



Box 32, Wekweètì, NT X0E 1W0  
Tel: 867-713-2500 Fax: 867-713-2502

#1-4905 48<sup>th</sup> Street, Yellowknife, NT X1A 3S3  
Tel: 867-765-4592 Fax: 867-765-4593  
[www.wlwb.ca](http://www.wlwb.ca)

July 21, 2022

W2021L2-0004, W2021L2-0005, W2021C0009

Denise Lockett  
Manager, Stakeholder Relations, Licensing and Permitting  
Nighthawk Gold Corp.  
#301 – 141 Adelaide St. W.  
Toronto, ON, M5H 3L5

Sent via email

Dear Denise,

**Re: Nighthawk – Water Licence Amendment Applications and Land Use Permit Application – Reasons for Re-opening the Record and Request for Information Re Bulk Sampling Definition and Associated Security**

On July 19, 2022, the Board met and re-opened the Public Record for the Nighthawk Gold Corp (Nighthawk) Type A Water Licence Amendment Applications (W2015L2-0005 and W2021L2-0004) and Land Use Permit Application (W2021C0009) for the Indin Lake Project.<sup>1</sup> In consideration of the new evidence submitted by both the GNWT-ENR and Nighthawk in their Closing Arguments and the record to-date, the Board has decided to re-open the record to receive, and allow an opportunity for Parties to consider, this additional evidence. The reasons for this decision are outlined below, along with next steps in the proceeding.

**Background**

On November 4, 2021, Nighthawk Gold Corp (Nighthawk) submitted two Type A Water Licence Amendment Applications (W2015L2-0005 and W2021L2-0004) and a Land Use Permit Application (W2021C0009) for the Indin Lake Project.<sup>2</sup> In accordance with subsection 124(1) of the Mackenzie Valley Resource Management Act (MVRMA), the Wek'èezhìi Land and Water Board (WLWB or Board) is required to make a preliminary screening determination on any part of the proposed development that is not exempt from screening. The WLWB made a preliminary screening determination on the Applications on February 9, 2022.<sup>3</sup>

---

<sup>1</sup> See [Online Review System](#) for [Type A Water Licence Applications and Type A Land Use Permit Application](#)

<sup>2</sup> See [Online Review System](#) for [Type A Water Licence Applications and Type A Land Use Permit Application](#)

<sup>3</sup> See WLWB Online Registry at [www.wlwb.ca](http://www.wlwb.ca) for [Nighthawk - Preliminary Screening Determination and RFD - Feb 9 22.pdf](#)

The scope of Nighthawk's proposed activities came under question during both the Technical Session and the Public Hearing, and the latter resulted in two Undertakings by Nighthawk to provide further information. Following receipt of the response to Undertakings, an Information Request (IR) was issued to Nighthawk on April 25, 2022.<sup>4</sup> In response to the IR, Nighthawk provided additional information on the scope of its application as it relates to bulk sampling. Nighthawk's response to the IR underwent public review in accordance with the April 25, 2022 Work Plan.<sup>5, 6</sup>

In response to GNWT comment 1 on Nighthawk's response to the April 25, 2022 IR, Nighthawk provided additional details on the proposed scope of bulk sampling activities, including:

- The type of bulk sample undertaken previously at Damoti is not proposed (response to GNWT-ENR comment 1);
- Bulk sampling will be completed using a diamond drill to obtain drill core, surface samples/trenching, or reverse circulation drilling (response to GNWT-ENR comments 1 and 2);
- Proposed methods do not generate waste rock that needs to be stored at surface and subsequently monitored (response to GNWT-ENR comment 1);
- On average, bulk samples obtained through surface sampling/trenching, diamond core drilling, or reverse circulation drilling, are estimated to be 1 to 2 tonnes,<sup>7</sup> and up to a maximum of 100 tonnes (response to GNWT-ENR comments 1 and 2); and
- This volume of rock can be easily removed using mega bags, with no requirement to stockpile any new waste rock after sampling is complete.

On June 8, 2022, Board staff distributed draft authorizations (Federal Water Licence W2021L2-0005, Non-federal Water Licence W2021L2-0004, and Land Use Permit W2021C0009) for public review.<sup>8</sup> The Draft Licences included a requirement for the submission of a Bulk Sampling Plan for Board approval prior to the commencement of bulk sampling. The Draft Licences proposed that the Licensee shall not commence bulk sampling activities described in the Plan prior to Board approval of the Plan. The Draft Licences included the following requirements for a Bulk Sampling Plan to reflect the response to the April 25, 2022 IR:

- a) Location of bulk sampling and/or trenching activities;
- b) Detailed mechanisms of bulk sampling and/or trenching including use of explosives;
- c) Volume of bulk samples and expected geochemistry from drill core results;
- d) Dimension of trenches and expected geochemistry from drill core results; and
- e) Reclamation details of bulk sampling location following work.

