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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND COLDANI,

Plaintiff,

v.

JACK HAMM and PATRICIA HAMM,
individually and doing business
as LIMA RANCH/DAIRY,

Defendants.

No. 2:07-CV-0660 JAM EFB

ORDER DENYING MOTION TO JOIN A
NECESSARY PARTY

_____/

Plaintiff Raymond Coldani ("Coldani") filed a citizen suit against defendants Jack Hamm and Patricia Hamm, individually and doing business as Lima Ranch/Dairy (collectively "Lima Ranch"), seeking to enforce regulations promulgated under the Clean Water Act, 33 U.S.C. §§ 1251-1376 ("CWA"). Coldani alleges that Lima Ranch violated the CWA and created a public nuisance by polluting the groundwater beneath his property and the property in and around Lima Ranch, with nitrates. Lima Ranch now moves to join the City of Lodi ("City") as a necessary party pursuant

1 to Rule 19(a) of the Federal Rules of Civil Procedure. For the
2 reasons set forth below, Lima Ranch's motion is DENIED.¹

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4 I. FACTUAL ALLEGATIONS

5 Jack and Patricia Hamm own and operate Lima Ranch, a dairy
6 cow operation encompassing several hundred acres. First Amended
7 Complaint ("FAC") ¶ 2. The ranch contains at least 1,000 dairy
8 cows and its operations include milking, waste collection, waste
9 storage and waste water discharge. Id. ¶ 3. Coldani owns a
10 substantial amount of property adjacent to and in the vicinity
11 of Lima Ranch. Id. ¶ 2. Coldani alleges that Lima Ranch's
12 disposal of animal waste has caused the groundwater beneath, and
13 surrounding the ranch (including his property), to become
14 polluted by nitrates. Id. ¶ 4. Coldani alleges that the
15 groundwater has become polluted due to nitrate-containing
16 discharges that originate from leaks, percolations, infiltration
17 and/or seepage of animal waste from the waste storage ponds and
18 irrigation water applied by Lima Ranch to its fields. Id. ¶¶
19 33-34. Coldani alleges that the polluted groundwater migrates
20 onto his property and into the White Slough, which is
21 hydrologically connected to the Sacramento-San Joaquin River
22 Delta system; a navigable water located less than a mile from
23 Lima Ranch. Id. ¶¶ 4, 32, 34.

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 78-230(h).

1 Coldani contends that Lima Ranch's discharge of animal
2 waste violates numerous laws, including the CWA. FAC ¶¶ 5, 26-
3 27. Coldani claims that such conduct is causing imminent and
4 substantial endangerment to health and the environment as well
5 as interfering with his use and enjoyment of the surface water,
6 groundwater, air and soils of his property. Id. ¶¶ 26-27, 35-
7 39, 44. Coldani further claims that the community at large has
8 been, and continues to be, harmed by Lima Ranch's conduct in
9 that the nitrates discharged by its operations have caused or
10 contributed to localized groundwater being unfit for use as a
11 drinking water supply and/or for irrigation. Id. ¶ 44. Through
12 this action, Coldani seeks a declaration that Lima Ranch has
13 violated the CWA. Id. ¶ 47. Coldani also seeks relief in the
14 form of an order requiring Lima Ranch to comply with the
15 regulations governing its operations and to abate and remediate
16 the consequences of its regulatory violations, including any
17 conditions that have caused a public nuisance. Id. ¶ 47.

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21 Lima Ranch now moves pursuant to Rule 19(a) of the Federal
22 Rules of Civil Procedure to join the City as a necessary party
23 on the basis that the City is a potentially responsible party
24 for the nitrate contamination alleged by Coldani. Specifically,
25 Lima Ranch contends that the City's White Slough Water Pollution
26 Control Facility ("White Slough Facility"), a sewage treatment
27 facility located near Lima Ranch and Coldani's property, is a
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1 possible source of some or all of the nitrate contamination
2 alleged by Coldani. According to Lima Ranch, environmental
3 reports show that nitrates have leached from the City's sewage
4 pipes and White Slough Facility holding pond impacting the
5 property in and around Coldani's property. Lima Ranch asserts
6 that localized groundwater deflection moves in a direction that
7 would naturally cause any nitrate contamination at the White
8 Slough Facility to migrate towards, and under, Plaintiffs
9 property. In its motion, Lima Ranch argues that the City is a
10 necessary party because in their absence the Court could not
11 fashion complete relief and their absence could cause Lima Ranch
12 to incur liability for contamination for which it is not
13 responsible. Lima Ranch maintains that the City is responsible
14 for some or all of the nitrate contamination alleged by Coldani,
15 and therefore joinder of the City is necessary to avoid
16 multiplicity of litigation.
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20 II. OPINION

21 A. Legal Standard

22 "The framework for determining whether a party is necessary
23 and indispensable is provided by Fed.R.Civ.P. 19(a)." American
24 Greyhound Racing, Inc. v. Hull, 305 F.3d 1015, 1022 (9th Cir.
25 2002). A party is necessary within the meaning of Rule 19 if,
26 in its absence, the court cannot accord complete relief among
27 existing parties; or the absent party claims an interest
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1 relating to the subject of the action and disposing of the
2 action in its absence may: impair or impede its ability to
3 protect that interest; or leave an existing party subject to a
4 substantial risk of incurring double, multiple, or otherwise
5 inconsistent obligations because of the interest. Fed.R.Civ.P.
6 19(a). If the absent party falls into either of these
7 "alternative" categories, it is "necessary" to the instant
8 litigation. See Dawavendewa v. Salt River Project Agricultural
9 Improvement and Power District, 276 F.3d 1150, 1155 (9th Cir.
10 2002).

