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## Reasons for Decision

Reference/File Number:	W2018L2-0002 & W2018L2-0003 (Type "B" Water Licences)
Licensee:	Nighthawk Gold Corporation
Subject:	Type B Water Licence Amendment

## Decision from the Wek'èezhìi Land and Water Board Meeting of June 18, 2020

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### 1.0 Decision

On June 18, 2020, the Wek'èezhìi Land and Water Board (the Board) considered Nighthawk Gold Corporation's (Nighthawk) Application to amend Water Licences W2018L2-0002 and W2018L2-0003. The Board has decided the following:

1. The proposed maximum water use of 299 m<sup>3</sup>/day between both Water Licences W2018L2-0002 and W2018L2-0003 is exempt from preliminary screening in accordance with the Exemption List Regulations of the MVRMA, Part 1, Schedule 1, section 2;
2. To amend Part D of Type B Water Licence W2018L2-0002 to replace Condition 1, with the following two conditions:
  - a. The Licensee may only withdraw up to a combined total of 299m<sup>3</sup> per day of Water for the Project, as defined in this Licence and the project defined in Water Licence W2018L2-0003; and
  - b. The Licensee may only withdraw water from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 3;
3. To amend Part D of Type B Water Licence W2018L2-0003 to replace Condition 1, with the following two conditions:
  - a. The Licensee may only withdraw up to a combined total of 299m<sup>3</sup> per day of Water for the Project, as defined in this Licence and the project defined in Water Licence W2018L2-0002; and
  - b. The Licensee may only withdraw water from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 3;

4. To not approve Version 3.0 of the Water Use Plan; and
5. To require Nighthawk to submit Version 3.1 of the Water Use Plan with the following updates:
  - a. References to maximum water use that reflect the maximum of 299 m<sup>3</sup>/day for both Licences; and
  - b. Land designations in Figure 1.

## **2.0 Background**

The WLWB received Water Licence Amendment Applications from Nighthawk on March 26, 2020 for Water Licences W2018L2-0002 (federal) and W2018L2-0003 (non-federal).<sup>1,2</sup> These Licences allow for water use in support of mineral exploration at the Indin Lake Gold Property. The Amendment Applications requested an increase in water use from 179 m<sup>3</sup>/day and 120 m<sup>3</sup>/day, up to 299 m<sup>3</sup>/day for each licence. Along with the Amendment Applications, Nighthawk submitted Version 3.0 of its Water Use Plan for Board approval.

The Amendment Application, engagement record,<sup>3</sup> Water Use Plan Version 3.0,<sup>4</sup> and previous preliminary screening,<sup>5</sup> were distributed for public review on March 26, 2020, inviting Parties to provide comments and recommendations using the Online Review System (ORS). Under the Preliminary Screening Requirement Regulations of the *Mackenzie Valley Resource Management Act* (MVRMA), the Board must conduct a preliminary screening for an amendment application, unless it is exempt from preliminary screening in accordance with the Exemption List Regulations. Reviewers were encouraged to provide comments and recommendations (e.g., on impacts and mitigation measures) to assist with the completion of the preliminary screening. Reviewer comments were due April 23, 2020. Comments and recommendations were received from Crown Indigenous Relations Northern Affairs Canada – Inspector (CIRNAC)<sup>6</sup>, Government of Northwest Territories – Environment and Natural Resources – Environmental Assessment and Monitoring (GNWT-ENR-EAM), Fisheries and Oceans Canada: Triage Group Fisheries Protection Program (DFO), and Indigenous and Northern Affairs Canada – Yellowknife (INAC-YK); Board staff also submitted questions. The North Slave Metis Alliance (NSMA) and Wek’èezhii Renewable Resources Board (WRRB) indicated they had no comments or recommendations at this time. Proponent responses were submitted by May 7, 2020. Reviewer comments and recommendations, as well as the proponent responses are available on the WLWB Online Registry.<sup>7,8</sup>

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<sup>1</sup> See WLWB ([www.wlwb.ca](http://www.wlwb.ca)) Online Registry for [W2018L2-0002 – Nighthawk – Water Licence Amendment Application](#)

<sup>2</sup> See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Water Licence Amendment Application](#)

