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May 3, 2021

File: W2018L2-0003 & W2018C0007

Denise Lockett
Nighthawk Gold Corp.
141 Adelaide St. W., Suite 301
Toronto, ON M5H 3L5

Sent by email

Dear Denise Lockett,

Re: Nighthawk Gold Corp. – Issuance Package – Land Use Permit W2018C0007 and Water Licence W2018L2-0003 – Amendment – Indin Lake Gold Property, NT

The Wek'èezhii Land and Water Board (Board) met on April 22, 2021 and considered the Amendment Application for Type B Water Licence W2018L2-0003, the Amendment Request for Type A Land Use Permit W2018C0007, and the updated Water Use Plan Version 4.0 from Nighthawk Gold Corp. (Nighthawk) in accordance with the *Mackenzie Valley Resource Management Act* (MVRMA) and *Waters Act*.

The amended Land Use Permit W2018C0007 has been issued, effective May 3, 2021 and expiring February 14, 2024.¹ The amended Water Licence W2018L2-0003 has been issued effective May 3, 2021 and expiring February 15, 2024.² Both are supported by the Board's Reasons for Decision (attached). These documents are posted to the Board's Public Registry.

Management Plans – Revision and Resubmission Required

The Board has decided to approve Water Use Plan Version 4.0 but notes that withdrawal from VL2, VL5, VL6, and VL21 is not authorized. The Board requires that Water Use Plan Version 4.1 (Plan) be revised to include all changes detailed in the attached Reasons for Decision and resubmitted for Board approval. The Board notes that the Water Use Plan is also a requirement of Licence W2018L2-0002;³ thus Version 4.0

¹ See WLWB Online Registry (www.wlwb.ca) for [W2018C0007 – Nighthawk – Land Use Permit – Amendment – May 3 21](#)

² See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Water Licence \(non-federal\) – Amendment – May 3 21](#)

³ See WLWB Online Registry for [W2018L2-0002 – Nighthawk – Amended Water Licence \(federal\) – Jun 18 20](#)

also applies to this licence. Additionally, the Board reminds Nighthawk that all future additions of Water Sources to the Water Use Plan would require an amendment application.

Inspectors:

The Inspectors referred to in the Licence and Permit can be contacted at the GNWT-Lands North Slave Regional Office and GNWT-Lands offices.^{4,5}

Permit Lifecycle

Sections 5 and 6 of the Board's *Guide to the Land Use Permitting Process*⁶ (Guide) contains detailed information on enforcement of this Permit, and processes which may occur post-issuance, such as amendments to conditions, and assignment to another company. Please be familiar with this section of the Guide and reach out to Board staff with any questions about Board processes related to this Permit.

Licence Processes and Additional Information

Sections 5 and 6 of the Board's *Guide to the Water Licensing Process*⁷ (Guide) contain detailed information on licence enforcement and potential post-issuance processes, such as amendments to conditions, and assignment to another company. Please be familiar with these sections of the Guide and reach out to Board staff with any questions about Board processes related to the Licence.

Full cooperation of Nighthawk is anticipated and appreciated. Please contact Meaghan MacIntyre-Newell at (867) 765-4584 with any questions or concerns regarding this letter.

Yours sincerely,



Joe Mackenzie

Wek'èzhii Land and Water Board, Chair

BCC to: Nighthawk Distribution List
Clint Ambrose – Inspector, GNWT-Lands
David Scott-McQuinn, Water Resources Officer, GNWT-ENR
Nathen Richea – Director, Water Resources, GNWT-ENR

Attached: Reasons for Decision

⁴ See GNWT-Lands Inspection and Enforcement webpage (<https://www.lands.gov.nt.ca/en/services/inspections-and-enforcement>) for regional contact information.

⁵ See GNWT-Lands Inspection and Enforcement webpage (<https://www.lands.gov.nt.ca/en/services/inspections-and-enforcement>) for contact information for the North Slave Regional Office.

⁶ See WLWB Apply for Permit/Licence webpage for MVLWB [Guide to the Land Use Permitting Process](#) (2020).

⁷ See WLWB Policies and Guidelines webpage for MVLWB [Guide to the Water Licensing Process](#) (2020).



