

Comments on the
RECIRCULATED PORTIONS OF FINAL ENVIRONMENTAL IMPACT REPORT
AND MITIGATION MONITORING AND REPORTING PROGRAM
DEVIL'S GATE RESERVOIR SEDIMENT REMOVAL AND MANAGEMENT PROJECT,
PASADENA, CA

September 7, 2017

To: Los Angeles County Flood Control District (FCD):

In an abbreviated response to the recirculated portions of the Devil's Gate Final Environmental Impact Report, I enclose the following comments.

1. **Public Comment Period Too Short.** The public comment period provided for the extensive, recirculated portions of the EIR was too short, given the complex issues raised in the document, the grave consequences of FCD proceeding with the project as now structured, and the mid-summer season during which comment was required. I requested an extension of the comment period. The FCD replied, denying an extension:

We received your request to extend the 45-day public comment period for the recirculated portions of the final Environmental Impact Report (EIR) for the Devil's Gate Reservoir Sediment Removal and Management Project by an additional 30 days at a minimum beyond the currently scheduled public comment deadline of Thursday, September 7, 2017.

This facility is essential to our flood control system and an additional 30-day extension would likely delay the start of the project by a full year due to the seasonal timing of this project. This would prolong an unacceptable flood risk to downstream residents. As a result, we regretfully are unable to grant an extension to our public comment deadline of September 7, 2017.

The basis for the FCD claim that an extension of 30 days would delay the start of the project for a full year is not explained, nor is it logical. The claim of delay seems patently incorrect since the project is not expected to start until after the rain season ends next year in early 2018, and then apparently only after endangered bird species have left the riparian area in late spring or early summer. If that timing has changed, it is certainly incumbent on the FCD to announce the change in its plans, and to explain the rationale for sediment removal earlier in the year. Absent an unannounced alteration in the FCD plans, the refusal to grant additional time for public comment seems simply a sham--an attempt to avoid having to respond to the inadequate EIR changes by opponents of the scale of the sediment removal plan—inexcusable, given the more than adequate time FCD has to resolve issues prior to the probable planned start of activity at Devil's Gate.

As indicated below, we believe that the EIR must be further revised and recirculated in any event.

- 2. The EIR Must be Withdrawn and Further Revised and Recirculated.** The sediment removal project has been significantly changed as a result of two recent developments. First, the timing of sediment removal activities has apparently been significantly restricted in spring to avoid impacts on the least Bell's Vireo, a listed bird species that nests in the riparian area that the project will disturb. This will cause the project removal activity to either be extended over many more years, or the removal activity significantly accelerated to meet the existing scheduled time period. In either event, the changes would occasion major and different impacts that were not analyzed in the EIR, and alternatives would have to be restructured. Second, it appears, based on public statements by Los Angeles County officials, that the planned pipeline project to Eaton Canyon has been significantly altered. If that project has been changed in any substantial way, the EIR must be revised and recirculated to disclose and analyze differential impacts. If the pipeline project has been cancelled, for example, or substantially delayed, the size and depth of the pool in front of the dam and the area of riparian destruction should be greatly reduced, since these are major factors in the ecological harm that the project would cause.
- 3. The Mitigation Plan Remains Seriously Deficient** FCD has repeated support for the deficient mitigation plan from the EIR in the recirculated provisions. The District insists that 1:1 mitigation for the total destruction of some of the most valuable remaining riparian habitat in the Los Angeles basin is warranted. It is not, and the carefully constructed tables showing other projects that have been approved using 1:1 mitigation ratios is deceptively and improperly presented to back its contentions.

A full inspection of the table from the reference that FCD has used to back its contentions tells a much different story. For most of the projects listed in those tables, mitigation requirements are higher—often far higher—than 1:1¹. Moreover, much of the content and recommendations in the Ambrose article upon which FCD relies so heavily—a summary and evaluation of multiple agency-required mitigation in

¹ *An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Resources Control Board, 1991-2002.* Ambrose, et. al. 2007 (Ambrose). The relevant table from which FCD has cherry picked its examples appears at pages 184-188. The article notes: The 143 Section 401 permits that were evaluated authorized approximately 217 acres of impacts (including temporary impacts) and required that 445 acres of mitigation be provided." Page iii. And, "Most often, the amount of mitigation required is not a simple one-acre mitigated for one-acre lost ratio (NRC 2001). The additional acreage is intended to account for temporal losses and incomplete replacement of function. Therefore, mitigation ratios of 2:1, 3:1, or greater are sometimes required." Page 9 Thus, the average required mitigation in California is on the order of 2:1, sometimes much higher where, as here, the habitat values are important and/or difficult to replace.

California—directly contravenes FCD’s contentions and points toward the woeful inadequacy of FCD’s surficial revamp of its mitigation proposals.

