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**VIA ELECTRONIC & U.S. MAIL**

September 11, 2015

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401 Water Quality Certification and Waste Discharge Requirements Program  
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD  
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RE: **Devil's Gate Reservoir Sediment Removal and Management Project (File No. 15-053).**

On behalf of the Arroyo Seco Foundation (“**ASF**”) and the Pasadena Audubon Society (“**Audubon**”) (collectively referred to as “**Commenters**”), my Office is submitting comments regarding the County of Los Angeles Department of Public Works (“**DPW**” or “**Public Works**”) and Los Angeles County Flood Control District’s (“**LACFCD**” or “**Flood Control District**”) Devil’s Gate Reservoir Sediment Removal and Management Project (File No. 15-053) application for a Clean Water Act, 33 U.S.C. § 1251 *et seq* (“**CWA**”) Section 401 Water Quality Certification (“**401 Certification**”), a pre-requisite for receiving a Clean Water Act Section 404 Dredge and Fill Permit (collectively, “**Permit Application**”).

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.

As a result, Commenters request that the Los Angeles Regional Water Quality Control Board (“**LARWQCB**” or “**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 Environmental Impact Report to consider the Project’s impacts on water quality, and 6) impose waste discharge Requirements.

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 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.

## **I. PROJECT BACKGROUND.**

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.

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.

The Project will impair water quality within the Reservoir and receiving 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.

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.

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:

... 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. *Id.*

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.

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.”

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 **annual ongoing sediment removal**.

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.

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 Canyon Pipeline Project, a water supply project which may seek to rely on water storage capacity within the Reservoir.

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:

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.

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:

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.

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. Michael Beck, City Manager, City of Pasadena (May 15, 2014) Letter to Gail Farber, Director, Los Angeles County Department of Public Works RE: City of Pasadena Recommendations on County of Los Angeles Draft Environmental Impact Report and Proposed Alternatives for the Devil’s Gate Reservoir Sediment Removal and Management Project attached hereto as Exhibit 21.

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.

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.

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.

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, *et seq* (“**CEQA**”) Final Environmental Impact Report (“**FEIR**”) on October 12, 2014.

Commenters filed a CEQA lawsuit challenging the Project’s approval by the BOS under the California Environmental Quality Act, Cal Public Resources Code § 21000, *et seq* (“**CEQA**”), County of Los Angeles Code, as well as Pasadena Municipal Code on December 11, 2014. *Arroyo Seco Foundation, et al v. County of Los Angeles, et al* (LASC Case No. BS152771), Notice To Responsible Agencies (filed Feb. 17, 2015).

The Permit Application has been pending with the Regional Board since May 18, 2015.

## **II. EXPERT TESTIMONY.**

Commenters have included the testimony of nine scientific experts commenting on the Project.

Matt Hagemann is a hydrogeologist with over 15 years of consulting experience in environmental site assessment and remediation. His practice focuses on providing assistance to communities and as a consulting expert and expert witness for environmental litigation. Mr. Hagemann has extensive experience in the interpretation of data and the application of environmental regulations and regulatory guidance. Mr. Hagemann has provided consulting support and expert witness testimony for a variety of projects concerning the environmental occurrence of perchlorate, MTBE, and petroleum hydrocarbons. Mr. Hagemann has also led research on several projects to compile comprehensive histories of chemical synthesis, production, and industry knowledge related to MTBE and perchlorate use. In addition to being licensed in California as a Professional Geologist and Certified Hydrogeologist, Mr. Hagemann is a Qualified Stormwater Pollution Plan Developer (QSD) and a Qualified Stormwater Pollution Plan Practitioner (QSP). Mr. Hagemann has conducted numerous inspections of industrial facilities and has recommended best management practices to improve stormwater quality.

Mr. Hagemann has an extensive history in environmental consulting and regulatory oversight. He previously served as the Senior Science Policy Advisor with U.S. EPA Region 9 in San Francisco, where he advised senior management on emerging water quality and hazardous waste issues. Mr. Hagemann also served as a hydrogeologist in the Superfund and RCRA divisions in overseeing the investigation and cleanup of toxic waste facilities, including seven closing military bases. At EPA, Mr. Hagemann led technical aspects of enforcement against polluters resulting in significant settlements. Mr. Hagemann joined EPA in 1989 as a charter member of the RCRA Corrective

Action Section. In this role, he applied newly written guidance in the investigation and cleanup of sites and assisted in the delegation of EPA’s authority to states. Mr. Hagemann also worked as a hydrogeologist in EPA’s Water Division and implemented Safe Drinking Water Act programs and provided division-wide assistance on issues involving the Clean Water Act. Mr. Hagemann also worked as a hydrologist for the National Park Service to ensure protection of water quality of National Parks throughout the U.S. under provisions of the Clean Water Act.

Jessie Jaeger joined SWAPE in April 2014, she worked as a research assistant for the UCLA H. Bradley Shaffer Lab, where she used laboratory techniques and genetic analysis to aid in conservation efforts of threatened species in California. In June of 2014 she graduated from UCLA with a Bachelor of Science degree in Environmental Science and a minor in Conservation Biology. While attending UCLA, her studies focused on wastewater management and treatment, habitat conservation, and global climate change. Since joining SWAPE, Jessie has worked primarily on groundwater and drinking water projects, where she conducts research, prepares reports and presentations, and analyzes environmental datasets.

T’Shaka Touré has over 25 years of diverse experience in natural resources management with an emphasis in regulatory permitting, environmental reexamination, wildlife studies, open space management planning, wetland ecology, and hydrology. Mr. Touré has conducted technical studies, prepared regulatory permits, jurisdictional delineations, and provided USFWS Section 7 consultation and expert testimony for endangered species to include mitigation and monitoring plans for impacts to special-status species. Mr. Touré has prepared and implemented natural resources management plans for artificially created wetland design planning, open space planning, and water quality control planning. He has expansive experience in habitat assessments and regulatory permitting concerns for California special-status species including Least Bell’s Vireo, Willow Flycatcher, Tricolored Blackbird, Burrowing Owl, Swainson’s Hawk, Blunt-nosed Leopard Lizard, California Red-legged Frog, Arroyo Toad, Desert Tortoise, Kangaroo Rats, San Joaquin Kit Fox, and Valley Elderberry Longhorn Beetle). He is knowledgeable regarding special-status species mitigation banks and conservancy lands. Additionally, he’s experienced in working with local and regional regulatory agencies staff personnel and has a working relationship with CDFW, RWQCB, USACE, and various municipality public works staff. Mr. Touré is an experienced senior level regulatory specialist that has navigated through the regulatory permitting process in order to identifying appropriate site locations to establish conservation to meet mitigation requirements, when appropriate. He has provided document reviews, environmental reexamination, and implementation of required technical studies. He has prepared regulatory permitting packages for DFW Sections 2081, 1602, Regional Board Section 401 Certification, and USACE 404 Permit of the CWA, to include regulatory services for projects throughout California. Mr. Touré’s biological experience and regulatory permitting knowledge extends from agricultural lands to wetlands. He has provided environmental compliance services and document reviews for BNSF railway, large scale solar energy and linear transportation projects for Caltrans, California Energy Commission, and PG&E projects in the counties of Fresno, Madera, Merced, Kern, Kings, Tulare, San Joaquin, Stanislaus, Sacramento, Santa Clara, Alameda, Monterey, Los Angeles, Orange, San Bernardino, and Riverside.

Michael Long retired in 2010 as Natural Areas Administrator over 19 Natural Areas and Wildflower Sanctuaries for the Los Angeles County Department of Parks and Recreation, based at Eaton Canyon Nature Center and worked in the Nature Centers system 39 years. He obtained a BS in Zoology in 1972 from California State University Los Angeles and taught college environmental biology and human ecology courses and currently teaches natural history classes for the Nature Centers. Mr. Long's research interests are in ornithology, herpetology and botany, he has prepared or reviewed over 200 CEQA and NEPA environmental documents, and he continues to perform field biological assessments for environmental documents. He served 12 years on the County Regional Planning Dept. Significant Ecological Areas Tech. Advisory Committee. He also is Vice Pres. and Conservation Chair for the Calif. Native Plant Soc., San Gabriel Mountains. Chapter, an Advisor for the Arroyos and Foothills Conservancy, and Vice Pres. of the Pasadena Audubon Society.

