UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 14-00395 JGB (SPx)**	Date	August 28, 2014
Title	***Bernadette Blackwood, et al. v. N&M Dairy, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order DENYING Defendants' Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim (Doc. No. 34) (IN CHAMBERS)

Before the Court is a Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim filed by Defendants Mary De Vries, individually, dba N&M Dairy, and as Trustee of the Neil and Mary De Vries Family Trust, and Randy De Vries. (Doc. No. 34.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After reviewing and considering all papers filed in support of and in opposition to the Motion, the Court DENIES Defendants' Motion to Dismiss.

I. BACKGROUND

A. Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, et seq., is a comprehensive regulatory program designed to promote the safe handling of solid and hazardous wastes. Coalition for Health Concern v. LWD, Inc., 60 F.3d 1188, 1190 (6th Cir. 1995). Under RCRA, persons treating, storing, or disposing of hazardous waste must obtain a permit to do so. 42 U.S.C. § 6925(a). While the United States Environmental Protection Agency ("EPA") has primary responsibility for implementing RCRA's directives, the states may enact their own hazardous waste regulatory programs. 42 U.S.C. § 6926(b). If a state elects to enact its own program meeting minimum federal standards and applies for and receives approval from the EPA, then the state program operates in lieu of the federal program. Id.

RCRA's citizen-suit provision permits "any person" to sue the owner or operator of a solid waste treatment, storage, or disposal facility if the owner or operator "has contributed or . . .

is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B).

B. Lahontan Regional Board

The Water Rights Board was created by the California Legislature in 1956 to administer water rights. See SWRCB Cases, 136 Cal. App. 4th 674, 695 n. 9 (2006) (citing Cal. Stats. 1957, 1st Ex. Sess. 1956, ch. 52, § 7, pp. 425–27). In 1967, the Legislature consolidated the Water Rights Board with the State Water Quality Control Board to create the State Water Resources Control Board ("State Board"). Id. at 695 (citing Cal. Stats. 1967, ch. 284). The State Board is designated as the state water pollution control agency for all purposes stated in the Clean Water Act and is the agency authorized to exercise powers delegated to it under the Clean Water Act. 33 U.S.C. § 1313; Cal. Water Code § 13160. The Porter–Cologne Act established nine California Regional Water Quality Control Boards, Cal. Water Code §§ 13200, 13201, which operate under the purview of the State Board. See id. § 13225. Each Regional Board is required to formulate and adopt water quality control plans for all areas within the region. Id. § 13240. The Lahontan Regional Board ("Board") has jurisdiction over the region in which N&M Dairy is located.

C. Procedural History and Relevant Allegations

On March 5, 2014, Plaintiffs Bernadette Blackwood, Curtis Blackwood, Christina Decker, Carlos Silva, James Ervin, Kathren Ervin, James Dennis Ervin, Ofelia Ervin, David Fritz, Lisa Fritz, Vanessa Araujo, José E. Magaña, Bradley Morotaya, Ashley Romero, Felix Romero, Wanda Romero, John Morrison, Lisa Morrison, Amir Paniagua, Celia Piña, Eva Piña, José de Jesus Piña, Shelby Ann Ratican, Garry Snell, Lisa Snell, Christopher G. Sprowl, Nicole Sprowl, Fred Charles Whitton, Dallas Whitton, Susan Gray, John Gray, and Shawna Gray (collectively, "Plaintiffs") filed a Complaint against N&M Dairy, Mary De Vries, Neil De Vries, Neil and Mary De Vries Family Trust, James De Vries, Randy De Vries, and does 1 through 10, inclusive. (Compl., Doc. No. 1.) On April 3, 2014, Plaintiffs filed a First Amended Complaint ("FAC") against Mary De Vries, individually and dba N&M Dairy and as trustee of the Neil and Mary De Vries Family Trust, Neil De Vries individually and dba N&M Dairy and as trustee of the Neil and Mary De Vries Family Trust, James De Vries, Randy De Vries, and Does 1 through 10, inclusive. (Doc. No. 26.) Plaintiffs allege claims for: (1) Resource Conservation and Recovery Act ("RCRA") imminent and substantial endangerment; (2) continuing private nuisance; (3) continuing trespass—vectors and particulate; and (4) continuing trespass—contaminants. (Id.)

