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## Reasons for Decision

Issued pursuant to paragraph 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR)

<b>Reference/File Number:</b>	W2018C0007 (Type "A" Land Use Permit)
<b>Permittee:</b>	Nighthawk Gold Corp.
<b>Subject:</b>	Permit Amendment Request

## Decision from the Wek'èezhì Land and Water Board Meeting of February 24, 2022

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### 1.0 Decision

On February 24, 2022, the Wek'èezhì Land and Water Board (the Board) met to consider the Land Use Permit amendment request from Nighthawk Gold Corp (Nighthawk) for Type A Land Use Permit W2018C0007 for the Indin Lake Gold Project (Project).

In consideration of the Request, reviewer comments, and proponent responses, the Board decided the following:

1. That the Request is exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA;
2. To issue the amended Type A Land Use Permit W2018C0007; and
3. To approve Version 4.1 of the Spill Contingency Plan and require Nighthawk to submit Version 4.2 within 30 days of issuance to address Spill Contingency Plan Revisions #1 through 4.

### 2.0 Background

Nighthawk is a gold exploration company that is authorized to conduct exploration activities at the Indin Lake Gold Property, which is located in the Wek'èezhì Area. The Indin Lake Gold Project (Project) includes mineral leases and claims on both federal and non-federal land and includes the former Colomac Mine (222km north-northwest of Yellowknife), the Damoti Lake exploration area (200km north-northwest of Yellowknife), and several other former exploration sites. Nighthawk currently holds two Type A Land Use

Permits (W2018C0007 and W2018X0008) and two Type B Water Licences (W2018L2-0002 and W2018L2-0003) for the Project.

On November 3, 2021, the Board received Applications from Nighthawk for a federal Type A Water Licence, a non-federal Type A Water Licence, and a Type A Land Use Permit. The purpose of the Applications was to support increased drilling and associated water use as advanced mineral exploration expands at the Indin Lake Gold Property, NT. These Applications included a proposal to increase fuel storage from 300,000 liters to 1,255,830 liters. The proceeding for the Type A Licences and Type A Permit Applications is anticipated to be completed in the Summer of 2022, pending the Board's decision and after receipt of the Minister's decision.

On January 6, 2022, the WLWB received an Amendment Request (Request) for Type A Land Use Permit W2018C0007 from Nighthawk.<sup>1,2,3,4</sup> Nighthawk was requesting to increase the fuel storage from 300,000 liters to 1,255,380 liters and to increase the federal security by \$54,0001. The increase in fuel storage aligns with what was requested in the Applications for the Type A Licences and Type A Permit. Nighthawk submitted this Amendment Request before the proceeding for the Type A Licences and Type A Permit Applications is completed because it would like to use the 2022 winter road season to transport and store additional fuel on site before the completion of the proceeding for the Type A Licences and Type A Permit Applications.

## 2.1 Public Review

The Amendment Request, Engagement Log, Impact and Mitigation Table, Spill Contingency Plan Version 4.1, and draft Land Use Permit<sup>5</sup> were distributed for public review on January 14, 2022. Under the Preliminary Screening Requirement Regulations of the *Mackenzie Valley Resource Management Act* (MVRMA), the Board must conduct a preliminary screening for a proposed amendment, 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 February 4, 2022. Comments and recommendations were received from Environment and Climate Change Canada (ECCC), Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), CIRNAC-Inspector, and the Tłı̨chǫ Government (TG); Board staff also submitted questions. The Government of Northwest Territories – Environment and Natural Resources (GNWT-ENR) and the Wek'èezhìi Renewable Resources Board (WRRB) responded that they had no comments or recommendations at this time. Proponent responses

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<sup>1</sup> See WLWB Online Registry ([www.wlwb.ca](http://www.wlwb.ca)) for [W2018C0007 – Nighthawk – Fuel Storage Amendment – Cover Letter – Jan 6 22](#)

<sup>2</sup> See WLWB Online Registry for [W2018C0007 – Fuel Storage Amendment – Engagement Log – Jan 6 22](#)

<sup>3</sup> See WLWB Online Registry for [W2018C0007 – Fuel Storage Amendment – Impact Mitigation Table – Jan 6 22](#)

<sup>4</sup> See WLWB Online Registry for [W2018C0007 – Nighthawk – Spill Contingency Plan – Version 4.1 – Jan 11 22](#)

<sup>5</sup> See WLWB Online Registry for [W2018C0007 – Nighthawk – DRAFT Land Use Permit – Jan 14 22](#)

were submitted by the deadline of February 11, 2022. Reviewer comments and recommendations, as well as the proponent responses are available on the WLWB Online Review System.<sup>6</sup>

Since no concerns regarding timelines were received during the public review and no requests to extend the reviewer comment deadline were received, the Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsection 63(2) of the MVRMA. The Board is also satisfied that the Tłı̨ch̨o Government has been consulted in accordance with section 63(3) of the MVRMA.

