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Attorney for Plaintiff  
We Advocate Thorough Environmental Review

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF NAPA

WE ADVOCATE THOROUGH  
ENVIRONMENTAL REVIEW,  
a California not-for profit Corporation

Plaintiff

·V.

CRYSTAL GEYSER WATER COMPANY,  
a California Corporation; COUNTY OF  
SISKIYOU; and DOES 1 through 20

## Defendants

Case No. \_\_\_\_\_

# COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

By this action, Plaintiff We Advocate Thorough Environmental Review seeks a Declaratory Judgment that Defendant Crystal Geyser Water Company's planned operation of a bottling facility for the processing of teas and other beverages, including the production of plastic bottles, is inconsistent with the Siskiyou County Zoning Ordinance and the Siskiyou County General Plan as the facility is located in a "Woodland Productivity" overlay, which designates the land for light-industrial use, not heavy-industrial use. Plaintiff also seeks a Preliminary and Permanent Injunction against Defendant Crystal Geyser Water Company enjoining it from operating the bottling facility in a manner that is inconsistent with the Siskiyou County General Plan, including the Woodland Productivity" overlay.

1 Plaintiff also seeks a Declaratory Judgment that Defendant Crystal Geyser Water  
2 Company's planned operation of a bottling facility for the processing of teas and other beverages  
3 requires a groundwater extraction permit pursuant to Siskiyou County Ordinance section 3-  
4 13.301. Plaintiff also seeks a Preliminary and Permanent Injunction against Defendant Crystal  
5 Geyser Water Company enjoining it from operating the bottling facility unless and until it  
6 obtains a groundwater extraction permit pursuant to Siskiyou County Ordinance section 3-  
7 13.301.

### 8 PARTIES

9 1. Plaintiff We Advocate Thorough Environmental Review ("W.A.T.E.R.") is a  
10 California non-profit corporation. W.A.T.E.R. is a grass roots organization established to  
11 promote quality local and regional planning, land use and development, as well as to preserve a  
12 healthy human and natural environment within the Siskiyou County area. W.A.T.E.R. and its  
13 members have a direct and substantial beneficial interest in ensuring that Respondents comply  
14 with the laws relating to zoning and environmental protection, particularly the Siskiyou County  
15 General Plan. W.A.T.E.R. and its members are affected by Defendant's failure to comply with  
16 the requirements of the Siskiyou County General Plan and the State Planning and Zoning Law,  
17 Government Code section 65000 *et seq.*

18 2. Defendant Crystal Geyser Water Company ("Crystal Geyser") is a California  
19 corporation that is authorized to conduct business in the State of California. Crystal Geyser  
20 owns the former Coca-Cola Dannon Spring Water Bottling Facility that is located in an  
21 unincorporated area of Siskiyou County near Mt. Shasta. (Project SP-97-08.) The facility is  
22 located at Township 40N, Range 4 West, section 9, MDB&M. (APN 37-140-010.) Crystal  
23 Geyser Water Company's corporate offices are located at 501 Washington Street, Calistoga in  
24 Napa County. Crystal Geyser Water Company operates as a subsidiary of Otsuka  
25 Pharmaceutical Co., Ltd.

26 3. Defendant Siskiyou County is a political subdivision of the State of California and a  
27 body corporate and politic exercising local government power.

1           4.       Petitioner is unaware of the true names and identities of DOES 1 through 20,  
2 inclusive, and sues such unnamed Defendants respectively, by their fictitious names.  
3 W.A.T.E.R. is informed and believes, and based thereon alleges, that fictitiously named  
4 Respondents also are responsible for all acts and omissions described above. When the true  
5 identities and capacities of Respondents have been determined, W.A.T.E.R. will, with leave of  
6 Court if necessary, amend this Petition to include such identities and capacities.

7                                   **JURISDICTION AND VENUE**

8           5.       This Court has jurisdiction over the matters alleged in this Petition pursuant to Code  
9 of Civil Procedure sections 526, 527, and 1060.

