

LAW OFFICE OF DONALD B. MOONEY

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

September 19, 2017

Via Electronic Mail

planning@co.siskiyou.ca.us

Planning Commission
County of Siskiyou
806 South Main Street
Yreka, CA 96097

**Re: *Crystal Geyser Bottling Plant
Final Environmental Impact Report (SCH#2016062056)***

Dear Commissioners:

This office represents We Advocate Thorough Environmental Review (W.A.T.E.R.) regarding Crystal Geyser's proposed water bottling facility in Siskiyou County. The following comments are submitted in conjunction with comments submitted by Marsha A. Burch representing the Gateway Neighborhood Association. As an initial matter, W.A.T.E.R. and GNA object to the proposed project on the grounds that the Final Environmental Impact Report ("FEIR") fails to meet the legal requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.* and the CEQA Guidelines, section 15000 *et seq.* (Title 14 California Code of Regulations § 15000 *et seq.*)

As discussed in Ms. Burch's letter and this letter, the Final EIR is fatally flawed as an informational document and fails to meet CEQA's requirements. The Final EIR's significant flaws are also described and discussed in the comment letters submitted by W.A.T.E.R. and GNA's experts. This comment letter will focus on the Final EIR's inadequacies with respect to hydrology, utilities and alternatives.

I. THE PLANNING COMMISSION DOES NOT POSSESS THE AUTHORITY TO CERTIFY THE FINAL EIR

As discussed by the City of Shasta's comment letter, the Siskiyou County Planning Commission does not possess the legal authority to certify the Final EIR. Siskiyou County Code section 10-4.202.5 defines the Planning Commission's authority. Section 10-4.202.5 states that the Commission has the authority to:

- (a) The approval or denial of tentative maps;
- (b) The approval or denial of tentative parcel maps;
- (c) Reviews and recommendations on involuntary mergers;
- (d) The processing and approval of time extensions; and

(e) Reviews and recommendations on reversions to acreage.

Thus, nothing in the Siskiyou County Code authorizes the Planning Commission to certify a Final EIR or approve the Project. As such, the County should withdraw the Planning Commission meeting and reschedule consideration of certification of the Final EIR consistent with the County's code. Moreover, the Agenda indicates that the action item for the Planning Commission is approval of a resolution certifying the FEIR and approving the Project. As the Planning Commission does not have such authority, the action item is legally flawed and thus violates the Brown Act.

II. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

“CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Pub. Resources Code, §21001.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Pub. Resources Code, § 21000(g).] CEQA is to be interpreted '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]". (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) “The environmental impact report, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision making and to expose the decision-making process to public scrutiny. (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910; citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.) This interpretation remains the benchmark for judicial interpretation of CEQA. (*Laurel Heights Improvement Association v. Regents of the University of California* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 390, quoting *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274.) As the *Laurel Heights I* court noted, “[i]t is, of course, too late to argue for a grudging, miserly reading of CEQA.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 390.)

The EIR is “the heart of CEQA” and “an environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological point of no return.” (*Id.* at p. 392.) The EIR is the “primary means” of ensuring that public agencies “take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.” (*Id.*, quoting Pub. Resources Code, § 21001(a).) The EIR is also a “document of accountability,” intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 392 (quoting *No Oil, Inc., supra*, 13 Cal.3d at p. 86.) Thus, “[t]he EIR process protects not only the environment but also informed self-government.” (*Ibid.*)

The central purpose of an EIR is to identify the significant environmental effects of the proposed project, and to identify ways of avoiding or minimizing those effects through the imposition of feasible mitigation measures or the selection of feasible alternatives. (Pub. Resources Code, § 21002, 21002.1(a), 21061.) “An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of an agency's proposed decision.” (*Mountain Lion Foundation v. Fish & Game Commission, supra*, 16 Cal.4th at p. 113.) Thus, the primary purposes of CEQA is to inform government decision-makers and the public about the potential significant environmental effects of proposed projects (CEQA Guidelines, § 15002(a)(1)) and to disclose to the public the reasons for approval of a project that may have significant environmental effects. (CEQA Guidelines, § 15002(a)(4).) Informed decision making and public participation are fundamental cornerstones of the CEQA process. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights I, supra*, 47 Cal.3d 376.) With this primary purpose of CEQA in mind, the California Supreme Court has stated that “[t]he environmental impact report (“EIR”) is the primary means of achieving the Legislature’s considered declaration that it is the policy of this State to take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State.” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1229 [emphasis added].)

Thus, when an agency fails to comply with CEQA’s informational requirements of CEQA, an agency has failed to proceed in ‘a manner required by law. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 118. If the deficiencies in an EIR “preclude[] informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred.” (*Id.* at p. 128.)

As discussed in these comments, GNA’s comments, and the comments submitted by experts on behalf of W.A.T.E.R and GNA, the Final EIR fails as an informational document and thus is legally deficient. Moreover, the Final EIR’s conclusions and findings regarding impacts are not supported by substantial evidence.

III. Chapter 4.8: Hydrology

A. Personal Observations of Impacts to Groundwater Wells Constitute Substantial Evidence

Comments by some of the community members regarding wells adjacent to the project site indicate that many of them experienced well problems from 2001 to 2010 and believe their wells were impacted by plant operations, and that their wells are in jeopardy from future pumping operations at the proposed project. The County disputes this potential impact, but does so without data regarding groundwater levels or groundwater quality monitoring in the area of the residential wells.

The FEIR and comments submitted by counsel for Crystal Geysers attempt to discredit the comments from landowners regarding potential impacts to their groundwater wells from the operation of the Project. To that extent, they refer to their testimony as anecdotal information and assert that it does not constitute substantial evidence. The comments and testimony from nearby well users, however, is based upon their personal observations and knowledge. Such personal observations of the landowners and water users near or adjacent to the Project constitute substantial evidence. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 937; *Ocean View Estates Homeowner's Assn., Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402; *Citizens Ass'n for Sensible Development v. County of Inyo* (1985) 172 Cal.App.3d 151, 173 (owner of adjacent property may, based upon personal observations, testify to existing traffic conditions). Thus, while an individual may not be an expert, their firsthand observations should not casually be dismissed as immaterial because "relevant personal observations are evidence." (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist., supra*, 116 Cal.App.4th at 402.) The County dismisses the personal observations of the residents which constitute substantial evidence.¹

B. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE FINDING SUFFICIENT WATER EXISTS FOR THE PROJECT.

As demonstrated by the results of the Aquifer Test and the comments submitted by Tim Parker, the evidence in the record underscores how little is known about the upper and lower aquifer systems. The Aquifer Test confirms the lack of understanding and acknowledges the complexity of the aquifer system, yet the Crystal Geysers and County are satisfied sufficient water exists to supply the project and ignore the possibility of third party impacts by not collecting the data necessary to demonstrate otherwise. While the County's experts may opine that sufficient water exists, such opinion must be based upon substantial evidence. (CEQA Guidelines, § 15384.) In the present matter, the lack of knowledge about the upper and lower aquifer results in a lack substantial evidence to support the FEIR's conclusions.

C. The Final EIR Fails to Adequately Address Concerns and Regarding Groundwater Impacts

CEQA Guidelines Section 15088 requires good faith written responses to all comments on environmental issues. "The requirement of a detailed written response to

¹ "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines §§ 15064(f)(5); 15384(a); see also Pub. Resources Code, § 21080(e)(1); *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 410.

comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.” (*City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889, 904; *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.)

As discussed in Tim Parker’s comments on the FEIR, the FEIR failed to adequately address the comments and concerns raised landowners operating wells near or adjacent to the Project. Numerous comments addressed the potential impacts that the Project may have on groundwater wells adjacent to and nearby the Project. The County’s consultant conducted aquifer pumping tests to better understand the connection between the upper and lower aquifers and the impact to the adjacent neighborhood. However, there was a lack a data collection on the specific area and the pumping tests and consultant failed to adequately address the comments regarding impacts to the neighborhood northeast of the plant.

IV. THE FINAL EIR FAILS TO ADEQUATELY ADDRESS THE PROJECT’S IMPACTS TO GROUNDWATER QUALITY

As discussed in the comment letter from Peter Martin, the FEIR’s responses to comments contains inadequacies and inaccuracies regarding effluent and discharge from the proposed facility. Moreover, the EIR’s water quality analysis focuses not on impacts to groundwater quality at the DEX6 well, but the potential for contaminated water beneath the leachfield. Thus, the County and Crystal Geyser are trying to use the EIR to address regulatory issues surrounding discharge to the leachfield, as opposed to using the EIR as an information document for the decisionmakers and public regarding the Project’s impacts to groundwater quality. Thus, the EIR fails to address potentially significant environmental impacts to groundwater quality.

The FEIR also fails to address potential impacts associated with clean-in-place chemicals. Mr. Martin’s comments demonstrate that clean-in-place chemicals such as nitric acid and periacetic acid would react violently with the caustic soda and the bleach would give off chlorine gas if mixed with nitric acid. Additionally, the formation of carcinogenic trihalomethanes will occur with the addition bleach to the groundwater and there is also the potential for the formation of toxic trichloramine. The FEIR, however, fails to address these potential impacts. As such, the FEIR fails as an informational document.

It should also be noted that the FEIR fails to address the toxicity of the clean in place chemicals and the potential impact they may have on groundwater quality. Again, the FEIR fails as an informational document.

V. CHAPTER 4.12 - UTILITIES

A. The Final EIR Weakens Mitigation Measure 4.12-1

The Final EIR weakened Mitigation Measure 4.12-1 from what was discussed in the Draft EIR. The EIR acknowledges the limited capacity of sections in the City's conveyance system and the City's wastewater treatment plant. The EIR acknowledges significant impacts to utilities. (See Impact 4.12-2 and Impact 4.12-3.) The EIR concludes that Mitigation Measure 4.12-1 reduces those impacts to less than significance.

In the FEIR, Mitigation Measure 4.12-1 contains significant new language that would allow *an increase* in the amount of Crystal Geyser's waste discharge to the City's sewer system than what was stated in the DEIR. Moreover, the new language eliminates the enforceable clear language that restricted Crystal Geyser's waste stream to 0.024 mgd 'at any time'.

The revised Mitigation Measure 4.12-1 now contains a loophole that potentially allows a volume of 0.05 mgd -which is more than twice what the DEIR Mitigation Measure 4.12.-1 would allow of 0.024 mgd *at any time*. The FEIR's version of Mitigation Measure 4.12-1 specifies this more-than-doubled volume to apply during the worse precipitation weather event--ie Peak Wet Weather Flow PWWF . This is not a minor oversight. The original intent of Mitigation Measure 4.12-1 was to restrict waste flows to 0.024 mgd at any time.

The FEIR also incorrectly states that the Responsible Agency is the County, however it should state that the City is the Responsible Agency.

B. SUPPORTING FEIR ANALYSIS FOR CHANGES TO MITIGATION MEASURE 4.12 -1 IS INADEQUATE

The FEIR's *analysis* fails to support the new language in Mitigation Measure 4.12-1. First, the FEIR's supporting analysis (see excerpt/quote below) found in Volume II Section 5.1.3 at pages 5.5 is insufficient. It relies on faulty logic of *averaging* the *weekly* waste flows to the City whereas the Mitigation Measure requires a *daily* limitation of flows. The FEIR's faulty analysis also assumes that the plant would be closed one day a week and thus would not be discharging waste on that day, but the EIR describes bottling operations daily.