<sup>3</sup> See WLWB Online Registry for [W2018L2-0003 – Nighthawk Engagement Record – Mar 26 20.pdf](#)

<sup>4</sup> See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Water Use Plan V3.0 – Mar 26 20.pdf](#)

<sup>5</sup> See WLWB Online Registry for [W2012L1-0002 – Nighthawk – Type B Water Licence – Preliminary Screening – Aug 16 12.pdf](#)

<sup>6</sup> Comments received from Department of Indian Affairs and Northern Development to reflect current affiliation with CIRNAC

<sup>7</sup> See WLWB Online Registry for [W2018L2-0002 – Nighthawk – Review Summary and Attachments – May 7 20.pdf](#)

<sup>8</sup> See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Review Summary and Attachments – May 7 20.pdf](#)

### **3.0 Reasons for Decision**

#### **3.1 Split-Interest Project**

Nighthawk applied to amend both federal and non-federal Type B Water Licences to increase water use for each licence to 299 m<sup>3</sup>/day. During the public review, CIRNAC-Inspector and GNWT-ENR-EAM commented that water use exceeding 299 m<sup>3</sup>/day for the entire project would require Nighthawk to apply for Type A Water Licences (CIRNAC-Inspector comment 1; GNWT-ENR-EAM comment 2). CIRNAC-Inspector and GNWT-ENR-EAM recommended adding a condition to the existing water licences that would allow for a combined total of 299 m<sup>3</sup>/day for the project (CIRNAC-Inspector comment 1; GNWT-ENR-EAM comment 1). Nighthawk was asked to clarify if it will require more than 299 m<sup>3</sup>/day for its activities and if there would be any operational impacts if the maximum water use allowed between both licences was limited to 299 m<sup>3</sup>/day (WLWB staff comment 1). Nighthawk clarified that it does not currently need more than 299 m<sup>3</sup>/day in total and stated it is agreeable to having the water use between both licences limited to 299 m<sup>3</sup>/day and does not foresee any impacts from these conditions being included in the Water Licences.

The Mackenzie Valley Land and Water Board (MVLWB) recently decided on a split-interest project for Seabridge Gold (NWT) Inc. (Seabridge) where Seabridge had applied for federal and non-federal water licences.<sup>9,10</sup> Seabridge did not require more than 299 m<sup>3</sup>/day but wanted operational flexibility to allocate the water use between each water licence as necessary for operations. The MVLWB included conditions in each Water Licence that would allow for a maximum of 299 m<sup>3</sup>/day under each licence without exceeding 299 m<sup>3</sup>/day between both licences. The Board believes similar conditions would grant Nighthawk the operational flexibility requested in the Application without exceeding the limits of a Type B Water Licence. Given that Nighthawk is agreeable to such conditions, the Board proceeded by treating the Amendment Application as a request to use a maximum of 299 m<sup>3</sup>/day between both Licences instead of a request to increase water use to 299 m<sup>3</sup>/day for each licence. Specific conditions have been included in the amended Licences that would limit the total water use for the project to 299m<sup>3</sup>/day (see section 3.4 of this Reasons for Decision).

#### **3.2 Exemption from Preliminary Screening**

In accordance with the *Preliminary Screening Requirement Regulations* and subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA), the Board must conduct a preliminary screening of the Amendment Applications. However, Schedule 1 (Section 2), Part 1, paragraph 2(b) of the *MVRMA Exemption List Regulations* states that an application can be exempt from preliminary screening if:

A development, or a part thereof, for which renewal of a permit, licence or authorization is requested that (a) has not been modified; and (b) has fulfilled the requirements of the environmental assessment process established by the *Mackenzie*

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<sup>9</sup> See MVLWB ([www.mvlwb.ca](http://www.mvlwb.ca)) Online Registry for [MV2019L2-0011 – Seabridge Gold \(NWT\) Inc. – Issuance – Type B Water Licence – Non-Federal – Mar30\\_20.pdf](#)

<sup>10</sup> See MVLWB Online Registry for [MV2018L2-0012 – Seabridge Gold \(NWT\) Inc. – Issuance – Type B Water Licence – Federal – Mar 30\\_20.pdf](#)

