

EXHIBIT C



June 15, 2015

Mr. Mitchell M. Tsai
Attorney at Law
P. O. Box 61223
Pasadena, CA 91116

Subject: 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

Dear Mr. Tsai:

This letter summarizes my review of the proposed Devil's Gate Reservoir Sediment Removal and Management Project as it relates to biological and regulatory permitting concerns. My comments are based on a review of the following environmental and regulatory documents: Final Environmental Impact Report (FEIR)¹; Biological Reports²; Jurisdictional Delineation Reports,³ Los Angeles Regional Water Quality Control Board, Section 401 Water Quality Certification, Application Form;⁴ Los Angeles Regional Water Quality Control Board, Section 401 Certification, Request for Information;⁵ California Department of Fish and Wildlife Section 1600⁶, U.S. Army Corps of Engineers⁷ prepared for the proposed Devil's Gate Reservoir Sediment Removal and Management Project (Project).

The Project site is owned by the Los Angeles County Department of Public Works within the City of Pasadena, Los Angeles County, California at 1065 La Canada Verdugo Road, Pasadena, Los Angeles County, California, 91103. The proposed Project boundary encompasses approximately 120 acres within an approximately 258-acres reservoir that has wetlands, braided channels, and drainage features surrounded by an urban matrix.

The Los Angeles County Flood Control District (LACFCD) proposes to excavate 2.4 million cubic yards of sediment (inclusive of vegetation) that has accumulated behind the dam within Devil's Gate Reservoir, to restore reservoir capacity for storm and sediment inflows to minimize the level of flood risk to downstream communities along the Arroyo Seco waterway. The

¹ Devil's Gate Reservoir Sediment Removal and Management Project, Final Environmental Impact Report (FEIR) prepared for the Los Angeles County Flood Control District by Chambers Group, Inc.

² Biological Reports prepared for the Los Angeles County Flood Control District by Chambers Group, Inc.

³ Jurisdictional Delineation Reports (2011 and 2013) prepared for the Los Angeles County Flood Control District by Chambers Group, Inc.

⁴ Los Angeles Regional Water Quality Regional Control Board, Section 401 Water Quality Certification, Application Form.

⁵ Los Angeles Regional Water Quality Regional Control Board, Request For Information.

⁶ CDFW 1600 Lake and Streambed Alteration Agreement.

⁷ U.S. Army Corps of Engineers, Nationwide Permit 31 Application.

activities would result in temporary discharges of fill within waters of the United States through periodic excavation of accumulated sediment and removal of riparian vegetation. Activities would be conducted within an approximately 71-acre footprint, of which approximately 38 acres would directly impact waters of the United States (10.8 acres of wetland, and 27 acres of non-wetland)⁸. The proposed maintenance baseline would be maintained by future sediment excavation activities.

I am a senior level regulatory specialist/biologist with experience in wetlands and regulatory permitting with an emphasis in resource management. I have 25 years of professional experience in research biology and wetland ecology. For the past twelve years, I have served as an environmental consultant focusing on biological and regulatory permitting (i.e., wildlife surveys, jurisdictional delineations, restoration and conservation biology, and Sections 1600, 404, and 401 permits). Prior to environmental consulting, I worked ten years for the U. S. Geological Survey (USGS), Biological Resource Division (Maryland and California) and six years for the Smithsonian Institution Museum of Natural History, Division of Vertebrate Zoology in Washington, D.C. In addition to my professional experience as a regulatory specialist and research biologist, I've served as an adjunct professor instructing courses in general biology, cellular biology, and human anatomy for the Rancho Santiago Community College District in southern California. My educational background includes M.S. in Biology/Ecology and B.S. in Zoology/Chemistry from Howard University, Washington, DC.

For the proposed Project, I have concerns regarding the jurisdictional delineation, hydrology, biological report, proposed mitigation measures, and regulatory permit applications prepared for the Project site. These concerns are based on my review of the following documents prepared for this Project; 1) Final Environmental Impact Report (FEIR), 2) Biological Reports, 3) Jurisdictional Delineation Reports, 4) Los Angeles Regional Water Control Board, 401 Certification Application, 5) Los Angeles Regional Water Control Board, Request for Information, 401 Certification, and 6) U.S. Army Corps of Engineers 404 Permit Application.

BACKGROUND

The Project proposes construction activities for the removal of sediment from the reservoir. In order to excavate sediment from the reservoir, trees and vegetation growing within the excavation area or where haul roads are located would be removed. In the areas where excavation would not take place, including the western side of the reservoir (Oak Grove area), vegetation would not be removed. To facilitate storm flows, a slightly steeper gradient would be used in the constricted area of the basin.

DISCUSSION

The County's environmental documents conclude that mitigation measures would reduce impacts to biological resources to a level of less-than-significant. However, based on my review of the documents listed above and referenced in this comment letter, the proposed mitigation measures are not adequate to reduce the Project impacts on biological resources to a less-than-significant level¹. The mitigation measures proposed for this Project lack substance, onsite mitigation is not attainable and specific language and implementation actions regarding mitigation and protective

⁸ U.S. Army Corps of Engineers Los Angeles District. Public Notice. Application For Permit. Devil's Gate Reservoir Sediment Removal and Management Project. Comment Period May 14, 2015 through June 12, 2015.

measures for LBV and wetland habitat is not adequate to reduce impacts to a less-than-significant level.

Based on my experience and knowledge of biological resources and regulatory requirements within the region of the Project site adequate mitigation measures, draft mitigation plan, and regulatory permitting packages have not been adequately proposed or submitted. The required regulatory permits (California Department of Fish and Wildlife (CDFW) 1600 Lake and Streambed Alteration Agreement; Regional Water Quality Control Board 401 Certification (RWQCB); and U.S. Army Corps of Engineers (USACE) 404 Permit) have not been completed pursuant to CEQA compliance. The proposed project has not met required CEQA guidelines for avoidance and mitigation measures for adverse impacts to plant, wildlife, and natural resources. Therefore until adequate and acceptable mitigation measures, draft mitigation plan and/or mitigation bank, and completed regulatory permitting packages have not approved and issued Project implementation of construction activities are not in compliance pursuant to CEQA and therefore unauthorized to proceed.

The onsite mitigation measures proposed by the County have been denied by both the RWQCB and USACE. During my review of the environmental documents for the project no alternative plan had been presented. Suitable least Bell's vireo (LBV) riparian habitat exist onsite but there is no indication the habitat will be mitigated at an adequate ratio for impacts to riparian habitat. Additionally, the FEIR fails to identify the hydrology flows and patterns resulting from the sediment removal. There has been no hydrology study submitted to identify post- and pre-hydrology patterns for the reservoir. An understanding of the resulting drainage patterns would provide an analysis on downstream impacts and how to address subsequent management planning. The ability to make practical decisions for public safety, reservoir capacity, and understand beneficial usages for local and regional wildlife species is required.

The appropriate agencies (i.e., County of Los Angeles, CDFW, RWQCB, and USACE) MUST require the Project applicant to provide: 1) improved and specific language regarding the implementation of MM-BIO 1 through MM-BIO 8, 2) revised jurisdictional delineation map depicting wetland boundaries within current sediment laden portions of the riparian habitat and/or increase the 1:1 ratio to 3:1 for impacts to wetland habitat, 3) a pre and post-hydrology study, and 4) complete regulatory permitting package that includes Sections 1600 (CDFW), 404 (USACE), and 401 (RWQCB) permit applications.

Due to a lack of information for the following: least Bell's vireo activity within the reservoir surroundings (i.e., Hahamongna Watershed Park⁹), mitigation measures, draft mitigation plan or mitigation bank, regulatory permit applications (i.e., Sections 1600, 404, and 401) the proposed Project has the potential to have a significant impact on the environment.

Based on a USGS report,¹⁰ sediment data has been collected at a number of drainages and sites within the Los Angeles River and Arroyo Seco but the focus of the data has been on evaluating total sediment discharge, especially during winter storms (Brownlie and Taylor 1981; Inman and Jenkins, 1999). However, there is a need to reevaluate these historical sediment data since the

⁹ Dowel C.D., L.A.M. Benner, and M.C. Long, 2015. Endangered Bird Species and California Bird Species of Special Concern with Hahamongna Watershed Park. Pasadena Audubon Society.