### **3.0 Reasons for Decision**

#### **3.1 Eligibility**

As per section 18 of the Mackenzie Valley Land Use Regulations (MVLUR), eligibility must be determined before the Board can issue a permit. The proposed activities are to take place at the Indin Lake Gold Property. It was confirmed that Nighthawk holds mineral claims for the Indin Lake Gold Property. This satisfies eligibility requirements under paragraph 18(a)(i) of the MVLUR and confirms that Nighthawk has eligibility to complete the proposed activities.

#### **3.2 Preliminary Screening**

In accordance with the *Preliminary Screening Requirement Regulations* in subsection 124(1) of the MVRMA, the Board must conduct a preliminary screening of 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 Valley Resource Management Act*, the *Canadian Environmental Assessment Act* or the *Environmental Assessment Review Process Guidelines Order*.

The request to increase the maximum fuel storage volume from 300,000 liters to 1,255,830 liters was also included Nighthawk's Applications for Type A Water Licences and a Type A Land Use Permit. Although the proceeding for these Applications has been on-going since November 2021, the potential impacts of the increased fuel volume had not been screened at the time the Request was distributed for public review. Therefore, when the Request was distributed for public review, reviewers were encouraged to provide comments and recommendations (e.g., on impacts and mitigation measures) to assist with the completion of the preliminary screening.

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<sup>6</sup> See WLWB Online Review System for [Nighthawk Gold Corp – Indin Lake Gold Project – Land Use Permit – Amendment Request](#)

### **3.2.1 Exemption from Preliminary Screening**

The Board completed a preliminary screening which included the proposed changes to the Project on February 9, 2022,<sup>7</sup> and the Request does not include any additional changes. The Project has also been screened on February 9, 2006,<sup>8</sup> February 29, 2012,<sup>9</sup> August 16, 2012,<sup>10</sup> May 29, 2014,<sup>11</sup> November 19, 2020,<sup>12</sup> and April 22, 2021.<sup>13</sup> Accordingly, the Board has determined that the Request is exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA. Consequently, no further preliminary screening was conducted.

- ***Decision #1: The Board has determined that the Request is exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA.***

The Board's preliminary screening encompassed the project changes included in Nighthawk's current Amendment Request. During the public review of this Amendment Request, comments and recommendations related to potential impacts and proposed mitigations for the increased fuel volume were received from CIRNAC and the TG (CIRNAC comment 5 and TG comment 1). While these potential impacts were considered in the Board's preliminary screening for Nighthawk's Type A Water Licences and Type A Land Use Permit Applications, the Board has not yet implemented mitigations through Permit conditions because that proceeding is ongoing. The proposed mitigations outlined in the Board's Preliminary Screening associated with the potential impacts of the increased fuel volume included the use of existing Permit conditions, such as requirements for management plans. Mitigation measures to address the potential impacts related to the increased fuel storage that were identified by CIRNAC and the TG during this proceeding, and those outlined in the Board's preliminary screening for the Type A Licences and Type A Permit Applications are further discussed in sections 3.3 and 3.4 of these Reasons for Decision.

### **3.3 Land Use Permit**

A draft Permit, developed by Board staff, was included in the Item for Review to allow reviewers to comment on proposed changes to the Permit. The draft Permit was developed by including the requested amendments to the existing Permit, W2018C0007, and updating some standard wording to conditions based on the Mackenzie Valley Land and Water Board (2019) *Standard Land Use Permit Conditions Template* (Standard Conditions).

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<sup>7</sup> See WLWB Online Registry for [Nighthawk – Preliminary Screening Determination and RFD – Feb 9 22](#)

<sup>8</sup> See WLWB Online Registry for [W2006C0001 – MERC – Preliminary Screening – Land Use Permit and Water Licence – Feb 9 06](#)

<sup>9</sup> See WLWB Online Registry for [W2012C0002 – Merc – Land Use Permit – Preliminary Screening – Feb 29 12](#)

<sup>10</sup> See WLWB Online Registry for [W2012L1-0002 – Nighthawk – Type B Water Licence – Preliminary Screening – Aug 16 12](#)

