

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA**

JOHN THOMAS H. DO (SBN 285075)

jdo@aclunc.org

EMI YOUNG (SBN 311238)

eyoung@aclunc.org

GRAYCE ZELPHIN (SBN 279112)

gzelphin@aclunc.org

39 Drumm Street

San Francisco, CA 94111

Telephone: (415) 293-6333

Facsimile: (415) 255-8437

ASIAN LAW CAUCUS

CARL TAKEI (SBN 256229)

carlt@asialawcaucus.org

MEGAN VEES (SBN 325184)

meganv@asianlawcaucus.org

55 Columbus Avenue

San Francisco, CA 94111

Telephone: (415) 896-1701

Facsimile: (415) 896-1702

Counsel for Plaintiffs Chang, et al.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**GER CHONG ZE CHANG, MAINOU VANG,
RUSSELL MATHIS, YING SUSANNA VA, and
all others similarly situated,**

Plaintiffs,

v.

**COUNTY OF SISKIYOU and JEREMIAH
LARUE, in his official capacity as Sheriff,**

Defendants.

**COVINGTON & BURLING LLP
STANLEY YOUNG (SBN 121180)**

syoung@cov.com

3000 El Camino Real

5 Palo Alto Square, 10th Floor

Palo Alto, CA 94306-2112

Telephone: (650) 632-4700

Facsimile: (650) 632-4800

MICHAEL PLIMACK (SBN 133869)

mplimack@cov.com

ALISON WALL (SBN 319562)

awall@cov.com

ELLEN CHOI (SBN 326291)

echoi@cov.com

COVINGTON & BURLING LLP

Salesforce Tower

415 Mission St., Suite 5400

San Francisco, CA 94105-2533

Telephone: (415) 591-6000

Facsimile: (415) 591-6091

CASE NO.: 2:22-cv-01378-KJM-AC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Hearing Date: September 13, 2024

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Judge: Kimberly J. Mueller (KJM)

Courtroom: 3

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1 **I. INTRODUCTION**

2 A recent and unusual Siskiyou County zoning campaign is depriving the County’s Asian American
3 community of the water it needs to survive. Just as in the summer of 2021, when this Court previously
4 intervened, the County is preventing the putative Plaintiff water class from bathing, cooking, cooling,
5 sustaining their plants, livestock, and companion animals, and fighting devastating fires. As a result,
6 community members’ health is deteriorating, their animals are dying, and their property has burned to the
7 ground. The County’s novel zoning policy, barring all off-parcel transport of water, is the latest of a series
8 of unconstitutional actions intended to harass and intimidate a disfavored racial minority. Without
9 immediate court intervention, the Plaintiffs’ water class will continue to suffer irreparable harm.

10 The County’s recent zoning strategy continues a history of discriminating against Asian Americans
11 and, in particular, restricting Asian Americans’ access to water. Such restrictions impelled this Court to
12 issue a preliminary injunction in 2021 preventing the County from enforcing its water extraction and water
13 truck ordinances. In the wake of that order, and as a result of a subsequent settlement agreement in 2023,
14 the County rescinded the water extraction and water truck ordinances and modified a third ordinance, the
15 water nuisance ordinance. Shockingly, the County continued to enforce one of the repealed ordinances
16 against Asian Americans. More significantly, the County found a new instrument—its longstanding
17 zoning ordinance—to accomplish its desired goal of inhibiting Asian Americans’ water access. Its new
18 interpretation of that ordinance prohibits *all* off-parcel water distribution, making it even more dangerous
19 than the water extraction ordinance that this Court enjoined. Over the past eight months, the County has
20 issued citations pursuant to this novel interpretation exclusively against Asian American well-owners who
21 supply water to the Asian American community. Defendants’ conduct has had the obvious and intended
22 effect of depriving Asian Americans of essential water to meet their basic human needs.

23 Given this growing humanitarian crisis, Plaintiffs request that the Court enjoin Defendants from
24 using the zoning ordinance to prevent the transfer of off-parcel water or otherwise preventing County
25 residents from accessing water for lawful domestic use.

26 **II. PROCEDURAL BACKGROUND**

27 Plaintiffs filed the underlying action on August 3, 2022, Dkt. 1, and the case was subsequently
28 reassigned to this Court as related to *Lo v. County of Siskiyou*, No 2:21-cv-00999-KJM-AC, Dkt. 9. At the

1 time this case was transferred to this Court, the Court had already entered a preliminary injunction in *Lo*
2 prohibiting Defendants from enforcing two water ordinances at issue in both matters: Siskiyou County
3 Code sections 3.5-13.101-3.5-13.109 and 3-4.1501-3-4.1506. *Lo v. Cnty. of Siskiyou*, 558 F. Supp. 3d 850,
4 872 (E.D. Cal. 2021). The parties in *Lo* reached a settlement, which required the County to repeal the two
5 water ordinances that had been preliminarily enjoined and to modify the third. Request for Judicial Notice
6 (“Pls.’ RJN”), Ex. A. In the present matter, Plaintiffs filed their First Amended Complaint on February
7 20, 2024, Dkt. 47, and Defendants filed a Motion to Dismiss on March 5, 2024, Dkt. 52. Oral argument
8 was held on May 17, 2024 and Defendants’ Motion to Dismiss is now pending with the Court.

9 **III. FACTS**

10 A. *The County Has Recently Adopted and Applied a Novel Interpretation of Its Zoning*
11 *Ordinance with Discriminatory Intent Against Asian Americans.*

12 In its preliminary injunction order in *Lo*, the Court found that plaintiffs had raised “serious
13 questions” as to Defendants’ discriminatory intent regarding the water extraction and water truck
14 ordinances, including based on evidence that the ordinances were a “tool” to “choke out . . . the water
15 issue.” *Lo*, 558 F. Supp. 3d at 870–71. In light of this injunction and subsequent repeal of the same
16 ordinances, the County has turned to zoning as a new tool to achieve the same discriminatory end.

17 Siskiyou County’s zoning ordinance, codified at Title 10, Chapter 6 of the County Code, was in
18 relevant part enacted in, and has remained unchanged since, 1986.¹ In a marked departure from its previous
19 use and interpretation, the County has recently interpreted the ordinance as prohibiting *all* water extraction
20 for off-parcel transfer. The County’s position is clear from citations, notices, and warnings issued to well
21 owners who provide water to their Asian American neighbors. *See* Moua Decl. Exs. A, C–E (citations for
22 a “water distribution center”); *id.* ¶ 10 (County officer said that he “did not have the right to let water be
23 hauled away from [his] property . . . regardless of if [he] was giving the water away or selling it”); B.
24 Yang Decl. Ex. A (citation for a “water distribution enterprise”); *id.* ¶ 7 (County officer said he could not
25 distribute his water off-parcel, even if distributed to properties he owned); Vue Decl. Ex A (citing an
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27 _____
28 ¹ The Siskiyou County Code can be accessed at https://library.municode.com/ca/siskiyou_county/codes/-code_of_ordinances?nodeId=16630.

1 unlawful “water distribution center”). The County’s citations and warnings assert that well owners are
2 operating “water distribution centers” and are issued without regard to amount or intended use. *See e.g.*,
3 Moua Decl. Exs. A, C–E. Plaintiffs are aware of no citations under the zoning ordinance for the operation
4 of an impermissible “water distribution center” prior to December 2023. *See* Verner-Crist Decl. ¶¶ 5–7.

