ATTACHMENT G
RESPONSES TO THE APPLICATION
(DATED MAY 2021)

Responses to Request for Appeal of Board of Zoning Appeals Decision
Arroyo Seco Canyon Project Areas 2 and 3

Modification to Conditional Use Permit No. 6222
State Clearinghouse No. 2014101022

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APPENDICES

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1. Introduction

The Arroyo Seco Canyon Project Areas 2 and 3 (Project or proposed Project) at its core is a stormwater capture and groundwater recharge project benefitting local habitat and the environment as well. It will better position the City in facing the challenges of water supply by optimizing its long-standing water rights from the Arroyo Seco to capture a significant amount of stormwater runoff, store this water in the Raymond Basin and later pump a portion of it for supply. The Project will address a number of existing deficiencies by renovating PWP's aging facilities, adding protections for aquatic species, and enhancing habitat where none currently exists. Specifically, in terms of water supply, the Project will address the City's limitations for capturing runoff from large storms before it is lost to the ocean. Pasadena already diverts water from the Arroyo Seco for water supply and does not propose a change to this baseline condition. However, the City does not currently have the capacity to capture runoff from large storms, but instead has to shut down its intake while a very significant amount of runoff flows in the stream, out of Devil's Gate Dam, and is lost to the ocean. This is the condition that needs to be highlighted when discussing the Project, because it is during these times that the Project will capture more water and not during the dry, low flow periods of the year. Understanding this Project setting is crucial to understanding its benefits and dispelling the misconceptions about its potential environmental impacts.

A Draft Environmental Impact Report (Draft EIR) for the proposed Project was distributed on Monday, June 15, 2020 to federal, State, regional, and local agencies and interested parties and was made available for a 46-day public review period until Friday, July 31, 2020. The Final EIR was prepared to respond to the comment letters that were received by the City of Pasadena on the Draft EIR. The City received comment letters from five agencies: United States Fish and Wildlife, California Department of Fish and Wildlife, California Department of Transportation, South Coast Air Quality Management District, and City of La Cañada Flintridge; three local groups: Arroyo Seco Foundation, Pasadena Audubon Society, and West Pasadena Residents Association; and eleven community members. Chapter 2, Responses to Comments, of the Final EIR, includes copies of all the letters received during the Draft EIR public review period, as well as responses to all comments received.

The proposed Project and Final EIR were presented to the Hearing Officer on January 6, 2021, where City staff recommended adopting a resolution to certify the Final EIR adopting findings, adopting the Mitigation Monitoring and Reporting Program (MMRP), adopting a Resolution adopting a Statement of Overriding Considerations and adopt the Specific Findings to approve the Modification to Conditional Use Permit (CUP) #6222. The proposed Project was approved that night by the Hearing Officer.

On January 19, 2021, a Request for Appeal was filed by the Arroyo Seco Foundation, together with the Pasadena Audubon Society, Hugh Bowles, Ken Kules, and Morey Wolfson to appeal the decision to certify the Final EIR. In response to the Request for Appeal, the City prepared the "Responses to Request for Appeal" for the proposed project, dated March 2021, which was included as Attachment H to the City's Staff Report in preparation for the Board of Zoning Appeals public hearing on March 18, 2021. The "Attachment H Responses to Request for Appeal" from the City's Staff Report is included as an appendix to this document.

The proposed Project and Final EIR were presented to the Board of Zoning Appeals on March 18, 2021, where City staff recommended adopting a resolution to certify the Final EIR adopting findings, adopting the Mitigation Monitoring and Reporting Program (MMRP), adopting a Resolution adopting a Statement of Overriding Considerations for the Project, and upholding the Hearing Officer's decision to approve the Modification to Conditional Use Permit (CUP) #6222. The proposed Project was approved that night by the Board of Zoning Appeals, with additional conditions of approval.

On March 29, 2021, a Request for Appeal was filed by the Arroyo Seco Foundation, together with the Pasadena Audubon Society, Hugh Bowles, and Ken Kules to appeal the decision to certify the Final EIR, referred to as the "Appellants" throughout this document. In response to the Request for Appeal, the City has prepared this "Responses to Request for Appeal of Board of Zoning Appeals Decision" for the proposed Project, dated April 2021. This document includes responses to the Request for Appeal Application (Appendix A); the attached Reason for Appeal of the Board of Zoning Appeal's Determination Regarding FEIR and CUP #6222 (Appendix B); the "Attachment H Responses to Request for Appeal" from the City's Staff Report dated March 18, 2021 (Appendix C); and the "Translocation of Rainbow Trout to the Arroyo Seco from the Bobcat Fire Burn Area" Memorandum dated Fall 2020.

Table 1. List of Commenters

Comment Letter	Name	Location in Document	Date
1	Arroyo Seco Foundation et. al.	Appendix A: Appeal Application	March 29, 2021
2	Arroyo Seco Foundation et. al.	Appendix B: Reasons for Appeal	Not Dated

2 Response to Request for Appeal Application

Appendix A. Request for Appeal Application (Comment Letter #1)

1-1 The "Request for Appeal" provides an overview of the Appellant's reasoning for appealing the Board of Zoning Appeal's decision to certify the Final EIR. This summary does not include any specific information to refute the analysis included in the Final EIR. Rather, an itemized listing of the Appellant's reasons are included as a statement attached to the appeal. This statement is titled "Reason for Appeal Regarding BZA and Hearing Officer's Determination Regarding FEIR and CUP #6222 - Arroyo Seco Canyon Project" and is addressed below in Responses 2-1 through 2-20.

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3 Response to Reasons for Appeal Regarding BZA and Hearing Officer's Determinations Regarding FEIR and CUP #6222

Appendix B. Reasons for Appeal Regarding BZA and Hearing Officer's Determinations Regarding FEIR and CUP #6222 (Comment Letter #2)

2-1 The Appellants (i.e., Arroyo Seco Foundation, Pasadena Audubon Society, Hugh Bowles, and Ken Kules) state they are appealing the decisions set forth by the Board of Zoning Appeal to approve the Modification to the Conditional Use Permit #6222 (CUP) and by the Hearing Officer regarding the certification of the Final EIR for the proposed Project. This comment introduces a general summary of the concerns set forth in the Reasons for Appeal letter, which are answered in detail in subsequent responses, and summarized below.

Regarding the Appellant's first request to use "a living stream to capture storm flows and protect precious habitat", based on arguments put forth by the Appellants in this appeal letter and previous comment letters, it is understood that their concept of a "living stream" is one without diversion into the infiltration basins.

- First, implementation of the suggested scenario ***does not reflect the reality of the existing/baseline conditions***. Pasadena Water and Power (PWP) currently diverts low flows from the Arroyo Seco and conveys these to spreading basins using its existing facilities. The suggestion to not divert stream water would be a change to this existing/baseline condition, in addition to new Project conditions, and is inappropriately identified by the Appellants as an alternative for consideration under CEQA. The feasibility of this request was thoroughly addressed in Section 6, Alternatives, of the Draft EIR and in "Topical Response ALT – Raymond Basin Judgment" of the Final EIR, as well as within several responses to comments to letters submitted by the Arroyo Seco Foundation (Comment Letter 6 of the Final EIR), Hugh Bowles (Comment Letter 9 of the Final EIR), and by Ken Kules (Comment Letter 14 of the Final EIR). As explained previously, PWP spreads water for percolation in spreading grounds to earn pumping credits in accordance with the Raymond Basin Judgement. PWP would continue to operate the proposed Project under this law as there is no ability in the Judgment to take pumping credit for water left in the stream. Also, inherent in the Appellant's suggestion is that the stream does not and will not capture storm flows below the diversion. However, even with increased diversions from the Project, the majority of flows will continue to remain in the stream past the point of diversion and storm flows from other sources downstream will also continue to contribute to stream flows.

- Second, regarding the "capture of storm flows", the Appellants are implying that the stream alone has a capacity for percolating flows comparable to that of the proposed Project. However, the Project will percolate more water than the stream alone, and even then significant amounts of water will continue to be released from Devil's Gate Dam. The natural percolation capacity of the stream combined with the retention time behind Devil's Gate Dam is not enough to percolate all Arroyo Seco stormwater during new Project conditions, as evidenced by the significant releases from Devil's Gate Dam (Dam). On average, the Dam has discharged 11,389.8 acre feet per year (AFY) of runoff from the reservoir, or an annual average of 15.7

cubic feet per second (cfs), since 1989. More specifically, when considering only the days (511 days over the past 30 years, or an average of 17 days per year) with flows that would be newly affected by this Project (i.e., large storm events where flows measure between 25 and 100 cfs at the Arroyo Seco stream gage), the Dam discharged an average of 70.1 cfs, or an average of 2,880 AFY. Therefore, it is evident that when stream flows leading to Devil's Gate Reservoir are greater than 25 cfs (the condition from which the Project would seek to increase diversions) these flows ***exceed the natural infiltration capacity of the system***. The purpose of the proposed Project is to capture a portion of these flows (i.e., 1,035 AFY) before they are released from the Dam and lost to the ocean. This water would infiltrate and recharge the Raymond Basin for additional beneficial use. Water left in stream would continue to percolate, but the streambed's capacity for natural infiltration would continue to be exceeded and excess stormwater runoff would continue to be released from the Dam,

- Third, the potential impacts of the proposed Project have been thoroughly evaluated and based on the substantial evidence set forth in the Draft EIR, ***no significant impacts to biological resources*** ("precious habitat") would result from the proposed diversion of additional flows during large storm events.

Regarding the Appellant's second request to ensure "an adequate environmental flow for fish and wildlife during the dry season beginning in the late spring", implementation of this suggested scenario is not relevant to new Project conditions, but refers instead to existing/baseline conditions. As clearly stated in Section 3, Project Description of the Draft EIR and as repeated throughout the Final EIR and specifically in Topical Responses HYD-1 and HYD-2 of the Final EIR, the existing condition is that the City currently diverts all low flows, which includes essentially all flows during the dry season of the year, and a moderate proportion of flows during the wet season of the year. The proposed Project would continue to divert all flows during the dry season, but its benefit would be in the ***increased capacity to divert flows from the larger storm events which occur primarily during the wet winter months of the year (i.e., diverting up to 25 cfs from flows up 100 cfs)***. To further demonstrate that the request would have a negligible effect during new Project conditions, the Project's projected increase in diversions from May through November would be only 6% (67 AF) of the total projected newly diverted flows for an average year (1,036 AF).

- Regarding the adequacy of the environment for fish, analysis from the Arroyo Seco stream gage located upstream of the diversion (USGS Gage 11098000) shows that ***zero stream flow*** occurs 24 percent of the time in August and 26 percent of the time in September. Flows less than 1 cfs occur 70 and 75% of the time in August and September, respectively. These low or zero flows in the late summer and fall are an existing limiting factor for fish, and the instream flows suggested by the Appellant's, (i.e., releases from the diversion), would not prevent this natural condition. Further, for conditions that are affected by the Project, as stated in Subsection 4.2.7, Mitigation Measures of Section 4.2, Biological Resources of the Draft EIR, MM-BIO-7 requires the preparation of a Native Resident and Migratory Fish Monitoring Plan in consultation with the California Department of Fish and Wildlife (CDFW). This measure ensures that the long-term operations of the proposed Project are responsive to potentially changing future conditions as it may relate to future fish populations. As stated in CDFW's comment letter dated January 6, 2021, "CDFW looks forward to coordinating with Pasadena Water and Power on diversion structure and the Monitoring Plan to ensure compliance as set forth by Fish and Game Code 5901 and 5937."

- Regarding the adequacy of the environment for wildlife, the potential impacts of the proposed Project have been thoroughly evaluated and based on the substantial evidence set forth in the Draft EIR, no significant impacts to biological resources would result from the proposed diversion of additional flows during large storm events.

Regarding the Appellant's third request to commit "to a plan to stabilize and replenish the Raymond Groundwater Basin", this request is already satisfied by the proposed Project, as currently defined, and no changes to the proposed Project are required. The Response 2-3 beginning on page 6 of the "Responses to Request for Appeal" dated March 2021 (see Appendix C), thoroughly addresses this comment. Through an analysis of hydrologic data, the City projects an average 1,035 AFY increase in diversions through implementation of the Project. The City would be entitled to pump only a portion of this amount, with the remainder stored in the underlying aquifer. Even the Appellant's analysis of post-Project contributions to the Raymond Basin using conservative underlying assumptions shows that ***the Project would have a net positive effect on groundwater recharge in the Monk Hill Subbasin,*** once a math error in their analysis is corrected (i.e., correcting the conversion from cubic feet per second [a flow rate] into acre feet [a volume] for the proposed Project condition). Additionally, as stated in the Final EIR, the proposed Project has as one of its stated objectives the increased recharge of the groundwater basin (i.e., Monk Hill Subbasin, within the Raymond Basin). Therefore, the proposed Project, by definition, is an effort by PWP to stabilize and replenish the Raymond Groundwater Basin for continued beneficial use for local water supplies.

2-2 Regarding the Appellant's assertion that comments provided by CDFW related to the adequacy of surveys for fish and other species of concern were not noted or responded to in the Final EIR, this assertion is inaccurate. The City's responses to comments as set forth in the Final EIR represent a good-faith, reasoned effort to address the environmental issues identified by the comments. Under the CEQA Guidelines, the Lead Agency is required to evaluate and provide written responses to comments received on the Draft EIR (CEQA Guidelines, Section 15088). As Lead Agency pursuant to CEQA, the City applied careful judgment based on scientific and factual data and has made a determination to approve the proposed Project, as the public agency with the primary responsibility for carrying out the proposed Project.

The City of Pasadena prepared a thorough response to all comments received, including the CDFW (a Trustee and Responsible Agency) comment letter dated July 29, 2020, during the public review period for the Notice of Availability of a Draft Environmental Impact Report (NOA), which was distributed on Monday, June 15, 2020 for a 46-day review period.

At the time of the Hearing Officer's Meeting on January 6, 2021, CDFW submitted an additional comment letter providing seven recommendations. As a result of this additional comment letter, the City outreached to CDFW and set a meeting for agency-to-agency coordination in order to discuss the analysis and conclusions set forth in the Draft EIR and Final EIR, and address CDFW's recommendations. A meeting was held between the City and CDFW on March 10, 2021, in which the recommendations of CDFW were addressed and CDFW did not offer any additional comments or questions at that time. No additional information has been requested by CDFW and no subsequent correspondence has been received from them; it is therefore anticipated that CDFW's questions and recommendations have been adequately addressed for the purposes of the CEQA review process.

