.31 A licensee may make a submission to the Board in respect of a licence proceeding commenced under section 8.27.

Deadline for submission

8.32 The licensee's submission must be made within the time period specified in the notice under section 8.29.

Contents of submission

8.33 A submission made under section 8.31 must include:

(a) the licensee's name, email address (if available), mailing address (including postal code), and telephone number and fax number (if applicable);

(b) a clear statement addressing all issues raised in the licence proceeding;

(c) information or documents supporting the licensee's statement; and

(d) copies of all supporting documents, other than public documents.

Deadline Date

8.34 If the Board publishes a notice under sections 8.19, 8.22 or 8.29, it must set a deadline date by which interventions must be submitted.

PART 9 CHAPTER 14 – YUKON FIRST NATION FINAL AGREEMENT

Notice - method

9.1 If the Board or an applicant is required by Chapter 14 of a Yukon First Nation Final Agreement to provide notice to a Yukon First Nation, the Board or the applicant whichever has the responsibility, must provide such notice in writing by hand delivery, mail, courier, facsimile or other means of communication.

Water Use Disputes

Application by Yukon First Nation – alternatives or measures to avoid

9.2 An application made under subsection 14.11.1.1 or 14.11.1.2 of a Yukon First Nation Final Agreement must contain a clear and detailed description of the right the Yukon First Nation believes is affected, the remedy the Yukon First Nation is seeking and

(a) in the case of 14.11.1.1, suggested alternatives that may satisfy the requirements of a licensee without interfering with the right being affected; or

(b) in the case of 14.11.1.2, suggested measures that could be taken to avoid interference with the right being affected.

Application by Yukon First Nation – compliance or unforeseen impacts

9.3 An application made under subsection 14.11.1.3 or 14.11.1.4 of a Yukon First Nation Final Agreement must contain the remedy the Yukon First Nation is seeking, and a clear and detailed description of the Yukon First Nations' issues and concerns related to

(a) in the case of 14.11.1.3, a licensee's compliance with the terms and conditions of its licence; or

(b) in the case of 14.11.1.4, the unforeseen impacts caused by the terms and conditions of a licence.

Application by Yukon First Nation – compensation

9.4 An application for compensation made under subsection 14.11.1.5 of a Yukon First Nation Final Agreement must contain a clear and detailed description of the provable loss or damage to the Yukon First Nation.

Application by Yukon Indian Person

9.5 An application for compensation made under section 14.11.5 of a Yukon First Nation Final Agreement must contain a clear and detailed description of the provable loss or damage to the Yukon Indian Person.

Information request

9.6 The Board may request that a Yukon First Nation that has made an application under subsection 14.11.1.5 or a Yukon Indian Person who has made an application under section 14.11.5 provide further information, particulars or documents.

Notice to licensee

9.7 If the Board receives an application made under section 14.11.1 or 14.11.5, the Board must

(a) give written notice to the licensee of receipt of an application; and

(b) set a deadline date by which a licensee may make a submission.

Submission by licensee

9.8 A licensee may make a submission to the Board in respect of an application made under section 14.11.1 or 14.11.5.

Deadline for submission

9.9 The licensee's submission must be made within the time period specified in the notice under section 9.7.

Contents of submission

9.10 A submission made under section 9.8 must include:

(a) the licensee's name, email address (if available), mailing address (including postal code), telephone number and fax number (if applicable);

(b) a clear statement addressing the issues raised in the application;

(c) information or documents supporting the licensee's statement; and

(d) copies of all supporting documents, other than public documents.

Information request

9.11 The Board may require a licensee to provide further information, particulars or documents, including information related to the licensee's financial responsibility.

Hearing

9.12 The Board may hold a hearing in order to

(a) gain a better understanding of the views of the parties; or

(b) obtain further information from the parties.

Applicant and licensee to be invited

9.13 If the Board holds a hearing under section 9.12, the Board must invite the applicant and the licensee to attend.

Not open to the public

9.14 A hearing held under section 9.12 is not open to the public.

Interim order

9.15 Prior to making a final determination in respect of an application made under section 14.11.1 or 14.11.5, the Board may make an interim order in accordance with section 14.11.3.

PART 10 COMPENSATION

Claim for compensation – *Waters Act* or a Yukon First Nation Final Agreement

10.1 A person who wishes to make a claim for compensation from an applicant under the Act or a Yukon First Nation Final Agreement, must do so in accordance with the Board' s *Compensation Guidelines*.

Application to amend a compensation order - Yukon First Nation Final Agreement

10.2 A person may make an application to the Board under section 14.12.8 of a Yukon First Nation Final Agreement to request that the Board review and amend a compensation order.

Changing circumstances

10.3 An application made under section 10.2 must contain a description of the change in circumstances that form the basis of the request.

Notice

10.4 Upon receiving an application under section 10.2, the Board must give written notice to a person affected by the compensation order and set a deadline date by which the person may make a submission to the Board.

Submission

10.5 A person who receives notice under section 10.4, may make a submission to the Board on or before the deadline date specified in the notice.

Information request

10.6 The Board may require a person who has submitted an application under section 10.2 or a person who has made a submission under section 10.5 to provide further information, particulars or documents.

PART 11 INTERVENTION

Submission

11.1 A person may submit an intervention to the Board in relation to an application or a licence proceeding initiated by the Board if a notice has been published under sections 8.19, 8.22 or 8.29.

Deadline for intervention

11.2 A person must submit an intervention to the Board on or before the date and time specified in the notice published under sections 8.19, 8.22 or 8.29.

Request for extension of deadline

11.3 A person may request an extension of the deadline date but the request for an extension must be submitted, in writing, to the Board on or before the deadline date specified in the notice.

Contents of request

11.4 A request for an extension of the deadline date must contain the following information:

(a) the intervener's name, email address (if available), mailing address (including postal code), telephone number and fax number (if applicable); and

(b) a clear rationale for the request.

Board must not extend deadline

11.5 If a person submits a request for an extension after the deadline date has passed, the Board must not extend the deadline.

Submission after deadline date

11.6 If a person has not requested an extension of the deadline date under section 11.3 but submits an intervention after the deadline date has passed, the Board is not required to consider the intervention.

Board may consider late intervention

11.7 The Board may only consider an intervention that was submitted after the deadline date if the intervention contains information necessary for the proper adjudication of the matter and if acceptance of the new information is justified based on fairness, relevancy and reliability.

Board may seek views

11.8 The Board may seek views from the parties to the licence proceeding on the fairness of accepting the intervention and on relevancy and reliability of the information in the intervention submitted after the deadline date.

Board decision

11.9 The Board must examine the intervention and submissions of the parties to determine whether or not to accept the late intervention.

Contents of intervention

11.10 An intervention must include, where applicable:

(a) the intervener's name, email address (if available), mailing address (including postal code), and telephone number and fax number (if applicable);

(b) a clear and detailed description of the intervener's issues and concerns;

(c) a copy of all supporting documents, other than public documents;

(d) if a notice of public hearing has been published, a clear indication of whether or not the intervener intends to appear at the public hearing and make representations;

(e) if a notice of public hearing has not been published and the intervener believes that holding a public hearing is in the public interest, the rationale for why the intervener believes it is in the public interest; and

(f) a copy of any document authorizing another person to represent the intervener.

Indigenous Knowledge

11.11 Where applicable, an intervention may include Indigenous knowledge that helps explain or demonstrate the issues or concerns.

Paper copies

11.12 Upon request by the Board, an intervener must provide to the Board an unbound paper copy of an intervention of a quality that can be reproduced by a photocopier.

Additional paper copies

11.13 The Board may require an intervener to provide additional paper copies of an intervention.

Electronic copies upon request

11.14 Upon request by the Board, an intervener must provide to the Board an electronic searchable Adobe PDF copy of an intervention.

Multiple interventions

11.15 A person may submit an intervention in response to a notice of application or a Board initiated licence proceeding and another intervention in response to a notice of public hearing published in respect of the same licence proceeding.

Response to intervention

11.16 Subject to section 11.19, a licensee or an applicant may, after an intervention is submitted, submit to the Board a written response to the intervention.

Request for information

11.17 After an intervention is submitted, the Board may request that an intervener provide further information, particulars or documents.

Response to intervener response

11.18 Subject to section 11.19, an applicant or a licensee may submit to the Board a written response to an intervener's response to a request from the Board under section 11.17.

Deadline for response prior to public hearing

11.19 If a public hearing will be held in relation to an application or a Board initiated licence proceeding, the applicant or licensee, as the case may be, must submit its response to interventions or its response to interveners' responses no later than 10 (ten) days prior to the date of the public hearing.

PART 12 INDIGENOUS KNOWLEDGE

Request

12.1 A person who wishes to submit Indigenous knowledge to the Board and who wishes for some or all of that Indigenous knowledge to be kept confidential must:

(a) request, in writing, that the Indigenous knowledge be kept confidential;

(b) separate the Indigenous knowledge from any other information the person is submitting;

(c) include a complete statement of the Indigenous knowledge the person is requesting to be kept confidential;

(d) clearly explain the justification for the request; and

(e) include a non-confidential summary of the Indigenous knowledge with enough detail to convey a reasonable understanding of the substance of the Indigenous knowledge.

Non-confidential summary

12.2 If the Board decides that the non-confidential summary does not meet the requirements referred to in paragraph 12.1(e), it must notify the requestor, in writing, and specify the date by which the requestor must provide a revised non-confidential summary.

Deadline for submission

12.3 Notwithstanding section 12.2, if a satisfactory non-confidential summary is not submitted to the Board at least twenty (20) days prior to a public hearing, the Board must not accept a non-confidential summary.

Board may keep Indigenous knowledge confidential

12.4 Upon receiving a request under section 12.1, the Board may keep Indigenous knowledge confidential if, in its opinion:

(a) the Indigenous knowledge is relevant to the licence proceeding related to which it was submitted;

(b) the Indigenous knowledge is not generally available from a source that is not confidential;

(c) disclosure of the Indigenous knowledge would result in a reasonable expectation of probable harm to a person, place or thing, or constitute a violation of the cultural value system of a First Nation; or

(d) the non-confidential summary referred to in paragraph 12.1(e) meets the requirements of that section.

Decision – confidential

12.5 If the Board decides that the Indigenous knowledge will be kept confidential, the Board must:

(a) notify the requestor of the decision, in writing;

(b) not include the Indigenous knowledge on the register; and

(c) include the non-confidential summary on the register.

Decision – not confidential

12.6 If the Board decides that the Indigenous knowledge will not be kept confidential, the Board must notify the requestor of the decision, in writing.