5 The County’s new and unusual position that well owners (at least Asian American well owners)
6 may not transfer water off-parcel contradicts both standard California practice, *see* House Decl. ¶¶ 4–5,
7 and the County’s prior position that its Code did not regulate water extraction and transfer, *see* Verner-
8 Crist Decl. Ex. B at 3 (noting the “absence of regulations in the County Code that provide for the regulation
9 of extraction of groundwater for off-parcel use”). This new interpretation is also more restrictive than the
10 discretionary permitting scheme under the water extraction ordinance that this Court found concerning.
11 *See Lo*, 558 F. Supp. 3d at 868 (water extraction ordinance “effectively prohibit[s] groundwater use and
12 transportation absent proof to the County’s satisfaction that the groundwater will be put to legal use”). To
13 be sure, the need to demonstrate “to the County’s satisfaction” that water was for legal purposes was
14 problematic; but under the new zoning scheme, Asian Americans are not even given that chance.

15 The County has narrowly focused its new interpretation on well owners (themselves, all Asian
16 American) who provide water to Asian Americans. *See e.g.* Verner-Crist Decl. ¶¶ 6–7, Ex. A. The County
17 simultaneously ignores—and has even facilitated—the transfer of water by non-Asian well owners who
18 extract water for purposes other than provision to Asian Americans, including beekeeping and pest
19 control. *See* Verner-Crist Decl. Exs. C (email to select county members that permits to extract and move
20 groundwater will be issued to “legitimate operators—basically all of you”); *id.* Ex. D (sheriff pulling over
21 “legitimate operators” for not having permits is “not so good”); *id.* ¶ 11, Ex. E (water tender permits issued
22 to persons with a high probability of white surnames); House Decl. ¶ 5 (it is common practice to transfer
23 water between agricultural properties); Griset Decl. ¶ 20 (same). Further, Asian Americans are unable to
24 change their zoning designation to allow them to provide water—the County informed one Asian
25 American well owner, who was seeking to change his zoning in light of the County’s zoning enforcement,
26 that such a change was not possible. Moua Decl. Ex. B (County informed Moua he could not change his
27 zoning to allow Moua to provide water to his neighbors and that they had to drill wells on their property
28

1 instead). The County’s new interpretation of its zoning ordinance is thus effectively a wholesale
2 prohibition of off-parcel water transportation.

3 B. *The Recent Shift in the County’s Policy or Practice Is Causing Another Humanitarian*
4 *Crisis, Similar to That of Summer 2021.*

5 The consequences of the County’s actions are exactly as to be expected: Asian Americans in the
6 County are suffering from a lack of water and increasingly being forced to leave the County. *See* M. Lee
7 Decl. ¶ 5 (this summer is becoming as “bad” as 2021 due to lack of water); Mathis Decl. ¶ 23 (similar);
8 Y. Yang Decl. ¶ 11 (similar). This severe impact on Asian Americans is due to their particularly heavy
9 reliance on off-parcel water for all of their water needs. *See* Reynolds Decl. ¶¶ 6, 10 (the majority of Asian
10 American community relies on hauled water). The rural areas in which Asian Americans primarily live,
11 such as Shasta Vista, are not connected to municipal water systems; wells, which serve as an alternative
12 water source, are costly and uniquely difficult for Asian Americans to obtain. *See id.* (majority of Asian
13 Americans do not have wells); M. Lee Decl. ¶ 3 (no public water system in Shasta Vista and many
14 residents have no wells); Thao Decl. ¶ 8 (well can cost \$75,000); Y. Yang Decl. ¶¶ 4–5 (County repeatedly
15 failed to inspect property to allow for well permit); Vue Decl. ¶ 4 (County never granted him a well
16 permit); B. Lee Decl. ¶ 4 (well too costly); Mathis Decl. ¶ 6 (same). Thus, the primary way that many
17 Asian Americans get water—for bathing, cooling, cooking, fire prevention, caring for animals, etc.—is
18 from a handful of well owners who extract water from their wells into water trucks, which then haul the
19 water to Asian Americans’ homes. *See* Vue Decl. ¶ 5; Moua Decl. ¶ 5; K. Lee Decl. ¶ 3; Xiong Decl. ¶ 5;
20 B. Lee Decl. ¶ 5; Thao Decl. ¶ 9. Defendants are well aware of Asian Americans’ reliance on off-parcel
21 water, *see* Verner-Crist Decl. ¶¶ 11–13, Ex. F (District Supervisor getting reports of “an explosion of
22 water trucks in the Shasta Vista Area”); *id.* Ex. G (County representative has a well map of Shasta Vista).

23 As a result of the County’s recent and idiosyncratic zoning policy, water is becoming scarce, as
24 well owners are fearful of providing and/or have simply stopped providing, off-parcel water. *See* Vue
25 Decl. ¶ 7 (stopped providing water after receiving County zoning notice); B. Yang Decl. ¶ 9 (fears that
26 providing water will result in further fines or a lawsuit); K. Lee Decl. ¶ 9 (can no longer get water from a
27 well owner as a result of the County threatening to fine the well owner); Griset Decl. ¶ 15 (Asian
28 Americans have “asked and asked [] for water in the heat” but fears County retribution); B. Lee Decl. ¶ 10

1 (told by water haulers they do not have water); Mathis Decl. ¶¶ 20–21; M. Lee Decl. ¶ 5. Other community
2 members with water refuse to share it with their Asian American neighbors for fear that the County will
3 give them a “ticket.” M. Lee Decl. ¶ 6 (neighbors refused to fill up her 5-gallon jug).

4 The impact on the Asian American community is becoming increasingly dire. With State support,
5 the Rural Community Assistance Corporation (“RCAC”), a non-profit that provides water assistance to
6 low-income communities on the West Coast, is trying to improve water access for Asian Americans in
7 Siskiyou County. Reynolds Decl. ¶ 2. In light of recent zoning enforcement, their assistant field manager
8 on the ground is “gravely concerned about the state of water access” for the community, *id.* ¶ 12, and
9 recognizes that “[i]f the County successfully prohibits water hauling from the wells that currently provide
10 water to the Asian-American community, the vast majority of this community will be without water”
11 and/or begin to use worse quality water, which itself is dangerous, *id.* ¶¶ 10–11. Reynolds reports that
12 “Asian-American households, representing hundreds of people, have made requests that RCAC protect
13 their hauled water, which is necessary for their daily needs” *Id.* ¶ 7.