2-3 Regarding the Appellant's assertion that the CEQA documentation defers to the regulatory permitting process to address topics related to the purview of CDFW, this assertion is inaccurate. The Draft EIR and Final EIR provide adequate analysis, assessments, and conclusions of significance, based on substantial evidence, to support the City's findings. As set forth in the Final EIR, the City prepared

responses to all comments received by CDFW and made adjustments to the requirements set forth in several mitigation measures (i.e., MM-BIO-1 through MM-BIO-8) to address recommendations made by CDFW through their July 29, 2020 comment letter on the Draft EIR. Additionally, as described in Response 2-2 above, the City conducted a meeting for agency-to-agency coordination regarding the proposed Project in which the recommendations of the CDFW were addressed and CDFW did not offer any additional comments or questions at that time. The Final EIR for the proposed Project satisfies the requirements of CEQA and the CEQA Guidelines, and it is understood that CDFW may impose additional restrictions and/or requirements upon the proposed Project through their regulatory permitting authority. This permitting process is under the statutory responsibility of CDFW and the City must and will continue to work with CDFW in order to satisfy any additional requirements they may have, beyond the requirements of CEQA, through the Section 1600 Streambed Alteration Agreement process.

2-4 The Appellant asserts that the proposed Project requires a quantitative evaluation of hydrology and the Raymond Basin regarding "the amount of 'new water' that will be captured by the diversion that would not otherwise have percolated in the stream or behind Devil's Gate Dam." The requested analysis has been previously demonstrated. As stated in Section 3, Project Description of the Draft EIR (page 3-3), the proposed Project would capture an additional 1,035 AFY, on average. When this "new water" is being diverted, there is always outflow from the Dam. In fact, on an annual basis this outflow is more than double what is left in the stream at the diversion point due to the significant contribution to stream flows from other sources downstream of the diversion. This indicates that if the "new water" was instead left in-stream, it would not have an opportunity to percolate. In these conditions, the streambed is already saturated with no additional capacity for percolation. The Project, on the other hand, diverts this additional water to spreading basins where it recharges the Raymond Basin via infiltration.

2-5 The Appellant asserts that the proposed Project requires a quantitative evaluation of hydrology and the Raymond Basin regarding "the amount of pumping credits that the ASCP will "earn" based on the Raymond Basin Judgment and rules established by the Raymond Basin Management Board." The quantification of pumping credits is dependent upon diversion and spreading, which would vary annually and be entirely dependent on weather events and stream flows. The City currently receives pumping credit of 60 to 80% of its surface water rights that are diverted for spreading. The percentage depends on which of the City's basins are used for recharge. During the same period of record used for the hydrologic analysis to quantify Project benefits (i.e., 1989 to 2020, in order to capture representative wet and dry years as well as pre- and post-Station Fire conditions), credits as a percentage of water spread averaged 70% overall. The period includes over 10 years when the LACDPW controlled spreading operations of the City's water rights and credits were calculated as 80% of an adjusted spreading amount. This period also includes the City's transition from diverting water for treatment at the Behner WTP and directing this water to the sludge ponds for spreading credit. Additionally, when the City began to take over spreading operations from the LACDPW, the Raymond Basin Management Board began using a different formula to calculate adjusted spreading from diversions and derive credits. In the last 15 years, however, the City has earned 80% credit from water diverted to the former Behner sludge ponds (Pasadena ponds 1 and 2) and 60% for water diverted to basins 1 through 12. This operation has resulted in 20 to 40% of diverted water spread for percolation remaining in the Raymond Basin.

The Project does not seek to change the baseline condition; contributions to groundwater that are protected from pumping and that remain in the Basin would continue at the existing rate. Maintaining this baseline condition post-Project would be ensured by applying the existing rate for earning credits to the existing average diversions. Nowhere in the Draft EIR or Final EIR is a change to this existing

metric for the baseline condition considered or evaluated because ***there are no proposed changes to the existing pumping credit allocation.***

In addition to the water from existing stream diversions that is infiltrated through the spreading basins and is retained in the Raymond Basin under baseline conditions, the Project's projected increment in diversions (1,035 AFY) would also contribute to water that would remain in the groundwater basin. This contribution will be determined from the formula for earning credits. Although implied in the EIR, it is here clarified that credits earned will be consistent with the Judgment and not exceed 80% of water diverted. Any rate equal to or less than this threshold would result in additional water remaining in the basin above the amount that currently remains (baseline). In the past, adjustments to the calculation of earned credits have been made at the Raymond Basin Management Board's discretion. It has been anticipated that new credits will be determined through a similar process. In any case, the proposed Project would continue to have a net positive effect on the groundwater basin as stated throughout the EIR.

2-6 The Appellant asserts that the proposed Project requires a quantitative evaluation of hydrology and the Raymond Basin regarding "the efficiency of spreading basins compared to the conservation that naturally occurs in alluvial stream zones like Hahamongna." This request was previously addressed in Response 2-1 and Response 2-4 above.

2-7 The Appellant asserts that if pumping credits were to exceed the "new water" from the ASCP, that there would be an adverse impact on the Raymond Basin. This comment has been previously addressed in detail in 2-5 above and in Response 2-3 beginning on page 6 of the "Responses to Request for Appeal" dated March 2021 (Appendix C). In summary, the analysis conducted by Mr. Ken Kules and cited by the Appellant demonstrates that even under extremely conservative assumptions, the proposed Project would infiltrate more "new water" than the number of pumping credits that PWP would claim. This conclusion may be seen in the analysis once the correction is made for his calculation error regarding conversion from cubic feet per second (a flow rate) to acre-feet (a volume).

2-8 Regarding the Appellant's assertion that sufficient information was not included in the Draft or Final EIR related to the Raymond Basin, this statement is inaccurate. As stated in Section 15064(b)(1), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.

The Draft EIR and Final EIR clearly set forth this factual data, as summarized below:

<u>Brief Summary of Draft EIR, Section 4.5, Hydrology and Water Quality (Threshold 4.5b):</u>

- Under the current conditions, the City can divert an average of 2,045 AFY. Under the proposed Project conditions, the City could divert approximately 3,080 AFY Therefore, the Project would add approximately 1,035 AFY of diverted flows into the spreading basins as a result of diverting water from stream flows between 25 cfs and 100 cfs. The proposed Project would increase Arroyo Seco diversion almost exclusively during wet winter months with high stream flows.

- The 1974 Amendment to the Raymond Basin Judgment allows for surface water rights holders to recharge the groundwater with their assigned surface water flows by spreading for percolation in spreading grounds, and to later extract a percentage of the recharged water (PWP currently receives 60-80% pumping credits for water spread, depending on where the recharge occurs). The remaining portion of the water recharged in spreading basins may not

be pumped from the aquifer. (Therefore, between 40-20% of this percolated water remains in the groundwater basin.)

- The proposed expansion of the spreading basins in Area 3 would increase annual percolation into the Monk Hill Subarea beyond the current condition. The proposed increase in spreading basin size to 16 acres (from the existing 13 acres), would be large enough to percolate approximately 22 cfs at a percolation rate of 2.7 ft/day. A percolation rate of 3.1 ft/day would be required to accommodate the full 25 cfs within these 16 acres of spreading basins, which is anticipated to be achievable. With an improved design at the intake, construction and operation of the new sedimentation Basin A, and proper annual maintenance to remove fine sediments accumulating in the basins, the management of sediment will be improved and percolation rates are anticipated to be adequate to achieve the allocated 25 cfs.

- The proposed expanded basin size and potentially increased percolation rates would allow for PWP to divert and recharge its 25 cfs surface water rights to a fuller extent. More surface area available for spreading and percolation, combined with more water available for spreading, directly results in more groundwater recharge. Thus, the proposed Project would result in a net benefit for groundwater supplies within the Raymond Basin.

In response to comments raised on the Draft EIR, additional discussion was provided in the Final EIR, as summarized below. None of the additional information would constitute "significant new information" as defined in Section 15088.5 of the CEQA Guidelines. Importantly, recirculation of an EIR is not required simply because new information is added. Because none of the information provided deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the proposed Project or a feasible way to mitigate or avoid such an effect, recirculation is not warranted or appropriate.

<u>Brief Summary of Final EIR, Topical Response HYD-1:</u>

- The Devil's Gate Reservoir is not capable of holding the totality of the flows it receives from the Arroyo Seco and other contributing sources of flows in an average year. If the proposed increment in diversion water were to remain in the Arroyo Seco stream channel during medium and high-flow events, the additional water would contribute to flows that reach the Reservoir and are discharged from the Dam.

- Based on daily outflow records for the Devil's Gate Dam for the years 1989 to 2019, which includes wet, average and dry years, outflow released from Devil's Gate Dam averaged 11,389.8 AFY. This amount exceeds the average stream flow of Arroyo Seco as measured at the USGS gauging station located upstream of the existing diversion structure of 6,890 acre-feet (see page 4.5-20 of the Draft EIR). This clearly shows that additional sources contribute significantly to stream flow downstream of the existing diversion structure.

- Based on historical observations, the Devil's Gate Reservoir could be filled to its projected post-sediment removal capacity without contribution from the Arroyo Seco above the diversion structure and would still require annual releases from the Dam.

- Further, it cannot be presumed that all water held behind the Dam would percolate. Ponding behind Devil's Gate Dam is controlled by Los Angeles County Department of Public Works (LACDPW) and it is their observation that percolation behind the Dam is ineffective due to the continual buildup of excessive fines in this highly sediment-laden area of the Reservoir. For this reason, Los Angeles County has considered plans to pump water from behind the Dam into

spreading basins to increase percolation to the underlying aquifer in the Monk Hill Basin. This potential project is described in Section 3.5, Cumulative Impacts of the Draft EIR as the "LACFCD Pumpback/Intake at Devil's Gate to Eaton Canyon" project. Further, it should be noted that the LACDPW assigns a value of 0 cfs for groundwater infiltration behind Devil's Gate Dam in its Devil's Gate Stormwater Capture Model. This model is currently being used to size the facilities proposed for the Pumpback project. While in reality percolation is not zero, the LACDPW's assumption for their model underscores their experience of insignificant percolation behind the Dam.

In response to the Final EIR, the Appellants submitted additional comments in anticipation of the Hearing Officer's meeting. Their comments and analysis related to the Raymond Basin supplies was determined to be an inaccurate characterization of Project impacts, as summarized in Response 2-3 beginning on page 6 of the "Responses to Request for Appeal" dated March 2021 (Appendix C).

Further, regarding the request for additional analysis of the Raymond Basin, although groundwater levels in the Pasadena Subarea of the Raymond Basin have been in decline in recent years, the water levels in the Monk Hill Subarea (beneath the Project site) have experienced a general increase coinciding with the 1955 modification to the Judgment, and only saw significant decreases during what the National Oceanic and Atmospheric Administration has determined to be the driest 4-year period in California's recorded history. Although the Appellant has equated the decline to resumed pumping from the Monk Hill Wells after completion of the Monk Hill Treatment Plant in 2011, it should be noted that the rate of decline from 2011 to 2015 is similar to that experienced during a previous drought that started in 2006 while the City had already curtailed its pumping due to perchlorate contamination. This suggests that the rate of decline was influenced by drought more than by pumping. Regardless, the fluctuations in groundwater levels are not a subject of relevant study because, as shown through the Draft and Final EIR, the proposed Project would result in a beneficial impact to groundwater levels. CEQA does not require analysis of positive impacts to the environment.

In Ken Kules' March 17, 2021 "Comments for the Zoning Appeals Board March 18, 2021 Hearing," the Appellant continued to assert that there has been failure to address that the Project will have an adverse and significant impact on the Raymond Basin groundwater. In Response 2-1 above, as well as in Response 2-3 beginning on page 6 of the "Responses to Request for Appeal" dated March 2021, this comment has been addressed thoroughly, using the Appellant's own analysis and conservative underlying assumptions. The table with this analysis from Appendix C is replicated below. After correcting a simple math error in the Appellant's analysis (i.e., failing to convert from cubic feet per second [a flow rate] into acre feet [a volume] for the proposed Project condition), ***the quantified results show that the proposed Project would have a net positive effect on the Monk Hill Subbasin groundwater supplies***.

Updated Summary of Appellant's Calculations (Acre Feet per Year)

Summary	Appellant's Assumed Existing Conditions	Appellant's Modeled Project Condition	Corrected Modeled Project Condition
Diverted and Spread			
Baseline	1,973	1,973	1,973
Increment	0	1,104	1,104
Percolation behind Devil's Gate Dam (streambed and ponding)	1,047	424	841

New Groundwater Pumping (80% of increment)	0	(883)	(883)
Effect on Groundwater	3,020	2,618	**3,035**

The Appellants continue to use this miscalculation to assert an adverse impact when it has been repeatedly shown that, even under the conservative assumptions, there would be no significant impacts.

The Appellants continue to reiterate the same arguments that have been previously addressed. These include existing conditions that are thus not subject to CEQA analysis such as 60-80% water credits ratio, low-flow conditions, and provisions of the Raymond Basin Judgment.

The Appellants erroneously state that PWP has used only monthly data for analysis and that their analysis is more reliable and "granular" because of their use of daily values. While figures in the Draft and Final EIR use monthly displays of volumes of water that might be diverted by the proposed Project, these were based on an analysis of streamflow data reported by the USGS for the Arroyo Seco in 15-minute intervals. This data was summated for daily flow rates and displayed as monthly graphs for visualization purposes. In addition, PWP repeated the Appellant's daily analysis, again using the conservative estimates for percolation rates and additional flows, determining that the Project would have a net positive effect on groundwater supplies.

As stated previously, recirculation of an EIR is not required simply because new information is added. Because none of the information provided deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect, recirculation is not warranted or appropriate.

2-9 Regarding the commenter's assertion that there could be an adverse impact on the Raymond Basin as a result of the proposed Project, please refer to the responses above. This potential impact "has not been acknowledged or addressed" and "mitigation has not been proposed" because the proposed Project would result in a beneficial impact to groundwater supplies. CEQA does not require mitigation for projects that do not result in significant adverse environmental impacts.

2-10 This comment is almost a verbatim repetition of the Comment 2-3 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021.

In summary, the Appellants state that the Hearing Officer failed to make a rational judgment regarding their comment on groundwater impacts. However, to the contrary, the Hearing Officer had all information presented in the "Responses to Request for Appeal" dated March 2021, including Response 2-3 which provided substantial evidence to dismiss the assertion of groundwater impacts. The Appellants also state that the Hearing Officer failed to consider the impact of ponding water behind the Dam, as required by the Settlement of the Arroyo Seco Foundation vs. Los Angeles County Flood Control District. However, to the contrary, the Hearing Officer had all information presented in the "Responses to Request for Appeal" dated March 2021, which included Response 2-2 that provided substantial evidence to dismiss the settlement agreement as largely inconsequential to the proposed Project. The Hearing Officer explicitly stated his understanding of the nature of the Project and the issues raised at the hearing prior to certifying the Final EIR.

2-11 In summary, the Appellants state that the Project does not comply with the Fish and Game Code. This comment is almost a verbatim repetition of the Comment 2-4 provided in the "Reason for Appeal of

Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021.

For additional context, the portion of the Final EIR that is referred to by the Appellants on page 2-177 of the Final EIR is included below in totality (emphasis added):

> Furthermore, as described in Section 4.2, Biological Resources of the Draft EIR, the proposed Project has been designed in consideration of a future condition where fish are re-established in the Arroyo Seco. Such a condition for the future would occur when/if connectivity is re-established for passage through Devil's Gate Dam (i.e., removal of the dam or construction of a fish-ladder), connecting the upper and lower Arroyo Seco to the Los Angeles River and ultimately, the Pacific Ocean. If access for fish is re-established, the Project would accommodate a future bypass fishway and maintenance of minimum flow conditions to allow for upstream passage while the diversion is in operation. Until this potential future scenario, the proposed Project design may not comply with Fish and Game Codes 5901 and/or 5937. ***Therefore, MM-BIO-7 (Native Resident and Migratory Fish Monitoring Plan preparation and implementation) is provided to allow for the future use of the Study Area as a movement corridor for native resident or migratory fish species.***

Additionally for context, Fish and Game Code 5901 states "Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream… any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream", and Code 5937 states "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam."

It is important to understand that the proposed Project is being designed ***for the protection of fish and that of primary concern for the diversion is minimizing the existing adverse effects on native fish.*** The proposed Project would improve conditions by adding fish screens to the intake that do not currently exist and replacing the existing fixed diversion dam that is a barrier to fish passage with an operable gate. Additionally, a roughened channel would be added by the Project for fish passage. While conditions would be improved, it is also important to understand that present conditions in the Arroyo Seco and downstream include a number of limiting factors that will remain unfavorable to fish. These include: 1) low to zero stream flows during the late summer/early fall months, 2) Devil's Gate Reservoir where fish may be lost because flows spread out from the stream or due to unsuitable habitat conditions, and 3) channelized sections of the Arroyo Seco and Los Angeles River, Devil's Gate Dam, Brown Mountain Dam, and other anthropogenic barriers in between that prevent fish passage and anadromy, (i.e., fish migration with access to the ocean). For this reason, measures that would mitigate for the Project's adaptation to the existing condition have been included in the EIR, and approval of the proposed Project includes the mandatory implementation of MM-BIO-7. This measure is required to reduce potential impacts to less than significant and would ensure that the proposed Project would function in compliance with Fish and Game Codes 5901 and/or 5937. MM-BIO-7 is required to be developed in consultation with CDFW, and sets forth clear performance standards to ensure less than significant impacts.

Regarding the Appellant's reference to a CDFW comment on page 2-23 of the Final EIR, the Final EIR included a revision to augment MM-BIO-7 to respond to comments raised. Subsequently, as stated in CDFW's comment letter dated January 6, 2021, "CDFW looks forward to coordinating with Pasadena

Water and Power on diversion structure and the Monitoring Plan to ensure compliance as set forth by Fish and Game Code 5901 and 5937."

2-12 Regarding the Appellant's assertion that the environmental review should consider lack of availability of flows during the dry months, the request is contrary to the requirements of CEQA. As stated in Section 15125 of the CEQA Guidelines, generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions. Regarding the Appellant's request for seasonal flows in the dry season, as detailed throughout the Draft EIR, including in the Project Description and in Section 4.5, Hydrology and Water Quality (pages 4.5-20 to 4.5-21), the existing condition is that the City currently diverts all low flows, which includes essentially all flows during the dry season of the year, and a moderate proportion of stream flows during the wet season of the year. These diversions are generally limited to stream flows less than 25 cfs in the current condition. Under the proposed Project conditions, diversions would be able to continue for stream flows up to approximately 100 cfs. ***Under low-flow conditions, stream flows would be diverted according to the existing operational schedule (i.e., existing conditions)***. Since there is little to no change between existing operations and the Project's continued diversion of low flows, the suggestion of releasing seasonal flows during the dry season in the form of minimum flows is unnecessary and would not avoid any significant environmental impacts of the proposed Project.

2-13 Regarding the Appellant's comment related to consideration of climate change, this topic was thoroughly assessed in Section 4.4, Greenhouse Gas Emissions of the Draft EIR, and impacts were determined to be less than significant with no mitigation required. As articulated in the *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, Case No. S213478, only when a proposed project risks exacerbating environmental hazards or conditions that already exist, must an agency analyze the potential impact of such hazards on future residents or users. It is the project's impact on the environment – and not the environment's impact on the project – that compels an evaluation of how the future could be affected by exacerbated conditions. In the case of the proposed Project, global climate change is an existing condition that would not be exacerbated by Project implementation. If future effects of climate change on the hydrology and runoff within the Arroyo Seco result in decreased stream flows, then the proposed Project would realize a reduction in diversions and subsequently reduced groundwater recharge. Similarly, if future effects of climate change result in increased stream flows, then the proposed Project would result in potentially increased diversions up to the maximum studied in the Draft EIR. Either way, the proposed Project would not result in cumulative impacts that would exacerbate climate change.

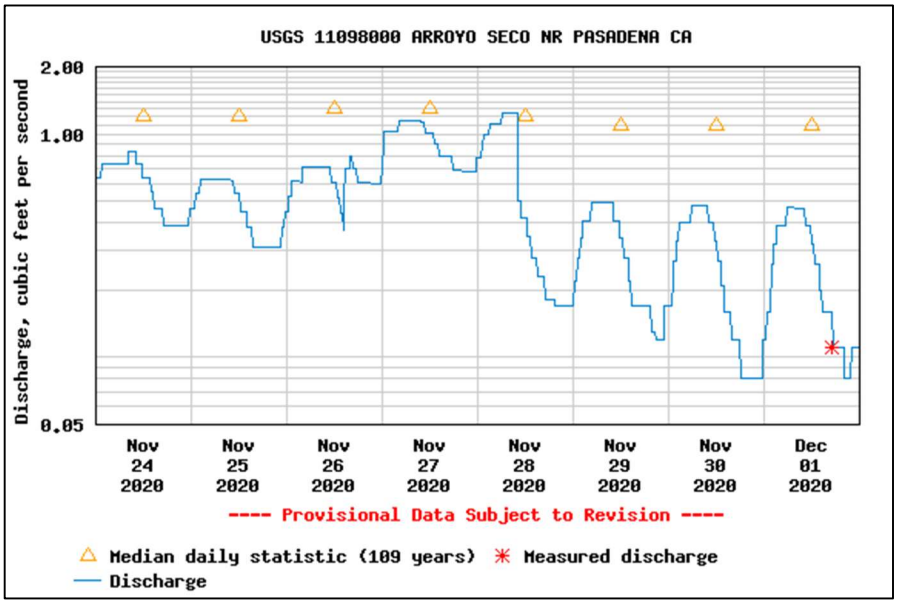
2-14 This comment is almost a verbatim repetition of the Comment 2-5 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021 (Appendix C).

Subsequent to the preparation of that document, a social media posting on Facebook dated April 20, 2021 stated that the presence of a steelhead trout* was confirmed in the Arroyo Seco in a pool at Brown Mountain Dam, which is an 80-foot high impassable barrier to upstream fish movement. It is anticipated that the Appellants will characterize this information as "significant new information" pursuant to Section 15088.5 of the CEQA Guidelines, and use it to point to the inadequacy of the Project's present/absence site survey and historic survey results.

However, PWP has been informed by CDFW that the agency "…translocated (planted) the native coastal rainbow trout to the Arroyo Seco. They were released below Brown Mountain Dam, above and below

Gould Mesa Campground, and above the diversion structure over a 2.5 mile stretch of the stream. Fish surveys will be conducted by CDFW in the summer and/or fall of this year…". As discussed in the "Translocation of Rainbow Trout to the Arroyo Seco from the Bobcat Fire Burn Area" Memorandum (see Appendix D) prepared in the fall of 2020 by CDFW, a total of 469 rainbow trout were rescued from the West Fork San Gabriel River and Bear Creek and were released in the Arroyo Seco. Due to habitat availability, only fish of less than 5 inches in size were placed in the Arroyo Seco. The translocation was performed on November 24, 2020 and December 1, 2020 as part of a plan to rescue fish from the drying and post-Bobcat Fire conditions in the West Fork San Gabriel River.

The rainy season of 2020-21 is one of the driest in recent history and as a result, flows within the Arroyo Seco are well below average. At the time of the relocation, the USGS gage readings from the Arroyo Seco were very low (i.e., well below 1 cfs), as shown below. The flows on May 6, 2021 were 0.4 cfs at the USGS stream gauge upstream of the project.[1]



Source: USGS 2021

Although the Arroyo Seco Foundation (ASF) erroneously identified the fish as steelhead in the social media post, the presence of coastal rainbow trout in the Arroyo Seco above the diversion would not alter the analysis or conclusions of the Draft EIR or Final EIR, and no new significant impacts would occur as a result of this information, for the following reasons:

- As stated in Section 15125 of the CEQA Guidelines, generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions. The Draft EIR appropriately characterized the conditions related to the presence of fish at the time of the issuance of the NOP and based on the results of presence/absence site survey and historic survey results. As stated in the Fisheries Review Letter authored by Dr. Camm Swift included as Appendix B-1 of the Draft EIR, there were no fish known to inhabit the Arroyo Seco above Devils Gate Dam,

[1] U.S. Geologic Survey. 2021. Current Conditions for USGS 11098000 Arroyo Seco NR Pasadena CA stream gauge, online viewer. Accessed May 6, 2021. https://waterdata.usgs.gov/monitoring-location/11098000/#parameterCode=00060&period=P7D

according to surveys and observations made by National Oceanic and Atmospheric Administration Steelhead Recovery coordinator Mark Capelli in August 2018 (email dated August 22, 2019) and by CDFW Fishery Biologist John O'Brien (email communication dated August 22, 2019). Additionally, as stated in the "Translocation of Rainbow Trout to the Arroyo Seco from the Bobcat Fire Burn Area" Memorandum (see Appendix D), the agency noted that the Arroyo Seco has historically supported a rainbow trout population, but that "…fish have not been observed during CDFW reconnaissance level and electrofishing surveys." ***This provides further evidence, supported by CDFW's own surveys, that there were no fish in the Arroyo Seco at the time of the preparation of the Draft EIR.***

- The Draft EIR was prepared in a manner that clearly articulated a condition in which fish populations would be located within the Arroyo Seco at a future time. As stated in the Project Description of the Draft EIR, Section 3.1.1, page 3-2:

  > "The proposed Project's design for the new diversion weir/intake structure would be protective of future fish while taking into account the Project's existing setting, including conditions that are currently unfavorable to fish and their survivability. Specifically, if fish were present in the Arroyo Seco, downstream fish passage during current diversion operations would result in fish being transported to the downstream reach and Devil's Gate Reservoir area in low flows. Under current conditions, fish may perish in this reach due to isolation or stranding in low or zero flow periods. As such, the proposed Project features include (1) a fish screen to prevent future fish from entering the intake, and (2) an engineered roughened channel downstream of the new diversion structure and operable weir to allow return passage upstream should fish pass during periods of high flows."
  >
  > "The intake approach channel would be angled and taper to an off-channel screen bay, allowing for: 1) sediment to be flushed through the bay, 2) protection of the screens, and 3) potential adaptability in future conditions for downstream fish passage. The tapered bay would end at a 12-inch diameter slide gate and flushing pipe for removing sediment and small debris build-up in front of the screens. Design of a drum screen or a vertical screen with automatic brush cleaning system would follow CDFW published design criteria to prevent future fish populations from entering into the conveyance system and becoming stranded in the spreading basins."

- Fish movement and impediments to movement were analyzed based upon current conditions, as stated in Section 4.2, Biological Resources of the Draft EIR, page 4.2-32:

  > "If fish were present in the Study Area in the current condition, the current diversion operations which lacks a fish screen, would result in fish being transported downstream to be potentially stranded in isolated pools of water (the spreading basins or in the reach between the diversion and the JPL Bridge), or lost when passed into Devil's Gate Reservoir where flows spread out and habitat is unsuitable. The loss of connectivity and isolation of pools occurs primarily during the late summer/early fall months when there are periods of low to zero flows in the stream above the diversion (stream flows are below 1 cfs 35% of the year, and drop to zero about 10% of the time). This lack of water is the primary barrier for fish movement from about the JPL Bridge upstream where substrate and cover is good, but water is lacking. Below the JPL Bridge the flatter sediment load of the reservoir is open to solar heating, is dominated by finer substrates, and cover and pools are rare or absent."

- As stated in Section 4.2, Biological Resources of the Draft EIR, page 4.2-33:

  > "For a future condition where fish return or are reintroduced to the Arroyo Seco under present channel conditions, there are still several barriers to fish migration and survival that influence proposed operations. As such, operations would not be altered from those proposed under the present condition, i.e., fish would continue to be excluded from passing downstream the diversion and no minimum in-stream flows would be proposed. Under these conditions, the monitoring program would continue and would include a program to rescue fish between the diversion and JPL Bridge. During high flows when the gate is lowered, a roughened channel section downstream will allow upstream passage of future fish. Roughened channels are an accepted method of providing passage for steelhead trout in CDFW's Salmonid Stream Restoration Manual (CDFG 2010), requiring site specific design and review."

- Non-anadromous rainbow trout are not a federal- or state-listed (i.e., threatened or endangered) species per the Endangered Species Acts and are not a special-status species per the CDFW's Special Animal List. The rainbow trout are genetically identical to the steelhead; however, importantly, only become a protected species when migration becomes possible and connection to the ocean waters is available. This would require the removal of several substantial barriers to migration, including channelized sections of the Arroyo Seco and Los Angeles River, Devil's Gate Dam, Brown Mountain Dam, and other anthropogenic barriers in between that prevent fish passage and anadromy, (i.e. fish migration with access to the ocean). The Arroyo Seco has not been identified as a "Trout Waters with Special Fishing Regulations" by the CDFW and anyone with a fishing license could fish, capture, and kill any of these translocated fish within the Arroyo Seco (between the last Saturday in April through November 15), as they are not a protected species.[2] Therefore, for the purposes of compliance with CEQA, any construction-related or operational direct and/or indirect impacts to these relocated fish would be considered less than significant because they are not special status fish. If CDFW directs PWP to implement measures to protect the rainbow trout during construction or operational activities, such protection measures would be mandated through the Streambed Alteration Agreement permitting process with the agency.

- Finally, MM-BIO-7 was prepared to account for the presence of future fish populations. As written in the Draft EIR, and augmented through the Final EIR, MM-BIO-7 states:

  > MM-BIO-7: Prior to the commencement of earthmoving within Area 2 for the demolition of the existing diversion/weir structure, the City shall develop a Native Resident and Migratory Fish Monitoring Plan (Monitoring Plan), in consultation with CDFW. This Monitoring Plan shall set forth annual monitoring requirements to determine if native fish species or migratory fish populations are present within an approximate 3,500-foot section of the stream (about 1,500 feet upstream of the diversion/weir structure to the abandoned headworks (Area 1) and 2,000 feet downstream to the JPL Bridge at the mouth of the canyon). The Monitoring Plan will include the results of the baseline conditions for fish, which shall be conducted prior to commencement of earthwork in Area 2 within the 3,500 section of the stream using the survey methodology described in the 2010 California Salmonid Stream Habitat Restoration Manual (4th Edition). Annual survey protocols shall be established to the satisfaction of CDFW and set forth

[2] CDFW. 2021. Freshwater Sport Fishing Regulations (online viewer) for the Arroyo Seco watershed. Accessed May 2021. https://apps.wildlife.ca.gov/sportfishingregs/#skip-to-regs.

in the Monitoring Plan. If the results of the annual surveys reveal a positive presence of native fish, the Monitoring Plan shall set forth thresholds for determining the permanency of the population, and whether or not connectivity both upstream and downstream of the diversion structure is appropriate and in the best interest of the long-term survival of an established native or migratory fish population, given hazards associated with stranding downstream. Until passage for steelhead is restored to the Arroyo Seco, the City shall implement a program to rescue fish between the diversion structure and the JPL Bridge. If rescue is determined to be ineffective or impractical, then the City shall modify its operations to accommodate passage. At such time as steelhead passage is restored, the City shall alter either the design of the diversion/weir structure, the operational methods of the diversion/weir structure, or both to satisfy Fish and Game Code Sections 5901 and 5937.

Therefore, the potential for the presence of fish populations was entirely anticipated by the proposed Project and assessed in the Draft EIR. As such, the finding of a fish at Brown Mountain Dam after CDFW's translocation does not result in "significant new information" that would require recirculation of the Draft EIR because the presence of fish would not: (1) result in a new significant environmental impact; (2) result in a substantial increase in the severity of an environmental impact; (3) require a new project alternative or mitigation measure; or (4) affect the meaningful public review of the Draft EIR.

*It should be noted that identification of the fish as steelhead is inaccurate. As explained previously, existing conditions in the Arroyo Seco and the Los Angeles River include a number of limiting factors that prevent fish migration and anadromy for rainbow trout.

2-15 This comment is almost a verbatim repetition of the Comment 2-6 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021. Only the statement regarding the eDNA results from 2019 that indicated the presence of California newt was new. As stated in Section 4.2.2 of the Final EIR, California newt was assumed to be present based upon previous observation within or adjacent to the study area. As such, potential impacts to the species were analyzed and mitigated for by the requirements of MM-BIO-1.

2-16 This comment is almost a verbatim repetition of the Comment 2-7 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021. No additional response is warranted.

2-17 This comment is almost a verbatim repetition of the Comment 2-8 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021. No additional response is warranted.

2-18 This comment is almost a verbatim repetition of the Comment 2-9 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021. No additional response is warranted.

2-19 The Board of Zoning Appeals (BZA) reopened the public hearing and allowed the attorney representing PWP to address the issue of potential recirculation of the EIR, where she quoted directly and accurately from State CEQA Guidelines Section 15088.5 and presented arguments on behalf of PWP. At the conclusion of her remarks, the Chair of the BZA asked if there were additional questions or comments

from the BZA members, and when none were presented, the BZA then re-closed the public hearing. Prior to the hearing, the Appellants asked to present slides, however BZA remote hearing procedures at the time did not allow for appellant presentations to be presented via ZOOM. As an alternative, Appellants were asked to provide their slides of the presentation in advanced of the meeting so that they could be provided to the BZA for review and so that Appellants could reference them during the meeting. Appellants took advantage of this opportunity. Additionally, City Planning staff did not say at the hearing that PWP "played a major role in shaping and writing their staff report." Even if that had been said, it is incumbent upon Planning staff to present an accurate report, and therefore incumbent upon them to ask any applicant for clarification or information necessary to do so.

2-20 This comment is almost a verbatim repetition of the Comment 2-10 provided in the "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222" dated January 19, 2021 and responded to in the "Responses to Request for Appeal" dated March 2021.

In response to the Appellant's additional text regarding the need for a "fair and science-based process", the Draft and Final EIR for the proposed Project was prepared in compliance with CEQA and the CEQA Guidelines and the conclusions of significance were based on substantial evidence. There has not been any "significant new information" presented through any comments received by the City, as defined by CEQA Guidelines Section 15088.5, that would require recirculation of the CEQA documentation.

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Appendix A

Request for Appeal Application

Comment Letter 1

PASADENA PERMIT CENTER
www.cityofpasadena.net/permitcenter

REQUEST FOR APPEAL

APPLICATION INFORMATION

Project Address: 3420 and 3500 North Arroyo Blvd

Case Type (MCUP, TTM, etc.) and Number: Modification to CUP #6222 and FEIR - Arroyo Seco Canyon Project

Hearing Date: March 18, 2021 Appeal Deadline: March 29, 2021

APPELLANT INFORMATION

APPELLANT: Arroyo Seco Foundation et. al. Telephone: [ ] 626 639-4092

Address: 539 E. Villa St. #2 Fax: [ ]

City: Pasadena State: CA Zip: 91101 Email: tim@arroyoseco.org

APPLICANT (IF DIFFERENT): City of Pasadena Water & Power Department

I hereby appeal the decision of the:

- [x] Hearing Officer
- [ ] Zoning Administrator
- [ ] Design Commission
- [ ] Director of Planning and Development
- [ ] Historic Preservation
- [ ] Film Liaison

REASON FOR APPEAL

The decision maker failed to comply with the provisions of the Zoning Code, General Plan or other applicable plans in the following manner (use additional sheets if necessary):

The Arroyo Seco Foundation, a 501(c)3 non-profit corporation, together with Pasadena Audubon Society, Hugh Bowles and Ken Kules, file this appeal of the Board of Zoning Appeals Modification to CUP #622 and FEIR and the adoption of the CEQA findings and Mitiigation Program for the proposed ASCP. The BZA failed to consider significant gaps and omission of important inforamtion regarding hydrology and environmental protections in the FEIR that have deprived regulatory agencies and the public of the opportunity to understand the project and the changes in it. The approvals should be withdrawn. The FEIR should be revised to respond to the concerns raised and recirculated to allow regulatory agencies and the public to comment on it. See also attached statement. 1-1

Timothy J. Brick
Signature of Appellant

March 29, 2021
Date

* OFFICE USE ONLY

PLN # _____ CASE # _____ PRJ # _____

DESCRIPTION _____

DATE APPEAL RECEIVED: _____ APPEAL FEES: $ _____ RECEIVED BY: _____

APP-RFA Rev: 1/18/07

PLANNING AND DEVELOPMENT DEPARTMENT
CURRENT PLANNING SECTION

175 NORTH GARFIELD AVENUE
PASADENA, CA 91101

T 626-744-4009
F 626-744-4785

Appendix B

Reason for Appeal of the Board of Zoning Appeal's Determination Regarding FEIR and CUP #6222

Comment Letter 2

ARROYO SECO FOUNDATION

Reasons for Appeal Regarding BZA and Hearing Officer's Determinations Regarding FEIR and CUP #6222 - Arroyo Seco Canyon Project

The Arroyo Seco Foundation, together with Pasadena Audubon Society, Hugh Bowles, and Ken Kules join in appealing the Board of Zoning Appeal's Modification to Conditional Use Permit #6222 and Hearing Officer Paul Novak's previous Certification of the Final Environmental Impact Report (SCH #2014101022) and the adoption of CEQA Findings and a Mitigation Monitoring and Reporting Program for the proposed Arroyo Seco Canyon Project (the Project).

We believe the Arroyo Seco Canyon Project, as proposed, will have detrimental impacts on the habitat, wildlife and water resources in Hahamongna and the Arroyo Seco.

We urge the City of Pasadena to protect the natural character of our region's greatest environmental treasure by:

1. using a living stream to capture storm flows and protect precious habitat;
2. ensuring an adequate environmental flow for fish and wildlife during the dry season beginning in the late Spring; and
3. committing to a plan to stabilize and replenish the Raymond Groundwater Basin.

Please review the issues we have detailed below that we believe require a recirculation of the EIR.

2-1

- **Concerns of Responsible Agencies**

Public Resources Code section 21080.4(a) clearly requires that information specified by a responsible agency, such as the CA Department of Fish and Wildlife, "shall be included" in the EIR. CDFW provided specific directions to PWP regarding the inadequacy of surveys conducted for fish and species of concern in their comments on the DEIR and the FEIR in the letter of January 6, 2021 that have not been noted or responded to in the FEIR, by the Hearing Officer or by the Board of Zoning Appeals.

2-2

It is not sufficient to hold that such directions and requirements will be handled during the permitting process because CEQA requires that responsible agencies should be able to rely on the evidence and measures contained in the FEIR for their regulatory purposes.

2-3

- **Hydrology Impacts**

Evaluation of the ASCP on hydrology and The Raymond Basin requires quantitative analysis of three conditions:

- The amount of "new water" that will be captured by the diversion that would not otherwise have percolated in the stream or behind Devil's Gate Dam 2-4
- The amount of pumping credits that the ASCP will "earn" based on the Raymond Basin Judgment and rules established by the Raymond Basin Management Board 2-5
- The efficiency of spreading basins compared to the conservation that naturally occurs in alluvial streamzones like Hahamongna. 2-6

If the amount of pumping credits exceeds the "new water" from the ASCP, there would be an adverse impact on the Raymond Basin. The Draft EIR makes no effort to address the first condition and the Final EIR attempts to address it in a vague analysis but does not quantify the amount. No effort is made by the DEIR or FEIR to quantify the pumping credit amount. 2-7

CEQA requirement regarding recirculation of the Draft EIR

The following CEQA language informs decisions regarding adequacy of a **Draft EIR** (emphasis added): 2-8

> 15088.5. RECIRCULATION OF AN EIR PRIOR TO CERTIFICATION
>
> (a) A **lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review** under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. **New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project** or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. **"Significant new information" requiring recirculation include, for example, a disclosure showing that:**
>
> > (4) **The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded**.

In this case, it is clear that sufficient information was not included in either the Draft or Final EIRs to provide for meaningful public review and comment of the impacts on the Raymond Basin. The Draft EIR must be recirculated as required by CEQA Section 15088.5.

- **Failure to address that there will be an adverse and significant impact on the Raymond Basin groundwater**. 2-9

Ken Kules' comments on the FEIR indicate that there could be an adverse impact on Raymond Basin groundwater as a result of ASCP operations. That impact has not been acknowledged or addressed by the Hearing Officer or BZA, and mitigation has not been proposed. The analysis

discussed in Mr. Kules' FEIR comments on pp. 11-13 concludes that the adverse impact is significant and a Finding of Overriding Considerations is required for the ASCP to proceed. The Hearing Officer failed to make a technically-based rational judgment concerning the validity of the City's assertion that Mr. Kules' comment on the FEIR (p.11) is "inaccurate." Without providing substantial reasons, the Hearing Officer accepted the City's dismissal of Mr. Kules' analysis. This, despite Mr. Kules' rigorous granular analysis and modeling of likely conditions.

In addition, the Hearing Officer did not provide substantial justification for accepting the City's disregard for the changed operation of Devil's Gate Dam and reservoir regarding the impact of ponding of water behind the dam during the Spring as required by the settlement of ASF vs. Los Angeles County Flood District, the Hahamongna sediment management program.

2-10

- **Failure to Provide for Fish Passage or Adequate Streamflow to Accommodate Potential Fish Populations.**

  The FEIR concedes that the project fails to comply with Fish & Game Code sections 5931 and 5937, which require that free passage over or around any dam as well as sufficient streamflow be allowed to pass over, around or through a dam to accommodate "any fish that may be planted or exist below the dam." (FEIR at 2-177.)

  The EIR takes the position that compliance with sections 5901 and 5937 is contingent upon the City locating native fish within 1,500 feet upstream to 2,000 feet downstream of the Project Site. (DEIR at ES-18.) The California Department of Fish & Wildlife, however, found that the City's finding is specious and is based upon an inadequate survey that fails to comply with California regulatory requirements (FEIR at 2-23). The Project clearly violates sections 5931 and 5937 which require that passage and streamflow be adequate for any fish, native or otherwise, that may exist downstream of the dam irrespective of whether the City's perfunctory search of them may happen upon one.

  2-11

  The environmental review should consider that the lack of any consideration of seasonal flow availability during dry months and the taking of water that is already limited in dry months by PWP diversions imperils fish at their most vulnerable period.

  2-12

  It is also concerning that the FEIR does not consider that rapidly changing climate conditions are likely to exacerbate the dry conditions for fish and aquatic species.

  2-13

- **Failure to include information lawfully required Information in the FEIR about the Potential Presence of Fish in the Arroyo and to Support its Finding that No Fish are in the Arroyo with Substantial Evidence**

  The Arroyo Seco Foundation and others who commented in the FEIR noted the glaring deficiencies in the FEIR's fish information and interpretation of the California Fish & Game

  2-14

Code (ASF p9). As the California Department of Fish & Wildlife notes, surveys were only conducted for southern steelhead and rainbow trout and not for any fish populations in general. (FEIR at 2-23.) In addition, California Department of Fish & Wildlife found that the methods utilized to conduct the wildlife surveys were inadequate and that the methods utilized by the City "can miss fish that may be hiding between boulders, below undercut banks, or in shadowed areas of the stream." (*Id.*) Neither the Hearing Officer nor the BZA, however, noted these comments, or questioned City staff about them, or responded to them in any way.

Failure to conduct adequate surveys for wildlife is more than just an omission of information. It represents a failure to adequately describe an environmental baseline, as well as a failure to supply substantial evidence to support the City's finding that there are no fish in the Arroyo.

MM Bio-7 has been substantially revised in the FEIR, but the measure misstates CA Fish & Game Code 5932 and 5937, narrows the requirements contained therein, and sets infeasible conditions for a purported future compliance.

2-14 Cont.

Neither the hearing officer or the BZA discussed these concerns in their decisions. Resolution No. 2021-01 says that the evidence considered "included the Final EIR, including the public comments about environmental impacts that were made on the Draft Environmental Impact Report prepared for the Project" but does not cite consideration of comments made on the FEIR or responses to them.

The FEIR Deprived the Public of a Meaningful Opportunity to Comment Upon Changes in the Project, Environmental Setting, Mitigation Measures and Other Critical Data.

The FEIR makes numerous changes to the EIR including modifying "areas of known controversy," project objectives, new and previously undisclosed biological impacts to special status species, as well as new mitigation measures that could have undisclosed environmental impacts by themselves. (FEIR 3-1 – 3-12). In addition, the FEIR modified the environmental setting, noting previously undisclosed information concerning cultural resources on the Project Site.

Of special significance is that the FEIR added a whole new area of controversy as to whether "percolation rates in the spreading basins are poor." The efficacy and efficiency of spreading basins as a means of recharging groundwater resources goes to the core project objectives, and the FEIR must be recirculated with information as to the City's analysis regarding the percolation rates in spreading basins.

2-15

The FEIR fails to note recent sightings of a family of the endangered Least Bell's vireo in the downstream area that will be impacted by increased diversions. The FEIR does not note the presence of an entirely new sensitive status species, mountain lion, which demonstrates that the FEIR omitted crucial information that was required to be included in the Draft EIR regarding the environmental baseline. In another development, eDNA results in 2019 discovered the presence of the California Newt, another species of special not found in the EIR survey. These findings also require recirculation due to modifications in the environmental setting. (FEIR 3-2 – 3-3.) 2-16

The FEIR also adds additional mitigation activities that require environmental analysis. MM-BIO-4 mentions the establishment of white alder-California sycamore woodland in Area 1 without describing or analyzing the activities necessary to establish this particular habitat, activities that could have significant environmental impacts. MM-BIO-6 mentions the establishment of jurisdictional waters within Area 1, additional activities that could have significant environmental impacts that are not described in the current FEIR. 2-17

The only remedy for these failures is recirculation of the EIR with regard to these issues.

Mr. Kules raised the point with regard to CEQA Section 15088.5 requirements in his comments on the FEIR that "*the California Environmental Quality Act (CEQA) requires that the EIR be recirculated to provide opportunity to disclose the impacts."*

Section 21092.1 of the California Public Resources Code requires that "[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 … but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in order to give the public a chance to review and comment upon the information. (CEQA Guidelines § 15088.5.) 2-18

Significant new information includes "changes in the project or environmental setting as well as additional data or other information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." (CEQA Guidelines § 15088.5(a).) Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed," as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (*Id.*)

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."].) If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

The Hearing Officer's failure to discuss the issues raised here and BZA's subsequent action have resulted in a CEQA administrative record that is sorely lacking, and an EIR that must be recirculated.

2-18 Cont.

Denial of Administrative Due Process

At the hearing before the Board of Zoning Appeals, Assistant City Attorney Teresa Fuentes interceded improperly after the public hearing was closed to misstate CEQA requirements in a "successful" effort to bend the decision of Board. We appellants where not given the right to respond to her interpretation of CEQA and her misstatements as to whether we had offered alternatives for consideration. In that hearing, we were also denied other measures that were accorded to PWP, such as the opportunity to present slides illustrating our concerns and to respond and rebut statements at some length. It should also be noted that planning staff openly admitted that PWP had played a major in shaping and writing their staff report because of the "complexity of the issues." We appellants were given no such privilege regarding the development of a staff report that should have been an objective review of our concerns.

The inherent inequity of the process illustrates the one-sided, defensive nature of the FEIR review and the clear denial of due process to concerned citizens.

2-19

Conclusion

These significant gaps in the FEIR and the omission of important information have deprived the public of a meaningful opportunity to understand and comment upon the impacts of the Project and the changes in it. The Hearing Officer's determination and the findings of the BZA should be withdrawn. The EIR should be revised to respond to these concerns and other pertinent considerations and recirculated to allow agencies and the public to comment on the Projects and its impacts in a fair and science-based process.

2-20

References:

- Arroyo Seco Foundation Comments on ASCP FEIR
- Comments of Ken Kules on ASCP FEIR

Appendix C

Attachment H Responses to Request for Appeal" from the City's Staff Report dated March 18, 2021

ATTACHMENT H
RESPONSES TO REQUEST FOR APPEAL (DATED MARCH 2021)

Responses to Request For Appeal
Arroyo Seco Canyon Project Areas 2 and 3

Modification to Conditional Use Permit No. 6222
State Clearinghouse No. 2014101022

Prepared for:

City of Pasadena Department of Water and Power
150 South Los Robles Avenue, Suite 200
Pasadena California 91101

Prepared by:

DUDEK
38 North Marengo Avenue
Pasadena, California 91101

March 2021

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1. Introduction

A Draft Environmental Impact Report (Draft EIR) for the Arroyo Seco Canyon Project Areas 2 and 3 (Project or proposed Project) was distributed on Monday, June 15, 2020 to federal, State, regional, and local agencies and interested parties and was made available for a 46-day public review period until Friday, July 31, 2020. The Final EIR was prepared to respond to the comment letters that were received by the City of Pasadena on the Draft EIR. The City received comment letters from five agencies: United States Fish and Wildlife, California Department of Fish and Wildlife, California Department of Transportation, South Coast Air Quality Management District, and City of La Cañada Flintridge; three local groups: Arroyo Seco Foundation, Pasadena Audubon Society, and West Pasadena Residents Association; and eleven community members. Chapter 2, Responses to Comments, of the Final EIR, includes copies of all the letters received during the Draft EIR public review period, as well as responses to all comments received.

The proposed Project and Final EIR were presented to the Hearing Officer on January 6, 2021, where City staff recommended adopting a resolution to certify the Final EIR adopting findings, adopting the Mitigation Monitoring and Reporting Program (MMRP), adopting a Resolution adopting a Statement of Overriding Considerations and adopt the Specific Findings to approve the Modification to Conditional Use Permit (CUP) #6222. The proposed Project was approved that night by the Hearing Officer.

On January 19, 2021, a Request for Appeal was filed by the Arroyo Seco Foundation, together with the Pasadena Audubon Society, Hugh Bowles, Ken Kules, and Morey Wolfson to appeal the decision to certify the Final EIR. This document includes responses to the Request for Appeal Application (Appendix A) and the attached Reason for Appeal of Hearing Officer's Determination Regarding FEIR and CUP #6222 (Appendix B).

Table 1. List of Commenters

Comment Letter	Name	Location in Document	Date
1	Arroyo Seco Foundation et. al.	Appendix A: Appeal Application	January 19, 2021
2	Arroyo Seco Foundation et. al.	Appendix B: Appeal Letter	January 19, 2021

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2 Response to Request for Appeal

Appeal Letter #1

1-1 The "Request for Appeal" provides an overview of the Appellant's reasoning for appealing the Hearing Officer's decision to certify the Final EIR. This summary does not include any specific information to refute the analysis included in the Final EIR. Rather, an itemized listing of the Appellant's reasons are included as a statement attached to the appeal. This statement is titled "Reason for Appeal of Hearing Officer's Determination Regarding FEIR and Conditional Use Permit #6222 - Arroyo Seco Canyon Project" and is addressed below in Responses 2-1 through 2-10.

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3 Response to Reason for Appeal of Hearing Officer's Determination

Appeal Letter #2

2-1 The Appellants (i.e. Arroyo Seco Foundation, Pasadena Audubon Society, Hugh Bowles, Ken Kules, Morey Wolfson) state that the Hearing Officer failed to address comments raised on the Final EIR, which is interpreted by the Appellants to indicate a lack of understanding of the comments received by the City. However, to the contrary, the Hearing Officer made clear that he had thoroughly read the Draft EIR and Final EIR, including all comment letters received by the City leading up to, and during, the hearing. The Hearing Officer explicitly stated his understanding of the nature of the project and the issues raised at the hearing prior to certifying the Final EIR.

2-2 Regarding the comment that the Final EIR does not adequately consider the changed condition of the Devil's Gate Reservoir, this assertion is inaccurate. In the Settlement Agreement between the Arroyo Seco Foundation (ASF), the Pasadena Audubon Society and the Los Angeles County Flood Control District (LACFCD), signed on July 7, 2020, agreement 1.g. states:

> During the annual maintenance period (i.e. after the District's initial removal of 1.7 mcy of sediment), and unless otherwise required for safe dam operation, the District agrees to reduce the release of water from the dam ***after the storm season*** so that, to the extent feasible, a pool of water remains behind the dam until July first of that year.

While it is unclear what benefit the appellants believe will be realized by holding water behind the Devil's Gate dam, the following analysis demonstrates that the proposed Project will have little effect on this pool of water under the terms agreed upon by the LACFCD.

Per the LACFCD, the "storm season" is defined as October 15 through the following April 15; flows occurring during this period are thus excluded from any obligation within the Settlement Agreement. From data used to develop Table HYD-1 in Topical Response HYD-1 in the Final EIR, the Project is projected to divert less than 264 acre-feet out of a total additional annual average of 1,035 acre-feet (25%) during the months of April, May and June covered by the Settlement Agreement. These totals, however, include the first 14 days of April which are not subject to the Settlement Agreement. Analysis of daily Arroyo Seco stream flow data, considering only the 76 days between April 15 and June 30 of the last 31 years from the Arroyo Seco stream gage (USGS 110980) reveals that on average, the proposed Project would only divert an additional 105 acre-feet per year (AFY) during the Settlement Agreement period, or only 10% of additional Project diversions. According to the Los Angeles County Department of Public Works (LACDPW) stream gage below Devil's Gate Dam (F-277), the Dam has discharged on average 573 AFY during this same period, more than five-times the additional diversion that would result from this project. Thus, additional Project diversions would comprise only a small percentage in comparison with water discharged by Devil's Gate Dam during this period.

Over the past 31 years, only 66 days between April 15 and June 30 (the period affected by the Settlement Agreement) have had sufficient flow at the Arroyo Seco gage to be considered for additional diversion by the Project, an average of 2.1 days per year. This is equivalent to an occurrence of only 2.8% of all days covered by the Settlement Agreement period. During these 66 days, 44 have had no

discharge from Devil's Gate Dam. Only 8 of the past 31 years (none occurring within the past decade) have had at least one day within the Settlement Agreement period with sufficient flow to be considered by the Project, but which have also experienced discharge at the Devil's Gate Dam.

It should be noted that the LACDPW assigns a value of 0 cfs for groundwater infiltration behind Devil's Gate Dam in its Devil's Gate Stormwater Capture Model. As LACDPW has determined percolation behind the Dam to be ineffective, this model is currently being used to size the facilities proposed to pump water out of Devil's Gate Reservoir to infiltration basins so that it may percolate to the underlying aquifer in the Monk Hill Basin.

Additional analysis of the effects of the Settlement Agreement upon ponding need not be considered because of the unlikelihood of observing flows large enough to be affected by the Project within the 76-day period affected by the Settlement Agreement, the limited impact of Project diversions upon Devil's Gate discharge volume, and the insignificant Devil's Gate Dam infiltration rate.

2-3 Regarding the comment's assertion that the Project would have a significant impact on the Raymond Basin groundwater supplies, this assertion is inaccurate. The comment references a comment letter on the Arroyo Seco Canyon Project from Ken Kules dated December 31, 2020, which claims that the proposed Project will have a detrimental effect on groundwater recharge in the Raymond Basin. Mr. Kules argues that were it not for the increase in diversions proposed by the Project, this water would largely percolate in the natural stream bed and in the ponding behind Devil's Gate Dam. Included in his letter, Mr. Kules provides calculations based off of historic stream flow data at the Arroyo Seco stream gage (USGS 110980) to attempt to show that the proposed Project's diversion of surface water will result in less groundwater recharge than were the water left to flow in its natural stream bed.

To make this argument, Mr. Kules makes several erroneous assumptions:

- Assumption #1: A streambed percolation rate of 5 cubic feet per second (cfs) per mile.

This assumption is based off of a Phillip Williams & Associates (PWA) 2000 study that made assumptions from qualitative visual observations of the rate of leakage from streambeds, distances, and heterogeneity of the watershed. These assumptions were not supported by any quantitative measurements. Additionally, the presumption of a constant percolation rate overlooks any effects of soil moisture or pore saturation. While initial percolation rates in a dry porous media might be temporarily high, as the underlying vadose zone begins to saturate, percolation rates decline to a much lower steady-state. On January 18, 1999 when this estimate was made, no significant rainfall had occurred for more than a month. Streambed materials would have been dry and more receptive to percolation than under saturated conditions when pore spaces are filled. Mr. Kules extrapolated an assumed rate of infiltration from qualitative visual observations by PWA to define a quantitative infiltration rate of 5 cfs per mile for streambeds. There is no direct field measurement in the Arroyo Seco to substantiate this value.

- Assumption #2: Devils Gate Percolation between 24 cfs and 29 cfs

This assumption, estimated in the same PWA 2000 study, extrapolates the spreading basin percolation rates to the full Devil's Gate Reservoir. This estimation equates percolation in the spreading basins, which have historically received no more than 25 cfs of diversion flow, with that of Devil's Gate Reservoir, which received flows as high as 4,300 cfs in the year prior to this assumption. Such high flows would carry a heavy sediment load which would be ponded behind Devil's Gate Dam and could

significantly lower percolation rates through siltation and plugging of pore space. The PWA Study quotes the LACDPW as noting "…that while it is possible to control the level of sediment entering the existing Arroyo Seco Spreading Grounds by only diverting during times of relatively sediment-free flow, there is no way to control the level of sediment carried by flows that eventually pond at the dam." Even though LACDPW, as operator of the Devil's Gate Dam and Reservoir, plans regular maintenance to avoid large-scale sediment removal projects in the future, the purpose of this removal is for flood control and not for any expected increase in percolation. In fact, LACDPW has assigned a value of 0 cfs for groundwater infiltration behind Devil's Gate Dam in its Devil's Gate Stormwater Capture Model. As LACDPW has determined percolation behind the Dam to be ineffective, this model is currently being used to size the facilities proposed to pump water out of Devil's Gate Reservoir to infiltration basins so that it may percolate to the underlying aquifer. In summary, the underlying sediments beneath the reservoir are silt and silty-sand with lower infiltration rates compared to the gravelly sand at the spreading basins. This is corroborated by LACDPW's estimate of a low infiltration rate of 0 cfs at the reservoir to develop their project design to pump ponded water from the reservoir to the spreading basins.

- Assumption #3: Constant 4 cfs contribution to stream flow from sources between the Arroyo Seco stream gage and Devil's Gate Dam

Using a limited historical period of only 11 days (from February 6-16, 2017), when hydrology was admittedly not affected by high flows or stormwater, Mr. Kules uses the comparison between flow at the Arroyo Seco stream gauge (USGS 110980) and flow at the LACDPW gage below Devil's Gate Dam (F-277) to estimate other inflows to the Arroyo Seco for the reach below the City's existing point of diversion. These sources would include Millard Creek, the Altadena Storm Drain and the West Altadena Drain, among others which flow principally during and after storm events ignored by Mr. Kules through his limited data selection. Mr. Kules states that the discharge at gage F-277 below Devil's Gate Dam, on days when flow at the Arroyo Seco stream gage is equal to the spreading basins' long-term percolation rate of 18 cfs, is equal to the contribution to Arroyo Seco flow from other sources located downstream of the gage. He then extrapolates this 11-day Dam discharge average of 4 cfs to cover the entire 10,957 days (30 years) of the modeled period.

His methodology overlooks decades of data from both gages that shows long-term average flows for the 31-year period of 9.52 cfs at the upstream Arroyo Seco stream gage and 15.79 cfs at the discharge of Devils Gate Dam. Specifically, when Arroyo Seco flows of 18 cfs were observed, Devil's Gate Dam has historically discharged an average of 21.26 cfs, not 4 cfs as proposed by Mr. Kules in his limited data selection. By choosing a period of medium flow (from February 6-16, 2017, the Arroyo Seco flows averaged 13.2 cfs) not influenced by rain events, this assumption is not representative of Project conditions and ignores the proposed Project changes to current operations, (i.e. diverting 25 cfs from flows up to 100 cfs during larger storm events).