¹⁰ USGS. Geological, Hydrological, and Biological Issues Related to the Proposed Development of a Park at the Confluence of the Los Angeles River and the Arroyo Seco, Los Angeles County, California. (Scientific Investigation Report 2004-5296).

period of interest is the dry season of the year. Sedimentation accumulation and beneficial usages for wildlife and plant species beyond aquatic species requires further evaluation.

SUMMARY

Concerns:

Hydrology

Project activities will alter the drainage pattern of the Project site:

- a. Develop a sediment transport model that is based on, and calibrated to current data collected for sedimentation at cross sections above, in, and below the drainage and braided channels that occur in the reservoir.
- b. The Project requires a CDFW 1600 Lake and Streambed Alteration Agreement and a pre- and post-hydrology study must be provided in order to analyze how the hydrology patterns will affect the current topography of the proposed Project and impact plant and wildlife species at the conclusion of the construction activities.
- c. A surface water diversion plan is also required.
- d. A Stormwater Pollution Prevention Plan (SWPPP) is required.

Concerns:

Biological Reports

Additional information for the least Bell's vireo and western pond turtle may be required. The areas of concern regarding the biological species are provided below:

- a. The Biological Reports¹¹ states that regardless of the survey type, 100% coverage of the Project site was surveyed by the biologists. This statement fails to provide what types of approved protocol-level or focused surveys were conducted, besides LBV protocol-level surveys.
- b. Surveys were conducted at the Project site but without baseline monitoring data these surveys do not fully address impacts for the region. As such, the occurrence for LBV, western pond turtle and other special-status species may not have been completely analyzed.
- c. Biological Reports states all surveys were conducted during favorable weather conditions (p.7). However the Biological Report also stated there was 100% cloud cover and drizzle rain during the May 27 site visit survey. As such, all surveys were not conducted during favorable weather conditions to detect LBV. Additionally, the Biological Report stated early LBV surveys were not conducted due to constraints that took place early during the survey season. What were the constraints and is there a need to conduct surveys during the time period missed?
- d. Were soil pits taken at the inactive retention basins. Could these locations also exhibit wetland features and characteristic (see Biological Report, photo 3)?

Concerns:

Least Bell's Vireo (LBV)

- a. The Project would substantially reduce and fragment the foraging habitat available to LBV that occurs at the Hahamongna Watershed Park. Adverse effects to LBV from habitat loss, habitat fragmentation, and the reduction of habitat patch size have been well

¹¹ Biological Reports prepared for the Los Angeles County Flood Control District by Chambers Group, Inc.

documented. These adverse effects include nest abandonment, increased depredation (both intra- and inter-specific), and foraging interference.¹² The FEIR and Biological Reports do not disclose, analyze, or provide mitigation for the Project's potentially significant indirect impacts to LBV. Additionally, observations of LBV have been detected with signs of breeding activity within the Hahamongna Watershed Park over several summer seasons.¹³

- b. LBV is a federal and state listed endangered species. The Project site and surrounding buffer zone provide suitable nesting and foraging habitat for LBV. Vireo's can be difficult to detect due to their cryptic coloration, and tendency to flush (fly away) when approached. As a result, the USFWS has established the survey protocols that must be used to collect the data necessary to disclose and evaluate Project impacts to LBV. Per the Biological Reports, LBV protocol-level surveys were conducted in accordance with the USFWS survey protocol guidelines. However, not all surveys were performed during suitable weather conditions for detection of the species. Additionally, there were survey constraints that prevented early season surveys per the Biological Reports. Because USFWS protocol surveys were constrained the Biological Report does not provide fully detailed data on the abundance and distribution of LBV at the Project site. As a result, the County lacks the information needed to fully disclose and evaluate Project impacts to LBV, and perhaps more importantly, to devise effective mitigation. To ensure an adequate impact assessment, develop clear and effective avoidance and minimization measures, and formulate appropriate mitigation measures the County must also review LBV observations that have been recorded in Hahamongna Watershed Park.¹⁴ A review of LBV activity within Hahamongna Watershed Park and impacts to riparian habitat at the reservoir must be considered in order to determine appropriate mitigation measures for the species.
- c. LBV occurrence is depicted on map Attachment 4 of the Biological Report but there is no indication of the LBV observation on map Attachment 3, why is the species not listed on both maps?

Concerns:

Biological Resources

The Biological Reports fails to mitigate potentially significant impacts associated with the Project. The proposed onsite mitigation has been denied by the both RWQCB and USACE and an approved alternative(s) has not been presented to the reviewer of these environmental documents.

Concerns:

Mitigation Measures

- a. The proposed mitigation measures MM-BIO 1 through MM-BIO 8 are too vague and provide inadequate protective measures for special-status species. Without appropriate mitigation measures to reduce unavoidable impacts to special-status species and natural resources the Project's impacts are not at a less-than-significant level.

¹² Kus, B. 2002. Least Bell's Vireo (*Vireo bellii psuillus*). In The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian associated birds in California. California Partners in Flight. http://www.prbo.org/calpif/htmldocs/riparian_v2.html.

¹³ Dowel C.D., L.A.M. Benner, and M.C. Long, 2015. Endangered Bird Species and California Bird Species of Special Concern with Hahamongna Watershed Park. Pasadena Audubon Society.

¹⁴ Dowel C.D., L.A.M. Benner, and M.C. Long, 2015. Endangered Bird Species and California Bird Species of Special Concern with Hahamongna Watershed Park. Pasadena Audubon Society.

- b. Specifically, MM-BIO 4 does not provide specific actions to take and/or implement if a sensitive species is encountered. How and where will bat eviction take place and during what season? What is the buffer distance for bat avoidance? The 30 feet buffer recommendation must be increased to a minimum distance of 50 feet. Additionally, where do suitable bat relocation sites occur on or near the Project site? No map has been provided to indicate a relocation area for bat species or even to indicate their current location within the Project site. Based on the current mitigation measures bats must not be relocated because there has not been a suitable relocation area(s) identified in the environmental reports reviewed for this project. As such, this mitigation measure must be revised.
- c. Specifically, MM-BIO 8 does not provide specific locations for off-site mitigation. The proposed onsite mitigation has been denied by both the RWQCB and USACE.
- d. Where is a map of the proposed off-site mitigation area? Has a location actually been identified?
- e. An off-site mitigation bank must be established and map of the conservation easement location provided.
- f. 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 LBV 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 report¹⁵ (dated 2011) to the final Public Notice¹⁶ (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 Notice¹⁷ states approximately 10.8 acres are wetlands however a previous JD report¹⁸ 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.

Several bird species likely nest in the Project area. Nesting birds are protected by the Migratory Bird Treaty Act (“MBTA”), and in some cases the state and federal government. The proposed mitigation does not adequately avoid and minimize potentially significant impacts to nesting birds protected by the MBTA.

- g. Some birds can build a nest and initiate egg-laying in as few as 14 days. As a result, a

¹⁵ Formal JD report Devil’s Gate Reservoir Sediment Removal Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (February 2011).

¹⁶ U.S. Army Corps of Engineers, Los Angeles District. Public Notice. Devil’s Gate Reservoir Sediment Removal and Management Project (2015).

¹⁷ Ibid.

¹⁸ Formal JD report Devil’s Gate Reservoir Sediment Removal Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (February 2011).

pre-construction survey without any specific timeframe does not ensure avoidance and minimization of Project impacts to nesting birds.

