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# Common Law Trespass/Nuisance Action/Ripeness: U.S. District Court Addresses Application of Doctrine to Mining Expansion Contingent Upon County Approval

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A United States District Court (E.D. California) (“Court”) addressed in a June 12th Memorandum and Order (“Memorandum”) an argument that certain claims for nuisance and trespass from federal common law were not ripe. See *Buena Vista Rancheria of Me-Wuk Indians v. Pacific Coast Building Products, Inc. et al.* 2023 WL 3955680.

The question addressed was whether such claims were prudentially ripe when the activity associated with them could not begin without a governmental approval.

The Buena Vista Rancheria of Me-Wuk Indians (“Buena Vista”) are described in the Memorandum as occupying a 67.5-acre property in Amador County, California. The property is stated to include the following:

- Harrah’s Northern California casino
- Drinking and wastewater treatment plants
- Cultural center
- Two homes
- Tribal office
- Tribal cemetery
- Traditional gathering places
- Recognized wetland preserve

Pacific Coast Building Products, Inc. and H.C. Muddox (collectively “PCBP”) own 114.27-acres of surface mining property known as the “Berry Mine.” It is directly adjacent to the east of Buena Vista’s property. The PCBP property has been used for mining intermittently since at least 1976.

PCBP informed Buena Vista in 2022 that it intended to expand its surface clay mining operation. The new mining operation was stated by PCBP to begin as soon as Amador County provided approval. PCBP also informed Buena Vista of its belief that it could begin the new mining operations on an area of its property located less than 250 feet from the boundary at any time and without the County’s approval.

Buena Vista filed a federal common law claim for nuisance and trespass.

PCBP sought to dismiss the claims on the grounds that they were not prudentially ripe under Rule 12(b)(1).

The Court notes that the purpose of the ripeness doctrine is to prevent:

. . . premature adjudication where a case has had no concrete impact on the parties. . . “[R]ipeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.

PCBP argued that the Court should consider two factors in addressing a ripeness claim:

1. the fitness of the issues for judicial review; and
2. the hardship to the parties of withholding court consideration.

Therefore, PCBP argued that Buena Vista’s claims were not ripe because:

- They are based on the contingent event of the County approving its application
- The application has not yet been reviewed

The Court stated that a challenged government action must be final before it is ripe. The courts in the Ninth Circuit are noted to generally not entertain a petition where pending administrative proceedings or further agency action might render the case moot and judicial review unnecessary.

The Court held that PCBP’s ability to commence the new mining operation is contingent on approval of the application before the County and a review by the United States Army Corps of Engineers. Because approval is not final, it held that Buena Vista’s claims seeking to enjoin the project are not ripe.

The Court granted PCBP’s motion to dismiss.

A copy of the Memorandum can be downloaded [here](#).