

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 24th day of January, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE:

THE NELSONS APPEAL the ALJ's recommendation to deny the Motion to temporarily stay proceedings in this cause pending the final determination of Nelson, et al, v. EXCO Resources, Inc., Case CJ-09-188, District Court of Grady County, Oklahoma.

The Nelsons own a portion of the surface of Section 10, T7N, R8W, Grady County, Oklahoma. EXCO is the former operator of the Norge Marchand Unit. During the time EXCO was the operator of the unit, in early 2009, a flowline associated with the Norge Marchand 12-1 well leaked on two separate occasions. The leaks released oil and saltwater to the Nelsons' property. The leaks were reported to the Commission and in March of 2009 the Commission closed the complaints on the leaks.

The Nelsons later brought a civil action against EXCO, *Nelson, et al, v. EXCO Resources, Inc.*, Case No. CJ-09-888, District Court of Grady County, Oklahoma. In the action, the Nelsons assert private rights claims against EXCO, sounding in nuisance and trespass. The basis of their claims is the allegation that the oil and saltwater released during the EXCO pipeline leaks harmed the Nelsons' property. The Nelsons seek an award of money damages to compensate for EXCO's conduct.

Following the commencement of that lawsuit and shortly before the scheduled jury trial, EXCO brought this proceeding before the Commission. In this proceeding, EXCO filed several motions seeking entry upon the Nelsons' land and other discovery matters.

In the District Court Case, the Nelsons' depositions were scheduled, by agreement, for August 11, 2010. Due to the length of the deposition of Joe Bob Nelson, Nicona Nelson's deposition began on August 11, 2010 but was not concluded until the end of the day on Thursday, August 18, 2010. In the depositions of the Nelsons, both parties requested that the soil and water pollution allegedly existing on the Nelsons' property be cleaned up. EXCO then commissioned a soil remediation expert and an expert hydrologist to prepare a plan of remediation to address the cleanup of the soil and water pollution allegedly existing on the Nelsons' property. After receipt of both parts of the plans of remediation from its experts, EXCO prepared the Application for Approval of a Plan of Remedial Operations and filed it on September 28, 2010,

in Cause PD 201000115. EXCO's plan of remediation will be completed under the direct supervision of the OCC Pollution Abatement Division.

The Nelsons move the Commission to temporarily stay the proceedings in this cause pending final determination of the District Court case based on the legal doctrine of comity.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ MICHAEL L. DECKER reported that it was his recommendation that the Motion to Temporarily Stay be denied. The ALJ reviewed all the briefs of the parties and the arguments presented. It was his recommendation that the doctrine of comity should not be applied to this situation. It is the purpose of the application that has been filed by EXCO with the Commission to institute an investigation of potential pollution and determine a remediation plan to be implemented. Parties at the hearing on the 3rd of January, 2010, both agreed through the comments of counsel, that there is the potential for pollution at the site and the need for some action to be taken to remediate.

The case of *Meinders v. Johnson*, 134 P.3d 858 (Ok.Civ.App. 2006) indicates that frequently there are District Court damage claims and Commission applications for remediation that will occur at the same time which is the situation in this matter. The *Meinders* case states that the Commission is not prevented from pursuing its jurisdiction to attempt investigation and implementation of a remediation plan if one is warranted. The Supreme Court in *DLB Energy Corporation v. Oklahoma Corporation Commission*, 805 P.2d 657 (Ok. 1991) held that the doctrine of comity would not apply in a situation involving a request to stay a Commission proceeding where the parallel proceeding had not resulted in a final decision by a District Court, which is clearly the indication of the record in this matter since the District Court of Grady County has not made any final determination in its proceeding.

Lastly, the Court in *GrayHorse Energy, LLC v. Crawley Petroleum Corporation*, 2010 OK CIV APP 145, ___ P.3d ___, deals with the public versus private rights question of determining jurisdiction between the Commission and the District Court. The Court found that the District Courts have power to adjudicate the legal affect of an Oklahoma Corporation Commission order when necessary to resolve a dispute over private rights. In the present case however there is a public right dispute because of the potential for pollution and a public nuisance that exists at the site.

If the ultimate investigation of the site in the present case determines that there was no pollution of this location, the Commission then could consider a Motion to Dismiss this EXCO case.

