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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BUENA VISTA RANCHERIA OF ME-WUK
INDIANS, a federally recognized
Indian tribe,

Plaintiff,

v.

PACIFIC COAST BUILDING PRODUCTS,
INC., a California corporation,
PCBP PROPERTIES, INC., a Nevada
corporation, and H.C. MUDDOX, a
corporate subsidiary of Pacific
Coast Building Products,

Defendants.

No. 2:23-cv-00168 WBS CKD

CORRECTED MEMORANDUM AND
ORDER RE: DEFENDANTS' MOTION
TO DISMISS¹

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The Buena Vista Rancheria of Me-Wuk Indians
("plaintiff") brought this action against Pacific Coast Building
Products, Inc., PCBP Properties, Inc., and H.C. Muddox
(collectively "defendants"), asserting claims for nuisance and

¹ The court heard oral argument on this motion on June
12, 2023.

1 trespass under federal common law. (See generally Compl. (Docket
2 No. 1).) Before the court is defendants' motion to dismiss.²
3 (Docket No. 8.)

4 I. Factual Allegations

5 Plaintiff occupies the Buena Vista Rancheria -- a 67.5-
6 acre Rancheria³ property in Amador County.⁴ (Compl. ¶ 13.)
7 Plaintiff describes the Rancheria as "the Tribe's cultural
8 epicenter, source for economic development, and natural resource
9 management." (Id. ¶ 23.) Within the boundaries of the Rancheria

10 ² Defendants also request that the court take judicial
11 notice of: (1) various forms filed in connection with their
12 proposed mining project application (Exhibits 1 and 2); (2) a
13 copy of a map of defendants' mine (Exhibit 3); (3) Google Earth
14 satellite images of the properties involved in the dispute
15 (Exhibit 4); and (4) sections of the Amador County Code (Exhibits
16 5 and 6). (See Req. for Judicial Notice (Docket No. 8-3).)
17 Defendants' request for judicial notice of the Amador County Code
18 (Exhibits 5 and 6) is granted because such documents are a matter
19 of public record not reasonably subject to dispute. The request
20 for judicial notice of the map of the mine (Exhibit 3) is granted
21 as plaintiff relies on the same map in its complaint. However,
22 the remaining requests are denied because consideration of the
23 documents for which defendants seek notice is unnecessary to the
24 court's resolution of the instant motion.

19 ³ The United States created "Rancherias" -- a network of
20 small land parcels -- for landless Indian tribes in California.
21 (See Compl. ¶ 13.)

22 ⁴ In 1927, the United States purchased the land
23 constituting the Buena Vista Rancheria. (Compl. ¶ 13.) In 1958,
24 Congress disestablished many California Indian rancherias,
25 including the Buena Vista Rancheria, and terminated the legal
26 status of the related Indian tribes and their members. (Id. ¶
27 14.) The land comprising the Buena Vista Rancheria was
28 distributed to individual tribal members. (Id.) The United
States then withdrew the trust status of the Buena Vista
Rancheria and dissolved the Rancheria boundaries. (Id.) In
1983, the United States restored the Tribe's status as a
recognized Indians under federal law and the Tribe was added to
the Federal Register list of recognized Indian tribes. (Id. ¶
16.) In 2021, the Bureau of Indian Affairs ("BIA") placed the
Rancheria lands back into trust. (Id. ¶ 21.)

1 is: the Harrah's Northern California casino (the "Casino"),
2 drinking and wastewater treatment plants, a cultural center, two
3 homes, a Tribal office, the Tribal cemetery, traditional
4 gathering places, and a federally recognized wetland preserve.

5 (Id.) The Casino has been in operation since April 2019 and is
6 the primary source of revenue for the Tribe. (Id. ¶¶ 33, 34.)

7 Defendant PCBP Properties, Inc. owns 114.27-acres of
8 surface mining property known as the "Berry Mine" on the PCBP
9 Property. (Mot. at 8.) The Berry Mine is directly adjacent to
10 the east of the Tribe's Rancheria. (Compl. ¶ 35.) Portions of
11 the PCBP Property have been used for mining intermittently since
12 at least 1976. (Id. ¶ 38.)

13 On or about September 13, 2022, defendants informed
14 plaintiff that they intended to expand its surface clay mining
15 operation on the PCBP Property to a 40.1-acre section of the
16 property. (Id. ¶¶ 41, 42.) On December 16, 2022, defendants
17 told plaintiff that their new mining operation would commence as
18 soon as they receive approval from the County. (Id. ¶ 42.)
19 Defendants also informed plaintiff of their belief that they
20 could begin new mining operations on an area of the PCBP Property
21 located less than 250 feet from the Rancheria boundary at any
22 time and without County approval.⁵ (Id. ¶ 43.) Amador County
23 and defendants maintain the right to conduct new mining operation
24 under Section 7.36 of the County Code because mining occurred on
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26 ⁵ Plaintiff does not allege that defendants have a plan
27 to mine the area of the PCBP Property that is 250 feet from the
28 Rancheria boundary. Rather, plaintiff alleges that defendants
have expressed their belief that they can legally mine the area
at any time without County approval.

1 the land prior to January 1, 1976.⁶ (Id. ¶ 39.)

2 Plaintiff alleges numerous harms will flow from
3 defendants' new mining operation, including that the operation
4 will: (1) create significant noise and vibration; (2) reduce the
5 number of guests coming to the Casino; (3) cause health risks to
6 the Tribe as well as the Casino's employees and guests; (4)
7 impact air quality; (5) impact groundwater and federally
8 protected wetlands; and (6) disturb or destroy grave-like
9 structures and other objects of cultural patrimony.⁷ (Id. ¶¶ 51-
10 55.)