<sup>11</sup> See WWLB Online Registry for [W2012C0002 – Nighthawk – Amendment Application – Preliminary Screening – May 29 14](#)

<sup>12</sup> See WLWB Online Registry for [W2018C0007 – Nighthawk – LUP Amendment – PS Determination Notification and RFD – Nov 19 20](#)

<sup>13</sup> See WLWB Online Registry for [W2018C0007 – Nighthawk – WL and LUP Amendment – PS Determination Notification and RFD – Apr 22 21](#)

### **3.3.1 Permit Conditions**

In the Request, Nighthawk proposed amending Condition 65, MAXIMUM FUEL ON SITE, and Condition 55, SECURITY DEPOSIT. This proposed amendment would allow Nighthawk to store 1,255,830 liters of fuel in the land use area and increase the security to reflect the proposed increase in fuel storage.

#### Maximum Fuel on Site

During the public review, the CIRNAC-Inspector commented that it supports the proposed amendment and recommended increasing the volume in Condition 65, MAXIMUM FUEL ON SITE to 1,255,830 liters (CIRNAC-Inspector comment 4). In the Board's Preliminary Screening Determination, mitigations associated with the increase in fuel storage included the use of Standard Conditions and management plans with revisions where necessary. The Standard Conditions available to mitigate potential impacts outlined in the Board's Preliminary Screening Determination are already included in the existing Permit (i.e., WASTE CHEMICAL DISPOSAL, SPILL CONTINENCY PLAN, SPILL RESPONSE, REPORT SPILLS). Additionally, no comments or recommendations were received that suggested the increase in fuel volume should not be approved. Because the Permit includes Standard Conditions identified as potential mitigations in the Board's Preliminary Screening Determination and no reviewers raised additional concerns, the Board has amended Condition 65, MAXIMUM FUEL ON SITE, to allow for up to 1,255,830 liters of fuel on site.<sup>14</sup> Updates related to the Spill Contingency Plan to mitigate potential impacts are discussed further in section 3.4 of these Reasons for Decision.

The TG commented it believes that increasing the maximum fuel storage volume from 300,000 liters to 1,255,830 liters will result in increased greenhouse gas (GHG) emissions related to the Project (TG comment 1). The TG stated that accounting for the amount of fuel used, and the associated emissions could demonstrate environmental stewardship from Nighthawk and suggested Nighthawk commit to Greenhouse Gas (GHG) accounting but did not provide a specific recommendation related to the comment. Nighthawk responded that it would continue to work with the GNWT and the TG on ways to reduce GHG emissions but did not commit to GHG accounting at this time. Nighthawk also outlined how restocking of fuel via winter road would reduce emissions associated with flying fuel to site. The Board encourages Nighthawk to continue working with the TG and GNWT on issues related to GHG emissions.

#### Security

As per paragraph 32 of the MVLUR, the Board may require security to be posted by a Permittee before the start of a land-use operation. Given that the Project is split-interest, the Permit has two conditions related to security. Condition 54 requires a security deposit for the non-federal portion of the property and Condition 55 for the federal portion of the property. Nighthawk has proposed to increase the amount of security held under Condition 55 by \$54,001 based on the security associated with the increased fuel volume in the RECLAIM Estimate submitted as part of the application for the Type A Licences and Type A Permit.<sup>15</sup>

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<sup>14</sup> See WLWB Online Registry for [W2021C0009 – Nighthawk – Preliminary Screening Determination and RFD – Feb 9 22](#)

<sup>15</sup> See WLWB Online Registry for [Nighthawk – RECLAIM Estimate – Nov 3 21](#)

During the public review, CIRNAC commented that it does not have any concerns with the proposed security increase related to the Amendment (CIRNAC comment 7). No other comments or recommendations were received regarding security for the proposed amendment. Therefore, the Board has amended Condition 55, SECURITY DEPOSIT to require a security deposit of \$191,697.

### **3.3.2 Permit Issuance**

After reviewing the Application, available mitigations related to the proposed changes outlined in the Board's Preliminary Screening Determination, and all reviewer comments and proponent response submitted during the public review, the Board has decided to issue the amended Type A Land Use Permit W2018C0007.<sup>16</sup>

➤ **Decision #2: The Board has decided to issue the amended Type A Land Use Permit W2018C0007.**

### **3.4 Management Plans**

As discussed in Section 3.2 of these Reasons for Decision, the Request is exempt from Preliminary Screening because the proposed changes were screened on February 9, 2022.<sup>17</sup> However, the Board has not had an opportunity to implement mitigations related to the increase in fuel volume proposed in the Request. The paragraphs below discuss Plan updates required to mitigate the potential impacts associated with the Request or provide clarification on how the Plans mitigate potential impacts.

