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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAYMOND COLDANI, an individual	)	Case No. 2:07-CV-0660-JAM-EFB
	)	
Plaintiff,	)	<u>ORDER GRANTING DEFENDANTS'</u>
	)	<u>MOTION FOR DISMISSAL OF</u>
v.	)	<u>PLAINTIFF'S PUBLIC NUISANCE</u>
	)	<u>CLAIM</u>
JACK HAMM and PATRICIA HAMM,	)	
Individually and doing business	)	
as LIMA RANCH/DAIRY,	)	
	)	
Defendants.	)	

This matter comes before the Court on Defendants' Jack and Patricia Hamm, d/b/a Lima Ranch/Dairy (Defendants') Motion to Dismiss (Doc. 76) Plaintiff Raymond Coldani's state law public nuisance claim, for lack of jurisdiction. As Raymond Coldani is deceased, Steven Coldani, trustee of the Coldani Revocable Trust, has been substituted for Raymond Coldani. Plaintiff Steven Coldani ("Plaintiff") opposes the motion to dismiss (Doc. 105). The matter was set for a hearing on November 17, 2010 and ordered submitted on the briefs.<sup>1</sup> For the reasons set forth

<sup>1</sup> This matter was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 below, Defendants' motion is granted.

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3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 This case was originally filed by Raymond Coldani, based on  
5 allegations that Defendants were causing water pollution via  
6 runoff from their dairy. The original Complaint (Doc. 1)  
7 brought two federal claims: one claim for relief under the Clean  
8 Water Act ("CWA") and one claim for relief under the Resource  
9 Conservation and Recovery Act ("RCRA"). Later, the Complaint  
10 was amended (Doc.24), and brought only the CWA claim and a state  
11 law public nuisance claim. Following extensive discovery  
12 regarding the basis for the CWA claim, the Court denied a later  
13 motion to further amend the complaint (Doc. 73). Subsequently,  
14 Raymond Coldani moved to dismiss his CWA claim. The Court  
15 granted the motion (Doc. 87). The case was stayed due to  
16 Raymond Coldani's death, and the stay was lifted once Steven  
17 Coldani was substituted as the Plaintiff. Defendants' motion to  
18 dismiss the remaining state law nuisance claim was filed before  
19 the stay, and remained pending during the stay.

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21 II. OPINION

22 A. Legal Standard

23 [I]n any civil action of which the district courts  
24 have original jurisdiction, the district courts shall  
25 have supplemental jurisdiction over all other claims  
26 that are so related to claims in the action within  
27 such original jurisdiction that they form part of the  
28 same case or controversy under Article III of the  
United States Constitution.

27 ///

1 28 U.S.C. 1367(a). "Under 28 U.S.C. § 1367(c), a district court  
2 'may decline to exercise supplemental jurisdiction ... [if] the  
3 district court has dismissed all claims over which it has  
4 original jurisdiction.' The court's discretion to decline  
5 jurisdiction over state law claims is informed by the values of  
6 judicial economy, fairness, convenience, and comity." Meza v.  
7 Matrix Servicing, 2010 WL 366623, at \*3 (E.D. Cal. Jan. 26,  
8 2010) (internal citations omitted). In the usual case in which  
9 all federal-law claims are eliminated before trial, the balance  
10 of factors to be considered under the pendent jurisdiction  
11 doctrine- judicial economy, convenience, fairness, and comity-  
12 will point toward declining to exercise jurisdiction over the  
13 remaining state-law claims. Carnegie-Mellon University v.  
14 Cohill, 484 U.S. 343, 350 n.7 (1988) (superseded on other  
15 grounds by statute as recognized in Fent v. Okla. Water Res.  
16 Bd., 253 F. 3d 553, 557 (10th Cir. 2000).

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18 B. Claim for Relief

19 1. Public Nuisance

20 In the present case, the only remaining claim is a state  
21 law claim for "abatement of continuing public nuisance." The  
22 amended complaint alleges that nuisance conditions arise from  
23 violations of the state waste discharge requirements and  
24 violations of the California Health and Safety Code,  
25 constituting a nuisance as defined in California Water Code  
26 § 13050(m). A private person may maintain an action for a  
27 public nuisance, if it is specifically injurious to himself, but  
28 not otherwise. Cal. Civ. Code § 3493. Additionally, California

1 Civil Code § 3482 provides that "nothing which is done or  
2 maintained under the express authority of a statute can be  
3 deemed a nuisance." Thus, resolution of this claim will require  
4 a determination of whether there has been any violation of the  
5 various state statutes and regulations governing waste  
6 discharge, in addition to determining if the claim meets  
7 requirements for common law nuisance.

8 Because this case was stayed, the discovery cutoff date in  
9 the Court's scheduling order (Doc. 71) has passed, as has the  
10 trial date. Thus, whether the case is kept in federal court or  
11 dismissed for re-filing in state court, discovery must be  
12 completed and new trial dates set. In addition, the Eastern  
13 District of California currently has the heaviest caseload in  
14 the county, over two times larger than the national average.  
15 This Court is simply not in the position to retain cases that  
16 may properly be adjudicated by the state court.

17 Accordingly, the Court is exercising its discretion and  
18 declining to retain pendent jurisdiction over the only remaining  
19 claim in this action, as it is a state law claim that is best  
20 resolved by the state court. Balancing judicial economy,  
21 convenience, fairness and comity, the Court finds that  
22 dismissal, without prejudice to re-file in state court, is the  
23 proper exercise of its discretion in this matter.

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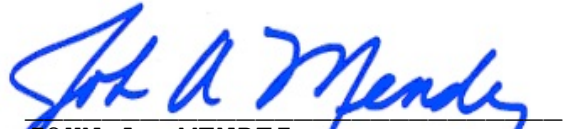
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III. ORDER

Defendants' Motion to Dismiss the public nuisance claim is  
GRANTED.

IT IS SO ORDERED.

Dated: December 21, 2010

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE