



Sahtu Land and Water Board

Staff Report

Division: Land / Water Program	Report No. 03
Date Prepared: February 20, 2009	File No. S03A-008 / S03L1-016
Meeting Date: March 31, 2009	
Subject: Request for Extension of a Type A Land Use Permit and renewal of a Type B Water Licence submitted by Apache Canada Ltd.	

1. Purpose/Report Summary

To consider the extension of a Type A Land Use Permit and renewal of a Type B Water Licence submitted by Apache Canada Ltd. for oil and gas exploration located in private Sahtu Settlement Lands (Subsurface rights – M16, M17 and M-20) located south of the Community of Colville Lake, SSE of Lac Belot, and north of Tunago Lake.

2. Background

2.1 Project Overview

In a letter dated November 18, 2008 and received by the Sahtu Land and Water Board on December 17, 2008, Apache Canada Ltd. (ACL) requested a two year extension of Type A Land Use Permit S03A-008 and a two year renewal of Type B Water Licence S03L1-016.

Both the WL S03L1-016 and the LUP S03A-008 expired on December 12, 2008. In the renewal and extension request ACL provided copies of NEB Operating Licence 1039. Since the program drilling occurs wholly within Sahtu Settlement Lands with subsurface rights, there is no requirement for an exploration licence. The *Cooperation, Benefits and Access Agreement* is still in effect (pleases see Section 3.1 of this staff report).

Apache Canada Ltd. planned to drill three exploratory wells, West Nogha K-14, Nogha B-23, and North Tunago E-44, located between 54 km and 73 km south of Colville Lake. Of the three proposed wells, B-23 and K-14 were drilled during the 2003-2004 winter season. Well E-44 was not drilled although the lease was constructed, the conductor hole was drilled and the remote sump was excavated. The sump was backfilled and the conductor-hole pipe was capped and remains on site. The Nogha drilling program was proposed by Apache to assess the hydrocarbon potential on Sahtu Land Blocks M-16, M-17, and M-20 (subsurface rights). The drilling program included the construction of three well sites, three sumps, one campsite and approximately 131 km of access using existing cut lines.

In a staff report presented on December 9, 2003, the SLWB staff recommended the use of Distillate 822 drilling fluid for the Nogha/Tunago Lake drilling program. Historically, the SLWB has not allowed the use of hydrocarbon based drilling fluids to be used in oil

drilling programs in the Sahtu region. The rationale for the non-use of hydrocarbon based fluids is a tolerance of not greater than 0.01 % of hydrocarbons by weight is allowed in the sumps. Apache shipped the Distillate 822 drilling mud out of the NWT to a receiving facility in Alberta.

The access route was cleared to 10 m wide to allow for the movement of heavy equipment and rig components. It was estimated that approximately 100 m³ of water would be required per kilometer of access. This estimate was inadequate and ACL over withdrew from their authorized sources and used unauthorized sources for additional water (SLWB letter dated May 19, 2004, DFO letter dated June 14, 2004, INAC letter dated June 30, 2004).

In a letter dated December 17, 2003, the SLWB Executive Director informed ACL they were in violation of Water Licences S03L1-007 and S03L1-008 as they were purchasing water from the Charter Community of Fort Good Hope and this had not been included in the application and the SLWB had not received a request for a modification or an amendment.

Well sites K-14 and B-23 were inspected by the INAC Inspector on January 26, 2004. The sites were still under construction but were generally found to be satisfactory although the fuel sloop located at the temporary camp did not meet with the Inspector's approval and there was no spill kit on site. At this time the Inspector also approved a new water source for access and lease construction. No information as to location of the new water source or bathymetrics was provided on the inspection report.

On March 9, 2004, the Inspector was again on site at K-14 and B-23. At this time invert waste was dumped into the gel-chem sump (invert waste was later identified as Distillate 822) and a petroleum spill was identified near the invert waste tank. Additionally, the fuel tanks, while double walled, were not in a lined berm as per regulatory requirements. In a letter to ACL dated March 16, 2004, the Inspector outlined the violations found on March 9th and included the lack of reporting to the NWT Spill Hotline for the invert wastes and the petroleum spill. The inspector also authorized a temporary camp for the K-14 lease.

The SLWB received a letter on March 25, 2004, on behalf of ACL stating that the invert wastes in the B-23 drilling sump would be excavated and removed to Norman Wells to await transport to a receiving facility in Alberta.

On March 30, 2004, the Inspector approved a LUP extensions past "break up" (March 31) with reoccurring approval to happen every 24 hours as needed.