Darren Dowell, PhD. is a research scientist at Jet Propulsion Library, and also currently serves as Visiting Associate and Lecturer at the California Institute of Technology. Mr. Dowell is an experienced ornithologist and has conducted bird surveys since 2009.

Lance Benner, PhD. is a research scientist at Jet Propulsion Library. Mr. Benner is an experienced ornithologist who has conducted bird surveys since 2003.

Timothy F. Brick is the Managing Director of the Arroyo Seco Foundation. Mr. Brick has been involved in Arroyo improvement projects for more than thirty years, beginning with Pasadena's Strategic Planning Committee in 1984. Mr. Brick served on the Devil's Gate Advisory Committee from 1985 to 1990. Mr. Brick then was appointed to the Devil's Gate Joint Planning Authority ("DGJPA"), where Mr. Brick was vice-chairman representing the City of Pasadena. The DGJPA set up Hahamogna Watershed Park in the Devil's Gate Dam basin and pursued a series of improvements to improve the area. In that capacity, Mr. Brick served on the committee that hired the dam rehabilitation firm, Harza Engineers, to prepare a plan to seismically upgrade and rehabilitate Devil's Gate Dam, which had been condemned in 1974 following the Sylmar Earthquake. In 1995, Mr. Brick was hired as the Executive Director of the Hahamongna Operating Company and later as a planning consultant to the City of Pasadena during the period of time that Devil's Gate Dam was rehabilitated by the County of Los Angeles Department of Public Works. Mr. Brick's responsibilities were to supervise the dam rehabilitation program and to ensure that the interests of Pasadena and of Hahamongna Watershed Park were protected in the construction process, so I studied the planning documents for the dam rehabilitation carefully and spent a significant amount of time inspecting the dam rehabilitation project.

Norman H. Brooks is the James Irvine Professor of Environmental and Civil Engineering at the California Institute of Technology.

**III. BACKGROUND ON THE CLEAN WATER ACT SECTION 404 DREDGE & FILL PERMIT**

The Clean Water Act, 33 U.S.C. § 1251, *et seq* (“CWA”) regulates discharges of pollutants into the waters of the United States and quality standards for surface waters. The CWA sets water quality standards for water bodies subject to federal jurisdiction as a “Water of the United States” as well as regulates the discharge of any pollutant from a point source into a Water of the United States.

However, in addition to regulating point sources of pollution as well as setting water quality standards for surface waters, the CWA regulates the discharge of dredged or fill material. Section 404 of the CWA, 33 U.S.C. § 1344, bars the discharge of dredged or fill material into a “Water of the United States” without a permit. Permits issued under Section 404 of the CWA, known as 404 Dredge and Fill Permits regulate the dredging and filling of wetlands, streambeds, and lakebeds for development, water resource projects, infrastructure development, and any other activity that involves the dredging and filling of riparian areas of a Water of the United States. Before receiving a 404 Permit, permittees must show that their activities comply with the Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 C.F.R. pt. 230.

**IV. BACKGROUND ON THE CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION.**

Federal agencies may not issue a 404 Permit unless the state or tribe where the discharge would occur has granted, granted with conditions or waived CWA Section 401 certification that the permitted activity will not or activity will not result will not result in discharges that do not comply with state water quality standards (“401 Certification”). 401 Certification is required for “[a]ny applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters. 33 U.S.C. § 1341(a)(1).

**V. BACKGROUND ON APPLICABLE WATER QUALITY STANDARDS.**

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, Altadena, and the City of Pasadena before it ends at its confluence with the Los Angeles River near Elysian Park.

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 off-set the adverse impacts of this downstream sedimentation on the beneficial uses of the Los Angeles River.

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.).

Increased sedimentation caused by the Project’s activities may impact beneficial uses along the Arroyo Seco and Los Angeles River. Arroyo Seco Reach 1 is designated for potential beneficial use for Municipal and Domestic Water Supply, Warm Freshwater Habitat, and Wildlife Habitat. Arroyo Seco Reach 2 is designated for potential beneficial use for Municipal and Domestic Water Supply, Warm Freshwater Habitat, and Wildlife Habitat as well as existing beneficial use for Rare, Threatened or Endangered Species. Devil’s Gate Reservoir (Lower) is designated for potential beneficial use for Municipal and Domestic Water Supply, intermittent beneficial use for Warm Freshwater Habitat as well as Groundwater Recharge, and existing beneficial uses for Wildlife Habitat. Devil’s Gate Reservoir (upper) is designated for intermittent beneficial use for Municipal and Domestic Water Supply, Groundwater Recharge, and Warm Freshwater Habitat, as well as existing uses for Wildlife Habitat. Los Angeles River Reach 2 is designated for potentially beneficial uses of Municipal and Domestic Water Supply, Industrial Service Supply, and Wildlife Habitat, as well as existing beneficial uses for Groundwater Recharge. Los Angeles River Reach 1 is designated for potentially beneficial uses for Municipal and Domestic Supply, Industrial Service Supply, Industrial Process Supply, Migration of Aquatic Organisms, as well as existing beneficial uses for Groundwater Recharge, Warm Freshwater Habitat, Marine Habitat, Wildlife Habitat, and Rare, Threatened or Endangered Species. Finally, Los Angeles River Estuary is designated for existing beneficial uses for Industrial Service Supply, Navigation, Commercial and Sport Fishing, Estuarine Habitat, Marine Habitat, Wildlife Habitat, Rare, Threatened or Endangered Species, Migration of Aquatic Organisms, Spawning, Reproduction and/or Early Development, and Wetland Habitat. California Regional Water Quality Control Board, Los Angeles Region (1995) Water Quality Control Plan Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties 2-12 (“**Basin Plan**”).

The Project activities may cause violations of Basin Plan water quality standards includes a narrative toxicity standard which states that “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health.” *Id.* at 4-18. The Basin Plan includes a narrative oil and grease standard which states that “[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible

film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-15. The Basin Plan includes a narrative suspended and settleable solids standard which states that “waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses . . . .” *Id.* at 4-16. The Basin Plan includes a narrative floatables standard which states that “[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-11. The Basin Plan includes a narrative color standard which states that “[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses.” *Id.* at 4-10. The Basin Plan includes a narrative turbidity standard which states that “inland surface waters . . . shall be free of changes in turbidity which adversely affect beneficial uses. *Id.* at 4-18.

**VI. THE REGIONAL BOARD SHOULD CONDUCT A PUBLIC HEARING ON THE PROJECT’S 401 CERTIFICATION.**

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.

**VII. A 401 WATER QUALITY CERTIFICATION CANNOT BE ISSUED AT THIS TIME AS THE PERMIT APPLICATION IS INCOMPLETE.**

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.

**a. The Permit Application Does Not Identify All Federal Permits**

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 . . . .”

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.

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 & Wildlife Biologist, U.S. Fish & Wildlife Services (May 27, 2015), attached hereto as Exhibit 8.

**b. The Permit Application Does Not Properly Identify Waters Of The United States That May Be Impacted.**

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.

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 Sediment Removal and Management Project attached hereto as Exhibit 18. According to Touré:

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.

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

The **mitigation ratio must be increased from 1:1 to 3:1** 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 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. **There is no clear explanation as to why or how the wetland jurisdictional acreage has been reduced to such an extent** 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. **Currently the Public Notice states approximately 10.8 acres are wetlands however a previous JD report stated approximately 44.9 acres of wetland habitat.** 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).

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 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.

**c. The Permit Application Does Not Adequately Describe The Project Site.**

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:

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.

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.

**d. The Permit Application Does Not Adequately Describe Baseline Environmental Conditions**

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.

**e. The Permit Application Does Not Provide Adequately Describe The Project.**

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 & 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. .

**f. The Permit Application Does Not Provide A Detailed Compensatory Mitigation Plan.**

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:

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.

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.

**VI. THE PROJECT IS SUBJECT TO THE NPDES GENERAL CONSTRUCTION PERMIT.**

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 & 2012-0006-DWQ attached hereto as Exhibit 13 (“**General Construction Permit**”).

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.

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

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.

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.*

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.

**VII. THE REGIONAL BOARD MUST PREPARE A SUBSEQUENT ENVIRONMENTAL IMPACT REPORT UNDER CEQA BEFORE ISSUING A SECTION 401 CERTIFICATION.**

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.

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; *City of Redding v. Shasta County Local Agency Formation Com* (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:

(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 previously identified significant effects;

(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

(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:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(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

(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.

14 CCR § 15162(a). If, after a project is approved, any of these 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.

a. **The Project Will Have Significant Effects on Hydrology And Water Quality Which Were Not Analyzed In The FEIR.**

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.

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.

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 find that its environmental impacts are less than significant. As the Court found in *Lotus v. Dep’t of Transportation* (2014) 223 Cal. App. 4th 645, 658:

[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.

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.

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.**

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.

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 measures should not be deferred until some future time.”).

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.” *Communities for a Better Environment v. City of Richmond* (2010) (“*Communities*”) 184 Cal.App.4th 70, 92. As the Court noted in *Sundstrom v. County of Mendocino* (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.”

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. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670; *Communities*, 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. *Sacramento Old City Assn. v. City Council* (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).].

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.

The EIR concludes that without mitigation, the Project will likely have significant impacts on water quality. As the EIR notes:

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. . . .

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.

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.

Finally, while the Permit Application cites use of the Los Angeles County Flood Control District’s Best Management Practices (BMP) 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.

c. **Baseline Water Quality Conditions Vary Considerably From The Baseline Water Quality Conditions Presented In The FEIR.**

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:

. . . due to installation of IMP measures to reduce flood risk downstream and **interim sediment removal activities**, 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.

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.

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.

**d. The FEIR Does Not Consider An Adequate Range Of Alternatives.**

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).

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.

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.

Moreover, numerous experts have concluded that the Flood Control 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:

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 **there is no demonstrated relation of amount of deposited sediment to downstream flooding.**

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.

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:

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.

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.

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 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.

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.

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, at1. In addition, according to Mr. Brick who helped develop the Pasadena Alternative:

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 environmental resources in Hahamongna Watershed Park, which contains Devil’s Gate Dam and Reservoir. I was appointed to that Sediment Working Group.

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 through 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.

The 2.5 mcg 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.

The 2.5 mcg 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.

Alternative sediment removal configurations have also been proposed, avoiding critical habitat areas. Philip Williams & Associates (Jan. 17, 2000) Flood Hazard, Sediment Management, and Water Feature Analyses, Hahamongna Watershed Park Pasadena, CA attached hereto as Exhibit 14.

**e. The FEIR Does Not Adequately Respond To Comments On The Draft EIR.**

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.” *City of Long Beach v. Los Angeles Unified Sch. Dist.* (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. *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.4th 603, 615; *Rural Landowners Ass’n v. City Council* (1983) 143 Cal.3d 1013, 1020.

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.

**f. The FEIR Improperly Adopts A Future Environmental Baseline.**

The FEIR improperly adopts a future baseline to determine the Project’s environmental impact, adopting “conditions after sediment removal” 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. *Communities for a Better Environment v. So Coast Air Qual. Mgmt. Dist.* (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:

“...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.”

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 *See Save Our Peninsula Committee v. County of Monterey* (2001) (“*Save Our Peninsula*”) 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.” *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-11.

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 conditions.

**g. The FEIR Improperly Piecemeals The Project.**

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.

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.

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.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (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, **covering the entire project, from start to finish.**” *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268 (emphasis added).

**h. The FEIR’s Project Description Is Inadequate.**

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.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; *Berkeley Jets*, 91 Cal.App.4th at 1354; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus* (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.” *Id.*; see also 14 Cal. Code Regs. § 15124; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438. As one analyst has noted:

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*.

A “rigorous analysis” is required to dispose of an impact as insignificant. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. Such a rigorous analysis is not possible if the project description is inaccurate, inconsistent, or misleading.

The FEIR provides an inadequate basis for the public, decisionmakers as well as experts to determine the environmental impact of the Project. 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.

**VII. THE REGIONAL BOARD SHOULD IMPOSE WASTE DISCHARGE REQUIREMENTS AS CONDITIONS TO 401 CERTIFICATION.**

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.

a. **At A Minimum, CEQA Requires That The Regional Board Impose The Municipal Storm Water and Urban Runoff Discharge Waste Discharge Requirement.**

The Regional Board is required to condition granting the Project’s 401 Certification on imposing the Waste Discharge Requirements for 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.

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

b. **The Regional Board Should Impose All Construction Permit Requirements On The Project As Conditions Of The 401 Certification.**

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. .

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 noting that eventhough “[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.

c. **The Regional Board Should Impose Soft Bottom Dredging Waste Discharge Requirements.**

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 (“**Soft Bottom Clearing WDR**”).

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.”

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 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.

Moreover, while the Permit Application species 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.

The Permit Application and FEIR don’t requirement 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.

**d. The Regional Board Should Promulgate Its Own Waste Discharge Requirement For The Project.**

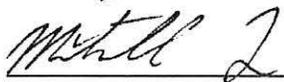
The Regional Board should propose a waste discharge requirement for the Project given the size, duration, and potential impacts of the Project.

**VIII. COMMENTERS REQUEST THAT YOU DENY THE PERMIT APPLICATION.**

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.

It is a pleasure working with you. Please contact my Office if you have any questions or concerns.

Sincerely,



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Mitchell M. Tsai

Attorneys for Arroyo Seco Foundation &  
Pasadena Audubon Society

Attachments:

*Arroyo Seco Foundation, et al v. County of Los Angeles, et al* (LASC Case No. BS152771), Notice To Responsible Agencies (filed Feb. 17, 2015) (attached as Exhibit 1);

Bill Bogaard, Mayor (Jan. 16, 2014) 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 (attached 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 as Exhibit 3);

County of Los Angeles Board of Supervisors (Nov. 12 2014) The Meeting Transcript of the Los Angeles County Board of Supervisors 191 (attached as Exhibit 4);

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 as Exhibit 5);

Final Environmental Impact Report Devil’s Gate Reservoir Sediment Removal and Management Project Pasadena, CA (Los Angeles County) (2014) (attached as Exhibit 6);

Grant Agreement Between The State of California (Department of Water Resources and Los Angeles County Flood Control District (2013) (attached as Exhibit 7)

Letter from Mitchell M. Tsai to Christine Medak, Fish & Wildlife Biologist, U.S. Fish & Wildlife Services (May 27, 2015) (attached as Exhibit 8);

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 as Exhibit 9);

Los Angeles County Flood Control District (2013) Sediment Management Strategic Plan 2012 – 2032 (attached as Exhibit 10);

Matt Hagemann and Jessie Jaeger, Comments on the Devil’s Gate Reservoir Sediment Removal and Management Project (June 15, 2015) (attached as Exhibit 11);

Norman H. Brooks, Notes by Norman H. Brooks To: Devil’s Gate Sediment Removal Working Group 5 (2014) (attached as Exhibit 12);

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) (attached as Exhibit 13);

Philip Williams & Associates (Jan. 17, 2000) Flood Hazard, Sediment Management, and Water Feature Analyses, Hahamongna Watershed Park Pasadena, CA (attached as Exhibit 14) ;