10          6.       Venue for this action properly lies in the Superior Court for the State of California  
11 in and for the County of Napa pursuant to section 395.5 of the Code of Civil Procedure as  
12 Crystal Geyser's corporate offices are located in Napa County.

13                                   **BACKGROUND INFORMATION**

14          7.       In November 1998 the County of Siskiyou approved the Danone International  
15 Brands, Inc.'s application for the Dannon Spring Water Bottling Facility in an unincorporated  
16 area of Siskiyou County near Mt. Shasta. (Project SP-97-08.) The facility is located at  
17 Township 40N, Range 4 West, section 9, MDB&M. (APN 37-140-010.)

18          8.       In approving the Dannon Spring Water Bottling Facility, on November 4, 1998,  
19 Siskiyou County and Danone International entered a Mitigation Agreement that is binding on  
20 the applicant/owner and on any successors in interest.

21          9.       In January 2001, Dannon began operating the bottling facility. Coca-Cola  
22 subsequently acquired the water bottling facility. In 2010, Coca-Cola ceased all operations and  
23 closed the facility.

24          10.      On or about, November 2013, Defendant Crystal Geyser Water Company purchased  
25 the property and facility from Coca-Cola Dannon Water. At the time of Crystal Geyser Water  
26 Company's purchase of the property, all of the equipment for the former bottling facility had  
27 been removed from the building and property.



1           11.     Based upon information and belief, W.A.T.E.R. alleges that Crystal Geyser Water  
2 Company intends to renew operations at the facility to bottle “value added water”. Crystal  
3 Geyser Water Company intends to begin production in late-2015.

4           12.     Based upon information and belief, W.A.T.E.R. alleges that Crystal Geyser Water  
5 Company intends to extract water at the facility to produce and bottle flavored water, juices, and  
6 teas at the former Coca-Cola Dannon bottling facility. Crystal Geyser Water Company intends  
7 to start bottling Crystal Geyser Sparkling Waters first, then Metromint, a zero-calorie, mint-  
8 flavored beverage and Juice Squeeze, a lightly carbonated fruit juice, and lastly Tejava, an iced  
9 tea. Crystal Geyser Water Company intends to begin production of the flavored beverages and  
10 tea in November 2015.

11          13.     Crystal Geyser Water Company’s operations will consist of water processing and  
12 carbonating, tea brewing, and juice batching. Water processing includes ozonation, carbon  
13 filtration, micro-filtration, ultraviolet treatment, softening, deionizing, flavor injection, and  
14 carbraonation.

15          14.     Based upon information and belief, W.A.T.E.R. alleges that Crystal Geyser intends  
16 to produce all of the PET plastic bottles for the beverages produced at the facility.

17          15.     Based upon information and belief, W.A.T.E.R. alleges that the County of Siskiyou  
18 and Crystal Geyser Water Company maintain that Crystal Geyser Water Company’s renewal of  
19 operations at the former Coca-Cola Dannon bottling facility, including the produce and bottle  
20 teas and flavored water beverages and production of PET plastic bottles for the beverages  
21 produced at the facility complies with the County’s previous discretionary approvals for the  
22 bottling facility as well as complies with the Siskiyou County General Plan. Thus, the County  
23 has not and does not intend to issue any discretionary permits for Crystal Geyser Water  
24 Company’s planned operations of the bottling facility.

25          16.     The County has issued permits to Crystal Geyser Water Company for the buildout  
26 of the interior of the facility. The County deems such permits to be ministerial. The permits are  
27 purportedly for plumbing and installation of bottling equipment at facility. Recent construction  
28

1 and installation of cooling and other equipment indicates that Crystal Geyser Water Company  
2 has expanded beyond the original footprint of the facility.