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Preliminary Screener	WLWB
Reference/File Number:	W2018L2-0003 (Type “B” Water Licence) W2018C0007 (Type “A” Land Use Permit)
Permittee:	Nighthawk Gold Corp (Nighthawk)
Subject:	Water Licence Amendment Application, Land Use Permit Amendment Request, and Updated Water Use Plan

Decision from the Wek'èezhì Land and Water Board Meeting of April 22, 2021

1.0 Decision

On April 22, 2021, the Wek'èezhì Land and Water Board (the Board) met and considered an Amendment Application for Type B Water Licence W2018L2-0003, an Amendment Request for Type A Land Use Permit W2018C0007, and an updated Water Use Plan Version 4.0 from Nighthawk Gold Corp. (Nighthawk). Nighthawk is proposing to update the complete application referenced in Part C, Condition 7 of the Permit and Part A, Condition 1(a) of the Licence.

The Board conducted a preliminary screening in accordance with subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA).⁸⁹ Based on the evidence provided, the Board was satisfied the screening had been completed according to section 125 of the MVRMA and decided not to refer the project to environmental assessment.

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

⁸ See WLWB Online Registry (www.wlwb.ca) for W2018C0007 – [Nighthawk – LUP Amendment – PS Determination Notification and RFD – Apr 22_21](#)

⁹ See WLWB Online Registry for [W2018L2-0003 – Nighthawk – WL Amendment – PS Determination Notification and RFD – Apr 22_21](#)

1. If the Board does not receive a notice of referral to environmental assessment by May 2, 2021, the Board will issue the amended Water Licence W2018L2-0003 on May 3, 2021, subject to the terms and conditions contained therein;
2. If the Board does not receive a notice of referral to environmental assessment by May 2, 2021, to approve Version 4.0 of the Water Use Plan but notes that withdrawal from VL2, VL5, VL6, and VL21 is not authorized;
3. Require Nighthawk to submit Version 4.1 within 30 days of the Board's decision; Version 4.1 is to remove references to the following Water Sources: VL2, VL5, VL6, and VL21;
4. If the Board does not receive a notice of referral to environmental assessment by May 2, 2021, the Board will issue the amended Type A Land Use Permit on May 3, 2021; and
5. Request that Nighthawk work collaboratively with the WRRB on wildlife management aspects and to determine the timing of an updated plan.

2.0 Background

The WLWB received an Amendment Application for Type B Water Licence W2018L2-0003 (Application),^{10,11,12} an Amendment Request for Type A Land Use Permit W2018C0007 (Request),^{13,14} and an updated Water Use Plan Version 4.0¹⁵ from Nighthawk on March 15, 2021.¹⁶ The Licence allows for water use in support of mineral exploration on the non-federal portion of the Indin Lake Gold Property. The Permit allows Nighthawk to conduct exploration activities at the Indin Lake Gold Property.

In June 2020, the Licence was amended to allow Nighthawk operational flexibility to allocate a total of 299 m³/day between both federal and non-federal Licences. In November 2020, the Permit was amended to allow Nighthawk to use additional equipment not included when the Permit was originally issued but did not update any conditions in the Permit. The current Amendments were submitted after Nighthawk entered into an option agreement with Geomark Exploration Ltd. to acquire additional mineral leases (NT-3636, NT-3538, NT-3655, and NT-3380). Nighthawk is requesting to have the area encompassed by these leases included in Permit W2018C0007 and Licence W2018L2-0003. Similar to the November 2020 Permit amendment, the currently proposed amendments would not result in any updates to the wording of conditions in the Permit or Licence but would update the complete application referenced in Part C, Condition 7 of the Permit and Part A, Condition 1(a) of the Licence.

¹⁰ See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Amendment Application – Cover Letter – Mar 10 21](#)

¹¹ See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Amendment Application – Form – Mar 10 21](#)

¹² See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Amendment Application – Engagement Log – Mar 12 21](#)

¹³ See WLWB Online Registry for [W2018C0007 – Nighthawk – Amendment Request – Cover Letter – Mar 10 21](#)

¹⁴ See WLWB Online Registry for [W2018C0007 – Nighthawk – Amendment Request – Engagement Log – Mar 12 21](#)

¹⁵ See WLWB Online Registry for [W2018L2-0003 – Nighthawk 0 Waster Use Plan V4.0 – Mar 10 21](#)

¹⁶ See WLWB Online Registry for [W2018C0007 – Nighthawk – Land Use Permit – Amendment – Nov 20 20](#)