Parties provided comments by the June 22, 2022 deadline, and Nighthawk provided comments and responses by the June 29, 2022 deadline. Closing Arguments were received from Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), Environment and Climate Change Canada (ECCC), the

---

<sup>4</sup> See WLWB Online Registry at [www.wlwb.ca](http://www.wlwb.ca) for [Nighthawk - Federal WL Application - Information Request to Nighthawk - Apr 25 22.pdf](#)

<sup>5</sup> See [WLWB Online Review System](#) for [Nighthawk Response to IR](#)

<sup>6</sup> See WLWB Online Registry for [Nighthawk - Non-Federal WL - Work Plan - Apr 25 22.pdf](#)

<sup>7</sup> Contradiction identified: Response to GNWT comment 1 says 1-2 tonnes, while response to GNWT comment 2 states 1-10 tonnes,

<sup>8</sup> See [WLWB Online Review System](#) for [Draft Water Licences and Land Use Permit](#)

Government of the Northwest Territories Environment and Natural Resources (GNWT-ENR), and the Tłı̨chǫ Government on or before the July 12, 2022 deadline. The Applicant provided Closing Arguments on July 18, 2022.<sup>9</sup>

Accompanying its Closing Arguments,<sup>10</sup> the GNWT-ENR submitted a new RECLAIM estimate related to bulk sampling activities and is considered new evidence. In its submission, the GNWT indicated that it was required to make assumptions on the activities for the estimate, including that bulk sampling will not take place on federal land (i.e., no federal security proposed) and maximum rock tonnages. In its Closing Arguments, Nighthawk responded to the GNWT's new evidence and provided its own new RECLAIM estimate.<sup>11</sup>

### **Reasons for Decision**

In accordance with Rule #38 of the Mackenzie Valley Land and Water Board's Rules of Procedure (Rules of Procedure), the Public Record will be closed at the time specified by the Board in a Directive, and no new evidence will be accepted unless a Request for Ruling to re-open the Public Record has been made under Rule #22 and is approved by the Board. As per the most current Work Plan for the proceeding,<sup>12</sup> the deadline for Parties' closing arguments was July 11, 2022 and the deadline for the Applicant's closing arguments was July 18, 2022. The receipt of closing arguments indicates the closing of the public record. In addition, in accordance with Rule #93 of the Rules of Procedure, new evidence should not be introduced to the proceeding by Interveners unless a Request for Ruling is submitted under Rule #22 and approved by the Board. The late evidence included in GNWT's and Nighthawk's Closing Arguments was not accompanied by a Request for Ruling to open the record and file new evidence.

The new evidence submitted with both the GNWT's and Nighthawk's Closing Arguments is related to security. The Boards' authority to require licensees and permittees to provide and maintain security is granted under the *Mackenzie Valley Resource Management Act* (MVRMA, federal legislation) and the *Waters Act* (territorial legislation).<sup>13</sup> In non-federal and federal areas, respectively, the GNWT and CIRNAC Ministers are the authorities responsible for approving type A water licences and, for both permits and licences, setting the form of security, holding security, and ultimately paying for the closure and reclamation of abandoned mine sites. The security estimates provided by GNWT-ENR and Nighthawk in their Closing Arguments introduce new evidence that no Parties, including the federal land manager, have had the opportunity to comment on.

As described in the Closure Guidelines, the total financial security required at any time during the life of the Project should be equal to the total outstanding reclamation liability for land and water combined. These updated estimates are linked to the extent of bulk sampling and associated liability, which remains unclear. Given the linkages between the assumptions about security and the definition of the proposed

---

<sup>9</sup> See WLWB Online Registry for [Nighthawk - Federal WL Application - Nighthawk Closing Arguments - Jul 18 22](#) and [Nighthawk - Federal WL Application - Nighthawk Closing Arguments - RECLAIM - Jul 18 22](#)

<sup>10</sup> See WLWB Online Registry for [Nighthawk - Federal WL Application - GNWT Closing Arguments - Jul 11 22](#) and [Nighthawk - Federal WL Application - GNWT Closing Arguments - RECLAIM - Jul 11 22](#)

<sup>11</sup> See WLWB Online Registry for [Nighthawk - Federal WL Application - Nighthawk Closing Arguments - RECLAIM - Jul 18 22](#)

<sup>12</sup> See WLWB Online Registry for [Nighthawk - Federal WL - Work Plan - May 26 22.pdf](#)

<sup>13</sup> See MVRMA sections 71, 72.11 and subsection 60(1.1), and Waters Act subsection 35

bulk sampling, the Board believes additional information is needed in order to be able to fully assess security requirements and set security as part of its decisions on the Water Licences and Land Use Permit.