On average, Devil's Gate Dam has discharged 11,429 acre feet per year (AFY) or 15.79 cfs since 1989, while stream flow at the Arroyo Seco gage has averaged 6,891 AFY, 9.52 cfs. Devil's Gate outflows leave the Monk Hill Subbasin via the lower Arroyo Seco and Los Angeles River, which are mostly concrete-lined from Devil's Gate Dam to San Pedro Bay. Of the total Devil's Gate discharge lost from the basin, 9,334 AF occurs from January through April (or an average of 40 cfs over those four months) and is the water that the proposed Project is intending to partially capture and infiltrate into the groundwater basin. Ken Kules' analysis does not account for the magnitude of water released annually from the Dam and lost to the ocean.

- Assumption #4: Only 18 cfs can be diverted in the existing condition

Although the current spreading basin capacity infiltrates approximately 18 cfs at a sustained rate, the basins have the ability to percolate at a higher rate for a short period of time. The diversion structure has the ability to divert the full right of 25 cfs.

While questioning the validity of its underlying assumptions for the reasons highlighted above, an analysis has been conducted to consider Mr. Kules' calculations on their own merit. Using his assumptions of Devil's Gate percolation between 24 and 29 cfs, additional flows of 4 cfs, no rainfall within the basin and the other assumptions detailed above, we repeated Mr. Kules' calculations. While we can confirm the validity of most of his calculations, it would appear on the final page that he did not convert from cubic feet per second (a flow rate) into acre feet (a volume) for proposed condition percolation totals (11,678 to 13,772 AF) as he had done for the existing condition percolation totals. Without this calculation error, proposed condition percolation would be between 772 and 911 AFY (not 424 AFY).

Taking into account this conversion error, Mr. Kules' summary table has been corrected below in Table 2. Even if one were to overlook the errors in the assumptions made for this calculation, it can be seen that the proposed Project would not have a net-negative effect upon recharge in the Monk Hill Subbasin as stated by Mr. Kules.

Table 2. Updated Summary of Ken Kules' Calculations (Acre Feet per Year)

Summary	Kules Assumed Existing Conditions	Kules Modeled Project Condition	Corrected Kules Modeled Project Condition
Diverted and Spread			
Baseline	1,973	1,973	1,973
Increment	0	1,104	1,104
Percolation behind Devil's Gate Dam (streambed and ponding)	1,047	424	841
New Groundwater Pumping (80% of increment)	0	(883)	(883)
Effect on Groundwater	3,020	2,618	3,035

2-4 Regarding the comment that the Project fails to provide for fish passage or streamflow for fish passage, per Fish and Game Code sections 5931 and 5937, this assertion is inaccurate. The Fish and Game Code requires that free passage over or around any dam as well as sufficient streamflow be allowed to pass over, around or through a dam to accommodate "any fish that may be planted or exist below the dam." Contrary to the commenter's assertion that the proposed Project does not comply with Fish and Game Code 5937, the proposed diversion/intake structure in Area 2 would improve biological functions beyond the current conditions, and would allow for compliance with the Fish and Game Code requirements through the diversion's design features and through operational requirements, as set forth in MM-BIO-7.

As stated in Section 4.2.5 of the Draft EIR, if fish were present in the Study Area in the current condition, fish could be transported downstream to be potentially stranded in the spreading basins due to the lack of a fish screen at the intake or in isolated pools of water between the diversion and the JPL Bridge, or lost when passed into Devil's Gate Reservoir where flows spread out and habitat is unsuitable. The loss of surface water connectivity within the Arroyo Seco and subsequent isolation of pools occurs primarily during the late summer/early fall months when there are periods of low to zero flows in the stream above the diversion structure in Area 2. Stream flows within the Arroyo Seco are below 1 cfs approximately 35% of the year and drop to zero approximately 10% of the year, based on data from the United States Geological Survey (USGS) stream gage No. 11098000. This lack of surface water is the primary barrier for fish movement in the existing condition from about the JPL Bridge upstream where substrate and cover is good, but surface water is lacking. Below the JPL Bridge, the flatter sediment load of the reservoir is open to solar heating, is dominated by finer substrates, and cover and pools are rare or absent. Also, the Arroyo Seco is subject to frequent dry conditions due to loss of aboveground flow as the channel emerges from the canyon into the alluvium, where water flow is primarily subterranean.

Further, as assessed under Threshold 4.2d in Section 4.2, Biological Resources of the Draft EIR, under existing conditions the diversion dam is a barrier to the movement of small aquatic animals due to an approximate 4-foot elevation drop downstream of the structure, in addition to steep channel segments and step-pool or bedrock drops preventing upstream fish passage. Therefore, if fish were to be present, their movement would be restricted and they may perish due to isolation or stranding.

The proposed Project would remedy some of the existing conditions in the Arroyo Seco that hinder the survival of fish populations. The proposed Project would include a fish screen to prevent future fish populations from being conveyed into and isolated within the spreading basins. Additionally, the Project includes an engineered roughened channel downstream of the new diversion structure and operable weir gate to allow return passage upstream should fish pass during periods of high flows. The proposed roughened channel profile slope downstream of the diversion weir would be 4% and, therefore, reasonably similar to a natural steep section or chute in the adjacent reaches of channel. The roughened channel would be designed to allow operational changes that could accommodate low- and high-flow fish passage and would include a small cushion pool at the crest to prevent injury and an asymmetric cross-section to provide appropriate depths and velocities across the range of design flows.

The comment erroneously claims the EIR takes the position that compliance with California Fish and Game Code (CFGC) sections 5901 and 5937 is contingent upon native fish being found within 1,500 feet upstream to 2,000 feet downstream of the Project site, and that the California Department of Fish and Wildlife (CDFW) found the finding false and the Project violates the codes. The proposed Project will be built and can be operated as if fish were present under the current condition; this includes implementation of a Monitoring Plan (MM-BIO-7). The proposed length of the stream identified to be monitored is within a section that has an upstream barrier (Brown Mountain Dam located approximately 3.9 river miles from Area 2) and downstream barrier (Devil's Gate Dam located approximately 1.7 river miles from Area 2) that limits the movement of fish in the Arroyo Seco. At the time of the preparation of the EIR there was no identified plan to remove either barrier, so limiting the monitoring between the two substantial structures is appropriate. Importantly, the CDFW stated in their second comment letter (dated January 6, 2021) that the agency "…agrees that the area surveyed for the Project and use of the 2010 California Salmonid Stream Habitat Restoration Manual (4th Edition) is adequate…" and "…looks forward to coordinating with Pasadena Water and Power on diversion structure and the

Monitoring Plan…" as required by MM-BIO-7, indicating that the approach of utilizing subsequent monitoring and potential fish rescue is appropriate given current conditions.

2-5 Regarding the comment related to the adequacy of fish studies performed for the Project, the topic was adequately addressed in the Draft EIR. The section of the Arroyo Seco surveyed for the proposed Project, as stated in the Biological Resources Technical Report, prepared by Dudek, dated May 2020 (Appendix D to the Draft EIR) includes an upstream barrier (Brown Mountain Dam) and downstream barrier (Devil's Gate Dam) that limits the movement of fish in the Arroyo Seco and presents a partially closed system (i.e., fish cannot leave). The Study Area for the fish survey was conducted in one continuous pass that originated where surface water ended downstream of the JPL bridge to the Brown Mountain Dam. At the time of the survey, October 14, 2019, USGS stream gage No. 11098000[1], located approximately one mile upstream of Area 2, recorded water flow at less than 1 cubic foot per second and the gage height was recorded at less than one foot. This indicates that water levels were low within the Study Area portion of the Arroyo Seco during the survey which reduces the potential habitat and refugia for fish and makes it more likely that a trained observer would locate any fish, not just rainbow trout or arroyo chub. As stated in the Fisheries Review Letter authored by Dr. Camm Swift included as Appendix B-1 of the DEIR, there are currently no fish known to inhabit the Arroyo Seco above Devils Gate Dam, according to surveys and observations made by National Oceanic and Atmospheric Administration Steelhead Recovery coordinator Mark Capelli In August 2018 (email dated August 22, 2019) and by California Fish and Wildlife Fishery Biologist John O'Brien (email communication dated August 22, 2019).

This comment asserts that the Draft EIR does not adequately describe the environmental baseline conditions regarding fish in the Arroyo Seco. Section 4.2 of the EIR and Appendix (Biological Resources Technical Report for the Arroyo Seco Canyon Project Areas 2 and 3) provide an in-depth literature review and field studies to adequately document the environmental baseline for the existing conditions of fish in the Arroyo Seco.

This comment states that MM BIO-7 misstates CFGC Sections 5932 and 5937, narrows the requirements contained therein, and sets infeasible conditions for a purported future compliance with the codes. These assertions are inaccurate. At the time of the preparation of the EIR, there was no identified plan to remove Devil's Gate Dam, which inhibits upstream passage of fish. CFGC 5937 requires sufficient water to pass over, around or through a dam, to keep adequate conditions for the passage of any fish that may be planted or exist below the dam. The proposed Project has committed to satisfy these requirements.

Fish are not expected to occur downstream of Area 2 based upon the existing conditions described throughout the EIR and its appendices. As such, MM-BIO-7 identifies a methodology to determine the presence of downstream fish, should conditions change in the future. As stated in MM-BIO-7, annual survey protocols shall be established to the satisfaction of CDFW and set forth in a Native Resident and Migratory Fish Monitoring Plan (Monitoring Plan). If the results of the annual surveys reveal a positive presence of native fish, the Monitoring Plan shall set forth thresholds for determining the permanency of the population, and whether or not connectivity both upstream and downstream of the diversion structure is appropriate and in the best interest of the long-term survival of an established native or migratory fish population, given hazards associated with stranding downstream. Further, MM-BIO-7 requires that until

[1] https://nwis.waterdata.usgs.gov/usa/nwis/uv/?cb_00060=on&cb_00065=on&format=gif_default&site_no=11098000&period=&begin_date=2019-10-12&end_date=2019-10-16

passage for steelhead is restored to the Arroyo Seco, the City shall implement a program to rescue fish between the diversion structure and the JPL Bridge. If rescue is determined to be ineffective or impractical, then the City shall modify its operations to accommodate passage. Lastly, MM-BIO-7 requires that at such time as steelhead passage is restored, the City shall alter either the design of the diversion/weir structure, the operational methods of the diversion/weir structure, or both to satisfy CFGC Sections 5901 and 5937. In summary, the proposed Project is protective of future fish populations through design features (i.e. fish screen, roughened channel, and an operable weir gate) and the Draft EIR requires that the City provide for the passage of fish through design changes or operational changes, as appropriate to satisfy Fish and Game Code Sections 5901 and 5937. Importantly, the CDFW stated in their second comment letter (dated January 6, 2021) and submitted for review at the Hearing Officer's meeting, that the agency looks forward to coordinating with the City on diversion structure and the Monitoring Plan (MM-BIO-7) to ensure compliance as set forth by CFGC sections 5901 and 5937.

2.6 Regarding the comment that there have been changes to the Draft EIR that would result in environmental impacts, this assertion is inaccurate. It is assumed that this comment refers to changes made through the Final EIR, as described in Section 3, Changes to the Draft EIR, although the comment is not clear on this. None of the modifications to the text itemized in the Final EIR provide new information that would trigger recirculation of the EIR prior to certification, per the guidance provided in CEQA Guidelines Section 15088.5.

Regarding the revision to Cultural Resources, the additional information on the El Prieto Trail was not included in the Draft EIR because the trail is outside of the study area and although the road may have been used for local access, the road has been dramatically altered by subsequent historical flood events and altered by CCC-era road construction such that the original route no longer retains the necessary physical or material integrity to convey their history. The additional information was provided for context, and the Final EIR clearly states that it does not have any effect on the analyses, conclusions, or mitigation measures set forth in the Draft EIR or the associated Cultural Resources Technical Report, and that no other revisions are required.

Regarding the additional text added to "Areas of Known Controversy" in the Executive Summary of the Draft EIR, the issue of percolation rates is part of the larger context of concerns related to the expansion of the spreading basins articulated through several comment letters provided through the Notice of Preparation public review period. Table 1-1 in Section 1, Introduction of the Draft EIR, includes general summaries of the NOP comments received, which includes the following, "This letter requests evaluation of: alternatives to the Project; evaluation of cumulative impacts related to the Devil's Gate sediment removal project; assessment using the best available information related to percolation rates in spreading basins; and requests decreased diversions and reliance more on the natural stream hydrology." Further, several of the comment letters included in Appendix A of the Draft EIR provide detailed descriptions of such concerns, which are subsequently thoroughly addressed throughout Section 4.5, Hydrology and Water Quality of the Draft EIR. In the Final EIR, the topic is further explained in response to Comment Letter 6, as well as subsequent letters. As stated in Section 3.1, Introduction of the Final EIR, none of these additional explanations provide new information that would trigger recirculation of the EIR prior to certification, per the guidance provided in CEQA Guidelines Section 15088.5.

2-7 Regarding the recent sightings of the endangered least Bell's vireo downstream of the proposed diversion dam, this information was made available after the public review period for the Draft EIR.

Nevertheless, Appendix D of the Draft EIR acknowledges the occurrence of this species in Hahamongna Watershed Park. The occurrence of a breeding pair does not change the analysis that the Project will have a less than significant impact on downstream habitat, including occupied least Bell's vireo habitat, as stated in Section 4.2.5, Appendix D of the Draft EIR, and the updated analysis (performed by Psomas and dated October 14, 2020) that was included in the Final EIR.

Regarding the addition of the mountain lion discussion to the Final EIR, mountain lions are identified as occurring in the Study Area in Section 5.3.5 of Appendix D of the Draft EIR. The Project's lack of impact on the movement of terrestrial wildlife, which includes the mountain lion, is discussed in Section 4.2.5 of the Draft EIR. As stated in the Final EIR, mountain lions would only be expected as a transient in the Project sites and natal dens would not be expected based upon studies of the species. Thus, the consideration of listing mountain lions under the California Endangered Species Act does not change the environmental setting since impacts to the species are not expected and no new mitigation would be required. As stated in Section 3.1, Introduction of the Final EIR, none of these additional explanations provide new information that would trigger recirculation of the EIR prior to certification, per the guidance provided in CEQA Guidelines Section 15088.5.

2-8 Regarding the comment that implementation of MM-BIO-4 and MM-BIO-6 would cause significant environmental impacts if implemented, this assertion is inaccurate. MM-BIO-4 and MM-BIO-6 both require the approval of Habitat Mitigation and Monitoring Plans by CDFW, U.S. Army Corps of Engineers, and Los Angeles Regional Water Quality Control Board. These agencies are also responsible for issuing permits for impacts to jurisdictional waters. As such, implementing the establishment of vegetation and jurisdictional waters would be subject to their conditions and approval and conducted in accordance with all applicable regulations, and these agencies would not permit activities that could further impact sensitive resources on-site or downstream of the proposed mitigation areas. Further, the California Environmental Quality Act (CEQA) explicitly excludes restoration of a natural resource from environmental review, and such activities are categorically exempt (see CEQA Guidelines Section 15307 and 15308). As stated in Section 3.1, Introduction of the Final EIR, none of these additional explanations provide new information that would trigger recirculation of the EIR prior to certification, per the guidance provided in CEQA Guidelines Section 15088.5.

2-9 Regarding the comment that the EIR for the proposed Project be recirculated for an additional public review due to the presence of "significant new information", this assertion is inaccurate. As addressed through Responses 2-2 through 2-8 above, no new significant information has been provided that would deprive the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such effects. As stated in Response 2-1, the Hearing Officer made clear that he had thoroughly read the Draft EIR and Final EIR, including all comment letters received by the City leading up to, and during, the hearing. The Hearing Officer explicitly stated his understanding of the nature of the project and the issues raised at the hearing prior to certifying the Final EIR.

2-10 The Final EIR provides comprehensive responses to all comment letters received during the public review period, and no new information was provided during the preparation of the Final EIR or subsequently prior to the Hearing Officer's meeting on January 6, 2021, that would trigger recirculation of the EIR prior to certification, per the guidance provided in CEQA Guidelines Section 15088.5.

Appendix A

Request for Appeal

APPEAL LETTER #1

PASADENA PERMIT CENTER
www.cityofpasadena.net/permitcenter

REQUEST FOR APPEAL

APPLICATION INFORMATION

Project Address: 3420 and 3500 North Arroyo Blvd.

Case Type (MCUP, TTM, etc.) and Number: Modification to CUP #6222 and FEIR - Arroyo Seco Canyon Project

Hearing Date: January 6, 2021 Appeal Deadline: January 19, 2021

APPELLANT INFORMATION

APPELLANT: Arroyo Seco Foundation et. al. Telephone: [ ] 323 405-7326

Address: 539 E. Villa St. #2 Fax: [ ]

City: Pasadena State: CA Zip: 91101 Email: tim@arroyoseco.org

APPLICANT (IF DIFFERENT): City of Pasadena Water & Power Department

I hereby appeal the decision of the:

- ☒ Hearing Officer
- ☐ Zoning Administrator
- ☐ Design Commission
- ☐ Director of Planning and Development
- ☐ Historic Preservation
- ☐ Film Liaison

REASON FOR APPEAL

The decision maker failed to comply with the provisions of the Zoning Code, General Plan or other applicable plans in the following manner (use additional sheets if necessary):

1-1 The Arroyo Seco Foundation, a 501(c3) non-profit corporation, together with Pasadena Audubon Society, Hugh Bowles, and Pasadena residents Ken Kules and Morey Wolfson, join in this appeal of Hearing Officer Paul Novak's Certification of the Final Environmental Impact Report (SCH #2014101022) and the adoption of CEQA Findings and the Mitigation Monitoring and Reporting Program for the proposed Arroyo Seco Canyon Project. The Hearing Officer failed to consider significant gaps in the FEIR and the omission of important information that have deprived the public of a meaningful opportunity to understand and comment upon the impacts of the Project and the changes in it. The Hearing Officer's determination should be withdrawn. The EIR should be revised to respond to these concerns and other pertinent considerations and recirculated to allow agencies and the public to comment on the Projects and its impacts. See also attached statement.

Timothy F. Brick
Signature of Appellant

January 19, 2021
Date

* OFFICE USE ONLY

PLN # CASE # PRJ #

DESCRIPTION

DATE APPEAL RECEIVED: APPEAL FEES: $ RECEIVED BY:

APP-RFA Rev: 1/18/07

Appendix B

Reason for Appeal of Hearing Officer's Determination

ARROYO SECO FOUNDATION

APPEAL LETTER #2

Reason for Appeal of Hearing Officer's Determination Regarding FEIR and Conditional Use Permit #6222 - Arroyo Seco Canyon Project

The Arroyo Seco Foundation, together with Pasadena Audubon Society, Hugh Bowles, and Pasadena residents Ken Kules and Morey Wolfson, join in this appeal of Hearing Officer Paul Novak's Certification of the Final Environmental Impact Report (SCH #2014101022) and the adoption of CEQA Findings and a Mitigation Monitoring and Reporting Program for the proposed Arroyo Seco Canyon Project (the Project). 2-1

During the hearing of January, 6, 2021, the Hearing Officer failed to address numerous points of contention outlined in comments on the Final Environmental Impact Report (FEIR) made by the Arroyo Seco Foundation, Ken Kules, Hugh Bowles, and the Pasadena Audubon Society, indicating that he did not invest the time to understand the underlying arguments in those comments and imprudently chose not to question City staff regarding how the FEIR and the staff report and presentations addressed FEIR comments with regard to:

- **Failure to include an evaluation of the condition of future ponding upstream of Devil's Gate Dam in assessing the impact of the project on the Monk Hill Basin.**

  Both the FEIR (response 14.1-5) and the staff presentation at the hearing relied on analysis of historic conditions to make a case for the conclusion in the DEIR that "The proposed Project would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin, and no mitigation is required." (p. 46)

  The FEIR analysis - which offers new arguments regarding Project impacts - is clearly deficient as it does not consider the changed condition regarding ponding upstream of Devil's Gate Dam as described in Ken Kules' December 31, 2020 FEIR comments (p. 6) nor does it even acknowledge that the changed condition will occur as a matter of a legal settlement achieved by the Arroyo Seco Foundation and Pasadena Audubon in July, 2020 in *Arroyo Seco Foundation v. Los Angeles County Flood Control District*. This settlement agreement has great relevance to the management of the Devil's Gate basin as well as to the habitat and groundwater percolation that will be impacted by the Project's diversions. 2-2

(ASF, p. 5). The Hearing Officer failed to note the omission of this matter in the FEIR or the City's analysis in this regard.

- **Failure to address that there will be an adverse and significant impact on the Raymond Basin groundwater**.

  The simple analysis on p. 10 of Mr. Kules' comments on the FEIR clearly shows that there will be an adverse impact on Raymond Basin groundwater as a result of ASCP operations. That impact has not been acknowledged or addressed by the Hearing Officer and mitigation has not been proposed. The analysis discussed in Mr. Kules' FEIR comments on pp. 11-13 concludes that the adverse impact is significant and a Finding of Overriding Considerations is required for the ASCP to proceed. The Hearing Officer failed to make a technically-based rational judgment concerning the validity of the City's assertion that Mr. Kules' comment on the FEIR (p.11) is "inaccurate." Without providing substantial reasons, the Hearing Officer accepted the City's dismissal of Mr. Kules' analysis. This, despite Mr. Kules' rigorous granular analysis. In addition, the Hearing Officer did not provide substantial justification for accepting the City's disregard for the changed operation of Devil's Gate Dam and reservoir.

2-3

- **Failure to Provide for Fish Passage or Adequate Streamflow to Accommodate Potential Fish Populations.**

  The Project concedes that the Project fails to comply with Fish & Game Code sections 5931 and 5937, which require that free passage over or around any dam as well as sufficient streamflow be allowed to pass over, around or through a dam to accommodate "any fish that may be planted or exist below the dam." (FEIR at 2-177.)

  The EIR takes the position that compliance with sections 5901 and 5937 is contingent upon the City locating native fish within 1,500 feet upstream to 2,000 feet downstream of the Project Site. (DEIR at ES-18.) The California Department of Fish & Wildlife, however, found that the City's finding is specious and is based upon an inadequate survey that fails to comply with California regulatory requirements (FEIR at 2-23). The Project clearly violates sections 5931 and 5937 which require that passage and streamflow be adequate for any fish, native or otherwise, that may exist downstream of the dam irrespective of whether the City's perfunctory search of them may happen upon one.

2-4

- **Failure to include information lawfully required Information in the FEIR about the Potential Presence of Fish in the Arroyo and to Support its Finding that No Fish are in the Arroyo with Substantial Evidence**

The Arroyo Seco Foundation and others who commented in the FEIR noted the glaring deficiencies in the FEIR's fish information and interpretation of the California Fish & Game Code (ASF p9). As the California Department of Fish & Wildlife notes, surveys were only conducted for southern steelhead and rainbow trout and not for any fish populations in general. (FEIR at 2-23.) In addition, California Department of Fish & Wildlife found that the methods utilized to conduct the wildlife surveys were inadequate and that the methods utilized by the City "can miss fish that may be hiding between boulders, below undercut banks, or in shadowed areas of the stream." (*Id.*) The Hearing Officer, however, did not note these comments, or question City staff about them, or respond to them in any way.

Failure to conduct adequate surveys for wildlife is more than just an omission of information. It represents a failure to adequately describe an environmental baseline, as well as a failure to supply substantial evidence to support the City's finding that there are no fish in the Arroyo.

2-5

MM Bio-7 has been substantially revised in the FEIR, but the measure misstates CA Fish & Game Code 5932 and 5937, narrows the requirements contained therein, and sets infeasible conditions for a purported future compliance.

The Hearing Officer asserted that he had reviewed the entire prior record of the CEQA proceedings but did not clearly demonstrate his consideration of the issues raised here and in comments on the FEIR, nor did he engage in any questioning of staff on these matters in the hearing. Resolution No. 2021-01 says that the evidence considered "included the Final EIR, including the public comments about environmental impacts that were made on the Draft Environmental Impact Report prepared for the Project" but does not cite consideration of comments made on the FEIR or responses to them.

The FEIR Deprived the Public of a Meaningful Opportunity to Comment Upon Changes in the Project, Environmental Setting, Mitigation Measures and Other Critical Data.

The FEIR makes numerous changes to the EIR including modifying "areas of known controversy," project objectives, new and previously undisclosed biological impacts to special status species, as well as new mitigation measures that could have undisclosed environmental impacts by themselves. (FEIR 3-1 – 3-12). In addition, the FEIR modified the environmental setting, noting previously undisclosed information concerning cultural resources on the Project Site.

2-6

In particular, the FEIR added a whole new area of controversy as to whether "percolation rates in the spreading basins are poor." The efficacy and efficiency of spreading basins as a means of recharging groundwater resources goes to the core project objectives, and the FEIR must be

recirculated with information as to the City's analysis regarding the percolation rates in spreading basins.

The FEIR fails to note recent sightings of a family of the endangered Least Bell's in the downstream area that will be impacted by increased diversions. It also documents the presence of an entirely new sensitive status species, mountain lion, which demonstrates that the FEIR omitted crucial information which was required to be included in the Draft EIR regarding the environmental baseline, and requires recirculation due to modifications in the environmental setting. (FEIR 3-2 – 3-3.) 2-7

The FEIR also adds additional mitigation activities that require environmental analysis. MM-BIO-4 mentions the establishment of white alder-California sycamore woodland in Area 1 without describing or analyzing the activities necessary to establish this particular habitat, activities that could have significant environmental impacts. MM-BIO-6 mentions the establishment of jurisdictional waters within Area 1, additional activities that could have significant environmental impacts that are not described in the current FEIR. 2-8

The only remedy for these failures is recirculation of the EIR with regard to these issues.

Mr. Kules raised the point with regard to CEQA Section 15088.5 requirements in his comments on the FEIR that "*the California Environmental Quality Act (CEQA) requires that the EIR be recirculated to provide opportunity to disclose the impacts."*

Section 21092.1 of the California Public Resources Code requires that "[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 … but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in order to give the public a chance to review and comment upon the information. (CEQA Guidelines § 15088.5.)

Significant new information includes "changes in the project or environmental setting as well as additional data or other information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." (CEQA Guidelines § 15088.5(a).) Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed," as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature 2-9

that meaningful public review and comment were precluded." (*Id.*)

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."].) If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

2-9

The Hearing Officer's failure to discuss the issues raised here has resulted in a CEQA administrative record that is sorely lacking and the EIR must be recirculated.

Conclusion

These significant gaps in the FEIR and the omission of important information have deprived the public of a meaningful opportunity to understand and comment upon the impacts of the Project and the changes in it. The Hearing Officer's determination should be withdrawn. The EIR should be revised to respond to these concerns and other pertinent considerations and recirculated to allow agencies and the public to comment on the Projects and its impacts.

2-10

References:

- *Arroyo Seco Foundation v. Los Angeles County Flood Control District* Settlement Agreement
- Arroyo Seco Foundation Comments on ASCP FEIR
- Comments of Ken Kules on ASCP FEIR

Appendix D

Translocation of Rainbow Trout to the Arroyo Seco from the Bobcat Fire Burn Area Memorandum

Translocation of Rainbow Trout to the Arroyo Seco

from the Bobcat Fire Burn Area

Fall 2020

Prepared by Jennifer Pareti

Introduction

Following the 2020 Bobcat Fire, CDFW led a fish rescue in the West Fork San Gabriel River (WFSGR) and Bear Creek (tributary to WFSGR) in Los Angeles County, within the Angeles National Forest. This report is a follow up to the Bobcat Fire Fish Rescue Report (Pareti 2021) and focuses on the translocation of rescued native coastal rainbow trout (*Oncorhynchus mykiss irideus*) to the Arroyo Seco in Los Angeles County, within the Angeles National Forest.

The Bobcat Fire began on September 6, 2020 and burned 115,796 acres of the Angeles National Forest, including 93% of the lower West Fork San Gabriel River watershed and 81% of the Bear Creek watershed (InciWeb 2020). CDFW biologists conducted reconnaissance level surveys on October 13 and 14, 2020 resulting in the observation of the extensively burned watersheds with little to no vegetation remaining on the steep surrounding mountainsides. The Burned Area Emergency Response Report (BAER) projected that upon the arrival of moderate rainfall, heavy debris and sediment loads would occur within the stream resulting in high mortality of native fish species throughout the WFSGR and Bear Creek (USFS 2020). A fish rescue was discussed with US Fish and Wildlife and US Forest Service, and all were in agreement with the CDFW rescue and release plan. Additionally, CDFW evaluated plans for a conservation translocation of rainbow trout to the Arroyo Seco.

The Arroyo Seco, a tributary to the Los Angeles River, has historically supported a rainbow trout population, however the watershed burned extensively in the 2009 Station Fire. Stream habitat within the Arroyo Seco has recovered to a level which should support rainbow trout but fish have not been observed during CDFW reconnaissance level and electrofishing surveys. Fish passage is not currently possible in the Arroyo Seco around Devil's Gate Dam, and therefore, there is no way for native rainbow trout to naturally repopulate the Arroyo Seco. The WFSGR coastal rainbow trout population is recognized as a valuable genetic resource for southern California Steelhead and native coastal rainbow trout (Abadia-Cardosa et al. 2016, NMFS 2012). Translocating WFSGR rainbow trout into Arroyo Seco provided an opportunity to preserve valuable WFSGR genetics as well as potentially re-establishing a native rainbow trout population in Arroyo Seco.

A reconnaissance level survey was conducted in Arroyo Seco on November 12, 2020 to assess the stream habitat. The water level in the stream was low following a year of below average rainfall, but the habitat was still suitable for rainbow trout. Approximately 3 miles of stream were selected for the translocation and 500 rainbow trout was determined as target population size to be translocated. Due to the shallow habitat in the Arroyo Seco at the time of the fish rescue, it was decided to only translocate small rainbow trout (less than 5 inches).

Rescue

Fish rescues in the WFSGR for translocation to Arroyo Seco were conducted by CDFW staff over two days: November 24, and December 1, 2020. Rescue efforts varied in number of rescue teams and rescue locations based on staff availability and are shown in Table 1 and Figure 1. Rescue teams were made up of 5-6 CDFW staff.