I therefore would recommend that the Motion To Temporarily Stay be denied and the application of EXCO be allowed to go forward for the purpose of investigating the site in Section 10 for the potential of pollution and to devise a remediation plan, with the caveat that dismissal of this application should be considered by the Commission at a later time if it is determined that there is no pollution issue to be resolved.

POSITIONS OF THE PARTIES

THE NELSONS

- 1) **Wes Johnston**, attorney, appearing on behalf of the Nelsons, stated the Nelsons filed this Motion to Stay based on the lawsuit filed in Grady County District Court for monetary damages sought from an EXCO pipeline leak on the Nelsons' property. The Nelsons seek to stay the Commission from taking action here so as to allow the District Court to issue its decision.
- 2) The case of *Greenhouse v. Hargrave*, 509 P.2d 1360 (Okl. 1973) sets forth some of the general provisions that deal with comity. Basically it says that courts that have concurrent jurisdiction, the second court in time will ordinarily withhold exercise of its jurisdiction while it permits the court that first acquired jurisdiction to finish its process so that you don't have a situation where you have two different tribunals acting and interfering with each other.
- 3) The Nelsons also cited the case of *Tenneco Oil Company v. Oklahoma Corporation Commission*, 775 P.2d 296 (Okl. 1989) which applied the doctrine of comity to the Corporation Commission. The *Tenneco* court found that the Commission action brought by Tenneco should have been stayed by the Commission under the doctrine of comity pending the determination of the appeal from the Federal District Court's judgment to the Federal 10th Circuit Court of Appeals.
- 4) In the present situation you have the District Court case and the Corporation Commission action. The Nelsons sought to have the Commission stay this particular Commission proceeding pending the final determination of the District Court proceeding which was first in time.
- 5) There is an argument that this doctrine of comity doesn't apply unless you have a final judgment or a final order from the initial tribunal. The Nelsons disagree with that. In the *Greenhouse v. Hargrave* case, 509 P.2d 1360 (Okl. 1973) there had been an entry of a partial summary judgment but there had not been a final judgment in that case. The Court applied the doctrine of comity and found it was appropriate. That was a case where you didn't have a

final judgment from the initial tribunal. In the *Tenneco* case you did have before the Commission a final judgment of the Federal District Court.

6) The Nelsons believe the *DLB Energy Corporation* case cited by ALJ Decker is not applicable in this present situation. The basis for the court's determination in that case was a finding that there was an interlocutory order. The only reference in the issue of comity appears in a paragraph where the court does say there's been no decision in the district court action. But the court goes no further in determining comity or whether or not a final order in the initial case is a prerequisite to the application of the comity doctrine. That's not a comity case. There is a comity reference that can properly be characterized as a dictum statement, but the case was decided on the basis of whether or not you have an appealable order. Thus, the *DLB Energy Corporation* case is not appropriate or persuasive in this case.

7) The *Meinders v. Johnson* case also cited by ALJ Decker does hold that the District Court and the Commission can exercise concurrent jurisdiction over particular issues. However the doctrine of comity specifically applies to the situation when two courts have concurrent jurisdiction over a particular issue. This is the situation that we have here.

8) The Nelsons disagree that the action before the Commission is a public rights issue. The pending District Court case involves private rights claims sounding in nuisance and trespass, and basically what is happening here is EXCO is attempting to bring the Corporation Commission into this private rights dispute. A public rights matter must arise between the government and others. The present dispute between the Nelsons and EXCO is a private rights dispute. All the Commission is doing is providing a forum for the determination of rights between EXCO and the Nelsons. This is not a dispute that arises between the government and others. This is just a private rights dispute that has been tendered to the Corporation Commission for its decision. Thus the present Corporation Commission case should be at least stayed so it doesn't go forward and interfere with the jurisdiction of the District Court.

EXCO

1) **Eric R. King**, attorney, appearing on behalf of EXCO, stated that EXCO filed their application for a proposed plan to remediate the Nelsons' property after all required and necessary tests are performed. EXCO notes due to the results of their EM survey showing soil contamination, EXCO believes the manner in which the Nelsons drilled their two monitoring wells may have caused groundwater pollution.

2) EXCO notes it has been ready since September 2010 to do the necessary testing and cleanup of the pollution on the Nelsons' land. EXCO asserts that the Nelsons have thwarted EXCO's cleanup efforts, i.e. denying access to the Nelsons' property contrary to the Supreme Court's order.