14 A few examples are illustrative of the obvious harms of water deprivation. Yiping Yang, along
15 with her husband—both in their sixties and with significant health issues—rely on water from their
16 neighbor, despite trying to get a permit from the County for their own well (which the County would not
17 approve). Yang Decl. ¶¶ 3–6. However, their neighbor recently stopped providing them water due to fears
18 of County enforcement. *Id.* ¶ 6. Yang and her husband turned to water haulers, but that, too, has recently
19 failed as the haulers cannot find wells willing to let them fill up. *Id.* ¶ 8. Some of her chickens have died,
20 and she and her husband cannot cool off in the extreme heat, much like the dire situation they faced in the
21 summer of 2021. *Id.* ¶¶ 9–11. Plaintiff Russell Mathis has also experienced great difficulty finding water
22 in recent months and was turned away by a water provider out of fear of the County. Mathis Decl. ¶ 20.
23 Although he was ultimately able to obtain a delivery of water several months ago, he is taking extreme
24 measures to ration water as he does not know if he will be able to find more. *Id.* Bao Lee, a 79-year-old
25 woman who takes care of her elderly husband, who is in poor health, is unable to find water more than
26 once every two months. B. Lee Decl. ¶ 11. Water haulers she previously relied upon will no longer provide
27 her water, and her neighbors fear the County will cite them if they move their water off-parcel. *Id.* ¶ 10.
28 As a result, Lee and her husband have insufficient water to cook, bathe, or cool down in the 100-degree

1 heat. *Id.* ¶ 13. Her husband’s already-poor health is deteriorating, and Lee has regular headaches as she
2 has rationed herself to two bottles of water a day. *Id.* ¶ 15; *see* Reynolds Decl. ¶ 9 (insufficient water to
3 bathe increases risk for disease, infection, and other illnesses). Meng Lee, a 62-year-old woman who lives
4 in Shasta Vista, has so little water that she cannot wash her dishes (which then get moldy), cannot shower,
5 and has already lost all of the plants in her herb garden. M. Lee Decl. ¶¶ 7–9. Her husband, who is 75 and
6 in poor health, left the County due to the lack of water; he calls his wife daily, hoping to return, but does
7 not because it is unsafe. *Id.* ¶ 11. In many instances, Asian Americans have resorted to burdensome,
8 inconvenient, and higher risk methods of obtaining and rationing water. Mathis Decl. ¶ 22 (tries to stretch
9 the use of his stored water, which results in mold); *see* Reynolds Decl. ¶ 11 (Asian Americans are likely
10 to seek even worse quality water, such as from streams, “if they have not already done so”).

11 The County’s new zoning policy also prevents Asian Americans from having the necessary water
12 to fight fires—especially this year—during dry, summer months when the fire risk in Shasta Vista is very
13 high. King Decl. ¶¶ 6, 9, 24; Khang Decl. ¶ 12; K. Lee ¶ 9 (without water access from well owners, will
14 not have water in his truck to fight fires). In the wake of the devastating Lava Fire in 2021, when the
15 Shasta Vista community watched local authorities stand idle as the neighborhood burned, the Shasta Vista
16 community organized themselves to serve as the “first line of defense” for fires. *See* King Decl. ¶¶ 5, 7;
17 Ya Decl. ¶ 10. Asian American firefighters from in and around Shasta Vista often stop the spread of a fire
18 before CalFire arrives, which usually takes at least 25 to 30 minutes. King Decl. ¶¶ 18, 19; Ya Decl. ¶ 11;
19 Khang Decl. ¶ 8. A rapid response time is critical to prevent fires from spreading, and Asian Americans
20 in Shasta Vista fight fires with water from water trucks, supplied by the same well owners that now fear
21 the County may issue warnings or citations to them. *See* King Decl. ¶¶ 20–22 (rapid response times are
22 critical and Hmong water trucks are first responders); Ya Decl. ¶¶ 19–20; Khang Decl. ¶¶ 16–18; K. Lee
23 Decl. ¶ 8 (as a water hauler, he plays a “crucial role” in putting out fires in Shasta Vista). Shasta Vista
24 community members often keep partially full water trucks precisely for this purpose—so as to quickly
25 extinguish fires. Khang Decl. ¶ 16. Numerous fires have already occurred in the area this season and were
26 put out by local Hmong, volunteer firefighters. Ya Decl. ¶ 18; Khang Decl. ¶ 12; Mathis Decl. Ex. A.

27 But as water sources become increasingly inaccessible due to the County’s conduct, Shasta Vista
28 is losing its first line of defense against fires. Ya Decl. ¶ 19 (over the past two months, it has grown

1 “increasingly difficult to find water trucks with well water that can respond to fires”); Khang Decl. ¶ 17
2 (same); K. Lee Decl. ¶ 9 (decreasing access to water for his water truck). In response to a July 11, 2024
3 fire at a Hmong gathering place, Fitz Ya—who helps triage and dispatch water trucks to fight fires in
4 Shasta Vista—talked to at least five or six water haulers, none of whom had water and some of whom
5 explained that well owners would “no longer provide water because the County was telling them that they
6 could not.” Ya Decl. ¶ 20. The Hmong gathering place burned to the ground. *Id.*

7 C. *The New Zoning Policy Is the Latest Episode in the County’s History of Depriving Asian*
8 *Americans of Water.*

9 Defendants’ new zoning policy is not the first time they have used ordinances to harass and
10 discriminate against the Asian American community by restricting water access. To the contrary, water-
11 related restrictions targeted at Asian Americans have been a focus of the County over the last few years.

12 Water was relatively accessible for Asian Americans in Shasta Vista prior to, and through most of,
13 2020. *See* M. Lee Decl. ¶ 4; Mathis Decl. ¶¶ 7–11; Griset Decl. ¶ 4 (provided non-potable water from his
14 well to Asian Americans from 2016 to Fall 2020). However, in August 2020, the Board of Supervisors
15 passed a water nuisance ordinance banning the extraction and discharge of groundwater for use in
16 cultivating cannabis. Pls.’ RJN Ex. B. The ordinance made this a strict liability offense, permitting citation
17 of well owners who distributed water, even if they were unaware that any portion of their water was
18 ultimately used for such cultivation. *See* Griset Decl. ¶ 6. This broad ordinance was enacted with
19 discriminatory intent, as evidenced by xenophobic statements from Defendants. *See, e.g.,* Verner-Crist
20 Decl. Ex. F (June 2020 email from a Board Supervisor complaining of the number of water trucks in
21 Shasta Vista, noting he was “fearful” they were “losing a portion of our county . . . similar to what we see
22 if foreign countries like Europe where Sharia law has replaced local governance”); *id.* ¶ 16 (during the
23 August 2020 meeting at which the water nuisance ordinance was passed, then-Sheriff discussed a need to
24 “eradicate this overwhelming illness”). The next month, the ordinance was enforced against property
25 owners who provided water to the Asian American community. *See, e.g.,* Griset Decl. ¶¶ 4, 7 (provided
26 water to Asian Americans until the County sued him in September 2020, including for violation of the
27 water nuisance ordinance); Verner-Crist Decl. ¶¶ 18–19, Ex. I (County sued the Ellison Ranch and, soon
28 after, Ms. Ellison complained during a Board meeting that people “rose up against” him in connection

1 with his friendship with the Hmong community); Mathis Decl. ¶¶ 10–11 (obtained water from Griset prior
 2 to fall 2020).² There are indications that this enforcement was racially motivated. For example, the same
 3 County prosecutor who filed the lawsuit against Griset subsequently wrote in an email that she was going
 4 to bring felony charges in marijuana cases because she thought “the Hmong will care about felony
 5 charges.” Verner-Crist Decl. Ex. H. Further, the ordinance was passed against a backdrop of racial animus
 6 from non-Asian community members. *See* Verner-Crist Decl. ¶ 21 (saying, in a Board meeting, “I do not
 7 refer to them as Hmong. I refer to them as illegal pot growers”); *id.* ¶ 22 (saying, in a Board meeting,
 8 Hmong and Chinese community members are living like a “third world country” and attributing thievery
 9 and murder to their “clan structure”); Griset Decl. ¶¶ 5, 7 (shortly before Griset was sued, approximately
 10 60 of his white neighbors protested his provision of water to Asian Americans).

11 The next summer, in May 2021, the County passed two additional water ordinances—the water
 12 extraction and water truck ordinances, Pls.’ RJN Exs. C–D, that were similarly enacted with
 13 discriminatory intent against Asian Americans, *see* Verner-Crist Decl. ¶ 25 (a Board Supervisor concerned
 14 about encumbrances on “legitimate business” when the ordinances are for people who “thumb their nose
 15 at us, thumb their nose at society, and thumb their nose at our way of life”). Indeed, the water truck
 16 ordinance was originally *only* directed toward neighborhoods with high Asian American populations,
 17 including Shasta Vista, and was immediately enforced against those communities. *Id.* Exs. J–K; Griset
 18 Decl. ¶¶ 10–11 (water truck ordinance was directed at the roads surrounding Shasta Vista and within an
 19 hour of the ordinances passage, Sheriff’s deputies were pulling over Asian American water haulers and
 20 seizing their trucks, including within private roads in Shasta Vista). Enforcement focused only on Shasta
 21 Vista despite a Board Member pointing out that similar water movement and use was occurring in another
 22 part of the County; later during that same meeting, the Sheriff emphasized the importance of “direct[ing]
 23 our anger at the right people . . . we know who they are . . . we need the cooperation of our local people .
 24 . . [to] really choke it out.” Verner-Crist Decl. ¶¶ 23–24.

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 26
 27
 28 ² The County’s lawsuit against Griset included violations of the zoning ordinance for operating a “water bottling”
 center, even though his water was non-potable and he had no prior citations under the ordinance. Griset Decl. ¶ 4.

1 Defendants' efforts to impede Asian Americans' access to water ignored and exacerbated the real
2 and apparent dangers of insufficient water access. *See Id.* Ex. P (ahead of the passage of the ordinances,
3 County CalFire Chief Phil Anzo cautioned that “[t]he County’s ban on non-fire water tenders may have
4 impact on fires in the area”); *id.* ¶ 15 (during a Board meeting in summer 2021, Asian American spoke of
5 the need to restore necessary water; “it is inhumane to deny our people from having access to water”);
6 Mathis Decl. ¶¶ 9, 18 (spoke to both County Sheriff’s personnel and a Board Supervisor about his concerns
7 for accessing water); *infra* Section III.A (County ignored significant fire dangers and turned off water
8 access during fire). These dangers materialized during the summer of 2021, in the wake of the water
9 extraction and water truck ordinances, as Asian Americans in the County were left without water for
10 drinking and bathing, were forced to watch their animals, plants, and vegetables die, and had insufficient
11 water to combat fires. *See* B. Lee Decl. ¶ 7 (had to beg friends for water, one of her dogs died, most of her
12 chickens and ducks died, and her and her elderly husband suffered physically in the heat without water);
13 M. Lee Decl. ¶ 4 (surrendered her dogs to the shelter and her herbs died due to lack of water); Xiong Decl.
14 ¶ 7 (almost left the County due to lack of water); Ya Decl. ¶ 20 (was no longer able to get water to fight
15 fires); Mathis Decl. ¶ 12 (could not get any water after May 2021, did not shower for four months); Y.
16 Yang ¶ 11 (plants and animals died).

17 In September 2021, in part as a result of these concerns, this Court enjoined the water extraction
18 and water truck ordinances. *Lo*, 558 F. Supp. 3d at 872. The injunction improved water access, *see* B. Lee
19 Decl. ¶ 8, despite the fact that the County issued at least four citations of the water extraction ordinance
20 while the injunction was in effect, Verner-Crist Decl. Ex. Q. Then, in August 2023, as the result of the
21 settlement in the *Lo* matter, the County rescinded the enjoined ordinances. *See* Pls.’ RJN Exs. A, F. While
22 the availability of water resources remained a consistent concern within the Asian American community,
23 the humanitarian crisis largely subsided. *See* B. Lee Decl. ¶ 8; Mathis Decl. ¶ 17.

24 D. *Water Deprivation Is Part of the County’s Discrimination Against Asian Americans.*

25 Defendants’ recent efforts to restrict water access to Asian Americans through its zoning ordinance
26 is the latest chapter in the saga of discrimination against Asian Americans in Siskiyou County, which
27 began almost immediately after the Asian American population in the County began increasing around
28 2014 and 2015. *See, e.g.*, B. Lee Decl. ¶ 3. In particular, Hmong people—many of whom trace their roots

1 to Laos—moved to the area from larger refugee communities in the Central Valley and Midwest. *See*,
 2 *e.g.*, Thao Decl. ¶¶ 4–6 (refugee, who fought in the Secret War in Laos on behalf of the United States, and
 3 moved with his family to the County in 2016). Many Asian Americans moved to, and currently live in,
 4 the Shasta Vista area in Siskiyou County, where they form the majority. *See* Reynolds Decl. ¶ 6; Thao
 5 Decl. ¶¶ 5–7; King Decl. ¶ 2; Ya Decl. ¶¶ 2–3.

6 While Asian Americans tried to integrate into the community, *see, e.g.*, Thao Decl. ¶ 6, the broader
 7 County—which is primarily white, *see* Pls.’ RJN at 1—reacted with a hostile “us” versus “them”
 8 mentality. For example, in a 2015 public meeting, the Board of Supervisors called first for a show of hands
 9 from “the Hmong residents present” and then for a show of hands from “those County residents present.”
 10 Verner-Crist Decl. Ex. R. at 9. During the 2016 elections, both the Department of Justice and the California
 11 Attorney General’s Office sent monitors to the County to “monitor[] reports of alleged voter intimidation
 12 among vulnerable minority populations, such as the Hmong community.” Pls.’ RJN at 1.³

13 Law enforcement in the County generally treat Asian Americans as criminals based on their race.⁴
 14 *See, e.g.*, Mathis Decl. ¶ 14 (officer from the Sheriff’s department told him “everyone who live[s] in
 15 Shasta Vista belonged to the cartel”). In 2017, then-Sheriff Jon Lopey attributed the problem of illegal
 16 cannabis cultivation to people of Hmong ethnicity, saying “[t]oo bad they didn’t use their ingenuity,
 17 intelligence and skills to engage in something lawful.”⁵ In the face of reports regarding a civil rights
 18 investigation of traffic stops, supervisors in the Sheriff’s Department urged deputies to keep “pushing that
 19 envelope to the edge,” noting explicitly that they had “folks scared (especially the Hmungs) [sic]” and
 20

21 ³ Citing U.S. Department of Justice, “Justice Department to Monitor Polls in 28 States on Election Day,” *available*
 22 *at* <https://www.justice.gov/opa/pr/justice-department-monitor-polls-28-states-election-day>; *see also* “Attorney
 23 *General’s Office in Siskiyou County after reports of sheriff intimidating voters,” available at*
<https://archive.redding.com/news/local/Siskiyou-sheriff-accused-of-intimidating-voters-382134091.html/>.

24 ⁴ Defendants have even adopted this rhetoric in court filings and open court. *See, e.g.*, Oral Argument Transcript,
 25 May 14, 2024, 23:11–23:14 (stating that the Asian Americans who appeared to witness the court’s public oral
 26 argument regarding the motion to dismiss did so because they have “an economic interest in continuing the growing
 27 of cannabis in Siskiyou County”); Dkt. 41 (Joint Rule 26(f) Report and Case Management Statement) (“Many if
 28 not all members of the putative class”—which includes all Asian Americans in Siskiyou County without well or
 municipal water access, Compl. ¶ 214—“are either directly linked, have or are actively involved in illegal cannabis
 cultivation . . .”).

⁵ Stephen Magagnini, “Marijuana and Hmong farmers: Siskiyou County sheriff fights to control cannabis trade,”
 Sacramento Bee, December 23, 2017, available at <https://www.sacbee.com/news/local/article191166434.html>.

1 were in the “spotlight for accusations of civil rights violations or racial profiling.” Verner-Crist Decl.
2 Ex. T; *see also* Griset Decl. ¶¶ 16–17 (has routinely watched Sheriff’s deputies pull over Asian Americans
3 “order them out of their cars, have them lie in the dirt behind their cars, search their cars, and then let them
4 go”). The Sheriff even wrote it was “helpful” that a County member alerted him to a change in “vehicle
5 usage” among the “Hmong population.” Verner-Crist Decl. Ex. S.

6 The County has further exhibited troubling disregard for direct threats to the safety of its Asian
7 American residents by letting Shasta Vista burn. During the devastating Lava Fire in 2021, local
8 authorities stood by and allowed the flames to consume the homes of many Asian Americans. *See* Ya
9 Decl. ¶ 9; Khang Decl. ¶ 5; Mathis Decl. ¶ 14. The County turned off the power to Griset’s well,
10 preventing him from providing water to help fight the fire. Griset Decl. ¶ 12; Mathis Decl. ¶ 14 (Sheriff’s
11 deputy told him they had “cut the power to [Griset’s] well so that no water could enter Shasta Vista”). A
12 Sheriff’s officer remarked, “we’re letting it burn.” Verner-Crist Decl. ¶ 39. Eventually, after significant
13 acreage was burned and homes destroyed, CalFire stepped in to fight the fire. *See* Khang Decl. ¶ 6; Mathis
14 Decl. ¶ 15. The destruction wrought by the Lava Fire forced some Asian Americans to leave the County,
15 Khang Decl. ¶ 5, which the County viewed as helpful, Verner-Crist Decl. Ex. U. (in the aftermath of the
16 Lava Fire, the County Undersheriff wrote that the “fire helped in it’s [*sic*] own way” by getting Shasta
17 Vista residents to “pack up and go away”).

18 **IV. LEGAL STANDARD**

19 A plaintiff may show need for a preliminary injunction under two related legal frameworks. First,
20 under the *Winter* test, the court considers whether: (1) plaintiffs are likely to succeed on the merits, (2)
21 plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
22 equities tips in plaintiffs favor, and (4) an injunction is in the public interest. *Winter v. Nat’l Res. Def.*
23 *Council*, 555 U.S. 7, 20 (2008). These factors are weighed on a sliding scale, such “that a stronger showing
24 of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d
25 1127, 1131 (9th Cir. 2011). Second, under the “serious questions” test, “[a] preliminary injunction is
26 appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and
27 the balance of hardships tips sharply in plaintiff’s favor.” *Id.* at 1134–35. Under the “serious questions”
28

1 test, a plaintiff must also show that the balance of equities tips in their favor and that an injunction is in
2 the public interest. *Id.* Here, under either framework, the relevant factors weigh sharply in Plaintiffs’ favor.

3 **V. ARGUMENT**

4 Plaintiffs’ case for a preliminary injunction is even greater than in *Lo*, where the court found the
5 ordinances were “a poor fit for its purposes” and “drop[ped] an inexplicably heavy hammer.” *Lo*, 558 F.
6 Supp. 3d at 871. Defendants’ new zoning policy is an even more dangerous “hammer.” The previously-
7 enjoined ordinances imposed a restrictive permitting process; the new zoning policy prevent *all* off-parcel
8 water transfer. Plaintiffs are likely to succeed on—or have at least raised “serious questions” regarding—
9 the merits of all their claims, including additional constitutional and statutory claims that were not asserted
10 in *Lo*. Finally, Plaintiffs are likely to continue suffering grave harm absent preliminary relief, and the
11 balance of equities and public interest weighs sharply in their favor.

12 A. *Plaintiffs Are Likely to Succeed on the Merits of Their Equal Protection Clause,*
13 *Statutory, and State-Created Danger Claims.*

14 Defendants’ zoning policy violates the federal and state Equal Protection clauses,⁶ violates
15 California Government Code § 11135(a), and constitutes an unlawful state-created danger. Plaintiffs are
16 likely to succeed on each of these claims.

17 1. **Defendants’ Conduct Violates the Equal Protection Clause by Intentionally**
18 **Targeting Asian Americans’ Water Supply.**

19 The Equal Protection Clause of the Fourteenth Amendment commands that no government shall
20 “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1;
21 *see City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The government violates
22 the Equal Protection Clause when it acts with discriminatory purpose, including when racial animus was
23 “a motivating factor” for the challenged action. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*,
24 429 U.S. 252, 266 (1977); *Ballou v. McElvain*, 29 F.4th 413, 422 (9th Cir. 2023). When there is “proof
25 that a discriminatory purpose has been a motivating factor in [a] decision,” courts should not be deferential
26

27 _____
28 ⁶ Defendants’ conduct violates Article I, Section 7(a) of the California Constitution for the same reasons it violates
the federal Equal Protection Clause and Substantive Due Process.

1 to government action. *Arlington Heights*, 429 U.S. at 265. To make out a claim under the Equal Protection
2 Clause, a plaintiff may “produc[e] direct or circumstantial evidence demonstrating that a government
3 action was motivated by a discriminatory purpose.” *Ballou*, 29 F.4th at 424 (quoting *Ave. 6E Invs., LLC*
4 *v. City of Yuma, Ariz.*, 818 F.3d 493, 504 (9th Cir. 2016)); *Arlington Heights*, 429 U.S. at 265 (determining
5 discriminatory purpose is a “sensitive inquiry” that can be shown through direct and circumstantial
6 evidence). Here, Defendants’ adoption of the new zoning policy was motivated at least in part by
7 discriminatory intent and intended to harm Asian Americans.

8 The County’s new interpretation of its zoning ordinance is peculiar enough by itself to constitute
9 strong circumstantial evidence of Defendants’ discriminatory intent. Not only is this new interpretation of
10 a very old statute directly contradictory to the County’s previous interpretation of the County Code’s
11 regulation of water extraction for off-parcel use, it also departs from standard California practice, House
12 Decl. ¶¶ 4–5, *see also* Griset Decl. ¶ 3 (transferring water between agricultural properties is a common
13 practice). *See Arlington Heights*, 429 U.S. at 267 (“[d]epartures from normal procedural sequences” might
14 be “evidence that improper purposes are playing a role”); *Church of the Lukumi Babalu Aye, Inc. v. City*
15 *of Hialeah*, 508 U.S. 520, 541 (1993) (inferring discriminatory intent, citing *Arlington Heights*, when city
16 did not regulate a previously known issue until after suspect class arrived); *Ramos v. Nielsen*, 321 F. Supp.
17 3d 1083, 1110–11 (N.D. Cal. Aug. 6, 2018) (finding a novel interpretation of a statute that was contrary
18 to defendants’ prior practice was plausibly based on racial animus), *related motion overruled on other*
19 *grounds by Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020) *and later vacated and reh’g granted by Ramos*
20 *v. Wolf*, 59 F.4th 1010 (9th Cir. 2023); *Ballou*, 29 F.4th at 423 (finding it persuasive that the government’s
21 challenged action “was not normal department procedure”). In *Arlington Heights* itself, where the
22 Supreme Court ultimately found that the facts did not support a showing of discriminatory intent, the
23 Supreme Court noted “we would have a far different case” if the fact pattern showed a “sudden[]” zoning
24 change compared to what had “always” been in place. *Id.* This is such a case.

25 Of course, Defendants’ interpretation and application of the zoning ordinance cannot be viewed in
26 a vacuum; rather, Defendants’ discriminatory intent regarding the zoning ordinance is evidenced by their
27 history of discrimination of Asian Americans in the County. *See id.* (the historical background is relevant,
28 “particularly if it reveals a series of official actions taken for invidious purposes”). Defendants’

1 discrimination has permeated throughout the daily lives of Asian Americans, who are broadly condemned
 2 as criminals, and has impacted their ability to freely drive in the County, to vote, to access the water
 3 necessary to live, and to even stay in the County. *See supra* Section III.D; Mathis Decl. ¶ 14; Griset Decl.
 4 ¶¶ 4, 7; Verner-Crist Decl. Ex. S (Sheriff’s office saying it is “helpful” to know a change in “vehicle
 5 usage” by the “Hmong population”); *supra* at n.3. The application of the zoning policy is just the latest
 6 instance of the County’s racial discrimination. *See Melendres v. Arpaio*, 598 F. Supp. 2d 1025, 1037
 7 (discriminatory intent can be shown through “acts of intentional discrimination by [d]efendants”); *Comm.*
 8 *Concerning Cmty. Improvement, v. City of Modesto*, 583 F.3d 690, 703 (9th Cir. 2009) (historical
 9 background of the decision and events leading up to a change in practice can show discriminatory intent).
 10 Defendants’ own statements and actions prove their racial animus against Asian Americans. *See* Verner-
 11 Crist Decl. ¶¶ 24–25 (Board Supervisor says water ordinances are targeted toward people that “thumb
 12 their nose at us” and Sheriff states “it’s important to direct our anger at the right people” and a need for
 13 local people to help “really choke it out”); *id.* Ex. U (County Undersheriff stating the Lava Fire “helped”
 14 by getting Shasta Vista residents to leave); *id.* Ex. T (Sheriff’s department “pushing the envelope to the
 15 edge” in light of civil rights lawsuits and scaring “the Hmungs [sic]”); *id.* Ex. R at 9 (Board calling for a
 16 vote of the Hmong residents and then “county residents”); Mathis Decl. ¶ 14 (member of Sheriff’s
 17 department stating everyone in Shasta Vista “belong[s] to the cartel”); *Gonzalez v. Douglas*, 269 F. Supp.
 18 3d 948, 965 (D. Ariz. 2017) (statements evidencing racial animus by persons responsible for the policy at
 19 issue were “highly probative”). Corresponding discriminatory statements by the public, including in the
 20 specific context of the provision of water to Asian Americans, are filled with animus. *See, e.g.*, Griset
 21 Decl. Exs. A, B (discriminatory statements by the public regarding his provision of water to Asian
 22 Americans); Verner-Crist Decl. ¶ 21 (“I do not refer to them as Hmong, I refer to them as illegal pot
 23 growers.”); *id.* ¶ 22 (associating Hmong clan structure to “thievery,” “murder,” and a “third world
 24 country”); *see also Ave. 6E Invs.*, 818 F.3d at 503–05 (government action “following discriminatory
 25 statements by members of the public” and a “presence of community animus” can show discriminatory
 26 intent).

27 The *only* property owners who have been targeted under the County’s recent flurry of enforcement
 28 over the past 8 months are themselves Asian American; the County now appears to be using the race of

1 well owners as a proxy to identify suppliers of water to the Asian American community. Verner-Crist
 2 Decl. Ex. A (citations have been issued to Moua, Lee, Yang); Moua Decl. ¶¶ 4–8 (white property owner
 3 was not cited for transferring water, but Asian American purchaser was immediately enforced against for
 4 transferring water from the same well); Vue Decl. Ex. A. Indeed, the cited well owners provide water to
 5 Asian Americans. Moua Decl. ¶ 7; B. Yang Decl. ¶ 3; Vue Decl. ¶ 5; *see also Pac. Shores Props., LLC v.*
 6 *City of Newport Beach*, 730 F.3d 1142, 1159 (9th Cir. 2013) (finding persuasive evidence that an
 7 ordinance was “specifically targeted” toward a group); *Reno v. Bossier*, 520 U.S. 471, 487 (1997) (“the
 8 impact of an official action is often probative of why the action was taken in the first place since people
 9 usually intend the natural consequences of their actions”). Further, the County is well aware that efforts
 10 to limit off-parcel water distribution will necessarily and primarily impact Asian Americans in the
 11 community and has a history of going so far as to try and *mitigate* water restrictions’ impact on non-Asians
 12 in the County. *See* Verner-Crist Decl. Exs. C–E.

13 Defendants acted with discriminatory intent in adopting the new zoning policy; at the very least,
 14 the evidence raises serious questions about the merits of Plaintiffs’ allegations. *See Ballou*, 29 F.4th at
 15 423 (noting that the “sequence of events,” which included complaints to defendants of discriminatory and
 16 disparate treatment against a protected class, “together with the departure from standard department
 17 procedure, indicates that [defendant] was at best unconcerned about allegations of discrimination”).⁷

18 **2. Defendants’ Conduct Violates Cal. Gov’t Code § 11135(a) by Intentionally**
 19 **Discriminating Against, and/or Disparately Impacting, Asian Americans.**

20 California Government Code § 11135(a) provides that “[n]o person in the State of California shall,
 21 on the basis of race, national origin, [or] ethnic group identification ... be unlawfully denied full and equal
 22 access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity.” To
 23 show a claim under § 11135(a), a plaintiff must show (a) that the defendant is subject to the state through
 24 the receipt of state funds, and (b) that the challenged activity is the result of unlawful, intentional
 25

26 _____
 27 ⁷ The zoning policy would even fail the rational basis test, as its remarkable breadth is unnecessary for any purported
 28 justification and disconnected from any purported rationale. *City of Cleburne*, 473 U.S. at 449-50 (purported
 government rationale of preventing fire hazards and street congestion was not rationally related to the application
 of a zoning ordinance); *see also Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1156 (9th Cir. 2014).

1 discrimination and/or has a disparate impact on a protected class. Cal. Gov't Code § 11135(a); *see also*
 2 *C.B. v. Moreno Valley Unified Sch. Dist.*, 544 F. Supp. 3d 973, 993 (C.D. Cal. 2021).

