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We Advocate Through Environmental Review
and Winnemem Wintu Tribe

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

WE ADVOCATE THROUGH ENVIRONMENTAL REVIEW, A California non-profit Corporation; and WINNEMEM WINTU TRIBE

Petitioners

v.

COUNTY OF SISKIYOU; SISKIYOU COUNTY BOARD OF SUPERVISORS; and DOES 1 to 20,

Respondents

CRYSTAL GEYSER WATER COMPANY, a California Corporation; and Does 21-40

Real Parties in Interest.

No. _____

VERIFIED PETITION FOR WRIT OF MANDATE

(CCP §§1085 and 1094.5; California Environmental Quality Act ("CEQA"); State Planning and Zoning Law; Siskiyou County General Plan)

Petitioners We Advocate Through Environmental Review and Winnemem Wintu Tribe (collectively "Petitioners") petition this Court for a Writ of Mandate, directed to Respondents Siskiyou County and the Siskiyou County Board of Supervisors ("Respondents"). Petitioner challenges Respondents' December 12, 2017, approval of the use permit for a caretaker's residence at 210 Ski Village Drive, Mt. Shasta, California (APN 037-140-090), Permit UP-16-03 ("Permit"); and certification of the Environmental Impact Report ("EIR") for the Permit (SCH# 2016062056). The Permit allows the Real Party in Interest, Crystal Geyser Water Company ("Crystal Geyser") to construct a caretaker's residence adjacent to a water and beverage bottling plant Crystal Geyser intends to operate in the County near the City of Mount Shasta ("City"). The County asserts that it has no authority over the operation of the bottling plant, but can issue the Permit to allow the caretaker's residence on the bottling plant site. The EIR, despite being prepared to support the County's approval of the Permit, describes the "Project" as the entire bottling facility and operation. In this Petition for Writ of Mandate, the caretaker's residence in addition to the bottling facility and operation is referred to as the "Project" while the permit for the caretaker's residence (the discretionary approval actually granted by the County) is referred to as the "Permit." The discretionary approval given by the County on December 12, 2017 was for the caretaker's residence Permit only. The EIR describes the Project as follows: "The Proposed Project consists of the operation of a spring water bottling facility and ancillary uses within an approximately 118-acre site formerly developed and operated as a water bottling plant. The Proposed Project consists of operational and physical changes to the former bottling plant facilities for the production of sparkling water, flavored water, juice beverages, and teas. This Environmental Impact Report (EIR) analyzes all modifications undertaken and proposed by CGWC [Crystal Geyser] to operate the proposed bottling plant facilities." Petitioners contend that Respondents' approvals for the Project violate the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. Additionally, the Project is inconsistent with the Siskiyou County General Plan and the City of Mount Shasta General Plan contrary to the State Planning Laws. (Gov't Code § 65300 et seq.) Petitioners allege as follows:

PARTIES

1. Petitioner We Advocate Through Environmental Review ("WATER") is a California non-profit corporation. WATER is a grass-roots organization established to promote quality local and regional planning, land use and development, as well as to preserve a healthy human and natural environment in the Siskiyou County area. WATER and its members have a direct and substantial beneficial interest in ensuring that Respondents comply with the laws relating to zoning and environmental protection. Members of WATER live, work and recreate in Siskiyou County and throughout the areas that will be impacted by the Project. The interests of WATER will be harmed by the Project unless court action is taken and Petitioners' requested relief is granted.

2. The Winnemem Wintu Tribe ("Tribe") is a Recognized California Historic Native American Tribe, indigenous to northern California formally recognized by the California Native American Heritage Commission, an agency of the State of California with responsibility for preserving and protecting Native American sites and cultural resources in California. Winnemem Wintu translates to Middle Water People as the McCloud River is bounded by the Upper Sacramento to the West and the Pit River to the East. The interests and rights of the Tribe and its members will be harmed by the Project unless court action is taken and Petitioners' requested relief is granted. The Tribe has thousands of years of history with the land on which the Project site is located. The Tribe derives its identity from its relationship with its historic physical/cultural landscape through continuing ceremony and prayer. The Tribe's rights as a Recognized California Historic Native American Tribe will be severely injured and the Tribe's cultural values will not be considered when determining impacts and mitigation, if the adoption of the Project is not set aside pending full compliance with CEQA and all other laws.

3. Both WATER and the Tribe, and their members, have long-standing interests in the area adjacent to the Project site, as well as in the surrounding community and County as a whole. The Petitioners' environmental, aesthetic, cultural and property interests will be severely injured if the adoption of the Project is not set aside pending full compliance with CEQA and all other laws. Petitioners enjoy the County's and State's natural resources.

Petitioners bring this petition on behalf of all others similarly situated who are too numerous to be named and brought before this Court as petitioners. Petitioners are within the class of persons and entities beneficially interested in, and aggrieved by, the acts of Respondents as alleged below. Petitioners participated in the administrative processes herein, with many members submitting comment letters and objecting to the Project. Petitioners have exhausted their remedies. Accordingly, Petitioners have standing to sue.

4. Respondent Siskiyou County is a political subdivision of the State of California and a body corporate and politic exercising local government power. Siskiyou County is the CEQA "lead agency" for the Project. As lead agency for the Project, Siskiyou County is responsible for preparation of an environmental document that describes the Project and its impacts, and, if necessary evaluates mitigation measures and/or alternatives to lessen or avoid any significant environmental impacts. The County also has principal responsibility for determining whether projects within its jurisdiction are consistent with applicable land use ordinances and other applicable laws.

5. Respondent Siskiyou County Board of Supervisors is a legislative body duly authorized under the California Constitution and the laws of the State of California to act on behalf of the County of Siskiyou. Respondent Siskiyou County Board of Supervisors is responsible for regulating and controlling land use within the County including, but not limited to, implementing and complying with the provisions of CEQA and the CEQA Guidelines, 14 California Code of Regulations, title 14, section 15000 et seq. (the "Guidelines"), applicable land use ordinances and other laws. As the elected representatives of the people of the County, the Board of Supervisors establishes overall County priorities and sets policy. The Board of Supervisors is the governing body of the County and is ultimately responsible for reviewing and approving or denying the Permit.

6. Real Party in Interest Crystal Geyser Water Company ("Crystal Geyser") is a California corporation that is authorized to conduct business in the State of California. Crystal Geyser owns the former Coca-Cola Dannon Spring Water Bottling Facility that is located at 210 Ski Village Drive, Mt. Shasta, California; the Project site. Crystal Geyser is the applicant

for the Permit for a caretaker's residence that is being challenged by this Petition. Crystal Geyser's corporate offices are located at 501 Washington Street, Calistoga, California in Napa County. Crystal Geyser operates as a subsidiary of Otsuka Pharmaceutical Co., Ltd.