3) EXCO agrees with the parties here that the District Court issues of trespass and nuisance are properly with the District Court. However, the Commission has jurisdiction to remediate and address pollution.

4) EXCO notes while there are some private rights issues present, EXCO believes this is a public rights dispute. EXCO notes there was an allegation by the Nelsons of groundwater pollution, which invokes the public rights issue which the Commission has jurisdiction over.

5) EXCO notes since the District Court has rendered no merit decision on the issues of trespass, nuisance and money damages, the doctrine of comity is inapplicable. Further, EXCO notes for comity to apply the existence of a final decision must be had that would interfere with the filed Commission application.

6) EXCO states that in the *DLB Energy* case the Supreme Court found no reason to disturb the Commission order which denied the requested stay, because there had been no decision in the District Court action. In Oklahoma one of the required elements for comity to apply is the existence of a decision on the merits which would interfere with the Commission case. In the *Panama Processes, S.A. v. Cities Service Company* case, 796 P.2d 276 (Okl. 1990) there was a judgment entered after a full and fair trial. In both the *Tenneco Oil Company* case and the *GrayHorse Energy, LLC v. Crawley Petroleum Corporation* case, 2010 OK CIV APP 145 ____ P.3d ____, a decision on the merits had been made in one of the courts. In the present case there is no decision on the merits in the district court, hence, comity is inapplicable to this particular situation.

7) In the *Greenhouse v. Hargrave* case the cases were filed by the same parties in both the Federal District Court and the District Court of Seminole County in Oklahoma. In the present situation the Nelsons filed in the District Court and EXCO filed at the Corporation Commission and there are not the same issues. There is no plan of remediation in the District Court case and there is no plan or request for approval for a plan or remediation in the District Court.

8) A private rights issue is something that is between two parties, and obviously the Commission does not have jurisdiction over the trespass and nuisance issues. When you have an allegation that the Nelsons' groundwater is contaminated, that becomes a public rights issue and the public rights issues are the Commission's jurisdiction. That's why you have a pollution and

abatement department. The decision here at the Commission is not going to interfere with the District Court case where money damages are involved.

9) EXCO would also cite the cases of *Panama Processes, S.A. v. Cities Service Company* and the *Crooks v. District Court of Seventh Judicial District of Oklahoma County*, 581 P.2d 897 (Okl. 1978) because both cases hold that there must be a final order before the doctrine of comity can be invoked.

10) Lastly EXCO would refer to Cause PD No. 960000298-T, the Gemini Oil Company case wherein the Commission stated:

[T]he district court is concerned with the resolution of a private dispute and the award of damages. But the award of damages unaccompanied by remediation is not in the public's best interest, and it is the public's interest with which we are concerned.

That is applicable in the present case, because if you don't have a remediation and you just have money damages, that's not in the public's best interest. The EXCO case presently before the Commission is a public right's dispute. The Commission also states in the Gemini Oil Company case:

...it must be reemphasized that the Commission clearly has the authority in the statutes and case law to adjudicate justiciable cases in controversy regarding alleged oil field pollution, its investigation, remediation and abatement, and imposition of contempt penalties for rules violations, if necessary. See *Stamford Energy Corporation v. Corporation Commission*, 764 P.2d 880 (Okla. 1988); and *Union Oil Company of Texas v. Jackson*, 909 P.2d 131 (Okla.App 1995).

* * *

...With regard to the proper exercise of Commission jurisdiction over pollution complaints, it must be borne in mind that the citizens complaint procedures define with certainty the parameters of what factual circumstances will trigger the agency's duty to investigate and respond to a situation pursuant to 27A O.S. Section 1-1-204:

"Pollution complaint" means any communication, whether verbal or written, from any person not acting within the scope of employment of an environmental regulatory agency, which alleges that any site specific pollution has occurred or is imminent, or that a site specific pollution control law or rule has been violated, and for which a complainant expects action to be taken by an environmental regulatory agency...

EXCO is the "person not acting within the scope of employment of an environmental regulatory agency".

11) EXCO asserts the Motion to Stay filed by the Nelsons is a delay tactic and respectfully requests the case be allowed to proceed to hearing as the doctrine of comity does not apply to the facts.

RESPONSE OF THE NELSONS

1) The Nelsons find the issue here to be a question of law as to whether the doctrine of comity applies.

2) The Nelsons note the normal approach to such situations here is to have the Commission District Office investigate upon a complaint with recommendations made by Commission Staff thereafter, which was not done in the present cause. Here, the OCC neither made a determination or investigation of the issue.

3) The Nelsons note the PD No. 960000298-T Gemini Oil Company case related to a general situation where operators were seeking declaratory judgments. In the present case there has been no complaint investigated by the district office.

4) The Nelsons note the *Panama Processes, S.A. v. Cities Service Company* case related to collateral estoppel and res judicata. The issue there was whether the court was going to give comity to an existing judgment or determination by another court on the collateral estoppel or res judicata issues.

CONCLUSIONS

The Referee finds that the Oral Report of the Administrative Law Judge should be affirmed.

1) In the *GrayHorse Energy, LLC v. Crawley Petroleum Corporation* case, supra, 2010 OK CIV APP 145, ___ P.3d ___, the Oklahoma Court of Civil Appeals reviewed a District Court's dismissal of an action. The GrayHorse group filed a petition against Crawley seeking money damages pursuant to the alternative legal theories of conversion, negligence, constructive fraud and unjust enrichment. The District Court dismissed the petition finding the working interest owners' claims were "matters over which the OCC had exclusive jurisdiction in a previously OCC Cause, CD 200804943, resulting from a forced-pooling order, OCC No. 558403." Id. 2010 OK.CIV.APP. 145, paragraph 4. The Court of Appeals found the dismissal was improper and stated that "district courts do have the power to adjudicate the legal effect of an OCC order when necessary to resolve a dispute over private rights." Id., at paragraph 11. Further, the Court stated:

¶12 As implied above, district courts have jurisdiction to resolve disputes over private rights involving mineral interests and oil and gas leaseholds. *Tucker v. Special Energy Corp.*, 2008 OK 57, ¶ 10, 187 P.3d 730. "[S]ubject matter jurisdiction rests solely with the district court to determine private rights in mineral interests and oil and gas leaseholds..." *Leck v. Continental Oil Co.*, 1989 OK 173, ¶6. 800 P.2d 224. 226. That is, the OCC "is without authority to hear and determine disputes between two or more private persons or entities in which the public interest is not involved." *Rogers v. Quik Trip Corp.*, 2010 OK 3, ¶7, 230 P.3d 853, 857 (footnote omitted). When the conflict between the parties does not affect the "rights within a common source of supply and thus" does not affect "the public interest in the protection of production from that source as a whole," the district courts, and not the OCC, have jurisdiction. *Samson Resources Co. v. Corporation Commission*, 1985 OK 31, ¶ 9, 702 P.2d 19, 22. See also *Rogers* at ¶ 6, 230 P.3d at 857 ("[t]he function of the [OCC] is to protect the rights of the body politic; private rights and obligations of private parties lie within the purview of the district court."); and *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 1984 OK 52, 687 P.2d 1049 (finding that the trial

court has jurisdiction over a case between interested parties to a forced-pooling order who contracted between themselves concerning the interests created by the forced-pooling order and where no public issue within the jurisdiction of the OCC was changed or challenged).

* * *

¶21 In fact, this claim, along with the rest of the GrayHorse group's claims, is particularly within the jurisdiction of the district courts to resolve and, if appropriate, award money damages. These claims involve the resolution of private, common law issues sounding in tort or, alternatively, restitution (unjust enrichment), and this dispute is between private entities. Even in the context of oil and gas rights involving OCC orders, "long-standing Oklahoma law recogniz[es] district court jurisdiction to provide a remedy for damages based on common law theories of recovery, such as private nuisance and negligence." *NBI Services, Inc. v. Ward*, 2006 OK CIV APP 20, ¶ 19, 132 P.3d 619, 626. *Cf. Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 70 (1982) (observing that at a minimum, to be deemed a public rights dispute and, therefore, capable of being removed from Art. III courts and delegated to legislative courts or administrative agencies, a case must arise between the government and others, and that private rights disputes lie at the core of the historically recognized judicial power).

2) In the present case EXCO does not assert that the Commission has jurisdiction over the Nelsons claims for monetary damages (arising from an alleged trespass or nuisance) which are pending in the district court action. However, EXCO states that the Commission has jurisdiction over the matters encompassed by EXCO's application (remediation of soil and alleged water pollution). The Referee agrees with EXCO's determination and the two pending proceedings, while involving some similar factual issues, raised entirely distinct legal issues. The Nelsons are seeking an award of monetary damages for trespass and nuisance while EXCO in the present proceeding seeks approval of a plan of remedial operations which is the jurisdiction of the Commission. See 17 O.S. Section 52 and 52 O.S. Section 139(B)(2) (giving the Commission

jurisdiction over site remediation). The resolution of EXCO's application by the Commission will not prevent the District Court from hearing the Nelsons' trespass and nuisance claims. Likewise, resolution of the Nelsons' District Court claims for nuisance and trespass will not affect the Commission's ability to resolve the issues presented in EXCO's application.

3) The *Meinders v. Johnson* case, 134 P.3d 858 (Okl.Civ.App. 2006) states:

¶27 Clearly, and in keeping with the limited jurisdiction of the Corporation Commission, the Oklahoma Supreme Court has recognized that the district courts of this state possess the authority to determine private rights' disputes arising from mineral production. *Tenneco Oil Co.*, 1984 OK 52, ¶¶20-23, 687 P.2d at 1053-54. Indeed, there seems little doubt that only the district courts of this state possess jurisdiction to award nuisance or negligence damages for pollution and cleanup. *Union Texas Petroleum Corp. v. Jackson*, 1995 OK CIV APP 63, 909 P.2d 131; *Tenneco Oil Co. v. Allen*, 1973 OK 129, 515 P.2d 1391; *Sheridan Oil Co. v. Wall*, 1940 OK 225, 103 P.2d 507. See also, *Marshall v. El Paso Natural Gas Co.*, 874 F.2d 1373 (10th Cir. (Okl.) 1989); *Greyhound Leasing & Financial Corporation v. Joiner City Unit*, 444 F.2d 439 (10th Cir. (Okl.) 1971). And, it appears that a party may pursue a damages claim in district court concurrently with a remediation action before the Corporation Commission. *Schneberger v. Apache Corp.*, 1994 OK 117, 890 P.2d 847; *Union Texas Petroleum Corp.*, 1995 OK CIV APP 63, ¶19, 909 P.2d at 139.

4) The Nelsons are requesting that the Commission temporarily stay the proceedings in this cause pending the final determination of the District Court case based on the legal doctrine of comity. In *Tenneco Oil Company v. Oklahoma Corporation Commission*, 775 P.2d 296 (Okl. 1989) the operator brought suit in Federal District Court seeking a determination that Tenneco was a participant in a well pursuant to forced pooled Order No. 201498. Over the objection of Tenneco, the Federal District Court ruled that it had jurisdiction and subsequently held that Tenneco was a participant in the well. Tenneco appealed to the 10th Circuit Court of Appeals arguing, in part, that jurisdiction over the parties' dispute lay solely with the Commission. At the same time it filed its federal appeal, Tenneco also filed an application with the Corporation Commission seeking a determination that it was not a participant in the unit well pursuant to forced pooling Order No. 201498. Persuaded by

principles of res judicata and collateral attack, the Commission dismissed without prejudice Tenneco's application in Order No. 306671. The Commission held in Order No. 306671 that Tenneco's right to refile an application with the Commission was contingent upon the 10th Circuit's determination that the Federal District Court exceeded its jurisdiction when it adjudicated the question of Tenneco's participation under forced-pooling Order No. 201498. Because of the existence of Tenneco's challenge to the federal court's jurisdiction, the Oklahoma Supreme Court found the Commission erred in dismissing Tenneco's application. The Supreme Court concluded that because of the jurisdictional challenge, the Corporation Commission should have stayed or arrested the proceeding pending disposition of the federal appeal based upon principles of comity. The issues in the operator's federal court action and Tenneco application at the Commission were the same, i.e. whether Tenneco was a participant in a particular well pursuant to forced pooling Order No. 201498. In the present case issues are not the same, i.e. remediation of alleged soil and water versus award of monetary damages for alleged trespass and nuisance. The District Court clearly has jurisdiction in the matters pending before it of trespass, nuisance and damages. Pursuant to 17 O.S. Section 52 and 52 O.S. Section 139(B)(2) the Commission has jurisdiction over site remediation such as that to be performed in accordance with EXCO's application to remediate the alleged soil and water pollution. Consequently the *Tenneco* case is not applicable to the facts in the present case. (In addition, the doctrine of comity can only be invoked where the parallel proceeding has resulted in a final order being made in that court.) The doctrine of comity has no application to the facts existing at this time because the exercise of jurisdiction by the Commission will not interfere with the exercise of jurisdiction by the District Court.

5) The Supreme Court in *Greenhouse v. Hargrave*, 509 P.2d 1360 (Okl. 1973) stated:

¶19 The doctrine of "comity" between courts stands for the premise that one court should defer action on causes properly within its jurisdiction until courts of another sovereignty with concurrent powers and already cognizant of the litigation, have had opportunity to pass upon the matter. *Darr v. Burford*, 70 S. Ct. 587, 339 U.S. 200, 94 L. Ed. 761 (1950).

¶20 Under the doctrine of comity, a court should ordinarily decline to entertain jurisdiction of a matter where there is an action already pending in a convenient and competent forum of a sister state to which the parties may apply, and where exercise of

jurisdiction by the second court might lead to confusion and conflicting orders. *Moody v. Branson*, 192 Okla. 327, 136 P.2d 925, 926 (1943).

¶21 Judicial comity is not a rule of law, but one of practical convenience and expediency. It is based on the theory that when a court has jurisdiction, its jurisdiction will not be interfered with during the continuance of its jurisdiction by another court of a foreign jurisdiction, unless it is desirable that one give way to the other. *Clampitt v. Johnson*, 359 P.2d 588, 592 (Okla. 1961).

6) In *DLB Energy Corporation v. Oklahoma Corporation Commission*, 805 P.2d 657 (Okla. 1991), the Supreme Court was asked to decide whether the Commission properly denied four motions to stay various Commission actions until a judgment was entered in a related district court action. The movant asserted: 1) that a decision in the District Court action could impact on the opposing party's standing to proceed before the Corporation Commission; 2) that the District Court would be charged with determining the contact rights of both parties under the farmout agreement; and 3) that by ruling in the causes, the Commission might issue an order inconsistent with the District Court's judgment and allow the opposing party to circumvent its contractual obligations. The ALJ denied the motions to stay and the Commission affirmed the ALJ's decision. The Supreme Court found the orders were interlocutory orders which were not immediately appealable. The Supreme Court stated:

Neither are we presented with a situation similar to *Tenneco Oil Company v. Oklahoma Corporation Comm'n*, 775 P.2d 296, 298 (Okla. 1989), in which we found that the Corporation Commission should have stayed its proceedings based on principles of comity. In *Tenneco*, a federal district court decision was on appeal when the related cause was filed with the Corporation Commission. Here, there has been no decision in the district court action. We find that the denial of a motion to stay proceedings is an interlocutory order and that it is not appealable.

In order for the doctrine of comity to be invoked by a party seeking a stay of an action, one of the required elements is the existence of a decision on the merits which would be interfered with if the other action is not stayed. See *Panama Processes, S.A. v. Cities Service Company*, 796 P.2d 276 (Okla. 1990) where the Supreme Court found that relitigation of Panama's breach of contract theory

which had been fully and fairly litigated in the Brazillian court was entitled to comity; see also *Crooks v. Seventh Judicial District, Oklahoma County, Oklahoma*, 581 P.2d 897 (Okla. 1978) where the Supreme Court stated that:

...there is no final order that requires comity or "full faith and credit." The Iowa requisition is bottomed on a temporary order seeking the children to be physically brought before the Iowa court. There is no final order that determines the children "in need of assistance" under the Iowa proceeding. See *Greenhouse v. Hargrave*, Okl., 509 P.2d 1360, 1362 (1973).

7) In the present case for the reasons stated above, the Referee finds there is no basis upon which the Nelsons can invoke the doctrine of comity as a basis for the request to stay this action. Further, the Commission has jurisdiction over the matters encompassed by EXCO's application, i.e. remediation of soil and alleged water pollution and the district court has jurisdiction over the Nelsons' claims for monetary damages, i.e. arising from an alleged trespass or nuisance. Accordingly, the Referee affirms the decision of the ALJ to deny the Nelsons' Motion to Temporarily Stay Proceedings.

RESPECTFULLY SUBMITTED THIS 27th day of JANUARY, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
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