Table 1. West Fork San Gabriel River and Bear Creek Fish Rescue Dates and Locations

Rescue Date	GPS Coordinates of Rescue Locations by Rescue Date	
	WFSGR	Bear Creek
November 24	34.244782, -117.946519	N/A
December 1	34.242414, -117.919680	34.240860, -117.884622

Electrofishing was utilized to capture all fish and was conducted using one to two backpack electrofisher units (Smith Root Models LR-20B and LR-24) depending on staff availability, as well as stream width and morphology. Electrofisher voltage settings ranged from 150-250 Volts depending on water depth. Remaining settings were as follows: 30 Hertz pulse frequency, 5 milliseconds pulse width, and 15 percent duty cycle. Rescue locations were selected based on CDFW 2018 habitat and fish data as well as accessibility (Pareti 2020). Electrofishing was conducted in an upstream direction in selected rescue locations and consisted of one or two electrofishers with at least two neters assigned to each unit.

Captured fish were placed in buckets with water and transferred to streamside holding containers with aerators. All fish were identified and counted by species. Rescued rainbow trout individuals were sorted by approximate size to less than or greater than 5 inches (127 mm). Fish translocated to Arroyo Seco had their adipose fin clipped to mark fish for future identification. Fish were weighed and measured (fork length) as time allowed. A representative number of adipose fin clips were collected for genetic sampling and stored dry in individually marked envelopes.

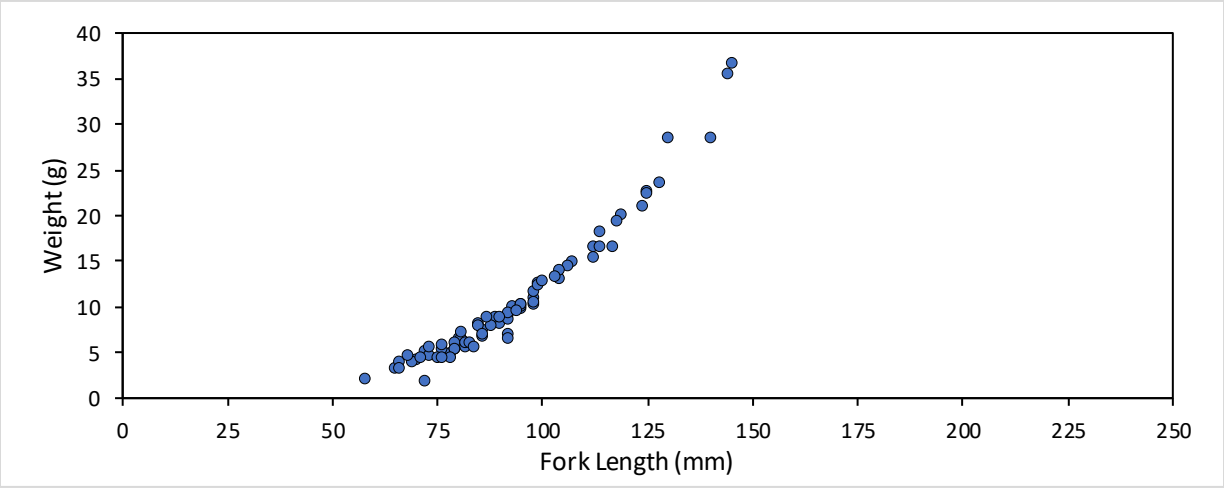
The total number of rainbow trout rescued are listed in Table 2 below along with the numbers of fish translocated to the Arroyo Seco as well as released into the East Fork San Gabriel River. Graph 1 shows length vs. weight relationships for all measured individuals translocated to the Arroyo Seco.

Fish were transferred to coolers filled with stream water for transport to release locations. Water temperature was monitored within the coolers and multiple battery-operated aerators were used for each cooler. Fish collection efforts concluded by 1:30 PM each day.

Table 2. Total Rainbow Trout Rescued from West Fork San Gabriel River and Bear Creek and Released in Arroyo Seco and East Fork San Gabriel River (EFSGR). Due to habitat availability, only rainbow trout less than 5 inches (127 mm) were considered for translocation to Arroyo Seco.

	Number of Rainbow Trout by Date		**Total Fish**
	11/24	**12/1**	
Total Rescued	271	379	650
Total Released in Arroyo Seco < 5 inches (127 mm)	**197**	**272**	**469**
Total Released in EFSGR > 5 inches (127 mm)	69	107	176
Total Mortalities	5	0	5

Graph 1. Length vs. weight of measured and weighed rainbow trout (n=78) rescued in West Fork San Gabriel River and Bear Creek and translocated to the Arroyo Seco, November 24 and December 1, 2020. Due to habitat availability, only rainbow trout less than 5 inches (127 mm) were considered for translocation to Arroyo Seco.



Release

A total of 469 rainbow trout were released into the Arroyo Seco on November 24 and December 1, 2020, distributed over 2.5 miles of stream (Figure 2). Fish were acclimated prior to release by slowing adding water from the Arroyo Seco stream into the coolers until the cooler water temperature was within 2°F of the Arroyo Seco. Once acclimated, fish were transferred to buckets and backpacks of 100% Arroyo Seco water to ensure no water from WFSGR entered the Arroyo Seco. Fish were hiked to release locations in buckets and backpacks and released in small quantities (3-10 fish) into areas with the best available rainbow trout habitat. Fish were observed following release to confirm that they were behaving normally. Mortalities were collected and preserved in ethyl alcohol.

Future Monitoring

A monitoring plan has been designed to collect data on Arroyo Seco stream conditions where rainbow trout were released and in downstream areas where fish may disperse. Fish surveys will be conducted by CDFW in the summer and/or fall.

Acknowledgements

Thank you to the following CDFW Region 5 staff for their assistance with fieldwork and planning for this fish rescue and release effort: Olivia Arredondo, Russell Barabe, Karen Boortz, Claudio Cardenas, Marissa Groenhof, Shelley Hunter, Matt Lucero, Derek Miller, Jenny O'Brien, John O'Brien, Austin Sturkie, Abram Tucker, and Brian Young.

References

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Pareti, J. 2020. West Fork San Gabriel River Stream Habitat and Fish Abundance June through August 2018. California Department of Fish and Wildlife, Region 5.

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Pareti, J. 2021. Bobcat Fire Fish Rescue, West Fork San Gabriel River and Bear Creek, Fall 2020. California Department of Fish and Wildlife, Region 5.

USFS. 2020 (October 11). Burned Area Emergency Response, Bobcat Fire. Angeles National Forest Hydrology and Watershed Specialist Report.

Figure 1: Bobcat Fire Fish Rescue Locations on the West Fork San Gabriel River. November 24 and December 1, 2020.

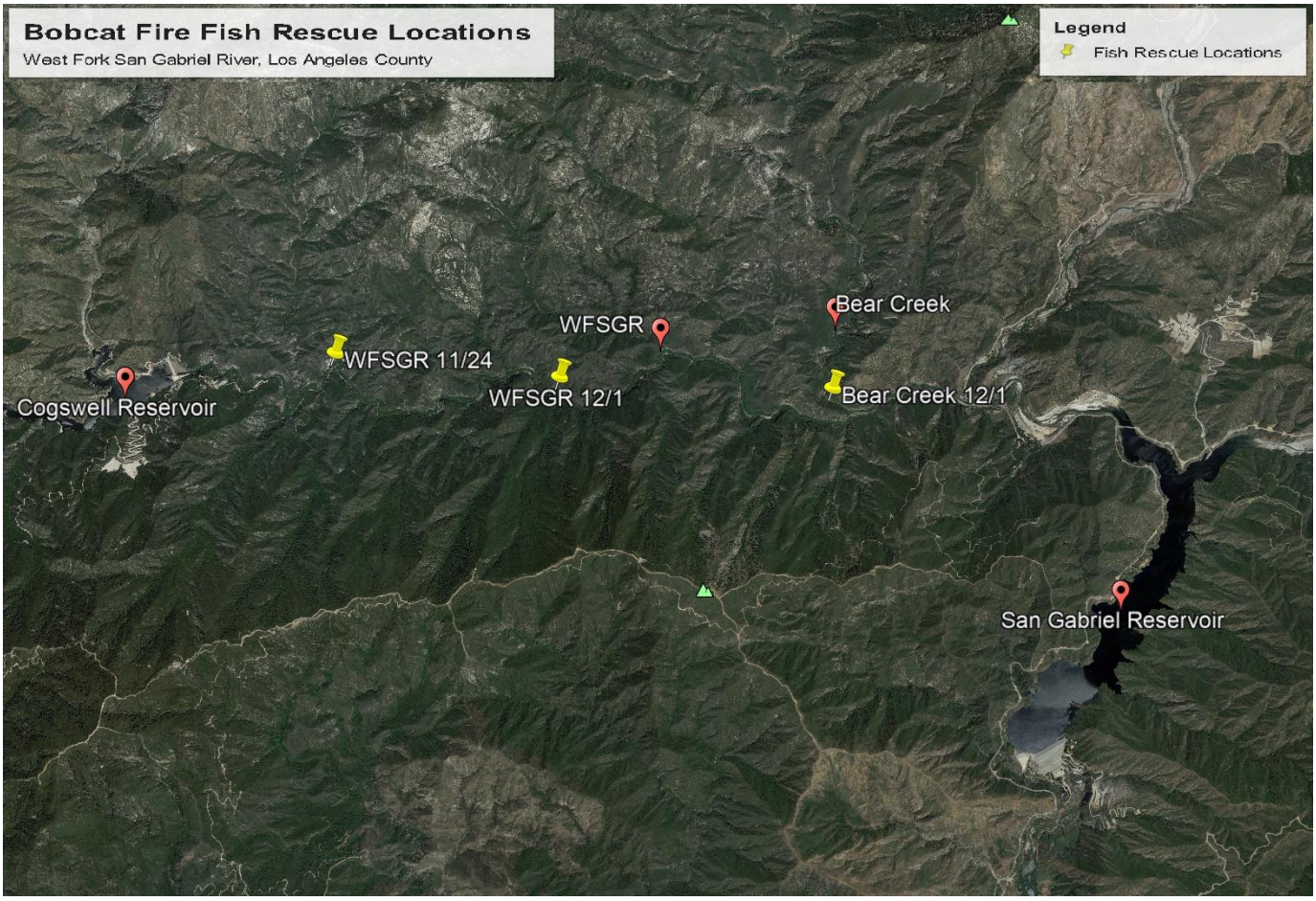
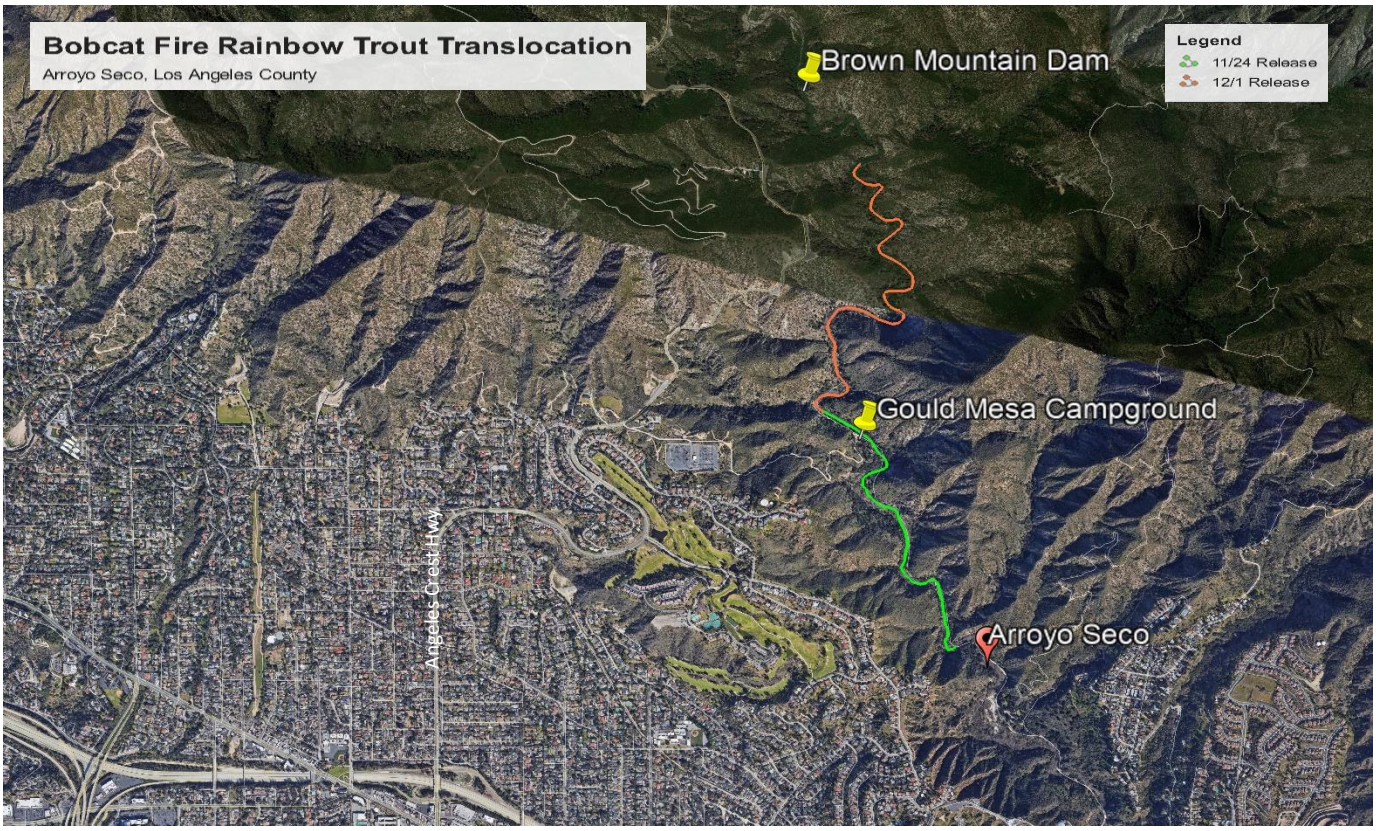


Figure 2. Bobcat Fire Rainbow Trout Translocation Locations on the Arroyo Seco. November 24 and December 1, 2020.



Figures 3-4. Capturing fish in the West Fork San Gabriel River and Bear Creek using backpack electrofishing.

Figures 5-8. Processing fish. Fish were sorted and counted by species. Rainbow trout were further sorted into two size classes, less than or greater than 5 inches (127 mm). Top and bottom left, rainbow trout less than 5 inches. Top and bottom right, rainbow trout greater than 5 inches

Figures 9-10. Processing fish. Fish were measured, weighed, and fin clipped according to the rescue and translocation plan.

Figures 11-14. Representative photographs of fish being acclimated and released to the Arroyo Seco on November 24 and December 1, 2020.

Figures 14-18. Representative photographs of fish being acclimated and released to the Arroyo Seco on November 24 and December 1, 2020.