N&M Dairy, which consists of two adjacent diary facilities on 904 acres in Helendale, California, operated from April 7, 1992 until 2013. (Id. ¶¶ 48, 49, 136.) N&M Dairy was a Concentrated Animal Feeding Operation under federal law. (Id. ¶ 51.) Combined, the two facilities managed 2,800 milk cows plus support stock, sites for dry stacked manure, and six unlined lagoons for storing 103,472 gallons of wash water daily. (Id. ¶¶ 53, 54.) The N&M Dairy and waste disposal areas are located in the same groundwater basin from which Plaintiffs' residential wells draw. (Id. ¶ 55.) Additionally, when N&M Dairy increased the size of its operations without adequately addressing the increased manure waste, it created excessive flies,

dust and particulates, groundwater contamination, and odors such that Plaintiffs could no longer use or enjoy their property. (Id. ¶¶ 59-60.) Plaintiffs allege that N&M Dairy's practices continue to endanger public health and the environment because the contaminants will continue to contaminate their well water, excess manure still stored continues to create nuisance conditions, and dust, particulate, and flies enter Plaintiffs' properties. (Id. ¶¶ 150, 160, 161, 173.)

Lahontan Regional Water Quality Control Board Regulation

The N&M Dairy has been subject to reporting requirements and has been inspected by the Board. The Board found numerous violations related to: (1) waste handling, storage, and discharge requirements; (2) groundwater contamination levels; and (3) nuisance conditions caused by the treatment and/or disposal of manure. (Id. ¶¶ 64-128.) In 2010 and 2011, the Board issued Cleanup and Abatement Orders. (Smith Decl., Ex. B.)

In December 2013, N&M Dairy entered into a Settlement Agreement for a Stipulated Clean Up and Abatement Order ("2013 CAO") with the Board, which required N&M Dairy to cease operations, dismantle the Dairy in its entirety, remove remaining manure from the site, pay a penalty to the Board, place conservation easements on a portion of the property, provide replacement drinking water service to residents with private wells with elevated levels of nitrates, and continue to study and monitor the area for the protection of the public. (Smith Decl., Exs. D, E; FAC ¶¶ 137-38.) The 2013 CAO provides that the Regional Board maintain jurisdiction over N&M Dairy for monitoring as well as to make changes to the existing Order by adding conditions and requirements. (Smith Decl., Ex. E.) Plaintiffs allege that the 2013 CAO only addressed the removal of excessive manure from the site and did not address any other aspects of environmental damage. (FAC ¶ 135.) The 2013 CAO does not require N&M Dairy to take measures to remediate the soil or require N&M Dairy to explore digging deeper wells for Plaintiffs to provide them with an independent safe water source. (Id. ¶ 139.) Additionally, the 2013 CAO does not contain provisions to provide Plaintiffs with a remedy if Defendants violate the 2013 CAO and prior orders. (Id. ¶ 141.) Plaintiffs did not appeal the 2013 CAO to the Water Resources Control Board or California Superior Court, as is permitted under California Water Code § 13320.

Plaintiffs seek: (1) a declaration that Defendants' past and/or present generation, handling, storage, treatment, transportation and/or disposal of solid waste presents, or may present, an imminent and substantial endangerment to public health and the environment; (2) a compliance order requiring Defendants to cease and desist from storing manure on any portion of Defendants' land that Defendants have not first lined adequately to prevent seepage of pollutants into surface water or groundwater that may, whether by flow or diffusion, transmit such pollutants outside Defendants' property boundaries; (3) temporary or injunctive relief by ordering Defendants to cease all activities constituting the imminent and substantial endangerment to the public health and environment; (4) an order for Defendants to take all actions as may be necessary to eliminate any present or future endangerment and nuisances. (Id., Prayer for Relief.)

On June 11, 2014, Defendants Mary De Vries and Neil De Vries ("Defendants") filed a Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim upon Which Relief Can be Granted. ("Motion," Doc. No. 34.) On June 30, 2014, Plaintiffs filed their Opposition to the Motion ("Opp.," Doc. No. 40) and Defendants replied on July 7, 2014. ("Reply," Doc. No. 42).

D. Request for Judicial Notice

Defendants request that the Court take judicial notice of the following documents:

- Board Order No. 6-01-38 (Ex. A);
- N&M Dairy Amended/Original CAO 6V-2011-0555-A1 (Ex. B);
- Justin Ervin Comments to Draft Settlement Agreement (Ex. C);
- Settlement Agreement and Stipulation for Entry of Order between N&M Dairy and Lahontan Regional Board (Ex. D);
- Cleanup and Abatement Order R6v-2013-0103 (Ex. E);
- Email and Comments on Behalf of Helendale Residents (Ex. F);
- Lahontan Regional Water Quality Control Board Response to Comments on Proposed Settlement 10/3/2013 (Ex. G);
- Lahontan Water Quality Control Board 8/29/2013, Request for Comments on Proposed Settlement and Stipulation for Order (Ex. H);
- Schaeffer v. Gregory Village Partner L.P., MSC11-01307, Superior Court, Contra Costa County, Order on Demurrer to First Amended Complaint (Ex. I); and
- Framework for Implementation of California Health and Safety § 25204.6(b) (Ex. J).

(Request for Judicial Notice "RJN," Doc. No. 34-2.)

Under Rule 201 of the Federal Rules of Evidence, the court may take judicial notice of the records of state courts, the legislative history of state statutes, and the records of state administrative agencies. Louis v, McCormick & Schmick Rest. Corp., 460 F. Supp. 2d 1153, 1156 n. 4 (C.D. Cal. 2006). Additionally, "[i]t is not uncommon for courts to take judicial notice of factual information found on the world wide web." O'Toole v. Northrop Grumman Corp., 499 F.3d 1218, 1225 (10th Cir. 2007). This includes information on government agency websites, which have often been treated as proper subjects for judicial notice. See, e.g., Kitty Hawk Aircargo, Inc. v. Chao, 418 F.3d 453, 457 (5th Cir. 2005) (taking judicial notice of approval by the National Mediation Board published on the agency's website). Thus, the Court grants Defendants' request for judicial notice of the Board Orders, information from the Board State Board's website, filings in other courts, the Board's Response to Comments, and the Email and Comments on Behalf of Helendale Residents. The Court does not rely on the Justin Ervin Comments and denies Defendants' request for judicial notice of this document as moot.

II. LEGAL STANDARD[1]

A federal court has jurisdiction to determine whether it has subject-matter jurisdiction. See United States v. United Mine Workers of America, 330 U.S. 258, 292 n. 57 (1947). If a federal court "determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). A party may assert a lack of subject-matter jurisdiction by a motion to dismiss. Fed. R. Civ. P. 12(b)(1). When evaluating a motion to dismiss, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994). Although the scope of review is limited to the contents of the complaint, the Court may also consider exhibits submitted with the complaint, Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990), and "take judicial notice of matters of public record outside the pleadings," Mir v. Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

III. DISCUSSION

Defendants request that the Court dismiss the RCRA case and associated supplemental causes of action because the Board, which has primacy and is in the best position to manage the technical issues to properly close the N&M Dairy, is currently overseeing the enforcement and final closure of the N&M Dairy and the RCRA cause of action is a collateral attack on the Board's current Order. (See generally Mot.)

A. Abstention

Defendants argue that the Burford, Younger, and Colorado River abstention doctrines apply. Where jurisdiction is found as defined by congressional action, a court cannot abdicate its "authority or duty in any case in favor of another jurisdiction." New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 358 (1989). "When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction . . . . The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied." Willcox v. Consol. Gas Co., 212 U.S. 19, 40 (1909). Only in exceptional cases may a court exercise its discretion to withhold otherwise authorized equitable relief. New Orleans, 491 U.S. at 359. Only in a limited class of cases, where undue interference with state proceedings will result, may a court abstain from jurisdiction. Id.

1. Burford Abstention

Under the Burford doctrine, if timely and adequate state-court review is available, federal courts sitting in equity are instructed to avoid interference with the proceedings or orders of state

[1] Unless otherwise noted, all mentions of "Rule" refer to the Federal Rules of Civil Procedure.

administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." New Orleans Pub. Serv., Inc. v. New Orleans, 491 U.S. 350, 361 (1989). The Burford doctrine is primarily concerned with protecting complex administrative processes from federal interference. Id. at 362.

The Court finds that there is no basis for declining jurisdiction under Burford. First, state courts lack jurisdiction over the RCRA claims at issue here. See Chico Serv. Station, Inc. v. Sol Puerto Rico Ltd., 633 F.3d 20, 31 (1st Cir. 2011) ("Moreover, we are leery of abstaining where litigants may be unable to press their federal claims in a state forum. Section 6972(a)—which states both that citizen suits 'shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur' and that '[t]he district court shall have jurisdiction' to grant relief in such suits—arguably locates exclusive jurisdiction over RCRA citizen suits in the federal courts."). Additionally, the exceptional circumstances warranting Burford abstention are not present here. California's ability to create a coherent environmental policy would not be disrupted by the Court's exercise of jurisdiction. See Interfaith Community Org. Inc. v. PPG Industries, Inc., 702 F. Supp. 2d 295, 309 (D.N.J. 2010) ("The mere fact that a state agency has taken some action on the waste at issue here does not make this Court's subsequent involvement a disruptive intrusion into the state's capacity to create a coherent policy."); see also Morton College Bd. Trustees of Illinois Comm. College District No. 527 v. Town of Cicero, 18 F. Supp. 2d 921, 929 (N.D. Ill. 1998) (rejecting Burford abstention for CERCLA claims and finding no conflict with the state's ability to develop a coherent policy, although a complex regulatory scheme existed in environmental matters, because case only addressed liability for condition of property at issue).

Defendants rely on Coalition for Health Concern v. LWD, Inc., 60 F.3d 1188 (6th Cir. 1995) and Space Age Fuels, Inc. v. Standard Oil Co., No. 95-1637, 1996 WL 160741 (D. Or. Feb 29, 1996). In Coalition for Health Concern, the plaintiffs brought a federal suit that asserted, among other claims, RCRA claims against the owner and operator of a hazardous waste incinerator facility and the Secretary of Kentucky's Cabinet for Natural Resources and Environmental Protection. 60 F.3d at 1189. The plaintiffs alleged that LWD was in violation of RCRA because its facility was operating without the appropriate permit. Id. at 1189-90. The plaintiffs also alleged that the Secretary failed to perform his statutory duty to either issue or deny the applicable permit within a deadline contained in RCRA. Id. at 1190. The federal suit was filed after the plaintiffs abandoned ongoing state administrative proceedings concerning the permitting issue. Id. at 1192. The Sixth Circuit found that Kentucky evinced a clear interest in hazardous waste disposal by enacting a broad statutory scheme and an administrative process governing permits for hazardous waste facilities; federal adjudication would have been "disruptive of Kentucky's efforts to establish a coherent policy with respect to the licensing of hazardous waste facilities"; and it was impossible to disentangle the federal claim from state law in light of Kentucky's EPA-approved hazardous waste program incorporating RCRA's provisions. Coalition for Health Concern, 60 F.3d at 1194.

In Space Age Fuels, the state environmental agency had issued six enforcement actions and imposed civil penalties against Space Age for petroleum contamination on the property it leased. Space Age Fuels, 1996 WL 160741, at *1-2. Space Age brought a RCRA suit, seeking an order to require several defendants, who it alleged owned and operated the property at various times, to remedy the contamination and reimburse Space Age for its remediation costs. Id. at *2-4. The court abstained on the basis of Burford after finding that the court's involvement would interfere with Oregon's creation of a coherent policy that "specifies who may be liable for remediation, and authorizes the [agency] to require those liable to 'conduct any removal or remedial action or related action necessary to protect public health, safety, welfare or the environment.'" Id. at *3. The state policy specifically codified the process by which persons could petition for reimbursement, and further encompassed a party's statutory right to seek contribution from other liable parties. Id.

Unlike Coalition for Health Concern and Space Age Fuels, California's environmental policies and scheme are not at issue in the instant case. California does not have a federally approved state program and the Court cannot determine, based on the allegations in the FAC and the judicially noticed documents, that the issues require the court to review the state's environmental permit process or require the Court to question, challenge, or otherwise contradict the state's enforcement proceedings. See Chico Serv. Station, Inc. v. Sol Puerto Rico Ltd., 633 F.3d 20, 34 (1st Cir. 2011) ("Instead, Chico's suit seeks an order enjoining further releases of contaminants at the filling station and requiring defendant Sol to take remedial action, as well as the imposition of civil penalties. None of these steps requires that the court directly review actions taken by the Puerto Rico EQB, which, in any event, has issued no final order."); Adkins v. VIM Recycling, Inc., 644 F.3d 483, 506 (7th Cir. 2011) ("Here, however, the plaintiffs' citizen suit is not a collateral attack on any permitting or other regulatory decision by the State of Indiana. The plaintiffs' suit is structured to complement and enhance IDEM's efforts, as citizen suits brought under RCRA should."); New Orleans Public Serv., 491 U.S. at 362 ("While *Burford* is concerned with protecting complex state administrative processes from undue federal influence, it does not require abstention whenever there exists such a process, or even in all cases where there is a 'potential conflict' with state regulatory law or policy.").

Accordingly, the Court finds that this case is not an exceptional case where Burford abstention is warranted.

2. Younger Abstention and Colorado River Abstention

Under the Younger abstention doctrine, in recognition of the principles of comity and federalism, a federal court should not interfere with ongoing state judicial proceedings by granting injunctive or declaratory relief unless such interference is necessary to prevent substantial and immediate irreparable harm. Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention has also been extended to cases that might interfere with state "administrative proceedings in which important state interests are vindicated, so long as in the course of those proceedings the federal plaintiff would have a full and fair opportunity to litigate" his or her federal claim. Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619, 627 (1986). Younger abstention is appropriate when: (1) state proceedings, judicial in nature, are pending; (2) the state proceedings involve important state interests; and (3)

the state proceedings afford adequate opportunity to raise the federal issue. Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982).

In addition to abstention under Younger, federal courts may also abstain under Colorado River from hearing a federal action when there is parallel or duplicative litigation in state court. The Ninth Circuit does not require exact parallelism between the federal and state actions and only requires substantial similarity between the actions. Nakash v. Marciano, 882 F.2d 1411, 1416 (9th Cir. 1989). The existence of a parallel or duplicative state action alone is insufficient to justify dismissing or staying a federal action. To abstain under Colorado River, courts examine the following factors: (1) whether the state court or federal court first assumed jurisdiction over property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal or state law controls the decision on the merits; and (6) whether the state court can adequately protect the rights of the parties. Moses H. Cone Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 23-24, 26-27 (1983); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818-19 (2010); 40235 Washington Street Corp. v. Lusardi, 976 F.2d 587, 588 (9th Cir. 1992). The Colorado River factors are not a "mechanical checklist," but require careful balancing by the district court. Moses H. Cone, 460 U.S. at 16. "The weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case." Id.

The majority of courts that have addressed whether Younger or Colorado River abstention is appropriate for RCRA claims have concluded that such abstention is not appropriate. See, e.g., Remington v. Mathson, 2010 WL 1233803 (N.D. Cal. March 26, 2010) (Younger and Colorado River abstention is not proper for federal actions based on RCRA); Snellback Properties, L.L.C. v. Aetna Development Corp., 2009 WL 1606945, *2 (N.D. Ill. 2009) (Colorado River abstention for RCRA claims is not appropriate because RCRA claim can only be resolved in federal court); Spillane v. Commonwealth Edison Co., 291 F. Supp. 2d 728, 735 (N.D. Ill. 2003) (same); Space Age Fuels, 1996 WL 160741, at *5 (Younger abstention is not appropriate for RCRA claims because federal courts have exclusive jurisdiction over RCRA claims and such claims cannot be raised in state court); Mutual Life Ins. Co. of New York v. Mobil Corp., 1998 WL 160820, *5 (N.D.N.Y. 1998) (Colorado River abstention of RCRA claims was not appropriate where federal subject matter jurisdiction was present, the state action would not resolve or affect the federal issues, and the state action involved distinct questions of state law). The Court agrees with the reasoning of those cases and finds that abstention under Younger and Colorado River is not appropriate in this case. Because Plaintiffs cannot bring their RCRA claims in state court, the state proceedings do not afford Plaintiffs an adequate opportunity to raise the federal issue, as required under Younger. The Court also finds that the Colorado River factors do not weigh in favor of abstention. There is no pending state proceeding. Additionally, the RCRA is a federal statue, which and weighs heavily against the fifth and sixth Colorado River factors. Moses H. Cone, 460 U.S. at 26 ("[T]he presence of federal-law issues must always be a major consideration weighing against surrender.").

B. Primary Jurisdiction

The doctrine of primary jurisdiction "is a prudential doctrine under which courts may, under appropriate circumstances, determine that the initial decisionmaking responsibility should be performed by the relevant agency rather than the courts." Syntek, 307 F.3d at 780. "The

doctrine is applicable whenever the enforcement of a claim subject to a specific regulatory scheme requires resolution of issues that are 'within the special competence of an administrative body.'" Farley Transp. Co. v. Santa Fe Trail Transp. Co., 778 F.2d 1365, 1370 (9th Cir. 1985) (quoting United States v. W. Pac. R.R. Co., 352 U.S. 59, 63 (1956)). The doctrine does not, however, "require that all claims within an agency's purview be decided by the agency." Brown v. MCI WorldCom Network Services, Inc., 277 F.3d at 1172; accord United States v. Gen. Dynamics Corp., 828 F.2d 1356, 1363 (9th Cir. 1987) ("While it is certainly true that the competence of an agency to pass on an issue is a necessary condition to the application of the doctrine, competence alone is not sufficient."). "Nor is [the primary jurisdiction doctrine] intended to 'secure expert advice' for the courts from regulatory agencies every time a court is presented with an issue conceivably within the agency's ambit." Brown, 277 F.3d at 1172.

Although "[n]o fixed formula exists for applying the doctrine of primary jurisdiction," W. Pac., 352 U.S. at 64, courts in the Ninth Circuit traditionally look at four factors identified in General Dynamics. Under this test, the doctrine applies where there is "(1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory scheme that (4) requires expertise or uniformity in administration." Gen. Dynamics, 828 F.2d at 1362.

The Court finds that abstention is not justified on the basis of primary jurisdiction. As discussed in Interfaith Community Organization Inc., "[i]t would be counterintuitive, where Congress has created a private cause of action to respond to imminent and substantial endangerment, to require plaintiffs to defer, indefinitely, to a state agency once the agency becomes involved." 702 F. Supp. 2d at 311 (listing cases that agree that abstention would be an end run around RCRA given that Congress has specified conditions under which the pendency of other proceedings bars suit under RCRA); see also Williams v. Alabama Dep't of Transp., 119 F.Supp.2d 1249, 1257 (M.D. Ala. 2000) (rejecting defendant's argument that RCRA claims required special expertise beyond the court's grasp). Moreover, inconsistent rulings is not a significant concern because "[e]xtra burden is not what [the primary jurisdiction] doctrine is meant to circumvent; additional obligation is not incompatible with nor does it undermine the agency-driven process." Me. People's Alliance v. Holtrachem Mfg. Co., L.L.C., No. 00-69, 2001 WL 1602046 *8 (D. Me. Dec. 14, 2001); Interfaith Cmty. Org. Inc., 702 F. Supp. 2d at 312 ("The fact that PPG may be subject to a more stringent remediation standard than it is under the Consent Judgment is not a reason to invoke the primary jurisdiction doctrine.").

C. Collateral Attack

"The collateral attack doctrine precludes litigants from collaterally attacking the judgments of other courts." Rein v. Providian Fin. Corp., 270 F.3d 895, 902 (9th Cir. 2001). Specifically, the collateral attack doctrine applies where a court is asked to "re-examine and decide a question which has been finally determined." City of Tacoma v. Taxpayers of Tacoma, 357 U.S. 320, 334 (1958). In order to be an impermissible collateral attack of an earlier judgment, the relevant claims must have been directly ruled on in the prior proceeding. See Skokomish Indian Tribe v. United States, 332 F.3d 551, 560 (9th Cir. 2003). However, simply arguing an issue at a prior proceeding does not trigger the collateral attack doctrine. Rather, the

earlier judgment must actually address that specific issue and make a determination in order for the doctrine to apply. See Pub. Util. Dist. No. 1 of Grays Harbor County Washington v. IDACORP Inc., 379 F.3d 641, 652 n. 12 (9th Cir. 2004) (finding no impermissible collateral attack "[i]n the absence of a finding by [the agency]," even though the plaintiff had "advanced arguments" as to the specific issue in the proceedings before the agency).

Defendants also argue that this Court should preclude Plaintiffs' action as an impermissible collateral attack on the Regional Board's past actions. The Court does not agree. Defendants do not point to any Board Order that specifically addresses and reject all the remedies Plaintiffs' seek. Moreover, while "Defendant[s are] correct, in some sense, that Plaintiffs are 'attacking' the [Board's] actions and standards[,] this is the very nature of an imminent and substantial endangerment citizen suit: it allows citizens to seek judicial remedies where, allegedly, an agency has failed to protect people or the environment from danger. To abstain on the basis of collateral attack here would defeat Plaintiffs' statutory right to a citizen suit." Interfaith Cmty. Org., 702 F. Supp. 2d at 314-315 ("[T]he RCRA suit may exist in spite of other actions having been taken to resolve the same matter."); Interfaith Cmty. Org. v. Honeywell Intern., Inc., 399 F.3d 248, 267 (3d Cir. 2005) (noting that Congress has rejected the argument that there is a preference for agency-directed cleanups and stated that courts could consider the availability of alternative remedies, but there is no requirement to defer to them) (citing S. Rep. No. 98-284, 98th Cong., 1st Sess. at 57 (1983)).

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Defendants' Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim.

IT IS SO ORDERED.