

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**GER CHONG ZE CHANG, MAI NOU 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.

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

SUPPLEMENTAL COMPLAINT

1 This filing supplements Plaintiffs’ previously amended complaint, pursuant to Federal Rule of
2 Civil Procedure 15(d).

3 ***The County’s Novel Interpretation and Discriminatory Application of its Zoning Ordinance to***
4 ***Continue to Deprive Asian American Communities of Water***

5 288. As part of its campaign to restrict water to Asian Americans and drive them from the
6 County, Siskiyou County has adopted and applied a novel interpretation of the County Zoning
7 Ordinance. The County, through or with its Community Development Department (“CDD”), its
8 Director Richard J. Dean, the District Attorney, and the Sheriff’s Department, has utilized this
9 interpretation to investigate, cite, fine, and sue well owners who provide water to Asian Americans,
10 while ignoring or even facilitating the extraction of water by well owners who do not predominantly
11 serve Asian American communities. As Defendants are aware,¹ Asian American communities in
12 Siskiyou County rely on off-parcel water for domestic use, including maintaining health, fire protection,
13 hygiene, bathing/cleaning, cooking, and caring for livestock, pets, and gardens.² Yet Defendants have
14 affirmatively implemented this policy, custom, or practice despite the danger that it would deprive Asian
15 American communities of necessary access to water, creating a water crisis.

16 289. Siskiyou County’s Zoning Ordinance is codified at Title 10, Chapter 6 of the County
17 Code. The Zoning Ordinance sets forth several districts that the County can establish in the
18 unincorporated County area. Among these are the “Prime Agricultural District” (AG-1), the “Non-
19 Prime Agricultural District” (AG-2), the “Rural Residential Agricultural District” (R-R), the “Light
20 Industrial District” (M-M), and the “Heavy Industrial District” (M-H). Siskiyou County Code 10-6.202.

21 290. The vast majority of the properties in and around the areas of the County where Asian
22 Americans are concentrated are zoned AG-1, AG-2, or Rural Residential, as are properties with wells
23 that provide water to those communities.

24
25 _____
26 ¹ Asian Americans community members have informed Defendants that they rely on off-parcel water.

27 ² Most Asian Americans in Siskiyou County live in rural areas without access to municipal water
28 systems and do not have wells on their properties. In addition to the high cost of having a well drilled,
the County has created further barriers for Asian Americans who seek permits to install a well, including
failing to carry out necessary inspections and failing to respond to permit applications.

1 291. Various sections of the County Code define the permitted uses of the different zoning
2 districts, as well as additional uses that are permitted in each zoning district subject to obtaining a use
3 permit (“conditional uses”). Agricultural uses and “[a]ccessory uses incidental to agriculture” are
4 permitted on both AG-1 and AG-2 land. Siskiyou County Code 10-6.4902, 10-6.5002. In the Rural
5 Residential district, accessory uses normally incidental to farming are permitted. Siskiyou County Code
6 10-6.4802.

7 292. The County first adopted its Zoning Ordinance in 1953. The sections of the Zoning
8 Ordinance that establish the permitted uses of the relevant zoning districts were enacted in 1986.
9 Despite this decades-long history, the County never used the Zoning Ordinance to regulate extraction or
10 distribution of water until 2020.

11 293. Around 2020, the County developed a new interpretation of the Zoning Ordinance.
12 Under this new interpretation, the County asserts that it is a zoning violation to transfer water off-parcel
13 in most types of zoning districts, including AG-1, AG-2, and Rural Residential. Specifically, the County
14 interprets the permitted and conditional uses of these districts to exclude *any* water distribution, while
15 maintaining that the only districts that allow water distribution are those that permit “bottling works and
16 spring and mineral bottling works at the source.” The Zoning Ordinance provides for water bottling
17 facilities in Light Industrial and Heavy Industrial districts. The County adopts this interpretation
18 regardless of the manner, amount, or use of extracted water; regardless of whether it is sold or given
19 away; and regardless of whether it is potable or non-potable.

20 294. Because the County now views water transfers as neither a permitted nor conditional use
21 in non-industrial zoning districts, well owners on AG-1, AG-2, or Rural Residential land cannot obtain a
22 permit that would allow them to provide water off-parcel in any amount or for any purpose, including
23 for accessory uses incidental to agriculture or small farming. The County’s new interpretation of the
24 Zoning Ordinance is therefore a stricter prohibition on water extraction and distribution than the 2021
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1 water extraction ordinance,³ which allowed for water extraction permits (though in practice those
2 permits were not generally available to Asian Americans).

3 295. This interpretation of the Zoning Ordinance marks a departure from prior policy, custom,
4 or practice within Siskiyou County and across the state.

5 296. The extraction and transportation of groundwater off the parcel where it was extracted is
6 commonplace in rural areas across California, and counties throughout the state typically do not rely on
7 zoning restrictions to limit water use. Nor do other counties generally outright bar water transfers within
8 watersheds or within a county. Under Siskiyou’s extreme reading of its Zoning Ordinance, moving
9 water to a neighboring parcel in any amount, even for necessary domestic use, is prohibited.

10 297. The County’s new interpretation and application of its Zoning Ordinance is also a
11 departure from its own past practice. During the decades the Zoning Ordinance has been in place, the
12 County never used it to restrict water transfers until 2020. This is not because no water distribution was
13 taking place. Moving water between parcels was and is a common practice among farmers and ranchers
14 in Siskiyou County. The County is aware of this practice⁴ and has even taken steps to *preserve and*
15 *promote* non-Asian farmers’ and ranchers’ ability to transfer water.

16 298. For example, after the passage of the water extraction ordinance, the County’s
17 Agricultural Commissioner contacted certain well owners, whom he referred to as “legal and legitimate
18 operators,” to advise them they would now need to obtain permits to extract water from their wells for
19 off-parcel use. On information and belief, these well owners have not provided water to Asian
20 American communities and are not themselves Asian American. Under the County’s current
21 interpretation of the Zoning Ordinance, *any* extraction of water from these well owners’ properties,
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23
24

25 ³ “Water extraction ordinance” refers to Siskiyou County Urgency Ordinance 21-07 and later Ordinance
26 21-13, codified at Siskiyou Cnty. Code § 3.5-13.101 et seq.

27 ⁴ During the Board of Supervisors’ debate on the water extraction ordinance, supervisors raised concerns
28 that requiring a permit to extract and transfer water off-parcel would “be an encumbrance” for “our
agriculture people, farmers, ranchers,” especially those who “provide services to other ranchers,” such
as water hauling.

1 regardless of permitting status, is prohibited.⁵ Nonetheless, the County has not cited any of these well
2 owners for violating the Zoning Ordinance by extracting water for off-parcel use.

3 299. Likewise, during the first few months of enforcement of the water extraction ordinance,
4 the County issued permits to white property owners to haul water from their parcels. Though such water
5 distribution apparently violates the Zoning Ordinance under the County’s current interpretation, the
6 County has not cited any of these property owners. In fact, in issuing the permits, County staff *explicitly*
7 notated that the requested water hauling was compliant with the County’s Zoning Ordinance.

8 *A. The County’s Use of its Zoning Ordinance as a New Tool to Restrict Water to Asian*
9 *Americans*

10 300. Around 2020, Siskiyou County began testing a new interpretation of the Zoning
11 Ordinance to target well owners who provide water to Asian American communities.

12 301. Steve Griset was one such well owner. The lawsuit Siskiyou County brought against Mr.
13 Griset, *see* First Amended Complaint (“FAC”) ¶ 154, included a claim for violation of the County
14 Zoning Ordinance under the theory that “bulk groundwater extraction, collection, and distribution” are
15 not permitted in the AG-1 zoning district where his property is located. As a result of that lawsuit, Mr.
16 Griset has been discouraged from providing water and generally refrains from providing water from his
17 well out of fear of further prosecution.

18 302. The County’s targeting of the Ellison Ranch, *see* FAC ¶ 156, also included a claim for
19 violation of the Zoning Ordinance by extracting and distributing groundwater. In October 2023, the
20 County and the owners of Ellison Ranch entered into a settlement agreement that prohibited the well
21 owners from “providing water from the Property for off-site use by a third party, or otherwise allowing
22 the Property to be a place of water supply and distribution for third party use.”

23 303. County officials, including the Sheriff’s Department at the request of the Community
24 Development Department, continue to track, surveil, and tail vehicles and water trucks, and now use
25 these activities to identify well owners to cite under the new interpretation of the Zoning Ordinance.

26 _____
27 ⁵ On information and belief, these well owners’ properties are zoned for agricultural, not industrial, uses.
28 Under the County’s new interpretation of the Zoning Ordinance, the only zoning districts that allow any
type of water distribution are Light Industrial and Heavy Industrial districts.

1 304. In late 2023 and 2024, the County sharply increased its use of the Zoning Ordinance,
2 under its newly adopted interpretation, to go after well owners who provide water to Asian Americans.
3 From December 2023 to July 2024, the County issued notices and citations for violation of the Zoning
4 Ordinance to owners of small wells on four properties. The owners of each of these four wells provided
5 water to Asian Americans and are Asian American themselves.

6 305. Bill Yang was one of these well owners. He lives in the Big Springs area of Siskiyou
7 County, near the Mount Shasta Vista subdivision (“Shasta Vista”). He has provided water from his well
8 to other Asian Americans who live in Shasta Vista and do not have wells on their properties. On
9 December 18, 2023, Siskiyou County Code Enforcement Officer John Ottenberg issued a Notice to
10 Comply to Mr. Yang, indicating that AG-2 zoning did not allow for a “water distribution enterprise.”
11 Mr. Yang talked with Code Enforcement later that month and was told he could not bring water from his
12 well to other properties, even if he owned those properties. On May 15, 2024, Code Enforcement
13 Officer Ottenberg cited Mr. Yang for violating the Zoning Ordinance by “unpermitted Removal of water
14 from property” and fined him \$100. Mr. Yang is afraid that if he continues providing water to his Asian
15 American neighbors, the County will sue or fine him.

16 306. On June 18, 2024, Code Enforcement Officer Ottenberg issued a Notice to Comply to the
17 Asian American owners of another well. Similarly, the notice indicated, “Ag-2 zoning makes no
18 allowance for a water distribution enterprise.”

19 307. Another of the well owners was Vue Moua. In March 2024, Mr. Moua bought a property
20 with a well in the Big Springs area, near Shasta Vista. The property is zoned AG-2. Before Mr. Moua
21 bought the property, water trucks would fill up there with the permission of the owner at the time, who
22 was white. The former owner was never cited for violating the Zoning Ordinance.

23 308. After Mr. Moua bought the property, he continued to allow water trucks to fill up there.
24 Much of the water pumped from his well went to Asian Americans living nearby who lacked wells on
25 their properties.

26 309. On April 24, 2024, a few weeks after closing on the property, Mr. Moua received a
27 Notice to Comply from Siskiyou County Code Enforcement Officer Ottenberg. The notice stated Mr.
28 Moua was violating the Zoning Ordinance by allowing water trucks to fill up at the property.

1 310. On May 15, 2024, Mr. Moua received a citation with a \$100 fine. A cover letter
2 accompanying the citation stated that it was a “zoning violation to operate a water distribution center”
3 on his property.

4 311. On May 23, 2024, Code Enforcement went to Mr. Moua’s property to inspect it. They
5 told him that he would need to change his zoning designation if he wanted to provide water off-parcel.

6 312. Mr. Moua contacted the Community Development Department to inquire about changing
7 the zoning designation on his property, explaining that he wanted to provide water to friends and
8 relatives for their daily use because they did not have wells on their properties. CDD responded that,
9 “The only zoning districts that allow for any sort of water distribution are the Light Industrial and Heavy
10 Industrial zoning districts.” Mr. Moua was informed that he could not get a zoning change because an
11 industrial zoning district would not be compatible with the neighborhood, which was made up of AG-1,
12 AG-2, and Rural Residential districts.

13 313. Mr. Moua received subsequent citations for pumping water in violation of the Zoning
14 Ordinance on June 4, 2024; June 20, 2024; and July 10, 2024. The citations included fines for \$200,
15 \$500, and \$1000, respectively.

16 314. Mr. Moua knows members of his Asian American community rely on him for water;
17 without water from his well, they will be unable to bathe in the extreme heat, care for their animals, and
18 protect against wildfires. However, he does not know if he can continue providing water if the County
19 persists in issuing escalating fines against him.

20 315. The fourth well owner was Neng Vue. Mr. Vue and his wife live in Shasta Vista. They
21 previously provided water to their neighbors without wells, who are also Asian American. On July 25,
22 2024, Mr. Vue received a notice from the County stating that he was violating the Zoning Ordinance by
23 operating a “water distribution center” by allowing water to be pumped at his property. After Mr. Vue
24 received the notice, he and his wife stopped providing water to their neighbors because they were scared
25 the County would fine them.

26 316. Defendants have not used the Zoning Ordinance to restrict well owners who do not
27 provide water to Asian Americans from extracting or distributing water.
28

1 317. Defendants' actions have had a chilling effect on well owners who provided water to
2 Asian Americans in Siskiyou County. Afraid that they will become targets of citations and fines, well
3 owners have ceased allowing water to be pumped on their properties. As intended, Defendants'
4 targeting of water providers under its Zoning Ordinance has led to a reduction in the provision of water,
5 uniquely impacting Asian American communities, who rely on off-parcel water.

6 318. The County's recent use of the Zoning Ordinance against well owners is leading to
7 another humanitarian crisis, similar to what Asian Americans experienced in the County in the summer
8 of 2021. Once again, many Asian Americans are experiencing scarcity of water, which poses a grave
9 danger to their health and safety. They lack water to meet their basic health and hygiene needs, care for
10 pets, maintain livestock and gardens, and prevent and fight fires that are all too common.

11 *B. Allegations of Plaintiff Mathis*

12 319. The County's recent use of the Zoning Ordinance to stop off-parcel water extraction has
13 again made it difficult for Plaintiff Russell Mathis to obtain water for his health, hygiene, cooling off,
14 fire protection, cooking, and caring for his dogs.

15 320. In addition to Steve Griset, another person who otherwise would have provided water to
16 Mr. Mathis recently declined to do so out of fear that the County would target him for enforcement.

17 321. With local well owners increasingly afraid to provide water due to the County's zoning
18 enforcement actions, it has been challenging for Mr. Mathis to obtain enough water for his basic needs,
19 putting his health and safety in serious danger. He has not secured a consistent or reliable water source,
20 and the water he has obtained is poor quality. In order to conserve the small amount of water he has,
21 Mr. Mathis uses only about five gallons of water per day.

22 322. This scarcity of water is especially dangerous during the summer months, when there is a
23 high risk of wildfires. There have already been a number of fires in Shasta Vista, the subdivision where
24 Mr. Mathis lives, during the summer of 2024, including a large fire in June that occurred less than a mile
25 from him. Local volunteer firefighters have struggled to secure enough water to control or put out fires.
26 And, if a fire reaches his property, Mr. Mathis will not have enough water in his depleted water tanks to
27 fight it.
28

CLAIM THIRTEEN

Violation of Equal Protection – Racial Discrimination – Zoning

Under the Fourteenth Amendment to the U.S. Constitution

Pursuant to 42 U.S.C. § 1983

(Plaintiff Mathis and the Water Subclass⁶ against Defendants)

323. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though fully set forth herein.

324. Plaintiff Mathis and members of the Water Subclass are Asian American and are, therefore, members of a protected class under the Equal Protection Clause.

325. Defendants, acting under color of state law, have a policy, practice, or custom of using the Siskiyou County Zoning Ordinance to stop well owners from providing water to members of the Water Subclass. Along with other water restrictions imposed by Defendants, like the water ordinances and permitting, the zoning policy, practice or custom was adopted with racial animus against the intended water recipients as an unlawful, motivating factor.

326. Defendants targeted well owners who supplied water to Plaintiff Mathis and other members of the Water Subclass based on their race. Defendants' unlawful policy, practice, or custom of using the Zoning Ordinance to target well owners who provide water to Asian Americans was and is the moving force causing the ultimate injury to the Water Subclass, including Plaintiff Mathis.

CLAIM FOURTEEN

Violation of Equal Protection – Racial Discrimination – Zoning

Under Article I, Section 7 of the California Constitution

(Plaintiff Mathis and the Water Subclass against Defendants)

327. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though fully set forth herein.

⁶ The Water Subclass is defined as “All Asian Americans who, since August 4, 2020, have resided or will reside within Siskiyou County without access to a residential well or municipal water at their property.” FAC ¶ 214.

1 328. The Equal Protection right under the California Constitution is comparable to, if not more
2 expansive than, the Equal Protection Clause under the U.S. Constitution.

3 329. Plaintiff Mathis and members of the Water Subclass are Asian American and are,
4 therefore, members of a protected class under the Equal Protection Clause.

5 330. Defendants, acting under color of state law, have a policy, practice, or custom of using
6 the Siskiyou County Zoning Ordinance to stop well owners from providing water to members of the
7 Water Subclass. Along with other water restrictions imposed by Defendants, like the water ordinances
8 and permitting, the zoning policy, practice or custom was advanced and adopted with racial animus
9 against the intended water recipients as an unlawful, motivating factor.

10 331. Defendants targeted well owners who supplied water to Plaintiff Mathis and other
11 members of the Water Subclass based on their race. Defendants' unlawful policy, practice, or custom of
12 using the Zoning Ordinance to target well owners who provide water to Asian Americans was and is the
13 moving force causing the ultimate injury to the Water Subclass, including Plaintiff Mathis.