PART 13 AMENDMENTS

Request to amend

13.1 A party may request to amend its application, claim for compensation, intervention or response by submitting a written request to the Board.

Board may allow amendment

13.2 After receiving a request under section 13.1, the Board may allow the party to submit an amendment.

Adjournment or cancellation of licence proceeding

13.3 If an application or a submission made under section 8.31 is amended, and the Board determines that, as a result of the amendment, the appurtenant undertaking is substantially changed, the Board may:

(a) adjourn the licence proceeding related to that application or submission; or

(b) adjourn or cancel a public hearing related to that application or submission.

New notice of amended application

13.4 If the Board adjourns a licence proceeding under paragraph 13.3(a), it must publish a new notice of the amended application or amended submission under subsection 21(1) of the Act.

New notice of public hearing

13.5 If the Board adjourns a public hearing under paragraph 13.3(b), it must publish a new notice of public hearing under subsection 21(2) of the Act.

Part 11 applies

13.6 If a new notice is published under sections 13.4 or 13.5, Part 11 applies with such modifications as the circumstances require.

PART 14 TECHNICAL PRE-HEARING CONFERENCE

Purposes

14.1 A technical pre-hearing conference may be held prior to a public hearing for the following purposes:

(a) to clarify technical issues;

(b) to gain a better understanding of the views of the parties; or

(c) to obtain further information from the parties.

Not open to the public

14.2 Unless the Board directs otherwise, a technical pre-hearing conference is not open to the public.

Parties to participate

14.3 If a technical pre-hearing conference under section 14.1 is held, the parties to the licence proceeding must be invited to participate in the conference.

Register

14.4 As soon as possible after a technical pre-hearing conference is concluded a transcript of the conference must be included in the register.

Amendment - applicant

14.5 An applicant or licensee must amend its application after a technical pre-hearing conference, if, as a result of the technical pre-hearing conference, the application no longer accurately reflects the proposed appurtenant undertaking.

Amendment – intervener

14.6 An intervener must amend its intervention and submit it to the Board after a technical pre-hearing conference, if, as a result of the technical pre-hearing conference, the original intervention no longer accurately represents the intervener's issues or concerns.

PART 15 ADMINISTRATIVE PRE-HEARING CONFERENCE

Purposes

15.1 Prior to a public hearing, all parties may be invited to attend an administrative pre-hearing conference for the following purposes:

(a) to clarify and, where possible, to narrow the issues;

(b) to explore possible admissions of facts, the proof of facts by affidavit, or the use of any public documents;

(c) to review the procedure to be followed at the public hearing;

(d) to discuss the need for an adjournment and rescheduling of the public hearing;

(e) to discuss the estimated duration of the public hearing; and

(f) to identify the need for additional information, and to determine responsibilities for the production of the information.

Directions

15.2 As a result of the administrative pre-hearing conference, the Chairperson may issue a direction if it is necessary to achieve a fair and efficient public hearing.

Register

15.3 As soon as possible after an administrative pre-hearing conference is concluded an accurate record of the conference must be included in the register.

PART 16 PUBLIC HEARING

Notice

16.1 If the Board holds a public hearing, the Board must publish notice of the public hearing in accordance with subsection 21(2) of the Act and on Waterline.

Chairperson to control

16.2 Subject to the *Conflict of Interest Rules*, the Chairperson must direct and control the conduct of a public hearing.

Directions

16.3 The Chairperson may issue a direction if it is necessary to achieve a fair and efficient public hearing.

Order of appearance and content of representations

16.4 Unless the Chairperson directs otherwise, the order of appearance of persons at a public hearing and the content of the oral representations by those persons will be as follows:

(a) the applicant's summary of its application or licensee's summary of its submission;

(b) questions to the applicant or licensee from other parties, the Board and the secretariat;

(c) the interveners, summaries of their interventions - in the order determined by the Chairperson;

(d) questions to the interveners by other parties, the Board and the secretariat;

(e) the applicant or licensee, in response to interventions;

(f) questions to the applicant or licensee from other parties, the Board and the secretariat;

(g) closing statements by the interveners;

(h) representations by members of the public;

(i) closing statement by the applicant or licensee.

Limit on questions and submissions

16.5 The Chairperson may limit the number of questions asked by a party and the submission made by a party if the questions or submissions are irrelevant or repetitive, do not assist the Board or are prejudicial to a fair hearing.

Limit on time

16.6 The Chairperson may limit the amount of time a party is given to make oral representations in order to ensure a public hearing is conducted in a timely and expeditious manner.

Representations by members of the public

16.7 A member of the public who is not a party to a licence proceeding may make representations at a public hearing if the member informs the secretariat prior to the beginning of closing statements.

Absence of member of the public

16.8 If a member of the public has informed the secretariat under section 16.7 but is not present during the public hearing when that member is scheduled to make a representation to the Board, the Board may continue with the public hearing in the absence of the representation.

Visual aids

16.9 Unless the Board determines otherwise, a party may use a visual aid to assist it in making representations at a public hearing.

Copies to be provided

16.10 Prior to relying on a visual aid, a party must provide a copy of the visual aid to the Board.

Written promise

16.11 During a public hearing, the Board may require, in the form of a written promise, a party to provide information to the Board.

PART 17 NEW INFORMATION DURING PUBLIC HEARING

Written explanation

17.1 If a party wishes to submit new information during a public hearing, the party must provide the new information to the Board, with a written explanation setting out the following:

(a) the reason the new information could not be filed by the deadline date set out in the notice of public hearing;

(b) a description of the new information; and

(c) an explanation as to why the new information is relevant and reliable.

Interpretation

17.2 For clarity, this Part does not apply to information provided to the Board as a result of a written promise given by a party during a public hearing.

Distribution to all parties

17.3 The party wishing to submit new information under section 17.1 must provide copies of the new information to all parties.

Submissions by other parties

17.4 A party who has received the new information may make written or oral submissions to the Board and to the other parties related to whether or not the new information is relevant and reliable.

Board decision

17.5 The Board must examine the new information and the submissions of the parties to determine whether or not to accept the new information.

Criteria to be considered

17.6 In making a determination under section 17.4, the Board must consider if the new information is necessary for the proper adjudication of the matter and if acceptance of the new information is justified based on fairness, relevancy and reliability.

Opportunity to respond

17.7 If the Board determines that the new information is admissible, each party must be given an opportunity during the public hearing to respond to the new information.

PART 18 ADJOURNMENT

18.1 The Board may adjourn a licence proceeding, a security determination process, a review and approval process or a public hearing:

(a) to ensure fairness to all parties;

(b) if it requests further information, particulars or documents and these cannot be obtained in time for the next sitting of the Board or for a public hearing;

(c) if an application, cost estimate or document submitted under Part 22 is amended, and an intervener determines that the amendment is likely to cause a significant change to its intervention;

(d) if there has been a request for an interpreter under Part 19; or

(e) for another reason the Board deems necessary.

PART 19 INTERPRETATION

English or French

19.1 A party may speak in English or French or produce documents in English or French during a licence proceeding, a security determination process, a review and approval process or a public hearing.

Language preference - technical pre-hearing conference or public hearing

19.2 Prior to a technical pre-hearing conference or a public hearing, the parties must advise the secretariat if they intend to speak in English or French.

Request for interpretation – technical pre-hearing conference or public hearing

19.3 A party may make a written request to the Board for a language interpreter or a sign language interpreter to be provided at a technical pre-hearing conference or at a public hearing.

Deadline for request

19.4 The request for an interpreter under section 19.3 must be made as early as possible but no later than twenty (20) days prior to the date of a technical pre-hearing conference or the date of a public hearing, as the case may be.

Reasonable efforts

19.5 The Board will make reasonable efforts to provide an interpreter upon request.

PART 20 REGISTER

20.1 The following information must be included in the register:

(a) information submitted under sections 8.3, 8.4, and 8.5;

(b) submissions made under section 8.31;

(c) interventions submitted under Part 11;

(d) non-confidential summaries of Indigenous knowledge submitted under paragraph 12.1(e);

(e) claims for compensation submitted under Part 10;

(f) the information, particulars or documents submitted in response to an information request made under sections 8.7, 8.13, 11.17, 21.6 or 22.3;

(g) responses to intervener's responses made under section 11.18;

(h) amendments allowed under section 13.2;

(i) transcripts of technical pre-hearing conferences;

(j) records of administrative pre-hearing conferences;

(k) to the extent possible, copies of visual aids used during public hearings;

(l) new information determined admissible under Part 17;

(m) transcripts of public hearings;

(n) cost estimates submitted under Part 21;

(o) documents submitted under Part 22;

(p) orders issued by the Board; and

(q) decisions of the Board.

PART 21 SECURITY DETERMINATION PROCESS

Order

21.1 The Board may, by order, require an applicant for a licence, a licensee or a prospective assignee of a licence to furnish and maintain security under section 15 of the Act.

Not open to the public

21.2 Unless the Board directs otherwise, Board deliberations in respect of an order for security are not open to the public.

A. Licensee

Notice to licensee

21.3 Other than in cases where a licensee submits a cost estimate under a licence condition, if the Board determines that it will examine whether or not to require a licensee to furnish and maintain security under section 15 of the Act, the Board must:

(a) give written notice to the licensee that the Board is examining the requirement for security; and

(b) set out the deadline by which a licensee must submit a cost estimate.

Cost estimate to be submitted

21.4 If the Board gives notice to a licensee under section 21.3, the licensee must submit a cost estimate in relation to the restoration or closure of the appurtenant undertaking in accordance with applicable Board guidelines.

Deadline for submission

21.5 The licensee's cost estimate must be submitted to the Board within the time period specified by the Board.

Adequacy

21.6 Upon the submission of a cost estimate, the secretariat must determine if the cost estimate is adequate by examining whether it is clear, accurate and contains the information required under section 21.4.

Secretariat may require information

21.7 If the secretariat determines that the estimate is not adequate, the secretariat may require a licensee, in writing or in person, to provide further clarity, accuracy, information, particulars or documents.

Technical workshop

21.8 Following the submission of a cost estimate and prior to making a determination of adequacy under section 21.6, the secretariat may hold a technical workshop for the following purposes:

(a) to clarify technical issues; or

(b) to obtain further information.

Not open to the public

21.9 A technical workshop is not open to the public.

Licensee to provide information

21.10 A licensee must provide the clarifications, accuracies, information, particulars or documents requested under section 21.7 to the satisfaction of the secretariat.

Board decision – Information not provided

21.11 If an applicant does not provide the clarifications, information, particulars or documents requested under section 21.7 to the satisfaction of the secretariat, the secretariat must seek a decision from the Board on the matter.

Board decision or public comment

21.12 Once the secretariat determines that the cost estimate is adequate, the Board may

(a) make a determination on whether or not to require the licensee to furnish and maintain security and, if the Board so requires, the amount of security to be furnished and maintained;

(b) publish notice in the manner set out in section 21(1) of the Act and on Waterline; or

(c) seek comments from the parties who intervened in the initial licence proceeding.

Published notice

21.13 If the Board publishes notice under paragraph 21.12(b), Part 11 applies with such modifications as the circumstances require.

Seeking comments - deadline

21.14 If the Board seeks comments under paragraph 21.12(c), the Board must set a deadline date by which comments must be received.

Extension – exceptional circumstances

21.15 The Board may only extend the deadline date specified under section 21.14 in exceptional circumstances.

Response to comments

21.16 If comments have been submitted under a request under paragraph 21.12(c), a licensee may submit to the Board a written response to the comments.

Board decision

21.17 Subject to section 21.18, after reviewing a cost estimate the Board may

(a) ask the licensee for further clarifications, information, particulars or documents;

(b) require the licensee to furnish and maintain security;

(c) determine that no security is required; or

(d) determine that an amendment to the licence to which the cost estimate relates is required.

Comments to be considered

21.18 If the Board has published noticed under paragraph 21.12(b) or sought comments under paragraph 21.12(c), the Board must take the comments submitted into consideration when making a decision under section 21.17.

B. Applicant for licence or prospective assignee

Quartz mining undertaking

21.19 Along with its application to the Board, an applicant for a licence in respect of a quartz mining undertaking must submit a cost estimate in accordance with the *Reclamation and Closure Planning for Quartz Mining Projects: Plan Requirements and Closure Costing Guidance*.

Notice – other than quartz mining undertaking

21.20 In a case other than an application in respect of a quartz mining undertaking, if the Board determines that it will examine whether or not to require an applicant for a licence, an amendment or renewal of a licence or a prospective assignee of a licence to furnish and maintain security under section 15 of the Act, the Board must

(a) give written notice to the applicant or prospective assignee that the Board is examining the requirement for security; and

(b) set out the deadline by which the applicant or prospective assignee must submit a cost estimate.

Cost estimate to be submitted

21.21 If the Board gives notice under section 21.20, the applicant or prospective assignee must submit a cost estimate in relation to the restoration or closure of the appurtenant undertaking in accordance with applicable Board guidelines.

Deadline for submission

21.22 The applicant's or prospective assignee's cost estimate must be submitted to the Board within the time period specified by the Board under paragraph 21.20(b).

Sections 21.6-21.18 apply

21.23 Upon the submission of a cost estimate pursuant to a notice issued under section 21.20, sections 21.6 to 21.18 apply with such modifications as the circumstances require.

PART 22 REVIEW AND APPROVAL PROCESS

Submission

22.1 If the Board has included a condition in a licence that requires a licensee to submit a document for review and approval by the Board, the licensee must submit:

(a) the document in accordance with the licence condition;

(b) an explanation of how the document fulfills the requirement of the licence condition; and

(c) a detailed description of:

(i) a new document; or

(ii) revisions to an existing document.

Adequacy and YESAA decision document preliminary review

22.2 Upon the submission of a document for review and approval, the secretariat must determine if the document is adequate by examining the document to determine if it

(a) is clear, accurate and contains the information set out in section 22.1; or

(b) reveals a change to the appurtenant undertaking such that the applicable YESAA decision document no longer allows the appurtenant undertaking to proceed.

Secretariat may require information

22.3 If the secretariat determines that the document does not meet the criteria set out in paragraph 22.2(a), the secretariat may require a licensee, in writing or in person, to provide further clarity, accuracy, information, particulars or documents.

Licensee to provide information

22.4 A licensee must provide the clarifications, accuracies, information, particulars or documents requested under section 22.3 to the satisfaction of the secretariat.

Board decision – Information not provided

22.5 If an applicant does not provide the clarifications, information, particulars or documents requested under section 22.3 to the satisfaction of the secretariat, the secretariat must seek a decision from the Board on the matter.

Board decision - YESAA decision document

22.6 If the secretariat believes that the document meets the criteria set out in paragraph 22.2(b), the secretariat must seek a decision from the Board on the matter.

Board decision or public comment

22.7 If a document is determined to be adequate by the secretariat, the Board may

(a) make a decision under section 22.12;

(b) publish notice of the document in the manner set out in section 21(1) of the Act and on Waterline; or

(c) seek comments on the document from the parties who intervened in the initial licence proceeding.

Published notice

22.8 If the Board publishes notice under paragraph 22.7(b), Part 11 applies with such modifications as the circumstances require.

Seeking comments - deadline

22.9 If the Board seeks comments under paragraph 22.7(c), the Board must set a deadline date by which comments must be received.

Extension – exceptional circumstances

22.10 The Board may only extend the deadline date specified under section 22.9 in exceptional circumstances.

Response to comments

22.11 If comments have been submitted under a request made under paragraph 22.7(c), a licensee may submit to the Board a written response to the comments.

Board decision

22.12 Subject to section 22.13, after reviewing a document the Board may

(a) approve the document as submitted;

(b) ask the licensee for further clarifications, information, particulars or documents;

(c) require the licensee to make changes to the document;

(d) hold a public hearing under section 19(1) of the Act; or

(e) determine that an amendment to the licence to which the document relates is required.

Comments to be considered

22.13 If the Board has published noticed under paragraph 22.7(b) or sought comments under paragraph 22.7(c), the Board must take the comments submitted into consideration when making a decision under section 22.12.

B.2. Conflict of Interest

YUKON WATER BOARD CONFLICT OF INTEREST RULES

These Rules are made under the authority of Section 22 of the *Waters Act* and section 2.12.2.10 of the Yukon First Nations Final Agreements.

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PART 1 INTRODUCTION AND PURPOSE

The Yukon Water Board is a quasi-judicial administrative tribunal and as such is bound by the principles of natural justice and administrative law. The Board is committed to the highest standards of ethics and integrity. It recognizes the need to foster values described as balanced, ethical, collaborative, transparent, and open.

The purpose of these Conflict of Interest Rules is to establish a procedure to identify and resolve conflict of interest issues and real or apparent bias of a Member with regard to any business of or matter before the Board. These Rules will assist Members in fulfilling their duties in a manner that is fair and unbiased in both practice and appearance.

PART 2 INTERPRETATION

Definitions

2.1 In these Rules,

"Act" means the Waters Act, S.Y. 2003 c.19 and includes Waters Regulation, O.I.C. 2003/58 and OIC 2014/63;

“Applicant” means any Person who makes an application to the Board other than a Claimant or an Intervener.

“Benefit” includes a fee, money, gift, service, personal benefit or other advantage which could be reasonably perceived to exert influence or give preferential treatment.

“Board” means the Yukon Water Board.

“Business Day” means a day that is neither a Saturday nor a Sunday, nor another holiday.

“Chairperson” means the Chairperson of the Board or, in the absence of the Chairperson, the Vice Chairperson.

“Claimant” means a Person seeking compensation under the Act or under Chapter 14 of the Umbrella Final Agreement.

“Intervener” means a Person who has made a written submission to the Board regarding an application.

“Member” means a member of the Board.

“Licensee” means a Person who has been issued a current water use licence under the Act.

“Party” means a Person who is an Applicant, a Claimant, an Intervener or a Licensee.

"Person" includes an individual, association, partnership, society, board, committee, council, organization, corporation, a government (including municipal, territorial, First Nation and federal government), and an agency of a government.

PART 3 GENERAL

Conflict identification

3.1 The Chairperson will meet with new Members, and will consult with legal counsel as necessary, in order to identify any potential for conflicts of interest or bias and to advise the Member of their responsibilities regarding these Conflict of Interest Rules.

Reasonable steps to avoid

3.2 The Board and its Members will at all times take reasonable steps to avoid any real or perceived conflict of interest or bias.

Responsibility to inform

3.3 Members have a responsibility to inform the Chair as soon as possible of any circumstances that may have a negative or harmful impact on their respective abilities to perform the duties required of their appointment.

Use of confidential information

3.4 Members shall not knowingly take personal advantage of confidential information obtained in the course of their duties as a Member.

Precautionary approach

3.5 A precautionary approach will be taken when deciding a specific situation given it is not always possible to know in advance which fact situations constitute a real or perceived conflict of interest or bias.

Reasonable person test

3.6 The test to determine whether there is a real or apparent conflict of interest or bias is whether a reasonably informed and right-minded person would reasonably conclude that a Member, whether consciously or unconsciously, may not decide a question fairly because of a conflict of interest or bias.

Conflict not an adverse statement

3.7 A determination of real or perceived conflict of interest or bias is not an adverse statement about the conduct or character of a Member; rather it is recognition of strong emphasis by the Board and each of its Members in maintaining the highest level of both real and perceived impartiality.

PART 4 PRINCIPLES

Board interests a priority

4.1 It is important that the Board members always place the interests of the Board above their own when engaged in business of the Board.

No participation

4.2 No Member shall participate in a proceeding if:

(a) They have a personal interest which is, or could reasonably be perceived to be, incompatible with an unbiased exercise of their judgement.

(b) For any other reason, they are of a reasonably held opinion, that they would be unable to render an impartial decision.

(c) Their continuing, or prior associations or relationships (including family and other close personal relationships), would reasonably be perceived as not enabling them to render an impartial decision.

(d) They have directly or indirectly, received a Benefit or other advantage which is, or could reasonably be perceived to be, incompatible with an unbiased exercise of their judgement.

PART 5 PROCEDURES

Decision making

5.1 The Board shall subscribe to the principles of consensus decision making on matters related to conflict of interest.

Consensus

5.2 When consensus is not reached the Board will decide the matter by vote.

Legal advice

5.3 The Chairperson may seek legal advice at any time if it is determined that advice would be helpful in determining a question of real, perceived or potential conflict of interest or bias on the part of a Member or the Board.

Legal advice obtained in writing

5.4 Any legal advice that is obtained on a matter relating to a Member will be obtained in writing and will be copied to the Member.

Application and matters before the Board

5.5 A Member who is affiliated, through membership, with any association, partnership, society, board, committee, council, or organization that is a Party shall not participate in any discussion or decision relating to any business of or matter before the Board involving that Party, and shall not discuss such business or matter with any other Member.

Member employment

5.6 A Member who is employed by or providing services, paid or unpaid, for a Party shall not participate in any discussion or decision relating to any business of or matter before the Board involving that Party regardless of the nature, location, or level of influence of the Member's employment or work circumstances with that Party, and shall not discuss such business or matter with any other Members.

