

## Friends of Hahamongna

**To: County of Los Angeles  
Department of Public Works  
Water Resources Division  
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**From: Friends of Hahamongna  
Contact: Elizabeth Bour, <bourel@sbcglobal.net>**

**RE: Comments: Recirculated Portions of the Final Environmental Impact Report  
And Mitigation Monitoring and Reporting Program for  
Devil's Gate Reservoir Sediment Removal and Management Project**

**DATE: September 6, 2017**

### **I. Introduction**

Friends of Hahamongna hereby submits its comments on the Los Angeles County Department of Public Works (LACDPW) Devil's Gate Reservoir Sediment Removal (sediment removal) Project. We have reviewed the Recirculated Portions of the Final Environmental Impact Report (RFEIR) and believe the revisions do not adequately mitigate the serious environmental impacts to the park and surrounding communities of Pasadena, La Canada Flintridge, and Altadena. We would like to address these inadequacies and inaccuracies with the RFEIR.

- The RFEIR failed to provide substantial evidence that the 1:1 mitigation ratio in Mitigation Measures BIO-6, 7, and -8 will reduce biological resource impacts to less than significant levels.
- Changes to Mitigation Measures BIO-6, 7, and -8 significantly reduce the amount of riparian habitat that will be mitigated and Mitigation Measure BIO-7 no longer commits to onsite mitigation.
- Mitigation Measures for BIO-1 through BIO-8, as currently stated, do not adequately address all the cumulatively considered impacts to the biological resources that the Devil's Gate Water Conservation Project will add.

### **II. Issues with the justification for a 1:1 mitigation ratio in MM BIO-6, -7, and -8:**

According to the Court ruling, the Final Environmental Impact Report (FEIR) failed to support that the 1:1 mitigation ratio in MM Bio-6, -7, and -8. As a result, the County was ordered to provide substantial evidence to support the 1:1 mitigation ratios in Mitigation Measures BIO-6, 7, and -8, and, therefore, the conclusion in the (FEIR) that the biological resource impacts will be reduced to less than significant levels. It is our opinion that the revisions in the RFEIR still fail to provide that substantial evidence for the following reasons:

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The RFEIR cited several projects in southern California that applied a 1:1 mitigation ratio for impacts to biological resources. None of these examples are truly comparable to this project.

- A. Vulcan Materials Company proposed an aggregate mining operation in Cajon Creek near the 210 Freeway. As identified in the EIR, this project constituted a primary threat to the San Bernardino Kangaroo Rat (SBKR). Because there are no approved mitigation banks for the SBKR or alluvial fan sage scrub habitat anywhere onsite, Vulcan utilized their Cajon Creek Conservation Bank to offset their impacts to the SBKR, and critical habitat.

The Cajon Creek Conservation Bank is a 567-acre habitat corridor established by CDFW and owned and managed by Vulcan. There is an existing Habitat Enhancement Management Plan in place. Management for the long term is funded from the sale of mitigation credits which are used by public agencies and private developers to mitigate various project impacts to habitat. It is in no way like the Devil's Gate Sediment Removal project. (<https://www.vulcanmaterials.com/social-responsibility/safety-health-environment/wildlife-habitat-enhancement>)

LACDPW has not yet developed the habitat restoration plan or identified a conservation area within the greater Los Angeles Watershed. There are no assurances that offsite areas will have conservation easements put in place to preserve habitat permanently. Much of this project's mitigation will be offsite and unknown offsite mitigation locations cannot be evaluated for suitability or determination of whether the 1:1 ratio will be adequate.

- B. A Mitigated Negative Declaration (MND) was prepared for the Quail Run Apartment project in the City of Riverside that committed to a 1:1 mitigation ratio for impacts to Riversidean Alluvial Fan Sage Scrub and to riparian habitats, including willow-mule fat woodland, and mule fat scrub. The mitigation included replacing/restoring riparian habitats with the same vegetation onsite.

