



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 4, 2022

Governor’s Office of Planning & Research

Apr 05 2022

STATE CLEARINGHOUSE

Matt Kelley
Senior Planner
Nevada County Planning Department
950 Maidu Avenue, Suite 170
Nevada City, CA 95959
Idaho.MMEIR@co.nevada.ca.us

Dear Mr. Kelley:

Subject: IDAHO-MARYLAND MINE PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2020070378

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from Nevada County Planning Department (County) for the Idaho-Maryland Mine Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California’s **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code., § 1802.) Similarly for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project is subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code is recommended. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project's surface components will be located on approximately 175.64 acres consisting of the Brunswick Industrial Site, the Centennial Industrial Site, and a 0.30-acre portion of East Bennett Road for off-site improvements associated with a potable water pipeline easement. The Project would also involve underground mining within an approximately 2,585-acre mineral rights boundary owned by the Rise Grass Valley.

The Project consists of re-initiating underground mining and gold mineralization processing for the Idaho-Maryland Mine over an 80-year period. Following completion of mining and processing activities, the Project sites would be reclaimed to open space and industrial uses. The Project would involve: (1) dewatering of the underground mine workings; (2) construction and operation of aboveground processing and water treatment facilities at the Brunswick Industrial Site; (3) engineered fill placement for potential future industrial pad development at the Centennial and Brunswick Industrial Sites; (4) installation of a potable water pipeline for residential potable water supply; and (5) reclamation of the Project sites in accordance with the Project's proposed Reclamation Plan. From the total of 175.64 acres included in the Project sites, approximately 104 acres would be disturbed as a result of construction of the facilities proposed to support dewatering, mining, and processing at the Idaho-Maryland Mine, as well as engineered fill placement.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below, in addition to the comments in Attachment 1, to assist the County in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

CDFW is primarily concerned with the Project impacts to existing fish and wildlife resources including brown trout (*Salmo trutta*), foothill yellow-legged frog (*Rana boylei*) (FYLF), California red legged frog (*Rana draytonii*), Pine Hill flannelbush (*Fremontodendron californicum* ssp. *decumbens*), California black rail (*Laterallus jamaicensis coturniculus*), willow flycatcher (*Empidonax traillii*), and other aquatic and terrestrial plant and wildlife species. CDFW is also concerned with impacts from the discharge of water on riparian habitat, impacts to downstream aquatic resources from mining activities, and dewatering impacts on water temperature, nutrient concentrations, and turbidity. CDFW provides the attached and following comments for the County's consideration:

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1. On page 2-30, Measure 4.4-1(a) for Pine Hill flannelbush (*Fremontodendron californicum ssp. decumbens*) lists Project-specific mitigation measures to be implemented on the Centennial Industrial Site. Some of these measures include seed collection, transplantation, and creating a Habitat Management Plan (HMP). Pine hill flannelbush is listed as rare under the Native Plant Protection Act (NPPA) (Fish & G. Code § 1900 et seq.). The NPPA prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Please see comment 3 for Incidental Take Permit (ITP) recommendations.
2. On page 2-34, two of the special status plants that mitigation measure 4.4-1(b) refers to, are listed as state endangered, the Stebbin's morning glory (*Calystegia stebbinsii*) and the Scaddel Flat checkerbloom (*Sidalcea stipularis*). Measures indicated to be included in the HMP as currently described in the DEIR would result in take. Measures resulting in take include, but are not limited to, on page 2-37 “*remove bulbs of individual plants to be directly impacted during the dormant season; relocate the bulbs to a site with similar soil, hydrologic, vegetation type and aspect as the portion of the project site where the plants are found; and identify the location(s) for dormant season relocation and site selection for transplantation.*” As stated above, take of state-listed plants due to Project activities may only be permitted under an appropriate CESA take authorization. Please see comment 3 for ITP recommendations.

Additionally, the DEIR should cover a range of possibilities for mitigation. The use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species are generally experimental in nature and largely unsuccessful. Therefore, the DEIR should describe additional mitigation measures utilizing habitat restoration, conservation, and/or preservation, in addition to avoidance and minimization measures, if it is determined that there may be impacts to rare, threatened, or endangered species.

3. CDFW recommends that an ITP be obtained where the Project has the potential to result in take of a species state-listed as rare, candidate, threatened, or endangered under CESA or NPPA, either through construction or over the life of the Project. Plant species not listed as rare, threatened, endangered, or candidates for listing under CESA or NPPA may nevertheless meet the definition of rare or endangered provided in CEQA (Cal. Code Regs., tit. 14, § 15380, subd. (b)). Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code § 2081 (b)). To facilitate the issuance of an ITP, CDFW recommends the DEIR include species specific measures to minimize and fully mitigate the impacts to any state-listed species the Project activities have the potential to take.
4. On page 2-38, the FYLF pre-construction survey and avoidance and minimization measures as laid out in measure 4.4-2(a), details Visual Encounter Surveys (VES) to be conducted. However, given that there are sightings of FYLF within five miles, both to

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the north at Deer Creek, and to the East at Greenhorn Creek, the limited historic survey data available in the immediate Project vicinity, and the lack of information regarding the distribution and extent of the current FYLF population within the Project area, CDFW recommends FYLF surveys and habitat assessments be conducted throughout the Project Study Area and include the results in the DEIR. CDFW recommends that surveys be conducted in accordance with CDFW's *Considerations for Conserving the Foothill Yellow-Legged Frog* (2018), available here:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>. CDFW

recommends the following survey and species considerations be incorporated into the DEIR for Project implementation:

- a. As described in the CDFW's *Considerations for Conserving the Foothill Yellow-Legged Frog* (2018) document, VES conducted during the late summer are often the easiest method for determining presence; subadults and occasionally adults are often observed along river margins, and subadult and adult frogs will likely also be observed in tributary streams (Crump and Scott 1994).
- b. To increase the likelihood of detection, surveys should include at least one VES during the breeding and/or oviposition period (generally April – June), a tadpole survey four to eight weeks after the breeding survey(s), a subadult survey in late summer/early fall (generally late August to early October), and a final VES within 3 to 5 days prior to starting work.
 - i. It is important to understand that frogs are ectothermic, so ambient temperature affects the likelihood of detection. Whether the life form is larval or subadult, both stages will shelter in place under substrate and emerge and become active with warmth (i.e., detection probability increases with temperature).
- c. If a survey fails to detect foothill yellow-legged frogs within suitable habitat, a follow-up survey should be conducted two to four weeks after the initial survey.
- d. Develop measures to avoid incidental take on a site- and project-specific basis.
 - i. For example, measures may vary based on the type and extent of disturbance, duration and timing of disturbance, and influence of environmental factors. A season of operation that completely avoids foothill yellow-legged frog presence does not exist; if frogs are present and breeding, they may be encountered in various life stages year-round. However, in locations having periodic dry conditions, especially prolonged dry conditions, foothill yellow-legged frogs are unlikely to be encountered. Under dry conditions, foothill yellow-legged frogs usually seek refuge in wetted tributaries (or any wetted feature).

In March 2020, the California Fish and Game Commission recognized two clades of the FYLF (*Rana boylei*) as threatened under the CESA. The Northeast/Northern Sierra clade was one of those clades. Therefore, please revise Table 4.4-6 to reflect Foothill

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yellow-legged frog status as threatened under CESA. Please see comment 3 for ITP recommendations.

5. On pages 2-43 through 2-45, the California black rail 4.4-2(d) pre-construction survey and avoidance and minimization measures indicate that a call-back/response survey will be done to detect evidence of this species. The California black rail is a fully protected species (Fish & G. Code § 3511). Fully protected species may not be taken or possessed at any time. The DEIR should state that the qualified biologist will obtain the proper permits prior to implementing call-back/response surveys. This may include the need for a Memorandum of Understanding (Fish & G. Code § 2081(a)) from CDFW prior to conducting the surveys to ensure the species scientific research is executed appropriately and the data is reported accurately.

Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the County include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts and avoid take of fully protected species.