*Valley Resource Management Act, the Canadian Environmental Assessment Act or the Environmental Assessment Review Process Guidelines Order.*

A preliminary screening was completed August 16, 2012 for activities under W2018L2-0002 and W2018L2-0003, screening the area for a maximum water use of 300 m<sup>3</sup>/day. As discussed in Section 3.1 of this Reasons for Decision, Nighthawk is agreeable to amending the Water Licences to allow for operational flexibility to allocate the total water use, 299 m<sup>3</sup>/day, between both Water Licences. The previous preliminary screening was reviewed, and it was confirmed that the activities and the area previously screened remain the same, provided the maximum water use remains 299 m<sup>3</sup>/day. Therefore, the Board has determined that the proposed maximum water use of 299 m<sup>3</sup>/day between both Licences is exempt from preliminary screening. No parties provided comments with respect to the preliminary screening as part of the public review.

- ***Decision #1: The Board has determined the proposed maximum water use of 299 m<sup>3</sup>/day between both Water Licences W2018L2-0002 and W2018L2-0003 is exempt from preliminary screening in accordance with the Exemption List Regulations of the MVRMA, Part 1, Schedule 1, section 2.***

### **3.3 General Principles for Water Licences W2018L2-0002 and W2018L2-0003**

The scope, definitions, and conditions set forth in the Licences have been developed in order to address the Board's statutory responsibilities and the concerns that arose during the regulatory process. In developing the Licences, changes were made to the previous Licences based on the following principles:

- To provide for the conservation, development, and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of Wek'èezhii, as per section 58.1 of the MVRMA;
- To achieve consistency with policies and guidelines adopted by the Mackenzie Valley Land and Water Boards (MVLWBs);
- To update conditions to reflect the current status of Nighthawk's activities;
- To update conditions to achieve consistency with existing Permit and Licence conditions;
- To address any recommendations from reviewers and the proponent; and
- To ensure overall clarity of the Licence requirements.

To address concerns raised during the public review, the Board has replaced one condition with two new conditions in each of the Licences.

### **3.4 Determinations Relating to Water Licences W2018L2-0002 and W2018L2-0003**

#### ***3.4.1 Requirements of Sections 73.03 and 73.04 of the MVRMA for W2018L2-0002***

After reviewing the submissions made under the regulatory processes and filed on the WLWB Public Registry, the Board is satisfied the requirements set out in Subsection 72.03 of the MVRMA have been met in this circumstance. No other licensees are affected, there are no applicants with precedence, and

no claims for compensation have been received; therefore paragraphs 72.03(5)(a) and (b) are not relevant. The Board is of the opinion that the conditions in the licence with respect to waste management will protect water quality, and therefore paragraph 72.03(5)(c) has been satisfied. The Board also believes that paragraph 72.03(5)(d) is satisfied because security related to this Licence is held by CIRNAC.

With respect to subsection 72.04(2) of the *MVRMA*, the Board believes that compliance with the conditions of the Licence will ensure that any potential adverse impacts on other water users, which might arise as a result of the of the issuance of the amended Licence, will be minimized.

### **3.4.2 Requirements of Sections 26 and 27 of the Waters Act for W2018L2-0003**

After reviewing the submissions made under the regulatory processes and filed on the WLWB Public Registry, the Board is satisfied the requirements set out in subsection 26 of the *Waters Act* have been met in this circumstance. No other licensees are affected, there are no applicants with precedence, and no claims for compensation have been received; therefore subsections 26(5)(a) and (b) are not relevant. The Board is of the opinion that the conditions in the licence with respect to waste management will protect water quality and therefore paragraph 26(5)(c) has been satisfied. The Board also believe that paragraph 25(5)(d) is satisfied because security related to this Licence is held by the GNWT-ENR.

With respect to subsection 27(2) of the *Waters Act*, the Board believes that compliance with the conditions of the Licence will ensure that any potential adverse impacts on other water users, which might arise as a result of the of the issuance of the amended Licence, will be minimized.

