

PRESS RELEASE: 4/21/22

In a Win for Winnemem Wintu Tribe and W.A.T.E.R., the Third District Court of Appeal Rejects Crystal Geysers Project EIR Approval

In a victory for a community effort led by the Winnemem Wintu Tribe and We Advocate Thorough Environmental Review (W.A.T.E.R., a grassroots, community non-profit organization based in Mt. Shasta), California's Third District Court of Appeal ruled in the groups' favor in a long-running fight against approvals by Siskiyou County and the City of Mt. Shasta for the Crystal Geysers Water Company (CGWC) bottling plant project. The ruling capped an 8.5 year effort by community members to ensure the proposed project would not harm the environment and community.

W.A.T.E.R. and the Winnemem Wintu Tribe challenged the adequacy of the Environmental Impact Report (EIR) prepared by the County to review the impacts of a bottling facility proposed by CGWC, as required by the California Environmental Quality Act (CEQA). In the case against the County, the unanimous decision confirms that the County's EIR for the project based its analysis on an impermissibly narrow set of project objectives, such that approval of the project as proposed was a "foregone conclusion," rendering the alternatives analysis an "empty formality." The Court also found that the County failed to recirculate the EIR after new emissions studies revealed that the project would produce almost twice the amount of greenhouse gases as was revealed in the Draft EIR.

In the case with the City of Mt. Shasta, W.A.T.E.R. and the Winnemem Wintu Tribe challenged the City's approval of a wastewater permit for CGWC. The Court found that the City had failed to comply with CEQA's requirement that the City make its own independent findings on several potentially significant impacts before the City approved its portion of the project, and that it needed to supply a brief explanation of the rationale for each finding, which it failed to do.

Both cases will be remanded to the Siskiyou County Superior Court (the lower court in this case) for entry of a judgment in favor of the petitioners. The lower court must specify those actions the County must take to comply with CEQA, i.e. to revise the statement of the project objectives and alternatives, and to recirculate the EIR's discussion of greenhouse gas emissions in order to allow comment on the new (much higher) emission estimates. Likewise, the lower court must specify those actions the City must take to comply with CEQA.

In both cases, the Appellate Court's judgments were based on the County and the City's violations of procedures required by CEQA. With respect to a public agency's conclusions regarding environmental impacts, the standard of review applied by the court is deferential to the agency, and environmental challenges can be an uphill climb for petitioners. The standard of review for procedural missteps is, however, a less deferential standard. It was under this rigorous review by the Third Appellate District that the City and County's actions were determined to have violated CEQA.

Prior to these rulings CGWC abandoned its project and sold the plant and its surrounding properties. However, the legal cases against the project approvals were continued to insure that the flawed EIR would not remain valid.

We are indeed happy to win on procedural grounds. However, the community still needs to remain vigilant about environmental hazards that local governments might miss or ignore in any future project. The history of the proposed CGWC project is a history of our County and City governments cooperating with a major extractive and polluting corporation without regard for community health or the environment. The City of Mount Shasta and Siskiyou County promoted an environmentally questionable project as a "fait accompli" (a done deal) immune to community input. Siskiyou County adamantly maintained that the project did not require environmental review and only initiated an EIR after broad community pressure was brought to bear. The controversial EIR produced by the County was ultimately invalidated on appeal because the County based the EIR's analysis on an impermissibly narrow set of project objectives, and would not recirculate the EIR after the revelation of a significant increase in projected Green House Gas emissions. If the priorities of these politicians and corporate officials were different, these cases would not have been necessary. Citizen awareness, concern and action are a vital and necessary part of legally mandated environmental review.

This is a victory also over CGWC itself, a subsidiary of a multi-billion dollar multinational pharmaceutical corporation with very deep financial pockets, with the potential corporate power to completely dominate local politics for years to come. For example, recent findings of a California Fair Political Practices Commission investigation revealed CGWC committed violations in its secret funding of a Siskiyou County political action committee that opposed a citizen-led effort to strengthen county water ordinances--an example of the kind of corporate political meddling that can cause significant community harm.

Our success would not have been possible if it had not been for the strong support of the many community members, mostly of modest means, who contributed their time, writing, letters, speeches, money, and words of support. It is also a reminder of the importance of community involvement and persistence in matters of this importance. We all must take the time to protect our community and remain vigilant.

Our community's most precious and most sought lifegiving asset is Mount Shasta's pristine groundwater especially during this time of increasing drought. We cannot accept unlimited water extraction, harms to our watershed, and degradation to our rivers and streams and the life they support. The wins in these two cases demonstrate that when we come together we can protect our water, our environment and the web of life we all depend on. We are thankful and proud of the work, sacrifice and victories that W.A.T.E.R. and the Winnemem Wintu Tribe together have shared. May all Peoples join together in the same way to protect and care for this precious World we call home.

We note that agreements between CGWC and the County and City included indemnification clauses such that the agencies and the citizens are not paying for the legal defense of the flawed EIR and permits; CGWC is responsible for the legal costs defending the EIR.