

APR 19 2017

Sherri B. Carter, Executive Officer/Clerk  
By Michael Rivera Deputy  
Michael Rivera

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ARROYO SECO FOUNDATION, a California  
Non-Profit Corporation; PASADENA  
AUDUBON SOCIETY, a California Non-Profit  
Corporation;

Petitioners and Plaintiffs.

v.

COUNTY OF LOS ANGELES, a political  
subdivision of the State of California and Charter  
County; COUNTY OF LOS ANGELES BOARD  
OF SUPERVISORS, governing body of the  
County of Los Angeles; COUNTY OF LOS  
ANGELES DEPARTMENT OF PUBLIC  
WORKS, a public entity; LOS ANGELES  
COUNTY FLOOD CONTROL DISTRICT, a  
public entity; and DOES 1-10, inclusive.

Respondents, and Defendants.

LOS ANGELES COUNTY FLOOD CONTROL  
DISTRICT, a public entity; and ROES 1-10,  
inclusive.

Real Parties in Interest and Defendants.

CASE NO.: BS152771

**[PROPOSED] JUDGMENT**

Assigned for All Purposes to Honorable James C.  
Chalfant, Dept: 85

Trial Date: February 14, 2017  
Continue Trial Date: March 23, 2017

**[PROPOSED] JUDGMENT**

1 The Verified Petition For Writ Of Mandate And Complaint For Declaratory And Injunctive  
2 Relief ("Petition") filed by Petitioners Arroyo Seco Foundation and Pasadena Audubon Society  
3 (collectively, "Petitioners") came on regularly for hearing on February 14, 2017 and March 23, 2017 in  
4 Department 85 of the Los Angeles County Superior Court, the Honorable James C. Chalfant presiding.

5 Mitchell M. Tsai and Christina M. Caro appeared for Petitioners. Michelle Ouellette, Michael  
6 S. Simon, and Sarah E. Owsowitz appeared for Respondents County Of Los Angeles, County Of Los  
7 Angeles Board Of Supervisors, County Of Los Angeles Department Of Public Works, and Respondent  
8 and Real Party In Interest Los Angeles County Flood Control District (collectively, "Respondents").

9 The matter was heard and submitted, and documentary evidence in the form of the  
10 administrative record was received. The Court issued two tentative written decisions on the Petition,  
11 on February 14, 2017 and March 23, 2017. The February 14, 2017 Tentative Decision on Petition for  
12 Writ of Mandate granted the Petition in part and denied the Petition in part and was adopted as the  
13 Court's Statement of Decision subject to subsequent modifications set forth in the March 23, 2017  
14 Tentative Decision on Supplemental Briefing Re: Cumulative Impacts and Remedy and at the  
15 continued hearing of March 23, 2017. The February 14, 2017 Tentative Decision and March 23,  
16 2017 Tentative Decision, as modified by the Reporters' Transcripts of Proceedings for the February  
17 14, 2017 and March 23, 2017 hearings are incorporated by reference (collectively, "Decision").

18 The Court, having considered the papers filed in support of and in opposition to the Petition,  
19 and all other papers filed, having heard oral argument and reviewed and considered the record  
20 submitted, and the matter having been submitted for decision, finds that the Devil's Gate Sediment  
21 Removal and Management Project ("Project") Final Environmental Impact Report ("Final EIR")  
22 fails to comply with the California Environmental Quality Act ("CEQA") in the following respects:

23 1. The Final EIR fails to support the 1:1 mitigation ratios in MM BIO-6, -7, and -8 with  
24 substantial evidence, and therefore its conclusion that the biological resource impacts will be reduced  
25 to less than significant levels also lacks substantial evidence.

26 2. The Final EIR's discussion of cumulative impacts to biological resources is insufficient  
27 because the Final EIR does not state how the possible cumulative impacts to special status species,  
28 riparian habitat, and other sensitive natural communities would be mitigated.

3. The Final EIR fails to include enforceable terms in MM AQ-1 to ensure that NOx  
emissions will be reduced to less than significant levels. Because MM AQ-1 does not require that  
contractor dump trucks comply with EPA 2007 standards, the air impacts from the Project's truck  
hauls have not been adequately mitigated and the FEIR's conclusion that air impacts have been

1 reduced to less than significant levels is unsupported.

2 The Court denied the Petition in all other respects.

3 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

- 4 1. The Petition is granted in part and denied in part.
- 5 2. Petitioners' request that the Court set aside the Project approvals is denied.
- 6 3. A peremptory writ of mandate directed to Respondents shall issue under seal of this

7 Court, ordering Respondents to do the following:

- 8 a. Void and set aside the November 12, 2014 certification of the portions of the Final EIR  
9 for that are necessary to bring Respondents' actions into compliance with CEQA.
- 10 b. Take action to remedy the inadequacies found by the Court in the Final EIR as described  
11 in the Decision, viz. Mitigation Measure Air Quality 1 (MM AQ-1), Mitigation  
12 Measures Biological Resources 6, 7, and 8 (MM BIO-6, MM BIO-7, and MM BIO-8),  
13 and the EIR's cumulative impacts analysis for biological resources, including ~~but not~~  
14 ~~limited to~~ the following actions which Respondents elect to take:

- 15 i. Respondents shall recirculate, for a 45-day public comment period, pages 83-85,  
16 130-134, 690-694, and 707 of the Final EIR (Administrative Record pages  
17 AR6718-6720, AR6765- 6769, and AR 7315-7319, AR7332, respectively)

18 revised to:

- 19 1. Provide substantial evidence to support the 1:1 mitigation ratios in MM  
20 BOI-6, -7, and -8, and therefore the Final EIR's conclusion that the  
21 biological resource impacts will be reduced to less than significant levels;  
22 and
- 23 2. Confirm that Mitigation Measures BIO-1 through BIO-8 will be applied  
24 as mitigation to the Water Conservation Project should such a project go  
25 forward.
- 26 3. Modify MM AQ-1 to read as follows: "LACFCD shall require all  
27 construction contractors during the sediment removal phase of the  
28 Proposed Project to use only sediment removal dump trucks that meet  
EPA's emission standards for Model Year 2010. ~~Model Year 2007 or~~  
~~later.~~"
4. Amend the Mitigation Monitoring and Reporting Program ("MMRP") to  
update MM AQ-1 as specified above.

- c. Revise and recirculate all necessary portions of the Final EIR and MMRP for a 45-day public comment period.
- d. Place the recirculated portions of the Final EIR and any amended portion of the MMRP on the publically noticed agenda of the Board of Supervisors for hearing and public comment.
- e. Suspend any and all Project activities unless and until Respondents have taken the necessary corrective actions to comply with CEQA and the writ.
- f. Ensure that the entire EIR has been completed in compliance with CEQA and the CEQA Guidelines prior to its recertification.
- g. Comply with the provisions of CEQA and the CEQA Guidelines in all other respects.

4. Under Public Resources Code section 21168.9(b), this Court will retain jurisdiction over the Respondents' proceedings through a return to the writ until the Court determines that the Respondents have complied with CEQA and the writ.

5. Respondents are ordered to file an initial return to the writ of mandate within 90 days, describing the action it has taken to comply with the writ pursuant to Public Resources Code section 21168.9(b).


6. Nothing in this Judgment directs Respondents to exercise their discretion in any particular way, and nothing bars Respondents from taking additional actions related to the Project beyond those included in this Judgment and Writ at their discretion.

7. Petitioners shall be awarded their costs of suit as provided by Code of Civil Procedure section 1032 in an amount to be determined according to the appropriate procedural requirements.

8. This Court retains jurisdiction to determine Petitioners' entitlement to attorneys' fees.

9. This judgment constitutes the final judgment of the Court in this action for all purposes.

DATED: 4/19/17

  
 Hon. James C. Chalfant  
 JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

DATED: April 18, 2017

MITCHELL M. TSAI, ATTORNEY AT LAW

By:   
 Mitchell M. Tsai

4474717

1 DATED: April 18, 2017

ADAMS BROADWELL JOSEPH & CARDOZO

2  
3  
4 By: 

Christina M. Caro

5 Attorneys for Petitioners Arroyo Seco Foundation &  
6 Pasadena Audubon Society

7 DATED: April \_\_, 2017

Mary C. Wickham, County Counsel  
8 OFFICE OF COUNTY COUNSEL

9 BEST BEST & KRIEGER, LLP

10  
11 By: \_\_\_\_\_

12 Michelle Ouellette  
Sarah E. Owsowitz

13 DATED: April \_\_, 2017

OFFICE OF COUNTY COUNSEL

14  
15  
16 By: \_\_\_\_\_

17 Michael S. Simon  
Lauren E. Dods

18 Attorneys for Respondents and Real Parties In Interest  
19 County of Los Angeles, County of Los Angeles Board of  
20 Supervisors, County of Los Angeles Department of Public  
21 Works and Los Angeles County Flood Control District  
22  
23  
24

25  
26  
27  
28  
04/24/2017