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Winnemem Wintu Tribe

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

WE ADVOCATE THOROUGH 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. SCCV-CVPT-2018-41

PETITIONERS' OPENING BRIEF

Hearing Date: May 10, 2019
Time: 8:30 a.m.
Dept.: 9
Judge: Hon. Karen Dixon
Petition Filed January 11, 2018

TABLE OF AUTHORITIES

Codes and Statutes

Public Resources Code

CEQA Guidelines

I. INTRODUCTION

The non-profit We Advocate Thorough Environmental Review ("WATER") and the Winnemem Wintu Tribe ("Tribe") (collectively "Petitioners") bring this mandamus action in the public interest. On December 12, 2017, in approving the Crystal Geyser ("CG") bottling facility project ("Project") without any upper limit on the amount of water CG may pump out of the ground for consumptive use, the County violated fundamental mandates of California law and its own land use plans and ordinances.

Significant environmental problems with the Project all stem from its location in a pristine mountain area, adjacent to a quiet, residential neighborhood well known for its incredible beauty and extreme environmental sensitivity. The area surrounding the bottling facility is also within aboriginal territory of the Winnemem Wintu Tribe, near natural springs that are sacred and have significance in Tribal culture. The County's own General Plan Woodland Productivity Overlay acknowledged the significance of this environment until the zoning was quietly changed to "Industrial" in the 1990s to accommodate CG's predecessors.

The proposed bottling facility's significant impacts to water supply, water quality, traffic, noise, hazards and hazardous materials, air quality, climate change, aesthetics, light and glare, and land use, were not adequately addressed in the EIR process. Among significant problems explained by Water and the Tribe, the Project will have *unknown* impacts to the groundwater supply for two reasons: (1) the County refused to do groundwater studies on the actual aquifer impacted by the Project, and (2) because there is no upper limit on extraction of groundwater. CG may pump as much groundwater as it wishes for any purpose and there is nothing in the conditions of approval limiting extraction. Finally, the air quality studies were so woefully inaccurate that no conclusions could be drawn with confidence. The County also gave short shrift to major aesthetic, noise and other impacts.

The County purports to have no authority over CG's groundwater extractions, and yet it went ahead and prepared an EIR, assuring concerned citizens and County decision makers that the impacts of the Project could and would be mitigated. The assurance was hollow, and the EIR is deeply flawed and cannot support the County's approval of the Project.

The County also failed to complete consultation with the Tribe under AB 52. During consultation the County improperly imposed inapplicable standards of proof on the Tribe, and failing to take cultural and sacred values into account at all. The flawed process culminated with the County terminating

consultation because the process was delaying the Project schedule; and this is not a valid basis for termination.

This Court's peremptory writ must issue in the public interest to require the environmental process for the Project to comply with all procedural and substantive protections, applicable environmental and other statutes, ordinances, and plans.

II. STATEMENT OF FACTS

The Project description is entirely unclear from the administrative record. The County's actions on December 12, 2017 include the following: (1) Certification of the Environmental Impact Report ("EIR") (ostensibly prepared for a conditional use permit for a "caretaker's residence"), while the Project description contained in the EIR includes a massive water extraction and bottling project that includes production of sparkling water, flavored water, teas and juice beverages (SCH# 2016062056); and (2) approval of a use permit for a caretaker's residence at 210 Ski Village Drive, Mt. Shasta, California (APN 037-140-090), Permit UP-16-03 ("Project"). The approvals did not include any development agreement or mitigation agreement, as has previously been the practice of the County in authorizing use of the bottling facility. (See AR 1624, 55378-55386.)[1]

A. History of environmental review of the proposed bottling facility

In 2013, CG contacted the City of Mt. Shasta regarding their connection to the City's sewer system as part of the proposed reopening of the bottling facility previously operated on the site. (AR 55416.) CG offered the City up to $3 million, in matching Economic Development Administration ("EDA") grant funds. The City was able to obtain the grant funds for purposes of funding improvements to the sewer collection system. (AR 48296.) The City's 2014 EIR effort was abandoned because of a failure in grant funding to the City. (AR 55409 and 55413.)

While the County and CG had apparently agreed that the County "has no authority" to limit CG's activities at the bottling facility (AR 1624, and see 55546 [no County authority over amount of groundwater extracted], 55555 [no requirement for CEQA review of bottling operation]), the County figured out a way to prepare an EIR covering the Project operations to provide a platform for issuance of wastewater and air quality permits. The County accepted an application from CG for a "caretaker's

[1] References to the administrative record of proceedings are to "AR" and the page number.

residence" on the bottling facility property and got busy preparing an EIR. Instead of simply reviewing the potential impacts of the caretaker's residence, however, the County undertook a huge effort to evaluate a much broader "project." 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." (AR 1624.)

To any reader, the EIR appears to evaluate the entirety of the bottling facility operations. The devil in the details here is that the County could not provide a stable project description, because it has no control over the level or method of production, and no development or mitigation agreement was included with the permit for the "caretaker's residence."

B. History of the Project site

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 for the bottling facility ("Plant"). (AR 1624 and 32537.) In November 1998 the County and the then applicant entered into an agreement regarding mitigation measures identified in the 1998 draft Initial Study ("1998 Agreement"). (AR 1624 [language disavowing any County land use authority is inserted in the Final EIR] and 55379.) The Plant was subsequently constructed between 1998 through 2000 by CCDA Waters and began operation in January 2001, with a leach field approved by the State for 72,000 gallons per day. (AR 1624 and 26497.)

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. (AR 26751; and see 55996.) It has also been reported by plant neighbors that plant operations negatively impacted domestic wells in the area. (See AR 1188, 1260, 1356, 27159, 32690, and 39133.) In 2010, CCDA Waters' plant was closed and the majority of equipment used for the bottling operation was removed. (AR 1625.) Crystal Geyser purchased the project site in 2013. (*Id.*) Crystal Geyser is owned by Otsuka Pharmaceuticals, a multi-national conglomerate. (See AR 55671.)

C. The Project

The Project site is bound by residential housing and industrial businesses, as well as a KOA campground and a railroad line. (AR 1625.) 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 and 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). (AR 1631.)

The Project consists of the operation of a bottling facility for the production of sparkling water, flavored sparkling water, juice beverages and tea. (AR 1632.) The bottling plant would use groundwater from the aquifer through an existing production well (DEX-6) in the northern area of the site. "Bottling operations would consist of: (1) water processing (carbonation, tea brewing, juice beverage batching); (2) blow molding of polyethylene terephthalate (PET) plastic bottles from purchased preforms; and (3) filling bottles with product and packaging." (AR 1632.)

The project description includes a "scenario" for predicting water consumption, wastewater production, traffic and air quality impacts. (AR 1632-1633.) The assumption is not based on substantial evidence, as there is nothing requiring CG to remain below a certain level of groundwater extraction, production and/or vehicle trips. The County set up the following conundrum: the EIR could not evaluate expansion of the bottling plant because that would be "speculative"; but the EIR could speculate that CG would not expand, even though there is nothing in the Project approval that would prevent it from doing so. The EIR simply assumes that the Project will engage in the same level of production as the previous site owner, CCDA Waters. (AR 1633.)

The EIR states that the plant would begin with one bottling line, adding a second later, with no plans for a third bottling line. (AR 1632.) Evidence in the record suggests that a third bottling line is anticipated (AR 937), and there is nothing in the conditional use permit for the caretaker's residence that would preclude increased water extraction and increased production, including addition of bottling lines. (AR 13-17 [no conditions regarding production levels] and 1546-1559 [no mitigation measures limiting production levels/extraction of groundwater.) The County claimed that the third bottling line contained in CG's plans was later removed, so should not be considered, but did not address the fact that there is nothing to prevent CG from adding the third line. (AR 7451.)

D. Administrative Process

On January 12, 2017, Respondent County issued a Draft EIR for the Project. Petitioners and many others submitted extensive comments on the Draft EIR. (AR 311-1544.) Respondent County issued a Final EIR for the Project and scheduled a Planning Commission hearing for September 20, 2017. (AR 32865-32889.) The Planning Commission hearing occurred on that date and was then continued to September 27, 2017. (AR 32890.) Petitioners and many others submitted extensive comments on the Final EIR and during the Planning Commission hearing. (AR 32874-32888.) On September 27, 2017, the Planning Commission approved the Project and certified the EIR. (AR 32856-32859, and see 32268-32275.) Petitioners appealed the decision to the Board of Supervisors. (See AR 32774.)

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. (AR 32505-32522.) 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. (AR 32520, and see 31955-32255.) On December 12, 2017, the Board or Supervisors received the report from staff, denied the appeal, approved the Project and certified the EIR. (AR 31733-31954, and 32461-32504.)

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. (See AR 1195, 1624, 55546 and 55555.) 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. (*Id.*)

E. County AB 52 Consultation with the Winnemem Wintu Tribe

The consultation process with the Tribe is documented in the record of proceedings at pages 56059-56386. The process began on June 16, 2016, when the County sent a letter to the Tribe indicating the intent to prepare an EIR for the CG Project, and the Tribe had 30 days to respond. (AR 56076-56079.) The Tribe did so on July 14, 2016. (AR 56093.) The Tribe submitted comments on the Notice

of Preparation raising several concerns, and indicated that the Tribal Cultural Resources ("TCRs") would be identified during the Consultation. (AR 56098-56100.)

On August 2, 2016, the Tribe requested that the process be conducted with personnel qualified in the investigation of TCRs (AR 56101-56102.) The County agreed. (AR 56103.) On August 23, 2016, the Tribe requested that the County engage a qualified ethnographer to assist with the Consultation, and that it wished to reserve the right to submit information during the Consultation in a form other than in-person, as Tribal representatives may not often be available. (AR 56108-56109.)

After the County's consultant, Sally Zeff, had a conversation with Tribal representatives, the County sent a letter on September 8, 2016, describing the process to be followed upon identification of TCRs, and indicated that a confidentiality agreement would be acceptable to the County. (AR 56110-56111.) The County declined to engage an ethnographer, and suggested that the Tribe could do so, and went on to say that information could be presented to the County in written form. (*Id.* at 56111.) The tribe agreed that the TCR information would be provided in writing, and a confidentiality agreement was executed. (AR 56112, and 56115-56119.)

On November 4, 2016, the Tribe submitted a letter providing initial information identifying the major impacts the Project would have on TCRs. (AR 56120-56124.) The Tribe identified the following TCRs that will be adversely affected by the Project: (1) the springs and groundwater of Mount Shasta; and (2) the Sacramento River. The letter discussed evidence of the sacred nature of these waters. (*Id.*) The letter emphasized the breadth of these resources as follows: "TCRs are not simply discrete sites containing a few scattered obsidian flakes and other artifacts, but rather places and landscapes, defined by past and present traditional cultural lifeways, illustrated by song, story and myth, intertwined into tribal ceremonies and a spiritual way of life." (*Id.* at 56121.) The letter described in detail the value of the groundwater of Mount Shasta and of the Sacramento River to the life and cultural belief of the Tribal members.

The Tribe stated its concern that the Project will have significant adverse impacts on the TCRs, noting that there is no upper limit on the amount of groundwater CG might pump at full production and through expansion. (AR 56123.) Consultation materials from the Bureau of Reclamation regarding the sacred nature of the groundwater of Mount Shasta and the waters of the Sacramento River were attached to the Tribe's correspondence. (AR 56125-56149.)

The County responded with a letter mistakenly dated September 8, 2016, acknowledging receipt of the November 4 letter from the Tribe. (AR 56152.) The County attached a draft of the proposed EIR section regarding the TCRs. (AR 56154-56156.) The proposed section simply acknowledges that the groundwater and the Sacramento River are TCRs, and then reiterates the EIR's standard evaluation of the Project's impacts to hydrology, stating that it would be less than significant. (*Id.*) The attached study did not once discuss the cultural or spiritual value of the water resources evaluated. (AR 56157-56252.) The threshold of significance was never even discussed with the Tribe.

The Tribe responded on December 16, 2016. (AR 56254-56256.) The Tribe noted that the short discussion provided for inclusion in the EIR did not meet the standards of AB 52, and failed to include discussion "that considers the tribal cultural values in addition to the scientific and archeological values when determining impacts and mitigation." (AR 56254, citing AB 52 Section (1)(b)(2), and see Public Resources Code ["PRC"] §21080.3.2.) The letter included many questions regarding the details of the Project, specifically asking why old data was being used, and what type of monitoring plan would be in place for impacts to groundwater. (AR 56255.)

On January 3, 2017, the County responded, acknowledging that the TCRs identified would be considered, and stating that the conclusion would be that there would be a less than significant impact, presumably based upon the outdated data sent to the Tribe with the County's last letter. (AR 56257.) In responding to the Tribe's questions, the letter acknowledged the problem that was on the minds of every Project neighbor: "No permit is required to be issued for water extraction. The County will be issuing a Conditional Use Permit for the proposed Caretaker's residence." (AR 56258.)

The County dodges the fact that the hydrologic data was in fact old by stating that the disclaimer in the study was "standard." Then the County went on to make a patently false statement that the groundwater information collected in the surrounding neighborhoods had "not been made available to the County." (AR 56259.) This statement was simply untrue. During the appeal hearing on December 16, 2017, a project neighbor stated that the County continued to rely on old data that did not evaluate the *actual* impacts on the groundwater wells in the area, despite the fact that the studies had been done and "*even though we've offered them.*" (AR 32659-32660, emphasis added.) In fact, the Gateway Neighborhood Association submitted to the County a detailed expert analysis of the local groundwater elevation, taking data from wells in the Project vicinity. (AR 38835-38890.)

The County finished up its letter by stating that no monitoring plan would be proposed or implemented, contradicting the very next paragraph by asserting that the conclusion had already been made that impacts to water resources would be less than significant. (AR 56259.) Finally, the County noted that if they would like more Consultation (such as it was), the Tribe should request a meeting. (*Id.*)

The Tribe responded to the County on March 1, 2017, correctly noting that the County had already made a significance determination, without even mentioning the cultural significance of the TCRs, and requested further consultation. (AR 56262, citing PRC § 21080.3.2.) The County had considered only physical quantity and quality data, but failed completely to address the values of the TCRs that are paramount to the Tribe, the values specifically required to be considered under AB 52. (*Id.*) The Tribe's letter described in detail the cultural significance of the resources, and noted that any diminishment of the groundwater would be an adverse impact. (AR 56262-56267.) The letter offered a list of feasible, effective mitigation measures that could be included in an effort to reduce impacts to the TCRs. (AR 56265.)

The County responded via email the same day, March 1, 2017, and asked if any of the material submitted was confidential because they wanted to forward to the Project consultant. (AR 56269.) On May 4, 2017, the Tribe responded via letter, indicating that the information was confidential and asking why the County had not responded to the request for further consultation. (AR 56272-56273.)

On May 11, 2017, the new County Director of Community Development sent a letter, assuring the Tribe that the Project consultant was similar to County staff, and so would be covered by the confidentiality agreement, and requested suggestions for a qualified ethnographer. (AR 56275-56276.) Additionally, around this time, nearly nine months after the Tribe requested that the County engage an ethnographer to assist with the consultation, the County for the first time engaged in discussions of doing so.

Despite indicating that it was considering the qualified ethnographers, the County gave very short shrift to the process. Without communicating with the Tribe, the County summarily terminated the RFP process, notified the Tribe's recommended ethnographer that her proposal had been rejected and settled on engaging Barbara Wolf – an individual directly involved in preparing the EIR for the Crystal Geyser Project – as the person to review the impacts on the TCR's identified by the Tribe and accepted by the County. (AR 56277-56321.)

Notably, Ms. Wolf had not even responded to the County's RFP for ethnographic services – nor was she qualified to do so. (AR 56314-56315.) Ms. Wolf, in fact, is not an ethnographer but instead her title at ICF is "Technical Writer." (AR 56320). The Tribe objected to County's proposal to hire Ms. Wolf, noting that she was not an ethnographer and did not have the qualifications or experience necessary to fulfill that role. (AR 56329.)

The only reason the County provided for refusing to consider the Tribe's suggested ethnographer – who had significant knowledge the project area and the Tribe – was that she was busy and her schedule did not mesh with the County's desire to fast-track the EIR process. (AR 56325-56326.) Therefore, the County urged the Tribe to agree to engage the services of the inexperienced member of the County consultant's firm in order to get the work done quickly. (*Id.*) Then, just two days after notifying the Tribe that the Tribe's recommended ethnographer would not be hired, the County notified the Tribe that the County planned to hire the inexperienced ethnographer. (AR 56327-56328.) Again the Tribe objected to Ms. Wolf's lack of experience and noted that "Valid ethnographic interview are built upon trust and understanding and ultimately the work must be done with the permission and cooperation of the target community, who in this case is the Winnemem Wintu Tribe." (AR 56329) The Tribe reiterated its request to continue the Consultation, and requested work on appropriate mitigation measures. (AR 56330.)