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13 B. Analysis

14 In the instant motion, Lima Ranch seeks to join the City as
15 a necessary party under Rule 19(a) on the basis that the City's
16 White Slough Facility is a possible source of some or all of the
17 nitrate contamination alleged by Coldani. In doing so, Lima
18 Ranch seeks to join an alleged joint tortfeasor under Rule
19 19(a). This is improper. Tortfeasors facing joint and several
20 liability are not parties who must be joined in a single
21 lawsuit. Temple v. Synthes Corp., 498 U.S. 5, 7 (1990) ("It has
22 long been the rule that it is not necessary for all joint
23 tortfeasors to be named as defendants in a single lawsuit.").
24 "The Advisory Committee Notes to Rule 19(a) explicitly state
25 that a tortfeasor with the usual joint-and-several liability is
26 merely a permissive party to an action against another with like
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1 liability." Id. (internal quotation marks omitted). Because
2 each tortfeasor is jointly and severally liable, the plaintiff
3 can pick and choose whom to sue and if the plaintiff elects to
4 sue less than all of them, those sued cannot compel joinder of
5 the other tortfeasors. See Stabilisierungsfonds Fur Wein v.
6 Kaiser Stuhl Wine Distributors Pty. Ltd., 647 F.2d 200, 207
7 (D.C. Cir. 1981). Rule 19 does not require the joinder of joint
8 tortfeasors. See Bank of America Nat'l Trust & Sav. Ass'n v.
9 Hotel Rittenhouse Assoc., 844 F.2d 1050, 1054 (3d Cir. 1988) (an
10 absent tortfeasor that is jointly liable to the claimant is not
11 a Rule 19(a) indispensable party). A defendant's possible right
12 of contribution or indemnity against an absent party is not
13 sufficient to make the absent party indispensable to the
14 litigation. Id.

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18 In this case, Coldani did not have to sue the City. He
19 could, and did, sue just Lima Ranch. Lima Ranch's possible
20 rights of contribution or indemnity against the City for all or
21 part of the claims asserted against it by Coldani does not make
22 the City an indispensable party under Rule 19. If Lima Ranch is
23 concerned about the City's absence, it can file a third-party
24 complaint against the City under Rule 14(a) of the Federal Rules
25 of Civil Procedure. See Fed.R.Civ.P. 14(a) ("A defending party
26 may, as third-party plaintiff, serve a summons and complaint on
27 a nonparty who is or may be liable to it for all or part of the
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1 claim against it."). To the extent Lima Ranch argues that
2 impleading the City into this case under Rule 14 is not the
3 appropriate procedural mechanism to join the City as a necessary
4 party, the Court disagrees. Plaintiffs have specifically
5 alleged facts which, if true, support the existence of a public
6 nuisance² and have demanded that Lima Ranch "immediately and at
7 its sole cost" abate the nuisance conditions. Thus, if Lima
8 Ranch is found liable for the nitrate contamination alleged by
9 Coldani and ordered to abate the contamination "at its sole
10 cost" it would have a possible right of contribution or
11 indemnity against the City as a joint tortfeasor. See Cal.Code
12 Civ. Proc. § 731 (any person whose property is injuriously
13 affected, or whose personal enjoyment is lessened by a nuisance
14 may pursue both abatement and damages).

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18 In short, the Court finds that the City is not a
19 "necessary" party under Rule 19(a). Complete relief can be
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21 ² California Civil Code section 3479 defines a nuisance as
22 "[a]nything which is injurious to health . . . or is indecent or
23 offensive to the senses, or an obstruction to the free use of
24 property, so as to interfere with the comfortable enjoyment of
25 life or property . . ." "A public nuisance is one which affects
26 at the same time an entire community or neighborhood, or any
27 considerable number of persons, although the extent of the
28 annoyance or damage inflicted upon individuals may be unequal."
Cal. Civ.Code § 3480. Pollution of water constitutes a public
nuisance. Newhall Land & Farming Co. v. Superior Court, 19
Cal.App.4th 334, 341 (1993). In fact, water pollution occurring
as a result of treatment or discharge of wastes in violation of
Water Code §§ 13000 *et seq.* is a public nuisance per se. Id.
(citing Cal. Wat.Code § 13050(m)).

1 accorded between Coldani and Lima Ranch without joinder of the
2 City. See Mintel Learning Technology, Inc. v. Beijing Kaidi
3 Education, 2007 WL 2288329, *13 (N.D. Cal. 2007) ("Because the
4 liability of joint tortfeasors is both joint and several, a
5 plaintiff can sue one without suing the others, and the court
6 can afford a plaintiff complete relief in the absence of all the
7 joint tortfeasors in the same lawsuit."). The Court notes that
8 Lima Ranch did not argue or offer evidence demonstrating that
9 the City claims an interest relating to the subject of the
10 action and that disposing of the action in its absence may
11 impair or impede its ability to protect that interest. United
12 States v. Bowen, 172 F.3d 682, 689 (9th Cir. 1999) (Joinder is
13 contingent upon an initial requirement that the absent party
14 claim a legally protected interest relating to the subject
15 matter of the action.). Accordingly, the Court denies Lima
16 Ranch's motion to join the City as a necessary party pursuant to
17 Rule 19(a).
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1 III. ORDER

2 For the reasons set forth above, Lima Ranch's motion to
3 join the City as a necessary party pursuant to Rule 19(a) is
4 DENIED.
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6 IT IS SO ORDERED.

7 Dated: September 2, 2008

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE