

## **Responsible Agency Under CEQA Must Make Express Findings as to Each Potentially Significant Impact Identified in Lead Agency's EIR**

The Court of Appeal held that the City of Mount Shasta, acting as a responsible agency, violated CEQA by approving a wastewater permit for a water bottling plant without making specific findings as to each potentially significant impact of its permit identified in the lead agency's EIR. The City's determination that there were "no unmitigated adverse environmental impacts relating to the alternate waste discharge disposal methods" was insufficient to comply with CEQA. *We Advocate Through Environmental Review v. City of Mt. Shasta*, 78 Cal. App. 5th 629 (2022).



Crystal Geyser Water Company purchased a defunct water bottling plant in Siskiyou County and sought to reopen it. It applied for a permit from the City to allow the plant to discharge wastewater into the city's sewer system, which the City granted. The County of Siskiyou served as the lead agency and prepared an EIR for the reopened bottling plant, and the City served as one of several responsible agencies. An environmental group and

a local Indian tribe filed petitions for writ of mandate challenging the City's approval of the wastewater discharge permit, arguing that the City failed to make the findings under CEQA.

The court agreed with appellants, concluding that the City's approval violated CEQA's procedural requirements. The wastewater permit authorized the plant to discharge to the City's sewer system process, non-process, and sanitary wastewater. The types of discharge included high-strength wastewater from spilled product and internal and external cleaning and sanitizing chemicals; flavor change rinse water; final rinse water from product lines and tanks; condensate, boiler-blowdown water; and cooling-tower-blowdown water. The County's EIR identified as potential impacts that the wastewater could exceed the capacity of the City's wastewater treatment plant, as well as that the installation of additional pipelines could result in significant impacts to fishery resources, several endangered species, and cultural resources. (In a separate decision, the Court of Appeal invalidated the County's EIR, holding that the stated project objectives were unduly narrow and that the EIR should have been recirculated in light of significant new information about project emissions. Our report on that decision is available [here](#).)

The City did not acknowledge the impacts identified in the County's EIR in its approval of the wastewater permit. It did not say whether those impacts would be mitigated, whether another agency would handle mitigation, or whether mitigation would be infeasible, and it did not supply any reasoning for the required findings. The City instead concluded in a single sentence that the City had reviewed the EIR and "[found] no unmitigated adverse environmental impacts relating to the alternate waste discharge disposal methods."

The court held that this determination was inadequate under CEQA, ruling that the City was required to find either that significant impacts identified in the EIR had been mitigated or avoided; that measures necessary for mitigation were within the responsibility and jurisdiction of another public agency and had been, or could and should be, adopted by that other agency; or that specific economic, legal, or other considerations made mitigation infeasible. Pub. Res. Code section 21081(a). Moreover, each agency's findings must be "accompanied by a brief explanation of the rationale for each finding," as required by CEQA Guidelines section 15091(a). The court rejected the City's contention that a responsible agency need only make findings under section 21081 when the EIR identifies significant, unmitigated environmental impacts.

Separately, the court rejected appellants' argument that the City should have performed additional environmental review because the amended draft of the permit identified impacts that were not addressed in the County's EIR. The County's EIR evaluated the potential environmental impacts associated with all governmental approvals, including the City's wastewater discharge permit. The court explained that the suit against the City was not an appropriate forum for challenging the County's EIR (citing 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality (Cont. Ed. Bar 2021 update) § 3.23 ("A lawsuit brought against a responsible agency is limited to the actions that the responsible agency takes in approving the project, but does not extend to actions by the lead agency, or to the adequacy of the lead agency's CEQA review of the project.")).

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