14
15 **CLAIM FIFTEEN**

16 **Violation of Substantive Due Process – State Created Danger – Zoning**

17 **Under the Fourteenth Amendment to the U.S. Constitution**

18 ***Pursuant to 42 U.S.C. § 1983***

19 **(Plaintiff Mathis and the Water Subclass against Defendants)**

20 332. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though
21 fully set forth herein.

22 333. Defendants affirmatively, despite the danger, put Plaintiff Mathis and the Water Subclass
23 in great physical and bodily danger by depriving them of water to hydrate, bathe, protect against
24 wildfire, and otherwise sustain life and health.

25 334. Defendants were aware of, and expressly indifferent to, the danger its actions inflicted
26 upon Plaintiff Mathis and the Water Subclass yet refused to take obvious steps to address the risks
27 created.
28

(Plaintiff Mathis and the Water Subclass against Defendants)

341. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though fully set forth herein.

342. California Government Code section 11135 sets forth a nondiscrimination requirement for state programs. It provides that in pertinent part:

[n]o person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

Cal. Gov't Code § 11135(a).

343. Defendants are recipients of financial assistance from the State of California.

344. Defendants were, at all times relevant to this action, and are currently operating or administering a program or activity that receives state financial assistance, within the meaning of section 11135.

345. Defendants have violated the rights of Plaintiff Mathis and the Water Subclass, secured by Cal. Gov't Code § 11135 et seq., by applying the Zoning Ordinance to prohibit others from providing water to them, and those violations were and are a substantial factor in causing Plaintiffs' harms. The zoning policy, practice or custom was adopted with racial animus as an unlawful, motivating factor and has a disparate impact on Asian Americans who uniquely rely on hauled water.

CLAIM EIGHTEEN

Conspiracy to Violate Constitutional Rights Under the Fourth and Fourteenth Amendment to the U.S. Constitution Pursuant to 42 U.S.C. § 1983 - Zoning

(All Plaintiffs against Defendants)

346. Plaintiffs incorporate by reference all foregoing and subsequent paragraphs as though fully set forth herein.

1 347. When government actors collectively agree to violate individuals' constitutional rights—
2 and take any steps in furtherance of that agreement—all relevant public agencies and employees are
3 liable for constitutional conspiracy pursuant to 42 U.S.C. § 1983.

4 348. Defendants, and/or their constituent parts, have entered into explicit or implicit
5 agreement(s) with one another to violate the Plaintiffs' constitutional rights by having a policy, practice,
6 and/or custom of making Siskiyou County inhospitable to Asian Americans vis-à-vis restricted water
7 access, discriminatory enforcement of laws, unreasonable searches and seizures, and unlawful property
8 encumbrances.

9 349. Defendants have each taken concrete steps in furtherance of the agreement(s) as
10 evidenced by Defendants' ongoing policy, pattern, and/or practice of coordinating with one another to
11 target Asian Americans in violation of their constitutional rights.

12 350. Plaintiffs, and those similarly situated, have been and will continue to be harmed as a
13 direct and proximate result of Defendants' ongoing conspiracy.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, individually and on behalf of a class of all those similarly situated,
17 demand the following relief:

18 A. A declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendants have
19 engaged in discrimination based on race, color, and/or ethnicity and denied Plaintiffs and plaintiff class
20 due process and equal protection of the laws in violation of the Fourteenth Amendment of the U.S.
21 Constitution and 42 U.S.C. § 1983;

22 B. An order enjoining Defendants from continuing to engage in such race, color, and/or
23 ethnicity-based discrimination or deprive Plaintiffs of due process as described herein and putting in
24 place safeguards sufficient to ensure that such discrimination or endangerment of their health and safety
25 does not continue in the future;

26 C. A permanent injunction prohibiting Defendants from enforcing Title 10, Chapter 6 of the
27 Siskiyou County Code to restrict the extraction, collection, or distribution of water;

28 D. An award to Plaintiffs of attorneys' fees;

1 E. An award to Plaintiffs of costs and expenses incurred in the filing and prosecution of this
2 action; and

3 F. Such other and further relief in favor of Plaintiffs as is just and proper.
4

5 DATED this 29th day of October 2024.

6 /s/ John Thomas H. Do (approved 10/25/2024)

7 John Thomas H. Do

8 Emi Young

9 Grayce Zelphin

10 AMERICAN CIVIL LIBERTIES UNION

11 FOUNDATION OF NORTHERN

12 CALIFORNIA

13 /s/ Megan Vees

14 Megan Vees

15 Carl Takei

16 ASIAN LAW CAUCUS

17 /s/ Stanley Young (approved 10/25/2024)

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