

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Dilevon Lo, et al.,

Plaintiffs,

v.

County of Siskiyou, et al.,

Defendants.

No. 2:21-cv-00999-KJM-AC

ORDER

While this case is pending, this court enjoined Siskiyou County from enforcing two ordinances that would likely cut off the water supply to a predominantly Hmong community within its borders. Although the County cited legitimate concerns when it adopted these ordinances, such as preventing people from using scarce groundwater to grow marijuana illegally on a commercial scale, serious questions surrounded its intentions. The County has now modified the two ordinances by resolution, but not amendment, and has clarified the system of permits they created. It moves to dissolve the preliminary injunction blocking the two ordinances. The County's changes resolve some concerns and reduce the chance people will go without water for their basic needs, but the County has not established the injunction is no longer warranted. **The court denies the motion as explained below.**

Although the County has not shown that changes to its permitting ordinances currently justify revisions to or dissolution of the preliminary injunction, it has shown that a modified

1 preliminary injunction could potentially minimize the risks of irreparable harms to the plaintiffs  
2 and simultaneously loosen the injunction's strictest terms. This matter is thus **referred to a**  
3 **mandatory court-convened settlement conference** to explore that possibility.

#### 4 **I. BACKGROUND**

5 Although California law allows marijuana use and distribution in some circumstances,  
6 California cities and counties can restrict or prohibit marijuana use and distribution. Prelim. Inj.  
7 (Sept. 3, 2021) at 2 n.1, ECF No. 47. For several years, Siskiyou County has been attempting to  
8 reverse a burgeoning trend of commercial cannabis cultivation within its borders. *See id.* at 1–2.  
9 Large-scale cannabis cultivation in the County is impossible without large volumes of water for  
10 irrigation, and water has become more precious in recent years as a result of prolonged and often  
11 severe droughts. *See id.* at 7, 10. The County banned commercial cannabis cultivation in 2015,  
12 declared a state of emergency in 2018, and banned the use of groundwater for illegal cannabis  
13 cultivation in 2020. *See id.* at 2, 7–8.

14 After the ordinances were adopted, violent crime spiked in many places where marijuana  
15 was illegally grown. *See id.* at 5, 10; *see also* LaRue Decl. ¶¶ 6–7, ECF No. 57-4 (reporting that  
16 violent crime has continued in recent months). Commercial growers flouting the County's rules  
17 also used dangerous or illegal pesticides, herbicides, fertilizers, and other chemicals, and workers  
18 lived in dangerous and unsanitary conditions. *See* Prelim. Inj. at 5, 10. Some people who lived or  
19 worked at illegal grow sites died in unsafe structures as a result of carbon monoxide poisoning.  
20 *See id.* at 5. Traditional law enforcement efforts to curb these problems proved ineffective or  
21 prohibitively expensive. *See id.* at 2, 3.

22 In 2021, after recognizing that most commercial cannabis growers irrigate their crops with  
23 well water delivered by truck, the County adopted two emergency ordinances. *See id.* at 8–10.  
24 One requires permits for groundwater extraction for use off parcel. *See id.* The other imposes a  
25 permit requirement for transporting groundwater by truck. *See id.* Groundwater extraction and  
26 trucking are misdemeanors without these permits, and unpermitted water trucks can be seized.  
27 *See id.*

1           These permitting ordinances had immediate effects as well, and not just on the illegal  
2 grow operations. Many of these operations are concentrated in an area known as the Mount  
3 Shasta Vista Subdivision, “MSV” or “Shasta Vista” for short. *See id.* at 3–4. Shasta Vista is  
4 predominantly Hmong. *Id.* at 5. Many Hmong people in Shasta Vista do not speak English as  
5 their first language, do not understand how to establish a residence legally, and harbor suspicions  
6 of government and authority due to historic persecution at the hands of communist authorities in  
7 Laos. *See id.* at 6. Many have thus built houses and other structures without the necessary  
8 permits and without access to a permanent source of useable water. *See id.* at 6–7. They depend  
9 on trucked groundwater for their basic needs—the very same groundwater that is subject to the  
10 County’s recent prohibitions. *See id.*

11           For many of the same reasons Hmong people in Shasta Vista do not establish legal  
12 residences or obtain building permits, they could not or would not obtain water extraction and  
13 trucking permits. *See id.* The permit applications also required a great deal of specific  
14 information that would be difficult for most lay people to obtain. *See id.* at 11–12. For example,  
15 applicants were required to provide zoning information and assessor’s parcel numbers. *See id.*  
16 For these reasons, when the two permitting ordinances came into effect, many people in Shasta  
17 Vista were without water for drinking, bathing, growing food, raising livestock, and their other  
18 basic needs during the hottest months of the year. *See id.* at 11–15.

19           Several Hmong people from Shasta Vista filed this lawsuit in June 2021, a few months  
20 after the groundwater restrictions went into effect. *See generally* Compl., ECF No. 1. They  
21 moved immediately for a temporary restraining order and a preliminary injunction, claiming the  
22 County’s ordinances deprived them of rights under the Fourteenth Amendment’s Due Process and  
23 Equal Protection clauses, among other things. *See generally* Mot., ECF No. 4. The court denied  
24 their request for a temporary restraining order but later granted their motion for a preliminary  
25 injunction. *See generally* Order Den. TRO at 8–11, ECF No. 11; Prelim. Inj., ECF No. 47.