3 17. On or about June 3, 2015, W.A.T.E.R. sent a letter to the County of Siskiyou and  
4 Crystal Geyser Water Company requesting that the County cease from issuing any permits for  
5 the Crystal Geyser facility and that Crystal Geyser Water Company refrain from taking any  
6 further action that would result in a violation of the County's General Plan and/or Zoning  
7 Ordinance. Neither the County of Siskiyou nor Crystal Geyser Water Company responded to  
8 W.A.T.E.R.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**  
10 **AND INADEQUACY OF REMEDY**

11 18. W.A.T.E.R. has performed any and all conditions precedent to filing the instant  
12 action and has exhausted any and all available administrative remedies to the extent required by  
13 law.

14 19. W.A.T.E.R. has no plain, speedy or adequate remedy in the course of ordinary  
15 law unless this Court grants the requested injunction that directs Crystal Geyser Water  
16 Company to comply with its obligations under the Siskiyou County General Plan. In the  
17 absence of such remedies, Crystal Geyser Water Company will operate the facility in Siskiyou  
18 County in violation of State law.

19 **STANDING**

20 20. W.A.T.E.R. has standing to assert the claims raised in this Complaint because  
21 W.A.T.E.R. and its members' aesthetic and environmental interests are directly and adversely  
22 affected by Defendants' actions.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**  
25 **(Declaratory Judgment-Siskiyou County Zoning Ordinance)**  
26 **(Against Crystal Geyser Water Company and County of Siskiyou)**

27 21. Plaintiff realleges and incorporates by reference Paragraphs 1 through 20, inclusive,  
28 of this Petition/Complaint, as if fully set forth below.

1           22.     A General Plan serves as the “constitution for all future developments’ within the []  
2 county to which any local decision affecting land use and development must conform. (*Citizens*  
3 *of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570; *Leshner Communication, Inc.*  
4 *v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.) The land use element serves as the central  
5 framework for the General Plan and is intended to correlate all lands uses into a set of coherent  
6 development policies. (Gov’t Code, § 65302(a).)

7           23.     Crystal Geyser’s bottling facility is located within an area zoned as heavy-industrial  
8 under Siskiyou County’s General Plan. The General Plan for this area contains a “Woodland  
9 Productivity” overlay that designates the land for light-industrial use, not heavy-industrial use.  
10 (See General Plan Land Use Element, Map 11.) The General Plan states that this map  
11 designation intends to retain rural residential and woodland productive in the area near the City  
12 of Mt. Shasta. (See General Plan, p. 18.)

13           24.     The General Plan also includes several development policies that always apply  
14 regardless of where the development is proposed. Policy 41.1 requires that:

15                   In all cases where one or more development policies in the Land Use  
16                   Element conflict with each other, the lowest density policy and the most  
17                   restrictive use policy will apply. ... The sole intent of this policy is to  
18                   clarify to the public which development policy(s) of the Land Use  
19                   Element only will apply to their property if more than one resource map  
20                   applies to their property.

21           25.     The General Plan identifies three Land Use Policies regarding the Woodland  
22 Productivity Overlay. (See Siskiyou County General Plan, Land Use Policies (Revised October  
23 9, 1997).) One of those Land Use Policies, Policy 32, applies specifically to Crystal Geyser’s  
24 intended use of the property. Policy 32 states:

25                   Single-family residential, light industrial, light commercial, open  
26                   space, non-profit and non-organizational in nature recreational  
27                   uses, commercial/recreational uses, and public or quasi-public uses  
28                   only may be permitted.

29           26.     Policy 41.3 provides further direction on the siting of facilities with heavy industrial  
30 uses. Policy 41.3 provides that:



- c. All .... heavy industrial uses should be located away from areas clearly committed to residential uses.
- e. All proposed uses of the land shall be clearly compatible with the surrounding and planned uses of the area.
- f. All proposed uses of the land may only be allowed if they clearly will not be disruptive or destroy the intent of protecting each mapped resource.

27. The General Plan Policies governing land use generally and the Policies applicable to the Woodland Productivity Overlay prohibits heavy industrial uses such as manufacturing plastic bottles.