In response to the Tribe's objection to an inexperienced member of the EIR team being hired as an ethnographer for the consultation process, the County became confrontational and essentially made up a new requirement and stated that in order to justify engaging an ethnographer the Tribe would be required to "provide substantial evidence about the physical locations where significant events, activities, or cultural observances have taken place that are associated with the Tribe's important association with the life force embodied in the water." (AR 56334.) These, of course, are the things the ethnographer would have assisted in providing. The remainder of the letter stated abruptly that if the Tribe could offer some "proof" of significant events, activities or cultural observances, the County would "apply its understanding of the Tribe's cultural values, as shared by the Tribe through previous consultation..." (AR 56355.) The County's letter demonstrated that it had no understanding whatsoever of the Tribe's cultural values. The rest of the letter essentially sets up the further communication in a way that makes it

impossible for the Tribe to meet the County's demand for substantial evidence, and regurgitates the County's existing analysis on impacts. (AR 56355- 56342.)

The Tribe responded on August 25, 2017, providing information regarding an ongoing consultation the Tribe was engaged in with the United States Bureau of Reclamation, shedding light on aspects of the TCRs. (AR 56343-56374.) The formal federal process documentation sets forth the evidence supporting the sacred nature to the Tribe of Mount Shasta and its groundwater.

On September 6, 2017, the County discussed some of the information submitted by the Tribe, then concluded that the Consultation had been underway for 15 months, and the Tribe had failed to provide any evidence that the Project would have a significant impact to the TCRs. (AR 56375-56378.) The County went on to say that it had substantial evidence that there would not be impacts, and the Tribe had failed to refute that, and so the County was "electing" to bring the Consultation to completion. (AR 56377.)

III. STANDARD OF REVIEW

CEQA's dual standard of review is well-settled. A court will "determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements," while according "greater deference to the agency's substantive factual conclusions." (*Banning Ranch v. City of Newport Beach* (2017) 2 Cal.5th 918, 935, citations omitted ["*Banning Ranch*"].) Thus, when reviewing an agency's CEQA compliance, the "court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of the improper procedure or a dispute over the facts." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 [*"Vineyard"*].)

Whether an EIR "omit[s] essential information," or fails to address an issue, is a procedural issue subject to de novo review. (*Banning Ranch, supra,* 2 Cal.4th at 935.) By contrast the courts use the "substantial evidence" test to review an agency's "substantive factual conclusions." (*Id.*) "Substantial evidence" is "evidence of ponderable legal significance, reasonable in nature, credible, and of solid value, evidence that a reasonable mind might accept as adequate to support a conclusion." (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070.)

Here, Petitioners challenge the EIR's failure to disclose information, including a failure to provide a stable, finite project description. The County also improperly terminated AB 52 Consultation with the

Tribe, and falsely stated in the Findings for the Project that "[n]o known or archeological or cultural resources were identified within either the Proposed Project or Off-Site Improvements areas either during the record search [citation] or field survey." (AR 244.) "Plant operations would therefore not have any impacts to cultural resources." (*Id.*) The County also chose outdated and inappropriate methodologies for the analysis of groundwater impacts, noise and air quality impacts. (See 4867, 7529-7530, 33253-33264, 35954-35958.) These matters challenge "whether the EIR is sufficient as an informational document." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 711.) The Court must therefore review these claims de novo, as a matter of law. (*Banning Ranch, supra,* 2 Cal.4th at 935.)

Petitioners also contend the County failed to support its determinations regarding the adequacy of mitigation for the Project's impacts, and improperly rejected feasible mitigation measures and alternatives. The "substantial evidence" test applies to these claims. (See *e.g. Napa Citizens for Honest Gov. v. Napa County* (2001) 91 Cal.App.4th 342, 359 (mitigation); and *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 598-99 (alternatives).)

As the Supreme Court instructed in the landmark *Friends of Mammoth v. Board of Supervisors* case, CEQA must be construed broadly to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 (superseded by statute on other grounds).)

The EIR did not fulfill its purpose as an informational document, failed to adequately analyze and mitigate impacts, and failed to adopt feasible mitigation measures and alternatives. The County's errors were prejudicial. (See *Banning Ranch, supra,* 2 Cal.5th at 942.)

The standard of review for the general plan claims is set forth in section IV.H below with the discussion of violations of the State planning laws.

IV. DISCUSSION

A. The EIR for the Project contains a misleading and unstable Project Description

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.

"An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) Without an accurate description, decision makers and the public cannot weigh a project's environmental costs and benefits, meaningfully consider mitigation measures, or evaluate alternatives. (*Id.* at 192-193; and Guidelines § 15124 (requiring detail sufficient for "evaluation and review of the [project's] environmental impact").)[2] CEQA requires a project description provide sufficient facts "from which to evaluate the pros and cons" of the project; an EIR in which "important ramifications" of the project remain "hidden from view" throughout the approval process "frustrates one of the core goals of CEQA." (*Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818, 829; see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-657 [invalidating an EIR for misleading project description].) The adequacy of a project description implicates CEQA's informational mandates and is thus reviewed *de novo*. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.)

The EIR here described the Project's purpose and characteristics in terms insufficient to support reasoned analysis of potential impacts, particularly effects on groundwater, water quality, noise, traffic, air quality and climate change. For example, the County maintains that it has no ability to control groundwater extraction or production levels, but then provides a purportedly "stable" project description describing a specific level of groundwater extraction and production activity. (See AR 164, 1633 [projected annual average draw of 129 acre-feet with one production line and 243 acre-feet with two production lines], and 1831.) Those production levels stated with such certainty are a best guess, and essentially represent speculation on the part of the County. If there was a commitment on the part of CG to a certain level of production, then the messiness of a fictional project description would have been avoided and the County would have entered into a development/mitigation agreement with CG. They did not; and this fact is laden with significance. The inadequacies of the Project description were pointed out to the County in numerous comment letters and during public testimony. (See AR 401-403, 463, 490, 495, 519, 654, 686, 799-801, 936-937 and 56384.)

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[2] The Guidelines are found at Cal. Code or Regs, title 14, section 15000 et seq.

The EIR's Project description includes bottling activity, groundwater extraction and 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 production of water, juice and tea beverages. (AR 1631-1634.) The Project description states that the levels of production are "estimates" and that they are based on an assumption of 90 percent capacity of the "installed bottling equipment." (AR 1631.) The Board of Supervisors were told by one of CG's attorneys that CG's vice president of manufacturing made the estimates of production, and with his 30 years of experience, it was reasonable to accept the representations. (AR 35974.) It is true that CG's Richard Weklych provided estimates of the production levels that could be anticipated given certain equipment (AR 7954-7955 and 9025-9026), but he did not make a commitment to operate at or below those levels.

County representatives took offense, complaining that commenters were accusing County staff and CG representatives of being dishonest. (AR 33380.) This begs the question: why would the County rely solely upon representations by Project proponents regarding levels of production, particularly where there is no development agreement, no mitigation agreement, no way at all to enforce operation at the represented level? CG is owned by an international pharmaceutical company, so it makes sense that the citizens of a rural, California community might want to have something more than, "take my word for it."

At the final meeting of the Board of Supervisors, County staff presented a memo answering questions posed by the Board at the previous meeting. (AR 31733-31749.) The memo asserts that accepting estimates of production from the Project proponent to form the Project description means that the description is "supported by reasonable assumptions and expert opinions supported by facts." (AR 31737.) The Project proponent is not an unbiased expert, and no matter how much experience CG's employees have, they did not commit the company to a certain level of groundwater extraction or bottling activity, nor could they.

County's strategy of relying on representations that the bottling facility will operate at roughly the same capacity as the previous operation on the site is also undermined by the fact that there are not reliable records of groundwater extraction rates for the previous plant, and the previous plant (with similar equipment) was trucking water in from another source at the rate of 148,800 gallons per week (and not pumping all of the water for its production from DEX-6). (AR 799-801.) In fact, the percentage

of water used by the previous operator was only 30-35 percent from DEX-6, with 60-65 percent trucked in from Mossbrea Springs. (AR 1082, and see AR 19866, and19869.)

The fact that the Project description is open-ended, and allows for unlimited increases in groundwater extraction as well as bottled beverage production, also prevented the County from being able to conduct a meaningful and adequate AB 52 consultation and analysis of impacts Tribal Cultural Resources. (See AR 56123 and 56383.) 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 elsewhere.