In accordance with Rule #61 of the Rules of Procedure, the Board is issuing an Information Request (see Attachment 1) to address information gaps associated with this evidence and meet its obligations to assess security for licences and permits. In accordance with Rules #7 and #8 of the Rules of Procedure, the Board has decided to re-open the Public Record to include the new evidence submitted by GNWT and Nighthawk in their Closing Arguments, as well as from the Response to Information Request that will be received by Nighthawk.

Because the new evidence provided in Closing Arguments and/or new information provided in response to the attached IR could affect the positions of the Parties as reflected in their closing arguments, the Board has adjusted the Work Plan in order to complete this proceeding fairly. Specifically, the WLWB has adjusted the Work Plan to ensure:

- Parties have an opportunity to review the new information, and provide new comments or recommendations;
- Nighthawk has an opportunity to provide responses to those recommendations; and
- All Parties have an opportunity to update their Closing Arguments should they choose to do so.
- 

As described in the section below on Next Steps, the Record will re-open to allow the inclusion of these new steps.

### **Next Steps**

The Information Request in Attachment 1 sets out ten items that will result in new information that will be added to the record for this proceeding. The WLWB is requesting that Nighthawk respond to the ten items above as additional evidence to be added to the record of this proceeding on or before **August 2, 2022**.

To ensure that all Interveners have an opportunity to consider this new evidence, the Work Plan has been updated to include the necessary review steps<sup>14</sup> and the record for this proceeding will not close until all the required information is in the Board's hands.

Once Nighthawk's IR Response has been deemed complete, Board staff will distribute it for public review via the Online Review System. Deadlines for this public review will be as follows:

- Deadline for Reviewers to provide comments/recommendations: **August 23, 2022**
- Deadline for Nighthawk to respond: **August 28, 2022**

Given that the new information will have been added to the record, all Parties will be provided an opportunity to provide an update to its Closing Arguments by the following dates:

- Deadline for submission of or updates to Closing Arguments: **September 6, 2022**

---

<sup>14</sup> See WLWB Online Registry for [Nighthawk – Federal WL – Work Plan – Jul 21 22.pdf](#)

- Deadline for updates to Applicant's Closing Arguments: **September 13, 2022**

Sincerely,



Mike Nitsizia  
Acting Chair, Wek'èezhìi Land and Water Board

Bcc: Nighthawk Distribution List

Attachment 1: Information Request to Nighthawk

## **Attachment 1: Water Licence Amendment Applications and Land Use Permit Application – Request for Information – Scope of Authorizations and Associated Security**

Throughout this proceeding Board staff have sought clarity regarding the scope of the Applications. In its Closing Arguments, the GNWT stated that it believed the issue regarding the scope of the licences had been resolved. However, the security estimates provided by GNWT-ENR and Nighthawk in its Closing Arguments, introduce new evidence that no Parties, including the federal land manager, have had the opportunity to comment on. These updated estimates are linked to the extent of bulk sampling and associated liability, which remains unclear. This new evidence, along with a review of the record to-date, highlights the need for additional information. In order to ensure the necessary evidence is on the record, the WLWB has determined that it requires additional information from Nighthawk before it can conclude this proceeding in accordance with Rule #61 of the Rules of Procedure.<sup>15</sup>

### **Definition of Bulk Sampling**

In review of the Draft Licences, the GNWT-ENR recommended that Nighthawk propose a definition for “Bulk Sampling” stating that it should “at minimum include trenching for the purpose of collecting a bulk sample” (GNWT-ENR comment 15). In its response, Nighthawk did not propose a definition but did agree that the definition of bulk sampling in the Federal and Non-federal Licences should include trenching and diamond drilling. The WLWB is not aware of a definition for bulk sampling within NWT legislation.

In consideration of the GNWT-ENR’s Closing Arguments, it appears GNWT-ENR has assumed a maximum of 100 tonnes of rock could be removed via bulk sampling over the life of the Project. In its Closing Arguments, Nighthawk specified that each sample will be less than 100 tonnes and did not comment on the maximum extent of bulk sampling. To understand the extent of potential effects and estimated the required security, the maximum extent of disturbance (i.e., rock to be removed) should be clarified by Nighthawk and incorporated into the authorizations.

- 1. Nighthawk is to:**
  - a. Confirm whether it wishes to receive authorization to bulk sampling at any location within the Indin Project area;***
  - b. Provide the maximum number of locations where bulk sampling may take place over the life of the project;***
  - c. At a given location, provide the maximum tonnage of bulk sampling and the maximum number of samples;***
  - d. Provide the maximum total tonnage of bulk sampling for the Project; and***
  - e. Describe the potential impacts and mitigations associated with the maximum extent of bulk sampling.***

The following definition is proposed for use in the licence for Nighthawk’s consideration:

- **Bulk Sampling:** The removal of a rock sample greater than 1 tonne by trenching, diamond drilling, or reverse circulation drilling, up to a maximum of 100 tonnes per sample.
- 2. Nighthawk to consider the above and propose a definition for Bulk Sampling.**

---

<sup>15</sup> MVLWB Rules of Procedure: [https://mvlwb.com/sites/default/files/lwb\\_rules\\_of\\_procedure\\_-\\_dec\\_17\\_18.pdf](https://mvlwb.com/sites/default/files/lwb_rules_of_procedure_-_dec_17_18.pdf)

In the scope of the authorizations trenching and bulk sampling are listed as separate activities. It is unclear if all proposed trenching will be encompassed by the proposed bulk sampling definition or whether additional trenching beyond bulk sampling is proposed.

- 3. Nighthawk is to clarify whether trenching beyond Bulk Sampling, as defined in #3 above is proposed.**

### Security

In its Closing Arguments,<sup>16</sup> the GNWT-ENR included a new RECLAIM estimate to include bulk sampling activities and presented new evidence regarding security associated with Bulk Sampling. The GNWT acknowledged that it was required to make assumptions on the activities for the estimate, including that all bulk sampling will take place on only non-federal land (i.e., no federal security proposed) and maximum rock tonnages. In its Closing Arguments, Nighthawk provided a response to the new GNWT recommendations, including a proposed closure cost estimate. No Parties had the opportunity to review this new evidence, including CIRNAC who is responsible for holding security for federal land.

As described in the Boards' Closure Guidelines:

Every new and existing advanced mineral exploration and mining operation must be able to support the cost of reclamation and be able to provide adequate security to ensure that the operator, rather than the landowner, bears the cost of reclamation, including care and maintenance, permanent closure, and post-closure monitoring.

As described above, it is unclear the maximum extent of bulk sampling proposed. In order to be able to fully assess security requirements under s. 35 of the *Waters Act*, the WLWB is requiring Nighthawk provide the following information:

- 4. Nighthawk is to provide a closure cost estimate to cover the maximum liability associated with bulk sampling at any time during the Project (as described in #1 above).**

### Waste Rock and Ore Management

In its comments on the Draft Licences, the GNWT-ENR recommended both the federal and non-federal water licences include a condition that prohibits the deposit of new waste rock or ore (GNWT-ENR comment 2). Nighthawk agreed with the inclusion of such a condition. Nighthawk further noted that it is understood that any future changes in sampling activities that could generate waste rock would trigger a water licence amendment.

The following new licence condition is being proposed for Nighthawk's consideration:

- The Licensee shall not deposit new waste rock or ore within the Project area.
- 5. Nighthawk is to consider the above proposed condition and comment on the proposed condition to prohibit the deposit of waste rock and ore.**

---

<sup>16</sup> See WLWB Online Registry for [Nighthawk - Federal WL Application - GNWT Closing Arguments - Jul 11 22](#) and [Nighthawk - Federal WL Application - GNWT Closing Arguments - Jul 11 22](#)

To ensure that such a condition is achievable, the WLWB would like to clarify whether any temporary storage of waste rock or ore may be required on site and if so, to understand how this activity could be consistent with #5 above.

- 6. Nighthawk is to clarify whether any temporary storage of waste rock or ore may be required and if so, describe how this activity could be consistent with #5 above (i.e., maximum duration of any temporary storage).**

#### Bulk Sampling Plan

In response to GNWT comment 20, Nighthawk stated that, the list of detailed information (included as the Bulk Sampling Plan Schedule in the Draft Licences) would be provided through notification of bulk sampling activities to the Inspector. Nighthawk stated that "the location and volume of bulk samples is yet to be determined and will be contingent on the incorporation of the drill results". Nighthawk further clarified the proposed process for providing information about bulk sampling:

To be clear, Nighthawk does not intend for a new Bulk Sampling Plan to be submitted for approval prior to each bulk sampling activity. Rather, pursuant to the overall Bulk Sampling Plan, and as stated in Nighthawk's response to IR #5 on 25 April 2022, notice to the Inspector prior to each bulk sampling event would include more detailed information specific to each bulk sampling event, such as location of the bulk sample(s); detailed mechanisms of bulk sampling and/or trenching including use of explosives; volume of bulk sample and expected geochemistry from drill core results; dimension of trenches and expected geochemistry from drill core results; and reclamation details of bulk sampling following work.<sup>17</sup>