28. Crystal Geyser proposes blow molding plastic bottles from plastic resin or from "pre-forms" (small preliminary plastic pellets or chunks that are heated to expand to bottle size). Preforms are made from plastic pellets or chunks and are made elsewhere. Once shaped into "preform" size they are trucked up to the facility where they are blow molded into the shape of the bottle needed. This blow molding is the final phase of plastic bottle manufacturing. The manufacturing of plastic products is not an allowable use in a light industrial zone. (Zoning Ordinance § 10-6-4602.)

29. Even if the Woodland Productivity Overlay did not apply to Crystal Geyser's facility, the appropriate zoning would be heavy-industrial. Manufacturing of plastic bottles constitutes a heavy-industrial use that is only allowed to be sited in a heavy industrial zone and then only with a conditional use permit. (See Zoning Ordinance § 10-6.4703(d).) Despite this restriction on heavy-industrial uses, Crystal Geyser intends to manufacture plastic bottles at its Mt. Shasta bottling facility without obtaining a conditional use permit for the Project.

30. Crystal Geyser's plan to bottle tea and juices in addition to bottling water also violates the County's Zoning Ordinance and the County's General Plan's Woodland Productivity Overlay. Pursuant to the Woodland Productivity Overlay, the land uses are limited to light industrial. "Bottling works and spring and mineral water bottling works at the source" constitute an allowable use in the light-industrial use. (Zoning Ordinance, § 10-6-4602(s).) However, if it is a "brewery", (i.e. brewing Tejava Tea and Metromint Tea), then the County's Zoning

1 Ordinance requires a "Conditional Use Permit". (*Id.* § 10-6-4603(j).) Additionally, the "Juice  
2 Squeeze" that will be bottled at the facility contains juice that Crystal Geyser Water Company  
3 delivers to the site. Thus, since the bottling of juice is not "at the source", it does not fall within  
4 the allowable uses for light industrial. (*Id.*, § 10-6-4602(s).)

5 31. An actual controversy exists between Plaintiff and Defendants over whether Crystal  
6 Geyser Water Company's operation of a bottling facility that includes the brewing of tea and  
7 production of juices, as well as the production of PET plastic bottles violates the Siskiyou  
8 County General Plan, the Woodland Overlay, as well as the Siskiyou County Zoning Ordinance.

9 32. Plaintiff respectfully request that the Court issue a declaratory judgment resolving  
10 this dispute and declare that such action violates the Siskiyou County Zoning Ordinance the  
11 Siskiyou County General Plan, and the Woodland Productivity Overlay.

12 **SECOND CAUSE OF ACTION**

13 **(Injunction)**

14 **(Against Defendant Crystal Geyser Water Company)**

15 33. Plaintiff realleges and incorporates by reference Paragraphs 1 through 32, inclusive,  
16 of this Petition, as if fully set forth below.

17 34. Plaintiff and its representatives have requested that Crystal Geyser Water Company  
18 comply with the Siskiyou County General Plan, including the Woodland Productivity overlay.  
19 Crystal Geyser Water Company has ignored this request and not responded to Plaintiff's  
20 requests.

21 35. Crystal Geyser Water Company's threatened and actual actions, unless and until  
22 enjoined and restrained by an order of this Court, will cause irreparable harm to W.A.T.E.R.'s  
23 interests and to the County of Siskiyou.

24 36. Plaintiff has no adequate remedy at law for the injuries that Defendants have caused  
25 and threaten to cause with violating the Siskiyou County General Plan, Woodland Productivity  
26 Overlay, and Siskiyou County Zoning Ordinance.

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1           37.     Plaintiff respectfully requests that this Court enjoin Crystal Geyser Water  
2 Company's brewing tea, producing juice products and/or the production and manufacture of PET  
3 plastic bottles at the facility near Mt. Shasta in Siskiyou County.