This apartment complex project is in no way comparable to the Devil's Gate sediment removal project. It is surrounded by urban development and is a much smaller project site (30 acres) with only 6.18 acres of critical habitat to be mitigated. The project's grading plan was revised to accommodate full onsite mitigation for the impacts to the riparian habitat. The restored habitat will be placed in a conservation easement that will be managed by the Riverside Land Conservancy. ([https://www.riversideca.gov/ceqa/planning/P14-0683\\_0685\\_P15-1080-1082%20Initial%20Study.pdf](https://www.riversideca.gov/ceqa/planning/P14-0683_0685_P15-1080-1082%20Initial%20Study.pdf))

According to the Quail Run Apartments MND, the determination that a 1:1 mitigation ratio would reduce impacts to riparian vegetation to a less than significant level is due, in part, to the requirement that there will be recordation of a conservation easement (MND page 32). No such easement is mentioned in the RFEIR for onsite or offsite mitigation areas. Concluding that a 1:1 mitigation ratio for this small dissimilar project implies that a 1:1 ratio is adequate for Devil's Gate Reservoir is not reasonable.

- C. Construction for the Rabla Pacifico Street Reconstruction project in Malibu impacted 1.9 acres of environmentally sensitive habitat, primarily Coastal Sage Scrub, that would be mitigated at a 1:1 ratio. In the EIR, the applicant committed to following their

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City ordinance (4.8.1) that strictly regulates project mitigation and requires supervision by the City biologist.

According to the Rambla Pacifico Street Reconstruction/Realignment EIR (Section 4.1 Biological Resources, Page 4.1-21) *“Restoration may occur at a City-approved off-site location if it is determined that it is not feasible to fully mitigate impacts onsite or where off-site mitigation is more protective in the context of the Natural Community Conservation Plan for the area. The City shall determine that the proposed restoration site(s) is of equivalent type and acreage to the affected habitat (i.e., a 1:1 restoration ratio). Areas onsite that shall be hydroseeded in accordance with a City approved revegetation plan may count towards the total mitigation acreage but must be included in the restoration plan. All plant and seed material used shall be of locally native, drought-tolerant stock and shall be approved by the City biologist. The habitat restoration shall be carried out prior to or concurrently with construction of the proposed realignment. Prior to issuance of grading permits, the applicant shall submit to the City for review and approval a habitat restoration plan, prepared by a qualified biologist, designed to restore the area in question for habitat function, species diversity, and vegetation cover. A copy of the plan shall be submitted to the City Biologist for review... The area of habitat to be restored shall be permanently preserved through the recordation of an open space deed restriction that applies to the entire restored area”.*

This project is not analogous in that it is a very small area adjacent to 20 private residential properties with only one biological resource to mitigate. This project did not negatively impact wildlife corridor with endangered species. And, mitigation would be, for the most part, onsite.

Use of a 1:1 mitigation ratio was considered acceptable because the ordinance strictly enforces mitigation, there will be a City biologist to oversee quality of mitigation, most, if not all, mitigation would be onsite and criteria is already established to determine suitability. There will also be an open space deed restriction put in place to protect the offsite mitigation areas.

- D. Tonner Hills Planned Community project in the City of Brea is a planned community on 790 acres that were used for oil and gas production for 100 years. The EIR addressed impacts to the Coastal Sage Scrub that was occupied or potentially occupied by the coastal California gnatcatcher, a federal threatened species. The project mitigation committed to a 473-acre onsite habitat conservation area with 116 acres being set aside to restore and enhance Coastal Sage Scrub. Coastal Sage Scrub restoration would be a phased effort prior to or during project development.

This project is not comparable in that the property is highly degraded due to gas and oil production, there is no mention of wildlife corridors or protected species at the project site, and there will be large habitat conservation area established onsite.

The justification for a 1:1 mitigation ration for Coastal Sage Scrub is that the onsite mitigation location areas are required to represent occupiable conditions for the gnatcatcher. There is no similar commitment in the RFEIR to ensure that the onsite and offsite mitigation locations will be occupiable conditions for the least Bell's vireo or any other species.