7. Petitioners are unaware of the true names and identities of DOES 1 through 20 and 21 through 40, inclusive, and sue such unnamed Respondents and Real Parties in Interest respectively, by their fictitious names. Petitioners are informed and believe, and based thereon allege, that fictitiously named Respondents and Real Parties in Interest also are responsible for all acts and omissions described above. When the true identities and capacities of Respondents and Real Parties in Interest have been determined, Petitioners will, with leave of Court if necessary, amend this Petition to include such identities and capacities.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.

9. Venue for this action properly lies in the Superior Court for the State of California in and for the County of Siskiyou pursuant to sections 393, 394 and 395 of the Code of Civil Procedure.

BACKGROUND FACTS

10. The Project site is located in Siskiyou County directly adjacent to the City of Mt. Shasta city limits, on Ski Village Drive approximately 1,200 feet from the intersection with Mt. Shasta Boulevard. The project site is comprised of fourteen parcels, Siskiyou County ("County") Assessor's Parcel Numbers (APNs) 037- 060-030, -040, -050, -060; 037-070-060, -070, -080, -090, -210; 037-140-020, -090; and, 037-160-010, - 020, -030, and is located in Township 11 North, Range 4 West, Section 9 City of Mt. Shasta United States Geological Survey (USGS) quadrangle. Regional access to the project site is provided by Interstate 5.

11. The Project site was used previously as a water bottling facility. Dannon Waters of North American (prior to Dannon becoming Coca-Cola Dannon [CCDA Waters]) acquired the

property and a draft Initial Study was prepared in March 1998 to address potential environmental impacts and proposed mitigation measures for what is now the existing water bottling facility ("Plant"). A Mitigation Agreement was entered into in November 1998 between the County and the then applicant which incorporated the mitigation measures identified in the 1998 draft Initial Study ("1998 Agreement"). The Plant was subsequently constructed between 1998 through 2000 by CCDA Waters and began operation in January 2001. The Plant facilities consisted of the plant building and ancillary structures.

12. In 2001, CCDA Waters sought and received approval from the Central Valley Regional Water Quality Control Board for an on-site leach field for industrial waste process rinse water. The leach field as constructed could accommodate 72,000 gallons per day.

13. CCDA Waters operated the Plant from approximately 2000 to 2010 and it has been reported (without specific documentation) that the facility used a monthly average of approximately 160 gallons per minute. It has also been reported by Plant neighbors that Plant operations negatively impacted domestic wells in the area.

14. In 2010, CCDA Waters' Plant was closed and the majority of equipment used for the bottling operation was removed. Crystal Geyser purchased the project site in 2013.

15. The Project site is bound immediately to the north by residential housing and industrial businesses, to the east by low density residential (LDR) housing, to the south by the Mt. Shasta KOA campground along with a railroad line and single family housing, and to the west by single family housing, as well as industrial and commercial businesses. Residential land uses in the project vicinity consists of varying lot sizes, generally at a greater density inside the City limits, and range from suburban to rural. Jehovah's Witnesses Kingdom Hall is northwest of the site, approximately 375 feet from the automobile entrance to the Plant. Commercial and industrial land uses in the vicinity generally occupy larger lots to support automotive and trucking based businesses. Beyond the immediate project vicinity, surrounding uses include residential and commercial uses in the City, rural residences in the unincorporated county, and both public and private forestland.

16. The County's General Plan designates the Project site as Woodland Productivity and Building Foundation Limitations: Severe Pressure Limitations Soils. The central project site that contains the Plant and leach field is zoned M-H (Heavy Industrial), the northern project site that contains the production well is zoned AG-2 (Non-Prime Agricultural), and the eastern project site is zoned R-R-B-1 (Rural Residential Agricultural District).

17. On January 12, 2017, Respondent County issued a Draft EIR for the Project. Petitioners and many others submitted extensive comments on the Draft EIR. Respondent County issued a Final EIR for the Project and scheduled a Planning Commission hearing for September 20, 2017. The Planning Commission hearing occurred on that date and was then continued to September 27, 2017. Petitioners and many others submitted extensive comments on the Final EIR and during the Planning Commission hearing.

18. On September 27, 2017, the Planning Commission approved the Project and certified the EIR. Petitioners appealed the decision to the Board of Supervisors.

19. On November 16, 2017, the Board of Supervisors held a public hearing on the appeal, heard presentations from Petitioners, Crystal Geyser and County staff, and heard public testimony. The Board closed the hearing on November 16, 2017, and continued the item to December 12, 2017, with a request to County staff to provide clarifications and answers to questions raised at the public hearing.

20. On December 12, 2017, the Board or Supervisors received the report from staff, denied the appeal, approved the Project and certified the EIR.

21. The Project description is at odds with the approval given by the County to Crystal Geyser. The County repeatedly and emphatically throughout the EIR process asserted that it has *no authority* over the operation of the bottling facility, and that the only discretionary approval within the County's authority was the Permit for the caretaker's residence. Yet, the EIR for the "Project" includes analysis of the entire bottling facility and operation. The EIR makes unsupported assumptions regarding the level of production anticipated as well as making predictions and conducting analysis regarding every other aspect of the bottling facility operations, all the while the County claimed that it had no ability whatsoever to place any type

of restriction on the bottling facility operations. Further, the County does have the authority and the duty to regulate the operations at the Plant because the Project includes the production of flavored water, juice beverages, and teas.

22. By including the bottling facility operations as part of the "Project" being reviewed by the County, and by certifying the EIR, it appears the County was attempting to provide a basis for various responsible agencies to take action on future permits from agencies such as the California Department of Fish and Wildlife, the City of Mount Shasta, the Regional Water Quality Control Board and the United States Army Corps of Engineers.

23. The EIR largely defers analysis and mitigation of impacts to the future, relying upon the notion that the responsible agencies will figure out what impacts the bottling facility will have on the environment, and presumably require mitigation for such impacts.

24. During Project review by the County, Petitioners and others submitted extensive comments and objections regarding the Project and its associated EIR to the County Board of Supervisors. Petitioners counsel also presented significant concerns during the appeal hearing before the Board of Supervisors that the EIR improperly stated that the "Project" under review was the bottling facility and all of its associated operations, and failed to disclose that the only action being considered by the County was the "Permit" for the caretaker's residence. It is misleading to the public and the decision makers, and the entire EIR implies that the County has some authority to require mitigation or even a stable project description for the bottling operations, when the opposite is true: the County emphatically denies having any power to control or regulate those operations.

25. On December 12, 2017, over Petitioners' myriad objections, the Siskiyou County Board of Supervisors approved the Project and Certified the EIR.

26. On December 13, 2016, Respondents filed a Notice of Determination with the County Clerk of Siskiyou County as provided for in Public Resources Code, section 21152.

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EXHAUSTION OF ADMINISTRATIVE REMEDIES

AND INADEQUACY OF REMEDY

27. Petitioners have performed any and all conditions precedent to filing the instant action and have exhausted any and all available administrative remedies to the extent required by law.