4                                   **THIRD CAUSE OF ACTION**  
5                                   **(Declaratory Judgment)**  
6                                   **(Against All Defendants)**

7           38.     Plaintiff realleges and incorporates by reference Paragraphs 1 through 37, inclusive,  
8 of this Petition, as if fully set forth below.

9           39.     Siskiyou County Ordinance section 3-13.301 provides that it is unlawful any  
10 person, including a corporation to extract groundwater by any artificial means from a  
11 groundwater basin underlying the County for use outside the basin from which it was extracted,  
12 without obtaining a written permit from the County.

13           40.     Section 3-13.301 provides several exceptions to the requirement for obtaining a  
14 permit for the extraction of groundwater, including for the bottling or transporting bottled water  
15 by a commercial bottling water enterprise, or both.

16           41.     In a submission to the Central Valley Regional Water Quality Control Board, the  
17 Crystal Geyser Water Company stated that:

18                   The sole water supply for bottling operations will be pumped from  
19 production well DEX-6, which is approximately 2,000 feet north of the  
20 Plant. The Plant will operate one bottling line that will produce four  
21 different types of products: sparkling water, flavored water, tea, and a  
22 juice beverage. The operations consists of water processing and  
23 carbonating, tea brewing, juice beverage batching, blow molding of  
polyethylene terephthalate (i.e., PET) plastic bottles, and filling bottles  
with product. Water processing for all the products includes proprietary  
ozonation, carbon filtration, micro-filtration, ultraviolet treatment,  
softening, deionizing, flavor injection, and carbonation.

24           42.     The County's Ordinance does not provide a definition for the term "bottled water"  
25 as that term is used in section 3-13.301.

26           43.     The State of California defines "bottled water" as any water that is placed in a  
27 sealed container at a water-bottling plant to be used for drinking, culinary, or other purposes  
28 involving a likelihood of the water being ingested by humans. (Health & Safety Code, §

1 111070.) Bottled water cannot contain sweeteners, acidifying agents (e.g. citric acid), vitamins,  
2 or chemical additives, and with the exception of mineral water, must contain less than 500 parts  
3 per million (ppm) of total dissolved solids (TDS).

4 44. Under California law, sparkling water is bottled water containing natural levels of  
5 carbon dioxide. If the water is treated and carbon dioxide is added to restore displaced levels,  
6 the finished product must contains the same amount of carbon dioxide as the water that emerged  
7 from the source. (Health & Safety Code, § 11190.) Bottled water with natural or added  
8 carbonation may be prepared with added flavors, extracts, essences, or fruit juice concentrates  
9 derived from a spice or fruit and comprising less than 1 percent by weight of the final product.  
10 The final product must not contain sweeteners or additives other than the flavors, extracts,  
11 essences, or fruit juice concentrates and carbon dioxide. . . .” (*Id.*)

12 45. Crystal Geyser Water Company has not obtained a groundwater extraction permit  
13 from the County of Siskiyou. (See Siskiyou County Ordinance, § 3-13.301.)

14 46. Crystal Geyser Water Company has not submitted an application to the County of  
15 Siskiyou for a groundwater extraction permit. (See Siskiyou County Ordinance, § 3-13-302.)

16 47. The County of Siskiyou and Crystal Geyser Water Company assert that Crystal  
17 Geyser Water Company’s intended operations at the facility are exempt from the requirements of  
18 section 3-13.301.)

19 48. An actual controversy exists between Plaintiff and Defendants over whether Crystal  
20 Geyser Water Company’s planned operation of the facility that includes the extraction of  
21 groundwater, the brewing of tea and production of juices requires a groundwater extraction  
22 permit per Siskiyou County Ordinance section 3-13.301.

23 49. Plaintiff respectfully request that the Court issue a declaratory judgment resolving  
24 this dispute and declare that Crystal Geyser Water Company’s operations are subject to the  
25 requirements of Siskiyou County Ordinance section 3-13.301.