Advise on real, perceived or potential conflict

5.7 A Member who recognizes that they have a real, perceived or potential conflict of interest or bias regarding an application or matter before the Board will immediately advise the Chairperson and the Chairperson will accept this declaration without further consideration. The Member will not participate any further in Board deliberations for that application or matter.

Disclosure when uncertain about conflict

5.8 A member who is unsure about whether they or another Member may have a real, perceived, or potential conflict of interest or bias must disclose the concern to the Chairperson as soon as possible.

Conflict disclosure discussion

5.9 The Chairperson will discuss the concern with the Member in question and make such inquiries as the Chairperson considers appropriate and with the affected Member, determine if the concern, whether a real or perceived conflict of interest or bias exists or is likely to exist, can be mutually resolved.

Resolution by the Board

5.10 Where it cannot be mutually resolved the Chairperson shall refer that question to the Board for determination.

(a) Pending a resolution, the Member in question shall not participate any further in Board deliberations for the application or matter giving rise to the concern of a conflict of interest or bias, actual or perceived.

Communication to affected member

5.11 The decision shall be communicated to the affected Member who shall comply with the Board's decision.

Disqualification "cooling off" period

5.12 In the event that a determination has been made that a Member is disqualified from participating in a particular application or other matter before the Board because of a real or apparent conflict of interest or bias arising out of the Member's prior relationship to a Party, then the Board may in appropriate circumstances, apply the following principles in determining a "cooling off" period of time after which the Member may no longer be considered disqualified:

(a) For each year the Member provided services for or was associated with a Party to the application or other matter before the Board, the Member may be considered disqualified for the period of one month/year of service or association beginning after the last month when the Member had any decision making ability, authority or other material involvement with regard to the Party.

PART 6 PUBLIC HEARINGS

Publish panel names

6.1 In those instances when an application or other matter will be dealt with by way of a public hearing then, prior to the public hearing, the Board will publicize the names of the panel of Members who will preside and hear evidence regarding the application or other matter.

Party notification

6.2 A Party must notify the Board at least five clear Business Days prior to the commencement of the public hearing and give reasons in writing of any concern that a Member may have a conflict of interest or that a perception of bias exists with respect to that Member's participation in the public hearing.

Party concerns

6.3 If a concern is raised by a Party regarding a possible conflict of interest or bias on the part of a Member, then the Board will:

(a) Consider the reasons giving rise to the Party's concern.

(b) Allow other Parties to the application or public hearing to make submissions with respect to the concern of possible conflict of interest or bias on the part of a Member.

(c) Pending a resolution, the Member in question shall not participate any further in Board deliberations for the application or matter giving rise to the concern of a conflict of interest or bias, actual or perceived.

(d) The Board will make a ruling whether or not a conflict of interest exists, or reasonable perception of bias exists, and provide written reasons for its decision.

(e) The decision will be communicated to the affected Member who shall comply with the Board's decision.

PART 7 CONTRAVENTION OF RULES

Failure to disclose

7.1 Where the Board determines under these Rules that there has been wilful failure by a Member to disclose a material conflict of interest, the Board may make a recommendation of termination of the Members appointment to the Minister.

Appendix C. Board Guidelines

C.1. COMMUNICATIONS GUIDELINES

Yukon
Water Board

Office des eaux
du Yukon

YUKON WATER BOARD

COMMUNICATIONS GUIDELINES

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1.1 PURPOSE:

These guidelines are intended to create common understanding and guide the Board and Secretariat who may be involved in answering media enquiries, attending conferences/workshops, participating in public events, conducting speaking engagements, and taking part in proactive public education and outreach activities.

1.2 OBJECTIVES:

To effectively guide communications in order to provide accurate information on board processes, practices and guiding principles in a timely matter to external audiences.

To strengthen relationships and build trust by conducting proactive public education and outreach activities.

1.3 CONTEXT:

In order to act in a manner that is fair and unbiased in practice, and appearance, conflict of interest and perception of bias must be considered when evaluating all:

- Proactive public education and outreach activities; and,
- Invitations to attend conferences/workshops, public events, and speaking engagements.

There is a need to clarify the provision of external communications. The proper response to enquiries includes the identification of the appropriate spokesperson(s).

Budgetary restraints must be taken into consideration when deciding which activities the Board can actively participate in.

1.4 GUIDING PRINCIPLES:

- The Board and Secretariat recognize the Chair is responsible for providing leadership to the Board, for effectively facilitating the work of the Board, and for communicating on behalf of the Board.
- The Board and Secretariat understand care must to be taken to ensure the preparation of effective and accurate communications in order to build trust in the board decision making process.
- The Board and Secretariat accept that they must conduct themselves in a professional and respectful manner while conducting board business.
- The Board understands that given their quasi-judicial decision making authority they must take care to not enter into external communications on matters before them.
- The Board and Secretariat recognize the importance of conducting proactive public education and outreach activities to enhance general understanding, promote early involvement and foster transparency in the water licensing process.

- The Board and Secretariat accept there is a wide range of potential situations, and questions related to the water licensing process, and board deliberations. Communications are to be focused on the licensing process, and not related to applications or any other matter that is deemed confidential.
- The Board and Secretariat are to communicate in a manner which is consistent with the Board's mandate and jurisdiction. When required, prepared statements and key messages will be developed to help guide communications.
- The Board recognizes the need to represent Board values regardless of the position of individual member's nominating agencies.
- Board Members should respectfully direct parties to the Secretariat when in doubt.

1.5 Responses to Media Enquiries:

- All media enquiries will be referred to the Director before any information is released.
- The Director will consult with the Chair on matters other than general or routine operational enquiries.
- The Director will advise the Chair as soon as possible of all sensitive and significant enquiries.
- The Chair will inform the Board of situations which may garner significant media attention.

1.6 Attending Conferences/Workshops, Public Events, Speaking Engagements and Public Education and Outreach:

- The Secretariat will inform the Director of requests to attend all conferences/workshops, public events and speaking engagements.
- The Board will inform the Chair of requests to attend all conferences/workshops, public events and speaking engagements.
- The Board and Secretariat will look for ways to conduct proactive public education and outreach activities.
- Decisions related to participation of the Secretariat of a routine operational nature will be made by the Director.
- Decisions related to requests for Board member participation will be made by the Chair in consultation with the Director.
- The Board and Secretariat who participate in these events will report on the details of the event at the next board meeting.

1.7 Identification of the Appropriate Spokesperson(s)

- A single spokesperson will be designated in most situations to respond on behalf of the Board to enquiries.
- The Director will normally speak to enquiries of a routine operational nature.

- The Chair will normally speak to sensitive and significant matters and will give proper consideration to advising Government on matters which are considered sensitive and significant.

C.2. In-camera Guidelines

Yukon
Water Board

Office des eaux
du Yukon

YUKON WATER BOARD

IN-CAMERA GUIDELINES

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1.1 Purpose

These guidelines are intended to create common understanding and guide the Board and Secretariat on the use and procedure of in-camera sessions during board meetings.

1.2 Objectives

- To ensure that in-camera sessions are used when appropriate.
- To effectively guide the Board in the procedures to be followed during in-camera sessions.

1.3 Context

- It is accepted good practice to regularly allocate time for in-camera discussions during board meetings where board members can meet behind closed doors without non-board members present, except as invited by the Board.
- All matters discussed during in-camera sessions are confidential and minutes taken will not be part of the regular meeting minutes.

1.4 Guiding Principles

- The Board and Secretariat understand that in-camera discussions are intended to provide the Board Members with a confidential forum to discuss sensitive matters.
- The Board recognizes that sensitive matters within the jurisdiction of the Board may include:
    - Board and Secretariat performance,
    - Governance,
    - Conflict of Interest,
    - Board member discipline, or
    - Chair and/or Vice-Chair selection.
- The Board accepts that in-camera sessions aren't to be used as a forum to promote special interests, nor to alter a decision that has been made in the board meeting.
- The Board recognizes that even though in-camera sessions are included as an agenda item for each meeting, there is no requirement to hold in-camera discussions each meeting.

1.5 Procedures

- The agenda for regular board meetings will include an in-camera session.
    - The Chair will confirm at the commencement of the board meeting when the agenda is being discussed whether there is a need for an in-camera session.
    - The Chair will again enquire whether there is a need for an in-camera session when the in-camera agenda item is reached.
- The Chair will ensure that minutes are taken, reviewed, approved, and stored in a secure fashion.
- The Chair will meet with the Director to discuss matters raised during an in-camera session when required.

C.3. Compensation Guidelines

Yukon Water Board

Office des eaux du Yukon

COMPENSATION GUIDELINES

May 2018 v.1

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Published under the authority of the Yukon Water Board
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Replaces: A Guide to Claiming Compensation under the Umbrella Final Agreement (Dec 2008), A Guide to Claiming Compensation under the Waters Act (Dec 2008) and An Overview of the Compensation Process (Dec 2008)

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Yukon Water Board applications and other resources are available from:

Yukon Water Board
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INTRODUCTION

These guidelines address most compensation issues to be considered during the licence application process, including licence renewals and amendments. Both the *Waters Act* (Act) and Chapter 14 of Yukon First Nation Final Agreements (Final Agreements) address compensation issues that may arise in circumstances outside the licence application process. For consideration of compensation outside the licence application process, the reader is directed to consult the Act and Chapter 14 of the relevant Final Agreement, as appropriate.

The guidelines are comprised of three parts: Part 1 is an overview of compensation under the Act and the Final Agreements; Part 2 addresses compensation under s. 12(4) of the Act; and Part 3 addresses compensation under certain provisions of Chapter 14 of the Final Agreements.

Part 1 - Overview

The primary legislation for managing the use[1] of water in Yukon is the Act. Under the Act, water uses are divided into three categories:

- uses that require a licence;
- uses authorized under the *Waters Regulation* (regulation), that do not require a licence; and
- uses that do not require a licence or an authorization under the Act or the regulation.

Generally speaking, all significant uses of water in Yukon require a licence issued under the Act. The Yukon Water Board (Board) is established under the Act and is responsible for issuing water licences.

Section 10 of the Act states the objects of the Board 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."*

There are fourteen Yukon First Nations. Eleven of these First Nations have entered into land claims Final Agreements with the governments of Canada and Yukon. These Final Agreements provide certain water related rights to Yukon First Nations and to Yukon First Nation people. These rights are recognized and protected under s. 35 of the Constitution Act, 1982.