28. Petitioners have complied with the requirements of Public Resources Code, section 21167.5 by mailing written notice of this action to the Respondents. A copy of this written notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

29. Petitioners have complied with Public Resources Code section 21167.6 by concurrently filing a request concerning preparation of the record of administrative proceedings relating to this action.

30. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside their approval of the Project and certification of the EIR. In the absence of such remedies, Respondents' approval will remain in effect in violation of State law.

31. This action has been brought within 30 days of the filing of the Notice of Determination as required by Public Resources Code section 21167(c).

STANDING

32. Petitioners have standing to assert the claims raised in this Petition because Petitioners' aesthetic, environmental and property interests are directly and adversely affected by Respondents' certification of the EIR and approval of the Project. The Tribe also has standing because the Tribe's rights and cultural interests as acknowledged and defined by AB52 are directly and adversely affected by Respondents' certification of the EIR and approval of the Project.

ARBITRARY AND CAPRICIOUS ACTIONS

33. Petitioners bring this action on the basis, among others, of Government Code section 800, and other applicable laws, which award Petitioners' attorneys' fees in actions to

overturn agency decisions that are arbitrary and capricious, such as the decisions here in question.

PRIVATE ATTORNEY GENERAL DOCTRINE

34. Petitioners bring this action as private attorneys general pursuant to Code of Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public interest. Issuance of the relief requested in this Petition will confer a significant benefit on a large class of persons by ensuring that Respondent County does not approve the Project in the absence of lawful environmental review and compliance with applicable local and state zoning law.

FIRST CAUSE OF ACTION

Abuse of Discretion

Violation of CEQA, Public Resources Code, § 21000 et seq.

35. Petitioners reallege and incorporate herein, as if set forth in full, each and every allegation contained in paragraphs 1 through 34.

36. In approving the Project as described herein, Respondent County prejudicially abused its discretion in violation of CEQA pursuant to Public Resources Code section 21168 and Code of Civil Procedure section 1094.5, because the County certified an EIR that fails to include information necessary for informed decision making and informed public participation, including information necessary to reach informed conclusions regarding the significance of the Project's environmental impacts, the effectiveness of mitigation measures to avoid the Project's significant environmental impacts, or feasibility of mitigation measures to reduce the Project's significant environmental impacts; because the EIR fails to lawfully assess the Project's cumulative effects; because the EIR fails to use the best available information and/or accepted methodology for analyzing information; because the Final EIR fails to provide good faith responses to comments on the Draft EIR; because the County failed and refused to provide a stable, finite Project description by obscuring the fact that the only authority the County has over any aspect of Crystal Geyser's activities relates to the caretaker's residence Permit *only*; because, with respect to the findings required by CEQA, the County failed to

make required findings, failed to support the findings with substantial evidence, and failed to disclose the analytic route showing how the evidence supports the findings.

37. Petitioners allege that the County violated CEQA as detailed in a number of comment letters submitted by Petitioners and others during the administrative review process, including, without limitation, the appeal submittals to the County by counsel for Petitioners. Petitioners allege that the County violated CEQA in a manner summarized in comments and appeal submittals addressed in staff reports prepared for the November 16, 2017 and December 12, 2017, Board of Supervisors hearings on the Project, including all of the attachments to those staff reports. Petitioners intend to prosecute all of the alleged violations of CEQA described herein and in the documents submitted by Petitioners during the administrative review process. By way of illustration, and without limitation, Petitioners allege the following violations of CEQA by the County:

38. Respondents have abused their discretion and failed to act in the manner required under CEQA with respect to the Project because they have failed to provide an adequate, stable project description, failed to adequately analyze the Project's environmental impacts, failed to identify necessary and feasible mitigation measures, failed to complete consultation with the Tribe under AB 52, and impermissibly deferred analysis of impacts and development of mitigation measures to the future.

I. Mitigation Measures are not enforceable as required by CEQA

39. The EIR, despite being prepared to support the County's approval of the Permit, describes the "Project" as the entire bottling facility and operation. The discretionary approval given by the County on December 12, 2017 was for the caretaker's residence Permit. The EIR describes the Project as follows: "The Proposed Project consists of the operation of a spring water bottling facility and ancillary uses within an approximately 118-acre site formerly developed and operated as a water bottling plant. The Proposed Project consists of operational and physical changes to the former bottling plant facilities for the production of sparkling water, flavored water, juice beverages, and teas. ***This Environmental Impact Report (EIR) analyzes all modifications undertaken and proposed by CGWC to operate the proposed***

bottling plant facilities." (Draft EIR, p. 3-1, emphasis added.) The record is clear that the County has no intention of defining, regulating or otherwise exercising any authority over the bottling facility operation, and insists that it has authority only over the caretaker's residence Permit issued to Crystal Geyser. The Project description is not just misleading, it appears to be for another project entirely. In fact, in the introduction to the Project Description Chapter of the EIR, the caretaker's residence is not even mentioned.

40. County asserted in response to these concerns that the conditions pertaining to the operation of the bottling facility would be included in the Permit for the caretaker's residence. The record reveals that the caretaker's residence has limited usefulness because the Health Risk Assessment in the EIR indicates that living in the home full-time would result in an unacceptable risk of developing cancer or other health problems. There is no substantial evidence in the record to support the conclusion that Crystal Geyser wants or needs a caretaker's residence, and certainly no evidence to support the assumption that Crystal Geyser will even go ahead with construction of the residence in light of the fact that it will be dangerous to live there. There is no sound basis for a conclusion that all of the conditions on the bottling facility operations will be enforceable through the caretaker's residence Permit.

41. Despite the County's claim that it has no authority over the bottling operation, the operation proposed by Crystal Geyser, including the production and bottling of juice and tea beverages, is subject to County permitting authority.

42. The bottling plant operation is also subject to the permitting authority of various other agencies, and so an environmental document will be necessary with respect to the discretionary actions of the responsible agencies, and it must cover all of the plant operations in order for the responsible agencies to issue their permits. It is unclear why, among the potential lead agencies for the bottling facility Project, that the agency with the least authority ended up as the lead agency. The County took on the task as the lead agency but failed to consider its lack of ability to enforce conditions if the only aspect of the Project over which the County claims to have authority is the caretaker's residence.

II. The County failed to complete AB52 consultation with the Winnemem Wintu Tribe

43. The staff reports for the November 16, 2017 and December 12, 2017 hearings state that the consultation process required upon request under AB 52 had been completed. This is incorrect, and the County unilaterally terminated the consultation process on September 6, 2017. The County suggested that the consultation process had been lengthy, but this does not satisfy the termination requirements of the statute. The County did not find in "good faith" that after "reasonable effort" agreement cannot be reached. (Public Resources Code § 21080.3.2 (b)(2).) The County's unilateral termination was based upon an assertion that the Tribe had not produced substantial evidence to support its assertion that the Project would have potentially significant impacts to Tribal Cultural Resources and that the County's timeline precluded further consultation. This does not meet the standard of AB 52 and improperly characterizes the obligations of the respective parties during consultation. The County was required by AB 52 to consult with the Tribe regarding the significance of Project impacts, and it did not do so. There is no substantial evidence to support the claim that the County is in compliance with AB 52.

44. In addition to improper termination of the consultation, the deficiencies of the Project description did not allow meaningful and comprehensive AB 52 consultation because there is no upper limit on the volume of water that will be extracted by Crystal Geyser, and the County asserts that it has no authority to limit the extraction amounts. Only after the Project description is corrected will the Tribe and the County be able to consult on the significance of adverse effects, mitigation measures and/or Project alternatives.

45. Further, the CEQA Findings state that no known tribal cultural resources were identified in the Study Area. (CEQA Findings, p. 21.) This is simply inaccurate, as such resources were identified and acknowledged by the County. There is no substantial evidence to support this statement, the consultation with the Tribe was abruptly and improperly terminated by the County, and the "fact" contained in the CEQA Findings is incorrect.

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III. The EIR for the Project contains an inaccurate Project Description

46. As set forth above, the EIR contains a project description that is almost unrelated to the discretionary Permit that was issued by the County in conjunction with certification of the EIR. The Project description is so inaccurate that the public and decision makers were completely confused about what was being considered and approved by the County.

47. The County asserted through the entire administrative review process that it has no authority to issue a permit for the bottling operation. Because the Project includes the production of flavored water, juice beverages, and teas, the Couuty not only has the authority to issue a permit, it must issue a discretionary permit for Crystal Geyser to produce these value-added products. Thus, the County does have the authority to regulate the entire operation of the Project.

48. The Project description includes estimates of production, but there is nothing in the environmental document, mitigation measures or conditions of approval for the caretaker's residence that includes any upper limits for the extraction of ground water and therefore any analysis of impacts to the hydrology of the area and to the Tribal Cultural Resources will necessarily be inadequate. Even if the inherent limits of production line capacities, waste stream disposal, etc. were never exceeded, the Project operator could easily, and without environmental review, transport extracted ground water by truck in unlimited quantities to an off-site facility for processing and bottling.

49. Thus, even if one assumes that the CEQA "project" approved by the County included the bottling facility operations the Project description is inaccurate.

50. CEQA requires that the full level of development and use being authorized by an approval must be analyzed and its effects mitigated. The EIR for the project fails to meet this standard. Appellants raised this issue in comments on the Draft EIR.

51. The EIR describes the production levels as 90% of what would be "possible" with the equipment at the Plant, but also states that the County has no authority to place any upper limit on production levels. The Draft EIR Project description includes a host of speculative "scenarios," and leaves the public and the decision makers wondering what the Project will

actual entail. The volume of wastewater varies, depending upon "market demand." Either one or two bottling lines will operate, depending on "market conditions," and the plant may operate "up to 24 hours per day (depending on demand)." (Draft EIR, p. 3-9.)

52. The Project is not described in the EIR. The County did not even approve of the bottling operations, and yet the EIR goes through hundreds of pages of analysis of various scenarios with unsupported assumptions regarding bottling facility operations, as though the County was approving a "project" that included operation of the Plant.

53. Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed project is critical to accurate analysis of impacts and meaningful public review. The EIR in this case failed to meet this requirement.

IV. The EIR includes impermissibly narrow project objectives

54. Many of the presumptions throughout the EIR are based upon the notion that there is some urgency in "meeting market demand," although it is never disclosed in the EIR what factual basis there may be for the urgent need for Project approval in order to meet this purported demand. The way that the objectives of a project are drafted impact the CEQA analysis, particularly consideration of alternatives and mitigation measures.

55. The Draft EIR states that it "considered" an alternative of delaying operation of the Project until the Lassen Substation power project is completed. This alternative would avoid the use of propane generators and reduce GHG and CAP emissions. (Draft EIR, p. 6-5.) The alternative was dismissed from full consideration because it would "not accomplish any of the project objectives in the short term." (*Ibid.*) The objective identified was that of initiating plant operation "as soon as possible to meet increasing demand for Crystal Geyser beverage products." All of the Project objectives are driven by the purported "need" for Crystal Geyser to meet immediate demand for its products. (Draft EIR, p. 3-8.)

56. Various statements and information were submitted by Crystal Geyser during the administrative process regarding the purported "need" to meet market demands, thereby precluding consideration of alternatives that would avoid environmental impacts, but none meets the standard for substantial evidence under CEQA.

V. The EIR's impacts analysis is insufficient

57. Allegations in this Petition regarding the failure of the EIR to adequately analyze impacts necessarily include the assumption that the County was analyzing the impacts of a CEQA "project" that included the bottling facility operations, despite the fact that the County insists that it has no authority over the bottling facility operations and was providing a discretionary Permit for the caretaker's residence only. The question of what the CEQA "project" was in this case is a threshold issue. Many of the allegations here are based upon the EIR's Project Description Chapter and analyses throughout, and are not based upon the County's assertion that it has no authority over the Project as described in the EIR.

A. Impacts to aesthetics

58. The error in the Draft EIR analysis of the Project's aesthetic impacts begins with an unsupported assumption that the plant is not a "dominant" visual feature. County's response to this assertion was that the plant may be visible from long-range, but this does not mean it is a dominant visual feature, while going on to acknowledge that it is also one of the most prominent non-natural features.

59. According to the County, the existing visibility of the plant will not be addressed because it is an existing condition, despite the fact that the "existing" situation is in violation of the 1998 Mitigation Agreement; the same Mitigation Agreement the County claims will be incorporated into the mitigation measures for the Project.

60. The Final EIR continued the error of the Draft EIR by simply giving credit to the applicant for all of the mitigation measures identified in the 1998 Agreement and discussed in the Project Description chapter. And yet, the Draft EIR goes on to accept that "[t]he existing warehouse is a reflective white surface that can produce local glare during daytime hours." (DEIR, p. 4.1-6.) In Response to comments, the County indicated that it will not be enforcing the mitigation measures required in the 1998 Agreement for "existing" structures on the site. There is no explanation as to why this is the case, except for the statement that enforcement of the 1998 Agreement is "beyond the scope of the project." (Final EIR, p. 3-8.)

61. The 1998 Agreement is a separate, ongoing, enforceable agreement, and the County's choice to forego enforcement is just that, a choice. The failure to enforce is not an existing "baseline condition."

B. Air quality impacts

62. Beginning with the Draft EIR, the entire air quality analysis, including analysis of greenhouse gas emissions, was so deeply flawed that it was difficult to present discussion in comments on the Draft EIR. Autumn Wind Associates provided an expert analysis of the air quality sections in the Draft EIR, and found that the basic inputs and assumptions had been heavily manipulated to "reduce" the apparent level of impact.

63. In response to comments on the Draft EIR, the County prepared a revised emissions analysis. The revised analysis did not remedy the errors.

64. In the Draft EIR, the Project appeared to have a minimal impact on air quality, as the Executive Summary in the Draft EIR concludes that all air quality impacts are less than significant, except for the increased cancer risk for the people living in the caretaker's residence. (Draft EIR, p. 2-5.) This seemed surprising in light of the tremendous number of truck trips that will result from operation of the Project.