- h. The FEIR must establish minimum standards for locating nests and minimizing human-induced disturbance. Research indicates nest finding is labor intensive and extremely difficult due to the tendency of many species to construct well-concealed or camouflaged nests. In general, bird nests are located when a variety of search techniques are used and considerable time (e.g., multiple surveys) is devoted to the effort.
- i. The mitigation measures lack monitoring, reporting, and compliance mechanisms that ensure the mitigation is effective and impacts to nesting birds are effectively avoided. These issues need to be resolved before the FEIR has the basis to conclude impacts to nesting birds would be less than significant. As it stands, the Project would result in significant unmitigated impacts to nesting birds.
- j. The mitigation measures are subject to interpretation and thus too vague to ensure mitigation will be implemented when needed. Before the County can conclude all potential impacts are mitigated to a level of less than significant, additional measures must be included in the FEIR. First, the measures do not specify the qualification of the “qualified biologist” who shall oversee the mitigation measures to ensure permitting compliance. An environmental awareness program must be implemented. This measure must state that an environmental awareness program shall be prepared and presented by a “qualified biologist.” A qualified biologist is required because they are experienced and capable of educating construction personnel on the following: 1) natural history of migratory birds and their nesting behavior, 2) life history of the LVB, western pond turtle and other special-status species, 3) the importance of the habitat to these special-status species, 4) provide photographs of the VLB, western pond turtle and other special-status species that have potential to occur on the project site, 5) provide terms and conditions of the mitigation measures being implemented for the Project site, and 6) provide information on notifying the qualified biologist if nesting birds, VLB, western pond turtle and other sensitive species are detected by construction workers.
- k. A qualified biologist must prepare a natural resources protection plan and a habitat restoration plan (for off-site mitigation) prior to construction. The main elements of the plans must include: removal and control of invasive vegetation, planting of native vegetation, and monitoring of success criteria. Non-native vegetation in the Project area and adjacent areas must be eradicated and controlled using chemical and hand-removal methods.

Based on the vague language of the proposed mitigation measures a Natural Resources Protection Plan (NRPP) must be considered as follows:

The proposed mitigation measures must include a more comprehensive NRPP. The NRPP provides guidance and instruction for all construction personnel working on the project regarding sensitive species and natural resources. The NRPP is based on the contract permits and the special provisions and serves to inform contractor and Project personnel of the conditions contained within those documents. The regulative authority comes from the permits and the contract document. The NRPP is implemented by a qualified biologist consisting of the following elements:

- List of sensitive species and habitats addressed in the NRPP which include the species listed in the FEIR,

- Detailed description of the proposed monitoring methods for all special-status with the potential to occur onsite during construction activities,
- Protocols for species protection and monitoring,
- Protection and/or minimization measures, which include those required by the Permits, Agreements, Certifications, Stormwater Pollution Prevention Plan (SWPPP), Contracts, and Special Provisions for regulated or sensitive species which may occur on the project site,
- Implementation plan for monitoring and maintaining the integrity of all Environmentally Sensitive Areas (ESA) fencing as delineated on design plans,
- Protective radii for sensitive species encounters,
- Implementation plan for protection measures including monitoring schedule,
- Monitoring duties,
- Schedule for inspecting protective measures,
- Schedule for maintaining protective measures,
- Schedule for submittal of monitoring reports,
- Response plan for instances where sensitive species are encountered.

Feasible mitigation includes:

1. In addition a compensatory mitigation plan must be submitted and approved prior to Project implementation, a description, location, and map of the compensatory lands must be included in a revised environmental review document.
2. Inclusion of the compensatory mitigation plan to the regulatory permits (Sections 1600, 404, and 401).

Concerns:

Regulatory Permit Issues

The County must address concerns mentioned above before permit applications are submitted for approval. The project requires Sections 1600 (CDFW), 404 (USACE) and 401(RWQCB) to include a Compensatory Mitigation Plan. To date none of these regulatory requirements have been completed. An acceptable mitigation bank must be identified and incorporated into the mitigation plan for the Project. Onsite mitigation for impacts to jurisdictional features has been denied by the RWQCB and USACE.

Jurisdictional Delineation Report (JD report)

- a. Based on a review of the JD reports prepared for the Project site there is no consistency in the total waters of the United States jurisdictional acreage and impacts to wetland habitat. The JD report acreage calculations are based on the 2011, 2013, and 2015 environmental review documents. These same inconsistencies exist for waters of the State (i.e., Regional Water Quality Control Board and California Department of Fish and Wildlife).
- b. In the 2011 JD report¹⁹, the direct impacts to waters of the United States was cited as approximately 46.63 acres of total jurisdiction, of which 44.9 acres consist of wetlands.
- c. In the 2013 JD report²⁰, the direct impacts to waters of the United States was cited as approximately 75.77 acres of total jurisdiction, of which 42.4 acres consist of wetlands.

¹⁹ Formal JD report Devil’s Gate Reservoir Sediment Removal Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (February 2011).