The EIR states "During the initial phase (one bottling line) peak production would generate an industrial wastewater flow to the City of 20,000 gpd for 5 days, 54,000 gpd for 1 day, and 0 gpd for 1 day since the facility will be closed. Therefore, over a 7 day *average*, with on-site storage of 40,000 gallons, the average flow to the City will be

approximately 22,000 gpd. Providing a 10 percent contingency results in a flow to the City of no more than 24,000 gpd." [Emphasis added]

Second, The FEIR's *Response to Comments*, including those to the Water Board (A-2 through A-9, at pages 3-65 through 3-69) on this issue are dismissive and did not address the Water Board's concern of inadequate on-site holding tanks for the *whole* project (ie 2 bottling lines). Instead of the FEIR increasing the number of holding tanks that would increase the plant's capacity of *containing* waste prior to discharging to the city's system a more restrictive flow of 0.024 mgd *at any time*, the FEIR juggled the numbers and changed the language in Mitigation Measure 4.12-1 as described above. [See FEIR Volume I Response to Comments link found at bottom of the page <https://www.co.siskiyou.ca.us/content/community-development-crystal-geyser-project>]

VI. THE FINAL EIR FAILS TO CONSIDER AN OFF-SITE ALTERNATIVE

The FEIR continues to fail to consider a “reasonable range” of alternatives that would reduce and avoid the Project’s significant impacts. (See Pub. Resources Code §§ 21002 and 21002(a); Guidelines § 15126.6(b); *Goleta Valley, supra*, 52 Cal.3d at 566 (EIR must consider alternatives that “offer substantial environmental advantages”).) Other than the required No Project Alternative (Guidelines § 15126.6(e)), the EIR’s alternative analysis contained only two alternatives to the proposed Project.

CEQA mandates that a lead agency adopt feasible alternatives or feasible mitigation measures that can substantially lessen the project’s significant environmental impacts. (Pub. Resources Code, § 21002; Guidelines, § 15002(a)(3); *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at p. 566.) For that reason, “[t]he core of an EIR is the mitigation and alternatives sections.” (*Id.* at p. 564.) “The purpose of an environmental impact report is to identify the significant effects on the environment of a project, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided. (Pub. Resources Code, § 21002.1(a) (emphasis added); see also Pub. Resources Code, § 21061.) Thus, a lead agency must ensure “that all reasonable alternatives to proposed projects are thoroughly assessed.” (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; Pub. Resources Code, § 21001(g) (lead agency must “consider alternatives to proposed actions affecting the environment”); *Laurel Heights I, supra*, 47 Cal.3d at p. 400.)

The EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, and evaluate the comparative merits of the alternatives.” (CEQA Guidelines, § 15126.6(a).) The alternatives discussion must focus on alternatives that avoid or substantially lessen any significant effects of the project. (*Id.*, § 15126.6(b); *Goleta Valley, supra*, 52 Cal.3d at p. 566 (EIR must consider alternatives that “offer substantial environmental advantages”).) The range must be sufficient “to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” (*San Bernardino Valley*

Audubon Soc’y v. County of San Bernardino (1984) 155 Cal.App.3d 738, 750; see also *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1217-18, 1222 (EIR that only considered two alternatives for less development was not a range of reasonable alternatives).) Although no rule governs the number of alternatives that must be considered, the range is governed by the “rule of reason.” (*Goleta Valley, supra*, 52 Cal.3d at p. 576; CEQA Guidelines, § 15126.6(a)(f).) *Marin Municipal Water District v. KG Land Corporation* (1991) 235 Cal.App.3d 1652, 1664 (“CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR”).) The range of alternatives, however, must be selected and discussed in a manner that allows for meaningful public participation and informed decisionmaking. (*Id.*) The fact that CEQA does not require a specific number of alternatives does not excuse an agency’s failure to present *any* feasible, less environmentally damaging options to a proposed project. (See *Sierra Club v. Contra Costa County, supra*, 10 Cal.App.4th at 1217-18, 1222 (EIR that only considered two alternatives for less development was not a range of reasonable alternatives).)

