

<b>Public Review Comment Letter</b>
1. Mitchell M. Tsai, on behalf of the Arroyo Seco Foundation and the Pasadena Audubon Society, September 11, 2015
2. Mitchell M. Tsai, on behalf of the Arroyo Seco Foundation and the Pasadena Audubon Society, April 8, 2016

<b>No.</b>	<b>Comment</b>	<b>Response</b>
1.1	<p>There are glaring omissions and misinformation in connection with the adverse impact of the project on the beneficial wildlife uses of wetlands along the perimeter of Devil's Lake, and adverse impacts on beneficial fishery uses of waters downstream of the Devil's Lake resulting from the mobilization of sediment and sedimentation-related water quality impacts.</p> <p>As a result, Commenters request that the Los Angeles Regional Water Quality Control Board ("<b>LARWQCB</b>" or "<b>Regional Board</b>") 1) deny the current Permit Application 2) conduct a public hearing on the Project, 3) find that the Permit Application is incomplete, 4) require that the Project apply for an NPDES General Construction Permit, 5) order the development of a Supplemental Environmental Impact Report to consider the Project's impacts on water quality, and 6) impose waste discharge Requirements.</p>	<p>The detailed responses to the requests listed are addressed below:</p> <p>1) <i>deny the current Permit Application</i>, see response to comments, 1.5 and 1.15 and 1.37.</p> <p>2) <i>conduct a public hearing on the Project</i>, see response to comment, 1.14.</p> <p>3) <i>find that the Permit Application is incomplete</i>, see response to comments, 1.15 through 1.21.</p> <p>4) <i>require that the Project apply for an NPDES General Construction Permit</i>, see response to comments, 1.22 and 1.34.</p> <p>5) <i>order the development of a Supplemental Environmental Impact Report</i>, see response to comment, 1.23.</p> <p>6) <i>impose Waste Discharge Requirements</i>, see response to comment, 1.32 and 1.36.</p>
1.2	<p>The Arroyo Seco Foundation is a community-based 501(c)(3) nonprofit organization that advocates for an integrated, harmonious approach to watershed and flood management, water conservation, habitat enhancement, and the expansion of recreational opportunities through action projects, recreation, and environmental awareness activities. ASF has conducted a watershed coordination and education program in the Arroyo Seco Watershed for more than ten years. ASF members live, work, and recreate in the area surrounding the Devil's Gate Reservoir. Pasadena Audubon Society is a California nonprofit corporation that aims to bring the excitement of birds to their community through</p>	<p>Comments noted.</p>

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	<p>birding, education, and the conservation of bird habitats serving the communities of Alhambra, Altadena, Arcadia, Azusa, Duarte, El Monte, La Cañada, Monterey Park, Monrovia, Montrose, Pasadena, Rosemead, San Gabriel, San Marino, Sierra Madre, South Pasadena, and Temple City. Audubon members live and work near the Project site and frequently live, work, and recreate in the areas immediately surrounding the Devil's Gate Reservoir.</p>	
1.3	<p><b><u>I. PROJECT BACKGROUND</u></b></p> <p>The Devil's Gate Reservoir Sediment Removal and Management Project ("Project") is a proposed sediment removal project in the Devil's Gate Reservoir ("Reservoir") proposed by the LACFCD. The Project proposes to remove sediment from behind Devil's Gate Dam ("Dam"). Built in 1920, the Dam is the oldest dam constructed by the County to provide flood protection to the cities of Pasadena, South Pasadena, and Los Angeles and to promote water conservation efforts. The Reservoir had an original storage capacity of approximately 7.42 million cubic yards ("mcy") at the time of its opening. The Reservoir's current reservoir capacity is approximately 3.72 mcy. LACFCD attributes the reduced capacity primarily to sediment accumulation behind the Dam.</p> <p>The Project site is located within Hahamongna Watershed Park ("Park" or "Project Site"), a well-known and widely used City of Pasadena designated nature preserve and recreational area. The 300-acre Park offers magnificent views of the San Gabriel Mountains, and supports a wide variety of recreational uses, including hiking, bicycling, birding, horseback riding, picnicking, soccer, baseball, softball, disc golf, and other activities. The Park is a popular fishing destination. The Park has also become home to a number of federally and state endangered species, including Least Bell's Vireo, Yellow Warbler, Yellow-Breasted Chat, and Loggerhead Shrike.</p>	Comments noted.
1.4	The Project will impair water quality within the Reservoir and receiving	For the detailed responses to the issues of water

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	<p>water bodies, destroy habitat for the above-mentioned federally and state endangered species, permanently decrease the recreational and aesthetic value of the Park, and displace recreational activities for the entire five-year period during which the Project's initial large scale sediment removal operations will occur.</p>	<p>quality, see response to comments, 1.11 and 1.24. Comments concerning recreational uses are noted but are outside the scope of the Los Angeles Water Board's action to issue a Clean Water Act section 401 water quality certification.</p> <p>The Los Angeles Water Board also notes that the final LACFCD alternative (Modified Alternative 3, Configuration D, Option 2) will shorten the initial sediment removal phase by a year.</p>
1.5	<p>Originally proposed as a 50-acre 1.67 mcy emergency sediment removal following the 2009 Station Fire, the Project was initially denied permits by a number of federal and state agencies, including the Regional Board. See Letter from Samuel Unger, P.E., Executive Officer, California Regional Water Quality Control Board Los Angeles Region to Christopher Stone, Los Angeles County Flood Control District ( Mar. 18, 2011), attached hereto as Exhibit 9.</p> <p>In denying the Project's December 1, 2010 application for a Clean Water Act (CWA) Section 401 Water Quality Certification, the Regional Board found that:</p> <p>. . . we do not find that the potential significant impacts have been minimized to the fullest degree possible and we do not find an analysis of alternatives, which should include alternatives in terms the overall size of the project (the volume of materials to be removed and the acreage impacted) and the timing and staging of the impact. Alternatives need to be identified and adequately analyzed for a project, such as the one proposed, to proceed. <i>Id.</i></p>	<p>As noted by the commenter, the Los Angeles Water Board denied without prejudice a 2010 application (File No. 10-170) for a sediment removal project at Devil's Gate Dam on March 18, 2011. The 2010 Devil's Gate project was designed to remove sediments in anticipation of potentially considerable additional sediment accumulation after the Station Fire in 2009. The storms that occurred in the two wet seasons after the fire increased sediment accumulation in the reservoir by approximately 1.3 million cy. The Los Angeles Water Board denied the application for several reasons, including that the LACFCD did not consider sufficient alternatives to avoid and/or minimize impacts to waters of the State from the project.</p> <p>LACFCD has appropriately responded to all the Los Angeles Water Board's concerns expressed in the March 18, 2011 denial without prejudice as explained below.</p>

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	<p>Moreover, the Regional Board requested that LACFCD “identify cleanout alternatives . . . other than ‘return to design capacity.’ . . . [and] identify cleanout alternatives which would minimize the 50-acre impact and identify alternatives for phasing the project to minimize impacts over time.</p> <p>Finally, the Regional Board noted that a “total cleanout” alternative would then “permit LACFCD to not conduct work in this basis for the next ten to fifteen years.”</p> <p>LACFCD failed to respond to the Regional Board’s directives. Instead, in 2014, despite no significant change in the Reservoir’s storage capacity from 2010, LACFCD substantially expanded the size of the proposed Project in to a massive 70-acre 2.4 mcy sediment removal project. Exactly opposite to what the Regional Board’s directed LACFCD to do in its March 18, 2011 comment letter. The Project’s initial large-scale sediment removal would occur over a five year period, removing sediment from a 70-acre area and establish a permanent 52-acre maintenance area within Park requiring <b>annual ongoing sediment removal.</b></p>	<p>1) In the March 18, 2011 denial without prejudice, the Los Angeles Water Board required LACFCD to “...identify clean out alternatives sufficient to protect public safety other than ‘return to design capacity...’” The alternatives identified by LACFCD included designs predicated on an analysis of State Department of Water Resources Division of Safety of Dams requirements and calculations of Capital Flood and Design Debris Events (DDE) instead of “return to design capacity.”</p> <p>2) In the March 18, 2011 denial without prejudice, the Los Angeles Water Board anticipated that the “total cleanout” alternative proposed at the time would allow the LACFCD to not conduct work in the reservoir for the next 10 to 15 years because the Los Angeles Water Board was aware of no plan for the long-term maintenance of the reservoir. The current Devil’s Gate project (File No. 15-053) includes a plan for annual clearing for long-term maintenance. The purpose of the annual maintenance activities is to reduce buildup of sediment in the reservoir maintenance area and substantially reduce the need for future, periodic large-scale sediment removal projects.</p> <p>3) In the March 18, 2011 denial without prejudice, the Los Angeles Water Board required LACFCD to “...identify cleanout alternatives which would minimize the 50-acre impact and identify alternatives for phasing the project...” The Devil’s Gate project (File No. 15-053) as proposed at the time of the commenter’s letter was larger in scope than the 2010 project because additional sediments had built-up behind the dam since 2010 due to the Station Fire.</p>

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		<p>Alternatives that would minimize the size of the impact include an “Upstream Sediment Management” Alternative, which was not analyzed because it was found to be infeasible and three alternatives (Alternative 1B, 2C and 3D), which would either remove more cubic yards of sediment (Alternative 2C) or fewer (Alternative 1B, 6% less and Alternative 3D, 18% less) than the proposed project while, in each alternative, impacting less acreage. Phasing the project, as described in the March 18, 2011 denial without prejudice, to remove “... lesser initial volumes but repeated cleanouts over several periods including two years and five years ...” was not analyzed as an alternative by LACFCD, but the EIR considered a reasonable range of alternatives and sufficient alternatives to prepare and issue 401 certification.</p> <p>In addition, subsequent to the commenter’s letter and the recirculated EIR, the Los Angeles County Board of Supervisors directed that the project reduce the maximum total volume of sediment removed from 2.4 mcy to 1.7 mcy plus inflows during the project at the time that it certified the recirculated portions of the FEIR. This alternative is referred to as Modified Alternative 3, Configuration D and was analyzed in the November 7, 2017 letter from ECORP Consulting, Inc. to the Permittee.</p> <p>The Los Angeles Water Board notes that the permanent maintenance area has been reduced to 49.39 acres in the Modified Alternative 3, Configuration D.</p> <p>In summary, the concerns in the March 18, 2011 denial without prejudice have been adequately</p>

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		<p>addressed, including the analysis of alternatives in the Final Environmental Impact Report (FEIR), including the recirculated portions, and the inclusion of a long-term maintenance plan that incorporates annual sediment removal.</p>
1.6	<p>LACFCD's new proposal would restore the Reservoir to a flood control capacity that it has not maintained since 1935. The sediment removal process will have numerous, significant impacts on water quality and riparian wetland habitat that LACFCD has failed to accurately and adequately disclose to the public and mitigate. More specifically, the administrative record before the LACFCD clearly shows that more than 40 acres of jurisdictional wetlands will be impacted by the project rather than the 10 acres suggest in LACFCD's 401 certification to the Regional Board. The administrative record also evidences that the LACFCD used an improper baseline to assess the impacts of the project on sediment mobilization and water quality relying on baseline samples taken immediately after dredging activities (which resulted in artificially high sediment levels in the water). The Regional Board's misplaced reliance on the LACFCD's flawed wetlands and sediment analysis in its beneficial use impact analysis in its 401 certification review would result in the Regional Board's separate violation of the Clean Water Act.</p> <p>Nor does LACFCD have a reasonable justification for the increased size of the Project, as it does not appear to be necessary due to flood risk at the Dam. In 1993, LACFCD made improvements at the Dam that significantly increased the Reservoir's flood control capacity. In 1995, LACFCD performed some small scale sediment removal from the areas behind the Dam, removing a mere 0.19 mcy. The Dam and Reservoir have operated successfully since that them. Nevertheless, LACFCD now claims that massive flooding of the surrounding downstream neighborhoods will occur unless the currently proposed Project is implemented. The timing of the Project interestingly coincides with new availability of State grant funds and the revival of the long-dead Eaton</p>	<p>The Jurisdictional Delineation completed by Chambers Group for the LACFCD in October 2013 and approved by the Army Corps of Engineers and the Los Angeles Water Board is consistent with the application for 401 certification received by the Los Angeles Water Board in May 2015. The Jurisdictional Delineation was updated August 16, 2016 to address Army Corps of Engineers' comments on the 2013 Jurisdictional Delineation. The commenter does not provide a reference or evidence for the "40 acres of jurisdictional wetlands" figure.</p> <p>For the baseline assessment, see response to comments 1.26 and 1.29.</p> <p>The commenter makes a number of comments on the estimation of flood risk. The estimation of flood risk at Devil's Gate is analyzed in the FEIR and comments on the estimation are responded to in the response to comments of the FEIR.</p>

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	<p>Canyon Pipeline Project, a water supply project which may seek to rely on water storage capacity within the Reservoir.</p>	
<p>1.7</p>	<p>LACFCD's own internal correspondences indicate that the amount of sediment removal proposed for the Project is unrelated to actual flood risk at the Dam. See Email from Valerie De La Cruz, County of Los Angeles to Ramil Parial and Crystal Franco (March 30, 2011) RE: FW: Devil's Gate Report, attached hereto as Exhibit 5. As Ms. De La Cruz stated:</p> <p style="padding-left: 40px;">Can we change the proposal (since this is an EIR now) to include a template cleanout, i.e. 1070 elevation in the reservoir? Since the emergency has been denied by the Board, I see no reason to limit the cleanout to 1.67MCY.</p> <p>Commenters and general public opinion are strongly against the Project due to the County's failure to adequately justify the need for such a large sediment removal. As L.A. County Supervisor Yaroslavsky stated in voting against the Project on November 12, 2014:</p> <p style="padding-left: 40px;">I'm not satisfied with the answer....I believe Mr. Czamanske deserves an answer and the rest of us do to that question we asked. What are the odds that if you went with the Pasadena alternative or any other alternative....you would have an overflow that would create.... a major flood?....It's a very legitimate question that they're asking. County of Los Angeles Board of Supervisors, The Meeting Transcript of the Los Angeles County Board of Supervisors 191 (Nov. 12 2014) attached hereto as Exhibit 4.</p>	<p>Comments noted. The alternatives identified by LACFCD included designs predicated on an analysis of State Department of Water Resources Division of Safety of Dams requirements and calculations of Capital Flood and Design Debris Events (DDE).</p>
<p>1.8</p>	<p>Numerous workable alternatives that are significantly less environmentally harmful and achieve adequate levels of flood protection were proposed to the Flood Control District, including one by the City of Pasadena that calls for 1.1 mcy of sediment to be removed from the Reservoir, with no more than 220,000 cy of sediment removal per year.</p>	<p>LACFCD analyzed a reasonable range of project alternatives, including a "no project" alternative. The amount of sediment that the City of Pasadena proposed to remove over a 5-year period is less than the amount that flowed into the reservoir following the Station Fire (1.1 million cy versus 1.3 million cy).</p>

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	<p>The alternatives focus on removing less sediment over a longer period of time to mitigate the Project's impacts. However, the County has ignored these alternatives in favor of a 5 year plan that appears to coincide with the expiration of the aforementioned state grants, set to expire in 2020. Grant Agreement Between The State of California (Department of Water Resources and Los Angeles County Flood Control District (2013) attached hereto as Exhibit 7.</p> <p>In fact, even the Flood Control District disagrees with itself as to whether or not ANY sediment removal is actually necessary. The Flood District's 2012 - 2032 Sediment Management Strategic Plan shows that the Reservoir is currently meeting the Flood Control District's own acceptable flood risk standard, 2DDE. Los Angeles County Flood Control District (2013) Sediment Management Strategic Plan: 2012 – 2032 8-42 attached hereto as Exhibit 10.</p> <p>This is in spite of the Project's admitted significant environmental impacts on aesthetics, traffic, biological resources, public health, noise, and air quality. The Project will destroy over 70 acres of some of Southern California's most precious wildlife habitat. It will send more than 400 trucks a day through a residential area around 15 preschool, elementary, middle and high school facilities and through residential streets and neighborhoods over 8 hours a day for 9 months of the year.</p> <p>The County of Los Angeles Board of Supervisors ("BOS") approved the Project and certified the Project's California Environmental Quality Act, Cal Public Resources Code § 21000, <i>et seq</i> ("CEQA") Final Environmental Impact Report ("FEIR") on October 12, 2014.</p> <p>Commenters filed a CEQA lawsuit challenging the Project's approval by the BOS under the California Environmental Quality Act, Cal Public Resources Code § 21000, <i>et seq</i> ("CEQA"), County of Los Angeles Code, as well as Pasadena Municipal Code on December 11, 2014. <i>Arroyo Seco Foundation, et al v. County of Los Angeles, et al</i> (LASC</p>	<p>According to the alternatives analysis conducted by LACFCD, with this amount of removal, an additional large-scale sediment removal would be required in the future.</p> <p>Since the Los Angeles Water Board denied without prejudice the 2010 application, the Los Angeles Water Board has worked with the LACFCD, the California Department of Fish and Wildlife and the Army Corps of Engineers to continue to revise the project to ensure impacts are minimized and appropriate compensatory mitigation is assessed. In addition, on June 14, 2011, the Los Angeles Water Board issued a Clean Water Act Section 401 Water Quality Certification for the Devil's Gate Dam Interim Measures project to authorize sediment removal within a 0.55 acres area to ensure continued functioning of the Devil's Gate Dam.</p> <p>On April 17, 2017, the Superior Court of the County of Los Angeles issued a decision on the commenter's lawsuit, finding that the EIR complied with CEQA on all but three grounds. Subsequently, the LACFCD recirculated those portions of the EIR on mitigation measures affecting certain biological resources, impacts to a potential Devil's Gate Water Conservation Project and emission standards for dump trucks. The Los Angeles County Board of Supervisors certified the recirculated portions of the FEIR on November 7, 2017, and directed LACFCD to reduce the maximum total volume of sediment from 2.4 mcy to 1.7 mcy plus inflows during the project. This alternative is referred to as Modified Alternative 3, Configuration D and was analyzed in the November 7, 2017 letter from ECORP Consulting, Inc. to the</p>

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	<p>Case No. BS152771), Notice To Responsible Agencies (filed Feb. 17, 2015).</p> <p>The Permit Application has been pending with the Regional Board since May 18, 2015.</p>	<p>Permittee.</p>
<p>1.9</p>	<p><b><u>II. EXPERT TESTIMONY.</u></b></p> <p>Commenters have included the testimony of nine scientific experts commenting on the Project.</p> <p>[Qualifications of commenters Matt Hagemann, Jessie Jaeger, T'Shaka Touré, Michael Long, Darren Dowell, Lance Benner, Timothy Brick, and Norman H. Brooks, see original letter.]</p>	<p>Comments noted.</p>
	<p><b><u>III. BACKGROUND ON THE CLEAN WATER ACT SECTION 404 DREDGE &amp; FILL PERMIT</u></b></p> <p>[See original letter.]</p>	<p>Comments noted.</p>
<p>1.10</p>	<p><b><u>IV. BACKGROUND ON THE CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION.</u></b></p> <p>[See original letter.]</p>	<p>Comments noted.</p>
<p>1.11</p>	<p><b><u>V. BACKGROUND ON APPLICABLE WATER QUALITY STANDARDS.</u></b></p> <p>The Project will affect both the Arroyo Seco and Los Angeles River. The Arroyo Seco is a 24.9 mile long seasonal river that begins at Red Box Saddle in the Angeles National Forest near Mount Wilson in the San Gabriel Mountains, flowing through La Canada Flintridge,</p>	<p>With this project, as with any sediment management or removal project, there is the potential for excess sediments to be introduced into the waterway by directly disturbing the sediment in water or when stormwater carries sediment from freshly excavated or graded areas to the water. The certification (File No. 15-053) includes requirements to employ Best Management Practices (BMP) to limit the potential for</p>

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	<p>Altadena, and the City of Pasadena before it ends at its confluence with the Los Angeles River near Elysian Park.</p> <p>The Los Angeles River is a 48 mile river starting in the Simi Hills and Santa Susana Mountain flowing through Los Angeles County, California from Canoga Park in the western end of the San Fernando Valley before ending southeast to its mouth in Long Beach. The entire main stem of the Los Angeles River had been found by the U.S. Environmental Protection Agency to constitute navigable waters of the United States, so the Regional Board's CWA 401 certification review of the Project must consider the downstream water quality/beneficial use impacts of the Project on the Los Angeles River. As noted above, the dredging activities will result in on-going and long-term mobilization of sediments in the waters of Devil's Lake, and these waters with high sediment loads will then be released/discharged downstream of the Project into the Arroyo Seco and then the Los Angeles River. Due to the improper sedimentation baseline used by the LACFCD, the Permit Application submitted to the Regional Board did not acknowledge these downstream sedimentation impacts and did not include mitigation to offset the adverse impacts of this downstream sedimentation on the beneficial uses of the Los Angeles River.</p> <p>The Project will impact many sections of the Arroyo Seco and Los Angeles River. Specifically, discharges from the Project's activities will reach Arroyo Seco Reach 1 (Los Angeles River Reach 2 to Holly Street, Arroyo Seco Reach 2 (Holy Street to Devil's Gate Dam), Devil's Gate Reservoir (Lower), Devil's Gate Reservoir (upper), Los Angeles River Reach 2 (Carson St. to Rio Hondo Reach 1), Los Angeles River Reach 1 (Estuary to Carson St.), and Los Angeles River Estuary (Ends at Willow St.).</p>	<p>excess sediment to be released to the stream and to monitor water quality when waters are diverted to ensure that any alteration in water quality will be detected so that modified or additional BMPs can be implemented. See response to comment 1.24 for more discussion of BMPs.</p> <p>For the sediment baseline comment, see response to comment 1.26.</p>
1.12	Increased sedimentation caused by the Project's activities may impact beneficial uses along the Arroyo Seco and Los Angeles River...	Comments noted. See also response to comment 1.11.

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	[Review of beneficial uses of Los Angeles River, see original letter]	
1.13	<p>The Project activities may cause violations of Basin Plan water quality standards...</p> <p>[Review of Basin Plan water quality standards, see original letter]</p>	See also response to comment 1.11.
1.14	<p><b><u>VI. THE REGIONAL BOARD SHOULD CONDUCT A PUBLIC HEARING ON THE PROJECT'S 401 CERTIFICATION</u></b></p> <p>Commenters request that the Regional Board conduct a public hearing on this Application. 23 Cal. Code of Regs. § 3858. The Project has been a source of significant public controversy and the general public should have an opportunity to respond to this Application.</p>	<p>The Los Angeles Water Board Executive Officer has issued the Clean Water Act (CWA) Section 401 certification.</p> <p>The public has had an adequate opportunity to comment on the project and the Section 401 application. The project has been on the Los Angeles Water Board's Public Notice page since May 2015 and comments were accepted until July 2018. The Los Angeles Water Board has considered all the comments received in preparing the conditions of the certification.</p> <p>Issuance of 401 Water Quality Certifications is within the authority of the Los Angeles Water Board and may be considered by the Board at a public meeting or may be issued by the Executive Officer on behalf of the Board (Los Angeles Water Board Resolution R14-005 amending R10-009, Delegation of Authority to the Executive Officer). See also California Code of Regulations, title 23, section 3859, subdivision (c) (noting that the Executive Officer has the authority to take a certification action).</p>
1.15	<p><b><u>VII. A 401 WATER QUALITY CERTIFICATION CANNOT BE ISSUED AT THIS TIME AS THE PERMIT APPLICATION IS INCOMPLETE.</u></b></p>	The application was determined to be complete on December 15, 2015. The applicable federal permits have been identified (see response to comment 1.16),

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	<p>The Regional Board should deny 401 Certification as the Application is inadequate and incomplete. The Application does not provide a number of documents and information required by the Regional Board's regulations, including identifying all applicable federal permits, identifying all waters of the United States, or providing a detailed Compensatory Mitigation Plan.</p>	<p>waters of the United States jurisdictional determinations have been approved (see response to comment 1.17) and a sufficient compensatory mitigation plan has been received (see response to comment 1.17).</p>
1.16	<p><b>a. The Permit Application Does Not Identify All Federal Permits</b></p> <p>Section 3856(c) of Title 23 of the California Code of Regulations provides that a 401 Certification application must “[c]omplete[ly] identif[y] . . . all federal licenses/permits being sought for or applying to the proposed activity . . . .”</p> <p>The Permit Application does not identify all federal permits applicable to the activity as the Permit Application does not list the need to obtain an Endangered Species Act Section 10 Incidental Take Permit. Presently, the County is involved in an informal biological consultation to determine whether or not an incidental take permit is required.</p> <p>The Project will in all likelihood require an Incidental Take permit as a federally-listed endangered species, the Least Bell's Vireo has been consistently observed on the Project site. Letter from Mitchell M. Tsai to Christine Medak, Fish &amp; Wildlife Biologist, U.S. Fish &amp; Wildlife Services (May 27, 2015), attached hereto as Exhibit 8.</p>	<p>The permit application satisfies the requirements for a complete application in Section 3856(h) of Title 23 of the California Code of Regulations. The application was deemed to be complete on December 15, 2015.</p> <p>State and Federal permits anticipated to be necessary were identified in the 401 Certification application, including the Section 404 Standard Individual Permit from the United States Army Corps of Engineers (ACOE) and the Section 1600 Streambed Alteration Agreement from the California Department of Fish and Wildlife. As a part of the Section 404 permit process, ACOE initiated an informal Section 7 Consultation with United States Fish and Wildlife Service.</p> <p>Further, the Certification includes conditions that require the Permittee to retain a qualified biologist to conduct surveys of the site to identify the presence of any sensitive species and to develop and implement appropriate protection measures for the species. See section XIV.G. In section XIV.F, the Certification states that, “[t]his Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under</p>

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		<p>either the California Endangered Species Act (Fish &amp; G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a “take” will result from any act authorized under this Order held by the Permittee, the Permittee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Permittee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.”</p>
1.17	<p><b>b. The Permit Application Does Not Properly Identify Waters Of The United States That May Be Impacted.</b></p> <p>Section 3856(h) of Title 23 of the California Code of Regulations provides that a 401 Certification application must provide a complete project description including listing the “[t]ype(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type). . . . [and] the total estimated quantity of waters of the United States that may be adversely impacted temporarily or permanently by a discharge or by dredging.</p> <p>The Permit Application fails to accurately identify the receiving water bodies and relevant quantities of waters of the United States that may be adversely impacted by the Project because both LACFCD’s application to the Regional Board, and the environmental documents prepared for the Project, misstate the type of water bodies that will be impacted, only identifying 37.8 acres of Lake/Reservoir. By contrast, the Army Corps of Engineers has found that the Project will affect 10.8 acres of wetland and 27 acres of non-wetland, which includes a variety of types of wetlands and vegetation communities including Riparian Woodland, Ruderal, Mule Fat Scrub, Riparian Herbaceous, Riversidean Alluvial Fan Sage Scrub, and Coastal Sage Scrub. U.S. Army Corps of Engineers (2015) Public Notice: Application For Permit Devil’s Gate Reservoir</p>	<p>The permit application satisfies the requirements for a complete application in Section 3856(h) of Title 23 of the California Code of Regulations. The application was deemed to be complete on December 15, 2015.</p> <p>The application identifies in the project description (Attachment A), 10.8 acres of wetland and 27 acres of non-wetland waters including the main channel and the braided channel. These calculations are also in the Jurisdictional Delineation of October 2013 included with the application as Attachment K.</p> <p>Compensation for the loss of wetland and aquatic habitat and the goal of no net loss will be met by the re-establishment of areas of temporary impact and 55.94 acres of mitigation onsite (including the requirements of the certification for impacts to waters of the State and the requirements of the California Department of Fish and Wildlife) and 32.2 acres of mitigation offsite (including the requirements of this Certification as well as the California Department of Fish and Wildlife mitigation requirements). The compensatory mitigation requirement includes a</p>

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	<p>Sediment Removal and Management Project attached hereto as Exhibit 18. According to Touré:</p> <p>This section of the 401 application has the Jurisdictional Wetland feature marked as "N/A". This does not appear to be correctly stated in the application because wetland habitat will be impacted by the Project activity. Additionally, Streambed (vegetated) and Streambed (unvegetated) is also considered as "N/A" on the 401 Certification application. Wetlands and streambeds exist on the Project site and must be indicated on the 401 Certification application. T'Shaka Touré, Comments on the Review of Environmental Documents (Final Environmental Impact Report, Jurisdictional Delineation Reports, Los Angeles Regional Water Quality Control Board 401 Permit Application, U.S. Army Corps of Engineers Public Notice and 404 Nationwide Permit No. 31 Application, California Department of Fish and Game [Wildlife] 1600 Lake and Streambed Alteration Agreement) Prepared for the Devil's Gate Reservoir Sediment Removal and Management Project attached hereto as Exhibit 17.</p> <p>Moreover, the mitigation ratios, jurisdictional determinations, wetlands determinations, and vegetation surveys developed by the LACFCD are insufficient when accurate wetland acreage is taken into account. According to Mr. Touré</p> <p><b>The mitigation ratio must be increased from 1:1 to 3:1</b> for impacts to jurisdictional features. An increased mitigation ratio is required for three primary reasons, 1) removal of riparian habitat at the reservoir will indirectly impact [Least Bell Vireo, a federally endangered species] activity at the Hahamongna Watershed Park, 2) removal of riparian habitat at the reservoir will directly impact the wildlife movement corridor that exists, and 3) based on the jurisdictional delineation reports conducted</p>	<p>minimum 3:1 ratio for permanent impacts (wetlands and streams) and a 1:1 ratio for temporary impacts. The acreage of wetland has not been miscalculated. The Wetland Determination Data Form – Arid West Region is from the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region, September 2008 (Arid West Manual). Per the Arid West Manual, if no hydric soil indicators are present, the soil may be non-hydric or it might represent a "problem" hydric soil. Hydric soil indicators for problem soils are discussed in Chapter 5 "Difficult Wetland Situations in the Arid West." In the Jurisdictional Delineation of October 2013, problematic soils inhibited the determination of the three-parameter wetland and the 1020-foot contour was used to delineate the boundaries of the wetland area. The Jurisdictional Determination was updated in 2016 (<i>Jurisdictional Delineation Update (Revised August 2016) for the Devil's Gate Reservoir Sediment Removal and Management Project, Los Angeles County, California</i>, ECORP Consulting, Inc., August 16, 2016) to re-examine the areas below the 1020-foot contour and areas with potential as mitigation areas. "Problematic" soils were assessed per "Difficult Wetland Situations in the Arid West."</p> <p>The Permit Application reports the impacts in acres, which is appropriate in this case. If the project included dredging, then impacts would need to be reported in cubic yards. These impacts are considered excavation and appropriately reported in acres and</p>

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	<p>for the Project site approximately 34.10 acres of wetland habitat has been eliminated when you compare the JD report<sup>15</sup> (dated 2011) to the final Public Notice<sup>16</sup> (dated 2015) issued for the Project. <b>There is no clear explanation as to why or how the wetland jurisdictional acreage has been reduced to such an extent</b> other than JD data sheet notations and report information stating "problematic soils." It's clear that problematic soil is a condition caused by sedimentation accumulation over wetland habitat. As such, the wetland habitat that has been covered by sedimentation must also be compensated and an increased ratio of 3:1 for impacts to jurisdictional features would serve as an appropriate compensation ratio. <b>Currently the Public Notice states approximately 10.8 acres are wetlands however a previous JD report stated approximately 44.9 acres of wetland habitat.</b> The difference between these wetland acreages must be accounted for to ensure appropriate and adequate mitigation measures have been implemented for the Project. By increasing the mitigation ratio to 3:1 the approximately 34.10 acres of omitted wetland jurisdiction can be accounted for and responsibly mitigated. Letter from T'Shaka Touré to Mitchell M. Tsai, Attorney At Law RE: Comments on the Review of Environmental Documents (Final Environmental Impact Report, Jurisdictional Delineation Reports, Los Angeles Regional Water Quality Control Board 401 Permit Application, U.S. Army Corps of Engineers Public Notice and 404 Nationwide Permit 31 Application, California Department of Fish and Game [Wildlife] 1600 Lake and Streambed Alteration Agreement) Prepared for the Devil's Gate Reservoir Sediment Removal and Management Project (June 15, 2015) (emphasis added).</p> <p>Moreover, the Permit Application does not properly provide the unit of waters of the United States that will be affected. A 401 Certification application for dredging activities are required to report "dredging</p>	<p>linear feet, Cal. Code Regs., tit. 23, § 3856(h)(4). Nonetheless, the application also reports the amount of sediment to be excavated in cubic yards.</p>

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	<p>estimates” in terms of “cubic yards.” Section 3856(h)(4) of Title 23 of the California Code of Regulations provides that while “[t]he estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres ... dredging estimates shall be reported in cubic yards.” The Permit Application reports in terms of acres.</p>	
1.18	<p><b>c. The Permit Application Does Not Adequately Describe The Project Site.</b></p> <p>The Permit Application does not adequately describe the Project site, neglecting to identify wildlife corridors, jurisdictional wetlands, and streambed resources on the Project Site that are indicated in the FEIR. According to Mr. Touré:</p> <p style="padding-left: 40px;">This section of the 401 application does not include “wildlife corridor, jurisdictional wetland, streambed (unvegetated and/or vegetated)” resources for the project site. Additionally, the project site functions as a wildlife corridor per Biological Report (p.11). As such, the dredging and excavation activities will affect the wildlife movement corridor and regional species. However this information is not indicated in the 401 application.</p> <p>The Permit Application does not provide an adequate description of the Project, contradictory to the underlying Clean Water Act 404 Permit Application and Notice and Army Corps of Engineers Jurisdictional Determination.</p>	<p>The 401 application materials include the Environmental Impact Report which describes the project site, and the wetlands and streambed resources. The application materials include the application form and 11 attachments, listed below, which provide an adequate basis for a 401 certification.</p> <p>Attachment A – Project Description Attachment B – Vicinity Map Attachment C – Adjacent Property Owners List Attachment D – Devil’s Gate Dam Profile Attachment E – Work Plan Map Attachment F – Jurisdictional Resources Impacts Map Attachment G – Design Plans Attachment H – Haul Route Maps Attachment I – Site Photos Attachment J – Environmental Impact Report Attachment K – Jurisdictional Delineation</p> <p>After an application is deemed complete per 23 CCR section 3856, a Regional Board can ask for information to clarify the proposed project and its potential impacts on water quality standards. The Los Angeles Water Board continued to work with the LACFCD, the California Department of Fish and Wildlife and the Army Corps of Engineers to refine the project, ensure the project impacts were avoided or minimized to the extent feasible, and develop the final</p>

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		<p>HMMP.</p> <p>It is unclear to which "Biological Report" the commenter is referring.</p>
1.19	<p><b>d. The Permit Application Does Not Adequately Describe Baseline Environmental Conditions</b></p> <p>For the aforementioned reasons, the Permit Application does not adequately describe baseline environmental condition as the Project does not disclose existing wildlife corridors, jurisdictional wetlands, and streambed resources on the Reservoir.</p>	See response to comment 1.18.
1.20	<p><b>e. The Permit Application Does Not Provide Adequately Describe The Project.</b></p> <p>Moreover, the Permit Application no longer accurately describes the Project. The Project may have permit conditions that will change the time and scale of the permitted Project. Commenters own research indicates that the United States Fish &amp; Wildlife Services and California Fish And Wildlife will require that the Project sediment removal not occur between April to June in order to accommodate Least Bell's Vireo's breeding season. Such a permit condition would result in either an intensification of the Project's activities from July to October of each other or a smaller project and longer timeframe for the Project's competition.</p>	<p>See response to comments 1.18.</p> <p>The California Department of Fish and Wildlife Streambed Alteration Agreement was finalized on March 1, 2017 and amended on July 16, 2018 and July 17, 2018. In addition, the seasonal restrictions in the Streambed Alteration Agreement will not significantly affect the hydrology or water quality nor prevent the issuance of an appropriate 401 certification.</p>
1.21	<p><b>f. The Permit Application Does Not Provide A Detailed Compensatory Mitigation Plan.</b></p> <p>The Permit Application does not provide a detailed compensatory mitigation plan. Sections 3856(h) 5-6) of Title 23 of the California Code of Regulations requires that a 401 Certification application include:</p>	The Permittee has provided a detailed compensatory mitigation plan to the Los Angeles Water Board, which is contained in the Devil's Gate Habitat Mitigation and Monitoring Plan (Devil's Gate HMMP) and the Devil's Gate Off-Site Habitat Mitigation and Monitoring Plan (Devil's Gate Off-Site HMMP). Implementation of the Devil's Gate HMMP and Devil's Gate Off-Site HMMP

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	<p>The total estimated quantity (in acres and, where appropriate, linear feet) of waters of the United States, by type (see Subsection (h)(2) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained...[As well as a] description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.</p> <p>The Permit Application does not include all relevant information that demonstrates that appropriate compensation has been or will be provided to offset any anticipated adverse impacts to the receiving water(s) (23 CCR Sections 3836(a) and 3856(h)(5)). The Permit Application should include the size and location of the mitigation site; acreages and descriptions of water body type(s) and habitat(s) present and/or proposed; representative photographs; plant palette and installation methods; irrigation systems; exotic plant control efforts; success criteria; mitigation monitoring; long-term management and preservation; signage and fencing; funding; educational programs; key personnel; remedial action upon failure; and a time schedule.</p>	<p>is required by this 401 certification.</p> <p>The Devil's Gate HMMP and Devil's Gate Off-Site HMMP include the quantity of Waters of the United States to be created, restored (rehabilitated or re-established), enhanced or preserved both on-site and off-site at a mitigation bank.</p> <p>The Devil's Gate HMMP also includes descriptions of all habitat types to be created, restored, enhanced or preserved, representative photographs, CRAM scores (California Rapid Assessment Method for wetlands), project site information (including but not limited to hydrology, existing vegetation, historic land use), the mitigation work plan (including but not limited to description of the areas, site preparation, planting specification, irrigation, performance standards (success criteria), schedule of implementation, a ten-year monitoring program and a long-term management plan). Additional measures of public education and outreach (including but not limited to signage, trail management (including fencing), trash removal and vector control) are also included in the HMMP.</p> <p>The steps that will be taken to avoid or minimize losses or adverse impacts to beneficial uses of waters are detailed in the FEIR, including the recirculated portions, and in the application (application section 9. Other Actions/Best Management Practices (BMPs)) and in the required BMPs in the certification.</p>
1.22	<p><b><u>VI. THE PROJECT IS SUBJECT TO THE NPDES GENERAL CONSTRUCTION PERMIT</u></b></p>	<p>The Devil's Gate project does include one of the four construction phases identified in the General Construction permit - grading and land development-</p>

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	<p>The Project is required to obtain coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Permit No. CAS000002, Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ &amp; 2012-0006-DWQ attached hereto as Exhibit 13 (“General Construction Permit”).</p> <p>A NPDES General Construction Permit is required for “[a]ny construction or demolition activity, including, but not limited to, clearing, grading, grubbing, or excavation, or any other activity that results in a land disturbance of equal to or greater than one acre.” General Construction Permit at 8.</p> <p>A General Construction Permit is required as Project implementation would involve clearing, grading, grubbing, and excavation nearly 2.4 mcy of sediment from nearly 70.81 acres. Permit Application at 2</p> <p>LACFD claims that no General Construction Permit is required “because the Proposed Project is limited to sediment removal as it pertains to the confines of the reservoir’s original design.” FEIR at 178. However, the General Construction Permit only allows for “[r]outine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility.” General Construction Permit at 9.</p> <p>However, the Project is anything but “routine.” LACFCD is proposing the largest sediment removal in the Reservoir’s history, proposing to remove 2.4 mcy of sediment over a five year period averaging approximately 0.5 mcy of sediment removal annually. Over the Reservoir’s 96-year history, the most sediment that has been removed over any five-year period was 1.46 mcy from 1973 to 1978. Los Angeles County Flood Control District (2013) Sediment Management Strategic Plan: 2012 – 2032 8-43. The last large scale sediment removal at the Reservoir that equaled or exceeded 0.5 mcy was in 1978. Id.</p>	<p>However, all of the impacts are within jurisdictional boundaries or directly adjacent to jurisdictional boundaries.</p> <p>The General Construction permit states: 1. Findings. B. 23. Storm water discharges from dredge spoil placement that occur <i>outside of U.S. Army Corps of Engineers jurisdiction (upland sites)</i> and that disturb one or more acres of land surface from construction activity are covered by this General Permit. Construction sites that intend to disturb one or more acres of land within the jurisdictional boundaries of a CWA § 404 permit should contact the appropriate Regional Water Board to determine whether this permit applies to the site... [Emphasis added.]</p> <p>The entire Devil’s Gate project is within the jurisdiction of the Army Corps of Engineers pursuant to CWA section 404, and as it relates to water quality, is regulated by the Section 401 certification. All requirements necessary to protect water quality are included in the Section 401 certification.</p> <p>The requirements of the General Construction Permit and the Section 401 certification largely overlap; both include receiving water requirements, water quality monitoring requirements, reporting requirements and BMPs.</p> <p>The CWA Section 401 certification for this project includes conditions that require a site-specific Storm</p>

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	<p>Moreover, the Project will not restore the Reservoir to its original 1919 line and grade or hydraulic capacity. LACFD is required to obtain coverage under the General Construction Permit before moving forward with the Project.</p>	<p>Water Pollution Prevention Plan (SWPPP) and Rain Event Action Plans (REAP) because these will be useful planning documents for the LACFCD.</p>
1.23	<p><b><u>VII. THE REGIONAL BOARD MUST PREPARE A SUBSEQUENT ENVIRONMENTAL IMPACT REPORT UNDER CEQA BEFORE ISSUING A SECTION 401 CERTIFICATION.</u></b></p> <p>The deficiencies in the LACFD Application to the Regional Board alone merit rejection of the Application by the Board. In addition, if the Regional Board intends to further consider the Application, before issuing a 401 Certification, the Regional Board must also prepare a Subsequent Environmental Impact Report (“SEIR”) to analyze the effectiveness of potential permit conditions because new information has come to light which demonstrates that the Project will have substantially greater adverse impacts on water quality and wetland habitat than what was previously identified in LACFD’s EIR for the Project, and mitigation measures and alternatives exist that would substantially reduce one or more of these significant effects, as identified in this letter and in the expert comments attached hereto. LACFD failed and refused to decline to adopt these mitigation measures and alternatives.</p> <p>Although responsible agencies like the Regional Board are generally required to presume the correctness of an EIR prepared by a CEQA lead agency like LACFD (see PRC § 21167.3; <i>City of Redding v. Shasta County Local Agency Formation Com</i> (1989) 209 Cal. App. 3d 1169, 1181), an exception exists where an EIR has been previously certified by the lead agency, but one of the following circumstances arises:</p> <p>(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of</p>	<p>LACFCD is the lead agency pursuant to the California Environmental Quality Act (CEQA). As such, LACFCD has primary responsibility for evaluating the potentially significant environmental impacts of the project and providing for their mitigation. The Los Angeles County Board of Supervisors certified the final environmental impact report (FEIR) for this project on November 12, 2014, and certified recirculated portions of the FEIR on November 7, 2017.</p> <p>The commenter claims that “new information has come to light which demonstrates that the Project will have substantially greater adverse impacts on water quality and wetland habitat than what was previously identified in LACFD’s EIR and that mitigation measures and alternatives exist which would substantially reduce one or more of these significant effects.” It is not clear from the scope of this comment what these substantially greater adverse impacts are or what specific mitigation measures and alternatives exist that would substantially reduce one or more of these effects. The LACFCD has recirculated portions of the EIR on mitigation measures affecting certain biological resources (including mitigation measure BIO-8 for habitat restoration), impacts to a potential Devil’s Gate Water Conservation Project and emission standards for dump trucks. In addition, subsequent to</p>

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	<p>previously identified significant effects;</p> <p>(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or</p> <p>(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:</p> <p>(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;</p> <p>(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;</p> <p>(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or</p> <p>(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.</p> <p>14 CCR § 15162(a). If, after a project is approved, any of these</p>	<p>the commenter's letter and the recirculated EIR, when the Los Angeles County Board of Supervisors certified the recirculated portions of the FEIR, they directed LACFCD to reduce the maximum total volume of sediment from 2.4 mcy to 1.7 mcy plus inflows during the project. This alternative is referred to as Modified Alternative 3, Configuration D and was analyzed in the November 7, 2017 letter from ECORP Consulting, Inc. to the Permittee.</p> <p>As a responsible agency, the Los Angeles Water Board may choose to prepare a subsequent or supplemental EIR under the limited circumstances outlined in California Code of Regulations, title 14, section 15162 and 15163. Here, Los Angeles Water Board staff has determined that the circumstances as noted in California Code of Regulations, title 14, section 15162 are not present. Therefore, the Los Angeles Water Board has no obligation to prepare a subsequent EIR pursuant to California Code of Regulations, title 14, section 15162.</p> <p>As a responsible agency, the Los Angeles Water Board has authority to mitigate or avoid only the direct or indirect environmental effects of the parts of the project that it decides to carry out, finance, or approve (Cal. Code Regs., tit.14, §15096(g)). Here, the Los Angeles Water Board is only approving the 401 water quality certification. The conditions attached to the 401 water quality certification will mitigate and/or avoid the significant environmental impacts related to the discharges of waste subject to the 401 water quality certification.</p>

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	<p>conditions occurs, a subsequent EIR or negative declaration must be prepared by the public agency which grants the next discretionary approval for the project. 14 CCR § 15162(c). In that situation, no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted. In this case, the Regional Board is the agency that would grant the next discretionary approval for the Project, the Section 401 Certification, and therefore must prepare an SEIR for the Project before any Certification can issue from the Regional Board.</p>	
1.24	<p><b>a. The Project Will Have Significant Effects on Hydrology And Water Quality Which Were Not Analyzed In The FEIR.</b></p> <p>The FEIR does not adequately analyze the Project's impact on hydrology and water quality, improperly concluding that the Project's impacts will be less than significant. The FEIR concludes that the Project will have a less than significant impact, requiring no mitigation measures, based upon unknown "regulations and permit requirements and implementation of project-specific BMPs, impacts related to otherwise substantially degrading water quality would be less than significant." FEIR at 181.</p> <p>The FEIR fails to include to analyze a number of crucial details concerning hydrology and water quality. According to Mr. Touré, the FEIR and Permit Application needs to provide and analyze specific Best Management Practices when it comes to water pollution control plans, stormwater pollution prevent plans, and surface water diversion plans. Touré at 4, 12.</p> <p>CEQA requires that a Project's environmental impact be analyzed prior to mitigation, such as the permit requirements that the FEIR relies upon to find a less than significant impact. Adherence to permit requirements may create a presumption that a Project has mitigated its impact to the extent feasible as required by CEQA, but it does not allow a Project to</p>	<p>Impacts to hydrology and water quality were analyzed in Section 3.11 of the EIR. The EIR identifies the environmental setting including the existing water quality (water quality criteria, surface water and groundwater location and quality, potential sources of pollution) and applicable regulations including TMDLs, and identifies and evaluates significance criteria.</p> <p>The Project application provides a number of water quality related BMPs, including BMPs to control runoff and debris and to address work activities before and during rain events. In addition, the project application references the Public Works BMP Manual ("...the project will conform to the requirements of the latest edition of the Public Works BMP Manual..."). In addition, avoidance and minimization measures were included in the project description in the Project application.</p> <p>Furthermore, as a part of compliance with this 401 certification, LACFCD will conduct additional water quality sampling prior to and during any diversions of</p>

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	<p>find that its environmental impacts are less than significant. As the Court found in <i>Lotus v. Dep't of Transportation</i> (2014) 223 Cal. App. 4th 645, 658:</p> <p>[Failing to separately identify and analyze the Project's impacts] before proposing mitigation measures is not merely a harmless procedural failing. . . . this shortcutting . . . subverts the purposes of CEQA by omitting material necessary to informed decision-making and informed public participation. It precludes both identification of potential environmental consequences . . . [and] thoughtful analysis of the sufficiency of measures to mitigate those consequences.</p> <p>The FEIR should be revised and recirculated, adopting and analyzing the permit requirements for the Project intended to minimize impacts on water quality as mitigation measures.</p>	<p>waters to ensure that water quality is maintained throughout the project.</p> <p>Finally, BMPs, along with required water quality sampling to ensure their effectiveness, have been incorporated into the 401 certification.</p>
1.25	<p><b>b. The Regional Board Cannot Adopt The LACFCD's Environmental Impact Report To Issue A 401 Water Quality Certification As The Environmental Impact Report Improperly Defers Mitigation Measures To The Regional Board.</b></p> <p>The Regional Board cannot rely upon the LACFCD's EIR as it improperly analyzes and defers water quality mitigation measures to any mitigation measures that would be developed through the 401 Certification process by the Regional Board.</p> <p>Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. 14 Cal. Code Regs. § 15126.4(a)(1)(B) (" . . . [f]ormulation of mitigation</p>	<p>As described above, the Los Angeles Water Board's authority with respect to mitigation measures is more limited. Under California Code of Regulations, title 14, section 15096, subdivision (g), the Los Angeles Water Board "has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Therefore, the Los Angeles Water Board only has responsibility for ensuring that water quality impacts are adequately mitigated through issuance of the 401 certification.</p> <p>Here, the water quality certification specifically identifies mitigation measures that must be adopted as conditions of the water quality certification, including implementation of Storm Water Pollution Prevention Plans and Surface Water Diversion Plans,</p>

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	<p>measures should not be deferred until some future time.”).</p> <p>Deferring critical details of mitigation measures undermines CEQA’s purpose as a public information and decision-making statute. “[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.” <i>Communities for a Better Environment v. City of Richmond</i> (2010) (“<i>Communities</i>”) 184 Cal.App.4th 70, 92. As the Court noted in <i>Sundstrom v. County of Mendocino</i> (1988) 202 Cal.App.3d 296, 307 “[a] study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.”</p> <p>A lead agency’s adoption of an EIR’s proposed mitigation measure for a significant environmental effect that merely states a “generalized goal” to mitigate a significant effect without committing to any specific criteria or standard of performance violates CEQA by improperly deferring the formulation and adoption of enforceable mitigation measures. <i>San Joaquin Raptor Rescue Center v. County of Merced</i> (2007) 149 Cal.App.4th 645, 670; <i>Communities</i>, 184 Cal.App.4th at 93 (“EIR merely proposes a generalized goal of no net increase in greenhouse gas emissions and then sets out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate the [project’s significant environmental effects.]”); cf. <i>Sacramento Old City Assn. v. City Council</i> (1991) 229 Cal.App.3d 1011, 1028-1029 (upheld EIR that set forth a range of mitigation measures to offset significant traffic impacts where performance criteria would have to be met, even though further study was needed and EIR did not specify which measures had to be adopted by city).].</p>	<p>requirements for the staging of equipment, designation of spoil areas, compensatory mitigation and other BMPs. In addition, the requirement that LACFCD comply with all applicable state, federal and local regulations is an appropriate mitigation measure. See <u><i>Oakland Heritage Alliance v. City of Oakland</i></u> (2011) 195 Cal.App.4th. 906-907. See also <i>California Native Plant Society v. City of Rancho Cordova</i> (2009) 172 Cal.App.4th 603, 619-620 (City of Rancho Cordova did not defer a determination of whether the Project would have a significant impact on the vernal pool and seasonal wetlands habitats or defer the identification of measures calculated to mitigate that impact.) Furthermore, concerns about whether it is realistically foreseeable that a mitigation measure will actually be carried out as outlined do not raise an issue of improper deferral. (Id. at p. 623.)</p>

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	<p>LACFCD defers a number of critical details to the 401 Certification process in the EIR, requiring the Regional Board to conduct its own environmental review.</p> <p>The EIR concludes that without mitigation, the Project will likely have significant impacts on water quality. As the EIR notes:</p> <p style="padding-left: 40px;">The proposed sediment removal project will cause physical disturbance to the site. The physical disturbance to the site may cause temporary water quality impacts during the excavation process due to the likely generation of loose sediments, increased turbidity, and suspended sediments at and downstream of the work areas. It is possible that the excavated sediments could reduce dissolved oxygen concentrations and cause a temporary increase in concentrations of constituents, such as heavy metals, petroleum, and/or VOCs. . . .</p> <p style="padding-left: 40px;">Heavy equipment needed for sediment removal has the potential to cause accidental spills of fuel, and lubricating oil and contaminants could be released into the watershed and adversely affect water quality. FEIR at 182 – 83.</p> <p>However, despite the admitted impacts to water quality, the FEIR concludes that there will be no significant impact based upon unknown mitigation measures. Rather than analyzing the effectiveness of potential mitigation measures, the FEIR cursorily concludes that whatever mitigation measures imposed by the Regional Board would adequately address water quality impacts, finding that “[a]dequate BMPs will be utilized; and adherence to the regulations set forth by the County, State, and federal agencies will reduce the potential for impacts to water quality to a less than significant level. EIR at 183.</p> <p>Finally, while the Permit Application cites use of the Los Angeles County Flood Control District’s Best Management Practices (BMP)</p>	

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	<p>Manual for Soft Bottom Channel Clearing and LACDPW's Best Management Practices Construction Site Manual, the FEIR fails to analyze the effectiveness of or incorporate any BMPs as mitigation measures.</p>	
1.26	<p><b>c. Baseline Water Quality Conditions Vary Considerably From The Baseline Water Quality Conditions Presented In The FEIR.</b></p> <p>The FEIR does not adequately represent baseline water quality conditions as the LACFCD was involved in sediment removal activities at the time that water quality sampling occurred. According to the FEIR while LACFCD was conducting water quality sampling:</p> <p style="padding-left: 40px;">... due to installation of IMP measures to reduce flood risk downstream and <b>interim sediment removal activities</b>, stream flow was not naturally flowing through Devil's Gate Dam. The water was being stored north of the dam and then pumped approximately every 10 minutes through the dam and into the lower Arroyo Seco. These activities may have affected the water quality and water sampling results for the BDG station. . . . FEIR at 175.</p> <p>In short, the LAFCD was conducting sediment removal activities at the time that it sampled the water. The baseline water quality data relied upon by the LACFCD is an inaccurate portrayal of normal water quality conditions in the Reservoir.</p> <p>Moreover, the baseline water quality data in the FEIR raises cause for concern as the surveys found levels of dissolved oxygen and total dissolved solids in excess of the Regional Water Quality Control Board's water quality objectives, indicating that sediment removal activities may have a significant impact on water quality.</p>	<p>The FEIR adequately represents baseline water quality conditions. Water quality samples were taken at several sites, including a site upstream of the Interim Measures Project. This site, Upper Devil's Gate, is a reasonable representation of baseline water quality conditions as sediment removal activities under the Interim Measures Project would not have affected the water quality upstream.</p>

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1.27	<p><b>d. The FEIR Does Not Consider An Adequate Range Of Alternatives.</b></p> <p>The FEIR does not consider an adequate range of alternatives, failing to analyze a number of environmentally superior alternatives that would have fulfilled the Project's objectives, including alternative proposals advanced by ASF as well as the City of Pasadena. An agency must consider a reasonable range of alternatives in an EIR. 14 Cal. Code Regs. § 15126.6(a). Potential alternatives to be considered must substantially reduce significant environmental impacts and attain most of the basic project objectives, while being feasible, reasonable, and realistic. 14 Cal. Code Regs. § 15126.6(c).</p> <p>The LACFCD's own studies indicates that a smaller sediment removal would adequately meet the LACFCD's own flood risk guidelines. The Flood District's 2012 - 2032 Sediment Management Strategic Plan shows that the Reservoir is currently meeting acceptable flood risk levels. Sediment Management Strategic Plan at 8-42.</p> <p>The Project Site has historically been limited to a maximum storage capacity far less than what the County is proposing. Bill Bogaard, Mayor, Letter to County of Los Angeles Department of Public Works RE: City of Pasadena Comments on Draft Environmental Impact Report for Devil's Gate Reservoir Sediment Removal and Management Project (Jan. 16, 2014) attached hereto as Exhibit 2; City of Pasadena (2003) Final Master Environmental Impact Report Arroyo Seco Master Plan Project Volume III. Attachments Appendix A. Staff Recommended Alternative; Appendix B, Notice of Exemption, Appendix C, Letters of Comments on Draft Master Environmental Impact Report attached hereto as Exhibit 3, and has not been at the capacity that the County is proposing to achieve through the Project since 1935. Sediment Management Strategic Plan at 8-43.</p> <p>Moreover, numerous experts have concluded that the Flood Control</p>	<p>An Alternatives Analysis was included in the EIR per CEQA requirements. A Proposed Project and six alternatives were fully analyzed, including the "No Project Alternative." Alternatives (such as the Arroyo Seco Foundations' SLOW Plan and the City of Pasadena's plan) were discussed, but found not to meet project objectives. The SLOW Plan was considered in the Final EIR Response to Comments.</p> <p>In addition, the LACFCD recirculated portions of the EIR on mitigation measures affecting certain biological resources (including mitigation measure BIO-8 for habitat restoration), impacts to a potential Devil's Gate Water Conservation Project and emission standards for dump trucks. Subsequent to the commenter's letter and the recirculated EIR, when the Los Angeles County Board of Supervisors certified the recirculated portions of the FEIR, they directed LACFCD to reduce the maximum total volume of sediment from 2.4 mcy to 1.7 mcy plus inflows during the project. This alternative is referred to as Modified Alternative 3, Configuration D.</p> <p>The Los Angeles Water Board notes that the amount of sediment that the City of Pasadena proposed to remove over a 5-year period is less than the amount that flowed into the reservoir following the Station Fire. The storms that occurred in the two wet seasons after the fire increased sediment accumulation in the reservoir by approximately 1.3 million cy. With this amount of removal, according to the LACFCD, an additional large-scale sediment removal project such</p>

