On January 10, 2023, DTSC received comments from the California Department of Fish and Wildlife (CDFW) regarding the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Argonaut Mine Tailings Site Feasibility Study/Remediation Action Plan. The following provides CDFW's comments along with DTSC's responses.

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Argonaut Mine Tailings Site Feasibility Study/Remediation Action Plan (project). CDFW is responding to the IS/MND as a Trustee Agency for fish and wildlife resources (Fish & G. Code, §§ 711.7 & 1802, and CEQA Guidelines, §§ 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for incidental take of endangered, threatened, and/or candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project would be located near the intersection of Highway 49/88 and Sutter Street in the City of Jackson (approximately Latitude: 38.355175, and Longitude: -120.777227, in Amador County). The project consists of the Department of Toxic Substances Control (DTSC) completing improvements to the stormwater conveying structures from the Argonaut Dam that is currently discharging into an existing open drainage channel on the east side of Argonaut Drive. The proposed project consists of improving the downstream drainage system to handle 140 cubic feet per second runoff in 100-year storm events. New stormwater infrastructure would be built to channelize runoff into an existing stormwater drain under Highway 49/88, which ultimately conveys stormwater to Jackson Creek. A significant portion of the downstream infrastructure would be replaced with larger pipes, culvert inlets, new manholes, and additional drainage inlets. Overall, the proposed improvements are intended to address and improve stormwater conveyance in the City of Jackson.

CDFW recommends the following items be addressed in the future planning of the project:

1. **Nesting Bird Survey timing**. The recommended surveys are limited to February 1 through August 15. CDFW recommends that nesting bird surveys be conducted if project activities are scheduled to occur between February 1 and August 31, to fully encapsulate the potential nesting season.

   DTSC Response: The IS/MND currently states that project work, including vegetation removal and ground disturbing activities, would occur outside of the nesting season for migratory birds (February 1 through August 15). If removal of trees and vegetation occurs during the nesting season for migratory birds, (February 1 through August 15), a qualified biologist would conduct surveys for nesting raptors and other nesting birds no more than 14 days before the start of vegetation removal to locate all active nests of birds protected under the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503 and 3503.5. CDFW is recommending that the nesting season end date be extended by an additional 16 days to August 31. A 16-day extension of the nesting season for migrating birds to August 31 would have little impact on project activities and timelines, and therefore this extension would be incorporated into the project description.

2. **Nesting Bird Survey Radius**: The recommended survey buffers are listed as 50 feet for migrating birds and 300 feet beyond the project area of nesting raptors. CDFW typically recommends a 500-foot radius for migrating birds, and a ½ mile radius for nesting raptors.

DTSC Response: Extending the survey buffers around the project footprint to a 500-foot radius for nesting birds and a ½ mile radius for nesting raptors would have little impact on the project and, therefore, the CDFW recommended survey buffers would be incorporated into the project description.

3. **Moving out of Harm's Way**: The proposed project is anticipated to result in disturbances to natural habitats that support native species. To avoid direct mortality, a qualified biologist who is approved by CDFW to handle western pond turtles (*Emys marmorata*, WPT, Species of Special Concern), or other special status species, may be retained to be onsite prior to and during all project-related activities to move out of harm's way special status species or other wildlife of low or limited mobility, that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far a necessary to ensure their safety.

   Please note, if it is determined the project may have the potential to result in "take," as defined in the Fish and Game Code, section 86, of a CESA-listed species, then DTSC should disclose that an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081) may be needed prior to starting construction activities. The MND should include all avoidance and minimization to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures should be proposed to fully mitigate the impacts to CESA-listed species (Cal. Code Regs., tit. 14, § 783.2, subd. (a)(8)). If the DTSC does not pursue CESA authorization and encounters any CESA-listed species during project activities, work should be suspended, and CDFW notified. Work should not re-initiate until DTSC has consulted with CDFW and can demonstrate compliance with CESA.

   DTSC Response: The potential for CESA-listed species, including species of special concern, to occur within the project footprint or to be affected by project activities is very low, and project activities are not expected to impact these species. Regardless, mitigation measures would be implemented to ensure that potential impacts would remain at less-than significant levels. These mitigation measures would include:

   - A qualified biologist with experience conducting western pond turtle surveys would conduct two preconstruction surveys for adult western pond turtle one week and within 48 hours before vegetation removal and initial ground-disturbing activities in or adjacent to suitable aquatic habitat. The survey area would include all potential western pond turtle habitat within a 300-foot buffer around the proposed project's limits of work. If a western pond turtle is found during the pre- construction surveys, a biological monitor will be present during construction activities occurring in the marsh or adjacent habitats within 300 feet of the marsh to provide guidance on avoiding impacts to western pond turtles during construction.
   - Before any work occurs in the proposed project site, including grading or vegetation removal, a qualified wildlife biologist would provide Worker Environmental Awareness Program training for all construction personnel. The training would include a description of the avoidance and minimization measures that would be implemented during

construction to protect sensitive biological resources. If new construction personnel are added to the project, the contractor would provide them with the mandatory training before they start work.

