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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

MEMORANDUM AND ORDER RE:  
DEFENDANTS' MOTION TO DISMISS<sup>1</sup>

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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

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<sup>1</sup> The court takes this motion under submission on the  
papers, without oral argument, pursuant to Local Rule 230(g).

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

4 I. Factual Allegations

5 Plaintiff occupies the Buena Vista Rancheria -- a 67.5-  
6 acre Rancheria<sup>3</sup> property in Amador County.<sup>4</sup> (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 <sup>2</sup> 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 <sup>3</sup> The United States created "Rancherias" -- a network of  
20 small land parcels -- for landless Indian tribes in California.  
21 (See Compl. ¶ 13.)

22 <sup>4</sup> 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.<sup>5</sup> (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 <sup>5</sup> 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.<sup>6</sup> (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.<sup>7</sup> (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

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22 <sup>6</sup> 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 <sup>7</sup> "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.<sup>8</sup> (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

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27 <sup>8</sup> 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.<sup>9</sup> 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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24  
25 <sup>9</sup> 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 12, 2023



13 **WILLIAM B. SHUBB**  
14 **UNITED STATES DISTRICT JUDGE**