3 First, it cannot be disputed that the County, including the Planning Department and Sheriff's
 4 Office, receives state funds. *See* Verner-Crist Decl. ¶¶ 41–42.⁸ Second, Defendants are engaged in
 5 unlawful, intentional discrimination under § 11135(a) for the same reasons they are unlawfully
 6 discriminating under the Equal Protection Clause. Cal. Code Regs. tit. 2, § 14028 (b) (listing similar
 7 considerations as *Arlington Heights*). In addition, Defendants' conduct violates § 11135(a) because,
 8 irrespective of discriminatory intent, it has a disparate impact on Asian Americans. Disparate impact can
 9 be shown through evidence that (i) "a group of individuals, other than members of a protected class,
 10 receive better or more effective" treatment; (ii) "the same benefits are more burdensome to obtain for
 11 members of a protected class;" (iii) "the benefits of the program were reduced, less effective, or more
 12 burdensome ... than in the past;" or (iv) "a "condition ...disproportionately excludes [protected]
 13 individuals... from participation in or receipt of the benefits" Cal. Code Regs. tit. 2, § 14029(a); *see also*
 14 *Moreno Valley Unified Sch. Dist.*, 544 F. Supp. at 993–94 (disproportionate enforcement against a
 15 minority can violate § 11135(a)). Defendants' conduct has a disparate impact on Asian Americans—all
 16 of the County's citations under its new zoning policy are against Asian Americans, *see* Verner-Crist Decl.
 17 Ex. A, and Asian Americans, particularly those in Shasta Vista, are more likely to rely on off parcel,
 18 hauled water for basic domestic use, *see* Reynolds Decl. ¶¶ 6, 10 (the majority of Asian American
 19 community relies on hauled water); *see also, e.g.*, Vue Decl. ¶ 5; Moua Decl. ¶ 5; K. Lee Decl. ¶ 3.

20 **3. Defendants' Conduct Constitutes an Unlawful State-Created Danger by**
 21 **Depriving Plaintiffs of Water for Basic Health and Safety Needs.**

22 To prevail on a state-created danger claim, Plaintiffs must show (i) "affirmative conduct on the
 23 part of the state that exposed [them] to an actual, particularized danger that [they] would not otherwise
 24

25 ⁸ Because these departments receive state funding, all of their operations are precluded from unlawful
 26 discrimination. Cal. Gov't Code § 11135(a). The program or activity "need not receive direct state support to be
 27 covered." Cal. Gov't. Code § 14020(ii)(1). Coverage "extends to all the operations of the covered entity" and "[t]his
 28 is true even if only one part of the covered entity receives state support." *Id.* "Covered entity," in turn, includes "any
 entity or individual, including local agencies . . . that is funded directly by the state or receives any state support"
 and "a local agency and any entity or individual involved in carrying out any program or activity . . ." *Id.* §
 14020(m)(3)–(4).

1 have faced,” and (ii) “that the state official acted with deliberate indifference to that known or obvious
2 danger.” *Polanco v. Diaz*, 76 F.4th 918, 926 (9th Cir. 2023). Defendants’ targeted efforts to cut off Asian
3 Americans’ access to water readily meet both factors.

4 Regarding the first factor, Defendants’ prohibition of off-parcel water transfer exposes Plaintiffs
5 to actual, particularized dangers associated with water deprivation. Having lived through the 2021 water
6 crisis, Plaintiff Mathis and class members are experiencing renewed desperation for water due to the
7 County’s efforts to inhibit water extraction for off-parcel distribution. *See supra* Section III.B. Defendants
8 need not be the “cause-in-fact” of the harm; “[r]ather, the state actor need only have created the
9 particularized risk that plaintiff might suffer such injury.” *Kennedy v. City of Ridgefield*, 439 F.3d 1055,
10 1062 n.2 (9th Cir. 2006). Defendants, by proactively targeting water at the source and categorically barring
11 off-parcel water conveyances that are critically needed by Plaintiffs, clearly meet this standard. *See*
12 *Murguia v. Langdon*, 61 F.4th 1096, 1112 (9th Cir. 2023) (“This court and other circuits have applied the
13 state-created danger . . . where an officer . . . separated the plaintiff from a third-party who may have
14 offered assistance, or prevented other[s] from rendering assistance to the plaintiff.”).

15 As a result of Defendants’ conduct, Asian Americans’ water access is directly curtailed. *See* Vue
16 Decl. ¶ 7; B. Yang Decl. ¶ 9; Griset Decl. ¶ 15; Moua Decl. ¶ 17; K. Lee Decl. ¶ 9; M. Lee Decl. ¶ 6. The
17 scarcity of water has caused community members to suffer water deprivation and take extreme measures
18 to limit their water use. *See* Reynolds Decl. ¶ 11; Mathis Decl. ¶ 20; *see also Cobine v. City of Eureka*,
19 250 F. Supp. 3d 423, 432 (N.D. Cal. 2017) (a state-created danger exists when plaintiffs are placed in a
20 situation that is “more dangerous” than the one prior to defendants’ conduct). Asian Americans are unable
21 to bathe, cool themselves, cook, protect against fire, garden, and care for their livestock and animals,
22 which undeniably endangers their health, safety, and hygiene. *See supra* Section III.B; *see also, e.g.,*
23 *Sacramento Homeless Union v. Cnty. of Sacramento*, 617 F. Supp. 3d 1179, 1193 (E.D. Cal. 2022) (citing
24 “stress, extreme fatigue” from heat exposure as a state-created danger); *Langley v. City of San Luis Obispo*,
25 2022 WL 18585987, at *5 (C.D. Cal. Feb. 7, 2022) (“the City’s sweeps and property seizures
26 force . . . expos[ure] to the elements . . . jeopardizing their physical and mental health” and constitute a
27 state-created danger); *Santa Cruz Homeless Union v. Bernal*, 514 F. Supp. 3d 1136, 1143 (N.D. Cal. 2021)
28 (“potential spread of disease” can be a state-created danger). Many are particularly vulnerable, as they are

1 low income, elderly, do not speak English, and/or live with chronic diseases exacerbated by a lack of
2 water. *See* Reynolds Decl. ¶ 6; *see e.g.*, Thao Decl. ¶ 3; B. Lee Decl. ¶¶ 2–3.

3 Regarding the second factor, water deprivation is associated with obvious dangers and Defendants
4 are plainly and deliberately indifferent to such dangers. Asian Americans and their advocates have
5 repeatedly petitioned the County to cease targeting their water. *See* Verner-Crist Decl. ¶ 14 (protesters
6 heard in the background of a Board meeting regarding water-related ordinances); Mathis Decl. ¶¶ 9, 18
7 (spoke to County Sheriff’s personnel and a Board Supervisor about his concerns for accessing water).
8 Even the County’s Fire Chief cautioned that “the County’s ban on non-fire water tenders may have impact
9 on fires in the area,” including Shasta Vista. Verner-Crist Decl. Ex. P. Further, numerous wildfires over
10 the past few years have underscored the need for water to fight fires, and Defendants have even witnessed
11 water trucks putting out fires in the impacted community. *See* Ya Decl. ¶ 12 (Sheriff cited water hauler
12 immediately after putting out fire); King Decl. ¶ 6 (fire risk in Shasta Vista ranked as High or Very High
13 by CalFire maps); K. Lee Decl. ¶ 9. And both the present lawsuit and the *Lo* lawsuit alleged the
14 particularized dangers caused by Defendants’ efforts to restrict Asian Americans’ access to water.