4. **Tree Roosting Bats**: If roost trees are removed during the colder months, bats may be in hibernation and unable to escape. To avoid potential impacts to both maternity colonies and hibernating bats, CDFW recommends that tree removal be scheduled either in the spring between approximately March 1 (or when evening temperatures are above 45°F) and April 15, or in fall between approximately September 1 and October 15 (or prior to evening temperatures dropping below 45°F and the onset of rainfall greater than one-half inch in 24 hours). If bats must be capture or relocated, a qualified biologist should capture injured bats by hand-capture or other methods approved by CDFW. CDFW does not authorize the use of mist nets or harp traps as capture techniques.

   DTSC Response: A habitat assessment was conducted in spring of 2020 by a CDFW qualified biologist to evaluate the potential for trees in the project vicinity to provide bat roosting habitat. Several trees in the study area were determined to have varying degrees of potentially suitable roosting habitat, though it appeared unlikely that any of these trees would require removal as part of the project activities. Because it has been three years since that habitat assessment was completed and because the limits of work have since been refined slightly, the project site was reassessed on February 10, 2023. It was determined that no trees with potential to provide significant bat roosting habitat would require removal for the project. Therefore, the IS/MND has been modified to remove discussion of seasonal tree removal in MM BIO-1.

   However, two adjacent trees within close proximity of construction disturbance may provide potentially significant maternity roost habitat. Construction disturbance occurring during the maternity season (generally April 1 – August 31) could cause roost abandonment and the mortality of nonvolant bat pups (pups that cannot yet fly). Therefore, the Section 4 threshold discussion in the IS/MND concerning native wildlife nursery sites and MM BIO-1 have been updated to include the following language:

   <u>Impact Analysis:</u>
   Based on the temporary nature and duration of the construction activities and the location of work areas, which are on an industrial site, the Proposed Project would not have the potential to interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors. This conclusion is based on the temporary nature and duration of the work and the work areas which are in a disturbed, developed area.

   Based on biological surveys, there is the potential for special status bird species to nest on and near the Proposed Project site, and potential for colonial bat species to roost near the Proposed Project site. The Proposed Project would include MM BIO-1 to address short-term disturbance, as identified in Section 4(a). Once completed, the Proposed Project would result in a similar quality and area of habitat as is currently existing at the Proposed Project site.

   Conclusion:
   There is the potential for special status bird species to nest on or near the Proposed Project site and for colonial bat species to roost near the Proposed Project site. Implementation of

recommended MM BIO-1 would ensure impacts to nesting and foraging birds and colonial bat species remain at less-than-significant levels. Once completed, the Proposed Project would result in a similar quality and area of habitat as is currently existing at the Proposed Project site.

MM BIO-1

- A CDFW qualified biologist shall conduct surveys in an effort to determine if trees in the immediate vicinity of the project disturbance area contain a maternity colony of bats. Surveys shall be conducted at a time when a maternity roost would be active (typically between April 1 – August 31), as determined by the qualified biologist. At a minimum, surveys shall consist of two evening emergence surveys or one evening and one dawn survey using acoustic recording equipment and night vision technology. If roosting colonial bats are determined to be absent, no further action shall be required.

  If an active maternity colony is found, measures intended to minimize construction disturbance and the potential for roost abandonment and bat mortality shall be implemented. Such measures could include:
  1) Biological monitoring to assess levels of disturbance and colony response,
  2) Acoustic monitoring to assess frequencies and decibels of sounds emitted by construction activities,
  3) Installation of acoustic buffers between construction activities and any active maternity colonies, and/or
  4) Delay of project activities until pups are volant and can fly away from construction disturbance, as determined by the qualified biologist.

5. **Passive Relocation and Entrapment Prevention**: At the end of each workday, an escape ramp should be placed at each end of any open excavation to allow wildlife that may become trapped to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than thirty (30) degrees. A qualified biologist or construction monitor should survey the project area to ensure wildlife incidentally trapped due to project activities are allowed to escape prior to project commencement.

   DTSC Response: Open trenching would be used to upgrade existing stormwater conveyance infrastructure within the project footprint. Wildlife have the potential to fall into open trenches and possibly become trapped with no means of escape. MM BIO-1 states that before any work occurs in the project footprint, including grading or vegetation removal, a qualified wildlife biologist would provide Worker Environmental Awareness Program training for all construction personnel. The training would include a description of the avoidance and minimization measures that would be implemented during construction to protect sensitive biological resources. These measures would include standard requirements to prevent wildlife entrapment. Because this was not explicitly specified in the IS/MND, language has been added to MM BIO-1 to read:

   - At the end of each workday, an escape ramp shall be placed at each end of any open excavation to allow wildlife that may become trapped to climb out overnight. The ramp shall be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than thirty (30) degrees. At the beginning of each workday a qualified biologist or construction monitor shall survey the project area to ensure

wildlife incidentally trapped due to project activities are allowed to escape prior to project commencement.