The Amendment Application, Engagement Record, Water Use Plan Version 4.0, Draft Permit,¹⁷ and Draft Licence¹⁸ were distributed for public review on March 15, 2021, 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 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 April 6, 2021. Comments and recommendations were received from Government of Northwest Territories – Environment and Natural Resources (GNWT-ENR), GNWT-Lands, GNWT-Inspector, and the Wek’èezhìi Renewable Resources Board (WRRB); Board staff also submitted questions. The Tłı̨chǫ Government responded indicating it had no comments at this time. Proponent responses were submitted April 8, 2021. Reviewer comments and recommendations, as well as the proponent responses are available on the WLWB Online Registry.^{19,20}

3.0 Reasons for Decision

3.1 Permit 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 on newly acquired mineral leases adjacent to the Indin Lake Gold Property (NT-3636, NT-3538, NT-3655, and NT3380). In the covering letter, Nighthawk indicated that it had entered into an Options Agreement with Geomark Exploration Ltd., the company that holds the leases. During the public review, GNWT-Lands confirmed that this Options Agreement satisfies eligibility (GNWT-Lands comment 1). Therefore, the eligibility requirements under section 18 of the MVLUR are fulfilled.

3.2 Preliminary Screening

In accordance with subsection 124(1) of the MVRMA, the Board must conduct a preliminary screening of the Application. As per section 125(1) of the MVRMA, the Board distributed the Preliminary Screening Determination to the Review Board and the Nighthawk Distribution List on April 22, 2021.^{21,22} The Board did not receive a referral to Environmental Assessment during the 10-day pause period; therefore, as discussed in section 3.3 of this Reasons Decision, the Board is issuing the amended Permit W2018C0007 and amended Licence W2018L2-0003.

¹⁷ See WLWB Online Registry for [W2018C0007 – Nighthawk – Draft Land Use Permit – Mar 15 21](#)

¹⁸ See WLWB Online Registry for [W2018L2-0003 – Nighthawk – Draft Water Licence \(non-federal\) – Mar 15 21](#)

¹⁹ See WLWB Online Registry for [W2018L2-0003 – Nighthawk – WL Amendment – Review Summary and Attachments – Apr 9 21](#)

²⁰ See WLWB Online Registry for [W2018C0007 – Nighthawk – LUP Amendment – Review Summary and Attachments – Apr 9 21](#)

²¹ See WLWB Online Registry for [W2018C0007 – Nighthawk – LUP Amendment – PS Determination Notification and RFD – Apr 22 21](#)

²² See WLWB Online Registry for [W2018L2-0003 – Nighthawk – WL Amendment – PS Determination Notification and RFD – Apr 22 21](#)

3.3 Water Licence

3.3.1 General Principles for Water Licence W2018L2-0003

The scope, definitions, and conditions set forth in the draft Licence has been developed in order to address the Board's statutory responsibilities and the concerns that arose during the regulatory process. In developing the draft Licence, no changes were made to conditions but updates were made to reference documents to reflect the current status of Nighthawk's activities.

3.3.2 Determinations Relating to Water Licence W2018L2-0003

Existing Licensees

To Parties, or existing Licensees, raised concern with the potential for Nighthawk's proposed amendments to affect existing Licensees. Therefore, after reviewing the submissions filed on the Public Registry, the Board is satisfied that, with respect to paragraph 26(5)(a) of the *Waters Act*, the granting of this amended Licence to Nighthawk will not adversely affect, in a significant way, any existing Licensee, provided the conditions of the Licence are complied with.

Existing Water Users

Paragraph 26(5)(b) of the *Waters Act* prohibits the issuance of a licence unless the Board is satisfied that appropriate compensation has been or will be paid by the Applicant to people who were, at the time when the Applicant filed its application with the Board, members of the classes of water users, depositors, owners, occupiers, or holders listed under paragraph 26(5)(b) who would be adversely affected by the use of waters or deposit of waste proposed by the Applicant. There were no claims for compensation received by the comment deadline outlined in the Notice of Application.²³ Provided that compliance with the Water Licence conditions is achieved, the Board does not believe that any users or persons listed in paragraph 26(5)(b) of the *Waters Act* will be adversely affected by the use of waters or the deposit of Waste proposed by the Applicant.