#### **3.4.1 Spill Contingency Plan**

The Spill Contingency Plan submitted with the Request included updates that had been recommended during the proceeding for the Type A Licences and Type A Permit Applications.<sup>18</sup> During the public review of the Request, comments and recommendations regarding the Spill Contingency Plan were received from ECCC, CIRNAC, and the CIRNAC-Inspector; Board staff also asked a question.

Based on the comments received during the public review and as described in paragraphs below, the Board has identified the need for clarification on the mitigations related to the transport of fuel on the winter road and storage of fuel at the Colomac site. The information that requires clarification does not change Nighthawk's approach to preventing and mitigating impacts related to the fuel transportation and storage on site. Transportation of fuel on the winter road was originally authorized under Permit W2012C0002,<sup>19</sup> but the Board understands that a more detailed Plan is appropriate for the increased volume of fuel being transported on the winter road and stored at the Colomac site. Additionally, the CIRNAC-Inspector stated that even though the proposed Amendment increases the amount of fuel on site, it is not requesting to change how the fuel is stored (e.g., in 205 liter barrels); therefore, the risk of

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<sup>16</sup> See WLWB Online Registry for [W2021C0009 – Nighthawk – Preliminary Screening Determination and RFD – Feb 9 22](#)

<sup>17</sup> See WLWB Online Registry for [W2021C0009 – Nighthawk – Preliminary Screening Determination and RFD – Feb 9 22](#)

<sup>18</sup> See WLWB Online Review System for [Nighthawk – Indin Lake Gold Project – Type A Water Licence Applications and Type A Land Use Permit Application](#)

<sup>19</sup> See WLWB Online Registry for [W2012C0002](#)

spills will remain the same once the fuel is secured on site (CIRNAC-Inspector comment 1). The Board has thus decided to approve Version 4.1 of the Spill Contingency Plan because the mitigation measures are scalable to account for the larger fuel volume. Information provided in response to reviewer recommendations provides valuable information that would make the Plan more robust in addressing the increased fuel volume. Therefore, the Board has decided that Nighthawk must revise the Plan and submit Version 4.2 within 30 days of issuance of the amended Permit to address Spill Contingency Plan Revisions #1 through 4. The required revisions discussed below include: updates agreed to by Nighthawk during the proceeding; updates to reflect the proposed activities; and updates to ensure the Plan meets applicable guidelines.

- ***Decision #3: The Board has decided to approve Version 4.1 of the Spill Contingency Plan and requires Nighthawk to submit Version 4.2 within 30 days of issuance to address Spill Contingency Plan Revisions #1 through 4.***

If the revised Plan contains new information not addressed in this Reasons for Decision, a public review may be required to give reviewers an opportunity to provide feedback on the additional content.

#### Fuel Transportation

During the public review, CIRNAC recommended that Nighthawk provide additional details regarding the preventative measures and spill response procedures that will be implemented during fuel transport (CIRNAC comment 2). The TG also recommended that Nighthawk ensure that a robust risk management effort is in place for the transportation of fuel on the winter road (TG comment 2). In response, Nighthawk indicated it has been communicating with the GNWT Inspector to discuss health and safety considerations during fuel transport on the winter road and provided information about where the fuel originates, the transportation contractor, and the transportation method that will be used to transfer fuel to the Colomac Site. Nighthawk also indicated that an Emergency Response Plan had been provided to Nighthawk by the company contracted to transport the fuel to reduce potential impacts to Tłı̨ch̓ Citizens, communities, and the environment. Nighthawk's responses provide important information to ensure the mitigations being proposed are implemented when Nighthawk is transferring fuel to the Colomac Site and should be included in an updated Plan.

- ***Spill Contingency Plan Revision #1: Nighthawk is to include details regarding preventative measures and spill response procedures that will be implemented during fuel transport on the winter road as outlined in response to CIRNAC comment 2 and TG comment 2.***

#### Fuel Storage

During the public review, reviewers requested information and clarification on how the additional fuel would be stored at the Colomac site and how Nighthawk will prevent contamination of the surrounding area. Although the methods of fuel storage may be sufficient, additional information related to the increased volume, outlined below, can provide clarification on how Nighthawk manages the storage of this additional fuel.