11 II. Discussion

12 Among other grounds, defendants seek to dismiss the
13 complaint on the ground that plaintiff's claims are not
14 prudentially ripe under Rule 12(b)(1). The ripeness doctrine
15 prevents premature adjudication where a case has had no concrete
16 impact on the parties. Exxon Corp. v. Heinze, 32 F.3d 1399, 1404
17 (9th Cir. 1994). "[R]ipeness doctrine is drawn both from Article
18 III limitations on judicial power and from prudential reasons for
19 refusing to exercise jurisdiction." Reno v. Catholic Soc.
20 Servs., Inc., 509 U.S. 43, 57 n.18 (1993). Because ripeness
21 pertains to a federal court's subject matter jurisdiction under

22 ⁶ Amador County Code 7.36.070 provides: "Nothing in this
23 chapter shall be construed as requiring the filing of a
24 reclamation plan for or the reclamation of mined lands which were
25 disturbed by surface mining operations conducted prior to January
1, 1976."

26 ⁷ "Cultural patrimony" is defined as "an object having
27 ongoing historical, traditional, or cultural importance central
28 to the Native American group or culture itself" Native
American Graves Protection and Repatriation Act, 25 U.S.C. §
3001(3)(D).

1 Article III of the United States Constitution, it is properly
2 raised in a motion to dismiss under Fed. R. Civ. P. 12(b)(1).
3 See St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989)
4 (ripeness goes to a federal court's subject matter jurisdiction).

5 In assessing a prudential ripeness claim, as defendants
6 argue here, courts generally consider two factors: (1) "the
7 fitness of the issues for judicial review" and (2) "the hardship
8 to the parties of withholding court consideration." Alaska Right
9 to Life Pol. Action Comm. v. Feldman, 504 F.3d 840, 849 (9th Cir.
10 2007) (citation and quotations omitted). Defendants argue that
11 the Tribe's claims are not ripe because they are based on the
12 contingent event of the County approving its application and the
13 application has not yet been reviewed.⁸ (Mot. at 24.) The court
14 agrees. See Mt. Adams Veneer Co. v. United States, 896 F.2d 339,
15 343 (9th Cir. 1989) ("Where, as here, injunctive relief and a
16 declaratory judgment are sought with regard to an administrative
17 determination, the courts traditionally have been reluctant to
18 grant such relief unless there is a controversy ripe for judicial
19 resolution.").

20 A challenged government action must be final before the
21 action is ripe. See United States v. Braren, 338 F.3d 971, 975
22 (9th Cir. 2003) (citation omitted). Generally, courts in the
23 Ninth Circuit "will not entertain a petition where pending
24 administrative proceedings or further agency action might render
25 the case moot and judicial review completely unnecessary."
26 Sierra Club v. U.S. Nuclear Regul. Comm'n, 825 F.2d 1356, 1362

27 ⁸ Defendants filed their application with Amador County
28 on March 8, 2023. (Mot. at 17.)

1 (9th Cir. 1987) (citations omitted). Compare Del Monte Dunes at
2 Monterey, Ltd. v. City of Monterey, 920 F.2d 1496, 1501 (9th Cir.
3 1990) (“[A] claim is not ripe until the local government issues a
4 final decision on the application of land use regulations to the
5 affected property.”) (citation omitted); Wash. Trout v. FERC, 60
6 F. App’x 693, 694 (9th Cir. 2003) (finding case was not ripe
7 where the FERC was still evaluating a facility’s license and had
8 not made a final decision), with Assiniboine & Sioux Tribes of
9 Fort Peck Indian Rsrv. v. Bd. of Oil & Gas Conservation of State
10 of Mont., 792 F.2d 782, 789 (9th Cir. 1986) (finding claims ripe
11 where the Bureau of Land Management had approved orders affecting
12 tribal lands); Pacificans for Scenic Coast v. Cal. Dep’t of
13 Transp., 204 F. Supp. 3d 1075, 1091 (N.D. Cal. 2016) (finding
14 claims ripe where “Caltrans has engaged in final agency action on
15 behalf of the Federal Highway Administration by giving
16 environmental approval to the project”).

17 Here, defendants’ ability to commence their new mining
18 operation is contingent on approval of the mining project
19 application by the County as well as review by the U.S. Army
20 Corps of Engineers.⁹ Because approval of the new mining project
21 is not yet final, plaintiff’s claims seeking to enjoin the
22 project are not ripe. See Ass’n of Am. Med. Colls. v. United
23 States, 217 F.3d 770, 780 (9th Cir. 2000) (“The core question is

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25 ⁹ PCBP Entities must submit an aquatic resources
26 delineation (identifying the amount and boundaries of aquatic
27 resources) to the U.S. Army Corps of Engineers to determine
28 whether any waters of the United States will be impacted by the
new mining project. (Mot. at 24.) If any water may be impacted,
defendants will have additional administrative steps, including
the creation of reports, in order for the Corps of Engineers to
process the requested permit. (See id.)

1 whether the agency has completed its decisionmaking process . . .
2 .”) (citation omitted). Plaintiff is free to refile their
3 complaint if and when defendants’ project is approved by the
4 County and the Corps of Engineers or if defendants should take
5 any actions for mining the PCBP Property inconsistent with the
6 court’s understanding of the administrative prerequisites for
7 such actions as expressed in this Order.

8 IT IS THEREFORE ORDERED that defendants’ motion to
9 dismiss (Docket No. 8) be, and the same hereby is, GRANTED.
10 Plaintiff has twenty days from the date of this Order to file an
11 amended complaint, if it can do so consistent with this Order.

12 Dated: June 14, 2023



13 WILLIAM B. SHUBB
14 UNITED STATES DISTRICT JUDGE
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