65. Rather than use the methodology and inputs that are the standard of the industry for air quality analysis, and rather than including *all* of the truck traffic that the Project will generate, the County modified the inputs, misstating the types of truck traffic as well as modifying the standard assumptions for General Heavy Industrial analyses in such a way that the conclusions fall below thresholds of significance.

66. The County acknowledged that the Project use is General Heavy Industrial. (Draft EIR, Appendix M, pp. 8-11.) Appendix M to the Draft EIR identified a trip rate applied to the General Industrial land use type, but at numerous locations, the "General Light Industry" land use had been substituted without explanation. Further, standard trip rate values had been overridden for the DEIR analysis, also without explanation. The arbitrary deviation from standard, industry-accepted methodology was not supported by substantial evidence, and the Draft EIR sited to none.

67. The Autumn Winds comment letter pointed out to the County that the Project will generate many more trips than those considered in the Draft EIR and that the standard fleet mix had been so heavily modified, leaving out the heaviest vehicles, it rendered the conclusions invalid.

68. In response to comments, the Final EIR included substantial emissions input-related chauges, but the changes did not remedy the errors of the Draft EIR. Emissions remain underestimated for CAP and GHG pollutants, and the screening-level Health Risk Assessment ("HRA") conducted for the DEIR and carried through *unrevised* to the Final EIR now reflects substantially underestimated health risks.

69. In the Final EIR, the County also has abandoned any threshold of significance for CAP emissions from mobile sources. The County admits that the revised modeling reveals significantly increased emissions from mobile sources, but declines to use the threshold of significance that was applied to these emissions in the Draft EIR, claiming "Siskiyou County is in attainment for all CAP's, [and] numerical thresholds have not been established for mobile emissions." (Final EIR, p. 3-24.) In other words, the County applied the Rule 6.1 threshold to *all* Project CAP emissions in the Draft EIR, but when the revised modeling revealed that the mobile emissions would exceed this threshold, the County abandoned it and now claims that there is no applicable threshold. A lead agency may not analyze an impact without using a threshold of significance, and the fact that another agency has not established a threshold does not excuse the County from this requirement.

70. The revised modeling included in the Final EIR is as deeply flawed as the original effort prepared for the Draft EIR. The County continued to modify the carefully developed fleet mix, and provides little in the way of explanation. No substantial evidence is cited by the County to explain the changes in the fleet mix, particularly the decision to remove heavy-heavy-duty trucks from the General Light Industry category under which the Project is covered. The Project's mobile source emissions continue to be underestimated.

71. The Health Risk Assessment ("HRA") fails to meet CEQA's standards as well. The revised modeling in the Final EIR shows increased truck trips and an increased proportion

of heavy-heavy trucks (that, relatively, emit the most diesel particulate matter in the fleet mix), with increasing mobile source emissions (except for CO, which decreased slightly). While the Final EIR recognizes the increase in criteria air pollutants that will result, it does not include a correlative increase in diesel particulate matter, relevant to health risks, into the original HRA's findings. Those findings were based on 100 "heavy duty" trucks. The Final EIR analysis shows 103, but with a higher fraction of the heavy-heavy's, and PM2.5 emissions have increased.

72. The County failed to run the screening level HRA with the new mobile source information, and as a result, the HRA is inaccurate. Emissions estimated in the Final EIR's revised Air Quality element have increased substantially over what was used in the Draft EIR to model the project's health risks.

73. With the Final EIR emissions data, modeling was been conducted by Dr. Andrew Gray of Gray Sky Solutions, and the increase in DPM-containing PM2.5 will cause the project's maximum cancer risk for the most at-risk residents to exceed the 10/million increased cancer risk threshold of significance, rendering the Final EIR's determination of a less-than-significant risk invalid. The County refutes these conclusions, but the process of running a new HRA with the new emissions data was required.

74. The Final EIR also failed to remedy other problems with the air quality analysis. For example, the use of "urban" trip lengths in the CalEEMod modeling remains inappropriate. Also, the abandonment of any threshold of significance for mobile sources of CAP emissions is not consistent with the law.

C. Greenhouse Gas Emissions

75. The greenhouse gas and climate change impacts sections of the EIR rely upon Appendix M, discussed in detail above, as well as the revised emissions data included in the Final EIR, and that analysis is so inaccurate that it is of very little use in terms of providing support for any conclusions regarding GHG emissions.

76. Also omitted from the emissions analysis is any consideration of CO_2 emissions that will occur as a direct result of the Project's consumption of materials used for making

bottles. The Project will produce single-use polyethylene terephthalate ("PET") bottles for its products. (Draft EIR, p. 3-9.) The bottles will be molded on site using "preforms." (*Id.*) There is no discussion of how many bottles will be produced, nor any consideration of the GHG emissions associated with making the preforms. The manufacture of one ton of PET produces 3 tons of CO_2. This contribution to total GHG emissions must be included.

77. The GHG analysis also includes HVAC use in such a way that is not supported by any evidence. (Draft EIR, p. 4.6-13.) "The HVAC system was assumed to run two hours a day, 160 days annually, with four heating units." There is no discussion of why the heating units would be used for only two hours per day, particularly in light of local cold winter conditions. There is also no mention of how much the air conditioning units will be used. Since teas will be brewed and boilers will be used, it is likely some cooling of the building will be required in the summer. GHG emissions from the AC system must be evaluated.

78. The Draft EIR properly determined that the Project's GHG emissions would be a significant and unavoidable impact. (Draft EIR, p. 4.6-17.) Under CEQA, this determination gives rise to a legal obligation to impose all feasible measures to mitigate the impact. (CEQA Guidelines § 15126.4.) The DEIR fails to provide an adequate discussion of potential mitigation measures.

79. THE GHG emission analysis is also flawed by the fact that the EIR uses various "scenarios" to discuss potential emissions, and none of the scenarios take into account the fact that the County asserts that it has no authority to impose any limits on the production levels of the bottling facility. Thus, the GHG emissions resulting from the Project will not be 25,486 metric tons ("MT") of CO_2 per year, but could be something far greater. (See Draft EIR, p. 4.6-16, Table 4.6-2.)

80. The Draft EIR lists a menu of mitigation measures that could be used "to achieve a net reduction of 25,486 MT of CO_2 annually." (Draft EIR, p. 4.6-18.) Possibly some solar arrays, encourage employees to carpool, and then buy some offset credits from the carbon registry. (*Ibid.*) This menu of items is also proposed in the context of the fact that there is no upper limit on production at the Plant, the faulty air emissions study contained in Appendix M,

not to mention the fact that it assumes a credit for the Project recycling a percentage of its waste stream, without a clear explanation of how that will occur.