6. The DEIR has identified perennial, intermittent, and ephemeral rivers, streams, and other hydrologically connected aquatic features. The DEIR did not analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned aquatic features and associated biological resources/habitats that may occur because of the Project. Therefore, the DEIR should propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level including but not limited to Project impacts to water temperature, water nutrient concentrations, and turbidity.

The DEIR has identified Project activities that will require notification to CDFW pursuant to Section 1602 of the Fish and Game Code. Notification is required for any activity that may do one or more of the following:

- Substantially divert or obstruct the natural flow of any river, stream, or lake;
- Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- Deposit debris, waste, or other materials where it may pass into any river, stream or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW will determine if the Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. The Project as currently

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proposed in the DEIR will require a LSA Agreement. A LSA Agreement will include measures necessary to protect existing fish and wildlife resources.

CDFW's issuance of a LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of a LSA Agreement, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, minimization, mitigation, and monitoring and reporting commitments.

7. The DEIR does not include a discussion of the Project's effects of mining operations on resident fish in Wolf Creek or South Fork Wolf Creek. On March 8, 2022, CDFW staff performed a spot electrofishing survey within South Fork Wolf Creek. The survey included three electrofishing locations within Reaches C and D as shown in Appendix K.1, Figure A1, of the DEIR. The efforts identified the presence of multiple life stages of resident brown trout (*Salmo Trutta*) at each of the survey locations (Memorandum: Electrofishing at South Fork Wolf Creek, Nevada County, March 8, 2022). The DEIR should discuss resident fish in South Fork Wolf Creek and Wolf Creek and analyze potential fisheries impacts that may occur as a result of the Project and propose ways to avoid, minimize, or mitigate any potentially significant impacts to a less-than-significant level.
8. In Appendix K-2, the DEIR estimates that initial dewatering will involve pumping groundwater from the mine works at a rate of approximately 2,500 gallons per minute (gpm) for six months, with ongoing dewatering of 850 gpm during mine operation. As a result of the dewatering, there is a predicted groundwater drawdown of up to 10 feet. The DEIR identifies the different types of vegetation within the Project site, including riparian vegetation, but does not characterize the vegetation's potential reliance on groundwater or interconnected surface waters. The DEIR does not include a discussion of the potential impacts of lowering the groundwater table on environmental users of groundwater, such as groundwater dependent ecosystems or environmental users of interconnected surface waters.

Page 121 of Appendix K.2 of the DEIR states that in higher topographic areas, the depth to groundwater is already below typical rooting depths and that in lower areas, the flow releases to South Fork Wolf Creek would increase recharge to support groundwater levels. Appendix K.2 does not provide sufficient detail about the location of vegetation that may be reliant on groundwater or interconnected surface waters, the depth to groundwater underlying those areas, or evidence that increased flows in South Fork Wolf Creek would provide enough groundwater recharge to maintain groundwater

levels to support existing vegetation. Additionally, Appendix K.2 states that because projected groundwater drawdown is within the range of historic fluctuations, impacts would be less-than-significant. However, maintaining groundwater at the projected maximum drawdown level, or any reduced groundwater level, for sustained mine operations over 80 years without the reprieve of historical seasonal groundwater highs may result in temporary or permanent impacts to environmental users of groundwater, including groundwater dependent vegetation.

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The DEIR should include a more detailed analysis of the impacts of initial and continued dewatering on environmental users of groundwater, including groundwater dependent ecosystems and users of interconnected surface waters. The analysis should include figures displaying the locations of potential groundwater dependent ecosystems or riparian or other vegetation that relies on interconnected surface waters, the depth to groundwater underlying the groundwater dependent ecosystems and riparian vegetation in Project and non-Project scenarios, and additional discussion of the projected increase in recharge as a result of the discharge of treated water into South Fork Wolf Creek, including the interconnectivity between groundwater and South Fork Wolf Creek surface water. If this more detailed analysis identifies any potentially significant impacts, the DEIR should state how the Project will avoid, minimize, or mitigate any these impacts to a less-than-significant level.