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None of these projects presented as argument for a 1:1 mitigation ratio is comparable to Devil's Gate Sediment Removal project, in either size, existing conditions, habitat composition, presence of endangered species or mitigation opportunities. Contrary to the listed examples, Devil's Gate Reservoir provides rare habitat for an expansive wildlife corridor and several endangered species. Onsite mitigation and conservation easements are common commitments with the listed project examples where a 1:1 mitigation ratio was allowed.

In the RFEIR, the LACDPW emphasizes more offsite mitigation, and added the option of offsite mitigation outside Pasadena city limits. The LACDPW did not state potential offsite mitigation locations or the percentage of habitat that will be candidates for offsite mitigation. Nor did they define the criteria they would use to determine what would be mitigated onsite and what would be mitigated offsite. Adequacy cannot be assessed. In the worst-case scenario, it is now possible, that 100% of the biological mitigation could be offsite and outside Pasadena city limits.

The LACDPW has not demonstrated how a 1:1 mitigation ratio proposed for the projects in Malibu, Brea, and Riverside would support a conclusion that MM BIO-6, -7 and -8 at a 1:1 ratio would adequately mitigate the negative impacts to biological resources to less than significant levels.

### III. Issues with offsite mitigation for MM BIO-6, -7, and -8:

In the FEIR (page 130), MM BIO-7 did not state that the mitigation could be offsite. In the RFEIR, language was added that states *"Priority for tree replacement locations shall be onsite, offsite within Arroyo Seco subwatershed, and offsite within the greater Los Angeles River watershed."* There is no statement of what the criteria would be to determine the percentage that will be offsite or the offsite locations. There is no method to assess whether the offsite locations can support the same wildlife or contribute to the existing wildlife corridors.

For example, according to the FEIR (page 108), the endangered least Bell's vireo is dependent on corridors of habitat along rivers and streams and that habitat within Devil's Gate Reservoir is the willow woodland and dense mule fat. According to statements made by the USGS Western Ecological Research Center 2002 survey about the least Bell's vireo:

- Site fidelity is high among adults, with many birds not only returning to the same territory, but placing nests in the same shrub used the previous year.
- Least Bell's Vireos place their nests in a variety of plants that provide concealment in the form of dense foliage. Vegetation characteristics of riparian stands between five to ten years of age are most suitable for nesting Least Bell's Vireo.
- Least Bell's Vireo nests are normally found in areas with dense understory and the canopy of riparian habitat is mainly dominated by willows.

Preservation of the least Bell's vireo in Devil's Gate Reservoir is dependent on the 62.5 acres of suitable habitat currently in the project site, including the willows. Based on the language provided, much of the mitigation could be offsite which would result in habitat in Devil's Gate Reservoir that would not be suitable for the least Bell's vireo or any other wildlife that relies on similar adequate habitat.

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The proposed removal and maintenance configurations would leave very little suitable acreage available for onsite mitigation. Mitigation for habitat for the least Bell's vireo will likely be offsite. It is unknown if there are any offsite locations within Greater Los Angeles River watershed that would support alluvial fan sage scrub and riparian woodland habitat necessary for the endangered least Bell's vireo, especially at the substandard ratio of 1:1.

### IV. Issues with reduction of mitigation acreage for MM BIO-7, and -8:

The FEIR states "*The Proposed Project would impact approximately 51.4 acres of Riparian Woodland and 11.1 acres of Mule Fat Thickets within the Proposed Project site. Riparian Woodland and Mule Fat Thickets are rare plant communities and provide nesting habitat for riparian species; impacts to these habitats would result in a significant impact. To minimize impacts due to the loss of Riparian Woodland and Mule Fat Thickets, Mitigation Measures MM BIO-7 and MM BIO-8 have been provided*" (FEIR page 130). In addition, it states that the Riparian Woodland is primarily Black Willow Series and that Black Willow (*Salix gooddingii*) is the dominant tree in the canopy. And, MM BIO-7 commits to, in part, "*Within 90 days prior to ground-disturbing activities, a qualified biologist shall conduct a tree survey within the project footprint, to identify trees that will be removed or potentially affected by the Proposed Project and trees that can be avoided. LACFCD will replace trees that cannot be avoided.*" (FEIR page 131). However, the RFEIR changed the mitigation obligation to "*Implementation of Mitigation Measure MM BIO-7 would identify **native city-protected trees** that would be potentially affected, and need root zone protection or **native city-protected trees** that would be removed*" (page 133). Per Pasadena's tree ordinance, Black Willows are city-protected trees but they are not one of the 13 species listed on the City's native tree list ([http://www.ci.pasadena.ca.us/PublicWorks/Tree\\_Protection\\_Ordinance\\_Summary](http://www.ci.pasadena.ca.us/PublicWorks/Tree_Protection_Ordinance_Summary)). Therefore, because of the changes to MM BIO-7, the acreage covered by Black Willow, the dominant tree in the Riparian Woodland that supports endangered species, will not be mitigated.

### V. Issues with restatement of existing conditions of biological resources:

In the RFEIR there was a large amount of new information provided under Riparian Habitats (Biology-2 and 3) that was apparently not evident or stated in the 2013 survey or in the 2014 FEIR. Example statements include: "*This loss of secondary structure of native plant species in Riparian Woodland eliminates potential nesting, roosting, and cover sites for common and sensitive species of birds and other wildlife that primarily use the vegetation in the shrub and herbaceous plant layers*" (page 130H) and "*Much of the vegetation located within the wetlands boundaries was either removed by the high storm flows or was buried by the influx of sediment into the reservoir immediately after large storms in 2010*" (page 132B). The facts about these existing conditions and impacts have been rewritten, without the benefit of a new survey. The origination of this information is suspect. Vegetation communities have significantly improved since the 2013 survey and the potential nesting of birds has not been eliminated, as evidenced by the abundance of mallard ducks, occasional presence of Egret and Blue Heron, and the several sightings of least Bell's vireo. Consistently throughout the RFEIR and contrary to the statements made in the FEIR, post fire impacts are exaggerated, the quantity and quality of habitat are understated, and degradation to habitat is overstated. This appears to be additional attempt to reduce mitigation obligations and acreage for riparian habitat by restating the

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findings in the FEIR, without another survey. The riparian woodland is reestablishing and thriving (*exhibit photos below*).

Rather than increasing mitigation measures to adequately mitigate stated impacts to the existing condition, LACDPW degraded existing conditions and reduced the projects impacts to meet the desired mitigation ratio.

### VI. Issues with post-removal reservoir management mitigation:

- A. Under Reservoir Management Option 1, the mitigation plan stated in the RFEIR will rely on self-germination for regrowth of Mule Fat and Alluvial Fan Scrub and the regrowth would be removed on an annual basis. It states “*Under Option 1, reservoir management would occur in the entire Proposed Project site; therefore, plant species characteristic of the Riparian Woodland and Mule Fat Thicket vegetation communities would be removed on an annual basis but may regrow each year between maintenance activities*”. This will eliminate the ability for wildlife to rely on this region for consistent suitable habitat. Some species may not return if Option 1 is implemented.
- B. For reservoir management Option 2, the RFEIR states “*Under Option 2, the impacts to a portion of the riparian habitats located upstream of the boundary of the reservoir management area would be considered temporary because the area located between the reservoir management area boundary and the upstream boundary of the sediment removal area would not be disturbed at all during the reservoir management activities. Consequently, under Option 2, the LACFCD would replant this 29-acre temporary impact area with Riparian Woodland and Mule Fat Thicket vegetation communities where appropriate in addition to planting Riversidean Alluvial Fan Sage Scrub...*”. This implies that onsite restoration of Riparian Woodland, Mule Fat and Alluvial Fan Scrub would be relocated, separated from the current wildlife corridor, and would be reduced from 62.5 to the 29 acres of area that is not cleared annually. Any onsite mitigation is dependent on the reservoir maintenance option that is implemented and, at best, would be limited to 29 acres.

### VII. Issues with the adequacy of biology mitigation measures for cumulatively considered impacts with the Water Conservation Project:

- A. Although the Water Conservation Project has not been defined enough to assess impacts and adequate mitigation for cumulative impacts, the assertion has been made that MM BIO-1 through MM BIO-8 would reduce these cumulatively considered biological impacts to less than significant (page 133B). However, the diversion of water from existing downstream habitats will not only have an impact at the water conservation project level, but it will significantly limit opportunities for offsite mitigation downstream within the Arroyo Seco watershed for the sediment removal project. And, downstream vegetation, including any added as part of this project’s mitigation effort, will not receive the necessary water to flourish.

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The affected downstream areas are abundant in native plants and wildlife and include grant-funded natural stream restoration projects in between channelized stream areas. A few of the recent restorations projects include:

- Stream Diversion in the Lower Arroyo
- Central Arroyo Stream Restoration
- Archery Range Planting Restoration
- Memorial Grove Planting Restoration

Although the devastation to existing downstream habitat resulting from water diversion would be a project-level EIR concern for the Water Conservation Project, it eliminates the downstream Arroyo Seco watershed as a possible offsite mitigation location for the sediment removal project MM BIO-6 through MM BIO-8. This constitutes a cumulatively considered concern and emphasizes the need to understand, now, what offsite mitigation locations will be used for sediment removal project.

- B. Much of the route for the Water Conservation Project alternatives 1 and 3 is outside Pasadena city limits in an unincorporated County area (Altadena). MM BIO-7 states that root zone protection and mitigation for trees along the chosen route will only apply to Pasadena “native city-protected trees”. New York Drive (Altadena) is a narrow tree-lined street and there will be inevitable tree root disruption but LACFCD only commits to protecting and replacing trees that have been defined as native and City-protected under Pasadena’s tree protection ordinance. It is inappropriate to apply Pasadena’s standards and ordinances to trees in Altadena which may choose to have all trees protected and, if necessary, replaced.

### VIII. Necessary Clarifications

- A. The RFEIR must define the criteria for selecting suitable offsite mitigation locations and prove that suitable locations exist in the Arroyo Seco watershed or the greater Los Angeles River watershed.
- B. Assurances for mitigation monitoring are unclear and insufficient to provide enforceability. The onsite and offsite locations are not identified and a proposed habitat restoration plan has not been presented.

### IX. Conclusion:

The recirculated portions of the FEIR do not meet the orders mandated in Judge Chalfant’s ruling and, therefore, the FEIR still has critical defects in the areas of biological resource impacts and cumulatively considered impacts. The following inadequacies and inaccuracies still exists:

- Judge Chalfant ordered the County to provide documentation that their 1:1 mitigation ratio would adequately protect sensitive habitat and species. Instead of providing expert testimony from biologists and restoration experts, the County listed several projects that did proceed with 1:1 mitigation programs. They were

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not comparable. The revisions in the RFEIR are not substantial evidence that a 1:1 mitigation ratio is adequate for rare riparian habitat. They are, instead, a strong argument for reducing the amount of biological resources that they will choose to mitigate and for moving the reduced mitigation to unknown locations offsite, possibly outside Pasadena city limits.

- Offsite mitigation was not a consideration in the FEIR for MM BIO-7. The feasibility and the availability of offsite mitigation locations has not been assessed.
- To reinforce a reduced effort for restoration and preservation of habitat and wildlife, LACDPW recreated the existing conditions from what was identified in the Chambers Group 2013 survey and stated in the FEIR.
- There is a significant reduction in what will be mitigated from what was committed to in the FEIR, particularly with the riparian woodland. Limiting tree mitigation to native city-protected trees eliminates mitigation for the Black Willow that is critical habitat for species such as the least Bell's vireo.
- The RFEIR does not consider the downstream impacts to biological resources from the related Devil's Gate Water Conservation Project when determining if MM BIO-1 through MM BIO-8 can be applied and will adequately mitigate cumulatively considered impacts.

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## X. Exhibit Photos:

Hahamongna Riparian Habitat as of 9/4/17



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