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6. **Lake and Streambed Alteration**: Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing 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.

    If upon review of an entity's notification, CDFW determines that the project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the environmental document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the project may avoid or reduce impacts to fish and wildlife resources. Notifications for projects involving (1) sand, gravel or rock extraction, or (2) timber harvesting operations must be submitted using paper notification forms. All other LSA Notification types must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS. More information about LSA Notifications, paper forms and fees may be found at https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA.

    Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the project. Written notifications may be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

    DTSC Response: DTSC is currently completing a CDFW 1602 Lake and Streambed Alteration permit application. This application will be submitted through CDFW's Environmental Permit Information Management System (EPIMS) Permitting Portal. Project activities will not commence until the project receives this permit.

Mitigation Measure Bio-1 – Updated Language for IS/MND and Other Permits
(additional language is underlined, ~~strikethrough~~ identifies removed language)

Prior to any ground disturbing activities:

- Schedule project work, including vegetation removal and ground disturbing activities, to occur outside of the nesting season for migratory birds (February 1 through August 31).

- If removal of trees and vegetation will occur during the nesting season for migratory birds, (February 1 through August 31), a qualified biologist should conduct surveys for nesting raptors and other nesting birds no more than 14 days before the start of vegetation removal. Typically, these nest surveys need to extend ½ mile radius ~~feet~~ beyond the boundaries of the project impact area for nesting raptors, and a 500-foot radius for other nesting birds. If active bird nests are detected during the surveys, a non-disturbance protective buffer should be established around the nest (typically a~~300 feet~~ ½ mile radius for raptors, 500-foot radius for other nesting migratory birds). A smaller buffer may be established in consultation with CDFW if the qualified biologist determines that construction closer to the nest would not adversely affect nesting activities.

- Minimize tree trimming and restrict vegetation removal to areas outside of oak woodland vegetation communities and limit vegetation trimming to smaller (under 6" diameter at breast height [DBH]), shrub-like trees that are not likely to support roosting bats or North American porcupine. If removal of trees larger than 6" DBH cannot be avoided during construction, a qualified biologist experienced with bat species should conduct a survey to search for evidence of bat roosts in trees to be removed. Bat roost surveys will be conducted at least 6 months before proposed tree removal. If evidence of roosting bats is found during the pre-construction survey, the qualified biologist will provide guidance on the appropriate time to conduct tree removal (typically during the fall, September– October 31) and will be present during tree removal to avoid impacts on roosting bats.

- A qualified biologist with experience conducting western pond turtle surveys should conduct two preconstruction surveys for adult western pond turtle one week and within 48 hours before vegetation removal and initial ground-disturbing activities in or adjacent to suitable aquatic habitat. The survey area will include the marsh habitat present in the BSA (Exhibit 3) and grassland and ruderal habitat within 300 feet of the marsh. If a western pond turtle is found during the pre- construction surveys, a biological monitor will be present during construction activities occurring in the marsh or adjacent habitats within 300 feet of the marsh to provide guidance on avoiding impacts to western pond turtles during construction.

- A wetland delineation will be conducted to identify any aquatic features on site that are potentially jurisdictional under Section 404 and 401 of the Clean Water Act or under the jurisdiction of CDFW. If the proposed project will result in impacts on jurisdictional waters of the U.S. or the State, the applicant should secure the appropriate permits from the U.S. Army Corps of Engineers, the State Water Resource Control Board and CDFW.

- Before any work occurs in the project footprint, including grading or vegetation removal, a qualified wildlife biologist will provide Worker Environmental Awareness Program training for all construction personnel. The training will include a description of the avoidance and

minimization measures that will be implemented during construction to protect sensitive biological resources. If new construction personnel are added to the project, the contractor will provide them with the mandatory training before they start work.

- At the end of each workday, an escape ramp shall be placed at each end of any open excavation to allow wildlife that may become trapped to climb out overnight. The ramp shall be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than thirty (30) degrees. At the beginning of each workday a qualified biologist or construction monitor shall survey the project area to ensure wildlife incidentally trapped due to project activities are allowed to escape prior to project commencement.

- A CDFW qualified biologist shall conduct surveys in an effort to determine if trees in the immediate vicinity of the project disturbance area contain a maternity colony of bats. Surveys shall be conducted at a time when a maternity roost would be active (typically between April 1 - August 31), as determined by the qualified biologist. At a minimum, surveys shall consist of two evening emergence surveys or one evening and one dawn survey using acoustic recording equipment and night vision technology. If roosting colonial bats are determined to be absent, no further action shall be required.

  If an active maternity colony is found, measures intended to minimize construction disturbance and the potential for roost abandonment and bat mortality shall be implemented. Such measures could include:

  1. Biological monitoring to assess levels of disturbance and colony response,
  2. Acoustic monitoring to assess frequencies and decibels of sounds emitted by construction activities,
  3. Installation of acoustic buffers between construction activities and any active maternity colonies, and/or
  4. Delay of project activities until pups are volant and can fly away from construction disturbance, as determined by the qualified biologist.