26           When the court issued the preliminary injunction, it held that the plaintiffs’ equal  
27 protection claim was the only claim likely enough to succeed so as to justify a preliminary  
28 injunction. *See id.* at 18–26. The challenged ordinances do not single out anyone by race, so the

1 plaintiffs’ only path to success would be to prove the ordinances had a “racially disproportionate  
2 impact” and were enacted with “racially discriminatory intent.” *Id.* at 21 (quoting *Vill. of*  
3 *Arlington Heights v. Met. Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977)). The plaintiffs cited  
4 evidence showing the two ordinances exacted a heavy and disproportionate toll on Hmong people  
5 in Shasta Vista. *See id.* at 22. The court found they were likely to prevail on that point as the  
6 case continued. *Id.*

7 Discriminatory intent was a far more difficult question to answer. Although the plaintiffs  
8 had not shown they were likely to prove, at the end of the day, that the County had acted with a  
9 racially discriminatory intent, the plaintiffs had raised “serious questions” about the County’s  
10 intentions, and in the Ninth Circuit those “serious questions” can justify a preliminary injunction.  
11 *See, e.g., All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). For  
12 example, County officials knew that most Hmong families in Shasta Vista were living without a  
13 reliable water supply, but the County expected to grant only a handful of permits. *Prelim. Inj.* at  
14 24. The permits required applicants to supply a great deal of specific information, such as the  
15 assessor’s parcel number and zoning category, water needs, expected driving routes, and other  
16 minutiae, and the reasons for imposing such specific requirements were unclear. *See id.* at 11–12,  
17 25. County officials also had broad discretion to deny permits and faced no deadlines to act. *Id.*  
18 at 25. It was difficult to understand what purpose this burdensome and opaque permitting scheme  
19 might serve if not to deter Hmong people from applying for permits. *Id.* Anti-Asian vitriol,  
20 vigilantism, intimidation, and racially motivated violence has also beset Siskiyou County in  
21 recent years, and County officials used concerning language to describe their goals. *See id.* at 6,  
22 25–26. The court could not discount the possibility this language tacitly validated anti-Asian  
23 sentiments. *See id.* at 25–26. The County also knew about many illegal grow sites other than in  
24 Shasta Vista, but it had limited its water truck permitting ordinance to a few roads around Shasta  
25 Vista—exactly where the County’s Hmong population is concentrated. *See id.* at 26.

26 It bears repeating that this evidence did not prove the County, its Board of Supervisors, or  
27 other officials intended to discriminate. *Id.* Rather, the plaintiffs had raised serious questions  
28 about the intentions behind the County’s permitting ordinances, and the court could not

1 immediately answer those questions. *See id.* The plaintiffs also proved they were likely to suffer  
2 irreparable harm, and the balance of hardships tipped sharply in their favor. They and many  
3 others would likely go without water for their basic needs if the two permitting ordinances  
4 remained in effect. *See id.* at 26–28. The court therefore granted their motion for a preliminary  
5 injunction and stopped the County from enforcing the two permitting ordinances until this case  
6 could be resolved.

7 As it confirmed at hearing, the County has complied with the injunction and has stopped  
8 enforcing the two permitting ordinances. LaRue Decl. ¶ 15, ECF No. 57-4. Water truck  
9 deliveries have resumed. *Id.* Deliveries occur mostly at night, but daytime deliveries have  
10 increased in recent weeks. *Id.* The Sheriff’s Office “has received frequent reports from the  
11 public of massive amounts of groundwater being pumped from agricultural properties.” *Id.*  
12 Trucks line up to collect water from local ranchers, and although well owners are subject to fines,  
13 “the fines are no deterrent given the level of profit to the provider of water.” *Id.* Drought also  
14 has continued to plague Siskiyou County since the court granted the plaintiffs’ motion for a  
15 preliminary injunction, and California water agencies have restricted off-parcel groundwater use,  
16 but not if necessary to meet basic needs, such as growing food and cooking. *See, e.g.,* Dean Decl.  
17 ¶¶ 22–23 & Ex. C at 4, ECF No. 57-3.

18 When the court granted the motion for a preliminary injunction, it noted the County could  
19 move to dissolve that injunction if it adopted “new ordinances that do not impose the same  
20 burdens,” if it imposed “simple permit requirements that do not weigh unfairly on Hmong  
21 community members,” or if it ensured “people in Shasta Vista will have a safe and adequate  
22 source of water other than trucked groundwater while this case is pending.” Prelim. Inj. at 27–28.  
23 Taking that cue, the County modified the two ordinances through resolutions of its Board of  
24 Supervisors. *See* Siskiyou Cty. Code §§ 3-4.1501 to .1506 & 3.5-13.101 to .109. The full text of  
25 the permanent ordinances is included in an appendix to this order for ease of reference. The  
26 County’s Board of Supervisors also expanded the truck-permitting ordinance county-wide. Haupt  
27 Decl. ¶ 3, ECF No. 57-5. A resolution now also exempts trucks from the permit requirement if  
28 they comply with potable water transport regulations. *Id.* Finally, County officials simplified

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.