### **3.4.3 Requirements of Section 61 of the MVRMA**

Pursuant to subsection 61(2) of the *MVRMA*, the Board may not issue a licence or permit except in accordance with any applicable land use plan. Nighthawk has two mineral leases (NT-3216 and NT-4574) that contain, or are on, Tłıchq land. The Tłıchq Land Claims and Self-Government Agreement (Tłıchq Agreement) lists several existing third-party interests (such as mineral claims or leases) on Tłıchq lands. The Tłıchq Agreement states that, for mining claims or leases created prior to the Tłıchq Agreement, the management of these existing interests lies with the Government of Canada. Mineral lease NT-3216 is listed as an existing interest in the Tłıchq Agreement, however, lease NT-4574 is not. When the Licences were first issued, the Miner's Recorder's Office was contacted regarding this lease and indicated that NT-4574 was previously mineral claim F35390, which is listed as an existing interest in the Tłıchq Agreement. The manager of the Tłıchq Government's Department of Culture and Lands Protection was included in this correspondence, and no comments were received. Therefore, the Board believes the requirements of subsection 61(2) are met.

### **3.5 Amended of Water Licences W2018L2-0002 and W2018L2-0003**

Nighthawk's Licences were renewed in 2019, at which time Nighthawk's previous licence, W2012L1-0002, was separated into two licences to account for the project taking place on both federal and non-federal land. The Amendment being requested would allow for Nighthawk to have operational flexibility

to allocate the total water use between both federal and non-federal licences. The following discussion only focuses on sections where changes from the existing Water Licences are being proposed. Attachment 3 and Attachment 4 show changes that have been made to each Licence.

### **3.5.1 Part D of Licence W2018L2-0002: Conditions Applying to Water Use**

In the existing Licence, Part D, Condition 1 states “The Licensee may only withdraw up to 179 m<sup>3</sup> per day from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 2.” As discussed in Section 3.1 of this Reasons for Decision, the Amendment would allow for operational flexibility to allocate water use between the two licences without exceeding a maximum of 299 m<sup>3</sup>/day between both licences. Section 3.1 of this Reasons for Decision also describes a decision made by the MVLWB on a split-interest project where Seabridge was granted operational flexibility to allocate total water use between the entire project, referring to both federal and non-federal water licences. The Board decided to amend Part D of the Licence to replace Condition 1 with the following two conditions: (1) “The Licensee may only withdraw up to a combined total of 299 m<sup>3</sup> per day of Water for the Project, as defined in this Licence and the project defined in Water Licence W2018L2-0003”; and (2) “The Licensee may only withdraw water from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 3.” This amendment would allow Nighthawk to have operational flexibility to allocate water use between the two licences without triggering the need for a Type A Water Licence while maintaining the condition requiring Nighthawk to operate under its approved Water Use Plan.

Administrative updates to correct references to conditions in Part D have been made throughout the Licence.

- **Decision #2: The Board has decided to amend Part D of Type B Water Licence W2018L2-0002 to replace Condition 1, with the following two conditions:**
  - 1. The Licensee may only withdraw up to a combined total of 299m<sup>3</sup> per day of Water for the Project, as defined in this Licence and the project defined in Water Licence W2018L2-0003; and**
  - 2. The Licensee may only withdraw water from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 3.**

### **4.5.2 Part D Licence W2018L2-0003: Conditions Applying to Water Use**

In the existing Licence, Part D, Condition 1 states “The Licensee may only withdraw up to 120m<sup>3</sup> per day from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 2.” As discussed in Section 3.1 of this Reasons for Decision, the Amendment would allow for operational flexibility to allocate water use between the two licences without exceeding a maximum of 299 m<sup>3</sup>/day between both licences. Section 3.1 of this Reasons for Decision also describes a decision made by the MVLWB on a split-interest project where Seabridge was granted operational flexibility to allocate total water use between the entire project, referring to both federal and non-federal water licences. The Board has decided to amend Part D of the Licence to replace Condition 1 with the following two conditions: (1) “The Licensee may only withdraw up to a combined total of 299 m<sup>3</sup> per day of Water for

the Project, as defined in this Licence and the project defined in Water Licence W2018L2-0002”; and (2) “The Licensee may only withdraw water from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 3.” This amendment would allow Nighthawk to have operational flexibility to allocate water use between the two licences without triggering the need for a Type A Water Licence while maintaining the condition requiring Nighthawk to operate under its approved Water Use Plan.

