



December 14, 2020

Yukon Water Board
Suite 106, 419 Range Road
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Submitted via email:

- ywb@yukonwaterboard.ca

Attn: Piers MacDonald, Chair

Re: Water Licence PM20-018 Wetlands, Yukon Water Board

Introduction

Thank you for the opportunity to submit these written comments on how to manage the issue of placer mining in wetlands.

YCS appreciated the opportunity to present at the Public Hearings and was pleased to answer the questions in the Information Request PM20-018-5.1.2

The information request questions were about how best to proceed with a project; none of the questions addressed what the triggers for DENIAL of a permit or licence should be. When addressing the question of 'How much is too much' in the discipline of Cumulative Effects, a threshold approach is typically taken.

In these comments, therefore, we shall explore how the much less tangible question of deciding if a project should be allowed to proceed may be answered - ultimately this is the truly fundamental question for YWB.

Comments/Discussion

Making the decision to permit, or prevent, mining in wetlands requires consideration of, among other things, *context* and *scale*.



Context

In its presentation, the KPMA presented a risk matrix. A risk matrix by its nature does not have a defined 'No further' point, rather it advocates more and more stringent mitigations as the potential damage increases, but there is no defined point at which a project becomes unacceptable. This approach works well for industry, and risk matrices are consequently popular with industry and governments interested in promoting economic growth.

YCS recommends that the YWB avoid the pitfalls of a Risk approach and adopt the Precautionary Principle in its decision-making processes. YCS takes this position given there are still too many unknowns where disturbance and remediation of wetlands are concerned. Indeed, the KPMA appears to be concerned that addressing these unknowns will be excessively burdensome.

The Precautionary Principle¹ posits that if the environment is at risk through an action, and we do not know everything needed to avoid that risk, we should avoid the action. A risk-based approach, on the other hand, requires a direct link between an action (e.g. disturbance) and a risk, otherwise, no action is required.

An example is Canada's Single Use Plastic Ban; it is a precautionary action to avoid harm to the environment and human health despite the lack of evidence of a cause-and-effect relationship between the action and the harm. The risk matrix proposed by KPMA requires proof of a direct link between taking action and a harm, i.e. if an action cannot be shown to cause harm, it should be permitted.

In sum, a Risk based approach is more about 'How' than it is about 'If' - or, 'whether' a project is acceptable.

Another issue that the YWB has to grapple with is that the current mining regime assumes that mining is beneficial. Pretty much all mines are approved. It is very possible that the Mineral Development Strategy will challenge this assumption; the YWB will find it easier then to follow suit. Mining is good if its benefits outweigh its costs. The balance of this equation is not clear in the ancient wetlands of the Indian River.

The Indian River valley has considerable importance to many people, in particular to the Tr'ondëk Hwëch'in. As I alluded to in my presentation, it has a place in my heart as well.

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https://en.wikipedia.org/wiki/Precautionary_principle#Internal_inconsistency:_applying_strong_PP_risks_causing_harm



I cannot, of course, speak to how the original inhabitants of the land feel when they see the transformation of the Indian River Valley, but I can attest to the solastalgia that washes over me when I visit. This loss of heritage is very real, even if it is intangible.

The context for the YWB also includes how land use decisions have historically overridden local concerns in favour of industry interests. The YWB itself has had its authority challenged and decisions questioned or even reversed by government, working with industry.

It is the opinion of YCS that it is time for the pendulum to swing the other way, to a more moderate position where projects can just as readily be rejected as they are approved.

Scale

Canada has committed to conserving representative of 25% of its land by 2025, 30% by 2030², and numerous scientific papers³ have indicated that at a minimum 50% of the earth must be left in a natural state if we want ecosystem processes to persist, life as we know it on earth to continue, and for our rich and vibrant society to persist.

Of course, protecting 50% or more of any particular ecosystem is not, on its own, adequate to achieve the goals behind notion of setting aside 50% of Canada for conservation, some ecosystems have an outsized importance compared to others, some ecosystems are more sensitive than others. In addition, land processes adjacent to wetlands will impact wetlands function and form. Frustrated miners regularly point out how relatively small their footprints are. Taken from the perspective of the Yukon as a whole, or from that of an ecoregion, or even a watershed, the footprint of a placer mine is small, and even the aggregate footprint of multiple mines is small. However, this footprint is concentrated within a particular ecosystem (wetlands) that supports much more biodiversity compared to its size than does the area around it.

Wetlands are of such great importance that they should be left, for the most part, undisturbed, particularly wetland types that cannot be restored following a disturbance.

So, while it is important that 50% or more of an ecoregion be conserved, it is also important that enough of a watershed be conserved so that its ecological processes can continue.

² https://naturecanada.ca/wp-content/uploads/2019/12/Minister-of-Environment-and-Climate-Change-Mandate-Letter-_Prime-Minister-of-Canada-1.pdf

³ <https://www.nature.com/articles/nature24144>



Conclusion

Perhaps counterintuitively, having the assurance that licence applications can be denied can provide more certainty to industry. Additionally, First Nations, Communities and other social and environmental organizations will be better able to suggest and improve on impact mitigations, if they are secure in the knowledge that the possibility of a veto exists.

Contrariwise, the absence of the knowledge that beyond a certain point, projects will be rejected means that industry will propose projects that have unacceptable effects, resulting in long drawn out delays, such as the one that triggered this Hearing in the Public Interest.

In the tradition of innovation and farsightedness that has characterized the Yukon, especially since the modern treaties brought self-government to Yukon First Nations, and following the precedents set in many high court cases^{4 5}, **YCS recommends that the YWB take a generous view of how its mandate to protect waters fits into Canada's present and future obligations to protect land, and ensure that almost all wetlands be left undisturbed.**

It is the hope of YCS that these comments will be useful to the YWB as it strives to address the challenging problem of reconciling the protection of the Yukon's water while allowing for the continuation of potentially harmful practices.

Respectfully submitted,
For YCS,

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⁵ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16890/index.do>