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	<p>District has severely overestimated flood risk at the Reservoir. According Norman H. Brooks, James Irvine Professor of Environmental and Civil Engineering at the California Institute of Technology:</p> <p style="padding-left: 40px;">From this summary, it is clear that the uncontrolled downstream basins contribute significantly to the flood hazards in the lower end (Basin 3). The downstream Basins have much shorter rainfall-runoff concentration times (an hour or so) than those for large watershed upstream of Devil's Gate Dam (several hours), and are thus more at risk from rainfall of high intensity for short durations. These factors have been analyzed in special hydraulic studies (see Report furnished by LAFCD), but <b>there is no demonstrated relation of amount of deposited sediment to downstream flooding.</b></p> <p style="padding-left: 40px;">The reservoir water storage above spillway level does sharply reduce flow peaks as shown in the report. Most of the analysis assumes that plant debris is blocking the large ports, which I do not believe is credible (large hydraulic forces, high 4 foot openings, and weak debris!) When the ports are not blocked, the only example presented showed a bulked inflow peak of 23,000 cfs being reduced to 12,000 cfs (no flow over the Ogee spillway)(cfs =cubic feet per second). I conclude that with adequate reservoir maintenance of loose brush, there is no way that the removal of sediment can be justified as a contribution to downstream flood control. Norman H. Brooks (2014) Notes by Norman H. Brooks To: Devil's Gate Sediment Removal Working Group 5 attached hereto as Exhibit 12.</p> <p>The County has severely overestimated the amount of sediment removal, approximately nothing, that is required to adequately manage flood risk. According to Timothy F. Brick, Executive Director of the Arroyo Seco Foundation:</p>	<p>as the initial sediment removal phase of this project would be required.</p> <p>The Sediment Management Strategic Plan is a planning-level document that included sediment history data to demonstrate the volume of sediment deposited into the dams and used that data, along with statistical analyses, to develop projected 20-year sediment volumes for LACFCD facilities. The sediment history provided for Devil's Gate Dam showed the sediment volumes accumulated at the dam; however, it only provided the remaining capacity below an elevation of 1,054 ft., the original spillway elevation of the dam, and does not reflect sediment inflow or removal in between each of the survey dates. LACFCD calculated reservoir capacity below the existing spillway, currently at 1,040.5 ft., as the appropriate parameter for determining the current available capacity for meeting the sediment volume requirements for the dam. The current capacity in the reservoir below the spillway is approximately 1.37 mcy. As LACFCD has calculated, this is 32.5 percent of the required storage capacity and 65 percent of one Debris Design Event (DDE). Also, additional sediment accumulates within the reservoir easement above an elevation of 1,054 ft. This accumulated sediment has the potential to be washed toward the dam during significant storm events and further reduce the available capacity below the spillway.</p> <p>The Project Site has not been maintained to a maximum storage capacity in recent history. Had LACFCD regularly maintained the site (for example, every year or every few years) the larger initial</p>

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	<p>Until recently LACFCD calculated the Devil's Gate reservoir capacity and storage from the lip of the original spillway at Devils Gate Dam, which was at elevation 1054 feet. In the 1990s LACFCD completed a rehabilitation of Devil's Gate Dam that dramatically altered the spillway, increasing its size and capacity to enable the spillway and Devil's Gate Dam to more efficiently pass flood flows by allowing for earlier releases from the reservoir behind. The spillway was straightened, quadrupled in size and uncontrolled ports were added to the new Ogee Crest spillway to allow for the release of water automatically at elevation 1040.5 feet above sea level. The Ogee Crest design, while providing for this early release of flood water into the stream and channel below the dam, allows flood waters to continue to back up behind the dam and the spillway until it reaches the elevation of 1065, at which elevation the flood waters flow over the Ogee Crest and through the spillway.</p> <p>In the EIR LACFCD measures the capacity and storage behind the dam from the bottom of the ports on the Ogee Crest spillway at elevation 1040.5. Measuring storage and capacity from 1040.5 rather than the historic level of 1054, LACFCD asserts, necessitates the removal of somewhat more than a million additional cubic yards of sediment to ensure adequate flood safety. But this analysis is flawed. The logical conclusion behind it is that LACFCD's dam rehabilitation in the 1990s actually made the dam more vulnerable to the flood threat, an absurd proposition. It's as if someone is standing on the 40 yard line of a football field facing the distant goal posts and claiming that the football field is 60 yards long. The ability of Devil's Gate Dam to process floods was actually improved by the rehabilitation in the 1990s, not diminished.</p> <p>In fact it could be argued that the true spillway level is actually 1065, and that is the level at which the storage and capacity</p>	<p>sediment removal phase would be less necessary. When capacity is largely re-established, a more uniform rate of removal will be appropriate and is reflected in the annual maintenance plan of the proposed project.</p> <p>The commenter makes a number of comments on the estimation of flood risk; the estimation of flood risk at Devil's Gate is analyzed in the FEIR and comments on the estimation are responded to in the response to comments of the FEIR.</p> <p>The Alternatives considered by LACFCD included alternative sediment removal configurations for the reservoir management area. Alternative 1B has the reservoir management area next to the Dam. Alternative 2C has the reservoir management area next to the Dam and in an additional location upstream and Alternative 3D has a reservoir management area next to the Dam extending in to two deeply excavated channels to provide more natural sediment movement and a smaller footprint. These alternatives represent an adequate range of alternatives. Subsequent to the commenter's letter and the recirculated EIR, when the Los Angeles County Board of Supervisors certified the recirculated portions of the FEIR, they directed LACFCD to reduce the maximum total volume of sediment from 2.4 mcy to 1.7 mcy plus inflows during the project. This alternative is referred to as Modified Alternative 3, Configuration D and was analyzed in the November 7, 2017 letter from ECORP Consulting, Inc. to the Permittee.</p>

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	<p>should be measured. Spillways are an integral part of the functioning of a dam. Passing water through a spillway is not a disaster or an indication of failure. The rehabilitation of Devil's Gate Dam in the 1990s was conducted to improve the efficiency and function of the spillway and the safety of Devil's Gate Dam.</p> <p>Representing the City of Pasadena, I participated in the selection of the dam safety consultants from Harza Engineers who designed the rehabilitation of the dam in the 1990s. I reviewed their design at that time and held numerous discussions with them about their design, which was able to reduce substantially previous estimates of the cost of the dam rehabilitation as well as the need to remove massive amounts of storage from the Devil's Gate Basin. I can assure that their design was developed to improve the efficiency of the spillway and of the dam and to reduce the need to remove such massive quantities of sediment from the reservoir. Timothy F. Brick, Statement of Timothy F. Brick Regarding the Amount of Sediment That Should Be Removed from Devil's Gate Dam to Provide Adequate Flood Protection (2014) attached hereto as Exhibit 16.</p> <p>A number of practical alternatives have been proposed to the County, including by the City of Pasadena, which proposed a lower amount of sediment removal over a longer period of time to alleviate the biological and public health impacts on the surrounding communities. Michael Beck, at 1. In addition, according to Mr. Brick who helped develop the Pasadena Alternative:</p> <p>The City of Pasadena is a downstream community. The Pasadena City Council, concerned about the massive size and impacts of the alternatives contained in the LACFCD's Draft EIR, appointed a Sediment Working Group to determine if there was a way of providing flood protection with less negative impacts to the neighborhoods nearby and to the precious</p>	

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	<p>environmental resources in Hahamongna Watershed Park, which contains Devil's Gate Dam and Reservoir. I was appointed to that Sediment Working Group.</p> <p>We consulted leading experts in the fields of hydrology and dam safety and concluded that there were serious flaws in LACFCD's analysis regarding the program needed, such as the demand for two Design Debris Events capacity and the amount of capacity actually needed in the basin. We determined flood protection could best be achieved by setting a target for sediment accumulation in the basin and then maintaining that target level though a commitment to small, steady removals of excessive sediment every few years, rather than massive Big Digs every twenty or thirty years. We noted that 2.5 mcy of sediment storage was lower than the level that LACFCD had maintained in the Devil's Gate basin since the mid-30s and proposed that as the appropriate level.</p> <p>The 2.5 mcy level will reduce the costs of excavation and trucking for LACFCD, the negative impacts on neighboring communities from noise, dust and traffic, and the habitat destruction that will accompany the sediment removal program.</p> <p>The 2.5 mcy sediment target is one of several important improvements that the Sediment Working Group recommended that were unanimously adopted by the Pasadena City Council. Regrettably LACFCD seems to have given only token consideration to these and many other improvements and alternatives proposed by the City of Pasadena, the Arroyo Seco Foundation, and numerous stakeholders and concerned citizens. Brick at 3.</p> <p>Alternative sediment removal configurations have also been proposed, avoiding critical habitat areas. Philip Williams &amp; Associates (Jan. 17,</p>	

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	2000) Flood Hazard, Sediment Management, and Water Feature Analyses, Hahamongna Watershed Park Pasadena, CA attached hereto as Exhibit 14.	
1.28	<p><b>e. The FEIR Does Not Adequately Respond To Comments On The Draft EIR.</b></p> <p>The FEIR does not adequately respond to ASF's comment letter on the DEIR. CEQA requires that a lead agency evaluate and prepare written responses to comments in a FEIR. Cal. Pub. Res. Code § 21091(d); 14 Cal. Code Regs. §§ 15088(a), 15132. Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful." <i>City of Long Beach v. Los Angeles Unified Sch. Dist.</i> (2009) 176 Cal.4th 889, 904. Comments raising significant environmental issues must be addressed in detail. 14 Cal. Code Regs. § 15088(c). Failure of a lead agency to respond to comments before approving a project frustrates CEQA's informational purpose, rendering an EIR legally inadequate. <i>Flanders Found. v. City of Carmel-by-the-Sea</i> (2012) 202 Cal.4th 603, 615; <i>Rural Landowners Ass'n v. City Council</i> (1983) 143 Cal.3d 1013, 1020.</p> <p>The FEIR provides conclusory and non-responsive comments to a number of issues, including but not limited to Comments Nos. 179-1-179-82, 189-1-189-18, 211-1-211-17, 216-1-216-43. The FEIR should be revised and recirculated with an adequate response to comments.</p>	<p>See response to comments 1.23.</p> <p>Alleged inadequacies that the commenter makes on the adequacy of the response to comments to the FEIR are outside the scope of the Los Angeles Water Board's 401 certification action.</p>
1.29	<p><b>f. The FEIR Improperly Adopts A Future Environmental Baseline.</b></p> <p>The FEIR improperly adopts a future baseline to determine the Project's environmental impact, adopting "conditions after sediment removal"</p>	<p>See response to comment 1.23. In addition, the Los Angeles Water Board notes that the EIR separates the project into Sediment Removal and Sediment Management.</p>

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	<p>after the initial sediment removal project is expected to be complete in 2020 as the environmental baseline. FEIR at 4. An EIR should generally analyze the impact of the Project based upon “existing” conditions. Every CEQA document must start from a “baseline” assumption. The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. <i>Communities for a Better Environment v. So Coast Air Qual. Mgmt. Dist.</i> (2010) 48 Cal. 4th 310, 321. Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency’s environmental review under CEQA:</p> <p style="padding-left: 40px;">“...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.”</p> <p>As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels <i>See Save Our Peninsula Committee v. County of Monterey</i> (2001) (“<i>Save Our Peninsula</i>”) 87 Cal.App.4th 99, 124–25. Using such a skewed baseline “mislead(s) the public” and “draws a red herring across the path of public input.” <i>San Joaquin Raptor Rescue Center v. County of Merced</i> (2007) 149 Cal.App.4th 645, 656; <i>Woodward Park Homeowners v. City of Fresno</i> (2007) 150 Cal.App.4th 683, 708-11.</p> <p>By adopting an environmental baseline based upon conditions after the initial projected five-year sediment removal project has been completed, LACFCD is able to improperly determine that the environmental impacts of its “permanent maintenance area” in the reservoir has less than a significant environmental impact. LACFCD should revise and recirculate the FEIR to analyze the Project based upon present existing</p>	<p>The baseline for the Sediment Removal Phase is based upon current existing conditions.</p> <p>The Sediment Management Phase will commence once the Sediment Removal Phase is complete. Therefore, the baseline for the Management Phase is set as the conditions after the Sediment Removal Phase is complete.</p>