The Final Agreements have the force of law and if there is any inconsistency or conflict between the Final Agreements and other Yukon laws, including the Act, the agreements prevail. (See e.g. *Act Approving Yukon Land Claim Final Agreements* (Yukon), ss. 2 and 3(1).)

[1] In these guidelines "use" includes the deposit of waste into water.

Chapter 14 of each Final Agreement states,

> *14.1.1 The objective of this chapter is to maintain the Water of the Yukon in a natural condition while providing for its sustainable use.*

The Act and the Final Agreements recognize that granting a licence to use water may adversely affect others. Both the Act and the Final Agreements require the Board to ensure compensation is addressed in the circumstances and as provided for in the Act and in the Final Agreements, respectively.

1.1 Compensation under the *Waters Act*

Subsection 12(4) of the Act sets out requirements for addressing compensation during the licence application process. The Act establishes two categories of potential compensation claimants:

- s. 12(4)(a) claimants (existing licensees and applicants with precedence); and
- s. 12(4)(b) claimants (includes other water users, owners and occupiers of property, holders of outfitting and trapping concessions).

While there are similarities in the compensation provisions applicable to each category, there are several important differences. As a result, each of these categories is discussed separately below.

1.2 Compensation under s. 12(4)(a) of the *Waters Act*

Subsection 12(4)(a) addresses compensation for "existing licensees" and "applicants with precedence"[2]. The Act states the Board must not issue a licence unless the applicant satisfies the Board that either:

a) the use of waters proposed by the applicant will not adversely affect, in a significant way, the use of waters by any existing licensee or applicant with precedence; or

b) the applicant has entered into a compensation agreement with every licensee or applicant with precedence whose use of waters will be adversely affected in a significant way.

Eligibility and requirements for compensation under s. 12(4)(a) are discussed in more detail below in Part 2.

[2] Paragraph 12(4)(a)(i)(B) of the Act refers to the use of waters proposed by certain "other applicants" having precedence over an applicant's proposed use. The "rule" for determining precedence is set out in s. 27 of the Act which states, where two licensees have licences permitting the use of waters, the licensee who filed their application first is entitled to the use of waters in precedence to any use of the waters by the other licensee. The precedence established by s. 27 Act continues to apply to renewals and assignments of the original licence (s. 27(3)).

1.3 Compensation under s. 12(4)(b) of the *Waters Act*

Subsection 12(4)(b) addresses compensation requirements and eligibility in relation to several listed potential claimants, including:

- licensees and applicants to whom s. 12(4)(a) does not apply
- certain unlicensed water users
- authorized waste depositors
- owners or occupiers of property
- outfitting and trapline concession holders, and holders of rights of a similar nature.

To be considered for compensation under s. 12(4)(b), a claimant must:

- file a notice with the Board within the time specified in the notice of application published by the Board; and
- satisfy the Board they:
    - were a licensee, applicant, water user, waste depositor, property owner or occupier, concession holder, etc., at the time the applicant filed their application with the Board; and,
    - would be adversely affected by the use of waters proposed by the applicant.

The Act states the Board must not issue a licence unless the applicant satisfies the Board that persons entitled to compensation under s. 12(4)(b) have been or will be paid compensation the Board considers appropriate.

Eligibility and requirements for compensation under s. 12(4)(b) are discussed in more detail below in Part 2.

1.4 Yukon First Nation Final Agreements – Chapter 14

Section 14.8.1 of each Final Agreement is worded identically and provides,

> *…a Yukon First Nation has the right to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quantity, quality and rate of low, including seasonal rate of flow.*

This right is subject to the rights of water users authorized in accordance with Chapter 14 and laws of general application, including the Act.

Chapter 14 provides in 14.8.5 and 14.12.4 that if the Board grants a licence that interferes with a Yukon First Nation's right under s. 14.8.1, the Board shall order the licensee to pay the First Nation compensation for provable loss or damage to the First Nation, and compensation for certain losses or damages suffered by persons enrolled under that First Nation's Final Agreement.

Eligibility and requirements for compensation under Chapter 14 of the Final Agreements are discussed in more detail below in Part 3.

Part 2 – Compensation under the *Waters Act*

2.1 Compensation under s. 12(4)(a) of the *Waters Act*

The compensation regime under s. 12(4)(a) of the Act is set out below in Figure 1.

The compensation provisions in s. 12(4)(a) apply to an application for a licence, and to an application to renew or amend a licence (ss. 12(4) and 16(2)).

The first consideration under s. 12(4)(a) is whether there are existing licensees or applicants with precedence whose use of waters would be affected by an applicant's proposed use of waters. To identify whether there are existing licensees or applicants with precedence, an applicant should consult the Board's on-line water licence registry, Waterline: http://yukonwaterboard.ca/index.htm. An applicant who requires assistance in identifying existing licensees or applicants with precedence is encouraged to contact the Board office.

The registry lists water licences that are in effect and their location. In assessing whether a proposed use of waters would affect the use of waters by existing licensees or applicants with precedence, an applicant should consider:

- the geographic proximity of their proposed water use in relation to existing licensees;
- the magnitude and duration of the proposed use of waters;
- the geographic extent of downstream effects from the proposed use; and,
- any other factors that may helpful in determining the effects of the proposed use.

If there are no existing licensees or applicants with precedence whose use of waters would be affected by the proposed use of water, no compensation is required under s. 12(4)(a).

If there are existing licensees or applicants with precedence whose use of waters would be affected, the applicant must satisfy the Board that either:

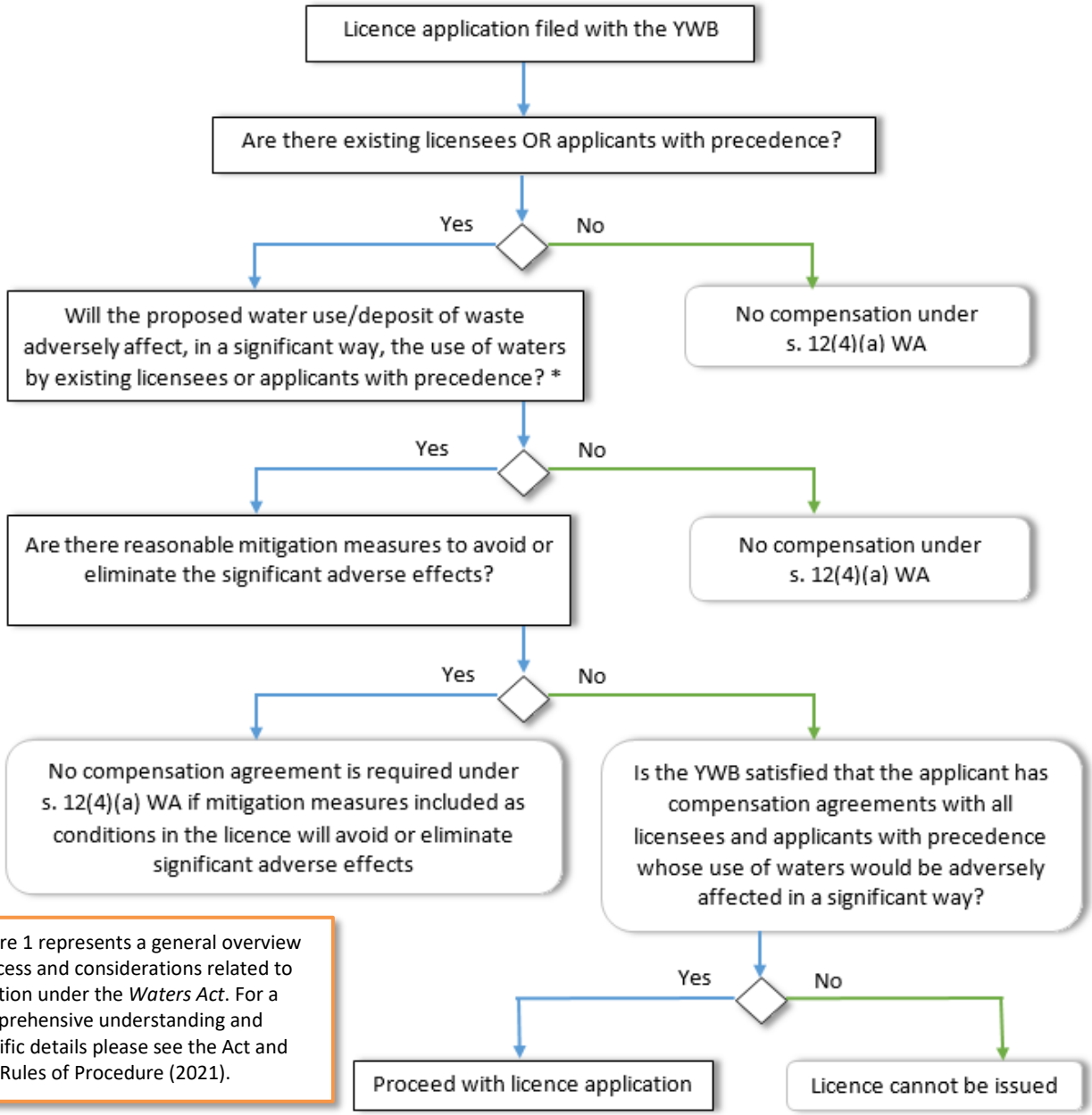
a) the proposed use will not adversely affect, in a significant way, the use of waters by those licensees or applicants; or,
b) the applicant has entered into compensation agreements with every existing licensee and applicant with precedence whose use of waters would be adversely affected in a significant way.

An applicant is responsible for ensuring that every licensee and applicant with precedence whose use of waters would be affected is notified of the application.

In assessing whether a proposed use would adversely affect, in a significant way, the use of waters by existing licensees or applicants with precedence, an applicant should consider:

- the nature, extent and duration of adverse effects, including incremental adverse effects;
- effects on the rate of flow, water quantity and quality; and,
- any other factors that may be helpful in determining the significance of adverse effects from the proposed use.

Figure 1 – Compensation under s.12(4)(a) *Waters Act* (WA)



Note: Figure 1 represents a general overview of the process and considerations related to compensation under the *Waters Act*. For a more comprehensive understanding and more specific details please see the Act and the Board Rules of Procedure (2021).

*Onus is on the licence applicant to satisfy the YWB that either:

(a) the proposed use/deposit of waste will not adversely affect, in a significant way, the use of waters by existing licensees and applicants with precedence;

OR

(b) the licence applicant has entered into a compensation agreement with every existing licensee and applicant with precedence whose use of waters would be adversely affected in a significant way.