- d. In the 2015, Public Notice Application for Permit²¹, the direct impacts to waters of the United States was cited as approximately 38 acres of total jurisdiction, of which 10.8 acres consist of wetlands.
- e. The total acreage for wetland habitat ranged from approximately 44.9 acres to 10.8 acres of jurisdictional wetlands. Each JD report had different results for jurisdictional waters of the U.S and wetland habitat. A total of approximately 34.10 acres of wetland habitat has been eliminated based on the Public Notice²² issued by the USACE Los Angeles District.
- f. If calculations for wetland boundary and determination of the wetland acreage is not revised to account for wetland habitat buried beneath the sediment then mitigation ratio for impacts to wetlands must be increased from 1:1 to 3:1 for impacts to the existing wetland jurisdictional features.
- g. 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 report²³ (dated 2011) to the final Public Notice²⁴ (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 then 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 Notice²⁵ states approximately 10.8 acres are wetlands however a previous JD report²⁶ 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.
- h. There is no indication the downstream portion of the project site was surveyed for wetland features by using the three-parameter criteria (hydrology, vegetation, soil) due to the identification of problematic soils. The Biological Report and Jurisdictional Delineation reports provided information on plant species and the absence or presence of water but the soils types were classified as problematic.
- i. There is no indication of the type of soil existing at the project site prior to the sediment accumulation and post 2009 Station Fire. The soil data is critical for determining the Project’s actual wetland boundaries. Only locations onsite where standing water was present have been considered wetlands. Due to the sediment accumulation the actual wetland boundaries are smaller then what truly occurs within the Project site.
- j. Due to the sediment accumulation adjacent to the soil pits, wetland boundaries of were undeterminable during the delineation process based on these problematic soils. Wetland

²⁰ Jurisdictional Delineation Report Devil’s Gate Reservoir Sediment Removal and Management Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (June 2013).

²¹ U.S. Army Corps of Engineers, Los Angeles District. Public Notice. Devil’s Gate Reservoir Sediment Removal and Management Project (2015).

²² *ibid*

²³ Formal JD report Devil’s Gate Reservoir Sediment Removal Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (February 2011).

²⁴ U.S. Army Corps of Engineers, Los Angeles District. Public Notice. Devil’s Gate Reservoir Sediment Removal and Management Project (2015).

²⁵ *Ibid*.

²⁶ Formal JD report Devil’s Gate Reservoir Sediment Removal Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (February 2011).

boundaries were therefore identified by the OHWM (Section 4.4.3). The wetland boundaries likely extend beyond the OHWM and have been buried by the excessive sediment accumulation within the reservoir. The jurisdictional delineation report could not provide the full extent of the wetland boundary that occur onsite. Based on the sediment accumulation within the reservoir the wetlands soils may be covered by 20-25 feet of sediment thus making an accurate determination of the wetland boundaries difficult to precisely determine. According to the 2013 JD report²⁷, “a soil pit was dug to a depth of 18 inches ...” A soil pit with a depth of 18 inches would not be adequate enough to determine what true soils exist below the accumulated sediment. This fact alone warrants the need to extend the existing and obviously limited wetland boundaries of the Project site. Wetland boundaries have only been determined where current standing water exists. Wetlands have wet and dry periods where although no standing water is present the hydrology and soil provide clear indication of wetland characteristics (hydrology, vegetation, soil). The wetland boundary calculation and boundary determination must be revised.

Section 401 Application

a. Area Type/Description

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.

b. Impacted Water Bodies: 401 Certification Application

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.

Section 404 Application

- a. The 404 application²⁸ must be resubmitted based on inaccurate and lack of information provided. The specific points are mentioned below:
- b. Aquatic Life Movements (p. 8): Application states, “*Project activities will only take place during dry months, when water is not present behind the dam. Therefore, no aquatic life should be affected.*” The Applicant statement is incorrect. Standing water exists immediately behind the dam. According to the Jurisdictional Delineation report and photographs of the project site the wetland habitat occurs immediately behind the dam and standing water was present in the area totaling approximately 10.8 acres. Although not detected based on limited surveys and no use of capture and release trapping

²⁷ Jurisdictional Delineation Report Devil’s Gate Reservoir Sediment Removal and Management Project in the City of Pasadena, Los Angeles County, California. Prepared by Chambers Group, Inc. (June 2013).