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	conditions.	
1.30	<p><b>g. The FEIR Improperly Piecemeals The Project.</b></p> <p>The FEIR improperly piecemeal the Project by splitting its environmental analysis into two parts, first analyzing the initial large sediment removal project and then based upon the impact of the initial sediment removal project, analyzing a permanently ongoing sediment removal project. The FEIR should treat these two as one project and analyze their impact based upon existing conditions.</p> <p>Moreover, the FEIR fails to analyze the closely related Devil's Gate Water Conservation project as well as the Foothill Municipal Water District Recycled Water project, as these two projects draw from the same grants and are contingent upon increases in capacity at the Reservoir.</p> <p>CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." <i>Bozung v. LAFCO</i> (1975) 13 Cal.3d 263, 283-84; <i>City of Santee v. County of San Diego</i> (1989) 214 Cal.App.3d 1438, 1452; <i>Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo</i> (1985) 172 Cal.App.3d 151, 165. Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, <b>covering the entire project, from start to finish.</b>" <i>Natural Resources Defense Council v. City of Los Angeles</i> (2002) 103 Cal.App.4th 268 (emphasis added).</p>	<p>See response to comment 1.23. In addition, the Los Angeles Water Board notes that the entire project is analyzed in the EIR as one project, and there is no piecemealing. There are two phases (Initial Sediment Removal and Annual Reservoir Management), as outlined in the EIR, but they are part of one project.</p> <p>The Devil's Gate Water Conservation Project is a separate project that is not part of the Proposed Project or alternatives. The Devil's Gate Water Conservation Project is still in a conceptual design phase, and no environmental report is available for public review at this time; however, this project was analyzed in the EIR as a project contributing to cumulative impacts. The Los Angeles Water Board understands that the Foothill Municipal Water District Recycled Water project is still in a conceptual design phase and is on hold by the project proponent at this time, and no environmental impact report is available for public review.</p>

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1.31	<p><b>h. The FEIR's Project Description Is Inadequate.</b></p> <p>The FEIR does not provide an adequate project description as it omits critical details that are integral to determining the Project's environmental impact. "An accurate, stable and finite project description is the sine qua non of an informative and legally adequate EIR." <i>County of Inyo v. City of Los Angeles</i> (1977) 71 Cal.App.3d 185, 192; <i>Berkeley Jets</i>, 91 Cal.App.4th at 1354; <i>Sacramento Old City Assn. v. City Council</i> (1991) 229 Cal.App.3d 1011, 1023; <i>Stanislaus Natural Heritage Project v. County of Stanislaus</i> (1996) 48 Cal.App.4th 182, 201. "[A] curtailed or distorted project description," on the other hand, "may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." <i>Id.</i>; see also 14 Cal. Code Regs. § 15124; <i>City of Santee v. County of San Diego</i> (1989) 214 Cal.App.3d 1438. As one analyst has noted:</p> <p style="padding-left: 40px;">The adequacy of an EIR's project description is closely linked to the adequacy of the EIR's analysis of the project's environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake. Stephen L. Kostka, Michael H. Zischke (2013) Practice Under the California Environmental Quality Act 580.</p> <p>A "rigorous analysis" is required to dispose of an impact as insignificant. <i>Kings County Farm Bureau v. City of Hanford</i> (1990) 221 Cal.App.3d 692. Such a rigorous analysis is not possible if the project description is inaccurate, inconsistent, or misleading.</p> <p>The FEIR provides an inadequate basis for the public, decision makers as well as experts to determine the environmental impact of the Project.</p>	<p>See response to comments 1.23.</p> <p>In addition, the FEIR provides an adequate project description in that it discusses and analyzes what water quality protection measures will prevent violations of water quality standards.</p> <p>The FEIR identifies potential sources of pollution and existing water quality impairments, erosion protection methods, and minimization of non-stormwater runoff, and discusses cumulative impacts. On April 17, 2017, the Superior Court of the County of Los Angeles found that the EIR complied with CEQA on all but three grounds and the LACFCD recirculated those portions of the EIR on mitigation measures affecting certain biological resources, impacts to a potential Devil's Gate Water Conservation Project and emission standards for dump trucks.</p>

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	<p>The FEIR omits critical details, including but not limited to discussing and analyzing exactly what water quality protection measures would be implemented to prevent the Project's activities from causing violations of applicable water quality standards.</p>	
1.32	<p><b><u>VII. THE REGIONAL BOARD SHOULD IMPOSE WASTE DISCHARGE REQUIREMENTS AS CONDITIONS TO THE 401 CERTIFICATION.</u></b></p> <p>In order to prevent the Project from causing violations of applicable water quality standards, including effluent limitations and receiving water limitations, the Regional Board should impose a waste discharge requirement on the Project. Waste discharge requirements are required to ensure that the Project's activities will not cause violations of applicable water quality standards.</p>	<p>A Section 401 certification is sufficient to ensure that water quality standards will be met. In fact, the purpose of a Section 401 certification is to ensure that any project that receives a federal permit complies with State water quality standards.</p> <p>The granting of a Section 401 certification to an applicant signifies that the state has determined that, with the imposition of the conditions contained in the Section 401 certification, the proposed activity and discharge will comply with water quality standards as well as the other identified provisions of the federal Clean Water Act and appropriate requirements of the state.</p> <p>In addition, this project will also be regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification," which requires compliance with all conditions of the Water Quality Certification.</p>
1.33	<p><b>a. At A Minimum, CEQA Requires That The Regional Board Impose The Municipal Storm Water and Urban Runoff Discharge Waste Discharge Requirement.</b></p> <p>The Regional Board is required to condition granting the Project's 401 Certification on imposing the Waste Discharge Requirements for</p>	<p>The 401 certification includes a condition that the project must "comply with the local regulations associated with the Regional Board's Municipal Stormwater Permit issued to Los Angeles County and co-permittees under NPDES No. CAS004001 and Waste Discharge Requirements Order No. R4-2012-</p>

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	<p>Municipal Storm Water and Urban Runoff Discharges within the County of Los Angeles, and the Incorporated Cities Therein, except the City of Long Beach (Order No. 01-182, NPDES No. CAS004001) attached hereto as Exhibit 20 ("Urban Storm Water WDR"). Section 2.6 of the FEIR, titled "Environmental Commitments," notes that the Project's activities will conform with the Urban Storm Water WDR. FEIR at 26.</p> <p>The Urban Storm Water WDR imposes a number of requirements that aren't included as part of the Project's water quality commitments including recordkeeping, monitoring of non-stormwater discharges, prevention of non-stormwater discharges, storm water pollution prevention, technology based effluent limitations, water quality-based effluent limitations, containment of oil or oily material (such as in the yet to be determined staging area), and storage of hazardous, toxic materials, and hydrocarbons. Urban Storm Water WDR at 30-31, 34, 38, 39, 40, 44</p>	<p>0175." (See Section XIV.G.5.) Further, the Section 401 certification has equivalent record keeping and reporting to ensure compliance with the requirements of the 401 certification and protection of water quality, including submittal of all water quality results in conjunction with Surface Water Diversion and dam releases and Annual Mitigation Monitoring Reports, including project status and monitoring reporting.</p>
1.34	<p><b>b. The Regional Board Should Impose All Construction Permit Requirements On The Project As Conditions Of The 401 Certification.</b></p> <p>In order to prevent the Project from causing violations of applicable water quality standards, including effluent limitations and receiving water limitations, the Regional Board should impose ALL requirements of the NPDES General Construction Permit (State Board Order No. 2009-0009-DWQ amended by State Board Order No. 2010-0014-DWQ and State Board No. 2012-0006-DWQ) ("General Construction Permit"), including discharge prohibitions, effluent standards for all types of discharges, training qualifications and requirements, sampling, monitoring, reporting, recordkeeping, risk determinations, ATS requirements, post-construction requirements, and storm water pollution prevention plans onto the Project's APP.</p> <p>The Regional Board is required to do so as the Project's FEIR concludes</p>	<p>The issued 401 certification includes conditions sufficient to protect water quality -- many of which are the same as or similar to conditions of the General Construction Permit. See response to comment 1.22.</p>

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	<p>that the Project will not result in violations of applicable water quality standards noting that even though “[a] NPDES General Construction Permit will not be required . . . [in order to] to avoid sediment removal activities violating water quality standards, all removal activities will be conducted in general accordance with the LARWQCB regulations and LACDPW regulations.” FEIR at 181.</p>	
1.35	<p><b>c. The Regional Board Should Impose Soft Bottom Dredging Waste Discharge Requirements.</b></p> <p>In order to prevent the Project’s activities from violating applicable water quality standards, the 401 Certification should be conditioned on the Project’s activities complying with the Waste Discharge Requirements (WDR) For Los Angeles County Flood Control District (Discharger) Proposed Maintenance Clearing of Engineered Earth-Bottom Flood Control Channels, Los Angeles County (File No. 99-011) (California Regional Water Quality Control Board Los Angeles Region Order No. R4-2015-0032) attached hereto as Exhibit 19 (“<b>Soft Bottom Clearing WDR</b>”).</p> <p>The Soft Bottom Clearing WDR imposes a number of requirements that LACFCD did not commit to in the FEIR or their Permit Application. Paragraph 43 of the Soft Bottom Clearing WDR requires that LACFCD’s “[d]ust control activities . . . be conducted in such a manner that will not produce downstream runoff.”</p> <p>The Permit Application allows for excavation activities during rain events. Paragraph 48 of the Soft Bottom Clearing WDR bars “maintenance activities within waters of the State during a rainfall event. . . . [and also requires that] [i]f rain is predicted within 12 hours after operations have begun, activities shall cease temporarily and protective measures to prevent siltation/erosion shall be implemented and maintained.” Rather than, allowing for LACFCD to “prepare an accumulated precipitation procedure” “if the project may be active</p>	<p>Conditions requiring dust control, suspension or modification of activities during rain or when rain is predicted, and water quality monitoring during work in waters or during water diversion are included in both the WDR and Section 401 certification for the Maintenance Clearing of Engineered Earth-Bottom Channels for Flood Control and this Certification for the Devil’s Gate Project.</p> <p>In the Certification for the Devil’s Gate Project, dust control is addressed in Section XIV, Conditions, G. Best Management Practices; and water quality monitoring during work in waters or during water diversion is addressed in Section XIV, Conditions, C. Water Quality Monitoring.</p> <p>The Certification for the Devil’s Gate Project has the same requirements as the WDR and section 401 certification for the Maintenance Clearing of Engineered Earth-Bottom Channels for Flood Control in terms of numeric limitations and monitoring for pH, temperature, dissolved oxygen, turbidity, and total suspended solids.</p>

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	<p>during rain events,” the Regional Board should bar all Project activities during rain events and require additional siltation/erosion prevention measures consistent with the Soft Bottom Clearing WDR.</p> <p>Moreover, while the Permit Application specifies that the accumulated precipitation procedure will comply with BMP NS-2 and the Public Works BMP Manual Section 7, the Permit Application fails to specify or attach BMP NS-2 or the Public Works BMP Manual Section 7 to the Permit Application.</p> <p>The Permit Application and FEIR don't require water quality monitoring despite the fact that surface flows may be present during Project activities. Paragraph 56 of the Soft Bottom Clearing WDR requires monitoring for pH, temperature, dissolved oxygen, turbidity, total suspended solids, and sets effluent limitations for these pollutants.</p>	
1.36	<p><b>d. The Regional Board Should Promulgate Its Own Waste Discharge Requirement For The Project.</b></p> <p>The Regional Board should propose a waste discharge requirement for the Project given the size, duration, and potential impacts of the Project.</p>	<p>A Clean Water Act Section 401 certification is required for this project, and is adequate to protect water quality.</p> <p>There is no limit in size, duration or potential impacts that cannot be addressed by a Clean Water Act Section 401 certification.</p> <p>In addition, the Devil's Gate project is also regulated pursuant to the State Water Board's Water Quality Order No. 2003-0017-DWQ, which authorizes the Devil's Gate section 401 certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (section XV).</p> <p>Reservoir clean-outs and large programmatic maintenance projects (such as the Debris Basin</p>