Section 401 Water Quality Certification Application Form (attached as Exhibit 15);

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 as Exhibit 16);

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 as Exhibit 17);

U.S. Army Corps of Engineers (2015) Public Notice: Application For Permit Devil’s Gate Reservoir Sediment Removal and Management Project (attached as Exhibit 18);

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 as Exhibit 19); and

Waste Discharge Requirements For 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 as Exhibit 20) ; and

Michael Beck, City Manager, City of Pasadena (May 15, 2014) Letter to Gail Farber, Director, Los Angeles County Department of Public Works RE: City of Pasadena Recommendations on County of Los Angeles Draft Environmental Impact Report and Proposed Alternatives for the Devil’s Gate Reservoir Sediment Removal and Management Project (attached as Exhibit 21).

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**VIA ELECTRONIC & U.S. MAIL**

April 8, 2016

Valerie Carrillo Zara, Lead  
401 Water Quality Certification and Waste Discharge Requirements Program  
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD  
320 West Fourth Street, Suite 200  
Los Angeles, California 90013  
Em: vcarrillo@waterboards.ca.gov

2016 APR 11 PM 1:32Z  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

RE: **Devil's Gate Reservoir Sediment Removal and Management Project (File No. 15-053).**

On behalf of the Arroyo Seco Foundation ("ASF") and the Pasadena Audubon Society ("Audubon") (collectively referred to as "Commenters"), my Office is submitting comments regarding the County of Los Angeles Department of Public Works ("DPW" or "Public Works") and Los Angeles County Flood Control District's ("LACFCD" or "Flood Control District") Devil's Gate Reservoir Sediment Removal and Management Project (File No. 15-053) application for a Clean Water Act Section 401 Water Quality Certification, a pre-requisite for receiving a Clean Water Act Section 404 Dredge and Fill Permit ("Permit Application" or "Project").

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 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.

Commenters would like to supplement their September 11, 2015 comments to the Los Angeles Regional Water Quality Control Board ("LARWQCB" or "Regional Board") that requested 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 Environmental

Impact Report to consider the Project’s impacts on water quality, and 6) impose waste discharge requirements.

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 **TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR PROPOSED LOS ANGELES COUNTY DEBRIS BASIN MAINTENANCE PROJECT (172 BASINS)** (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.

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.

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.

## **I. PROJECT BACKGROUND.**

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 Dam had an original storage capacity of approximately 7.42 million cubic yards (“**mcy**”) at the time of its opening. Now, with sediment having accumulated behind the dam, it holds a total reservoir capacity of 3.72 mcy.

The Project is set to occur 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.

The Project will destroy habitat for these federally and state endangered species, permanently decrease the recreational and aesthetic value of the Park, and displace recreational activities for a five-year period during which sediment removal is expected to be conducted.

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. 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).

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:

. . . 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.

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.

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.”

Five years later, despite virtually no change in the Reservoir’s situation, the Project has since ballooned into a massive 70-acre 2.4 mcy sediment removal project, exactly opposite to the Regional Board’s March 18, 2011 request. 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 **annual ongoing sediment removal**.

The County claims that massive flooding of the surrounding downstream neighborhoods will occur without this Project despite the fact that the last large scale sediment removal even vaguely approaching the size of the Project occurred at the Project Site in 1995, where they removed a mere 0.19 mcy. This was in part due to improvements at the Dam in 1993 that significantly increased the Reservoir’s flood control capacity.

But now, with the ready availability of State grant funds and the revival of the long-dead Eaton Canyon Pipeline Project, the County has suddenly decided that it is necessary to restore the Reservoir to a flood control capacity that it has not maintained since 1935.

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. Email from Valerie De La Cruz, County of Los Angeles to Ramil Parial and Crystal Franco RE: FW: Devil’s Gate Report (March 30, 2011).

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:

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)

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.

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, *et seq* (“CEQA”) Final Environmental Impact Report (“FEIR”) on October 12, 2014.