81. Finally, the Draft EIR errs in jumping to the conclusion that the Project's impacts related to climate change are significant and unavoidable, without conducting the analysis of *why* this is the case. (*Keep Berkeley Jets Over the Bay Com. V. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.) The Draft EIR states that the Project is necessary to allow Crystal Geyser to meet the vaguely described "increasing market demand."

82. In response to comments, the County continued on the path of simply making the finding that it is a significant and unavoidable impact, and does not consider additional mitigation measures. (Final EIR, p. 3-24.) "As shown in Table 4.6-2 of the Final EIR, the estimates of GHG emissions with the changes to the revised project assumptions increased from 35,486 metric tons (MT) of carbon dioxide equivalent (CO2e) per year to 61,281 MT of CO2e per year. As a result, Mitigation Measure 4.6-1 within the Final EIR has been revised to require an equal increase in the amount of off-set mitigation required; thus after mitigation, the severity of the environmental effect does not change between the Draft EIR and the Final EIR." (*Id.*) Thus, the revised analysis in the Final EIR shows that the Project will have nearly twice the level of GHG emissions as stated in the Draft EIR, and yet the County continues to avoid the consideration and adoption of additional mitigation measures. (See Final EIR, pp. 3-12 and 3-17.) This violates CEQA's requirements.

D. Noise impacts

83. The EIR fails to analyze noise impacts, and also fails to disclose information regarding noise impacts to the public and the decision makers. The Final EIR analysis picks and chooses from data in the Draft EIR and from the revised noise study presented with the Final EIR. The EIR uses noise thresholds that have been superseded and are *not* the standard for the industry. The County intentionally used a residence 80 feet from the railroad track to develop a "baseline" and compounded the errors in the noise analysis for leaving out a sensitive receptor.

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84. The residence at 333 Raspberry Way was left out of the study, despite the fact that it is directly across the street from the project and the nearest sensitive receptor to the HVAC equipment and boiler vents in the front of the bottling plant.

85. Rather than correcting the errors contained in the Draft EIR's analysis, the Final EIR includes additional errors in methodology as well as considerable misinformation. The County's conclusions regarding the noise impacts of the Project are not supported by substantial evidence.

86. The thresholds used in the EIR to determine incremental significance for all project noise sources are out-of-date and inappropriate for industrial noise sources. Comments submitted to the County be noise experts and others pointed out this flaw in the methodology. Further, in the revised study for the Final EIR, the County chose to use a residence located approximately 80 feet from the railroad tracks to develop a "new" noise baseline. (See Final EIR, p. 3-44.) Site 4 is used by the County to justify an increase in the baseline noise level in order to mask the noise impacts of the Project.

87. The responses to comments dismiss concerns about exceedance of noise standards, claiming that a 1-4 dB exceedance is minor. Even a 1 dB increase in 24-hour levels represents a potentially significant impact to local sensitive receptors that may require mitigation. The evidence in the record does not support the Final EIR's conclusions regarding noise impacts.

88. With respect to noise mitigation, the EIR allows for a choice between requiring quieter equipment or shielding. The use of both measures would provide the greatest mitigation, and unless there is substantial evidence to support the conclusion that employing both measures would be infeasible, then both must be required of the applicant.

E. Hazards and hazardous materials

89. The County failed to require an adequate level of analysis of potential contamination at the Project site. The Final EIR states as follows: "A Phase I ESA is generally considered the first step in the process of environmental due diligence and does not include the actual sampling of soil, air, groundwater, and/or building materials. If the Phase I

ESA determines that a site may be contaminated, a Phase II ESA may be conducted." (Final EIR, p. 4.7-2.) In response to comments, the County acknowledges that some of the contaminated portions of the Project site required soil removal and there is some question about the records supporting the conclusion that the removal actually occurred. (Final EIR, p. 3-196.) The fact that there are not conclusive records regarding the removal of the contaminants indicates that a Phase II ESA is required, at the very least. The vague support for the County's conclusion that the material was removed does not constitute substantial evidence.

F. Impacts to hydrology

90. The Project's impacts to groundwater have not been adequately disclosed and analyzed in the EIR. The EIR fails to adequately address potential impacts to nearby wells. The analysis falls short with respect to analyzing impacts to groundwater levels as well as groundwater quality.

91. The EIR fails to disclose with sufficient detail the chemicals that will be used at the bottling plant as well as the impacts that will result to groundwater.

92. Many comments from local residents were submitted to the County regarding the impacts to domestic wells during the time the Plant was operating between approximately 2000 and 2010. In response to comments, the County claims that the evidence submitted by commenters is "anecdotal." (Final EIR, p. 3-35, 3-107, 3-204 and 3-251.) Personal observations may qualify as substantial evidence, and in this case, the observations are based upon facts and the County may not dismiss the commenters' concerns on the ground that some of the evidence submitted is based upon non-expert observations.

93. The fact is that operation of the Plant impacts neighborhood wells, and the County and its experts have done everything possible to ignore this evidence, including making assumptions about future pumping levels without substantial evidence to support the assumption and in conjunction with the claim that the County has no authority to limit pumping levels. The personal observations of Project neighbors are substantial evidence, and the County's disregard of this information was an abuse of discretion.

94. In addition to the failure to take into account substantial evidence of potentially significant impacts to groundwater, the County also failed to conduct an adequate investigation into potential impacts. The Final EIR gives no adequate response to the suggestion that water flow patterns may well be far more complicated than the simple model relied upon and that direct testing needs to be done. (See Final EIR, pp. 3-362 to 3-364.) Furthermore, there is no proposed mitigation concerning what to do if neighboring wells are impacted by the Project.

95. The Final EIR claims that Crystal Geyser's pumping with two production lines would amount to only 28% of the flow rate in the aquifer below the extraction well for the Project (known as DEX-6). That flow rate (and its direction) is, in fact, not well known. Its calculation is not based on known data and some important data was disregarded by the County. Based on the evidence in the record, the actual flow rate could be much less than assumed. Moreover, even assuming the unsupported conclusion that the Project will cause 28% depletion of the groundwater, that level of depletion could cause significant impacts to neighboring wells.

96. With respect to potential water quality impacts, the Planning Commission failed to discuss which wastewater treatment option it was approving when it approved the Project. The Findings contain no mention of which option was approved. The Final EIR and Response to Comments (Number 16, page 3-17; Comment P25-3, page 3-116; Comment P35-14, page 3-143; Comment P36-66, page 3-160, Comment P36-235, page 202; Comment P139-2, page 3-376) state: "The initial wastewater treatment option will be selected prior to project approval." The Planning Commission failed to deliver on this commitment relied upon by the County in its responses to comments. Similarly, the Board of Supervisors ignored this commitment and failed to identify a wastewater treatment option.

97. According to City comments, the only wastewater treatment option that is acceptable to the City is Option 1, with all flows going the City Wastewater Treatment Plan ("WWTP"). The City, as a responsible agency, will now be faced with a Project approval that fails to identify which wastewater treatment option has been approved, despite the fact that the City is the agency that will be providing wastewater treatment services.