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		<p>Maintenance project of LACFCD (Water Board File No. 02-144, issued September 1, 2015) and the Stormwater Facilities Maintenance project of Ventura County (Water Board File No. 14-038) are regulated by Clean Water Act Section 401 certifications.</p> <p>In addition, see response to comment 1.32.</p>
1.37	<p><b><u>VIII. COMMENTERS REQUEST THAT YOU DENY THE PERMIT APPLICATION.</u></b></p> <p>Commenters request that the Regional Board deny 401 Certification as the Permit Application is incomplete, the Regional Board cannot lawfully issue a 401 Certification for the Project by adopting the LACFCD's FEIR, and additional protections are needed in order to ensure that the Project's activities do not cause violations of applicable water quality standards. Moreover, Commenters request that the Regional Board conduct a public hearing on the Permit Application, require that the Project apply for an NPDES General Construction Permit, and develop and impose a waste discharge requirement.</p>	<p>The Los Angeles Water Board has issued a Section 401 certification for the Devil's Gate Sediment Removal Project on the basis of the following: LACFCD has submitted a complete application per Cal. Code Regs., tit. 23, § 3856; LACFCD provided additional information and clarifications as required; LACFCD demonstrated avoidance, minimization and mitigation for impacts; and LACFCD complied with CEQA. The Section 401 certification includes conditions that ensure water quality standards are achieved. See, also, response to comment 1.14.</p>
2.1	<p>In addition to the requests originally submitted on September 11, 2015, Commenters would note that the County's Permit Application does not comply with the <b>TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR PROPOSED LOS ANGELES COUNTY DEBRIS BASIN MAINTENANCE PROJECT (172 BASINS)</b> (Corps' Project No. 2003-00411-BLR ("Debris Basin Maintenance Water Quality Certification" or "Water Quality Certification")) as the Permit Application 1) does not adopt enforceable turbidity limits, 2) allows for wet excavations, 3) allows for sediment removal activities during rainfall events, 4) fails to protect rare, threatened, or endangered species, and 5) does not require monitoring and annual monitoring and reporting.</p>	<p>The Los Angeles County Debris Basin Maintenance Project (172 Basins) and the Devil's Gate Reservoir Sediment Removal and Management Project are separate projects subject to separate, project-specific, permitting including separate Certification under CWA Section 401. As such, LACFCD's application for Certification for the Devil's Gate Reservoir Sediment Removal and Management Project is not required to comply with the Los Angeles County Debris Basin Maintenance Project (172 Basins) Certification.</p> <p>However, the conditions included in the Certification</p>

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	<p>The Regional Board should impose the conditions included in the Debris Basin Maintenance Water Quality Certification upon the Project as the debris maintenance activities regulated under the Water Quality Certification are virtually identical in the type of activities and their impact on water quality.</p> <p>The Project's Permit Application does not adopt many of the mitigation measures imposed by the Debris Basin Maintenance Water Quality Certification. These mitigation measures are necessary to protect the Project from causing violations of state water quality standards.</p>	<p>for the Devil's Gate Reservoir Sediment Removal and Management Project are very similar to the conditions included in the Certification for the Los Angeles County Debris Basin Maintenance Project (172 Basins) and appropriate for the specifics of the Devil's Gate Reservoir Sediment Removal and Management Project. In the Devil's Gate 401 certification, turbidity limits are included (Section XIV.C.); in-water work under conditions of diversion and monitoring is allowed (Section XIV.C.) (as is also allowed in the Debris Basin certification); activities during rain are not prohibited, but the additional measures of preparing site-specific Storm Water Pollution Prevention Plan (SWPPP) and a Rain Event Action Plan (REAP) are required to protect water quality (Section XIV. E. 7.); the taking of threatened, endangered or candidate species is not authorized and BMPs are required to protect special status species, including exclusionary fencing and capture/relocation outside the work area (Section XIV. G. 3.); and annual monitoring and reporting are required.</p>
2.2	<p><b>I. PROJECT BACKGROUND</b></p> <p>[See original letter.]</p>	<p>The "Project Background" section of this comment letter is nearly identical to the "Project Background" in the letter dated September 11, 2015; see responses to comments 1.3 – 1.8.</p>
2.3	<p><b>II. BACKGROUND ON THE CLEAN WATER ACT SECTION 404 DREDGE &amp; FILL PERMIT</b></p> <p>[See original letter.]</p> <p><b>III. BACKGROUND ON THE CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION</b></p>	<p>Comments noted.</p>

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	[See original letter.]	
2.4	<p><b>IV. THE REGIONAL BOARD SHOULD APPLY THE REQUIREMENTS OF THE DEBRIS BASIN MAINTENANCE REGULATIONS TO THE COUNTY'S PERMIT APPLICATION.</b></p> <p>The Regional Board should impose the Debris Basin Maintenance Water Quality Certification as the Permit Application involves similar activities as those covered by the Debris Basin Maintenance Water Quality Certification. The Debris Basin Maintenance Water Quality Certification cover "removal of mud, rock and debris from 172 debris basins. Debris Basin Maintenance Water Quality Certification at 1</p> <p>The Regional Board is required to do so as the Project's FEIR concludes that the Project will not result in violations of applicable water quality standards based upon the Regional Board's regulations, noting that even though "[a] NPDES General Construction Permit will not be required ... [in order to] to avoid sediment removal activities violating water quality standards, all removal activities will be conducted in general accordance with the LARWQCB regulations and LACDPW regulations." FEIR at 181</p>	See response to comment 2.1.
2.5	<p><b>a. The Permit Application Does Not Adopt Enforceable Turbidity Limits.</b></p> <p>Condition No. 20 of the Debris Basin Maintenance Water Quality Certification imposes enforceable numerical effluent limitations. In particular, the Water Quality Certification provides that "[d]ownstream TSS [(Total Suspended Solids)] shall be maintained at ambient levels. Where natural turbidity is between 0 and 50 ..., increases shall not exceed 20% ...."Numerical effluent limitations, <i>monitoring</i>, and <i>reporting measures</i> should be adopted to ensure that the Project activities do not result in discharges exceeding those numerical effluent</p>	<p>A Permit Application does not adopt enforceable turbidity limits. However, the Section 401 Certification for the Devil's Gate Reservoir Sediment Removal and Management Project addresses turbidity limits in Section XIV, Conditions, C. Water Quality Monitoring.</p> <p>The turbidity limit is based on the Los Angeles Region Basin Plan, which is the same as required in the Section 401 Certification for the Los Angeles County Debris Basin Maintenance Project (172 Basins)</p>

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	<p>limitations should be imposed as a condition of certification for the Project.</p>	<p>Project.</p>
<p>2.6</p>	<p><b>b. The Permit Application Allows For Wet Excavation.</b></p> <p>Condition No. 18 of the Water Quality Certification bars "wet excavation," i.e. sediment removal activities below the "existing groundwater level." Water Quality Certification at 3. The Region Board should bar wet excavations for the Project and require the County to determine "existing groundwater level[s]" on the Project Site.</p> <p>The Project's Permit Application does not address "wet excavation" and the possibility that the Project may pollute local groundwater resources. Given the depths that the Project proposes to excavate, there is a significant possibility that the Project may pollute local groundwater resources by excavating within the local groundwater table.</p>	<p>The Devil's Gate Reservoir Sediment Removal and Management Project application did not address wet excavations; however, the Certification for the Devil's Gate Reservoir Sediment Removal and Management Project includes a prohibition against wet excavations (Section XIV. G. 2.), which is the same as required in the Certification for the Los Angeles County Debris Basin Maintenance Project (172 Basins) Project.</p> <p>The Los Angeles Water Board notes that LACFCD proposes to remove sediments accumulated above the historical level of the stream and therefore is at little risk of encountering groundwaters.</p>
<p>2.7</p>	<p><b>c. The Permit Application Allows For Sediment Removal Activities During Rainfall Events.</b></p> <p>Condition No. 16 of the Water Quality Certification bars excavation activities during rainfall events, barring excavation activities "when site conditions would lead to excessive erosion" and moreover requiring "stabilization procedures" prior to rainfall events. Water Quality Certification at 3.</p> <p>The Permit Application goes the exact opposite direction, allowing for excavation activities during rain events. Permit Application at 15. The Regional Board should bar the Project from committing excavation activities during rainfall events as well as require stabilization procedures prior to rainfall events.</p>	<p>The Certification for the Devil's Gate Reservoir Sediment Removal and Management Project includes the requirement for the development of a site-specific Storm Water Pollution Prevention Plan (SWPPP) and Rain Event Action Plan (REAP) (Section XIV. E. 7.). This additional planning and the associated BMPs were included as a requirement for the Devil's Gate Reservoir Sediment Removal and Management Project due to its size and complexity.</p>

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2.8	<p><b>d. The Permit Application Does Not Protect Rare, Threatened Or Endangered Species.</b></p> <p>Condition No. 14 of the Water Quality Certification requires completion of a formal or informal consultation with responsible wildlife agencies before a Project can move forward. Water Quality Certification at 3.</p> <p>The Permit Application is not conditioned upon completion of formal or informal consultation with responsible wildlife agencies. The Regional Board should condition granting the Permit Application upon completion of consultation and compliance with any conditions imposed as a result from responsible wildlife agencies.</p>	<p>As a part of the Section 404 permit process, ACOE initiated an informal Section 7 Consultation with United States Fish and Wildlife Service. If during the consultation, it is determined that an Incidental Take Permit (ITP) is needed, LACFCD will make the application at that time. See also response to comment 1.16.</p>
2.9	<p><b>e. The Permit Application Does Not Require Monitoring Or Annual Reporting.</b></p> <p>Conditions Nos. 25 and 26 of the Water Quality Certification requires the County to submit an Annual Report as well as Annual Mitigation Monitoring Report to the Regional Board. Water Quality Certification at 5 -6.</p> <p>The Permit Application does not require any annual reporting. Annual reporting requirements should be imposed on the Project.</p>	<p>Permit applications themselves do not “self-impose” monitoring or annual reporting. The 401 certification for the Devil’s Gate Reservoir Sediment Removal and Management Project includes requirements for monitoring in Section XIV, Conditions, C. Water Quality Monitoring and requirements for reporting under Section XIV, Conditions, B. Reporting and Notification Requirements.</p>
2.10	<p><b>V. Conclusion.</b></p> <p>Commenters request that at a minimum, the Regional Board adopt the Water Quality Certification conditions upon the Project. Moreover, Commenters reiterate their request that the Regional Board 1) deny the current Permit Application 2) conduct a public hearing on the Project, 3) find that the Permit Application is incomplete, 4) require that the Project apply for an NPDES General Construction Permit, 5) order the development of a Supplemental</p>	<p>The detailed responses to the requests listed are addressed in the responses, above:</p> <p>1) <i>deny the current Permit Application</i>, see response to comments, 1.5 and 1.15 and 1.37.</p> <p>2) <i>conduct a public hearing on the Project</i>, see response to comment, 1.14.</p> <p>3) <i>find that the Permit Application is incomplete</i>, see response to comments, 1.15 through 1.21.</p>

No.	Comment	Response
	<p>Environmental Impact Report to consider the Project's impacts on water quality, and 6) impose waste discharge requirements.</p>	<p>4) <i>require that the Project apply for an NPDES General Construction Permit</i>, see response to comments, 1.22 and 1.34.            5) <i>order the development of a Supplemental Environmental Impact Report</i>, see response to comment, 1.23.            6) <i>impose Waste Discharge Requirements</i>, see response to comment, 1.32 and 1.36.</p>