²⁸ Request for Section 404 Nationwide Permit 31 Devil’s Gate Reservoir Sediment Removal and Management Project. Prepared by County of Los Angeles, Department of Public Works (September 2014).

- techniques the likelihood of wildlife species (i.e., pond turtles, riparian birds, raccoons, small mammals, etc.) presence with the exception of fish species is probable.
- c. Migratory Bird Breeding Areas (p. 8): Applicant states, “*With the implementation of Mitigation Measures, the impact to migratory birds will be reduced to a level below significance. See DEIR Section 3.6 – Biological Resources.*” The Mitigation Measures proposed for the project are inadequate. The mitigation measure proposed must provide specific language regarding the role of the qualified biologist and protective actions to take if a special-status species is encountered. The current mitigation measures do not provide a suitable relocation area and/or map of location where species would be protected from construction activities in the case the need to remove a species from harms way occurs. The mitigation measures fail to 1) identify and map where Environmentally Sensitive Area (ESA) fencing will be located and 2) relocation area(s) for special-status species that may be encountered within the active construction.
 - d. Adverse Effects from Impoundments (p. 8): Applicant states, “*Project activities will only take place during dry months when water is not present behind the dam.*” The Applicant statement is incorrect. Standing water exists immediately behind the dam. According to the Jurisdictional Delineation report and photographs of the project site the wetland habitat occurs immediately behind the dam and standing water was present in the area totaling approximately 10.8 acres.
 - e. Migratory Bird and Bald and Golden Eagle Permits (p. 8): The Applicant states, “*With the implementation of Mitigation Measures, the impact to migratory birds will be reduced to a level below significance. Bald and Golden Eagle are not present with the Project site. See DEIR Section 3.6 – Biological Resources.*” The Mitigation Measures proposed for the project are inadequate. The mitigation measure proposed must provide specific language regarding the role of the qualified biologist and protective actions to take if a special-status species is encountered. The current mitigation measures do not provide a suitable relocation area and/or map of location(s) where wildlife species would be relocated by the qualified biologist if encountered on the Project site. Additionally, the mitigation measures fail to identify and map where is the Environmentally Sensitive Area (ESA) fencing will be located.
 - f. Designated Critical Resource Waters (p. 8): The Applicant states, “*The Project will not directly affect critical resource waters or wetlands adjacent to such waters.*” The Project activities will directly affect wetland habitat onsite. Additionally, downstream resources are likely to be affected by the proposed dredging activities.

CDFW 1600 LSAA

The CDFW 1600 LSAA permit that has not been executed due to lack of mitigation measure requirements (i.e., approved mitigation plan and/or in-lieu fee payment to mitigation bank, mitigation credits, etc.). Additionally, the CDFW 1600 LSAA permit was prepared during 2013 and is not consistent with the current material reviewed in the FEIR. A revised CDFW 1600 LSAA permit application is required for the Project.

Although, the off-site acquisition and enhancement of off-site state waters would mitigate Project impacts no potential off-site locations for required mitigation have been provided. A mitigation plan that identifies locations of potential off-site conservation easement and restoration areas must be included with the permit application prior to project approval and implementation. The Project does not provide adequate mitigation for impacts to waters of the state and to wildlife species that benefit from the drainages onsite and in the vicinity of the Project. As an enforceable measure, a detailed revegetation (to include plant palette) and mitigation plan for impacts to the drainage features must be required prior to Project approval

and implementation. At the least, a Draft Mitigation Plan must be provided for review prior to Project approval and implementation.

Best Management Practices (BMP)

The FEIR fails to provide specific BMP's that will be applied to aid wildlife species, biological resources, and water pollution control plan.

Based on a USGS report,²⁹ sediment data has been collected at a number of drainages and sites within the Los Angeles River and Arroyo Seco but the focus of the data has been on evaluating total sediment discharge, especially during winter storms (Brownlie and Taylor 1981; Inman and Jenkins, 1999). However, there is a need to reevaluate these historical sediment data since the period of interest is the dry season of the year. What must also be evaluated is how species adapt to new drainage features, aquatic waterbodies, and recolonize suitable habitat.