The Ambrose, et. al., article evaluates the performance of project wetland mitigation, finding it seriously functionally defective². The careful file and site evaluation of mitigation project success in California, conducted by the authors of the study relied on by FCD, concludes:

Despite relatively high permit compliance, most mitigation sites were not optimally functioning wetlands based on the criteria we established from reference wetlands across the state. Mitigation sites had an overall mean score of only 59% (Figure AB-2). On average, sites scored better for biotic structure (e.g., plant community metrics) than for the hydrology attribute (Figure AB-3). Only 19% of the mitigation files were classified as optimal, with just over half sub-optimal and approximately one-quarter marginal to poor. Ambrose, at iii

California’s goal is no net loss of wetlands, and their important functions. The great difficulty in replacing functional wetlands and related habitats underlies regulatory policy to first avoid harm to wetlands—to avoid so far as possible destroying existing wetlands and the functions they perform. The FCD project fails to do this. A smaller project would destroy far fewer acres of the regionally irreplaceable wetland and riparian habitat. Moreover, the hydrologic consequence of digging a much deeper pool would be to drain far more groundwater, causing existing, adjoining wetlands to dry up, and preventing the establishment of replacement, on site wetland habitat.

The Ambrose article goes on recommend that permit conditions be very clear about what the mitigation will be and how it will be performed, how **functional** success and failure will be monitored and evaluated, and how the long term success, including the hydrology,

² “A few studies have gone beyond compliance assessment to evaluate ecological condition or functions of mitigation sites. The NRC report summarizes 11 of these studies. The most relevant for our work was conducted by Mark Sudol in southern California (Sudol 1996, Sudol and Ambrose 2002). Sudol reviewed Section 404 and Section 10 permits for Orange County and conducted field assessments of each mitigation site to evaluate its compliance with permit conditions as well as how well the wetland performed certain functions (as indicated by the Hydrogeomorphic Assessment Methodology (Brinson 1993)). **Sudol found 18% of the mitigation sites complied fully with their permit conditions, but that none of the sites had appropriate levels of wetland function.** One of the strengths of Sudol’s work was the combination of an office review of permits with field assessments of permit compliance and wetland function/condition (Sudol and Ambrose 2002), and this approach was adopted for this study”. Ambrose at page 3. In a similar study commissioned by the Los Angeles Regional Water Quality Control Board, Ambrose and Lee (2004) investigated this issue within the Los Angeles/Ventura area by evaluating the mitigation projects associated with approximately 55 Section 401 permits issued by that Regional Water Board. For those projects, they found that the assessable 401 permit conditions were mostly being complied with, yet very few mitigation projects could be considered optimally functioning wetlands. About half of the total mitigation acreage consisted of drier riparian and upland habitats that were outside of jurisdictional “waters of the United States;” **about two-thirds of the projects did not fully replace the functions lost, and, thus, “no net loss” was not being achieved.**

of wetlands restoration and creation will be assured. FCD's proposed mitigation, relying heavily on future promises, including financial support, and unspecified adaptive management, is seriously inadequate³.

Lastly, state's policy is firmly against reliance on off-site mitigation, since it so often fails to replace the functions of the destroyed habitat—or fails to succeed in any way. FCD specifies, without ascribing priorities to where or how much compensatory mitigation will be done in each location, that mitigation will be in onsite or offsite locations.

The appropriate course is for FCD to first obtain all agency approvals of its mitigation, and then, and only then, to recirculate the defective portions of the EIR so that the public has the opportunity to comment on how the mitigation program will actually be structured and carried out.

4. **Flood Risks are Inconsequentially Low.** The FCD premise for both refusing additional time to comment, and, more importantly, for suddenly moving forward with an overly massive and disruptive sediment removal program is FCD's significantly exaggerated probability of flood risk to downstream structures. FCD relies on the need for capacity to accommodate two "Design Debris Events" (DDEs). The DDE is a conveniently named quantity, but one quite poorly related to the actual downstream flood risks that would be caused by even extreme rainfall events. The sediment levels behind Devil's Gate Dam, even after very significant rainfall years following the Station Fire, are still not at levels that it has reached many years in the past.

Moreover, as many commenters have previously pointed out, FCD has essentially sat on its grand plan for many years, insisting on pursuing an overly aggressive sediment removal project, refusing to entertain a smaller, regular sediment removal program that could have been in place many years ago. This is underscored by FCD's total unwillingness to consider the more modest removal plan proposed, and twice approved by, the City of Pasadena. The Pasadena Plan would cause less neighborhood disturbance, destroy less habitat, require less mitigation, cost less, and remove sediment on a regular schedule, and avert all flood risk. It is incomprehensible why FCD has refused to even discuss the Pasadena Plan with the City or consider any

³ The proper structure of any compliant mitigation plan is to provide third party rights (the state wildlife agency or a non-profit organization) in the mitigation projects, usually through a conservation easement, particularly on any off-site land, and a stewardship endowment to ensure that the mitigation plan will meet its goals and be adequately funded. We recommend that those features be included here.

modification of its grand design. If there were any significant flood risks caused by sediment buildup behind the dam, they are caused by FCD's intransigence. The fact that FCD has not given even passing consideration to a smaller, less destructive project that would have been strongly supported by the community is the surest sign that the vaunted flood risk is largely illusory.

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Conclusion. FCD's court-ordered modifications of its defective EIR have not been corrected, and the EIR must be altered and recirculated to accommodate further changes in the scope and timing of the project and to revise and significantly improve the proposed mitigation program. I appreciate the truncated opportunity to comment, but believe strongly that the comment period should have been extended to provide a fuller analysis of the lengthy recirculated sections of the EIR. I had to omit or abbreviate comments on much of the EIR, which should have been subject to a more complete public examination.

Sincerely,

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