Shortly thereafter (April 6, 2004), the Inspector was on site again and provided an inspection report which acknowledged rig demobilization and also pointed out a petroleum spill located around the wellhead. The Inspector was assured the spill would be cleaned up. At present there is an "open" spill report for B-23 consisting of 3000 litres of diesel fuel. It is possible the spill has been cleaned up but at this time there is no documentation outlining a cleanup. INAC Inspectors will be doing an inspection this summer (2009).

April 14, 2004, the Inspector acknowledged rig demobilization and access decommissioning for K-14 and B-23. On April 23, 2004, the SLWB Hydrologist received confirmation that invert wastes in the B-23 sump was Distillate 822.

On May 19, 2004, the SLWB provided ACL with a letter outlining Water Licence violations for the past drilling season. This was followed up by a letter from INAC-Norman Wells (June 20, 2004) and DFO (June 14, 2004).

At the beginning of the 2004-2005 drilling season there were a number of requests for the drilling season. On Jan. 19, 2005, the SLWB granted ACL the ability to withdraw additional water volumes from authorized sources but stated it was a onetime only allocation. On Feb. 1, 2005, the INAC inspector received a request for an alternate access route to the B-23 well site. Inspector granted permission on Feb. 7, 2005. The permission was revoked by the SLWB on Feb. 15, 2005 as the Inspector did not have the authority to grant another company the ability to change the access route even if they are partners with ACL (company requesting access route change was Paramount Resources Ltd. – which holds a 50% interest in the Nogha/Tunago Lake Drilling Program but is not named in the WL or the LUP).

On Feb. 14, 2005, Paramount reported spill 05-077 (K-14 – 200 L diesel fuel) to the NWT Spill Hotline. On March 10, 2005, the Inspector identified this spill as still being open under NEB and stated the spill would be inspected during the summer site inspection and at that time, would be closed or recommended for further remediation. As of January 29, 2009, the spill is listed as “open” under the NEB.

During a site inspection of B-23 and K-14 (July 26, 2005), the inspector noted that any topsoil stripped from excavating sumps, on both sites, was not replaced when sumps were capped. As a result, there was little if any vegetative growth. Additionally, on K-14, there was plastic matting left from the drilling season and there was evidence of a number of small spills to the south of the well-head; the Inspector requested remediation plans for the site.

A fly-by was done on June 10, 2008 by the SLWB Geographer and the INAC Inspectors. The following was observed: K-14 sumps were slumping badly with pooling water present, B-23 well site showed pooling water and there appeared to be a mineral lick near the well-head.

In an email dated September 30, 2008, ACL (Ken Brink) contacted the SLWB Geographer and requested information on how to “protect” their interests in the Nogha/Tunago Lake Drilling Program. The SLWB Geographer advised ACL to apply for a Significant Discovery Licence from INAC.

In general, it appears as if ACL has reporting issues. In the past ACL has had issues with Water Licence violation, spill reporting and follow-up on commitments. An example of lack of follow-up was illustrated in the 2008 Summer Site Inspection Report. In 2005, plastic rig matting was identified as being left behind in order to be used in that summer's work. The plastic rig matting is still on site at K-14, three years after it was to be removed.

2.2 Process Requirements

Land Use Permit S03A-008 expired on December 12, 2008. The *Mackenzie Valley Land Use Regulations* (MVLUR) say that on receipt of a written request from a Permittee, prior to the expiration of the Permit, for an extension, the Board may extend the term of the Permit for an additional period not exceeding two years. No fees are required for an extension. If the extension is granted, the permit will be extended to December 12, 2010. Water Licence S03L1-016 also expired on December 12, 2008. The *NWT Waters Act* states that a Schedule III Water Licence application must be submitted to the Board

accompanied by a \$30.00 application fee. The Water Licence Renewal Application, with fee, was dated November 18, 2008 and received by the SLWB on December 17, 2008. A Water Licence can be renewed for a term not exceeding twenty-five years.

2.3 Attachments

- Map: ACL-Nogha/Tunago Lake: WL S03L1-016 Renewal and LUP S03A-008 Extension

3. Comments

3.1 Permission of Land Owner/Community Consultation/TEK

The access route uses the Fort Good Hope to Colville Lake winter road and then passes almost completely through Sahtu Settlement Lands to the south of the community of Colville Lake. Drilling takes place on Sahtu Private Land parcels M-16, M-17 and M-20 which are parcels with subsurface rights. In the original application Apache Canada Ltd. provided the SLWB with a *Cooperation, Benefits and Access Agreement* dated February 14, 2001. The agreement was signed by the K'asho Got'ine Lands Corporation Ltd. and its subsidiaries and Paramount Resources Ltd. (PRL). On August 21, 2003, ACL and PRL endorsed an Assignment and Novation Agreement giving ACL 50% interest in the program. The Assignment and Novation was ratified by the Behdzi Ahda First Nation, Ayoni Keh Lands Corporation, Yamoga Lands Corporation, Fort Good Hope Metis Nation Local #54 Land Corporation and the K'asho Got'ine Lands Corporation. The KGLC and ACL were approached on February 11, 2009 and asked to provide an expiry date for the agreement or a statement that the agreement is still in effect. The SLWB received confirmation on Feb. 13, 2009 from the KGLC, that the *Cooperation, Benefits and Access Agreement* is still in effect.

3.2 Community Consultation

Apache Canada Ltd. held community consultation meetings in Colville Lake, Fort Good Hope and Norman Wells and met once with representatives from Colville Lake in Calgary. The information gathered from these community consultations has not changed.

3.3 Traditional Environmental Knowledge

Traditional Environmental Consultations were held in the community of Fort Good Hope. No changes have been made to the Traditional Environmental Knowledge presented in Staff Report No.2 (dated December 8, 2003).

3.4 Potential Environmental Impacts and Mitigation Measures

Potential environmental impacts and mitigation measures have been addressed in the Preliminary Environmental Screening submitted before the board on December 9, 2003. There have been no changes in the expected impacts and mitigation measures.

3.5 Preliminary Environmental Screening

Section 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA) requires the SLWB to undertake a Preliminary Screening of any proposed development prior to the issuance of a Licence, Permit, or Authorization.

This permit extension and licence renewal do not require a Preliminary Screening under the terms of the MVRMA, Section 143 (1)(c), and the Exemption List Regulations, Schedule 1, Part 1, Section 2, due to the following points:

- This is an extension, not a new Permit, and
- The development is not to be modified, and
- The development has already fulfilled the requirements of the Preliminary Screening Process under the MVRMA.

3.6 Conformity with Land Use Plan

Section 47 of the MVRMA requires the Sahtu Land Use Planning Board (SLUPB) to determine whether an activity is in accordance with a land use plan where the activity is referred to the planning board by the body having authority to issue a Licence, Permit or other authorization in respect of the activity. The referral must be made before the issuance of any Licence, Permit or other authorization. A planning board shall transmit its decision to the agency or body that made a referral. A decision of a planning board about determination is final and binding.

On December 29, 2008, the SLWB mailed a extension/renewal review package to the Sahtu Land Use Planning Board. The Sahtu Land and Water Board has met their referral obligations to the Sahtu Land Use Planning Board as outlined in the *Mackenzie Valley Resource Management Act*. There has been no indication that the project does not conform to the land use plan, and there is no approved Land Use Plan for the affected area.

A Draft 1 - Land Use Plan was published on February 16, 2007. The project drilling sites are located wholly within Sahtu Private Land Parcels M-16, M-17 and M-20. Upon SLWB staff review of the Draft Land Use Plan of February 16, 2007, the drilling sites may be wholly located within the K'asho Got'ine Group Trapping Area although access from the community of Colville Lake crosses the Colville Lake Traditional Use Conservation Zone and the K'asho Got'ine Group Trapping Area, as mentioned in the Sahtu Land Claim.

3.7 Draft Permit/Draft Licence

A Draft Permit and Licence have been prepared with the extended expiry date.

3.8 Terms and Conditions

The Terms and Conditions for Land Use Permit S03A-008 and Water Licence S03L1-016 will remain the same.

4. Other Agency Comments

The extension request and licence renewal application were circulated to 27 organizations requesting a reply by February 13, 2009. To date 7 written responses have been received. The following organizations offered comments on the application:

Stanton Territorial Health Authority

In a fax letter dated January 19, 2009, the Stanton Territorial Health Authority outlined requests for testing should a camp be used in the future under the Land Use Permit and/or the Water Licence

- Weekly domestic bacterial samples, residual chlorine tests
- Solid waste incineration must follow ENR requirements
- Camp sewage must be adequately covered with soil or sand
- Sewage sumps must be covered and fenced

Sahtu Renewable Resources Board

In a fax letter dated January 26, 2009, the SRRB provided the following comments:

- The SRRB is satisfied that all requirements have been met, provided the subsequent conditions are followed:
 - Every effort will be made to avoid disturbing wildlife, especially caribou and muskoxen
 - If any bear dens are identified the following organizations will be contacted Fort Good Hope Renewal Resources Council, the Colville Lake Renewable Resources Council, GNWT-Environment and Natural Resources and the SRRB
 - No water withdrawal from lakes 2, 3, & and 10 although the SRRB will defer to DFO decision as final regarding lake usage
 - Distillate 822 used instead of salt-based drilling fluid
 - Local communities and users of the land are notified one week prior to program commencement
 - The use of trained Environmental Monitors hired locally with weekly reports provided to local renewable resource councils and the SRRB
 - Observation of speed limit on access roads and watching for wildlife
 - The use of native or uncontaminated seed for re-vegetation

National Energy Board

In an email letter dated January 27, 2009, the NEB had no comments regarding the extension/renewal.

Fisheries and Oceans

In an email letter dated January 28, 2009, DFO stated the project was unlikely to impact fish and fish habitat. Fisheries and Oceans did provide a Letter of Advice to Apache which has been included as an attachment.

Mackenzie Valley Land and Water Board

In a fax letter dated January 29, 2009, the Mackenzie Valley Land and Water Board provided the following comment:

- "It is decided that this operation is not 'likely to have an impact in more than one (1) settlement area, or in a settlement area and an area outside any settlement area', as per Part 4, Section 103(1)(a) of the *Mackenzie Valley Resource Management Act*".

Indian and Northern Affairs

In a fax letter dated February 13, 2009, Indian and Northern Affairs Canada - Water Resources Division stated INAC had no comments to offer at this time with regards to the water licence.

In an email letter dated February 13, 2009, INAC-Norman Wells provided the following comments:

- INAC would like to see the Water Licence renewed and the Land Use Permit extended as this may allow INAC to more vigorously pursue the clean up and mitigation of the Apache sites.
- INAC-Norman Wells requested a presence at the board meeting when WL S03L1-016 and LUP S03A-008 are being discussed.

4.1 Attachments

1. Fax letter dated January 19, 2009 from the Stanton Territorial Health Authority
2. Fax letter dated January 26, 2009 from the Sahtu Renewable Resources Board
3. Email letter dated January 27, 2009 from the National Energy Board
4. Email letter dated January 28, 2009 from Fisheries and Oceans
5. Fax letter dated January 29, 2009 from the MVLWB
6. Email letter dated February 12, 2008 from the SLUPB
7. Fax letter dated February 13, 2009 from INAC- Water Resources Division
8. Fax letter dated February 13, 2009 from INAC-Norman Wells

5. Conclusion

The information provided for extending the permit and renewal of the licence for the time period requested will not have any significant adverse environmental effects or cause significant public concern, and should be considered for approval

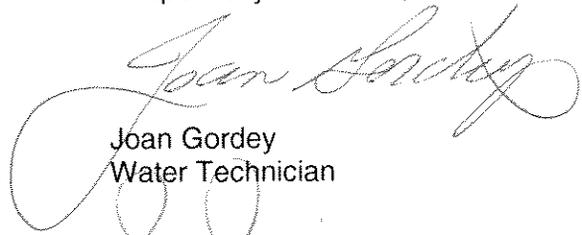
6. Recommendation

It is recommended that the Permit be extended and the Licence be renewed for a period of two years. The Terms and Conditions for Land Use Permit S03A-008 and Water Licence S03L1-016 will remain the same.

7. Reference Material Attached

- 7.1 Map: ACL-Nogha/Tunago Lake: WL S03L1-016 Renewal and LUP S03A-008 Extension
- 7.2 Fax letter dated January 19, 2009 from the Stanton Territorial Health Authority
- 7.3 Fax letter dated January 26, 2009 from the Sahtu Renewable Resources Board
- 7.4 Letter dated January 27, 2009 from the National Energy Board
- 7.5 Fax letter dated January 29, 2009 from the National Energy Board
- 7.6 Email letter dated January 28, 2009 from Fisheries and Oceans
- 7.7 Fax letter dated January 29, 2009 from the MVLWB
- 7.8 Email letter dated February 12, 2009 from the Sahtu Land Use Planning Board
- 7.9 Fax letter dated February 12, 2009 from INAC-Norman Wells
- 7.10 Fax letter dated February 13, 2009 from INAC-Water Resources: Yellowknife
- 7.11 Fax letter dated February 13, 2009 from INAC-Norman Wells

Respectfully submitted,



Joan Gordey
Water Technician



G.T. Govier
Executive Director

Executive Director Comments

Recommend to approve
extension & renewal