Many reservoirs are maintained; however, some contain significant habitat types or species diversity. Within reservoirs there is also aquatic habitat. Habitat or vegetation that exists within the reservoir will be impacted by excavation activities. Additionally, draining of a reservoir could impact the habitat in the stream below the dam. Therefore measures must be taken to remove excessive amounts of sediment by reviewing sediment models and hydrology studies to determine the appropriate time period(s) to conduct excavation activities in order to prevent unnecessary impacts to wildlife and plant species while at the same time limit excessive amounts of sediment from entering the reservoir and down streams tributaries.

The Devil's Gate Reservoir is in early succession based on the 2009 fires. As such, large amounts of vegetative removal will be detrimental for regional species and wildlife corridor movement. Albeit some removal of vegetation is required for the sedimentation dredging however exactly how much vegetative removal is truly required? This question must be considered when coupled with the fact that LBV has known breeding activity in Hahamongna Watershed Park.³⁰

The omissions outlined above preclude the ability to fully evaluate the impacts of the Project on jurisdictional features, potential LBV suitable habitat, and the proposed off-site mitigation location has not been identified. As such, the Project is not in full compliance with state and federal regulations. Further CEQA and possibly NEPA compliance must be considered. Although, this project is currently being reviewed pursuant to CEQA, NEPA compliance may be considered as a means to ensure adequate mitigation measures are addressed. For this Project NEPA would apply due to USACE having discretion in deciding whether and how to exercise its authority over required compliance and mitigation measures with the issuance of the Federal 404 NWP.

²⁹ USGS. Geological, Hydrological, and Biological Issues Related to the Proposed Development of a Park at the Confluence of the Los Angeles River and the Arroyo Seco, Los Angeles County, California. (Scientific Investigation Report 2004-5296).

³⁰ Dowel C.D., L.A.M. Benner, and M.C. Long, 2015. Endangered Bird Species and California Bird Species of Special Concern with Hahamongna Watershed Park. Pasadena Audubon Society.

CONCLUSION

As a result of the issues discussed herein and lack of specific mitigation language, it is my professional opinion that there is not substantive information for the County to conclude the Project will have less-than-significant impacts on sensitive biological resources and that adequate mitigation measures are in place to compensate for impacts to the LBV, wetland and riparian habitat that will be permanently impacted by the proposed Project activities. In particular, it is my professional opinion the Project has the following flaws:

- 1.) Lack of an acceptable and adequate compensatory mitigation plan, a mitigation bank must be identified and/or established,
- 2.) vague language for MM-BIO 1 through MM-BIO 8, a natural resource protection plan must be provided with the mitigation measures for a qualified biologist,
- 3.) lack of adequate Least Bell's Vireo surveys and analysis, the species has known presence and breeding behavior at the Hahamongna Watershed Park, as such any riparian removal at the reservoir will affect the LBV,
- 4.) lack of a pre- / post-hydrology study, there is no indication of the drainage pattern that will occur once the dredging activities are completed,
- 5.) inconsistency in wetland acreage vs. non-wetland acreage,
- 6.) problematic soils for wetland determination require an increased mitigation ratio for impacts to the wetland impacts,
- 7.) mitigation ratio for wetland habitat too low, and
- 8.) Incomplete regulatory permit applications.

Minimizing the Project's impacts on sensitive biological resources will require acceptable mitigation measures beyond what has been proposed by the County and FEIR. Appropriate mitigation measures must be presented for wetland habitat that will be impacted, LBV suitable habitat, and riparian habitat that exists at the Project site. Additionally, a qualified biologist must outline specific protective measures to implement if special-status species (i.e., LBV, western pond turtle or other species of concern) are encountered during construction activities. The mitigation and protective measures must provide a relocation plan with a map of the proposed relocation areas. Construction activities must be conducted outside of bat roosting periods. The species protective measures must be clearly identified and approved and not left open ended for determination at a later stage during the construction phase of the project.

Sincerely,



T'Shaka Touré, M.S.
Senior Regulatory Specialist/Biologist