98. In addition to the City's request that Option 1 be included in Project approval, the California Regional Water Quality Control Board submitted a letter to the County regarding the Project on September 18, 2017, stating that it strongly encouraged the County to recommend that Crystal Geyser's wastewater be sent to the City's WWTP to the extent capacity is available, rather than to the onsite leachfield. The Planning Commission ignored this issue and failed to select the wastewater treatment option before project approval as was promised in the County's response to comments, and so did the Board of Supervisors.

99. In addition to the failure to identify the wastewater treatment option, the County ignored many comments submitted by members of the public and experts regarding wastewater constituents that were completely ignored in the analysis. Many substances that will be contained in Project wastewater and several of these substances were ignored in the EIR, or not sufficiently analyzed. Some examples of such constituents are: refrigerant (tetraflouroethane); halogenated organic compounds; and cleaning agents.

G. Lighting Impacts

100. Lighting of loading areas on the East side of the plant is never described in the EIR. The entire outdoor lighting plan must be supplied in order to ascertain the significance of nighttime lighting. The lighting plan described in Appendix F or in Section 3.5.5 is totally inadequate, showing nothing of lighting locations and light distribution.

101. Comments were submitted stating that the nighttime illumination of all eight loading docks in itself constitutes a significant lighting increase over current conditions, but the report mentions the improvements of the amount of light cast off site would be minimized and not substantially increased over 2013 conditions (security lighting only). The EIR failed to quantify this or disclose the methods used to determine this assertion.

102. In response to these comments, the County acknowledged that a complete lighting plan has not been provided, but then goes on to conclude that it is a less than significant impact "based on the design and specifications of the proposed lighting plau and lighting improvements." (FEIR, p. 3-8.) Such a conclusion is not possible without obtaining and

analyzing all of the relevant information, and the conclusion is not based upon substantial evidence.

H. Impacts to Tribal Cultural Resources

103. During the initial stages of the AB 52 consultation process, the County acknowledged the Tribal Cultural Resources identified by the Tribe, but the County failed to consult with the Tribe regarding the significance of any adverse effects to these resources because the County prematurely terminated the consultation process.

VI. The Findings are not based upon substantial evidence

104. The findings for the Statement of Overriding Considerations ("SOC") are not supported by substantial evidence. The findings of fact and the CEQA findings are similarly flawed, without substantial evidence to support the conclusions.

105. In each of the areas discussed in this Petition, and in areas identified in various comments submitted to the County on the EIR, there is not substantial evidence to support the conclusions in the document. Further, below are examples of flaws in the findings:

- For impact areas where the EIR did not identify mitigation measures, the County simply did not make any findings. (See Findings and Facts in Support of Findings ["Findings"], p. 4 for Aesthetics; p. 28 for Hydrology and Water Quality; and p. 29 for Land Use.)
- The Air Quality Findings include all of the errors in the calculations, the improper abandonment of the threshold of significance, and the outdated HRA, and so are faulty. (Findings, pp. 4-6.) Further, Appellants' expert, Dr. Gray, used the updated emissions data from the FEIR and ran a new HRA, providing clear evidence that the health risk impacts of the Project *are* significant.
- The GHG analysis and findings are flawed for the same reasons. (Findings, pp. 24-27.)
- The Findings conclude that no contaminated soils exist on the project site, and as noted above, the evidence is uncertain and does not support this conclusion. (Findings, p. 28.)

- Particularly alarming, substantial evidence does not support the finding that there is sufficient water supply for the project. In fact, there is no finding at all on the question of water supply. (Findings, p. 28 ["None."])
- The Findings regarding noise impacts carry through the errors in the noise studies, the failure to include the nearest sensitive receptor and other flaws discussed above, and so they are not based upon substantial evidence. (Findings, pp. 29-35.)
- The Findings conclude that the No Project Alternative would not meet *any* of the project objectives, but fails to discuss whether or not Crystal Geyser could be competitive and meet market demand with the expansion of another of its facilities or with an off-site option. (Findings, p. 48.)
- The SOC inaccurately finds that the project will have overriding economic benefits simply because the project *may* create up to 60 jobs over a period of several years at the bottling plant. (Findings, p. 51.) There is no evidence cited, and the economic studies prepared for Crystal Geyser fail to take into account the context (whether 60 jobs is significant), and it also fails to take into account the large volume of groundwater that will strain the sewer treatment capacity and impact the public, the groundwater impacts associated with past plant operation, and the reduction in property values as a result of the noise, traffic, and aesthetic impacts. The Findings are a bare bones conclusion without citation or discussion of any substantial evidence.
- Finally, the SOC includes a statement that the project's impacts are mitigated and that is an overriding consideration. (Findings, p. 51.) This is not an overriding consideration, it is a requirement of CEQA. But for the proposed project, the mitigation measures would not be necessary. This SOC makes no sense.

VII. Other CEQA violations:

106. Because the County improperly described the CEQA "project" as something other than the caretaker's residence Permit being considered the public and decision makers were

mislead by the EIR, the County improperly acted as the lead agency for the "project", the mitigation measures included in the EIR are unenforceable, and every impact analysis based upon an assumption of a particular level of production at the Plant is unreliable because the County claims to have no authority to limit production in any way.

107. Respondents inappropriately deferred the performance of necessary investigations, studies or inquiry with respect to the development of mitigation measures and provided no performance standards, criteria or specific guidance with respect to future studies used to develop mitigation measures. Much of the deferral resulted from a reliance on the notion that responsible agencies would conduct necessary analysis in the future, and hopefully develop mitigation measures. This deferral violates CEQA.

108. CEQA requires that the County take into consideration this inconsistency with applicable general plans, and this is a significant impact under CEQA and must be mitigated, and alternatives to the Project as proposed must be considered in order to reduce the impacts. In the preparation of the EIR for the Project, the County failed to consider the conflicts with the applicable General Plans as potentially significant impacts.

109. As a result of Respondents' failure to comply with the procedures required by CEQA and the CEQA Guidelines, a preemptory writ of mandate must issue ordering Respondents to set aside its environmental findings and the related decision, and directing Respondents to comply with the procedures mandated by CEQA and the CEQA Guidelines before acting on any development proposal under the Project.

SECOND CAUSE OF ACTION

Violation of General Plan Laws - Government Code §§ 65300 et seq.; Code of Civil Procedure 1085

110. Petitioners reallege and incorporate by reference paragraphs 1 through 109.

111. Respondent County of Siskiyou must ensure that the Project approval is consistent with the statement of policies in the County General Plan and any other applicable planning document.

112. As discussed in detail above and in letters submitted by commenters during the administrative review process, the Project will not be consistent with the surrounding land uses and will be harmful to the citizens of both the County and the City, in violation of their respective General Plans.

113. CEQA requires that the County take into consideration this inconsistency with applicable general plans, and this is a significant impact under CEQA and must be mitigated, and alternatives to the Project as proposed must be considered in order to reduce the impacts.