The lack of an accurate and complete Project description here frustrated CEQA's fundamental informational purpose. The EIR's description of the Project's technical and environmental characteristics (see Guidelines § 15124(c)) was insufficient to support an evaluation of its most controversial impact: extraction of massive amounts of groundwater from the aquifer. The fact that CG representatives with years of experience could provide a plausible estimate of how much water could be pumped operating one bottling line versus two was beside the point; without information on the maximum pumping that would be allowed at the CG plant, the public was unable to understand exactly how the Project would impact the aquifer. (See *Santiago County Water Dist., supra,* 118 Cal.App.3d at 831 [information "required to be considered in an EIR must be in the formal report; what an official might have known from other writings or oral presentations cannot supply what is lacking in the report"].)

The failure to identify a "project" that the County has the power to authorize and impose conditions upon also precluded the County from complying with CEQA's requirement that all feasible mitigation measures be adopted, and that they be enforceable. (See PRC §§ 21002, 21002.2(b), 21081; and Guidelines § 15126.4(b).) In the final memo to the Board of Supervisors, County staff urged approval of the Project stating that the County has "numerous enforcement mechanisms" and cited Siskiyou County Code section 1-5.05, a provision that supports Petitioners' argument that none of the conditions of the caretaker's residence permit will be enforceable against plant operations. (AR 31737-31738.) The code section cited states that conditions of approval are enforceable "as a condition of exercise of the permit." (*Id.* at 3178, and see AR 1157 [staff report stating that mitigation measures "will

be made Conditions of Approval of the project," which is patently untrue, they will be conditions of the caretaker's residence permit].) As noted, CG has no real need for the caretaker's residence, so "exercising" that permit is irrelevant.

Finally, the EIR's description of the extraction rates and production levels as though they were the upper limit on the activities served to confuse the public, and the decision makers. Saying that the Project will consume 129 acre-feet of groundwater per year with one production line and 243 acre-feet with to production lines implies certainty. (AR 1633.) Those are definite figures. But they are a guess, and that undermines evaluation of impacts and potential alternatives. (See *Communities for a Better Environment, supra,* 184 Cal.App.4th at 83-84.)

The Supreme Court has declined in other contexts to "countenance a result that would required blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials." (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404-405 ["*Laurel Heights I*"].) The County acted contrary to this fundamental goal by failing to disclose to the public that there was no estimated upper limit on groundwater extraction: the amount available to CG is unlimited. The County compounded this failure to disclose by inserting extraction and production figures that were impliedly limits, thereby confusing the public and failing to proceed according to law. Accordingly, the County's certification of the EIR and approval of the Project must be set aside.

B. The EIR includes impermissibly narrow project objectives

Under CEQA, a lead agency may not approve a project if there are feasible alternatives that would avoid or lessen its significant environmental effects. (PRC §§ 21002, 21002.1(b).) To this end, an EIR is required to consider a range of alternatives to a project that would feasible attain most of the project's basic objectives while avoiding or substantially lessening any of its significant environmental impacts. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1456.) The discussion of alternatives must be sufficiently detailed to foster informed decision-making and public participation. (*Id.* at 1456, 1460.) A project proponent may not foreclose alternatives by adopting unreasonable narrow project objectives. (See *Kings County, supra,* 221 Cal.App.3d at 736-37 [holding applicant's prior commitments could not foreclose analysis of alternatives]; cf. *Nat'l Parks & Conservation Ass'n v. Bureau of Land Management* (9th Cir. 2010) 606 F.3d 1058, 1070.)

The EIR's alternatives analysis fails for two reasons. First, the County attempted to define the Project's alternatives so narrowly as to preclude any alternative other than the Project. The first "Project Objective" listed in the EIR is "[t]o operate a beverage bottling facility and ancillary uses to meet increasing market demand for Crystal Geyser beverage products." (AR 1631.) Other "objectives" include initiating operations "as soon as possible to meet increasing market demand for Crystal Geyser beverage products." (*Id.*) The County thus defined the core purpose – to allow CG to begin operations as soon as possible in such a way that supports CG business objectives – so narrowly as to preclude any alternative other than the proposed Project. Other alternatives, such as other locations, that would allow CG to obtain business advantages by quickly meeting market demand, were not evaluated.

The EIR mentioned other alternatives, such as aquaponics (use of the site to grow fish and plants together), and use of the site for residential purposes, noting that these were rejected out of hand. (AR 1982-1984.) Also rejected without analysis was an off-site alternative, and rightly so since the "objectives" of the Project involved developing the specific Project site. The alternatives were not truly alternatives. For example, the alternative to delay operation until electric power is available, avoiding significant impacts from Project generators, was eliminated because when the core objective is to get the Project proponent up and running and competing in the market, and alternative that involves delay would not be "feasible." (AR 1984.) The alternative was dismissed from full consideration because it would "not accomplish any of the project objectives in the short term." (*Ibid.*) There was, oddly, a reduced intensity alternative evaluated, suggesting that CG would operate only one bottling line, and that this would reduce the levels of extraction and production – but the County did not mention that this is an illusory alternative in light of the fact that the County seems loathe to exercise any police power or land use authority that could bring a development agreement into the process, and is committed to the position that CG is entitled to extract as much groundwater as it wishes from the aquifer. The so-called alternatives were dismissed in a few paragraphs. (AR 1985-1987.)

The County failed to evaluate a reasonable "range" of feasible alternatives that would attain most of the Project's basic objectives, and failed to provide enough "meaningful information" about the alternatives it did mention to foster informed public participation. (*Save Round Valley, supra,* 157 Cal.App.4th at 1456, 1460.)

The County failed to demonstrate – in the EIR or anywhere else in the record – that the "No Project" alternative is infeasible. In rejecting an alternative as infeasible, an agency "must explain in meaningful detail the reasons and facts supporting that conclusion" (*Marin Municipal Water Dist. V. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1664), and must support its rejection with substantial evidence. (Guidelines § 15091(b).) The County purportedly rejected the "no project" alternative for three reasons: (1) "existing facilities within the project site would remain vacant and non-operational;" (2) it "would not utilize existing facilities and infrastructure to the extent possible;" and (3) it would not "create new employment opportunities in the County." (AR 1985-1986.)

All of these conclusory assertions lack support in the record, and none demonstrates that the no project alternative is infeasible. The core "objectives" to facilitate business advantages for CG are not proper Project objectives as noted above, and in addition to that, these core objectives are not even mentioned in dismissing the "no project" alternative. An agency's reasons for rejecting alternatives "must be discussed *in the EIR* in sufficient detail to enable meaningful participation and criticism by the public." (*Laurel Heights I, supra,* 47 Cal.3d at 405, emphasis added.) Once again, the EIR fails as a matter of law.

E. The County Violated AB 52

The unstable Project description and narrowly draw Project objectives with the core goal of providing a business advantage to CG undermined the EIR's review of all areas of impact, as discussed in greater detail below. Also, these shortcomings added to a flawed and incomplete AB 52 consultation with the Tribe.

AB 52 is a substantive addition to CEQA. The provisions added to CEQA are not aspirational. They are mandatory. The express goal and purpose of AB 52 is to protect the sacred places of Native Americans, including but not limited to places of worship, religious or ceremonial sites, and sacred shrines that are central to a Tribe's culture. In order to achieve these goals AB 52 does numerous things.

First, AB 52 establishes "a new category of resources in the California Environmental Quality Act called "tribal cultural resources" ("TCRs") that considers the tribal cultural values *in addition to* the scientific and archaeological values considered when determining and mitigating the impacts of a proposed project. Notably, this newly created category of Tribal cultural resources" expressly includes "non-unique archaeological resource[s]" as a resource that, if identified as a TCR, must be studied to

determine if it will be significantly impacted by a proposed project. (PRC § 21074(c).) This is sharp departure from the treatment of "non-unique archaeological resource" that is not considered a TCR, as to which lead agencies need not give any consideration and are not even required to record. (See PRC § 21083.2(h).)

Second, AB 52 recognizes that Tribe's will have considerable expertise concerning their tribal histories, cultural practices, and the cultural resources central to the Tribe. (PRC § 21080.3.1) Third, AB 52 mandates that the lead agency for a proposed project must engage in meaningful, and good faith consultation with appropriate tribes to identify TCRs located within a project area, determine their cultural significances, and develop mitigation measures, or project alternatives, to protect any TCRs that may be significantly impacted by a proposed project. (See PRC §§ 21080.3.1; 21080.3.2; 21082.3; 21084.3.) There is no time limitation imposed on the consultation process.

The consultation requirement is meaningful and significant. Moreover, a lead agency's failure, or refusal, to engage in meaningful tribal consultation has real-world consequences. For example, once a tribe has requested consultation a lead agency cannot release project documents for a proposed project until after the agency has begun the mandatory tribal consultation. (PRC § 21080.3.1(b).) Relatedly, an agency cannot certify an EIR on any project that will have significant impact on an identified TRC until after the tribal consultation has been appropriately concluded. (PRC § 21082.3(d)(1).) And, importantly, AB 52 provides that the tribal consultation can be considered concluded if: (1) the consulting parties agree to mitigation measures to avoid significant impacts on TCRs; or (2) one party "acting in good faith and after reasonable efforts" determines that achieving an mutual agreement is impossible. (PRC § 21080.3.2(b).)

Here, the Tribe identified numerous TCRs that it believed would be significantly impacted by the Project. The record similarly reflects that despite acknowledging those TCRs the County went through the motions but made no meaningful effort to fully consider or analyze the impacts the Project may have on the TCR outside the scientific impact the Project may have generally.

For example, in addition to other facts addressed above, the EIR acknowledges the hydraulic connectivity between the groundwater TCR and DEX-6 (AR 1193-1194), but concludes that the impact will be less than significant. (AR 11194-1195.) However, those conclusions are based upon analyses that indirectly assess the potential impact of Project groundwater pumping on the aquifer. The County did not

once engage with the Tribe and consult with it regarding the significance the projected pumping from the aquifer may have on the TRC from the Tribal perspective. To be sure, the Tribe raised precisely this issue with the County in a letter dated March 1, 2017. There, the Tribe stated that the DEIR itself showed that the total amount of water that the Project may extract in one year equals 30% of the total aquifer flow, and the Project could extract 62% of the total aquifer flow on any given day. These figures do not include reasonable foreseeable expansion of the Project. (AR 56262-56267, at 56264.)

As it did with regard to every other issue the Tribe raised, the County simply brushed the impact aside. Thus, in reply to the Tribe's March 1, 2017, letter the County merely stated that the: "EIR covers the proposed Project, which is fully described in the project description of the EIR." The County then asserted that no permit is required to be issued for water extraction, and so there will be *no maximum limit* on the amount of water the Project will extract. In other words, the Project description does not contain a full description of the Project, as there is no upper limit on groundwater extraction. And, the County asserts that it may not legally impose any restrictions on groundwater extractions by Crystal Geyser, and that any analysis of future expansion would be "speculative." (AR 56383.)

The County essentially acknowledged that it did not, and could not determine the full scope of the Project's water extraction, but it could nonetheless determine that the limitless extraction of water would not significantly impact the TCRs the Tribe identified. The County's approach defies any logic. There simply is no way to avoid the conclusion that this open-ended extraction will result in a potentially significant impact to the groundwater TCR. This triggers the AB 52 requirement that the County consult regarding the significance in light of the sacred and culturally important nature of groundwater TCR and other TCRs identified, and mitigation measures or alternatives that could be adopted to avoid the impacts. The County failed to do so in any meaningful way.

Moreover, to the extent that the County ever engaged in meaningful consultation – a fact not supported by the record – the County abruptly and improperly terminated the consultation in a manner that directly violated AB 52. The County purported to notify the Tribe that the County was "electing to bring the consultation to completion on September 6, 2017 (AR 5609-56062.) In the September 6, 2017, letter the County expressly provides its bases the County believed supported concluding the consultation process. Thus, the County notes such things as: the timing and manner of the comments the Tribe submitted; the County's purported efforts to hire an inexperienced and unqualified consultant – who was

a member of the team preparing the EIR and thereby had a direct conflict of interest – to act as an ethnographer for the consultation process; the County's efforts to meet face to face with the Tribe – after the Tribe informed the County that such meetings were too difficult to arrange and the County agreed to written exchanges; and incredibly the Tribe's failure to do the County's job and evaluate the project in terms of potential adverse impacts the Project may have on TCRs the Tribe identified to the County. (AR 56061-56062.)

What the County's letter does not do is indicate that a mutual agreement was not possible. At best, in this regard the letter indicates that reaching an agreement may have been more difficult than the County hoped – which of course is not the standard imposed by AB 52. And while the September 6, 2017, letter may hint at the difficulty inherent in the consultation process, it also exposes the County's real reason for concluding the consultation process – that the process was taking too long and to hire an actual and experienced ethnographer to assist with the evaluation of the impacts would take too long. (AR 56061)

The County's letter then claims that AB 52 did not amend these provisions of state law. (*Id.*). What the County fails to acknowledge, is that as discussed above, AB 52 specifically provides that once consultation begins a lead agency cannot certify an EIR until consultation has been *properly* concluded. (PRC § 21082.3(d)(1).) And, AB 52 specifically does not provide that the fact that consultation is taking time is grounds for concluding the consultation process. (PRC § 21080.3.2.) The County's September 6, 2017, letter also fails to acknowledge that Tribe requested the engagement of an ethnographer as early as August 2016 and that it was the County that dragged that process out creating the delay that the County cites as support for its premature termination of an incomplete consultation process. (AR 56101-56102.)

Both, the manner in which the County conducted the consultation mandated by AB 52 and manner in which the County terminated that consultation violated CEQA. The County did not consult in good - faith with any eye toward analyzing and addressing the impacts the Project would have on the TCRs the Tribe identified and it terminated the consultation prematurely and based on insufficient grounds. Consequently, the EIR must be set aside and the County must reengage in consultation with the Tribe in a manner that satisfies the letter and the intent of AB 52.

D. The EIR's impacts analysis is insufficient

Allegations in the 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. If the County has no authority over the activities at the bottling facility, it begs the question why it acted as the lead agency.

The County concludes that only one impact, GHG emissions, will remain significant and unavoidable. (AR 251-252.) With respect to all other remaining impacts the EIR concludes that they are less than significant. (AR 18-73.) Many of these conclusions occur despite ample evidence in the record to the contrary. Lead agencies must determine significance of project impacts using "careful judgment..., based to the extent possible on scientific and factual data." (Guidelines § 15064(b).) The evaluation of an activity's significance also "depends upon the setting." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) Am agency may not "travel the legally impermissible easy route to CEQA compliance" by making a significance determination without fully analyzing the project's effects. (*Berkeley Keep Jets Over the Bay Comm. V. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.)

In many instances discussed below, the County insisted upon relying on old data insufficient to support conclusions, modeling programs that had been long since replaced by more accurate and reliable programs, and worse yet, manipulated models designed to provide a particular outcome. (See 4867, 7529-7530, 33253-33264, 35954-35958.) The County stuck with the unreliable "evidence" because it supported the desired conclusions. This is not the exercise of "careful judgment" but an attempt to justify an approval that will allow unlimited groundwater extraction and also unrestricted levels of industrial activity and production. Indeed, the County ignored the very "scientific and factual data" on which it should have relied.

Some of the areas of impact that were not adequately evaluated in the EIR are not discussed in detail here, including lighting, hazardous materials and traffic. (See *e.g.*, AR 334-336, 374, 631, 33227 and 34484-86.) Traffic was a particular concern of the City of Mt. Shasta. (See AR 327-338 at 329 and

334-336; 394-395, 530.) Those impacts were of concern and Petitioners and others commented on the shortcomings, but space precludes a detailed analysis in this brief. The remaining flawed impacts analyses sections are addressed here in alphabetical order.

1. Impacts to aesthetics

The EIR failed to disclose and properly evaluate the significance of the project's effects on aesthetics. The EIR's analysis of the Project's aesthetic impacts begins with an unsupported assumption stated in the EIR that the plant is not a "dominant visual feature." (AR 1670.) Many community members submitted comments refuting this assertion, noting that the plant is in fact *the* dominant visual feature when looking over at Mt. Shasta from the Eddies, Black Butte, or along the Pacific Crest Trail. (See AR 543, 621, 746, 806, 928 and 940-941.) These lay opinions based upon personal observation constitute substantial evidence. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927-928.)

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. (AR 1183.) In other words, it is a significant impact that required mitigation.

In response to calls for mitigation, the County stated the visibility of the plant will not be addressed because it is an existing condition (AR 1164, 1411-1412, 1184 and 32042), 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. (AR 1429 and see 32198.)

In response to comments regarding non-compliance with the 1998 Agreement, counsel for CG responded by stating the following: (1) CG "has committed to implementing measures in the 1998 Mitigation Agreement that are applicable to the proposed project"; (2) obligations of the 1998 Agreement that involve "past performance" are part of baseline conditions and do not apply; and (3) with regard to providing ongoing vegetative screening, CG will comply "to the degree commercially feasible." (AR 7452.) The letter concludes with a firm statement of non-commitment as follows: "In any event, it should be noted that the 1998 Mitigation Agreement sets forth existing conditions that are not tied to any proposed mitigation measure in the Draft EIR." (*Id.*) Compliance with the 1998 Agreement *is* a

mitigation measure, it is a condition of the permit for the "caretaker's residence." (AR 7-17 at 16.) Not only does the EIR fail to adequately evaluate and mitigate aesthetic impacts, the County goes so far as to disavow one of the only mitigation measures proposed to address the eye-sore the Project creates.