This was reiterated in its Closing Arguments.<sup>18</sup> In addition, Nighthawk stated it envisioned the Bulk Sampling Plan would include:

- a) an overview of the anticipated bulk sampling methods
- b) anticipated erosion control measures
- c) ore management and/or transport methods
- d) anticipated reclamation methods
- e) water management (if applicable)
- f) equipment
- g) potential impacts and mitigations
- h) reference to updated Spill Contingency Plan, Waste Management Plan, Water Management Plan, Closure and Reclamation Plan, or other approved plans as applicable.

A similar list was provided in Nighthawk's Closing Arguments. It is unclear whether potential impacts and mitigations can be assessed without a known location for bulk sampling being provided to the Board for decision (e.g., with the Application or in a Plan for approval). To ensure that all Parties have an opportunity

---

<sup>17</sup> See WLWB Online Review System for [Indin Lake Project - Draft Water Licences and Land Use Permit](#); Response to GNWT comment 20

<sup>18</sup> See WLWB Online Registry for [Nighthawk - Federal WL Application - Nighthawk Closing Arguments - Jul 18 22.pdf](#)



to comment on whether the locations are required as part of the Bulk Sampling Plan, Nighthawk is to provide clarity on how and when these details are proposed to be provided with supporting rationale.

- 7. Nighthawk is to propose the schedule requirements for the Bulk Sampling Plan, including rationale for not providing location, for Parties consideration**
- 8. Nighthawk is to propose a trigger for the submission of, and updates to, the Bulk Sampling Plan.**
- 9. Nighthawk is to propose timing and requirements for the notification to the Inspector regarding bulk sampling.**

#### Depositing waste within 100 metres of the Ordinary High Water Mark of any Watercourse

In its comments on the Draft Licences, the GNWT, CIRNAC, and Nighthawk all recommended that the following condition be included in the Water Licences (CIRNAC comment 2, GNWT comment and response 18):

The Licensee shall not discharge Waste, including Wastewater, to any Watercourse, or to the ground surface within 100 metres of the Ordinary High Water Mark of any Watercourse unless otherwise approved by the Inspector.

It is noted that this reflects a Standard Water Licence Condition<sup>19</sup> with the additional text “unless otherwise approved by the Inspector.” In its Closing Arguments, the GNWT noted that Nighthawk’s agreement to the inclusion of this condition and the associated limits on discharge of waste, were a key reason to resolving GNWT’s concerns with the inclusion of bulk sampling in the scope.

The Standard Water Licence Conditions Template state that “This Condition would not be included when the Licence allows for authorized Discharges with specified locations”.<sup>20</sup> The Non-federal Licence authorizes the deposit of Waste at the Damoti site with applicable EQC proposed; therefore this condition was not included in the Draft Non-federal Licence. In addition, “unless otherwise approved by the Inspector” was not included because the sub-delegation of responsibility to the Inspector exists under the Mackenzie Valley Land Use Regulations, however not in the Waters Regulations. It is noted that the Federal Licence Application proposes the use of camp where greywater and drill water may be released over land, however a specific location was not proposed or recommended through this proceeding.<sup>21</sup>

Therefore, the standard condition could be included in the Federal Licence and a non-standard condition, similar to the one proposed below, could be included in the Non-federal Licence:

- The Licensee shall not discharge Waste, including Wastewater, to any Watercourse, or to the ground surface within 100 metres of the Ordinary High-Water Mark of any Watercourse, beyond that authorized in Part H, Condition 12 of this Licence.<sup>22</sup>

---

<sup>19</sup> See [WLWB Policies and Guidelines](#) for [MVLWB Standard Water Licence Conditions and Schedules - Version 2.0](#); pg. 49

<sup>20</sup> See [WLWB Policies and Guidelines](#) for [MVLWB Standard Water Licence Conditions and Schedules - Version 2.0](#); pg. 49

<sup>21</sup> See WLWB Online Registry for [Nighthawk - Waste Management Plan - Version 4.0 - Oct 14 21](#); PDF pg 10 and [Nighthawk – Federal WL Application – Public Hearing – Day 1 Transcript – Apr 12 22](#) pg. 119

<sup>22</sup> Part H Condition 12 refers to the EQC at the Damoti site

**10. Nighthawk is to consider the above non-standard condition and propose an alternative condition to be included in the Non-federal Licence and address the GNWT-ENR's concerns if it does not agree with the above.**