15 Despite Defendants’ awareness of these obvious dangers and Asian American communities’
16 unique reliance on hauled water, the County has proceeded to cite well owners for all off-parcel water
17 transfers, and has refused attempts to adjust zoning status, even in the face of direct evidence regarding
18 the human impact. *See, e.g.*, Moua Decl. ¶¶ 11–15 (received numerous citations for providing water to
19 friends and family for daily use and after telling this to a County representation and seeking to change his
20 zoning, was told he could not do so); *see also Hernandez v. City of San Jose*, 897 F.3d 1125, 1135 (9th
21 Cir. 2018) (state created danger exists where “a municipal actor disregarded a known or obvious
22 consequence of his action”); *see also Sinclair v. City of Seattle*, 61 F.4th 674, 680 (9th Cir. 2023), *cert.*
23 *denied*, 144 S. Ct. 88 (2023) (deliberate indifference where defendant “recognize[s] the unreasonable risk
24 and actually intend[s] to expose the plaintiff to such risks without regard to the consequences to the
25 plaintiff”). Indeed, Defendants are not merely indifferent to the water deprivation they are causing; their
26 conduct is *specifically intended* to deprive Asian Americans of water. *See, e.g.*, Verner-Crist Decl. ¶ 25
27 (Sheriff wants help to “choke out” the water problem). Even after Plaintiff Mathis expressed his concerns
28 about the County’s water ordinances and the targeting of Asian Americans, County Supervisor Ed

1 Valenzuela said he was not concerned with an inability to get water. Mathis Decl. ¶ 18. That is deliberate
 2 indifference. And this is not the first time that Defendants have been deliberately indifferent to significant
 3 dangers to Asian Americans and inhibited water access that could have reduced such dangers. *See* Griset
 4 Decl. ¶ 12 (County cut access to his water during Lava Fire); Mathis Decl. ¶ 14.

5 *B. Plaintiffs Are Likely to Suffer Irreparable Harm in the Absence of Preliminary Relief*

6 As a result of Defendants' new zoning policy, well owners are no longer provider water to Asian
 7 Americans and there is general fear in among the community that providing water will result in citations
 8 from the County. *See* Vue Decl. ¶ 7 (stopped providing water to Asian Americans); B. Yang Decl. ¶ 9
 9 (fears providing water to Asian Americans); Griset Decl. ¶ 15 (same); Moua Decl. ¶ 17 (cannot provide
 10 water in the face of continued targeting by the County); K. Lee Decl. ¶ 9 (no longer can get water from a
 11 well owner); M. Lee Decl. ¶ 6 (neighbors refused to give water for fear of enforcement).

12 In turn, Asian Americans are already suffering due to a lack of water and it will likely continue to
 13 get worse. *See* Reynolds Decl. ¶ 10 (if County prohibits water access via wells, much of the Asian
 14 American community will be without water). Harms resulting from a lack of access to water include the
 15 inability to cook, wash, bathe, drink, cool, care for plants, care for animals, and fight fires. B. Lee Decl.
 16 ¶¶ 13–18; M. Lee Decl. ¶¶ 7–10; Y. Yang Decl. ¶¶ 9–10; Xiong Decl. ¶ 10; King Decl. ¶ 24; Khang Decl.
 17 ¶ 17; Ya Decl. ¶¶ 19–21; *see also* Reynolds Decl. ¶ 9 (“If someone cannot bathe themselves or clean their
 18 dishes . . . they are at a higher risk of disease, infection, and other illnesses.”); *Lo*, 558 F. Supp. 3d at 871–
 19 72 (deprivation of water for drinking, cooking, growing food, raising animals, and bathing constitutes
 20 irreparable harm). Further, Plaintiffs are likely to continue suffering the indignity of invidious
 21 discrimination, *see, e.g.*, Mathis Decl. ¶ 18, in violation of their constitutional rights. *Melendres v. Arpaio*,
 22 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights
 23 unquestionably constitutes irreparable injury.”) (internal quotations and citations omitted). Asian
 24 Americans may even be forced to leave, or remain away from, the County due to the unavailability of
 25 water. *See* Reynolds Decl. ¶ 10; *see, e.g.*, Mathis Decl. ¶ 27; M. Lee Decl. ¶ 12.

26 *C. The Balance of Harms and the Public Interest Weigh in Plaintiffs' Favor.*

27 The final factors—whether the balance of equities and public interest favor an injunction—merge
 28 when, as here, the government is a party. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th

1 Cir. 2014). The harms that Plaintiffs are likely to suffer are abundantly clear. *See supra* Section III.B &
 2 V.B. The nature of water deprivation and Plaintiffs’ particular vulnerability tip the balance of equities
 3 sharply in Plaintiffs’ favor. Further, “it is always in the public interest to prevent the violation of a party’s
 4 constitutional rights.” *Melendres*, 695 F.3d at 1002 (citation omitted); *see also Legend Night Club v.*
 5 *Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011) (holding that government was “in no way harmed by the
 6 issuance of an injunction that prevents [it] from enforcing unconstitutional restrictions”); *Ariz. Dream Act*
 7 *Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (when plaintiffs establish “a likelihood that
 8 Defendants’ policy violates the U.S. Constitution, [p]laintiffs have also established that both the public
 9 interest and the balance of the equities favor a preliminary injunction”).

10 It is unclear what, if any, harm the County seeks to prevent by curtailing the extraction and transfer
 11 of water from one property to another. Indeed, it is common practice to extract and transfer water off
 12 property, *see* House Decl. ¶ 5, and the County previously had an ordinance that purportedly permitted
 13 such activity, Pls.’ RJN Ex. C. And notably, Plaintiffs do not request that the County end all enforcement
 14 of its zoning ordinance—certainly, some enforcement of the ordinance (wholly unrelated to water
 15 regulation) is legitimate and necessary to curtail potentially harmful activity. Rather, Plaintiffs seek a
 16 preliminary injunction preventing Defendants from using zoning, or other means, to prevent necessary
 17 water access. And given Defendants repeated history of ignoring this Court’s orders and enforcing
 18 repealed ordinances, additional safeguards and documented assurances are appropriate. *See Melendres v.*
 19 *Arpaio*, 784 F.3d 1254, 1254 and 1265 (9th Cir. 2015); *see, e.g., Fraihat v. U.S. Immigr. & Customs Enf’t*,
 20 2020 WL 2758553, at *4 (C.D. Cal. May 15, 2020).

21 Without a preliminary injunction, Plaintiffs face the same harms that this Court sought to prevent
 22 in *Lo*: “plaintiffs and other members of the [Asian-American] community will likely go without water for
 23 their basic needs and will likely lose more plants and livestock. Fires may burn more homes. People may
 24 be forced to leave their homes and land behind without compensation.” 558 F. Supp. 3d at 871.

25 VI. CONCLUSION

26 For the foregoing reasons, the Court should grant Plaintiffs’ motion for a preliminary injunction.
 27
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Respectfully submitted,

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3 **AMERICAN CIVIL LIBERTIES UNION**
4 **FOUNDATION OF NORTHERN**
5 **CALIFORNIA**

6 By: /s/ John Thomas H. Do (approved 8/8/2024)

7 JOHN THOMAS H. DO
8 EMI YOUNG
9 GRAYCE ZELPHIN

10 **ASIAN LAW CAUCUS**

11 By: /s/ Megan Vees (approved 8/8/2024)

12 MEGAN VEES
13 CARL TAKEI

14 **COVINGTON & BURLING LLP**

15 By: /s/ Alison Wall

16 ALISON WALL
17 STANLEY YOUNG
18 ELLEN CHOI
19 MIKE PLIMACK

20 *Counsel for Chang, et al. Plaintiffs*