114. The Final EIR also found that the Project will result in noise impacts to at least one residence that conflicts with the General Plan noise standards and that mitigation of this impact is "infeasible" and so it would remain significant and unavoidable. There are mitigation measures that could be considered, including a reduction in the size of the plant in order to reduce traffic and its associated noise. Failing to disclose this land use conflict is a violation of CEQA on its own, and it is also a violation of the State Planning Laws. The County may not approve a project that violates a general plan policy that is fundamental, mandatory, and clear. The Project violates a clear, mandatory noise standard.

115. The County may not simply note the "unavoidable" impact and move on. The Project is inconsistent with the surrounding community and this must be disclosed and modification of the Project proposal must be undertaken in order to become consistent with the applicable General Plans.

116. In response to comments regarding General Plan consistency, the County provided a Master Response so vague that it does not address any of the concerns raised. (Final EIR, p. 3-42.) The Project will not be consistent with the surrounding land uses and will be harmful to the citizens of both the County and the City, in violation of their respective General Plans.

117. The Final EIR did not even attempt to remedy the shortcomings of the Draft EIR with respect to General Plan consistency. For example, at page 2 of the proposed Findings, it is noted that Policy 41.3(c) applies, providing that "[a]ll heavy commercial and heavy industrial uses should be located away from areas clearly committed to residential uses." The

Findings do not even address this Policy, but merely conclude that there is no woodland potential where the proposed caretaker's residence will be located. (Findings, p. 2.)

118. Employing the continued fiction regarding the Project merely consisting of a caretaker's residence, the proposed Findings go on to apply Policy 41.3(e), concluding that the caretaker's residence is compatible with surrounding residential uses, ignoring the remainder of the Project and its industrial activities. (Findings, p. 2.) Policy 41.6 is applied in a similar manner. (Findings, p. 3.) The Findings contain a series of unsupported conclusions regarding consistency with General Plan Policies. The Project is inconsistent with the Siskiyou County General Plan and approval would violate the State Planning and Zoning Law

119. Approval of the Project in violation of applicable General Plans and without the necessary mitigation measures was arbitrary, capricious, an abuse of discretion and a failure to proceed by law.

120. Because the Project is inconsistent with the Siskiyou County General Plan and the City of Mount Shasta General Plan, Respondents' approval of the Project violated State Planning and Zoning Law and must be set aside.

PRAYER

Wherefore, Petitioners respectfully request the following relief and entry of judgment as follows:

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside the certification of the EIR and approval of the Project and to withdraw the Notice of Determination for the Project;

2. For alternative and peremptory writs of mandate directing the County to comply with CEQA, the CEQA Guidelines, and the State Planning and Zoning Law, and to take any other action required by Public Resources Code section 21168.9 or as otherwise required by law;

3. For a stay and preliminary and permanent injunction restraining County and its agents, employees, officers and representatives from undertaking any activity to implement the

Project in any way pending full compliance with CEQA, the CEQA Guidelines, and the State Planning and Zoning Law;

4. For a declaration that Respondents' actions in approving the Project violated CEQA and the State Planning and Zoning Law as set forth above;

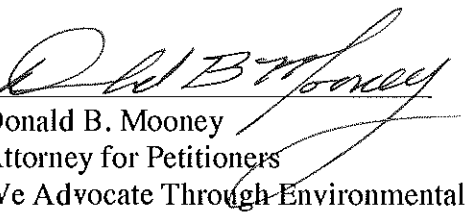
5. For Petitioners' attorneys' fees under Code of Civil Procedure section 1021.5 and other applicable authority;

6. Costs of suit; and

7. Such other and further relief as the Court deems just and proper.

DATED: January 9, 2018

LAW OFFICES OF DONALD B. MOONEY

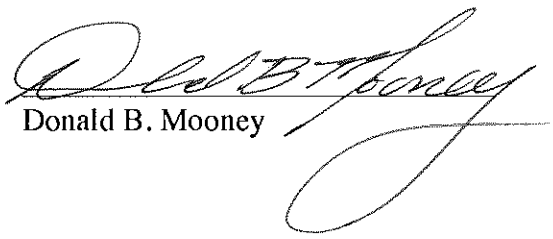
By 

Donald B. Mooney
Attorney for Petitioners
We Advocate Through Environmental Review
and Winnemem Wintu Tribe

VERIFICATION

I am the attorney for We Advocate Through Environmental Review and Winnemem Wintu Tribe which are both 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 Verified Petition for Writ of Mandate and know its contents. The matters stated in this Verified Petition for Writ of Mandate 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 9th day of January, 2018, at Davis, California.



Donald B. Mooney

EXHIBIT A

EXHIBIT A

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2
Davis, California 95616
Telephone (530) 758-2377
Facsimile (530) 758-7169
dbmooney@dcn.org

January 9, 2018

VIA FEDERAL EXPRESS,
ELECTRONIC MAIL AND
FACSIMILE (530.841-4110)
colleen@sisqvotes.org

Colleen Setzer
Clerk of the Board
County of Siskiyou
510 North Main Street
Yreka, CA 96097

Re: NOTICE OF INTENT TO FILE CEQA PETITION

Dear Clerk of the Board of Supervisors:

Please take notice, under Public Resources Code section 21167.5, that We Advocate Through Environmental Review ("WATER") and Winnemem Wintu Tribe (collectively "Petitioners") intend to file a Petition for Writ of Mandate in Siskiyou County Superior Court under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.* against the County of Siskiyou and the Siskiyou County Board of Supervisors. The Petition for Writ of Mandate will challenge the December 12, 2017, approval of the use permit for a caretaker's residence at 210 Ski Village Drive, Mt. Shasta, California (APN 037-140-090), Permit UP-16-03 ("Permit"); and certification of the Environmental Impact Report ("EIR") for the Permit (SCH# 2016062056). The Petition for Writ of Mandate will request that the court direct the County and the Board of Supervisors to vacate and rescind all Project approvals and direct the County to comply with CEQA. Additionally, the Petition will seek Petitioners' costs and attorney's fees associated with this action.

Very truly yours,

Donald B. Mooney
Attorney

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 129 C Street, Suite 2 Davis, California; I am over the age of 18 years and not a party to the foregoing action. On January 9, 2018, I served a true and correct copy of as follows:

Notice of Intent to File CEQA Petition
Public Resources Code section 21167.5

____ (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in Davis, California.

__X__ (by electronic mail) to the person at the address set forth below:

__X__ (by facsimile transmission) and via Federal Express to the person at the address and phone number set forth below:

Colleen Setzer
Clerk of the Board
County of Siskiyou
510 North Main Street
Yreka, CA 96097
colleen@sisqvotes.org
530-841-4110

I declare under penalty of perjury that the foregoing is true and correct. Executed January 9, 2018, at Davis, California.

Donald B. Mooney

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

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Davis, California 95616
Telephone (530) 758-2377
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January 9, 2018

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Colleen Setzer
Clerk of the Board
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Yreka, CA 96097
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530-841-4110

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Donald B. Mooney