The Board will also consider these factors when deciding under s.12(4)(a) whether an applicant's proposed water use will adversely affect, in a significant way, the use of waters by other licensees and applicants with precedence.

It is recommended that when preparing a licence application, an applicant carefully consider options to avoid, eliminate or minimize adverse effects on the use of waters by existing licensees and applicants with precedence and, where reasonable, incorporate measures that will avoid, eliminate or minimize significant adverse effects.

Most activities requiring a waters licence will require an assessment under the *Yukon Environmental and Socio-economic Assessment Act* (YESAA). It is anticipated that reasonable mitigation measures will be identified during the assessment under YESAA and be reflected in the decision document issued under YESAA.

If a proposed use of water will adversely affect, in a significant way, the use of waters by existing licensees or applicants with precedence, the applicant must either:

a) modify their undertaking or incorporate mitigation measures to avoid or eliminate the significant adverse effects; or

b) satisfy the Board that they have entered a compensation agreement with every existing licensee and applicant with precedence whose use of waters would be adversely affected in a significant way.

An applicant relying on a compensation agreement to meet the requirements of 12(4)(a) is not required to submit the agreement itself to the Board. However, the applicant is responsible for satisfying the Board that it has entered a compensation agreement. If the agreement is not provided to the Board, it is recommended that the applicant submit proof in writing signed by the affected party, confirming the affected party:

- is an existing licensee or applicant with precedence;
- is aware of the provisions in s. 12(4)(a) of the Act; and,
- has entered into a compensation agreement with the applicant.

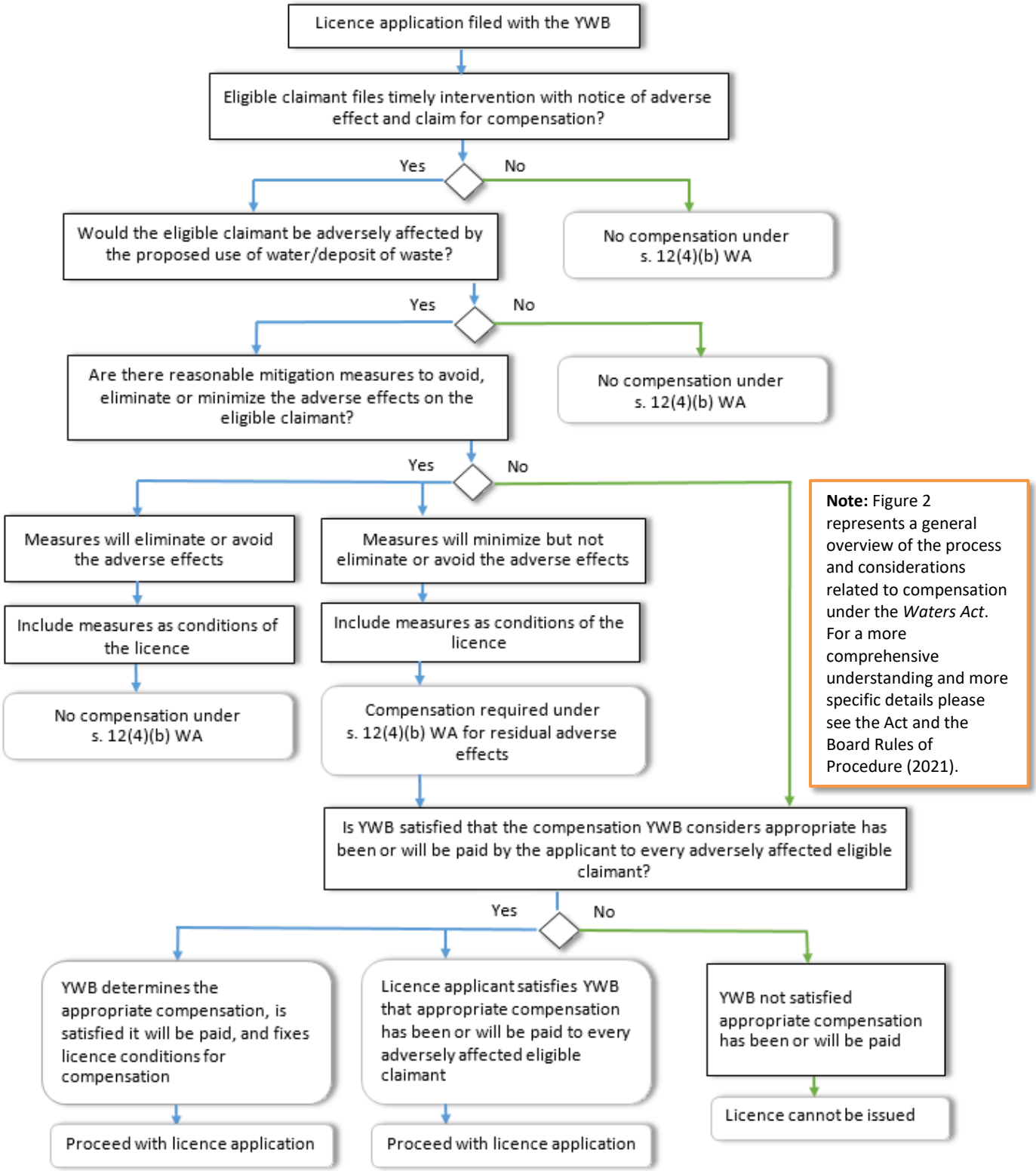
2.2 Compensation under s. 12(4)(b) of the *Waters Act*

The compensation regime under s. 12(4)(b) of the Act is set out below in Figure 2.

Subsection 12(4)(b) of the Act sets out a list of potential compensation claimants, including:

- licensees and applicants to whom s. 12(4)(a) does not apply
- certain unlicenced water users
- authorized waste depositors
- owners or occupiers of property
- outfitting and trapline concession holders, and holders of rights of a similar nature.

Figure 2 – Compensation under s.12(4)(b) *Waters Act* (WA)



These guidelines refer to the persons listed in s. 12(4)(b) collectively as “potential eligible claimants”.

Subsection 21(1) of the Act requires the Board to publish a notice of each licence application. The notice specifies the timeframe for persons to submit comments in writing regarding the proposed use of waters. Where a potential eligible claimant under s. 12(4)(b) considers they would be adversely affected by the proposed use, they may seek compensation under Act.

A potential eligible claimant intending to claim compensation under s. 12(4)(b) must submit a request for compensation in writing to the Board within the period specified in the published notice for submitting comments. A claim for compensation under s. 12(4)(b) submitted after the period for submitting comments has expired will not be considered by the Board.

A request for compensation under s. 12(4)(b) must include particulars of the adverse effects. In describing the effects, the claimant should address, where applicable:

- provable loss or damage;
- potential loss or damage;
- the extent and duration of the adverse effect, including the incremental adverse effect;
- the extent of the claimant’s use of water;
- the magnitude and duration of any nuisance, inconvenience, or noise; and,
- any other particulars relevant to understanding the adverse effects.

When setting the conditions of a licence, s. 13(2) of the Act requires the Board to make all reasonable efforts to minimize the adverse effects from issuing the licence. A claimant requesting compensation under s. 12(4)(b) should identify any reasonable mitigation measures that, in their opinion, would avoid, eliminate or minimize the adverse effects.

When considering an application, if the Board identifies reasonable measures that will avoid or eliminate the adverse effects, those measures will be incorporated into the conditions of the licence and no compensation will be required. If the measures identified and fixed as conditions of a licence will minimize but not fully avoid or eliminate adverse effects, the Board will determine appropriate compensation to be paid by the applicant for the residual adverse effects.

Part 3 – Compensation under Chapter 14 of Yukon First Nation Final Agreements

As noted above in Part 1, eleven of the fourteen Yukon First Nations have entered into Final Agreements with the governments of Canada and Yukon. Chapter 14 of these agreements provide Yukon First Nations and Yukon First Nation people with certain water related rights that are recognized and protected under s. 35 of the *Constitution Act, 1982*.

3.1 Yukon First Nation Final Agreements

Section 14.8.1 of each Final Agreement is worded identically and provides,

> *…a Yukon First Nation has the right to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quantity, quality and rate of low, including seasonal rate of flow.*

The right in 14.8.1 is subject to the rights of water users authorized in accordance with Chapter 14 and laws of general application, including the Act.

The compensation regime under Chapter 14 that applies during the water licence application process is set out below in Figure 3.

Chapter 14 provides in 14.8.5 and 14.12.4, if the Board grants a licence that interferes with a Yukon First Nation's right under 14.8.1 to have water remain substantially unaltered as to quantity, quality and rate of flow, the Board must order the licensee to pay the First Nation compensation for provable loss or damage to the First Nation, and for certain losses or damages suffered by persons enrolled under that First Nation's Final Agreement.

When the Board receives a water licence application it notifies the affected Yukon First Nation(s) in writing. The notice will advise the First Nation how to obtain a copy of the licence application and may contain other information about the application or the proposed use of water. The notice will also invite the First Nation to submit comments to the Board on the licence application, including comments relating to:

- effects of the proposed water use on the First Nation and Yukon First Nation people enrolled under that First Nation's Final Agreement;
- effects of the proposed water use on fish, wildlife and their habitats;
- reasonable mitigation measures to avoid adverse effects;
- alternatives that could reasonably satisfy the requirements of the licence applicant; and,
- compensation under Chapter 14 for provable loss or damage.