During the public review, CIRNAC recommended that Nighthawk provide more details regarding the operation and maintenance of the rain drain filters that are installed on impervious fuel storage berms and used to allow rainwater to drain (CIRNAC comment 1). Nighthawk responded that the rain drains are attached to various berms in the fuel cache and equipped with hydrocarbon selective filtration that prevent diesel fuel, jet fuel, gasoline, and transformer oil from being released. Additionally, Nighthawk responded that water is not allowed to pass through the drain until maintenance is completed. Given that the information provided by Nighthawk includes procedures to ensure no contaminants enter the environment and the level of detail provided in its response is not included in the Spill Contingency Plan, the Board is of the opinion that the information provided in Nighthawk's response should be included in the Plan.

- ***Spill Contingency Plan Revision #2: Nighthawk is to update Section 2.7 to include the information provided in response to CIRNAC comment 1.***

CIRNAC and Board staff asked about the capacity of the existing fuel cache at the Colomac Site and if the fuel cache has the capacity for the increased fuel volume (CIRNAC comment 3; Board staff comment 1). Nighthawk responded that the current fuel cache does not have the capacity to store the total volume of fuel being proposed; however, additional fuel berms have been purchased and will be constructed before the winter road to Colomac is completed. With the current berms on site, Nighthawk indicated the fuel cache has capacity for up to 410,000 liters of fuel (i.e., two thousand 205-liter drums). Based on the information provided in Nighthawk's response, it is unclear where the additional fuel caches will be constructed and what total capacity of all the fuel caches will be. This information would clarify how Nighthawk will store 1,255,830 liters of fuel and mitigate potential impacts to the environment.

- ***Spill Contingency Plan Revision #3: Nighthawk is to include information provided in response to CIRNAC comment 3 and Board staff comment 1 and provide information about where the additional fuel caches will be constructed and the total capacity of all the proposed fuel caches.***

During the public review, several comments and recommendations were received requesting additional information to ensure the Plan is equipped to handle the additional fuel volume and any potential impacts that may arise from this. These recommendations included:

- Updating Section 1 of the Plan to ensure the Plan is in compliance with the Environmental Emergency Regulations (E2 Regulations; ECCC comment 1);
- Reviewing the spill response gear outlined in the Plan and updating, if necessary (CIRNAC-Inspector comment 2); and
- Updating Table 3 in the Plan to reflect the increased fuel volume (CIRNAC-Inspector comment 3).

Nighthawk responded to these recommendations through the public review by providing the information or committing to providing the information in the next version of the Plan. Given that Nighthawk has agreed to these updates, the Board believes these recommendations should be addressed in the next version of the Plan.



- **Spill Contingency Plan Revision #4: Nighthawk is to address ECCC comment 1, CIRNAC-Inspector comment 2, and CIRNAC-Inspector comment 3.**

Three 75,000 liter above-ground storage tanks are currently located at the Damoti Site. CIRNAC recommended that Nighthawk consult ECCC and the Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations regarding the fuel storage tanks on site that may be moved to Colomac (CIRNAC comment 4). Nighthawk committed to reviewing the regulations. If Nighthawk intends to use the above-ground storage tanks for the storage of fuel in the future, an updated Spill Contingency Plan would be required to propose mitigations associated with storage in an above-ground storage tank. The Board is of the opinion that Nighthawk has addressed this recommendation and no further action is required, at this time.

### **3.4.2 Wildlife Management and Monitoring Plan**

Under the existing Permit, Nighthawk has submitted a Wildlife Mitigation and Monitoring Plan (WMMP).<sup>20</sup> The WMMP is not a requirement of the Permit or Licences the Project is currently authorized under. During the public review of the Request, CIRNAC commented that transporting fuel by winter road will increase the risk of direct injury or mortality for wildlife and recommended Nighthawk identify what mitigations would be implemented to reduce this risk (CIRNAC comment 5). The increased volume of fuel allowed on site will increase winter road traffic because Nighthawk intends to use the winter road to resupply fuel instead of transporting fuel to site via airplane. Nighthawk responded that wildlife will be provided the right-of-way on roads, trucks will follow the posted speed limit, and trucks will be spaced 100 to 200 meters apart. Because Nighthawk was previously authorized the use the winter road to transport goods including fuel and the WMMP is not a requirement of the Permit, the Board requests that Nighthawk work collaboratively with CIRNAC on wildlife management aspects and to determine the timing of an updated plan.

SIGNATURE



February 24, 2022

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**Mason Mantla, Chair**  
**Wek'èezhii Land and Water Board**

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**Date**

<sup>20</sup> See WLWB Online Registry for [W2018C0007 – Nighthawk – Wildlife Mitigation and Monitoring Plan – Version 3.1 – Feb 28, 19](#)