

EXHIBIT F



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



In Reply Refer To:
FWS-LA-14B0081-15CPA0263

JUN 19 2015

Ms. Bonnie Rogers
Department of the Army
Los Angeles District, U.S. Army Corps of Engineers
Regulatory Division
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

Subject: Public Notice SPL-2014-00591-BLR, Devil's Gate Reservoir Sediment Removal and Management Project, City of Pasadena, Los Angeles County, California

Dear Ms. Rogers:

The U.S. Fish and Wildlife Service (Service) has reviewed the Public Notice (PN) of application for a permit under section 404 of the Clean Water Act for the proposed Devil's Gate Reservoir Sediment Removal and Management Project, which we received by electronic mail on June 3, 2015. The Los Angeles County Flood Control District (applicant) proposes to clear natural vegetation within a 71-acre footprint and excavate 2.4 million cubic yards of sediment from the reservoir. The proposed permit would also include annual vegetation maintenance within a 52 acre footprint and an average sediment removal of 13,000 cubic yards per year. The PN identifies temporary impacts to about 37.8 acres of waters of the United States and permanent loss of aquatic resource functions due to proposed annual maintenance.

According to the PN, native vegetation communities that will be impacted include riparian woodland, riparian herbaceous, coastal sage scrub, Riversidean alluvial fan sage scrub, and mulefat scrub. Vegetation in the project area supports a wide variety of wildlife species. Incidental observations of wildlife during protocol surveys for the federally endangered least Bell's vireo (*Vireo bellii pusillus*, vireo) in 2010 included 50 bird species, 9 mammals, 2 amphibians, and 3 reptiles. The quality and quantity of native vegetation within the project area has declined since 2010 as a result of sediment accumulation behind Devil's Gate Dam and several years of below average rainfall conditions. Many areas currently mapped as ruderal vegetation (PN, Figure 2) were mapped as coastal sage scrub or black willow in 2010 (Chambers Group 2010). The extent of native vegetation is expected to vary over time in an active floodplain in response to annual rainfall conditions; however, the current degraded condition of the vegetation under-represents the full extent of permanent impacts to native vegetation that will occur as a result of the proposed project.

We offer the following comments and recommendations regarding project-associated biological impacts based on our review of the PN. Because our agency is currently reviewing the U.S. Army Corps of Engineers (Corps) determination that the project may affect the vireo, we anticipate that impacts to the vireo and its habitat can be addressed through the section 7 consultation process with the Corps. These comments are provided pursuant to our responsibilities under the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) and the Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*).

1. Fish and Wildlife Coordination Act (FWCA): The purpose of FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development projects. According to the PN, the Corps anticipates that the applicant will submit a mitigation plan to offset project related impacts but the mitigation plan has not been completed. Without a mitigation plan, we cannot evaluate the net project impacts to wildlife and in general, we recommend that all PNs include information on the proposed mitigation. We are primarily concerned that the vast majority of resources within the Los Angeles River Watershed have already been lost and consequently there are limited opportunities to compensate for the proposed loss of floodplain habitats and their associated functions and values. Therefore, we request an opportunity to review and provide comments on the proposed mitigation plan once it has been submitted by the applicant. Given the limited opportunities to offset impacts in the watershed, we recommend the Corps consider additional alternatives that may further minimize and avoid the temporary and permanent impacts associated with the project, including the following:
 - a. Minimize impacts to alluvial fan sage scrub, a rare and declining vegetation community, by reducing the excavation footprint at the upstream end of the reservoir and instead creating a narrow pilot channel into the basin. A deeper, narrower channel aligned with the current low flow channel would increase water velocity relative to the proposed footprint and facilitate sediment transport into the basin.
 - b. Reduce the permanent impact footprint by limiting vegetation removal to the sediment excavation footprint. Annual vegetation removal within a 52-acre footprint degrades the functions and values of the waters of the U.S. over a much greater area than is necessary to excavate 13,000 cubic yards of sediment. If the annual excavation footprint included a pilot channel to direct sediment to a smaller basin at the dam inlet then natural fluvial processes will complete much of the work that the applicant is currently proposing to complete with excavators. The reduction in the annual vegetation maintenance footprint should substantially reduce the long-term maintenance costs, and the pilot channel will prevent the distribution of sediment throughout the reservoir, except during very large storm events. Given the history of sediment removal activities in the basin (i.e., the basin remained largely undisturbed for about 20 years before the Interim Measures Project was

conducted in 2014), it is likely this additional habitat could be available to support wildlife for many years before a larger maintenance footprint is required.

- c. Require non-native plant removal from native vegetation communities outside of the project footprint as a condition of the 404 permit. Annual vegetation removal from the proposed maintenance area will result in the rapid spread of invasive weedy species both within the project footprint and adjacent undisturbed vegetation communities. Over time, the regular disturbance will degrade the quality of habitat for wildlife throughout the basin. We acknowledge that a preliminary determination has already been made by the Corps that non-native plant removal in the basin could not be considered as compensatory mitigation. Nevertheless, we consider this measure an important component of the project to minimize the potential for degradation of wildlife habitat beyond the project footprint.
 - d. Implement a brown-headed cowbird (*Molothrus ater*, cowbird) trapping program in the project area. The proposed reduction in the extent of riparian vegetation in the basin will increase the potential for sensitive species including vireo, yellow-breasted chat (*Icteria virens*) and yellow warbler (*Dendroica petechia*) to be parasitized by cowbirds. This is particularly true given the current degraded state of habitat in the basin and reduced extent of understory foliage (Chambers Group 2014).
2. Migratory Bird Treaty Act (MBTA): The MBTA prohibits killing or injuring adults and destroying the active nests of migratory birds.¹ Provisions of the MBTA do not currently provide a process for issuing permits to address incidental direct or indirect killing or injury of migratory birds. The proposed project area provides valuable foraging, resting, and breeding habitat for a large number of unlisted bird species that are protected under the MBTA. Vegetation removal and sediment excavation is proposed during the primary bird breeding season (i.e., March 1 through August 31). Given the proposed extent of impacts to natural vegetation communities (e.g., about 71 acres) it is unlikely the project would be able to proceed during the primary bird breeding season without encountering an active nest and it is unlikely that all active nests within dense areas of vegetation will be readily detectable. As such, we strongly recommend the 404 permit includes a condition requiring all vegetation to be cleared outside of the primary bird breeding season. In addition, we recommend that all project activities conducted during the bird breeding season be conducted in the presence of a biological monitor and be contingent on establishing appropriate buffers around active nests to minimize the potential for nest abandonment outside of the project footprint.

Based on the concerns described above, we recommend the Corps not issue the subject permit until the identified issues are resolved.

¹ For a list of species protected under the MBTA see:
<http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtandx.html>

We appreciate the opportunity to comment on the referenced document. Should you have any questions regarding this letter, please contact Christine Medak of this office at 760-431-9440, extension 298.

Sincerely,



 Karen A. Goebel
Assistant Field Supervisor

cc:

Matt Chiridon, California Department of Fish and Wildlife

LITERATURE CITED:

Chambers Group. 2010. Biological technical report for the Devil's Gate Reservoir Project site in the City of Pasadena, Los Angeles County, California. Prepared for Los Angeles County Department of Public Works, Water Resources Division, Alhambra, California.

Chambers Group. 2014. 2014 focused protocol survey report for least Bell's vireo and southwestern willow flycatcher at the Devil's Gate Reservoir, Los Angeles County, California. Prepared for Carlsbad Fish and Wildlife Office, Carlsbad, California.