2. Air quality impacts

The record reveals that the air emissions and health risk assessments relied upon by the County to support its conclusions are highly suspect and cannot be regarded as valid expert opinion or reasonable assumption predicated on fact. The record actually demonstrates that the County engaged in a pattern of non-disclosure and manipulation of data to arrive at no significant impact findings. Impact analyses and risk assessments tampered with to produce preordained results does not constitute substantial evidence.

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 DEIR, and found that the basic inputs and assumptions had been heavily manipulated to "reduce" the apparent level of impact. (AR 454-466.)

When the DEIR was released, the Project appeared to have a minimal impact on air quality, as the Executive Summary in the DEIR 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. (See AR 1598.) This seems surprising in light of the tremendous number of truck trips that will result from operation of the Project. (AR 1691 [100 semi truck trips per day], and 26166.)

In the DEIR, 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 manipulated the inputs, misstating the types of truck traffic as well as the modifying the standard assumptions for General Heavy Industrial analyses in such a way that the conclusions fall below thresholds of significance. (AR 454-456.)

The fleet mix for the DEIR analysis had also been manipulated to leave out the heaviest vehicles, thereby allowing the air quality model to support a finding of less than significant impact. The County's air quality modeling included an intentional reduction (or even zeroing out) of heavier vehicles. (AR 458-459 and 934-953 at 943.) In the face of this manipulation of the fleet mix, the County's consultant inexplicably claimed that the analysis is taking a "more conservative" approach in the DEIR. (AR 4600.)

This goes beyond a failure to disclose information in the Draft IER, and into the realm of intentionally misleading the public, the decision makers and other agencies. This is not the exercise of "careful judgment" but an attempt to justify an approval. (Guidelines § 15064(b).)

The County prepared a revised air quality impact study for the Final EIR, and it revealed significant impacts, but that revision was not recirculated, and the County clung to the conclusions that the impacts were less than significant. How many members of the public took the County's word for it that the Project would have "less than significant" impacts to air quality, and did not participate further in the administrative process? Recirculation is required where new information "reveals, for example, a new substantial impact, or a substantially increased impact on the environment." (*Vineyard, supra,* 40 Cal. 4th at 447; and Guidelines 15088.5(a)(1) and (2).)

The County's revised emissions study estimates Project emissions to be almost twice what was disclosed in the DEIR. (See AR 1788, and 31745-31746.) The County took three steps to avoid changing the conclusion of "less than significant" impact: (1) the analysis continued to inexplicably modify the standard fleet mix in the CalEEMod in order to minimize emission estimates; (2) emissions from stationary and mobile sources were separated and *no* threshold of significance was applied to mobile sources; and (2) the new numbers were not used to re-run the Health Risks Assessment, thereby avoiding the fact that the health risks were significant.

i. County continued to modify the fleet mix for the FEIR

The FEIR analysis was flawed. Substantial input-related changes were made in response to public comments, but the FEIR emissions remained underestimated for CAP and GHG pollutants, and the screening-level HRA conducted for the DEIR was carried through unrevised to the FEIR, reflecting substantially underestimated health risks. (See AR 33284.)

The FEIR analysis did not correct the inappropriate modifications to the fleet-mix in the model, it simply adopted a different inappropriate modification to the fleet mix. (AR 33284.) EMFAC's fleet mix for the Siskiyou area has been carefully calculated. These carefully crafted fleet mixes are key to CARB's EMFAC model. (*Id.*) Changes to the fleet mix are appropriate only in limited and well-documented cases, and must be carefully explained. (AR 33284-85.) In the FEIR analysis, the 103 daily truck trips are calculated separately from the trips calculated in CalEEMod for the land use type (General Light Industrial). This deviation from the standard fleet mix is not explained. (AR 33285.) The FEIR

asserts that "additional information" has been added to the Appendix M CalEEMod input table to explain changes in the fleet mix, yet there is no explanatory information provided aside from: "Trips and VMT – refer to CalEEMod Table in Appendix M." (AR 4604.)

Removal of certain classes of vehicles from the analysis was inappropriate. The Project's mobile source emissions continue to be underestimated, rendering the FEIR's conclusions inaccurate. These underestimated emissions negatively affect the Project's screening level HRA process and the EIR's accuracy of estimated health risks, along with GHG emissions and related credit calculations. (AR 33287-33288 at 33286.) There is no substantial evidence to support the County's deviation from the accepted fleet mix.

ii. County improperly applied "no threshold" mobile source emissions

In this case, despite the fact that the County revised the air emissions analysis in a way that resulted in very different conclusions (see AR 1788), the County avoided calls for recirculation by abandoning the significance threshold used in the Draft EIR – in order to avoid making a finding of significance. (AR 1697-98, 26173, 37669.) The new air quality information showed significant impacts (even though the new study was also flawed), but rather than getting into the difficulty of having to come up with mitigation measures or making findings of overriding significance, the County simply concluded that there is no applicable threshold. (*Id.*) Problem solved.

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." (AR 1177 ["numerical thresholds have not been established for mobile emissions"] and 1697-1698.) 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.

One of CG's attorneys responded to this comment by stating that the DEIR did not apply the threshold of significance (AR 37669), but the problem is that the DEIR included Table 4.2-4, holding the total Project emissions (mobile and stationary) to one threshold of significance (AR 26173), while the

FEIR includes Table 4.2-4 with stationary sources only (AR 1697), breaking the mobile source emissions into a separate table without a threshold. (AR 1698.)

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. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-656.) The County's actions in an effort to avoid making a finding of significance violated CEQA.

iii. County failed to re-run the Health Risk Assessment with new emissions numbers

The most alarming deficiency that continues in the FEIR is the inaccuracy of the HRA. The revised modeling in the FEIR 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). (See AR 37563-37565.) 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 FEIR analysis shows 103, but with a higher fraction of the heavy-heavy's, and $PM_{2.5}$ emissions have increased. (See AR 4600 and 4631.)

County's effort to explain this is in response to comments (AR 37566) and contained in a memo from Sierra Research explaining that while the revised air emissions analysis prepared by the County shows a 68% increase in exhaust $PM_{2.5}$ emissions, that shocking increase noted by the County's own experts does not mean that the health risks near the plant have changed one bit. (AR 32212-32213.) The memo states that Gray Sky Solutions' manner of revising the HRA was improper because the rates used for total emissions includes operational and mobile source emissions, and the HRA should only be assessed with a faction of each vehicle trip. (AR 32212 and see 32981.) The memo takes pains to say that *if* the HRA were to be re-run, it would still come out below the significance levels. (*Id.*) The interesting thing about this is that it would have take less time to re-run the HRA and actually prove that than it did to write the memo speculating what might happen if the County did the right thing and re-ran the HRA with the new emissions figures. (See AR 35812-13 [supplemental staff report stating that re-running the HRA is "somewhat time consuming" and each model run can take "about one day to complete"].)

In fact, at least 50 additional truck trips were noted on the Site Specific CalEEMod Inputs (AR 4600) that were not analyzed in the HRA included in the FEIR. These 50 additional truck trips produced the 68% increase in $PM_{2.5}$ and the HRA should have been re-run. (See AR 4631 *cf.* AR 29089.)

The bottom line is that the County failed to run the screening level HRA with the new mobile source information, and as a result, the HRA is inaccurate.

In fact, with the Final EIR emissions data, modeling was conducted by Dr. Andrew Gray of Gray Sky Solutions, and the increase in DPM-containing $PM_{2.5}$ 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 FEIR's determination of a less-than-significant risk invalid. (AR 33119-33132.)

In summary, the Final EIR includes substantial emissions input-related changes, but the changes do not remedy the errors of the Draft EIR. Emissions remain underestimated for CAP and GHG pollutants, and the screening-level HRA conducted for the Draft EIR and carried through unrevised to the Final EIR now reflects substantially underestimated health risks.

E. Greenhouse gas emissions

The EIR acknowledged that GHG emissions would be significant. (AR 1788.) However, the County erred in disclosing only about half of the estimated emissions in the DEIR (see AR 1789), and failing to recirculate the EIR when the radically new estimates were revealed. The FEIR continued to use the static threshold of 10,000 metric tons per year of CO_2 for operational emissions (based on AB 32 targets for 2020), and presented the new conclusions without any additional discussion of mitigation measures or project alternatives that could avoid some of the emissions that were more than five times the threshold. (AR 1789.)