Water Quality Standards

Insofar as subparagraph 26(5)(c)(i) of the *Waters Act* is concerned, the Board is of the view that compliance with the Licence conditions will ensure the Waste produced by the exploration at the Indin Lake Gold Property will be treated and disposed of in a manner which will maintain water quality consistent with applicable standards and the Board's *Water and Effluent Quality Management Policy*.²⁴

Financial Responsibility of the Applicant

Under paragraph 26(5)(d) of the *Waters Act*, before the Board can issue the Licence, it must be satisfied that the Applicant has provided evidence of adequate financial responsibility. The Board has not received any information to suggest that the current financial security does not satisfy paragraph 26(5)(d) of the *Waters Act*. There has been no evidence provided that the Project would significantly affect Closure and Reclamation costs. Additionally, Nighthawk has not proposed to increase activities beyond what security is currently held for. Therefore, the WLWB has determined that the financial responsibility of the Applicant remains adequate to satisfy 26(5)(d) of the *Waters Act*, including the requirements for security

²³ See WLWB Online Registry for [W2018L2-0003 – Nighthawk – WL Amendment Application – Public Notice – Mar 22 21](#)

²⁴ See WLWB 'Policies and Guidelines' webpage for MVLWB (2011) [Water and Effluent Quality Management Policy](#)

under Part C and Schedule 2 of the Licence.

Requirements of subsection 27(2) of the Waters Act

It is the Board's opinion that compliance with the condition of the Licence will ensure that any potential adverse effects on other water users, which might arise as a result of the issuance of the amended Licence, will be minimized.

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. It is noted that the mineral leases (NT-3636, NT-3538, NT-3655, and NT-3380) Nighthawk has requested to add to the Permit and Licence are on territorial land and therefore do not fall under the Tłıchq Wenek'e (Tłıchq Land Use Plan). The Tłıchq Land Claims and Self-Government Settlement (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. Therefore, the Board believes the requirements of subsection 61(2) are met.

Water Licence W2018L2-0003

At this time, Nighthawk has proposed to amend Licence W2018L2-0003 to allow for the use of water and deposit waste in support of exploration activities on mineral leases NT-3636, NT-3538, NT-3655, and NT-3380. This change would be through an update to the complete application referenced in Part A, Condition 1(a) with no change to any Licence conditions. During the public review, GNWT-ENR commented that it supports Nighthawk's Application and no changes to the Licence are required. No other comments regarding the Application were received during the public review.

Subject to the terms 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 Indin Lake Gold Property 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'èezhii.

After having reviewed the written comments and submissions received by the Board, and having due regard to the facts and circumstances, the merits of the submissions made to it, and to the purpose, scope, and intent of the MVRMA and the *Waters Act* and Regulations made thereunder, the Board has decided to issue the amended Water Licence W2018L2-0003, subject to the terms and conditions contained therein.

- ***Decision #1: If the Board does not receive a notice of referral to environmental assessment by May 2, 2021, the Board will issue the amended Water Licence W2018L2-0003 on May 3, 2021, subject to the terms and conditions contained therein.***

Water Use Plan Version 4.0

As part of the Amendment Application, Nighthawk submitted Version 4.0 of the Water Use Plan to include additional Water Sources as a result of the Options Agreement for new leases to be part of the Indin Lake Gold Property. The Water Use Plan was reviewed and it was confirmed that the Plan is in accordance with Part D, Condition 2 of the existing Licence. As described in Section 3.3.2, the Board decided to issue the amended Licence. The updated Water Use Plan would allow Nighthawk to use water and deposit waste in support of exploration activities on the newly acquired leases. During the public review, GNWT-ENR supported the updated Water Use Plan (GNWT-ENR comment 2).

Upon review of Version 4.0 of the Water Use Plan, it was noted that some of the proposed Water Sources were entirely located on lands Nighthawk does not have a mineral lease or claim for (VL2, VL5, VL6, and VL21). Nighthawk was asked to describe what these Water Sources would be used for, and what methods would be used to withdraw water from these sources (Board staff comment 2). Nighthawk responded that Water Sources outside of the lease boundaries were included for transparency with other water users in the area but understands exploration can only occur with mining lease and mineral claim areas. Nighthawk has stated it will update the Water Use Plan to exclude Water Sources entirely outside of areas in which Nighthawk has the right to conduct exploration activities. The Board has therefore decided to approve Version 4.0 of the Water Use Plan but notes that withdrawal from VL2, VL5, VL6, and VL21 is not authorized. The Board requires Nighthawk to submit Version 4.1 of the Water Use Plan within 30 days of the Board's decision; Version 4.1 is to remove references to Water Sources VL2, VL5, VL6, and VL21.