In deciding whether to grant a licence that would cause a substantial alteration in quantity, quality or rate of flow, the Board must consider:

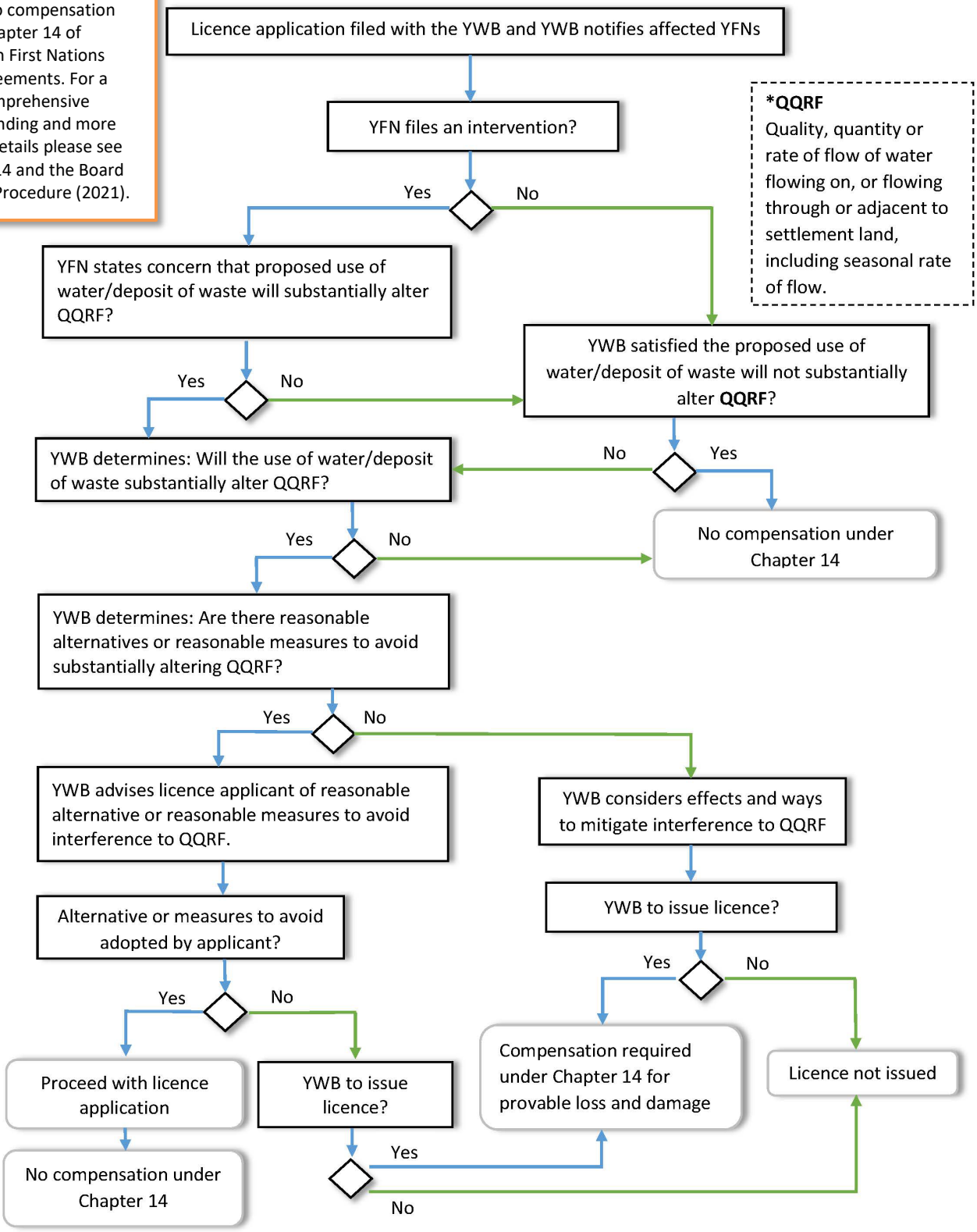
- effects of the water use on fish, wildlife and their habitats;
- effects of the water use on the Yukon First Nation and persons enrolled under that First Nation's Final Agreement; and
- means of mitigating the interference.

If granting a licence for the proposed use of waters would cause a substantial alteration to quantity, quality or rate of flow that would adversely affect a traditional use by a Yukon First Nation person in that person's traditional territory, the Board must, on request of the affected Yukon First Nation, consider

- whether there is an alternative that would reasonably satisfy the licence applicant's requirements while avoiding the adverse effect on traditional use; and
- whether there are reasonable measures for the applicant to avoid, eliminate or minimize the adverse effect.

Note: Figure 3 represents a general overview of the process and considerations related to compensation under Chapter 14 of the Yukon First Nations Final Agreements. For a more comprehensive understanding and more specific details please see Chapter 14 and the Board Rules of Procedure (2021).

Figure 3 – Compensation under Chapter 14 of Yukon First Nations (YFN) Final Agreements



If the Board decides to grant a licence that will cause a substantial alteration to the quantity, quality or rate of flow of water on, flowing through, or adjacent to settlement land, the Board will order the licensee to pay compensation for provable loss or damage to the affected First Nation.

The amount and terms of compensation for provable loss and damage will be determined in accordance with the provisions of Chapter 14. In the context of a licence application, 14.12.4 provides that the compensation payable to a First Nation may also include provable loss or damage suffered by persons enrolled under the affected First Nation's Final Agreement.

In determining the amount and terms of compensation to be paid to a Yukon First Nation under Chapter 14 the Board is required to consider several factors, including:

- the effect of the water use on the First Nation's use of water on or adjacent to its settlement land;
- the effect of the water use on the First Nation's settlement land, taking into account any cultural or special value of the land to the First Nation;
- the nuisance, inconvenience and noise caused by the water use to the First Nation on settlement land;
- the increment of the water alteration caused by the water use;
- the cost of mitigation and restoration of settlement land;
- the duration of any of the above; and
- any factors set out in the Act.

In determining the compensation payable to a Yukon First Nation for loss or damage suffered by a person enrolled under that First Nation's Final Agreement, the Board will consider:

- the effect of the water use on the person's use of water on or adjacent to the First Nation's settlement land;
- the effect of the water use on fish and wildlife harvesting by the person;
- the increment of the water alteration caused by the water use;
- the duration of any of the above; and
- any factors set out in the Act.

The Board may order periodic or lump sum compensation, or both.

A Yukon First Nation or licensee may apply to the Board to request a compensation order be amended to take into account changing circumstances.

The Board may request additional information from the First Nation, including information regarding provable loss or damage, to take into account alternatives or mitigation measures adopted by the applicant or proposed to be included as licence conditions.

C.4. Sediment and Erosion Control Plan Guidelines

Yukon Water Board

Office des eaux du Yukon

SEDIMENT AND EROSION CONTROL PLAN GUIDELINES

July 2018 v.2

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1. Purpose and Objectives

The purpose of these guidelines is to assist applicants in preparing a Sediment and Erosion Control Plan (Plan) that meets the requirements and expectations for plans submitted in accordance with the Water Licensing process. The specific information requirements presented in these guidelines are not intended to serve as fixed standards for licensing. Rather, they are intended to set out minimum information to be submitted in support of water licence applications for projects that have the potential to introduce or disturb sediment in watercourses.

Instream works such as bridge and culvert replacements and diversions can result in the release of sediment into watercourses. This sediment can be harmful to fish and other aquatic organisms as well as to fish habitat. A range of mitigation activities and project management strategies are available to manage sediment release and protect water quality.

A Sediment and Erosion Control Plan describing mitigation activities must be included as part of a water licence application submitted for projects involving instream works. Note that this guideline does not apply to placer undertakings as those projects are subject to limits set out in the *Fish Habitat Management System for Yukon Placer Mining*.

The objectives of the Sediment and Erosion Control Plan are:

- To outline measures that will ensure releases of sediment to the watercourse are prevented or minimized,
- To identify remedial actions that will be taken should turbidity concentrations approach or exceed the adaptive management level threshold concentrations, and,
- To outline a water sampling program that will ensure sediment control strategies are effective in maintaining suspended sediment levels below the authorized concentrations and also for timely adaptive management to prevent environmental harm.

2. Water Quality Limits

The Board will include water quality limits for turbidity and total suspended solids (TSS) in most water licences authorizing instream works. The limits are based on the Canadian Council of Ministers of the Environment (CCME) Canadian Water Quality Guidelines for the Protection of Aquatic Life. Turbidity concentrations are used as an adaptive management level threshold which triggers the implementation of additional mitigation strategies. Licensees will be expected to monitor turbidity levels during all instream works to ensure that sediment control measures are effective.

Total suspended solids concentrations are the compliance level threshold, and TSS concentrations are to remain below the compliance level at all times. It should be noted that while turbidity measurements can be used to estimate total suspended solids, it is only an

estimate. To ensure that TSS concentrations are below the compliance level Licensees may choose to collect TSS samples in addition to monitoring turbidity levels.

These water quality limits will be applied in licences unless the applicant can provide evidence that different standards would be protective of the receiving environment.

Turbidity and TSS water quality limits in a licence will usually apply to any instream works associated with the project. This includes all works during construction and any long-term maintenance authorized by the licence. These guidelines apply to instream works lasting 30 days or less. Please contact the Yukon Water Board Secretariat to discuss projects with instream works lasting more than 30 days.

3. Plan Requirements

The purpose of the Sediment and Erosion Control Plan is to describe the site specific operational procedures and best management practices that will be applied to the project which minimize the potential release of sediment to watercourses. The detail required in the plan will vary in accordance with the scope and scale of activities proposed in the application. The Sediment and Erosion Control Plan may be presented as part of the main application, and is not required to be drafted as a standalone document. The Plan must include, at a minimum, the following information:

1. Introduction
    - An overview of the project description, scope of work, project schedule and the areas where sedimentation/erosion may be a concern
    - A summary of the objectives of the Plan.
    - A summary of any timing windows that may restrict the scheduling of instream works.
    - A site plan indicating:
        - the location of instream works and infrastructure to be removed/installed
        - the locations where erosion and sediment control mitigation features will be installed
        - water diversions (if applicable)
        - areas of dewatering (if applicable)
        - on-site settling features
        - proposed upstream and downstream monitoring locations

2. Erosion and Sediment Sources

- Identify all areas where erosion or sedimentation may be a concern, a characterization of materials, a discussion of if the areas can be avoided, and the level of concern associated with each area.

3. Erosion and Sediment Control Measures

- Provide a detailed description of the methods of sedimentation and erosion prevention, the controls that will be used, the specific situations that they will be used in, and the implementation procedures that will be followed. Applicants are encouraged to implement best management practices for sediment and erosion control.

4. Monitoring Strategies

- Provide details of the proposed monitoring program, including:
  - who will be responsible for implementing the monitoring program
  - the proposed frequency, method and duration of sampling at upstream and downstream locations. Sampling will generally be required every hour for instream works of less than 24 hours, and daily sampling during instream works of between 24 hours and 30 days. Applicants are requested to contact the Yukon Water Board Secretariat to discuss projects where instream works will last more than 30 days.
  - parameters to be tested (generally turbidity and TSS).
  - a commitment to follow CCME Water Quality Guidelines or proposed alternative water quality limits with rationale and supporting evidence.

4. References and Links

Canadian Council of Ministers of the Environment. 1999. Canadian environmental quality guidelines. Turbidity, clarity and suspended solids factsheet. Canadian Council of Ministers of the Environment, Winnipeg. http://ceqg-rcqe.ccme.ca/download/en/217

Approved: Board Approved Date: July 2018

C.5. Laboratory Data Submission Standards for Water Quality

Laboratory Data Submission Standards for Water Quality

Yukon Water Board
Water Resources
Compliance Monitoring and Inspections



Yukon Water Board

ENERGY, MINES & RESOURCES
Yukon
COMPLIANCE MONITORING & INSPECTIONS

Yukon
Environment

Introduction

The Yukon Water Board, Water Resources and Compliance Monitoring and Inspections developed the following standards to ensure Water Quality data submissions are complete and accurate. Doing so will enable all current and future users' access to data. The Yukon Water Board requires submission of water quality data as stated in some licenses both in hard copy and in digital format.