Failure to provide a range of potentially feasible alternatives means that an EIR failed to provide a choice to the decisionmakers. (*San Bernardino Valley Audubon Soc’y v. County of San Bernardino, supra*, 155 Cal.App.3d at 750 (range must be sufficient to provide a reasonable choice of alternatives); *California Native Plant Society, supra*, 177 Cal.App.4th at 981 (decisionmaking body evaluates whether the alternatives are *actually* feasible); Guidelines, § 15126.6(a) (EIR must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation).) The decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible. (*Mira Mar Mobile Community v. City of Oceanside, supra*, 119 Cal.App.4th at 489.)

The Guidelines state that an EIR must “[d]escribe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and evaluate the comparative merits of the alternatives.” (Guidelines, § 15126, subd. (d), emphasis added.) Off-site alternatives involve similar uses at different locations. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566, see also *Laurel Heights I, supra*, 47 Cal.3d at 403-407; *Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.app.3d 274, 286-288.)

The Final EIR fails to include an off-site alternative that provides for Crystal Geyser to increase its production at its existing facilities in order to meet the purported demand for its product. The Final EIR fails to disclose that Crystal Geyser currently operates bottling plants in several other locations and fails to discuss whether those operations could be expanded or increased. Contrary to the FEIR assertion, expansion of other facilities is not a no-project alternative. It is the expansion of an existing facility that would meet Crystal Geyser’s objectives in expanding its production and sale of

beverage products. That is an off-site alternative that would avoid the impacts of the proposed project.

VII. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE STATEMENT OF OVERRIDING CONSIDERATIONS

In approving the proposed Project, the County intends to rely upon a statement of overriding considerations. Before approving a project with significant unavoidable environmental impacts, a public entity must make an express written determination that the project's benefits outweigh any potential environmental harm. (Pub. Resources Code, § 21081(b); CEQA Guidelines, §§ 15043, 15093; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 983. The agency must find “that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” (Pub. Resources Code, § 21081(b).) “A statement of overriding considerations is not a substitute for the [infeasibility] findings required by Public Resources Code section 21081(a). (*Federation II, supra*, 126 Cal.App.4th at 1201; see also CEQA Guidelines, § 15091(f). “Rather, a statement of overriding considerations supplements those findings and supports an agency's determination to proceed with a project despite adverse environmental effects.” *Federation II, supra*, 126 Cal.App.4th at 1201. It “is intended to demonstrate the balance struck by the body in weighing the ‘benefits of a proposed project against its unavoidable environmental risks.’ (CEQA Guidelines, § 15093(a), (c).) (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223.) “While the mitigation and feasibility findings typically focus on the feasibility of specific proposed alternatives and mitigation measures, the statement of overriding considerations focuses on the larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.” (*Concerned Citizens of South Central Los Angeles* (1994) 24 Cal.App.4th 826, 847.)

“The override decision “lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned.” (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368.) Override findings are sufficient if they “demonstrate the balance struck” by an agency in “weighing the benefits of the proposed project against its unavoidable adverse impacts.” (*Concerned Citizens of South Central Los Angeles, supra*, 24 Cal.App.4th at 849.) However, “a statement of overriding considerations must be supported by substantial evidence contained in ‘the final EIR and/or other information in the record.’ (CEQA Guidelines, § 15093(b); *Sierra Club v. Contra Costa County, supra*, 10 Cal.App.4th at 1223.)

In the proposed approval documents, the County’s findings will focus on economic benefits of the Project due to job creation and taxes paid to Siskiyou County. The proposed Statement of Overriding Considerations provides that the proposed Project increases the economic vitality of the region by generating approximately 60 new jobs.

The Statement also states that the Project would increase tax revenues to the County and Crystal Geyser would contribute its fair share toward the cost of infrastructure improvements outside of the project site. Despite these statements, the record does not appear to contain any fiscal analysis of employment and projected revenue to the County, which would be offset any additional costs incurred by the County. Without the fiscal analysis any findings in statement of overriding consideration regarding the Project's economic benefits is not supported by substantial evidence. As such, approval of the Statement of Overriding Considerations would constitute a prejudicial abuse of discretion.

Sincerely,



Donald B. Mooney
Attorney for We Advocate Thorough
Environmental Review

cc: We Advocate Thorough Environmental Review
Gateway Neighborhood Association