- ***Decision #2: If the Board does not receive a notice of referral to environmental assessment by May 2, 2021, the Board has decided to approve Version 4.0 of the Water Use Plan on May 3, 2021 but communicate that withdrawal from VL2, VL5, VL6, and VL21 is not authorized.***
- ***Decision #3: The Board requires Nighthawk to submit Version 4.1 within 30 days of the Board's decision; Version 4.1 is to remove references to the following Water Sources: VL2, VL5, VL6, and VL21.***

Additional Water Sources

Small-scale projects can propose small volumes of water use from a large number of potential sources over a large area and this is generally not practical to include in the body of a Licence. A Water Use Plan can be used to document all Water Sources that a Proponent intends to use throughout the life of a project. Section 79.1 of the *MVRMA* states:

The Wek'èezhii Land and Water Board may not issue, amend or renew a licence for the use of waters or the deposit of waste if, in its opinion, that use or deposit is likely to substantially alter the quality, quantity or rate of flow of waters when on or flowing through Tłıchq lands or water adjacent to Tłıchq lands unless:

- (a) The Board is satisfied that there is no alternative that could reasonably satisfy the requirements of the applicant and that there are no reasonable measures by which the applicant could avoid the alteration; and

- (b) The applicant has entered into an agreement with the Tłı̨chǫ Government to compensate the Tłı̨chǫ First Nation for any loss or damage that may be caused by the alteration, or the applicant or the Tłı̨chǫ Government has applied to the Board under subsection 79.3(1) for a determination of compensation for that loss or damage.

To allow the Board to fulfill this requirement in the MVRMA, and to satisfy the legislative requirements under subsection 26(5) and section 59 of the *Waters Act*, additional Water Sources must be added through an amendment proceeding because it provides all Parties an opportunity to provide input to the Board's consideration of proposed water sources. ***The Board reminds Nighthawk that all proposed Water Sources will require Nighthawk to submit an amendment application and a revised Water Use Plan.***

3.4 Land Use Permit

Nighthawk is requesting to amend its Permit to allow the Company to conduct exploration activities on newly acquired mineral leases. This change would be through an update to the complete application referenced in Part C, Condition 7; no Permit conditions would require changes to their wording. During the public review, GNWT-ENR commented that it supports Nighthawk's Amendment Application and no changes to the Permit are required. During the public review, the GNWT Inspector commented that no new Permit conditions would be required for the proposed Amendment (GNWT-Inspector comment 1). No other comments or recommendations were received from reviewers regarding the Request.

3.4.1 Overall Permit Recommendation

After reviewing the Request, as well as all reviewer comments and proponent responses submitted during the public review, the Board has decided to issue the amended Type A Land Use Permit.

- ***Decision #4: If the Board does not receive a notice of referral to environmental assessment by May 2, 2021, the Board will issue the amended Type A Land Use Permit on May 3, 2021.***

3.5 Wildlife Mitigation and Monitoring Plan

During the public review, the WRRB commented that Nighthawk did not submit an updated WMMP with the proposed amendments for the Licence and Permit and that projects requiring Type B Licences likely require WMMP as per the GNWT WWMP Process and Content Guidelines (WRRB comment 2).²⁵ The WRRB recommended that Nighthawk update their WMMP to include the newly acquired leases (WRRB comment 2). Nighthawk responded that because the activities of the Permit have not changed and the current WWMP is not specific to the particular leases and claims within the Permit boundaries, it does not believe an updated WMMP is required. Additionally, Nighthawk committed to continuing to review the WMMP annually and make updates as needed. It is noted that the WMMP is not a requirement of the Permit or Licence. The Board has decided to request that Nighthawk work collaboratively with the WRRB on wildlife management aspects and to determine the timing of an updated plan.

²⁵ See GNWT-ENR website for [Wildlife Management and Monitoring Plan \(WMMP\) Process and Content Guidelines](#)

- **Decision #5: The Board has decided to request that Nighthawk work collaboratively with the WRRB on wildlife management aspects and to determine the timing of an updated plan.**

In reviewing the WMMP, the Board noted that the authorizations referenced in the WMMP are not up to date and suggest that Nighthawk consider updating these as part of its next annual update.

Signed the 22nd Day of April, 2021, on behalf of the Wek'èezhìi Land and Water Board



Witness



Joe Mackenzie
Chair, Wek'èezhìi Land and Water Board