CEQA requires recirculation of a draft EIR whenever "significant new information" is added to the EIR after its release for public comment. (PRC § 21092.1.) Petitioners requested this in light of the fact that the DEIR emissions analysis was so deeply flawed. (AR 935.) "Significant new information" includes a change to the EIR that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. (Guidelines § 15088.5(a).) The test is met where the new information demonstrates that the draft EIR was "fundamentally and basically inadequate and conclusory in nature." (Guidelines § 15088.5(a)(4).)

Here the County acknowledged that the climate analysis presented in the DEIR was flatly inadequate by preparing a new emissions analysis that more than doubled the estimate air emissions. This fact alone required recirculation. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1052-53.) At the very least, the County was required to provide the public and the decision makers with an explanation of the magnitude of the impact and to evaluate additional mitigation measures. As the Supreme Court has explained, an "EIR's designation of a particular adverse impact as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect." (*Cleveland National Forest Foundation v. San Diego Ass'n of Govs.* (2017) 17 Cal.App.5th 413, 439-40.)

Also, the analysis in both the DEIR and the FEIR omitted any consideration of CO_2 emissions that will occur as a direct result of the Project's consumption of materials used for making bottles. (See AR 667.) The Project will produce single-use polyethylene terephthalate ("PET") bottles for its products. (AR 1632.) 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. (See AR 667 and 692.) This contribution to total GHG emissions must be included.

The GHG analysis also includes HVAC use in such a way that is not supported by any evidence. (AR 1786.) "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.

Finally, the County failed to describe feasible mitigation measure to reduce the significant GHG emissions identified in the new GHG analysis. (Guidelines § 15088.5(a).) Because the DEIR revealed only half of what the County now predicts, it included only a paltry offering of mitigation measures such as encouraging car pooling, installing a solar array (removed in FEIR), use of Pacificorp power when it becomes available, no engine idling, and purchase of offset credits. (AR 1790-1791.) The County failed

to reevaluate these measures when the estimates of emissions doubled. This oversight left the Project with completely ineffective climate mitigation.

The handful of mitigation measures include for GHG reduction are also not enforceable. CEQA mandates that mitigation measures be enforceable. (Guidelines §§ 15091(a)(1), (b) (mitigation findings must be supported by substantial evidence); and 15126.4(a)(1) and (2) (mitigation must be effective and enforceable).) In spite of this requirement, Mitigation Measure 4.6-1's "possibility" of installing solar arrays, and a plan to establish carpooling for employees are perfect examples of unenforceable mitigation measures providing no basis to claim any impact reduction. (AR 250-251 and 464-466.) Further, as noted in detail above, the County has no authority to enforce these mitigation measures outside of the context of CG's use of the caretaker's residence.

CG's attorney indicated that CG was opposed to any requirement for the installation of a solar array. (AR 1087.) In response, the Board of Supervisors made the finding that the solar array would not be required because of "aesthetic" impacts. (AR 267.) While the aesthetic impacts of a solar array may have been significant, the loss of one of the only mitigation measures for air quality impacts required the County to consider and adopt other feasible measures. (See §§ 21002, 21002.2(b), 21081.)

F. Noise impacts

CEQA establishes a California policy to "take all action necessary to provide the people of this state with...freedom from excessive noise," thus providing the public "a statutorily protected interest in quieter noise environments." *Berkeley Jets, supra,* 91 Cal.App.4th at 1379-80, citing PRC § 21001(b).) Noise is a particularly important issue in this case: not only is the Project located in a serene, quiet mountain setting, but it involves a heavy industrial use and over 100 semi-truck trips per day on small town roadways.

The Final EIR analysis picks and chooses from data in the Draft EIR and from the revised noise study presented with the Final EIR, and uses noise thresholds that have been superseded and are *not* the standard for the industry. (AR 36773, 37350.) The Federal Interagency Committee on Aviation Noise ("FICAN") thresholds used in the EIR to determine incremental significance for all project noise sources are out-of-date and inappropriate for industrial noise sources. They have been superseded by incremental thresholds developed by the Federal Transit Administration ("FTA") for transportation noise sources,

which are more stringent than the FICAN thresholds at noise exposure levels common in most environmental circumstances. (AR 33253-33264 at 33254-55.)

Despite the fact that the FICAN standards used by the County do not meet the standard for industry, County clung to the standard, stating that it is a less restrictive standard, but "there is no mandate" not to use it, and the FICAN standards were selected based on "the judgment of the noise consultant." (AR 37354.) CEQA's policy is to provide protection to the public against noise, and the FTA standards have by far the stronger scientific basis. (AR 33258.) Thus, rather than correcting the errors contained in the DEIR's analysis, the FEIR includes additional errors in methodology as well as considerable misinformation.

Additionally, a noise expert pointed out to the County in comments on the FEIR that neither the FTA nor the FICAN thresholds are applicable to industrial noise sources. Noise from industrial sources is *not* "broadband in nature." It has a completely different frequency spectrum than background levels that in most cases are dominated by transportation sources. (See AR 31846 and 31872.) To be less than significant for CEQA purposes, project machinery noise levels must be low enough, or made low enough, on average and in each octave band, to be inaudible to its residential neighbors throughout the day, especially during nighttime hours. (*Id.*) County rejected this assertion that it should evaluate noise that is audible to neighbors. (AR 37352.)

Throughout its response to comments on the shortcomings of the EIR's noise analysis, the County asserts the claim that it was entitled to rely upon City and County noise thresholds as a standard of significance for the Project. (AR 37342-37360.) County defends its conclusions by pointing to these noise ordinances, but case law rejects such excuses. (See *Berkeley Jets, supra,* 91 Cal.App.4th at 1380 [CEQA does not look to local noise ordinances to determine significance of impacts]; *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 300-01 [EIR could not ignore significant increases in traffic simply because traffic was within levels permitted by general plan].)

In response to comments on the DEIR, the County apparently charged its noise experts to figure out a way to get out from under the burden of significant noise impacts and the required mitigation. In addition to the "new " baseline developed by selecting a residence 80 feet from the railroad tracks, the County arbitrarily omitted analysis of vibrational noise and decided not to analyze the combined impact of traffic and industrial noise from plant operations. (AR 33330-33333 at 33331.) "The Revised Noise

Analysis picks and chooses between the noise levels predicted by the FHWA Model and the ambient noise measurements in order to eliminate the significant and unavoidable traffic noise impacts that were contained in the Draft EIR." (AR 33332.)

The responses to comments dismiss concerns about exceedance of noise standards, claiming that a 1-4 dB exceedance is minor. (AR 37345-37346.) Even a 1 dB increase in 24-hour levels represents a potentially significant impact to local sensitive receptors that may require mitigation. (AR 33262.) The evidence in the record does not support the FEIR's conclusions regarding noise impacts.

The noise analysis is inadequate. Case law requires the EIR to provide enough information so readers can determine whether project-related noise would "merely inconvenience" people or "damn them." (*Berkeley Jets, supra,* 91 Cal.App.4th at 1371, 1382; and see *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123 [EIR must describe impact of noise increase in light of existing conditions].)

G. Impacts to hydrology

1. Impacts to groundwater supply

The Project groundwater wells consist of a domestic well and DEX-6; the well that will be used to extract groundwater for bottling and production. (AR 1810.) According to the EIR, the domestic well is perforated in both the upper and lower aquifer systems, while DEX-6 is perforated in the deeper aquifer. (Id.) The Project's potential impacts to groundwater levels was of concern to many in the community, including Petitioners.

This analysis necessarily includes all of the uncertainty discussed elsewhere in this brief about the unstable Project description. County insists that it has no authority over the amount of groundwater that can be pumped at DEX-6, and so the amounts used to analyze for impacts to groundwater are entirely uncertain. The remainder of this discussion assumes that the figures set forth in the EIR are fixed, but that is an assumption for the sake of argument only.

The threshold of significance used by the County for impacts to groundwater was: whether the Project would "substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table" (AR 1824.) The strict application of this generic threshold was useful to allow for a very generalized view of the groundwater in the area, but it was in error. By using this standard, the County was able to accept the analysis based upon outdated models, ignore the standards of significance the

Tribe attributed to the Resource, and avoid having to do any actual studies on the impacts of the proposed pumping at DEX-6 and the nearby wells. The County violated CEQA by applying a standard of significance that did not analyze the water extraction increase "in light of existing conditions." (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123.) This decision to use a general threshold did not take into account the complexity of the groundwater system and the fact that the aquifer is a TCR, and that there are many local residents relying upon it for domestic water. By ignoring these realities, the County did not "use its best efforts to find out and disclose all that it reasonably could." (See *Berkeley Jest, supra,* 91 Cal.App.4th at 1370 (citing Guidelines § 15145.) Here, the EIR's failure to adequately analyze the Project's potential impacts on nearby wells meant that the County never effectively mitigated those impacts.

The record is rife with studies and modeling data, and conclusions by experts, but the one question that needs to be answered with respect to the Projects impacts to Big Spring Aquifer is whether industrial scale pumping at DEX-6 on the Project site cause short and/or long-term damage to groundwater levels at the many nearby of-site residential wells, City wells, and proposed City wells. (See AR 32666 and 32940.) This question has not been answered, and the County continues to point to the resumes of its experts, the volumes of material, but the unfortunate fact is that reams of material are not substantial evidence unless they analyze the appropriate question.

The County's experts used an obsolete and oversimplified model (PUMPIT) which is not applicable to the groundwater underneath the volcanic surface to extrapolate to the data the County has gathered *only from wells on the Project site*. (AR 32666 and 33305.) While the County's experts may opine that sufficient water exists, that opinion must be based upon substantial evidence. (Guidelines § 15384.) In this case, the lack of knowledge about the upper and lower aquifers results in a lack of substantial evidence to support the County's conclusions. (AR 33302-33307.)

County will argue that it is entitled to accept one expert's opinion over another's, but this is not a matter of conflicting opinions. There has never been any testing at all to determine what the impacts will be to neighboring wells, so this is not matter of conflicting expert opinions. (See AR 32667.)

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." (AR 1188-89, 1260, 1357, and 1404.)

The County was not entitled to ignore evidence that industrial-scale pumping at DEX-6 had caused neighborhood wells to fail in the past. Lay testimony of neighbors based on personal observations is substantial evidence. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927-928.) Also, the County was required to fully analyze this impact in response to this evidence. (*Berkeley Jest, supra,* 91 Cal.App.4th at 1370 (citing Guidelines § 15145.)

The Gateway Neighborhood Association also submitted to the County a detailed expert analysis of the local groundwater elevation, taking data from wells in the Project vicinity. (AR 38835-38890.)

In response to requests for a monitoring program for neighboring wells, the County responded with a firm no, but its own expert could not provide an answer without heavy qualifications. (AR 7529.) The response states that the groundwater extractions at the plant would not draw down nearby wells, stating as follows: "this also assumes certain conditions, such as: the fractures in the volcanic rocks at the Domestic Well remain open, extensive and continuous in the subsurface area beneath the region; the elevations of the perforated intervals in the wells being considered are the same; and the same stratigraphic horizons in the Domestic Well have been perforated in the other wells in the region." (AR 7529.) In other words, there is no guarantee at all that the prediction is correct.

The responses to requests for monitoring goes on to state that monitoring wells is "fraught with both logistical and even legal issues...." (AR 7530.) This is not a valid reason to abandon the effort of gathering the necessary data to determine impacts. Monitoring the neighborhood wells for impacts over time as CG engages in its unlimited groundwater extraction is a feasible mitigation measure, and really the only measure available to address the potentially devastating impacts that will likely occur as a result of groundwater depletion.

2. Impacts to groundwater quality

Petitioners and many others raised significant issues regarding groundwater quality during the County's review. 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. (See AR 317-322, 330-332, 397-398, 438-445, 32944-32968 at 32961-32962.) These issues were not properly evaluated by the County, and are also the

subject of the related case pending in this Court, Case No. SCCV PT 18-0531.

H. The Project violates General Plan thresholds and policies

All counties and cities must adopt a general plan for the physical development of their land. (Gov. Code § 65300.) The general plan functions as a "constitution for all future developments" and land use decisions must be consistent with the general plan and its elements. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. [Citation.]" (*Corona–Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) Perfect conformity is not required, but a project must be compatible with the objectives and policies of the general plan. (*Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors* (2005) 62 Cal.App.4th 777, 1336.) A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. (*Id.* at pp. 1341–1342; and *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.)

As discussed in detail above and in letters submitted to the County, 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.

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.

The Draft EIR found that the Project would 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. (AR 26350.) In the FEIR, the impact was downgraded to less than significant. (AR 1878-1879.) As discussed in detail above, the noise studies intentionally employed inappropriate methods of anlaysis and underestimated impacts.

There are, of course, 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.

(*Endangered Habitats League, Inc. v. County of Orange, supra,* 131 Cal.App.4th at 782.) The Project violates a clear, mandatory noise standard.

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. (AR 1195.) Master Response 20 does not really address the Project, but the caretaker's residence. The County notes that the Project is within a woodland productivity resource constraint overlay zone, and says that the overly "informed County officials when zoning the central portion of the project site as Heavy Industrial, allowing for construction of the CCDA Waters Plant[,]" asserting that it is too late to challenge that zoning determination. (*Id.*) The Master Response goes on to state that the "Proposed Project" includes a "by-right" operation of the bottling facility "over which the County has no approval authority, and the caretaker residence." (*Id.*) All of this is the basis upon which the County concludes that the Proposed Project is consistent with the General Plan. The Master Response does not even mention the policies raised by members of the public. (See AR 32967-68.)

In response to comments regarding the inadequacy of Master Response 20, the County states that the Policies of concern were dealt with in the FEIR. (AR 32052.) Unfortunately, there is no meaningful evaluation of the Policies in the FEIR. (AR 1849-1850.) The EIR dismisses the concerns about compatibility with surrounding land uses with the following statement: "The site does not have woodland potential where the proposed caretaker's residence is to be built, and development of the site and the caretaker's residence would not decrease the potential for industrial development. (AR 1850.) This makes no sense.

One of the Policies addressed by that statement is that all heavy commercial and industrial uses be located away from areas committed to residential use, and another is that a use must be compatible with surrounding planned and existing uses. (AR 1850.) The County simply refused to acknowledge the conflict with the General Plan Policies, and found that the Project was a use "by-right." (AR 1195.)

"The consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.) The Project is inconsistent with the Siskiyou County General Plan and approval would violate the State Planning and Zoning Law.

V. CONCLUSION

When CG wished to being bottling operations, the citizens and the Tribe all wanted a few simple things. They wanted a commitment to the environment and the neighbors regarding the upper limit of groundwater extraction. It is not unreasonable for the people living in this beautiful, sacred place to want to know how much of the groundwater is going to be extracted and trucked away in bottles to be consumed elsewhere for the benefit of a private business. And under CEQA, they were entitled to know. They also wanted CG to agree to monitor their domestic wells and commit to a reasonable set of mitigation measures if it turned out the experts were right, and the old data being cobbled together was wrong. Under CEQA, they were also entitled to this; to feasible, enforceable mitigation measures. Instead of providing assurances, the County and CG bent over backwards to find data to support conclusions that would free them from any obligation to the community.

For some reason the County went along with a course of action that intentionally leaves CG free to pump as much groundwater out of the aquifer as it sees fit. To bottle, to haul away in trucks, to do whatever it chooses, without limitation. No development agreement required. No truly enforceable conditions of approval because there is no point in actually constructing a caretaker's residence, because it will be dangerous to anyone who lives there. CG does not need a caretaker's residence. The mitigation measures in the EIR are a condition of the caretaker's residence permit, and outside of that context they are unenforceable.

Maybe this open-ended gift of the life-sustaining waters of the community was not what the County intended. Unfortunately, that is what it is, and if this Project is allowed to go forward without adequate review and enforceable mitigation measures, the water will be just that, an unfettered gift of a community's water resources to an international corporation.

DATED: February 22, 2019

LAW OFFICES OF DONALD B. MOONEY

By _____
Marsha A. Burch
Donald B. Mooney
Attorneys for Petitioners
We Advocate Thorough Environmental Review
and Winnemem Wintu Tribe

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Blvd, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On February 22, 2019, I served a true and correct copy of

PETITIONERS' OPENING BRIEF

____ (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 the City of Davis, California.

__X__ (by overnight delivery service) via Federal Express to the person at the address set forth below:

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

____ (by facsimile transmission) to the person at the address and phone number set forth below:

Natalie Reed Interim County Counsel Siskiyou County Counsel 205 Lane Street Yreka, CA 96097	***Representing Respondents County of Siskiyou and Siskiyou County Board of Supervisors***
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Barbara Brenner Churchwell White, LLP 1414 K Street, 3rd Floor Sacramento, CA 95914	***Representing Real Party in Interest Crystal Geyser Water Company***

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 2019.

Donald B. Mooney