Laboratory Submission Standards

All the required water quality data that is submitted digitally under a water licence needs to include copies of the original laboratory report as well as the data presented in the 'Yukon EQWin' framework. Submissions must include:

- Laboratory data uploaded electronically to Waterline in the 'Yukon EQWin' framework, in one of the following formats (.csv, .xls, or .xlsx)
- Metadata fields must be recorded on the chain-of-custody (COC) form in order to provide the laboratory with adequate information to meet the requirements of the 'Yukon EQWin' framework. Required metadata information is:
  - Sample Date
  - Sample Time
  - Station Code
  - Sample Class

  "LP": Sample taken by licensee as required by licence
  "LM": Sample taken by licensee for other monitoring purposes
  "LS": Sample taken by licensee in response to spill or unplanned discharge
  "LQS": QA/QC split or duplicate sample taken by licensee
  "LQR": QA/QC replicate sample taken by licensee
  "LQFB": QA/QC field blank sample taken by licensee
  "LQTB": QA/QC trip blank sample taken by licensee
- Field data (in-situ) data submitted in one of the following formats (.csv, .xls, or .xlsx).

Reporting Using Yukon EQWin Framework

We have worked with a number of laboratories to ensure that the 'Yukon EQWin' framework is available when requested. Licensees may request the format from laboratories by speaking with their laboratory account manager and/or by requesting the 'Yukon EQWin' format on the COC form. The following laboratories will produce a file that meets these standards:

- AGAT Laboratories
- ALS Environmental
- BV Labs
- CARO Analytical Services
- ELEMENT

If you want to work with laboratories not on this list, contact the Water Information Specialist at Water Resources Branch, Yukon Environment or the Manager, Environmental Monitoring, at Compliance Monitoring and Inspection, Energy Mines and Resources (CMI).

Data which have been authorized to have analysis performed by internal laboratories do not require use of the 'Yukon EQWin' framework. However, such data must be clearly identified as originating from an internal laboratory.

For assistance, please contact:

Water Information Specialist, Environment Yukon	867-667-3411
water.resources@gov.yk.ca	
Manager, Environmental Monitoring, CMI	867-667-3211
mark.nowosad@gov.yk.ca	
Data Management Specialist, Yukon Water Board	867-456-3801
ywb@yukonwaterboard.ca	

Appendix D. Board Policies

D.1. Ministerial Policy Direction – Security for Type A and Type B Water Licences involving Type II Mines

POLICY DIRECTION RESPECTING SECURITY FOR TYPE A AND TYPE BE WATER LICENCES INVOLVING TYPE II MINES

Pursuant to subsection 11(1) of the *Waters Act* (the *'Act'*), the Minister responsible for the Executive Council Office, as the Minister responsible for the issuance of policy directions under the *Act* pursuant to Order in Council 2003/275, gives the following policy direction to the Yukon Water Board (the 'Board').

1. If

   (a) a court of competent jurisdiction has exercised its authority in overseeing and authorizing the sale of the assets of a type II site (the 'site'), as defined in the Yukon Northern Affairs Program Devolution Transfer Agreement, made between the Government of Canada and the Government of Yukon, dated October 29, 2001; and

   (b) the purchaser of the assets (the 'purchaser'), as a condition of the sale referred to in paragraph (a), has entered into an agreement with the Government of Canada or the Government of Canada and the Government of Yukon setting out, amongst other things,
      (i) responsibility for environmental liabilities at the site that have arisen as a result of past mining activities at the site (the 'historic liabilities'), and
      (ii) financial arrangements concerning care and maintenance and remediation of these historic liabilities,

   then, in exercising its discretion under subsection 15(1) of the *Act* respecting security in relation to an application for a type A or B licence made by the purchaser or an assignment to the purchaser of a type A or B licence, the Board shall take into account the extent to which the purchaser or assignee is to assume responsibility for the historic liabilities as per the agreement referred to in paragraph (b) and determine security in relation to that level of responsibility such that the Government of Canada, or the Government of Canada and the Government of Yukon, as the case may be, is not required to both furnish and maintain security, directly or indirectly as a result of an obligation placed on the purchaser to furnish and maintain security, and assume the costs associated with care and maintenance or remediation of the historic liabilities.

2. This direction shall apply to the issuance, amendment and renewal of a license related to an undertaking at a type II site.

3. The date this policy direction is effective, the policy direction issued on April 11, 2006, entitled *Reclamation Security – Type II Sites Policy Direction*, is revoked.

This policy direction is effective as of the 6 day of June, 2019

Sandy Silver, Minister, Executive Council Office

D.2. Placer Mining Wetland Reclamation Plan Approval Post-Licensing

Yukon Water Board | *Office des eaux du Yukon*

Policy Title:	Placer Mining Reclamation Plan Approval Post-Licencing
Policy Number:	2020.06.01
Effective Date:	February 14, 2020
Relevant Documents:	Information Bulletin – Placer Mining Reclamation Plan Approvals, April 2020.

Placer Mining Wetland Reclamation Plan Approval Post-Licencing

1 Purpose & Scope

The purpose of this policy is to clarify that the Chief of Placer Mining Land Use (Chief) is responsible for the review and approval of wetland reclamation plans for placer Mining Land Use Approvals post-licensing. This policy applies to all Class 4 placer mining undertaking applications. The Board made the decision at the February 12-14 meeting that *"if a DD term states that the proponent submit a wetland protection and reclamation plan to the Chief prior to mining in wetlands, the Board will include this DD term in the Mining Land Use Approval (MLUA) if the operating plan is approved and the MLUA is issued* (Board Minutes, February 12, 2020, 4.1.1).

2 Context

The Board is delegated certain functions as the Chief under the *Placer Mining Act* (PMA). These functions include the issuance, amendment and renewal of Mining Land Use Approvals (MLUA) for Class 4 placer mining operations as set out in the *Placer Mining Land Use Regulations*. Class 4 operations require a water licence under the *Waters Act*.

The Board reviews Class 4 placer operating plan applications in coordination with the water licence applications. Recent placer undertaking YESAA Decision Document terms require operators to submit wetland reclamation plans to the Chief for review and approval prior to mining in wetlands or wetland areas. In these cases, the Board does not have the ability to review and approve these reclamation plans over the course of the Mining Land Use Approval because the Board does not have the authority of the Chief in the post-Approval period. Government of Yukon (YG) retains the functions of Chief post-Approval.

3 Policy statement

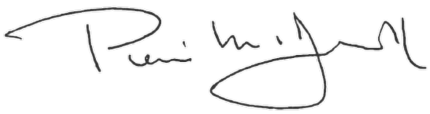
Review and approval of wetland reclamation plans for Class 4 placer mining land use will occur after the MLUA is issued.

4 Approach

1. The Board will continue to issue, amend and renew MLUAs for Class 4 placer undertakings as Chief.
2. MLUA terms and conditions will require operators to submit to the Chief a wetland reclamation plan, for review and approval, prior to undertaking any work in wetlands or wetland areas.
3. The Chief (YG) will determine the form and content of the reclamation plan.

4. The Board will use relevant language from the Decision Document as terms or conditions in the MLUA, if and when the Board approves the operating plan and issues the MLUA.
5. Licensees will be required to submit a copy of the wetland reclamation plan to the Board by uploading it to WATERLINE once the Chief approves it post-Approval.
6. Licensees are required to seek an amendment to their water licence if their approved wetland reclamation plans contemplate the use of water or the deposit of waste to water that current water licences do not permit.

5 Approval



Digitally signed by Pier McDonald

Chair, Yukon Water Board

June 1, 2020

Appendix E. Board Procedures

E.1. Yukon Water Board Review and Approval Process

Yukon Water Board "Review and Approval" Process

The following steps describe the Board's "review and approval" process from Part 22 of the Rules of Procedure.

STEP 1: DOCUMENT SUBMISSION

- The Licensee submits a document and confirms that the Secretariat receives it.

STEP 2: ADMINISTRATIVE AND TECHNICAL REVIEW

- The Secretariat reviews the document to determine if it satisfies the licence conditions, checks for changes and confirms that it is:
  - Clear, accurate and contains all the information required by the licence conditions.
  - Within the scope of the YESAA Decision Document for that licence's application.

STEP 3: BOARD REVIEW

- The Secretariat staff present the document to the Board for it to decide whether to seek public input for the review or proceed to Step 5, in accordance with the Rules of Procedure.
- The Board decides if it will seek input from the wider public or only interveners on the licence's application.

STEP 4 (Optional): PUBLIC NOTICE AND RESPONSE TO COMMENTS

- The Secretariat seeks public input in accordance with the Board's decision in Step 3 by providing notice and in following the Rules of Procedure.
- The Secretariat determines the timeline by which the Licensee can respond to interventions.

STEP 5: BOARD OPTIONS

- The Board reviews the document, interventions and Licensee responses. Prior to proceeding to step 6, the Board may:
  - Seek information or clarifications from the Licensee.
  - Require the Licensee to make changes to the document and specify the date by which to make the changes.
  - Hold a public hearing under section 19(1) of the Waters Act.

STEP 6: OUTCOMES

- The Board may:
  A. **Approve** the document, as submitted. The document forms part of the licence and the Board issues Reasons for Decision.
  B. **Not approve** the document, issuing Reasons for Decision to the Licensee.
  C. Determine that the Licensee requires an **amendment** to the licence that the document relates. The Board informs the licensee to submit an application to amend the licence.

Record of Revisions

#	Revision Description	Section	Date Revised	Approval Date
1	New Document	All	N/A	April 26, 2021
2	Add reference to Dec. 18, 2023 update to MOU	1.6.1 Governance Memorandum of Understanding	March 2025	
3	Update Chapter 14 flow chart and add	Appendix C.3 Compensation Guidelines	March 2025	
4	Add reference to compensation guidelines on all 3 flow charts.	Appendix C.3 Compensation Guidelines	March 2025	
4	Revise PDF bookmarks	All	March 2025	
5	Added *Consultant Deliverable* section	3.3.11 (moved *Board Deliberation* section to 3.3.12 and *Licensing Decisions* section to 3.3.13)	October 2025	
6	Added information on notice of application to Yukon First Nations	3.3.5 Notice of Application	October 2025	