Administrative updates to correct references to conditions in Part D have been made throughout the Licence.

- **Decision #3: The Board has decided to amend Part D of Type B Water Licence W2018L2-0003 to replace Condition 1, with the following two conditions:**
- 1. The Licensee may only withdraw up to a combined total of 299m<sup>3</sup> per day of Water for the Project, as defined in this Licence and the project defined in Water Licence W2018L2-0002; and**
  - 2. The Licensee may only withdraw water from the Water Sources identified in the approved Water Use Plan, as specified in Part D, Condition 3.**

### **3.5.3 Other Comments**

During the public review, DFO commented that this Application would not require an authorization under the *Fisheries Act* or the *Species at Risk Act* (DFO comment 1). DFO stated that Nighthawk is responsible for maintaining compliance with the *Fisheries Act* and must notify DFO if Nighthawk causes or is about to cause the death of fish by means other than fishing and/or the harmful alteration, destruction of fish habitat. Nighthawk responded that they will inform DFO if there are any changes to the current plan that are likely to cause harm to fish or fish habitat. The Board is of the opinion that the Proponent’s response addressed DFO’s comment and no changes were made to the Licences.

### **3.5.4 Conclusion**

Subject to the term and conditions set out in the Licence, and for the reasons expressed herein, the Board believes that the licensed undertaking for water use and waste disposal associated with the Nighthawk project can be completed by the Licensee while providing for the conservation, development, utilization of waters in a manner that will provide the optimum benefit for all Canadians, and in particular, for the residents of Wek’èezhìi.

### **3.6 Water Use Plan Version 3.0**

As part of the Amendment Application, Nighthawk submitted Version 3.0 of the Water Use Plan to reflect the proposed increase in water use of 299 m<sup>3</sup>/day for each Licence. The updated Water Use Plan was reviewed, and it was confirmed that the Plan is in accordance with Part D, Condition 2 of the existing Licences. As described in Section 3.5.1 and 3.5.2, the Board has amended the Licence to allocate a maximum water use of 299 m<sup>3</sup>/day between both licences instead of 299 m<sup>3</sup>/day per Licence. To align with the amended Licences, the Water Use Plan requires an update to reflect the authorized maximum

water use. Therefore, the Board has decided not to approve Version 3.0 of the Water Use Plan and requires Nighthawk to submit Version 3.1 of the Water Use Plan to update the total water use references to reflect the amended Licences.

During the public review, INAC-YK commented that there appeared to be some mistakes in the land designation included in Figure 1 (INAC-YK comment 1). INAC-YK recommended Nighthawk revise Figure 1 in future versions of the Water Use Plan. Nighthawk indicated they will follow up with the GNWT Center for Geomatics to correct the mistake in Figure 1. The Board requires Nighthawk to include an update to Figure 1 in Version 3.1 of the Water Use Plan.

The Board would like to clarify that Nighthawk is to continue operating under the approved Version 2.1 of the Water Use Plan until an updated version is approved. As per Part D Condition 2 of the amended Licences, Nighthawk is required to have an approved Water Use Plan to withdraw water. The Board believes operating under approved Version 2.1 of the Water Use Plan will not create any operational impacts while Version 3.1 is being considered by the Board because: Version 2.1 of the Water Use Plan reflects the authorized maximum water use of 299 m<sup>3</sup>/day for the project; Version 2.1 includes the list of Water Sources that Nighthawk is approved to withdraw water from and the associated maximum volumes from each source; and, the amended Licences will allow Nighthawk to allocate the maximum water use of 299 m<sup>3</sup>/day between the two Licences.

- ***Decision #4: The Board has decided not to approve Version 3.0 of the Water Use Plan;***
- ***Decision #5: The Board requires Nighthawk to submit Version 3.1 of the Water Use Plan with the following updates:***
  - 1. References to maximum water use that reflect the maximum of 299 m<sup>3</sup>/day for both Licences; and***
  - 2. Land designations in Figure 1.; and***

**Signed the 18<sup>th</sup> Day of June, 2020, on behalf of the Wek'èezhìi Land and Water Board**



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Witness



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Joe Mackenzie  
Chair, Wek'èezhìi Land and Water Board