Commenters filed a CEQA lawsuit challenging the Project’s approval by the BOS under the California Environmental Quality Act, Cal Public Resources Code § 21000, *et seq* (“CEQA”), County of Los Angeles Code, as well as Pasadena Municipal Code on December 11, 2014. *Arroyo Seco Foundation, et al v. County of Los Angeles, et al* (LASC Case No. BS152771), Notice To Responsible Agencies (filed Feb. 17, 2015).

The Permit Application has been pending with the Regional Board since May 18, 2015.

## **II. BACKGROUND ON THE CLEAN WATER ACT SECTION 404 DREDGE & FILL PERMIT**

The Clean Water Act, 33 U.S.C. § 1251, *et seq* (“CWA”) regulates discharges of pollutants into the waters of the United States and quality standards for surface waters. The CWA sets water quality standards for water bodies subject to federal jurisdiction as a “Water of the United States” as well as regulates the discharge of any pollutant from a point source into a Water of the United States.

However, in addition to regulating point sources of pollution as well as setting water quality standards for surface waters, the CWA regulates the discharge of dredged or fill material. Section 404 of the CWA, 33 U.S.C. § 1344, bars the discharge of dredged or fill material into a “Water of the United States” without a permit. Permits issued under Section 404 of the CWA, known as 404 Dredge and Fill Permits regulate the dredging and filling of wetlands, streambeds, and lakebeds for development, water resource projects, infrastructure development, and any other activity that involves the dredging and filling of riparian areas of a Water of the United States. Before receiving a

404 Permit, permittees must show that their activities comply with the Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 C.F.R. pt. 230.

**III. BACKGROUND ON THE CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION.**

Federal agencies may not issue a 404 Permit unless the state or tribe where the discharge would occur has granted, granted with conditions or waived CWA Section 401 certification that the permitted activity will not or activity will not result will not result in discharges that do not comply with state water quality standards (“401 Certification”). 401 Certification is required for “[a]ny applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters. 33 U.S.C. § 1341(a)(1).

**IV. THE REGIONAL BOARD SHOULD APPLY THE REQUIREMENTS OF THE DEBRIS BASIN MAINTENANCE REGULATIONS TO THE COUNTY’S PERMIT APPLICATION.**

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.

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 eventhough “[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.

a) **The Permit Application Does Not Adopt Enforceable Turbidity Limits.**

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, *monitoring*, and *reporting measures* should be adopted to ensure that the Project activities do not result in discharges exceeding those numerical effluent limitations should be imposed as a condition of certification for the Project.

b) **The Permit Application Allows For Wet Excavation.**

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 Regional

Board should bar wet excavations for the Project and require the County to determine “existing groundwater level[s]” on the Project Site.

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.

c) **The Permit Application Allows For Sediment Removal Activities During Rainfall Events.**

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.

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.

d) **The Permit Application Does Not Protect Rare, Threatened Or Endangered Species.**

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.

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.

e) **The Permit Application Does Not Require Monitoring Or Annual Reporting.**

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.

The Permit Application does not require any annual reporting. Annual reporting requirements should be imposed on the Project.

V. **Conclusion.**

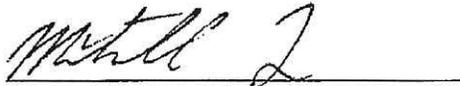
Commenters request that at a minimum, the Regional Board adopt the Water Quality Certification conditions upon the Project. Moreover, Commenters reiterate their request that the Regional Board

Los Angeles Regional Water Quality Control Board – Devil's Gate Sediment Removal & Management Project  
April 8, 2016  
Page 7 of 7

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.

Please contact my Office if you have any questions or concerns.

Sincerely,



Mitchell M. Tsai  
Attorneys for Arroyo Seco Foundation &  
Pasadena Audubon Society

Attachments:

TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR PROPOSED  
LOS ANGELES COUNTY DEBRIS BASIN MAINTENANCE PROJECT (172 BASINS)  
(Corps' Project No. 2003-00411-BLR); and

SECTION 401 WATER QUALITY CERTIFICATION APPLICATION FORM.