9. The DEIR does not discuss Project impacts on water temperature in South Fork Wolf Creek or Wolf Creek. Initial and continued dewatering of the mine works will reduce groundwater discharge into the surface water bodies where groundwater-surface water connectivity exists in proximity to the mine. Groundwater inflows to surface water typically maintain lower surface water temperatures. Where mine operations reduce groundwater contributions to South Fork Wolf Creek by altering the subsurface hydraulic gradients, mine operations can impact creek temperature. The DEIR should analyze the impacts of mine dewatering on surface water temperature in South Fork Wolf Creek and Wolf Creek and the aquatic species therein. If this analysis identifies any potentially significant impacts, the DEIR should state how the Project will avoid, minimize, or mitigate any these impacts to a less-than-significant level.

The DEIR also does not discuss the temperature of the on-site treated water that will be discharged into South Fork Wolf Creek, which has the potential to significantly alter instream temperatures and affect resident aquatic species, including brown trout (see above comment on resident fish). The DEIR should include an analysis of Project impacts on instream water temperatures of South Fork Wolf Creek and Wolf Creek. The analysis should consider both the temperature of on-site treated water discharges into South Fork Wolf Creek as well as the projected reduction of groundwater discharges to baseflow in the surface water bodies. If this analysis identifies any potentially significant impacts, the DEIR should state how the Project will avoid, minimize, or mitigate any these impacts to a less-than-significant level.

10. The DEIR states that the Project, in combination with the cumulative list of projects, would result in a less-than-significant cumulative impact to water quality, drainage patterns, and groundwater resources. The cumulative impacts discussion does not include a discussion of the impacts to environmental users of groundwater, habitats, or aquatic resources that would occur during the 80-year operational timeline for the Project. The 80-year duration of the Project would essentially create a new hydrologic baseline in the Project area and in upstream and downstream interconnected hydrology. The DEIR does not discuss the shifting ecological baseline that would occur during the Project, nor does it account for impacts that would occur at the end of the Project or the restoration timeline for a return to the pre-Project baseline conditions.

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The cumulative impacts discussion should consider the ecological impacts of the 80-year Project implementation timeline and the resulting adaptation of ecosystems and species to long-term altered hydrology. The DEIR should also evaluate impacts to hydrology in the Project area during the period of time in which recharge is refilling the previously dewatered mine works for potential impacts to surface water bodies, aquatic species, and groundwater dependent and riparian vegetation.

11. South Fork Wolf Creek and Wolf Creek are tributary to the Bear River, which has existing beneficial uses of warm and cold freshwater habitat, and wildlife habitat. The DEIR does not discuss potential downstream impacts to the Bear River and its beneficial uses as a result of the Project and associated impacts on upstream hydrology. The DEIR should discuss and assess potential downstream impacts to the Bear River and its existing beneficial uses.

Please see *Attachment 1: Additional CDFW Comments on Idaho-Maryland Mine DEIR April 4, 2022*, for all additional CDFW comments on this DEIR.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to r2CEQA@wildlife.ca.gov.

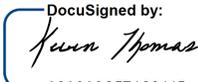
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CDFW appreciates the opportunity to comment on the DEIR to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Caitlyn Oswalt, Environmental Scientist at (916)358-4315 or Caitlyn.Oswalt@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kevin Thomas
Regional Manager

Attachment

1. Attachment 1: Additional CDFW Comments on Idaho-Maryland Mine DEIR April 4, 2022

Enclosure

1. Memorandum: Electrofishing at South Fork Wolf Creek, Nevada County, March 8, 2022

ec: Caitlyn Oswalt, Environmental Scientist
Billie Wilson, Senior Environmental Scientist (Supervisory)
Briana Seapy, Senior Environmental Scientist (Supervisory)
Bridget Gibbons, Senior Environmental Scientist (Specialist)
Mitch Lockhart, District Fisheries Biologist
Kelley Barker, Environmental Program Manager
CEQACommentLetters
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

Considerations for Conserving the Foothill Yellow-Legged Frog (CDFW 2018)
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>