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**FOURTH CAUSE OF ACTION**  
**(Injunction)**  
**(Against Defendant Crystal Geyser Water Company)**

50. Plaintiff realleges and incorporates by reference Paragraphs 1 through 49, inclusive, of this Petition, as if fully set forth below.

51. Crystal Geyser Water Company's threatened and actual actions, unless and until enjoined and restrained by an order of this Court, will cause irreparable harm to W.A.T.E.R.'s interests and to the County of Siskiyou.

52. Plaintiff has no adequate remedy at law for the injuries that Defendants have caused and threaten to cause with violating Siskiyou County Ordinance section 3-13.301.

53. Plaintiff respectfully requests that this Court enjoin Crystal Geyser Water Company's extraction of groundwater for brewing tea, producing juice products at the facility near Mt. Shasta in Siskiyou County unless and until Crystal Geyser Water Company obtains a groundwater extraction permit pursuant Siskiyou County Ordinance section 3-13.301.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. On the First Cause of Action, for a Declaratory Judgment against Defendants Crystal Geyser Water Company and County of Siskiyou that the Siskiyou County General Plan, Woodland Productivity Overlay, and Siskiyou County Zoning Ordinance do not permit the brewing of tea and production of juices, as well as the production of PET plastic bottles at Crystal Geyser Water Company's bottling facility.

2. On the Second Cause of Action, for a permanent injunction enjoining Defendant Crystal Geyser Water Company from brewing tea, producing juice products and/or the production and manufacture of PET plastic bottles at the facility near Mt. Shasta in Siskiyou County.

3. On the Third Cause of Action, for a Declaratory Judgment against Defendants Crystal Geyser Water Company and County of Siskiyou that the Crystal Geyser Water Company's planned operations at its facility in Siskiyou County, which includes the extraction



1 of groundwater, are subject to the requirements of Siskiyou County Ordinance section 3-13.301  
2 and that Crystal Geyser Water Company must obtain a groundwater extraction permit.

3 4. On the Fourth Cause of Action, for a preliminary and permanent injunction  
4 enjoining Defendant Crystal Geyser Water Company's extraction of groundwater for brewing  
5 tea, producing juice products at the facility near Mt. Shasta in Siskiyou County unless and until  
6 Crystal Geyser Water Company obtains a groundwater extraction permit pursuant Siskiyou  
7 County Ordinance section 3-13.301.

8 5. For Plaintiff's costs associated with this action;

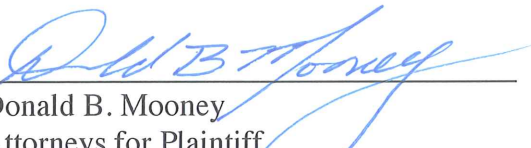
9 6. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure  
10 section 1021.5; and

11 7. For such other and further relief as the Court may deem just and proper.  
12

13 Dated: August 24, 2015

Respectfully submitted,

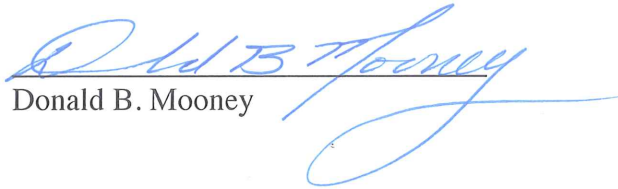
14 LAW OFFICES OF DONALD B. MOONEY

15  
16 By   
17 Donald B. Mooney  
18 Attorneys for Plaintiff  
19 We Advocate Thorough Environmental Review  
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VERIFICATION

I am the attorney for Plaintiff We Advocate Thorough Environmental Review who is located outside the County of Yolo, State of California, where I have my office. For that reason, I make this verification for and on their behalf pursuant to the California Code of Civil Procedure section 446. I have read the foregoing Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief are true of my own knowledge except those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 24th day of August 2015, at Davis, California.

  
Donald B. Mooney